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# Rules and Regulations

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## DEPARTMENT OF AGRICULTURE

### Animal and Plant Health Inspection Service

[Docket No. 87-010]

### 7 CFR Part 301

### Pink Bollworm Regulated Areas

**AGENCY:** Animal and Plant Health Inspection Service, USDA.

**ACTION:** Interim rule.

**SUMMARY:** We are amending the pink bollworm quarantine and regulations by adding Lincoln County, Arkansas, as a suppressive area to the list of pink bollworm regulated areas. This action is necessary to impose certain restrictions on the interstate movement of regulated articles in order to prevent the artificial movement of the pink bollworm into noninfested areas.

**DATES:** Interim rule effective April 16, 1987. We will consider your comments if we receive them on or before June 15, 1987.

**ADDRESSES:** Send written comments to Steven B. Farbman, Assistant Director, Regulatory Coordination, APHIS, USDA, 6505 Belcrest Road, Room 728, Federal Building, Hyattsville, MD 20782. Please state that your comments refer to Docket Number 87-010. Written comments received may be inspected at Room 728 of the Federal Building between 8:00 a.m. and 4:30 p.m., Monday through Friday, except holidays.

**FOR FURTHER INFORMATION CONTACT:** Michael J. Shannon, Senior Staff Officer, Field Operations Support Staff, Plant Protection and Quarantine, Animal and Plant Health Inspection Service, U.S. Department of Agriculture, 6505 Belcrest Road, Room 663, Federal Building, Hyattsville, MD 20782, (301) 436-8295.

**SUPPLEMENTARY INFORMATION:**

**Background**

The pink bollworm, *Pectinophora gossypiella* (Saunders), is one of the most destructive and widespread insect pests of cotton in the world. This insect spread to the United States from Mexico in 1917 and now occurs throughout most of the cotton-producing States west of the Mississippi River.

The pink bollworm quarantine and regulations (contained in 7 CFR 301.52 *et seq.*, and referred to below as the regulations) quarantine the States of Arizona, Arkansas, California, Louisiana, Mississippi, Nevada, New Mexico, Oklahoma, and Texas because of the pink bollworm. The regulations restrict the interstate movement of regulated articles from regulated areas in quarantined States for the purpose of preventing the artificial spread of the pink bollworm. We are amending § 301.52-2a of the regulations by adding Lincoln County, Arkansas, as a suppressive area to the list of pink bollworm regulated areas.

Regulated areas for pink bollworm are designated as either suppressive areas or generally infested areas. Restrictions are imposed on the interstate movement of regulated articles from both in order to prevent the artificial movement of the pink bollworm into noninfested areas. However, the eradication of pink bollworm is undertaken as an objective only in places that are designated as suppressive areas.

Prior to the effective date of this document, Lincoln County in Arkansas contained no areas regulated because of pink bollworm. We are designating all of Lincoln County as a suppressive area. Surveys conducted by inspectors of the United States Department of Agriculture and a State agency of Arkansas establish that pink bollworm has spread to areas in Lincoln County. In order to prevent the spread of pink bollworm and to facilitate its ultimate eradication, we are amending the regulated areas in § 301.52-2a of the regulations by designating all of Lincoln County in Arkansas, as a suppressive area.

**Emergency Action**

William F. Helms, Deputy Administrator of the Animal and Plant Health Inspection Service for Plant Protection and Quarantine, has determined that an emergency situation exists, which warrants publication of this interim rule without prior opportunity for a public comment. Because of the possibility that the pink bollworm could spread artificially to noninfested areas of the United States, immediate action is required to control the spread of this pest.

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

**Executive Order 12291 and Regulatory Flexibility Act**

We are issuing this rule in conformance with Executive Order 12291, and we have determined that it is not a "major rule." Based on information compiled by the Department, it has been determined that this rule will have an estimated annual effect on the economy of less than $10,000; will not cause a major increase in cost or prices for consumers, individual industries, Federal, State or local government agencies, or geographic regions; and will not cause significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

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

This action affects the interstate movement of regulated articles from Lincoln County in Arkansas. Based on information compiled by the Department, we have determined that, although there are hundreds of small entities that move these articles interstate from nonregulated areas in the United States, only about five small entities move them interstate from Lincoln County, Arkansas. Further, the overall economic impact from this action is estimated to be less than $10,000.

Under these circumstances, the Administrator of the Animal and Plant Health Inspection Service has determined that this action will not have a significant economic impact on a substantial number of small entities.

**Executive Order 12372**

The program/activity is listed in the Catalog of Federal Domestic Assistance under No. 10.025 and is subject to the provisions of Executive Order 12372, which requires intergovernmental consultation with State and local officials, (See 7 CFR Part 3015, Subpart V)

**List of Subjects in 7 CFR Part 301**

Agricultural commodities, Pink bollworm, Plant pests, Plants (Agriculture), Quarantine, Transportation.

## PART 301—DOMESTIC QUARANTINE NOTICES

Accordingly, 7 CFR Part 301 is amended as follows:

1. The authority citation for Part 301 continues to read as follows:

**Authority:** 7 U.S.C. 150dd, 150ee, 150ff, 161, 162 and 164–167; 7 CFR 2.17, 2.51, and 371.2(c).

2. Section 301.52–2a is amended by revising the list of regulated areas in the State of Arkansas to read as follows:

**§ 301.52–2a Regulated areas; suppressive and generally infested areas.**

* * * * *

Arkansas

(1) *Generally infested area.* None.

(2) *Suppressive area.*

*Chicot County.* That portion of the county lying north of U.S. Highway 82.

*Desha County.* The entire county.

*Drew County.* That portion of the county lying east of State Highway 293 and State Highway 4.

*Jefferson County.* That portion of the county lying east of U.S. Highway 79.

*Lincoln County.* The entire county.

*Monroe County.* That portion of the county lying east of White River and south of U.S. Highway 79 and U.S. Highway 49.

*Phillips County.* That portion of the county lying south of U.S. Highway 49.

* * * * *

Done in Washington, DC, this 10th day of April, 1987.

**D. Husnik,**

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

[FR Doc. 87–8452 Filed 4–15–87; 8:45 am]

BILLING CODE 3410–34–M

## NUCLEAR REGULATORY COMMISSION

### 10 CFR Part 73

### Miscellaneous Amendments Concerning Physical Protection of Nuclear Power Plants; Correction

**AGENCY:** Nuclear Regulatory Commission.

**ACTION:** Final rule; correction.

**SUMMARY:** This document amends a final rule, published by the Nuclear Regulatory Commission (NRC) in August 1986, which revised 10 CFR Part 73 to provide a more safety-conscious safeguards system while maintaining current levels of protection. This action is necessary to correct the inadvertent deletion of the requirement to consider the central alarm station at nuclear power reactors a vital area, and to inform affected licensees and the public of the inadvertent deletion.

**EFFECTIVE DATE:** April 16, 1987.

**FOR FURTHER INFORMATION CONTACT:** Priscilla A. Dwyer, Office of Nuclear Material Safety and Safeguards, U.S. Nuclear Regulatory Commission, Washington, DC 20555, telephone (301) 427–4773.

**SUPPLEMENTARY INFORMATION:** Prior to the publication of the Miscellaneous Amendments as a final rule on August 4, 1986 (51 FR 27817), Nuclear power reactor licensees were required to consider their central alarm stations as vital areas under § 73.55(e)(1). When the Miscellaneous Amendments were first proposed on August 1, 1984 (49 FR 30735), they introduced the new concept of "vital islands." Under that proposed rule, the central alarm station, along with four other areas, was designated as an independent vital island which, in essence, maintained the requirement that the central alarm station be considered vital. Public comment on the proposed rule indicated some confusion over use of the terms "vital islands" and "independent vital islands." Due to these comments and the evolving nature of vital area/island policy at that point in time, the determination was made by the staff to delete these new concepts from the amendments when published as a final rule. In doing so, however, the original requirement to consider the central alarm station a vital area inadvertently was not inserted back into the regulation. The purpose of this notice is to clarify that central alarm station remain a vital area notwithstanding the error in the prior publication. This revision will have no impact on power reactor licensees because previous security plan commitments to protect the central alarm station as vital have been maintained throughout this period.

Because all central alarm stations at nuclear power reactors have been, and continue to be protected as vital areas and because the omission being corrected was inadvertent, notice of proposed rulemaking and public comment thereon is unnecessary for this administrative amendment. Also, for these and additional reasons the NRC finds that good cause exists to waive the 30-day deferred effective date provisions of the Administrative Procedure Act (5 U.S.C. 553(d)). The omission must be corrected immediately to avoid the potential for confusion over the legal requirement for maintaining the vital status of central alarm stations. Therefore, the rule is effective on publication in the **Federal Register.**

**Environmental Impact: Categorical Exclusion**

The NRC has determined that this final rule is the type of action described in categorical exclusion 10 CFR 51.22(c)(3). Therefore, neither an environmental impact statement nor an environmental assessment has been prepared for this final rule.

**Paperwork Reduction Act Statement**

This final rule contains no information collection or requirements and therefore is not subject to the requriements of the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 et. seq.).

**Regulatory Analysis**

No regulatory analysis has been prepared for this final rule because there are anticipated to be no cost or resource impacts to the NRC or affected licensees.

**Backfit Analysis**

No backfit analysis has been prepared for this final rule because of its administrative nature and recodification of prior commitments.

**List of Subjects in 10 CFR Part 73**

Hazardous materials-transportation, Incorporation by reference, Nuclear materials, Nuclear power plants and reactors, Penalty, Reporting and recordkeeping requirements, Security measures.

For the 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 adopting the following amendment to 10 CFR Part 73.

## PART 73—PHYSICAL PROTECTION OF PLANTS AND MATERIALS

1. The authority citation for Part 73 continues to read as follows:

**Authority:** Sec. 161, 68 Stat. 948, as amended (42 U.S.C. 2201); sec. 201, 88 Stat. 1242, as amended (42 U.S.C. 5841).

2. In § 73.55, paragraph (e)(1) is revised to read as follows:

**§ 73.55 Requirements for physical protection of licensed activities in nuclear power reactors against radiological sabotage.**

* * * * *

(e) *Detection aids.* (1) All alarms required pursuant to this part must annunciate in a continuously manned central alarm station located within the protected area and in at least one other continuously manned station not necessarily onsite, so that a single act cannot remove the capability of calling for assistance or otherwise responding to an alarm. The onsite central alarm station must be considered a vital area and its walls, doors, ceiling, floor, and any windows in the walls and in the doors must be bullet-resisting. The onsite central alarm station must be located within a building in such a manner that the interior of the central alarm station is not visible from the perimeter of the protected area. This station must not contain any operational activities that would interfere with the execution of the alarm response function. Onsite secondary power supply systems for alarm annunciator equipment and non-portable communications equipment as required in paragraph (f) of this section must be located within vital areas.

* * * * *

Dated at Bethesda, Maryland this 8th day of April, 1987.

For the Nuclear Regulatory Commission.

**Victor Stello, Jr.,**

*Executive Director for Operations.*

[FR Doc. 87-8607 Filed 4-15-87; 8:45 am]

BILLING CODE 7590-01-M

## NATIONAL CREDIT UNION ADMINISTRATION

### 12 CFR Parts 701 and 741

### Organization and Operations of Federal Credit Unions; and Requirements for Insurance and Voluntary Termination of Insurance

**AGENCY:** National Credit Union Administration.

**ACTION:** Final rule.

**SUMMARY:** The NCUA Board has adopted final rules concerning business loans made by federally-insured credit unions and concerning preferential treatment and prohibited fees on business and other loans. These final rules are based on a proposed rule issued by the NCUA Board on June 19, 1986 (*see* 51 FR 23234, June 26, 1986), and a revised proposed rule issued by the NCUA Board on December 17, 1986 (*see* 51 FR 46869, December 29, 1986). These final rules incorporate many of the recommended changes and amendments submitted by commenters on the prior proposals. Major revisions involve the definition of member business loans (§ 701.21(h)(1)(i)), written business loan policies (§ 701.21(h)(2)), prohibited fees and preferential loan treatment (§ 701.21(c)(8) and (d)(5)), and minimum loan policy requirements for federally-insured credit unions (§ 741.3).

**EFFECTIVE DATE:** July 1, 1987.

**ADDRESS:** National Credit Union Administration, 1776 G Street, NW., Washington, DC 20456.

**FOR FURTHER INFORMATION CONTACT:** J. Leonard Skiles, Regional Director, Region V (Austin), 611 East 6th Street, Suite 407, Austin, TX 78701; or D. Michael Riley, Director, Office of Examination and Insurance, or Steven R. Bisker, Assistant General Counsel, 1776 G St., NW., Washington, DC 20456, or telephone: (512) 482-5131 (Mr. Skiles); (202) 357-1065 (Mr. Riley); or (202) 357-1030 (Mr. Bisker).

**SUPPLEMENTARY INFORMATION:**

### Background and General Comments

Approximately 350 comment letters were submitted on the June 1986 proposal and approximately 85 letters were submitted on the December proposal. A majority of the commenters on the second proposal either expressed support for the rules, or expressed appreciation of NCUA's responsiveness and recommended additional changes. Some of the commenters, although recognizing the present need for a rule, urged the NCUA Board to commit to review the rule in one to two years. NCUA has already begun to collect data on business loans in conjunction with the Semiannual Report (Form 5300) and will review the data over a period of three years or less. This process will help the NCUA Board determine the effectiveness of and the continued need for this final rule.

While the process of public debate and comment on this rule has been relatively long, with numerous discussions, lectures, and articles addressing the subject, there continues to be some misunderstanding about the objectives of the provisions concerning member business loans. The Board wants to stress that it is *not* its intent to prohibit commercial lending. Rather, the objective of the rule is to help establish a framework to ensure that business loans are made in a way that will reduce the risk inherent in such loans and provide for adequate financial backup (reserves) in the event that losses are incurred. The Board's goal is to provide the basis for a system of business lending that is consistent with safe and sound practices and that will help to reduce losses to federally-insured credit unions and the National Credit Union Share Insurance Fund ("NCUSIF"). This is the principal reason for bringing *all* federally-insured credit unions within the scope of the rule.

Some commenters have questioned NCUA's authority to extend the rule to federally-insured state credit unions. They argue that the Board's general rulemaking authority in section 209(a)(11) of the FCU Act (12 U.S.C. 1789(a)(11)) does not empower NCUA to promulgate a rule such as this. The Board does not agree. The objective of these rules is to ensure that lending practices are conducted in a safe and sound manner. Unsafe business lending practices by federally-insured state credit unions directly affect the risk of loss to the NCUSIF and in fact have resulted in many millions of dollars of losses in the last several years. Similarly, instances of preferential and substandard lending to insiders have resulted in very severe losses. Thus the application of these rules to federally-insured state credit unions is not a matter of unconstitutional overreaching, but instead is simply a matter of meeting certain minimum standards as a condition of Federal insurance. In this connection, section 201(b)(9) of the Act (12 U.S.C. 1781(b)(9)) provides that insured credit unions agree "to comply with the requirements of [Title II of the FCU Act] and of the regulations prescribed by the Board pursuant thereto." The record reflects that NCUA has used this authority only when necessary to establish minimum safety and soundness standards as a condition of Federal insurance.

Further, the Board, in this instance, has provided exemptions for federally-insured state credit unions in states that adopt rules "substantially equivalent" to NCUA's rules. (*See* discussions under "Applicability of Rules to Federally-Insured State Credit Unions," below.)

The most frequently received comments and the changes that have been made in the final rule are detailed below.

*Prohibited Fees (Section 701.21(c)(8))*

This is one of two sections of the rules that apply to *all* loans to members by Federal and federally-insured state credit unions. This Section of the proposal would have prohibited all officials and employees, and their immediate family members, from receiving loan-related commission and fee income. "Immediate family member" was very broadly defined. Many commenters expressed concern about the breadth of this prohibition. In response to the comments, the final rule narrows the prohibition to directors, committee members, loan officers, and senior management employees (defined essentially to include the CEO and his or her top assistants), and narrows the definition of "immediate family member" to the spouse and other relatives living in the same household.

The conflicts of interest sought to be eliminated by this Section of the rule exist principally where the person involved is in a position of authority in the credit union so as to influence or make decisions that can affect their pecuniary interest. Non-senior employees, therefore, need not be included in the prohibition.

The definition of "immediate family member" was amended because many commenters expressed concern that relatives of directors, committee members, and employees, previously included in the definition, were unwarrantedly precluded from doing business (providing services in connection with underwriting, insuring, servicing, or collecting loans or lines of credit) with the credit union. The Board agrees that the prohibition may have been unnecessarily broad and, therefore, has limited the definition. It is expected, however, that any such dealings will be at arm's length and in the best interest of the credit union.

*Nonpreferential Treatment (Section 701.21(d)(5))*

This is the second provision of the lending rules that applies to both member business and nonbusiness loans. This section prohibits preferential loans to directors and committee members and to their immediate family members and business associates. As in the case of the provisions on prohibited fees, the definition of immediate family member is limited to the spouse and other family members living in the same household. This change has also been made in § 701.21(h)(1)(iv) (prohibiting certain business loans to senior management employees, discussed below), and it is noted that the Board will, in the near future, review other provisions in NCUA's Rules and Regulations where the term appears and will consider consistent revisions to those Sections as well (*see* e.g., § 701.27(c)(3) concerning "credit union service organizations," § 701.36(b)(6) concerning fixed-assets, § 703.2(l) concerning investment activities, and § 721.2(c) concerning insurance and group purchasing).

*Definition of Member Business Loan (Section 701.21(h)(1)(i))*

A recommendation contained in several comment letters was that the exception from the definition of member business loans in paragraph (A), for loans fully secured by a lien on a 1 to 4 family dwelling, *not* be limited to the member's primary or secondary residence. The proposed rule was limited because it was not the Board's intention to except out from the definition real estate investment loans fully secured by such property. The commenters believed that the proposed rule was overly restrictive. The Board has reconsidered its position and has amended the rule to expand the exception to include a loan or loans fully secured by (1) the member's primary residence, or (2) the member's secondary residence, or (3) one other 1 to 4 family dwelling owned by the member. The change will permit a member to have a total of three fully secured loans (primary residence, secondary residence and one other) that would not otherwise be subject to § 701.21(h). This change should accommodate those instances where a member purchases a new primary residence and does not sell his prior residence but, instead, rents it to a family member or other person. In many cases, the motivation to maintain the old residence is not investment oriented but rather to provide a home for a family member.

Some commenters asked whether loans fully secured by condominium or cooperative apartments or townhouses were included in the exception. The Board interprets 1 to 4 family dwelling as including these kinds of residential properties.

The Board also received several comments asking that paragraph (B), the exception for loans fully secured by shares in the credit union, be broadened to include deposits in other financial institutions such as banks, savings and loan associations, and other credit unions. The Board's initial reason for limiting the exclusion to shares in the credit union was its concern that credit unions would fail to take the steps necessary to properly obtain a fully secured interest in deposits held at other financial institutions. The Board has amended the rule to include deposits in other financial institutions but cautions credit unions that, for the exception to apply, they must have completed all necessary agreements, filings, notifications, etc., required under state law to fully secure (perfect) their interest in such deposits.

A number of commenters urged the Board to raise the $25,000 trigger amount specified in paragraph (C) (loans less than $25,000 are *not* subject to § 701.21(h)) to $50,000. The Board has not increased the trigger amount because it would remove many loans from coverage under § 701.21(h) that, for safety and soundness reasons, need to be underwritten, monitored, and serviced in conformance with this rule. It is apparent from some of the comments that there is still confusion as to the effect of the $25,000 trigger amount. Simply stated, paragraph (C) excludes all loans under $25,000 that, but for the amount of the loan, would otherwise be subject to the member business loan rule § 701.21(h)). It is *not* a ceiling on the dollar amount that can be extended for a business loan. Further, the fact that a loan is excluded from coverage under § 701.21(h) does not mean that the loan is not subject to other applicable provisions of § 701.21 or other applicable sections of the NCUA Rules and Regulations and the FCU Act.

The Board received a comment letter from the Small Business Administration ("SBA") concerning the exclusion in paragraph (D) for loans fully insured or guaranted by an agency of the Federal government. The SBA stressed that the requirements in § 701.21(h) are consistent with the types of requirements followed by lenders participating in SBA's business loan guaranty program. Any credit union that is not conforming to these standards will likely not be approved by SBA. Therefore, while paragraph (D) provides credit unions with an exclusion for mandatory coverage under the rule, the provisions in the rule would generally need to be followed to satisfy SBA requirements.

Lastly, the Board notes that in each instance in the rule where the term "fully secured" appears, it means interests obtained by a credit union in the specific collateral sufficient to give the credit union an unimpaired right, free from the right of subsequent creditors, lienholders, receivers, trustees in bankruptcy, etc., to foreclose (take) the collateral in the event of default by the borrower.

*Written Loan Policies (Section 701.21(h)(2)(i))*

Paragraph (H) in § 701.21(h)(2)(i) of the proposed rule generated many comments. This provision required that financial statements and other documentation, including tax returns be updated on an annual or more frequent basis. Several of the commenters stated that because of the size of certain loans and the types of small businesses involved, the cost to the borrower to provide the required updated reports and documentation would be prohibitive. The same concern was expressed by the commenters as to the requirements in paragraph (G) which call for, among other things, balance sheet, trend and structure analysis; ratio analysis of cash flow, income and expenses, and tax data. Commenters also argued that these analyses were unnecessary where the income flow relied upon to repay the loan is not from the business.

In response to these concerns, the Board has combined parts of paragraphs (G) and (H) to form a new paragraph (H). The new paragraph states that a credit union's written loan policy shall provide for the analysis and updating of documentation specified in the paragraph *unless* the credit union's board of directors finds that it is not appropriate for a particular type of business loan and states the reasons for those findings in the credit union's written policies. These reasons must be based on sound business lending practices and be clear as to the basis for excepting out a particular type of business loan. NCUA examiners will be instructed to carefully review the credit union's board of directors findings in this regard. Lastly, the new paragraph requires "periodic" updating instead of yearly or more frequent updating. The larger and the more complex the loan, the more documentation is required and the more frequently it must be updated.

Paragraph (L), which had required the periodic disclosure to members of the number and aggregate dollar amount of business loans made to officials, and employees, has been amended to require only the periodic disclosure of the number and aggregate dollar amount of member business loans. Commenters stressed that the privacy of credit union officials and employees could be infringed by such disclosures. The Board believes that there are sufficient safeguards in the final rule to protect against insider dealing and conflicts of interest. The Board has determined that these additional disclosures are not necessary and has amended the final rule.

*Loans to One Borrower (Section 701.21(h)(2)(ii))*

Several commenters ought to have the 20% (of reserves) loan-to-one-borrower limit increased and to have the rule specify the criteria to be evaluated by the Board in considering whether to approve a credit union's request to raise the limit. Additionally, some commenters sought an exception from inclusion in the 20% limit of that portion of a member business loan that is fully secured by a 1 to 4 family dwelling that is the member's primary residence, secondary residence, or one other such dwelling owned by the member.

The Board continues to believe that the 20% limitation is necessary for safety and soundness reasons and is comparable to limits established by other Federal financial institution regulators. The 20% limit remains unchanged in the final rule. However, the exclusion for portions of loans fully secured by the member's 1 to 4 family dwelling has been added to the rule.

The final rule contains a list of what the Board will require, at a minimum, in evaluating a request to raise the limit. The rule states that credit unions seeking an exception must present the Board with: the higher limit sought; an explanation of the need to raise the limit; an analysis of the credit union's prior experience making member business loans; and a copy of its business lending policy. As an example, in explaining the need to raise the limit, an agricultural type credit union might note that almost all of the loans it normally makes would fall within the coverage of the rule and that they are usually quite large (e.g., for the purchase of tractors, combines, etc.). The credit union would need to support this with actual statistics and provide the Board with the other items noted n the rule.

*Allowance for Loan Losses (Section 701.21(h)(2)(iii))*

Some commenters continued to voice objection to the classifying of loans that are not delinquent, if the analysis and documentation of the loan is inadequate. Also, the commenters expressed their uncertainty as to who makes the initial determination on the classification of loans.

Although a loan may be current, there is no assurance that payments will continue, especially if the business falls upon hard times. Only through proper analysis and documentation can the loan be properly evaluated. Without that, the potential for loss increases. It is for this and other reasons that the Board has not amended this provision. The Board does want to stress that, although the criteria for classifying member business loans is somewhat different from that for other credit union loans, the procedure by which loans are classified was not intended to be changed by this rule. Credit unions will continue to make the initial determination and the examiner will review the classification.

*Prohibition on Loans to Senior Management Employees (Section 701.21(h)(3))*

This Section of the rule generated the most comments. Many of the commenters urged the Board to exclude loans to family members of salaried management from the prohibition. As previously discussed, the Board has amended the definition of "immediate family member" (*see* § 701.21(h)(1)(iv)). Therefore, the prohibition would now apply only to the individual's spouse or other family member living in the same household.

It should be recognized that the prohibition is *not* an absolute ban on loans to nonvolunteer senior management employees. These individuals are still eligible for consumer loans, including mortgage, automobile, credit cards, etc. Further, they may receive loans for business purposes that are less than $25,000.

A few FISCU commenters noted that, pursuant to state law, otherwise uncompensated directors are authorized to receive a small stipend for attending each board meeting, in addition to their reimbursement for expenses. These stipends, although small, would cause those directors to lose their status as volunteers for purposes of the prohibition. Therefore, if a director desires to obtain a business loan from his/her credit union he/she should forego the stipend.

*Reporting of Nonconforming Member Business Loans (Section 701.21(h)(4)(ii))*

The proposed rule required that credit unions report to the NCUA Regional Director, on or before the effective date of the rule, all business loans that do not satisfy any of the requirements of the rule. To alleviate unnecessary confusion and work, the final rule requires the reporting of only those loans that are in excess of the loan-to-one-borrower limit contained in § 701.21(h)(2)(ii).

*Applicability of Rule to Federally-Insured State Credit Unions (Section 741.3)*

Several commenters recommended that this Section be amended to provide some flexibility to allow a state regulatory authority that has, for

example, certain provisions in its state code which depart from those in the FCU Act, to adopt *substantially* equivalent regulations as determined by the NCUA Board. The Board agrees that such an amendment is warranted and has amended the final rule.

Depending on the circumstances, an exemption may be granted for one or more of the sections of NCUA's lending regulations that will now apply to federally-insured state credit unions (§ 701.21(c)(8) concerning prohibited fees, § 701.21(d)(5) concerning nonpreferential treatment, and § 701.21(h) concerning member business loans).

In determining whether a state's regulations are "substantially equivalent," and whether to exempt the state's credit unions from § 701.21(c)(8), (d)(5), or (h), the NCUA Board will review the regulations to determine whether they minimize risk and accomplish the overall objectives of the otherwise applicable NCUA Rules and Regulations. In the case of the member business loan rule, the Board will be particularly concerned with the provisions in the state's rules that address the scope of the rule, diversification (i.e., loan-to-one-borrower limits), written loans policies, and loans to senior management. Further, states that are exempted will need to provide for a system in which any required reviews and approvals, (e.g., approval to an individual credit union to exceed the 20% loan-to-one-borrower limit) although ultimately approved by the state, are decided only after consultation and coordination with NCUA. This would be the same type of procedure as contained in Section 741.3 for nonexempt states, where NCUA coordinates with the state supervisor.

*Standard Bylaw Amendment—Loans to Nonnatural Persons (Article XII, Section 1)*

In conjunction with the promulgation of these final rules, the NCUA Board has also approved a standard bylaw amendment for Federal credit unions concerning loans to nonnatural person members. Pursuant to Article XII, Section 1 of the FCU Bylaws, loans to a member other than a natural person cannot be in excess of its shareholdings in the credit union. The standard bylaw amendment, if adopted by an FCU, would permit the loan to exceed shares if the loan is made jointly to one or more natural person members and a business organization in which they have a majority ownership interest, or, if the nonnatural person is an association, the loan is made jointly to a majority of the members of the association and to the association in its own right.

**Regulatory Procedures**

*Regulatory Flexibility Act*

The NCUA Board has determined and certifies that the final rule will not have a significant economic impact on a substantial number of small credit unions (primarily those under 1 million dollars in assets). According to information available to the NCUA, business loans are not made by a significant number of small credit unions. Accordingly, the Board has determined that a Regulatory Flexibility Analysis is not required.

*Paperwork Reduction Act*

The Board submitted the information collection requirements of the first proposed business lending rule and received conditional approval from the Office of Management and Budget (OMB). (*See* (51 FR 23234, June 26, 1986.) The information collection requirements of this final rule have been modified from the June proposed rule. The written loan policy requirement is now found at § 701.21(h)(2)(i). Certain collections that were required in all situations under the proposed rule are now only required when appropriate. One additional requirement has been addded. Section 701.21(h)(4)(ii) requires that a one-time notification to the appropriate NCUA Regional Director be made.

Since the collection requirements have been modified, they will be resubmitted to OMB for approval with publication of this final rule. OMB action on the requirements will be published in the **Federal Register** when it is received by NCUA.

Written comments and recommendations regarding the collection requirements should be forwarded directly to the OMB desk officer at the following address:

OMB Reports Management Branch, New Executive Office Building, Room 3208, Washington, DC 20503, ATT: Robert Neil.

**List of Subjects in 12 CFR Parts 701 and 741**

Credit unions, Member business loans.

By the National Credit Union Administration Board on April 9, 1987.

**Becky Baker,**

*Acting Secretary of the Board.*

**PART 701—[AMENDED]**

Accordingly, NCUA amends its regulations as follows:

1. The authority citation for Part 701 continues to read as follows:

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

2. Section 701.21(a) is revised to read:

**§ 701.21 Loans to members and lines of credit to members.**

(a) *Statement of scope and purpose.* Section 701.21 complements the provisions of section 107(5) of the Federal Credit Union Act (12 U.S.C. 1757(5)) authorizing Federal credit unions to make loans to members and issue lines of credit (including credit cards) to members. Section 107(5) of the Act contains limitations on matters such as loan maturity, rate of interest, security, and prepayment penalties. Section 701.21 interprets and implements those provisions. In addition, § 701.21 states the NCUA Board's intent concerning preemption of state laws, and expands the authority of Federal credit unions to enforce due-on-sale clauses in real property loans. Also, while § 701.21 generally applies to Federal credit unions only, its provisions may be used by state-chartered credit unions with respect to alternative mortgage transactions in accordance with Title VIII of Pub. L. 97–320, and certain provisions apply to loans made by federally-insured state-chartered credit unions as specified in § 741.3. Finally, it is noted that § 701.21 does not apply to loans by Federal credit unions to other credit unions (although certain statutory limitations in section 107 of the Act apply), nor to loans to credit union organizations (which are governed by section 107(5)(D) of the Act and § 701.27 of this Part).

* * * * *

3. Section 701.21(c)(5) is revised to read:

* * * * *

(c) * * *

(5) *Ten percent limit.* No loan or line of credit advance may be made to any member if such loan or advance would cause that member to be indebted to the Federal credit union upon loans and advances made to the member in an aggregate amount exceeding 10% of the credit union's total unimpaired shares and surplus. In the case of member business loans as defined in § 701.21(h)(1)(i), additional limitations apply as set forth in § 701.21(h)(2)(ii).

* * * * *

4. Section 701.21(c)(8) is revised to read:

* * * * *

(c) * * *

(8) *Prohibited fees.* A Federal

credit union shall not make any loan or extend any line of credit if, either directly or indirectly, any commission, fee or other compensation is to be received by the credit union's directors, committee members, senior management employees, loan officers, or any immediate family members of such individuals, in connection with underwriting, insuring, servicing, or collecting the loan or line of credit. However, salary for employees is not prohibited by this Section. For purposes of this Section, "senior management employees" means the credit union's chief executive officer (typically this individual holds the title of President or Treasurer/Manager), any assistant chief executive officers (e.g., Assistant President, Vice President or Assistant Treasurer/Manager) and the chief financial officer (Comptroller), and "immediate family member" means a spouse or other family member living in the same household.

* * * * *

5. Section 701.21(d)(5) is revised to read:

* * * * *

(d) * * *

(5) *Nonpreferential treatment.* The rates, terms and conditions on any loan or line of credit either made to, or endorsed or guaranteed by—

(i) An official,

(ii) An immediate family member of an official, or

(iii) Any individual having a common ownership, investment or other pecuniary interest in a business enterprise with an official or with an immediate family member of an official, shall not be more favorable than the rates, terms and conditions for comparable loans or lines of credit to other credit union members. "Immediate family member" means a spouse or other family member living in the same household.

6. A new § 701.21(h) is added to read:

* * * * *

(h) *Member Business Loans*—(1) *Definitions.* (i) "Member business loan" means any loan, line of credit, or letter of credit, the proceeds of which will be used for a commercial, corporate, business, or agricultural purpose, except that the following shall not be considered member business loans for the purposes of this section:

(A) A loan or loans fully secured by a lien on a 1 to 4 family dwelling that is:

(*1*) The member's primary residence; or

(*2*) The member's secondary residence; or

(*3*) One other such dwelling owned by the member.

(B) A loan that is fully secured by shares in the credit union or deposits in other financial institutions.

(C) A loan, the proceeds of which are used for a commercial, corporate, business, or agricultural purpose, made to a borrower or an associated member (as defined in paragraph (h)(1)(iii) of this section), which, when added to other such loans to the borrower or associated member, is less than $25,000.

(D) A loan, the repayment of which is fully insured or fully guaranteed by, or where there is an advance commitment to purchase in full by, any agency or the Federal government or of a state or any of its political subdivisions.

(ii) "Reserves" means all reserves, including the Allowance for Loan Losses account, and undivided earnings or surplus.

(iii) "Associated Member" means any member with a common ownership, investment or other pecuniary interest in a business or commercial endeavor.

(iv) "Immediate Family Member" means a spouse or other family member living in the same household.

(2) *Requirements.* A Federal credit union may make member business loans only in accordance with the applicable provisions of § 701.21 (a) through (g) and the following additional requirements:

(i) *Written loan policies.* The board of directors must adopt specific business loan policies and review them at least annually. The policies shall, at a minimum, address the following:

(A) Types of business loans that will be made.

(B) The credit union's trade area for business loans.

(C) Maximum amount of credit union assets, in relation to reserves, that will be invested in business loans.

(D) Maximum amount of credit union assets, in relation to reserves, that will be invested in a given category or type of business loan.

(E) Maximum amount of credit union assets, in relation to reserves, that will be loaned to any one member or group of associated members, subject to § 701.21(h)(2)(ii).

(F) Qualifications and experience of personnel involved in making and administering business loans.

(G) Analysis of the ability of the borrower to repay the loan.

(H) The following considerations shall be addressed unless the board of directors finds that they are not appropriate for a particular type of business loan and states the reasons for those findings in the credit union's written policies: balance sheet, trend and structure analysis; ratio analysis of cash flow, income and expenses, and tax data; leveraging; comparison with industry averages; receipt and periodic updating of financial statements and other documentation, including tax returns.

(I) Collateral requirements, including loan-to-value ratios; appraisal, title search and insurance requirements; steps to be taken to secure various types of collateral; and how often the value and marketability of collateral is reevaluated.

(J) Appropriate interest rates and maturities of business loans.

(K) Loan monitoring, servicing and follow-up procedures, including collection procedures.

(L) Provision of periodic disclosure to the credit union's members of the number and aggregate dollar amount of member business loans.

(M) Identification, by position, of those senior management employees prohibited by paragraph (h)(3) of this section from receiving member business loans.

(ii) *Loans to one borrower.* Unless a greater amount is approved by the NCUA Board, the aggregate amount of outstanding member business loans to any one member or group of associated members shall not exceed 20% of the credit union's reserves. If any portion of a member business loan is fully secured by a 1 to 4 family dwelling that is the member's primary residence, secondary residence, or one other such dwelling owned by the member, or by shares in the credit union, or deposits in another financial institution, or insured or guaranteed by, or subject to an advance commitment to purchase by, any agency of the Federal government or of a state or any of its political subdivisions, such portion shall not be calculated in determining the 20% limit. Credit unions seeking an exception from the 20% limit must present the Board with, at a minimum: the higher limit sought; an explanation of the need to raise the limit; an analysis of the credit union's prior experience making member business loans; and a copy of its business lending policy.

(iii) *Allowance for loan losses.* (A) The determination whether a member business loan will be classified as substandard, doubtful, or loss, for purposes of the valuation allowance for loan losses, will rely on factors not limited to the delinquency of the loan. Nondelinquent loans may be classified, depending on an evaluation of factors, including, but not limited to, the adequacy of analysis and documentation.

(B) Loans classified shall be reserved as follows:

(1) Loss loans at 100% of outstanding amount;

(2) Doubtful loans at 50% of outstanding amount; and

(3) Substandard loans at 10% of outstanding amount unless other factors (e.g., history of such loans at the credit union) indicate a greater or lesser amount is appropriate.

(3) *Prohibitions*—(i) *Senior management employees.* A Federal credit union may not make member business loans to the following non-volunteer, senior management employees, or to any associated member or immediate family member of such employees:

(A) Any member of the Board of Directors who is compensated as such.

(B) The credit union's chief executive officer (typically this individual holds the title of President or Treasurer/Manager).

(c) Any assistant chief executive officers (e.g., Assistant President, Vice President, or Assistant Treasurer/Manager).

(D) The chief financial officer (Comptroller).

(ii) *"Equity kickers."* A Federal credit union shall not grant a member business loan where a portion of the amount of income to be received by the credit union in conjunction with such loan is tied to the profit to the business or commercial endeavor for which the loan is made.

(4) *Effective date.* (i) Section 701.21(h) is effective July 1, 1987. On and after that date, a Federal credit union may make member business loans only after adopting and implementing written loan policies as required by § 701.21(h)(2)(i). All member business loans made on or after that date must be in full compliance with § 701.21(h).

(ii) On or before July 1, 1987, a Federal credit union must notify the NCUA Regional Director, in writing, of any outstanding member business loans made prior to that date that do not satisfy the requirements of § 701.21(h)(2)(ii).

**Appendix to § 701.21(h)—Classifications**

*Substandard.* Loan is inadequately protected by the current sound worth and paying capacity of the obligor or of the collateral pledged, if any. Loans classified must have a well-defined weakness or weaknesses that jeopardize the liquidation of the debt. They are characterized by the distinct possibility that the credit union will sustain some loss if the deficiencies are not corrected. Loss potential, while existing in the aggregate amount of substandard loans, does not have to exist in individual loans classified substandard.

*Doubtful.* A loan classified doubtful has all the weaknesses inherent in one classified substandard, with the added characteristic that the weaknesses make collection or liquidation in full, on the basis of currently existing facts, conditions, and values, highly questionable and improbable. The possibility of loss is extremely high, but because of certain important and reasonably specific pending factors which may work to the advantage and strengthening of the loan, its classification as an estimated loss is deferred until its more exact status may be determined. Pending factors include: proposed merger, acquisition, or liquidation actions, capital injection, perfecting liens on additional collateral, and refinancing plans.

*Loss.* Loans classified loss are considered uncollectible and of such little value that their continuance as loans is not warranted. This classification does not necessarily mean that the loan has absolutely no recovery or salvage value, but rather, it is not practical or desirable to defer writing off this basically worthless asset even though partial recovery may occur in the future.

## PART 741—[AMENDED]

7. The authority citation for Part 741 is revised to read as follows:

**Authority:** 12 U.S.C. 1757, 1766(a), and 1781 through 1790.

8. Sections 741.3 through 741.9 are redesignated as §§ 741.4 through 741.10 respectively.

9. A new § 741.3 is added to read:

**§ 741.3 Minimum loan policy requirements.**

Any credit union which is insured pursuant to Title II of the Act must adhere to the requirements stated in § 701.21(h) concerning member business loans, § 701.21(c)(8) concerning prohibited fees, and § 701.21(d)(5) concerning nonpreferential loans. State-chartered, NCUSIF-insured credit unions in a given state are exempt from these requirements if the state regulatory authority for that state adopts substantially equivalent regulations as determined by the NCUA Board. In nonexempt states, all required NCUA reviews and approvals will be handled in coordination with the state credit union supervisory authority.

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## 12 CFR Part 708

## Mergers of Federally-Insured Credit Unions; Voluntary Termination or Conversion of Insured Status

**AGENCY:** National Credit Union Administration.

**ACTION:** Final rule.

**SUMMARY:** The Federal Credit Union Act empowers the NCUA Board to prescribe rules regarding mergers of federally-insured credit unions and changes in insured status, and requires written approval of the Board prior to the termination of Federal insurance or conversion of Federal insurance to non-Federal insurance. These revised rules address the treatment of the one percent NCUSIF deposit in mergers and shortening of the time permitted between the approval of a merger by NCUA and its presentation for a membership vote by the merging credit union. These rules also add new provisions regarding the termination or conversion of Federal insurance and set forth the forms to be used in obtaining membership approval of those actions. These rules do not affect the normal day-to-day operations of credit unions.

**EFFECTIVE DATE:** May 18, 1987.

**ADDRESS:** National Credit Union Administration, 1776 G Street NW., Washington, DC 20456.

**FOR FURTHER INFORMATION CONTACT:** James J. Engel, Deputy General Counsel, at the above address, or telephone: (202) 357-1030.

**SUPPLEMENTARY INFORMATION:**

### Background

On November 20, 1986, (See 51 FR 43377, December 2, 1986) the NCUA Board issued proposed amendments to Part 708 of its Rules and Regulations. Part 708 currently deals only with mergers involving at least one federally-insured credit union. Due to the fact that mergers can also involve the termination or conversion of Federal insurance, the November proposal added new provisions addressing those areas. As issued, the proposed rule was organized into three distinct subparts: Subpart A contained merger procedures; Subpart B set forth the procedures and notice requirements for termination of Federal insurance or conversion of Federal insurance to insurance provided by private or cooperative insurers; and Subpart C contained the forms to be used for terminating or converting Federal insurance, with or without a merger. This same format is followed in the final rule.

A total of nine public comment letters were received on the proposal. Comment letters were received from: one national credit union trade association; one credit union league; two Federal credit unions; 3 share (deposit) insurance corporations; one share insurance corporation trade association; and one state credit union supervisor trade association. The particular comments are addressed below.

**Public Comment**

In summary, one commenter supported the regulation as written, four commenters objected to the use of terms such as "federally-insured," "nonfederal insurance" and "Federal insurance"; two commenters felt the regulation discouraged termination or conversion of insurance; and two commenters had recommendations for minor changes. No commenters questioned the authority of the Board to regulate the matters addressed in the rule.

Regarding the objections to the use of terms such as "Federal insurance" and "federally-insured," similar objections were presented in a petition to amend Part 740 after the Board adopted a final amendment to that part in October, 1986. Two of the amendments at that time were inclusion of the term "federally" in the official sign and in the official advertising statement. The Board informed the petitioners in that matter that it did not find the use of "federally-insured" to be inaccurate or misleading and the Board continues to believe that the use of such terms are appropriate.

As stated in the legislative history of Title II of the Federal Credit Union Act (FCU Act):

> The primary purpose of the legislation [creating the National Credit Union Share Insurance Fund] is to provide a Federal system of share insurance for savings in credit unions and the regulatory authority necessary to operate such a share insurance system. Senate Rep. 91–1128, at 1, 91st Cong. 2d Sess., Aug. 19, 1970.

In discussing the need for the legislation, the Senate Report noted that "Federal credit unions are unique in that they are the only federally chartered thrift institutions that do not provide *Federal insurance protection* similar to that available to the depositors of most commercial banks and savings and loan associations." (Id., at 2, emphasis added.) The Report also specifically refers to "a program of Federal share insurance." (Id.) The fact of the matter is that NCUA is a Federal agency that administers a Federal share insurance program through the National Credit Union Share Insurance Fund. The references in the legislative history clearly indicate Congress knew it was creating Federal share insurance.

As to the comments that Congress could have used "Federal insurance" or "Federally-insured" in the FCU Act but chose not to, as an indication that "Federal insurance" was not intended, the Board believes the answer is clear from the statute itself. There was no need to use such terms. For insurance purposes, the FCU Act recognizes only two types of credit unions, those that are insured under the FCU Act—"insured credit union"—and those that are not—"noninsured credit union.' *See,* 12 U.S.C. 1752(7). A "noninsured credit union" is any credit union that is not insured by the NCUA Board through the NCUSIF. This would include credit unions that have no share insurance and those that are insured by an entity other than NCUA. Once a credit union converts from insurance under the FCU Act to another form of insurance, it becomes a "noninsured credit union" for purposes of the FCU Act. For purposes of Part 708 then, the Board could simply refer to any credit union not insured by it as a "noninsured credit union." Two of the commenters suggested that the Board do just that. The Board chose not to, however, and instead broke down "noninsured" credit union into "nonfederally-insured"—insured by a state-chartered insurance or guaranty corporation—and "uninsured"—having no share insurance at all. Use of "noninsured" when referring to nonfederally-insured credit unions, although accurate under the FCU Act, would, in the Board's view, be a disservice to those state-chartered insurers. None of the four commenters, however, which were state-chartered insurers themselves or represented those insurers, challenged the Board's authority to issue the rule or suggested alternatives to "nonfederally-insured" in their comments on the terminology used in the proposal. Rather, they recommended deleting terms such as "Federal," "federally," and "nonfederally." The Board is of the opinion that the terminology used in the proposal is appropriate and therefore has made no change in the final rule.

One commenter stated that it appears NCUA is trying to make it impossible to either change or drop NCUA insurance. The commenter requested relief from the 20 percent voter return requirement set forth in § 708.203(c) of the proposed rule. This 20 percent member participation rule is mandated by section 206(d)(2) of the FCU Act, 12 U.S.C. 1786(d)(2). That section of the FCU Act requires that at least 20 percent of the membership must participate in voting on the issue of converting insurance and a majority of those voting must approve. (Termination of insurance has a more stringent requirement: the affirmative vote of a majority of all members, 12 U.S.C. 1786(a)(1). *See* § 708.201(c) of this rule.) Since 20 percent participation is required by the statute, the Board is unable to make any change.

Another commenter felt that the forms in Subpart C would discourage termination or conversion of Federal insurance. The commenter requested that the forms be exemplary material and that credit unions be given greater flexibility in structuring notifications to their members. Although the forms are required, flexibility is provided in § 708.303. The proposed rule provided that modifications or additions would be permitted subject to approval of the appropriate Regional Director. The final rule has been changed by adding the state authority as a party to the approval of notice modifications in the case of state credit unions. In addition, any communications regarding insurance coverage mailed with the notices and ballot will require approval of the Regional Director and the state authority where appropriate.

The Board is of the opinion that part of its responsibilities in administering the Federal share insurance program is assuring that members have a clear understanding of any change to their credit union's share insurance coverage. In this regard, notification to members is extremely important. The Board does not find the use of specific forms to be burdensome and does not believe the forms in and of themselves will discourage termination or conversion of insured status. To the contrary, the use of the forms in Subpart C should simplify the process. The final rule, therefore, will require use of the language contained in the forms in Subpart C. As indicated, modifications can be made with the approval of the Regional Director and, where appropriate, the state authority.

Two commenters included specific suggestions for changes to the proposed rule, most of which relate to Subpart A—mergers. First, it was suggested that provisions that require submissions to the Agency be clarified as to whether the particular item should be submitted to the Regional Director or to the NCUA Board. For example, the current regulation requires submission of an insurance application to the Board (§ 708.3(c)) and submission of a merger plan to the Regional Director (§ 708.5(a)), while the proposal simply refers to NCUA (§§ 708.102(b) and 708.104(a)). NCUA was used in the proposal because these are areas subject to the Board's delegations of authority. The Board agrees with the commenter that clarification is appropriate and therefore the final rule has been revised to provide that all notices and submissions are to be sent to the appropriate Regional Director. If the Regional Director is not authorized to act on the submission, it will be forwarded to the NCUA Board. In most cases, the Board would seek Regional Director comments on an application or

plan and this would be accomplished by making the original submission to the Regional Office.

A second comment related to the refund of the NCUSIF deposit and/or insurance premium. *See* § 708.102(c) of the proposed rule. The commenter suggests that the FCU Act requires that any refund must not be returned prior to the expiration of the one-year period of continued insurance coverage and that this applies to a credit union that is nonfederally insured as well as those that are uninsured. Section 202(c)(1)(B)(i), 12 U.S.C. 1782(c)(1)(B)(i), requires a deposit refund in the event of insurance termination or conversion, and section 202(c)(1)(B)(ii), 12 U.S.C. 1782(c)(1)(B)(ii), provides that in no event shall the deposit be returned later than one year after the final date on which any shares are insured by the Board. Thus, the Board may withhold the refund for two years after termination of insurance, since limited insurance coverage extends for one year after termination; and for one year after conversion of insurance. Normally, the refund will be made as soon as possible after the NCUA's insurance liability expires, i.e., one year after termination and immediately after the date of conversion. The proposed regulation, § 708.102(c), merely states that in the case of a merger, if the continuing credit union is not insured by NCUA, i.e., it is uninsured or nonfederally insured, it will be entitled to a refund. If it is uninsured, the refund will not be made during the one-year limited coverage period. The Board does not believe that any change needs to be made to § 708.102. Section 202 of the FCU Act provides the basis for any extended withholding if that is determined to be necessary.

It was also suggested that the regulation stipulate that NCUA will examine credit unions during the one-year extended insurance coverage period after termination of insurance. The commenter believes that mandatory examination is necessary for the protection of the NCUSIF. The Board does not believe that its authority to examine such credit unions, which is found in section 206(d)(1) of the FCU Act, needs to be set forth in this regulation. The Board will exercise its discretion to conduct such examinations on a case-by-case basis.

Another suggestion was that a subsection (11) be added to § 708.103(a), preparation of a merger plan, to indicate the necessity of the adoption of Federal Bylaws where the continuing credit union is a Federal credit union. A new subsection is not necessary, however, since the continuing credit union's bylaws would remain in effect after a merger; no adoption of bylaws is necessary.

Both the current regulation, § 708.6(a), and the proposed, § 708.105(b), provide that if NCUA determines that a merging Federal credit union is in danger of insolvency and the merger would reduce the risk or avoid a loss to the NCUSIF, NCUA may permit the merger without membership approval. The proposal differs from the current regulation in that it requires the continuing credit union to be federally insured. The rationale for permitting the waiver of a membership vote in this situation is the benefit to the NCUSIF in the reduction of its risk or loss without the delay of obtaining membership approval. There is no change in NCUA's insurance liability to the members, they continue to have credit union service, and, if dissatisfied with the merger, they are free to withdraw their shares. The alternative would be liquidation of the merging Federal credit union. One commenter suggested that NCUA retain the right to waive the membership vote in the event of insolvency even if the actual risk to the NCUSIF is not reduced. In the Board's view, however, if there is no reduction of risk or avoidance of loss to the NCUSIF, there is no basis for speeding up the process and avoiding the delay that obtaining the membership vote would entail. In all likelihood, there would be no basis for permitting the merger at all since it would merely shift existing risk and loss to an otherwise stable institution. The Board, therefore, has made no change to § 708.105(b).

There were two comments submitted on § 708.201, termination of insurance. The first was in regard to subsection (b) which provides that a "Federal credit union may terminate Federal insurance only by merging into, or converting its charter to, an uninsured state credit union." The commenter felt that Federal insurance would also terminate if a Federal credit union merged with, or converted to, a nonfederally-insured state-chartered credit union. For purposes of this regulation, however, a merger with, or conversion to, a nonfederally-insured credit union would be treated as a conversion of insurance under § 708.203(b), not a termination of insurance. Termination, as that term is defined in § 708.1(g), means that the credit union will be uninsured, i.e., there is no share insurance of any kind. Therefore, no change is needed in § 708.201(b).

The second comment related to § 708.201(c). The commenter felt the provisions would only apply to federally-insured state credit unions and that provision was unclear. That is not the case though. Subsection (c) applies to termination by both state and Federal credit unions as provided in subsections (a) and (b) of § 708.201. In both situations, termination, whether as a single act or when coupled with a merger or change in charter— Federal credit unions can only terminate Federal insurance through a merger or change in charter—must be approved by a majority of all of the credit union's members under subsection (c). For this reason, no change has been made to § 708.201(c).

**Change in Final Rule**

Several changes have been made in the final rule. The first change is reflected by the addition of two provisions: § 708.201(d) and 708.203(d). These provisions set forth the statutory requirement contained in § 205(b) of the FCU Act that prior written approval of the Board is necessary in order to terminate Federal insurance (§ 708.201(d)) or convert to nonfederal insurance (§ 708.203(d)).

Section (§ 205(b)(1) of the FCU Act, 12 U.S.C 1785(b)(1), provides, in pertinent part, that:

> Except with the prior written approval of the Board, no insured credit union shall—(A) merge or consolidate with any *noninsured credit union* . . .; or
>
> * * * * *
>
> (D) Convert into a *noninsured credit union* . . . *(Emphasis added.)*

For purposes of the Federal Credit Union Act, the term "noninsured credit union" means any credit union that is not insured by the NCUA Board. 12 U.S.C. 1752(7). To avoid any uncertainty as to the Board's interpretation, §§ 708.201(d) and 708.203(d) have been added to the final rule, and the authority citation has been revised to include 12 U.S.C. 1785. The two new provisions also provide that the NCUA Board would approve or disapprove the termination or conversion within 90 days after being notified by the credit union.

Sections 708.202(c) and 708.204(c), regarding the sending of the final notice of termination or conversion to the members, have been revised to clarify that the action must first be approved "by the membership and the Board." The final rule also contains a revision in § 708.203(c). A sentence has been added to clarify that a credit union can give the Board notice of conversion of insurance either at the time it is soliciting membership approval or after

membership approval of the conversion is obtained. A similar change was not made to § 708.201(c) regarding termination because the FCU Act requires membership approval prior to notice to the Board.

Another change, previously noted, is contained in § 708.303, "Modification to Notice." In the final rule, the appropriate state authority, in addition to the NCUA Regional Director, must approve any changes to the notices or ballots set forth in Subpart C when a state-chartered credit union is terminating or converting Federal insurance. Communications regarding insurance coverage mailed with the notices and ballot are also subject to approval. This would not preclude a credit union from mailing a notice or ballot with the members' statement of the credit union's newsletter. If the statement or newsletter, however, addresses share insurance coverage or the termination or conversion thereof, approval would be necessary.

In addition to the clarifying amendment regarding submissions to the Agency, as previously discussed, a minor change has been made to the definition of "nonfederally-insured" in § 708.1(e). The phrase "private or cooperative" has been added to the description of insurance fund or guarantee. There have also been several modifications to the notices and ballots contained in Subpart C of the final rule. The notices of proposed action have been revised to conform with the requirements of Subpart B by adding a sentence wherein a credit union would set forth the date on which the membership vote is to be taken and a space for directions regarding a membership meeting or the use of mail ballots. The ballots have been changed to include a statement regarding the deadline for returning the ballot to the credit union—the date for the membership vote— and by adding a space for the member to insert the date the ballot is signed.

The remaining provisions of the final rule are the same as the proposed rule. It is organized in three distinct subparts. Subpart A prescribes the merger procedures to be used where at least one federally-insured credit union is involved. It is derived from the current Part 708.

Subpart B sets forth the procedures and notice requirements for termination of Federal insurance or conversion of Federal insurance to insurance provided by a guarantee corporation or insurance fund organized under state law. Subpart C sets forth the forms to be used for terminating or converting Federal insurance, with or without a merger. Both Subparts B and C are new, but their provisions are derived from § 206 of the Act.

If there is a merger between federally-insured credit unions, Subpart A alone applies. However, if a merger will result in the termination or conversion of Federal insurance, then certain portions of both Subparts B and C, as cross-referenced in Subpart A, come into play depending upon the particular facts of the situation. Subpart B is also cross-referenced to the forms in Subpart C. If a particular situation involves termination or conversion of Federal insurance without a merger, Subparts B and C apply and Subpart A does not. This approach should make application of the rule easier for credit unions.

In the case of a termination of insurance, the board of directors first approves the action. A Notice of Proposal to Terminate Federal Insurance is sent to the membership. The ballot may be included with the notice or provided at a later date. The membership vote is taken, and if approved by a majority of members, notice is sent to the Regional Director within one year of the membership vote and at least 90 days prior to the intended termination date. The Board will either approve or disapprove the termination within 90 days setting forth the termination date, normally the intended date set by the credit union. The Board may agree with the credit union to advance the termination date after the notice has been given to the Board since the notice period is for the Board's benefit. If approved, the credit union then sends the Notice of Termination to its members. If a merger is involved, Subpart A comes into play and there is an additional step: a merger plan would have to be submitted to the Regional Director. If approved, the credit union would then follow the above steps, submitting the merger and termination proposal to the membership. The voting requirements for termination, rather than a merger, are then applicable.

In a conversion of insurance, the first step is also board of directors' approval. A Notice of Conversion is then sent to the membership and the ballot may be included at that time. Unlike a termination action, the credit union need not wait for membership approval but may, if it so desires, notify the Board at the same time it contacts its members or during the solicitation process. The Board would still act in 90 days. If the members are given the full 30 days' notice, the conversion could then be completed within 60 days of membership approval. As in the case of termination, the Board and the credit union can agree to advance the conversion date. If approved by the Board and the members, the credit union would then send the Notice of Conversion. Also as in the case of termination, if a merger is involved, a merger plan has to be submitted to the Regional Director, and the voting requirements for conversion are controlling.

**Regulatory Procedures**

*Regulatory Flexibility Act*

The NCUA Board hereby certifies that the final rule will not have a significant impact on a substantial number of small credit unions (primarily those under $1 million in assets). Further, this final rule does not affect the daily operations of credit unions. Accordingly, the Board has determined that a regulatory flexibility analysis is not required.

*Paperwork Reduction Act*

The final rule includes several new notification requirements. There are six case situations that call for notices. Each situation has three separate notice requirements: notice of proposed action; ballot for membership vote; and notice of final action. The six case situations are: (1) Termination of insurance; (2) merger and termination of insurance; (3) conversion of charter and termination of insurance; (4) conversion of insurance; (5) merger and conversion of insurance; and (6) conversion of charter and conversion of insurance. The particular facts of a given case will determine which situation applies to a credit union and the credit union will only have to utilize the appropriate three notices.

The notice requirements for mergers were previously approved by OMB (Control number 3133–0024). The information collection contained in Subpart B has been approved for use through 12/31/89 (OMB No. 3133–0107).

**List of Subjects in 12 CFR Part 708**

Credit unions, Mergers of Federally-insured credit unions, Voluntary termination or conversion of insured status.

By the National Credit Union Administration Board on April 9, 1987.

**Becky Baker,**

*Acting Secretary of the Board.*

Accordingly, NCUA amends its regulations as follows:

Part 708 is revised to read as follows:

## PART 708—MERGERS OF FEDERALLY-INSURED CREDIT UNIONS; VOLUNTARY TERMINATION OR CONVERSION OF INSURED STATUS

Sec.



**Authority:** 12 U.S.C. 1766, 12 U.S.C. 1785, 12 U.S.C. 1786, 12 U.S.C. 1789.

### § 708.0 Scope.

(a) Subpart A of this Part prescribes the procedures for merging one or more credit unions with a continuing credit union where at least one of the credit unions is federally insured.

(b) Subpart B of this Part prescribes the procedures and notice requirements for termination of Federal insurance or conversion of Federal insurance to nonfederal insurance, including termination or conversion resulting from a merger.

(c) Subpart C of this Part sets forth the forms to be used for terminating Federal insurance or converting from Federal insurance to nonfederal insurance.

(d) Nothing in this Part shall operate as a restriction or otherwise impair the authority of NCUA to approve a merger pursuant to section 205(h) of the Act.

(e) This Part does not address procedures or requirements that may be applicable under state law for a state credit union.

### § 708.1 Definitions.

(a) "Continuing credit union" means the credit union which will continue in operation after the merger.

(b) "Merging credit union" means the credit union which will cease to exist as an operating credit union at the time of the merger.

(c) "State credit union" means any credit union organized and operated according to the laws of any state, the several territories and possessions of the United States, or the Commonwealth of Puerto Rico. Accordingly, "state authority" means the appropriate state or territorial regulatory or supervisory authority for any such credit union.

(d) "Federally-insured" means insured by the Board through the National Credit Union Share Insurance Fund (NCUSIF).

(e) "Nonfederally-insured" means insured by a private or cooperative insurance fund or guaranty corporation organized or chartered under state law.

(f) "Uninsured" means there is no share or deposit insurance available on the credit union accounts.

(g) The terms "terminate," "termination" and "terminating," when used in reference to insurance, refer to the act of canceling Federal insurance and mean that the credit union will become uninsured.

(h) The term "convert," "conversion" and "converting," when used in reference to insurance, refer to the act of canceling Federal insurance and simultaneously obtaining share or deposit insurance from another insurance carrier. They mean that after cancellation of Federal insurance the credit union will be nonfederally insured.

## Subpart A—Mergers

### § 708.101 Mergers generally.

(a) In any case where a merger will result in the termination of Federal insurance or conversion to nonfederal insurance, the merging credit union must comply with the provisions of Subpart B in addition to this Subpart A.

(b) No federally-insured credit union shall merge with any other credit union without the prior written approval of the Board.

(c) Where the continuing credit union is a Federal credit union, there must be compliance with the chartering policies of the Board.

(d) Where the continuing or merging credit union is a state credit union, the merger must be permitted by state law or authorized by the state authority.

### § 708.102 Special provisions for Federal insurance.

(a) Where the continuing credit union is federally insured, an NCUSIF deposit and a prorated insurance premium (unless waived in whole or in part for all insured credit unions during that year) will be assessed on the additional share accounts insured as a result of the merger of a nonfederally-insured or uninsured credit union with a federally-insured credit union.

(b) Where the continuing credit union is nonfederally insured or uninsured but desires to be federally insured as of the date of the merger, an application shall be submitted to the appropriate Regional Director when the merging credit union requests approval of the merger proposal. An NCUSIF deposit and a prorated insurance premium (unless waived in whole or in part for all insured credit unions during that year) will be assessed on any additional share accounts insured as a result of the merger.

(c) Where the continuing credit union is nonfederally insured or uninsured and does not make application for insurance, but the merging credit union is federally insured, the continuing credit union is entitled to a refund of the merging credit union's NCUSIF deposit and to a refund of the unused portion of the NCUSIF share insurance premium (if any). If the continuing credit union is uninsured, the refund will be made only after expiration of the one-year period of continued insurance coverage noted in paragraph (e) of this section.

(d) Where the continuing credit union in nonfederally insured, NCUSIF insurance of the member accounts of a merging federally-insured credit union ceases as of the effective date of the merger. (Refer to Subpart B, §§ 708.203 and 708.204 and Subpart C, § 708.302(b).)

(e) Where the continuing credit union is uninsured, NCUSIF insurance of the member accounts of the merging federally-insured credit union will continue for a period of one year, subject to the restrictions in section 206(d)(1) of the Act as noted in the Notice of Termination set forth in § 708.301(b)(3). (Refer to Subpart B, §§ 708.201 and 708.202, and Subpart C, § 708.301(b).)

### § 708.103 Preparation of merger plan.

(a) Upon the approval of a proposition for merger by the boards of directors of the credit unions, a plan for the proposed merger shall be prepared. The plan shall include:

(1) Current financial reports;

(2) Current delinquent loan schedules annotated to reflect collection problems;

(3) Combined financial report;

(4) Analyses of share values;

(5) Explanation of any proposed share adjustments;

(6) Explanation of any provisions for reserves, undivided earnings or dividends;

(7) Provisions with respect to notification and payment of creditors;

(8) Explanation of any changes relative to insurance such as life savings and loan protection insurance and insurance of member accounts;

(9) Provisions for determining that all assets and liabilities of the continuing credit union will conform with the requirements of the Act (where the continuing credit union is a Federal credit union); and

(10) Proposed charter amendments (where the continuing credit union is a Federal credit union). These amendments, if any, will usually pertain to the name of the credit union and the definition of its field of membership.

**§ 708.104 Submission of merger proposal to NCUA.**

(a) Upon approval of the merger plan by the boards of directors of the credit unions, the following information will be submitted to the Regional Director:

(1) The merger plan, as described in this Part;

(2) Resolutions of the boards of directors;

(3) Proposed Merger Agreement;

(4) Proposed Notice of Special Meeting of the Members (for merging Federal credit unions);

(5) Copy of the form of Ballot to be sent to the members (for merging Federal credit unions);

(6) Evidence that the state's supervisory authority is in agreement with the merger proposal (for states which require such agreement prior to NCUA approval); and

(7) Application and Agreement for Insurance of Member Accounts (for continuing state credit unions desiring to become federally insured).

**§ 708.105 Approval of merger proposal by NCUA.**

(a) In any case where the continuing credit union is federally insured, and the merging credit union is nonfederally insured or uninsured, a determination shall be made by NCUA as to the potential risk to the National Credit Union Share Insurance Fund (NCUSIF).

(b) If NCUA finds that the merger proposal complies with the provisions of this Part and does not present an undue risk to the NCUSIF, it may approve the proposal subject to such other specific requirements as may be prescribed to fulfill the intended purposes of the proposed merger. In the event NCUA determines that the merging credit union, if it is a Federal credit union, is in danger of insolvency, and that the proposed merger would reduce the risk or avoid a threatened loss to the National Credit Union Share Insurance Fund, NCUA may permit the merger to become effective without an affirmative vote of the membership of the merging Federal credit union, notwithstanding the provisions of § 708.106; *Provided* that the continuing credit union is federally insured.

(c) Any proposed charter amendments for a continuing Federal credit union will be approved contingent upon the completion of the merger.

**§ 708.106 Approval of the merger proposal by members.**

(a) When the merging credit union is a Federal credit union, the members shall:

(1) Have the right to vote on the merger proposal in person at the annual meeting, if within 60 days after NCUA approval, or at a special meeting to be called within 60 days of such approval, or by mail ballot, received no later than the date and time announced for the annual meeting or the special meeting called for that purpose.

(2) Be given advance notice of the meeting at which the merger proposal is to be submitted, in accordance with the provisions of Article V, Meetings of Members, Federal Credit Union Bylaws. The notice shall:

(i) Specify the purpose of the meeting and the time and place;

(ii) Include a summary of the merger plan, which shall contain, but not necessarily be limited to, current financial reports for each credit union, a combined financial report for the continuing credit union, analyses of share values, explanation of any proposed share adjustments, explanation of any changes relative to insurance such as life savings and loan protection insurance and insurance of member accounts (refer to Subpart B, §§ 708.202 and 708.204);

(iii) State reasons for the proposed merger;

(iv) Provide name and location (to include branches) of the continuing credit union;

(v) Inform the members that they have the right to vote on the merger proposal in person at the meeting or by written ballot to be received no later than the date and time announced for the annual meeting or the special meeting called for that purpose; and

(vi) Be accompanied by a Ballot for Merger Proposal.

(b) The proposal to merge a Federal credit union into a federally-insured credit union must be approved by an affirmative vote of a majority of the members of the merging credit union who vote on the proposal. If the continuing credit union is uninsured, the voting requirements of § 708.201(c) apply; if it is nonfederally insured, the voting requirements of § 708.203(c) apply.

**§ 708.107 Certificate of vote on merger proposal.**

The board of directors of the merging Federal credit union shall certify the results of the membership vote to the Regional Director within 10 days after the vote is taken.

**§ 708.108 Completion of merger.**

(a) Upon approval of the merger proposal by NCUA and by the state supervisory authority (where the continuing or merging credit union is a state credit union) and by the members of each credit union where required, action may be taken to complete the merger.

(b) Upon completion of the merger, the board of directors of the continuing credit union shall certify the completion of the merger to the Regional Director within 30 days after the effective date of the merger.

(c) Upon NCUA's receipt of certification that the merger has been completed, then the charter of the merging Federal credit union (if applicable) and the insurance certificate of any merging federally-insured credit union will be canceled.

## Subpart B—Voluntary Termination or Conversion of Insured Status.

**§ 708.201 Termination of insurance.**

(a) A state credit union may terminate Federal insurance, if permitted by state law, either on its own or by merging into an uninsured credit union.

(b) A Federal credit union may terminate Federal insurance only by merging into, or converting its charter to, an uninsured state credit union.

(c) Termination of insurance must be approved by the affirmative vote of a majority of the credit union's members. The credit union must notify the Board, through the Regional Director, in writing at least 90 days prior to termination and the membership vote must have been obtained within one year prior to giving the Board notice.

(d) No federally-insured credit union shall terminate Federal insurance without the prior written approval of the Board. The Board will approve or disapprove the termination in writing within 90 days after being notified by the credit union.

**§ 708.202 Notice to members of termination of insurance.**

(a) When a federally-insured credit union proposes to terminate Federal insurance, including termination due to a merger or conversion of charter, it

shall provide its members with written notice of the proposal to terminate and of the date set for the membership vote. The Notice of Proposal shall be as set forth in either § 708.301 (a)(1) or (b)(1), or as provided in § 708.301(c), as the circumstances warrant.

(b) The notice shall be delivered in person to each member, or mailed to each member at the address for such member as it appears on the records of the credit union, not more than 30 nor less than 7 days prior to the date of the vote. The membership shall be given the opportunity to vote by mail ballot. The ballot to be used shall be as set forth in either § 708.301 (a)(2) or (b)(2), as the circumstances warrant. The notice of the proposal and the ballot may be provided to members at the same time.

(c) If the proposition for termination of insurance is approved by the membership and the Board, prompt and reasonable notice of termination shall be given to all members in the form set forth in either § 708.301(a)(3) or (b)(3), as the circumstances warrant.

**§ 708.203 Conversion of insurance.**

(a) A federally-insured state credit union may convert to nonfederal insurance, if permitted by state law, either on its own or by merging into a nonfederally-insured credit union.

(b) A Federal credit union may convert to nonfederal insurance only by merging into, or converting its charter to, a nonfederally-insured state credit union.

(c) Conversion of Federal to nonfederal insurance must be approved by an affirmative vote of a majority of the credit union's members who vote on the proposition, provided at least 20 percent of the total membership participates in the voting. The credit union must notify the Board, through the Regional Director, in writing at least 90 days prior to conversion. Notice to the Board may be given when membership approval is solicited or after membership approval is obtained.

(d) No federally-insured credit union shall convert to nonfederal insurance without the prior written approval of the Board. The Board will approve or disapprove the conversion in writing within 90 days after being notified by the credit union.

**§ 708.204 Notice to members of conversion of insurance.**

(a) When a federally-insured credit union proposes to convert to nonfederal insurance, including conversion due to a merger or conversion of charter, it shall provide its members with written notice of the proposal to convert and of the date set for the membership vote. Notice of the proposal shall be as set forth in either § 708.302(a)(1) or (b)(1), or as provided in § 708.302(c), as the circumstances warrant.

(b) The notice shall be delivered in person to each member, or mailed to each member at the address for such member as it appears on the records of the credit union, not more than 30 nor less than 7 days prior to the date for the vote. The membership shall be given the opportunity to vote by mail ballot. The ballot to be used for the membership vote shall be as set forth in either § 708.302(a)(2) or (b)(2), as the circumstances warrant. The notice of the proposal and the ballot may be provided to the members at the same time.

(c) If the proposition for conversion of insurance is approved by the membership and the Board, prompt and reasonable notice shall be given to all members in the form set forth in either § 708.302(a)(3) or (b)(3), as the circumstances warrant.

## Subpart C—Forms

**§ 708.301 Termination of insurance.**

(a) A federally-insured state credit union shall use the following language for purposes of terminating Federal insurance:

(1) *Notice of Proposal to Terminate Federal Insurance*

(Date)_____

The Board of Directors of _____ Credit Union has approved a proposition to terminate Federal share (deposit) insurance, ($100,000, provided by the National Credit Union Administration (NCUA), an agency of the Federal Government). Termination of Federal insurance may only take place upon approval by a majority of our members. The membership vote will be taken on (date). (Add directions regarding membership meeting and/or mail ballot.)

If approved, any deposits made by you after the date of termination, either new deposits or additions to existing accounts, will not be insured by the NCUA.

Accounts in the Credit Union on the day of termination, up to a maximum of $100,000 for each member, will continue to be insured, as provided in the Federal Credit Union Act, for one (1) year after the close of business on the day of termination, but any withdrawals after the close of business on that date will reduce the insurance coverage by the amount of the withdrawal.

(2) The ballot for obtaining membership approval to terminate Federal insurance shall contain the following language:

This ballot must be received by the Credit Union by (date for vote).

I understand that if termination of Federal insurance is approved, any new deposits or additions to existing accounts made by me will not be insured by the National Credit Union Administration, an agency of the Federal Government. I also understand that my accounts in the Credit Union on the date of termination of insurance, up to a maximum of $100,000, will continue to be insured for one (1) year after the date of termination, but that any withdrawals after the date of termination will reduce the insurance coverage by the amount of the withdrawal.

Signed _____

Member's Name

Date _____

(3) *Notice of Termination*

(Date)_____

1. The status of the _____ as an insured credit union under the provisions of the Federal Credit Unions Act will terminate as of the close of business on the _____ day of _____.

2. Any deposits made by you after that date, either new deposits or additions to existing accounts, will not be insured by the National Credit Union Administration.

3. Accounts in the Credit Union on the _____ day of _____, up to a maximum of $100,000 for each member, will continue to be insured, as provided by the Federal Credit Union Act, for one (1) year after the close of business on the _____ day of _____; Provided, however, that any withdrawals after the close of business on the _____ day of _____, _____, will reduce the insurance coverage by the amount of such withdrawals.

(Name of Credit Union)

(Address)

_____

(b) A federally-insured credit union that is merging with an uninsured credit union shall use the following language for purposes of terminating Federal insurance:

(1) *Notice of Proposal to Merge and Terminate Federal Insurance*

The Board of Directors of (merging) Credit Union has approved a proposition to merge the Credit Union into the (continuing) Credit Union. The merger must be approved by a majority of the members of (merging) Credit Union. The membership vote will be taken on (date). (Add directions regarding membership meeting and/or mail ballot.)

If the membership approves the merger, the share (deposit) insurance you now have (up to $100,000 provided by the National Credit Union Administration, (NCUA), an agency of the Federal Government) will be affected as follows:

Any deposits made by you after the effective date of the merger, either new deposits or additions to existing accounts, will not be insured by the NCUA. Accounts in the (merging) Credit Union on the date of the merger, up to a maximum of $100,000 for each member, will continue to be insured, as provided in the Federal Credit Union Act, for one (1) year after the close of business on the date of the merger, but any withdrawals after the close of business on that date will reduce the insurance coverage by the amount of the withdrawal.

(2) The language for the ballot set forth in (a)(2) above, modified by substituting "the merger and termination" in lieu of "termination" each time it appears on the ballot, shall be used for obtaining membership approval to merge and terminate Federal insurance.

(3) *Notice of Merger and Termination of Federal Insurance*

1. The merger of the (merging) Credit Union into the (continuing) Credit Union has been approved, effective (date).

2. The status of the (merging) Credit Union as an insured credit union under the provisions of the Federal Credit Union Act will terminate as of the close of business on the ____ day of _____ (day preceding merger date).

3. Any deposits made by you after that date, either new deposits or additions to existing accounts, will not be insured by the National Credit Union Administration.

4. Accounts in the Credit Union on the ____ day of _____, (day preceding merger date), up to a maximum of $100,000 for each member, will continue to be insured, as provided by the Federal Credit Union Act, for one (1) year after close of business on the _____ day of _____ (day preceding merger date); Provided, however, that any withdrawals after the close of business on the _____ day of _____, _____ (day preceding merger date), will reduce the insurance coverage by the amount of such withdrawals.

(Name of Credit Union)
(Address)

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(c) A Federal credit union that is converting its charter to that of an insured state credit union shall use the language contained in paragraph (a) of this Section, but shall modify the language in (a)(1) to indicate that it is converting its charter and terminating Federal insurance.

**§ 708.302 Conversion of Insurance.**

(a) A federally-insured state credit union shall use the following language for purposes of converting from Federal insurance to nonfederal insurance:

(1) *Notice of Proposal to Convert to Nonfederally-Insured Status*

The Board of Directors of _____ Credit Union has approved a proposition to convert from Federal share (deposit) insurance to nonfederal insurance. The conversion must be approved by a majority of the members who vote on the proposal and at least 20% of the entire membership must participate in the vote. The membership vote will be taken on (date). (Add directions regarding membership meeting and/or mail ballot.)

If the membership approves the conversion, the share (deposit) insurance you now have (up to $100,000 provided by the National Credit Union Administration, an agency of the Federal Government) will terminate on the effective date of the conversion. Shares (deposit) in the _____ Credit Union will be insured up to $_____ by _____, a corporation chartered by the State of _____.

(2) The ballot to obtain membership approval of the conversion shall contain the following language:

This ballot must be received by the Credit Union by (date for vote).

I understand that, if the conversion of insurance is approved, the share (deposit) insurance that I now have (up to $100,000 provided by the National Credit Union Administration, an agency of the Federal Government) will terminate upon the effective date of the conversion and my shares will be insured up to $_____ by _____, a corporation chartered by the State of _____.

Signed _____
Member's Name

Date _____

(3) Notice of Conversion

(Date)_____

1. The status of the _____ as an insured credit union under the provisions of the Federal Credit Union Act will cease as of the close of business on the _____day of _____, _____.

2. As of that date, your deposits will no longer be insured by the National Credit Union Share Insurance Fund.

3. Accounts in the credit union will be insured up to $_____ by _____, a corporation chartered by the State of _____.

(Name of Credit Union)
(Address)

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(b) A federally-insured credit union that is merging with a nonfederally-insured credit union shall use the following language for purposes of converting from Federal to nonfederal insurance:

(1) *Notice of Proposal to Merge and Convert to Nonfederally-Insured Status*

"The Board of Directors of (merging) Credit Union has approved a proposition to merge the Credit Union into (continuing) Credit Union. The merger must be approved by a majority of the members of (merging) Credit Union who vote on the proposal and at least 20% of the entire membership must participate in the vote. The membership vote will be taken on (date) (Add directions regarding membership meeting and/or mail ballot.)

If the membership approves the merger, the share (deposit) insurance you now have (up to $100,000 provided by the National Credit Union Administration, an agency of the Federal Government) will terminate on the effective date of the merger. Shares (deposit) in the (continuing) Credit Union will be insured up to $_____ by _____, a corporation chartered by the State of _____.

(2) The ballot to obtain membership approval shall contain the following language:

This ballot must be received by the Credit Union by (date for vote).

I understand that if the merger of the (merging) Credit Union into the (continuing) Credit Union is approved, the share (deposit) insurance that I now have (up to $100,000 provided by the National Credit Union Administration, an agency of the Federal Government) will terminate upon the effective date of the merger and my shares in the (continuing) Credit Union will be insured up to $_____ by _____, a corporation chartered by the State of _____.

Signed _____
Member's Name

Date _____

(3) Notice of Merger and Conversion of Insured Status

(Date)_____

1. The merger of the (merging) Credit Union into the (continuing) Credit Union has been approved, effective (date).

2. As of that date, your shares (deposit) are no longer insured by the National Credit Union Administration.

3. Accounts in the (continuing) Credit Union will be insured up to $_____ by _____, a corporation chartered by the State of _____.

(Name of Credit Union)
(Address)

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(c) A Federal credit union that is converting its charter to that of a nonfederally-insured credit union shall use the language contained in paragraph (a) of this section, but shall modify the language in (a)(1) to indicate that it is converting its charter and converting from Federal insurance.

**§ 708.303 Modifications to notice.**

(a) Any modifications or additions to the notices or ballot concerning insurance coverage, and any additional communications concerning insurance coverage included with the notices or ballot, may be made with the approval of the Regional Director and, in the case of a state credit union, the appropriate state authority.

(b) Federally-insured state credit unions may include additional language in the notice and ballot regarding state requirements for mergers, where appropriate.

[FR Doc. 87-8530 Filed 4-15-87; 8:45 am]
BILLING CODE 7535-01-M

## NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

### 14 CFR Part 1260

**[NASA Grant and Cooperative Agreement Handbook Instruction 84-3]**

### Miscellaneous Changes to the NASA Grant and Cooperative Agreement Handbook

**AGENCY:** National Aeronautics and Space Administration.

**ACTION:** Final rule.

**SUMMARY:** This document amends the NASA Grant Cooperative Agreement Handbook to reflect miscellaneous changes which implement higher level directives or deal solely with NASA internal administrative matters.

**EFFECTIVE DATE:** April 15, 1987.

**FOR FURTHER INFORMATION CONTACT:** W.A. Greene, Procurement Policy Division (Code HP), Office of Procurement, NASA Headquarters, Washington, DC 20546, Telephone: 202-453-2119.

**SUPPLEMENTARY INFORMATION:**

#### Background

This document implements the recent addition to OMB Circular A-110 regarding interest bearing accounts and reiterates NASA's longstanding implementation of that Circular's financial reporting requirements by repeating them in this Handbook in addition to their continued inclusion in instructions provided by NASA's financial management offices. The chief additional internal NASA administrative provisions prohibit unauthorized use of contractual procedures on grants and using grants for consulting arrangements in violation of the NASA FAR Supplement.

#### Impact

This rule has been reviewed by the Office of Management and Budget (OMB) under the provisions of E.O. 12291. This instruction contains internal NASA implementation of higher regulatory directives. NASA's implementation is not expected to affect grantees in any significant way beyond that impact flowing from the higher level directives themselves. Consequently, Pub. L. 98-577 does not require publication of this Instruction for public comment. Because public comment is not required, the Regulatory Flexibility Act does not apply to this Instruction. Moreover, this Instruction does not impose any reporting or recordkeeping requirements subject to the Paperwork Reduction Act of 1980.

#### List of Subjects in 14 CFR Part 1260

Grants.

**S.J. Evans,**

*Assistant Administrator for Procurement.*

### PART 1260—[AMENDED]

1. The authority citation for 14 CFR Part 1260 continues to read as follows:

**Authority:** Pub. L. 97-858, 31 U.S.C 6301 *et seq.*

### Subpart 1—General

2. Section 1260.104 is amended by revising paragraph (b) to read as follows:

**§ 1260.104 Amendments.**

* * * * *

(b) *Procurement Information Circulars.* Non-regulatory changes to the Handbook which require immediate dissemination may be made by a Procurement Information Circular, issued by Headquarters, Procurement Policy Division, Code HP.

3. Section 1260.105 is amended by revising paragraphs (a) and (b) to read as follows:

**§ 1260.105 Dissemination and effective date of the part.**

(a) The NASA Grant and Cooperative Agreement Handbook and Instructions will be distributed by Code HP directly to NASA Headquarters offices and to installation distribution points. These NASA elements must inform the Office of Procurement, NASA Headquarters, Procurement Policy Division (Code HP) of the numbers of copies required. Requests for additional copies should be sent directly to Code HP by Headquarters offices or through installations' distribution points.

(b) Heads of installations will ensure that copies of the NASA Grant and Cooperative Agreement Handbook are distributed to all interested activities and individuals within their installation.

* * * * *

4. Section 1260.109 is added to read as follows:

**§ 1260.109 Prohibitions.**

(a) The negotiation, award, administration and renewal of grants are purposefully intended to be as simple as possible. Therefore, this Handbook is silent in various areas where long-established pre- and post-award contractual procedures exist. As such, policies, procedures, representations, certifications, forms or requirements (regardless of modifications) applicable to contracts shall not be used for grants or cooperative agreements unless otherwise authorized by this Handbook or by a deviation thereto.

(b) Installation regulations, handbooks or similar guidance documents shall not unnecessarily repeat, paraphrase, extract, condense, be inconsistent with or otherwise restate the material contained in this Handbook.

(c) Pursuant to NFS 18-37.204-70(c), grants and cooperative agreements shall not be used as legal instruments for consulting service arrangements.

### Subpart 4—Research Grant and Cooperative Agreement Provisions

5. In § 1260.406, paragraph (a) and the center heading preceding paragraph (a) are revised to read as follows:

**§ 1260.406 Financial management.**

**Financial Management (April 1987)**

(a) *Payment.* Advance payments by the Letter-of-Credit-Treasury Financial Communications System or Direct Treasury Check method will be made in accordance with procedural instructions furnished to the grantee by the Financial Management Office of the NASA installation which issued the grant. The grantee shall submit Federal Cash Transaction Reports (SF 272) to the aforementioned office within 15 working days following the end of each Federal fiscal quarter, containing current estimates of the cash requirements for each of the four months following the quarter being reported.

* * * * *

6. Section 1260.420 is revised by adding paragraph (c) to read as follows:

**§ 1260.420 Special conditions.**

* * * * *

(e) The following provision shall be appended to all grants and cooperative agreements as a special condition, pending its inclusion in NASA Form 1463A, NASA Provisions for Research Grants and Contracts:

**Interest Bearing Accounts (April 1987)**

Advances of Federal funds shall be maintained in interest bearing accounts. Interest earned on Federal advances deposited in such accounts shall be remitted to NASA promptly, but at least quarterly, as instructed by the Financial Management Office of the NASA installation which issued the grant. Interest amounts up to $100 per year may be retained by the recipient for administrative expense.

### Subpart 5—Administration of Research Grants and Cooperative Agreements

**§ 1260.514 [Amended]**

7. The first sentence of § 1260.514(d) is amended by removing the words "for Grants" and adding, in their place, the words "during close-out".

### Subpart 6—Reports

8. Subpart 6 is amended by revising § 1260.602 to read as follows:

**§ 1260.602 Committee on Academic Science and Engineering (CASE) reports.**

NASA Form 1356, "Committee on Academic Science and Engineering (C.A.S.E.) Report on College and University Projects" is either submitted with funded procurement requests or in the case of certain non-funded actions, initiated by the procuring office. All required NASA Forms 1356 will be completed, checked, and promptly forwarded to the Procurement Management Division, NASA Headquarters (Code HM), in accordance with the instructions on the form and NFS Subpart 18–4.676.

**§ 1260.603 [Amended]**

9. The first sentence of § 1260.603 is amended by removing the word "quarterly" and adding, in its place, the words "within 15 working days following the end of each Federal Fiscal quarter".

[FR Doc. 87–8513 Filed 4–15–87; 8:45 am]
BILLING CODE 7510-1-M

## FEDERAL TRADE COMMISSION

### 16 CFR Part 13

**[Docket C-3211]**

### McCoy Industries, Inc., et al.; Prohibited Trade Practices, and Affirmative Corrective Actions

**AGENCY:** Federal Trade Commission.

**ACTION:** Consent order.

**SUMMARY:** In settlement of alleged violations of federal law prohibiting unfair acts and practices and unfair methods of competition, this consent order prohibits, among other things, the Greensboro, NC-based retailer of flame-retardant, pressure-treated wood from misrepresenting the flame-retardant value of its products and requires respondents to notify purchasers that some of the wood may not meet established safety standards.

**DATE:** Complaint and Order issued April 2, 1987.[1]

**FOR FURTHER INFORMATION CONTACT:** Charles Peterson, Atlanta Regional Office, Federal Trade Commission, 1718 Peachtree St. NW., Room 1000, Atlanta, GA 30367. (404) 347–4836.

**SUPPLEMENTARY INFORMATION:** On Friday, January. 16, 1987, there was published in the **Federal Register**, 52 FR 1926, a proposed consent agreement with analysis In the Matter of McCoy Industries, Inc., and Reliance Treated Wood, Inc., corporations, 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: S 13.10 Advertising falsely or misleadingly; S 13.170 Qualities or properties of product or service; 13.170–40 Fire-extinguishing or fire-resistant; S 13.190 Results; S 13.195 Safety; 13.195–60 Product; S 13.205 Scientific or other relevant facts; S 13.210 Scientific tests. Subpart—Corrective Actions and/or Requirements: S 13.533 Corrective actions and/or requirements; 13.533–20 Disclosures; 13.533–45 Maintain records; 13.533–45(a) Advertising substantiation. Subpart—Misrepresenting Oneself and Goods—Goods: S 13.1710 Qualities or properties; S 13.1730 Results; S 13.1740 Scientific or other relevant facts. Subpart—Neglecting, Unfairly or Deceptively, To Make Material Disclosure: S 13.1885 Qualities or properties; S 13.1890 Safety.

**List of Subjects in 16 CFR Part 13**

Pressure-treated wood, 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. 87–8520 Filed 4–15–87; 8:45 am]
BILLING CODE 6750-01-M

[1] Copies of the Complaint and the Decision and Order are available from the Commission's Public Reference Branch, H–130, 6th Street and Pennsylvania Avenue NW., Washington, DC 20580.

### 16 CFR Part 13

**[Docket. C-3210]**

### Reliance Wood Preserving, Inc., et al.; Prohibited Trade Practices, and Affirmative Corrective Actions

**AGENCY:** Federal Trade Commission.

**ACTION:** Consent order.

**SUMMARY:** In settlement of alleged violations of federal law prohibiting unfair acts and practices and unfair methods of competition, this consent order prohibits, among other things, the Federalsburg, MD manufacturer of flame-retardant, pressure-treated wood from misrepresenting the flame-retardant value of its products and requires respondents to notify purchasers that some of the wood may not meet established safety standards.

**DATE:** Complaint and Order issued April 2, 1987.[1]

**FOR FURTHER INFORMATION CONTACT:** Charles Peterson, Atlanta Regional Office, Federal Trade Commission, 1718 Peachtree St., NW., Room 1000, Atlanta, GA 30367. (404) 347–4836.

**SUPPLEMENTARY INFORMATION:** On Friday, January 16, 1987, there was published in the **Federal Register**, 52 FR 1926, a proposed consent agreement with analysis In the Matter of Reliance Wood Preserving, Inc., a corporation, and Daniel Roy Dorman, individually and as an officer of said 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: S 13.10 Advertising falsely or misleadingly; S 13.170 Qualities or properties of product or service; S 13.170–40 Fire-extinguishing or fire-resistant; S 13.190 Results; S 13.195 Safety; 13.195–60 Product; S 13.205 Scientific or other relevant facts; S 13.210 Scientific tests. Subpart—Corrective Actions and/or

[1] Copies of the Complaint and the Decision and Order are available from the Commission's Public Reference Branch, H–130, 6th Street and Pennsylvania Avenue NW., Washington, DC 20580.

Requirements: S 13.533 Corrective actions and/or requirements; S 13.533–20 Disclosures; S 13.533–45 Maintain records; S 13.533–45(a) Advertising substantiation. Subpart—Misrepresenting Oneself and Goods—Goods: S 13.1710 Qualities or properties; S 13.1730 Results; S 13.1740 Scientific or other relevant facts. Subpart—Neglecting, Unfairly or Deceptively, To Make Material Disclosure: S 13.1885 Qualities or properties; S 13.1890 Safety.

**List of Subjects in 16 CFR Part 13**

Pressure-treated wood, 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. 87–8521 Filed 4–15–87; 8:45 am]

BILLING CODE 6750-01-M

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Food and Drug Administration

### 21 CFR Part 175

**[Docket No. 86F–0385]**

### Indirect Food Additives; Adhesives and Components of Coatings

**AGENCY:** Food and Drug Administration.

**ACTION:** Final rule.

**SUMMARY:** The Food and Drug Administration (FDA) is amending the food additive regulations to provide for the safe use of synthetic primary linear aliphatic alcohols as components of food-packaging adhesive formulations. This action responds to a petition filed by Petrolite Corp.

**DATES:** Effective April 16, 1987 objections by May 18, 1987.

**ADDRESS:** Written objections to the Dockets Management Branch (HFA–305), Food and Drug Administration, Room 4–62, 5600 Fishers Lane, Rockville, MD 20857.

**FOR FURTHER INFORMATION CONTACT:** Mary W. Lipien, Center for Food Safety and Applied Nutrition (HFF–335), Food and Drug Administration, 200 C Street SW., Washington, DC 20204, 202–472–5690.

**SUPPLEMENTARY INFORMATION:** In a notice published in the **Federal Register** of October 2, 1986 (51 FR 35288), FDA announced that a petition (FAP 6B3954) had been filed by Petrolite Corp., P.O. Box 21538, Tulsa, OK 74121, proposing that § 175.105 *Adhesives* (21 CFR 175.105) of the food additive regulations be amended to provide for the safe use of synthetic primary linear aliphatic alcohols as components of food-packaging adhesive formulations.

FDA has evaluated data in the petition and other relevant material. The agency concludes that the proposed food additive use is safe, and that the regulations should be amended as set forth below.

In accordance with § 171.1(h) (21 CFR 171.1(h)), the petition and the documents that FDA considered and relied upon in reaching its decision to approve the petition are available for inspection at the Center for Food Safety and Applied Nutrition (address above) by appointment with the information contact person listed above. As provided in 21 CFR 171.1(h), the agency will delete from the documents any materials that are not available for public disclosure before making the documents available for inspection.

The agency 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 is not required. The agency's finding of no significant impact and the evidence supporting that finding, contained in an environmental assessment, may be seen in the Dockets Management Branch (address above) between 9 a.m. and 4 p.m., Monday through Friday. This action was considered under FDA's final rule implementing the National Environmental Policy Act (21 CFR Part 25).

Any person who will be adversely affected by this regulation may at any time on or before May 18, 1987, file with the Dockets Management Branch (address above) written objections thereto. Each objection shall be separately numbered, and each numbered objection shall specify with particularity the provisions of the regulation to which objection is made and the grounds for the objection. Each numbered objection on which a hearing is requested shall specifically so state. Failure to request a hearing for any particular objection shall constitute a waiver of the right to a hearing on that objection. Each numbered objection for which a hearing is requested shall include a detailed description and analysis of the specific factual information intended to be presented in support of the objection in the event that a hearing is held. Failure to include such a description and analysis for any particular objection shall constitute a waiver of the right to a hearing on the objection. Three copies of all documents shall be submitted and shall be identified with the docket number found in brackets in the heading of this document. Any objections received in response to the regulation may be seen in the Dockets Management Branch between 9 a.m. and 4 p.m., Monday through Friday.

**List of Subjects in 21 CFR Part 173**

Adhesives, Food additives, Food packaging.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs and redelegated to the Director of the Center for Food Safety and Applied, Nutrition, Part 175 is amended as follows:

## PART 175—INDIRECT FOOD ADDITIVES: ADHESIVES AND COMPONENTS OF COATINGS

1. The authority citation for 21 CFR Part 175 continues to read as follows:

**Authority:** Secs. 201(s), 409, 72 Stat. 1784–1788 as amended (21 U.S.C. 321(s), 348); 21 CFR 5.10 and 5.61.

2. In § 175.105(c)(5) by alphabetically inserting a new item in the list of substances to read as follows:

**§ 175.105 Adhesives.**

* * * * *

(c) * * *

(5) * * *

| Substances | Limitations |
|---|---|
| * * * * * | |
| Synthetic primary linear aliphatic alcohols whose weight average molecular weight is greater than 400 (CAS Reg. No. 71750–71–5). | |
| * * * * * | |

Dated: April 8, 1987.

**Richard J. Ronk,**

*Acting Director, Center for Food Safety and Applied Nutrition.*

[FR Doc. 87–8505 Filed 4–15–87; 8:45 am]

BILLING CODE 4160-01-M

## DEPARTMENT OF TRANSPORTATION

### Coast Guard

### 33 CFR Part 165

**[COTP Los Angeles/Long Beach Regulation 87–04]**

### Safety Zone Regulations; Ports of Los Angeles/Long Beach, CA

**AGENCY:** Coast Guard, DOT.

**ACTION:** Emergency rule.

**SUMMARY:** The Coast Guard is establishing a safety zone of a 100 yard

radius around the tug MARTHA and the barge KSC–700 while underway in San Pedro Bay and in the Los Angeles/Long Beach Precautionary Area.

The zone is needed to protect the tug MARTHA and barge KSC–700 from vessel traffic hazards associated with maneuvering through the ports of Los Angeles/Long Beach.

No vessel may enter, remain in, or transit the Safety Zone without the permission of the Captain of the Port.

**EFFECTIVE DATES:** This regulation becomes effective at sunrise, 30 March 1987. It terminates at sunset, 10 April 1987.

**FOR FURTHER INFORMATION CONTACT:** LTJG M. E. Cutts at (213) 590–2300.

**SUPPLEMENTARY INFORMATION:** In accordance with 5 U.S.C. 553, a notice of proposed rule making was not published for this regulation and it is being made effective in less than 30 days after Federal Regulation publication. Publishing an NPRM and delaying its effective date would be contrary to the public interest since immediate action is needed to prevent potential damage to the vessels involved.

**Drafting Information**

The drafters of this regulation are LTJG M. E. Cutts, project officer for the Captain of the Port, and LCDR J. R. McFAUL, project attorney, Eleventh Coast Guard District Legal Office.

**Discussion of Regulation**

The event requiring this regulation will occur between 30 March 1987 and 10 April 1987. This safety zone is necessary to ensure the safety of the tug MARTHA and the barge KSC–700 while underway in San Pedro Bay and the Los Angeles/Long Beach Precautionary Area. These vessels will not be free to maneuver to avoid normal vessel traffic in the area.

**List of Subjects in 33 CFR Part 165**

Harbors marine safety, Navigation (water),

Security measures, Vessels, Waterways.

**Regulation**

**PART 165—[AMENDED]**

In consideration of the foregoing, Subpart C of Part 165 of Title 33, Code of Federal Regulations, is amended as follows:

1. The authority citation for Part 165 continues to read as follows:

Authority: 33 U.S.C. 1225 and 1231; 50 U.S.C. 191; 49 CFR 1.46 and 33 CFR 1.05–1(g), 6.04–1, 6.04–6, and 160.5.

2. A new § 165.T1155 is added to read as follows:

**§ 165.T1155 Safety Zone: Port of Los Angeles/Long Beach, CA.**

(a) *Location.* The following area is a safety zone: A 100 yard radius around the tug MARTHA and the barge KSC–700 while underway in San Pedro Bay and the Los Angeles/Long Beach Precautionary Area.

(b) *Effective Date.* This regulation becomes effective at sunrise, 30 March 1987. It terminates at sunset, 10 April 1987.

(c) *Regulations.* In accordance with the general regulations in § 165.23 of this part, no vessel may enter, remain in, or transit the Safety Zone without the permission of the Captain of the Port.

Dated: March 30, 1987.

**R.A. Janecek,**

*Captain, U.S. Coast Guard, Captain Of The Port, Los Angeles/Long Beach.*

[FR Doc. 87–8570 Filed 4–15–87; 8:45 am]

BILLING CODE 4910–14–M

## VETERANS ADMINISTRATION

**38 CFR Part 36**

### Increase in Maximum Permissible Interest Rates on Guaranteed Manufactured Home Loans, Home and Condominium Loans, and Home Improvement Loans

**AGENCY:** Veterans Administration.

**ACTION:** Final regulations.

**SUMMARY:** The VA (Veterans Administration) is increasing the maximum interest rates on guaranteed manufactured home unit loans, lot loans, and combination manufactured home unit and lot loans. In addition, the maximum interest rates applicable to fixed payment and graduated payment home and condominium loans, and to home improvement and energy conservation loans are also increased. These increases are necessary because previous rates were not competitive enough to induce lenders to make guaranteed or insured home loans without substantial discounts, or to make manufactured home loans. The increase in the interest rates will assure a continuing supply of funds for home mortgages, home improvement and manufactured home loans.

**EFFECTIVE DATE:** April 13, 1987.

**FOR FURTHER INFORMATION CONTACT:** Mr. George D. Moerman, Loan Guaranty Service (264), Department of Veterans Benefits, Veterans Administration, 810 Vermont Avenue NW., Washington, DC 20420 (202–233–3042).

**SUPPLEMENTARY INFORMATION:** The Administrator is required by section 1819(f), Title 38, United States Code, to establish maximum interest rates for manufactured home loans guaranteed by the VA as he finds the manufactured home loan capital markets demand. Recent market indicators—including the prime rate, the general increase in interest rates charged on conventional manufactured home loans, and the increase in other short-term and long-term interest rates—have shown that the manufactured home capital markets have become more restrictive. It is now necessary to increase the interest rates on manufactured home unit loans, lot loans, and combination manufactured home unit and lot loans in order to assure an adequate supply of funds from lenders and investors to make these types of VA loans.

The Administrator is also required by section 1803(c), Title 38, United States Code, to establish maximum interest rates for home and condominium loans, including graduated payment mortgage loans, and for loans for home improvement purposes. Recent market indicators—including the rate of discount charged by lenders on VA loans and the general increase in interest rates charged by lenders on conventional loans, have shown that the mortgage money market has become more restrictive. The maximum rates in effect for VA guaranteed home and condominium loans and those for energy conservation and home improvement purposes have not been sufficiently competitive to induce private sector lenders to make these types of VA guaranteed or insured loans without imposing substantial discounts. To assure a continuing supply of funds for home mortgages through the VA loan guaranty program, it has been determined that an increase in the maximum permissible rates applicable to home and improvement loans is necessary. The increased return to the lender will make VA loans competitive with other available investments and assure a continuing supply of funds for guaranteed and insured mortgages.

**Regulatory Flexibility Act/Executive Order 12291**

For the reasons discussed in the May 7, 1981 **Federal Register** (46 FR 25443), it has previously been determined that final regulations of this type which change the maximum interest rates for loans guaranteed, insured, or made pursuant to Chapter 37 of Title 38, United States Code, are not subject to the provisions of the Regulatory Flexibility Act, 5 U.S.C. 601 through 612.

These regulatory amendments have also been reviewed under the provisions of Executive Order 12291. The VA finds that they do not come within the definition of a "major rule" as defined in that Order. The existing process of informal consultation among representatives within the Executive Office of the President, OMB, the VA and the Department of Housing and Urban Development has been determined to be adequate to satisfy the intent of this Executive Order for this category of regulations. This alternative consultation process permits timely rate adjustments with minimal risk of premature disclosure. In summary, this consultation process will fulfill the intent of the Executive Order while still permitting compliance with statutory responsibilities for timely rate adjustments and a stable flow of mortgage credit at rates consistent with the market.

These final regulations come within exceptions to the general VA policy of prior publication of proposed rules as contained in 38 CFR 1.12. The publication of notice of a regulatory change in the VA maximum interest rates for VA guaranteed, insured, and direct home and condominium loans, loans for energy conservation and other home improvement purposes, and loans for manufactured home purposes would create an acute shortage of funds pending the final rule publication date which would necessarily be more than 30 days after publication in proposed form. Accordingly, it has been determined that publication of proposed regulations prior to publication of final regulations is impracticable, unnecessary, and contrary to the public interest.

(Catalog of Federal Domestic Assistance Program numbers, 64.113, 64.114, and 64.119)

These regulations are adopted under authority granted to the Administrator by sections 210(c), 1803(c)(1), 1811(d)(1) and 1819 (f) and (g) of Title 38, United States Code. The regulations are clearly within that statutory authority and are consistent with Congressional intent.

These increases are accomplished by amending §§ 36.4212(a) (1), (2), and (3), and 36.4311 (a), (b), and (c), and 36.4503(a), Title 38, Code of Federal Regulations.

**List of Subjects in 38 CFR Part 36**

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

Approved: April 10, 1987.

**Thomas K. Turnage,**

*Administrator.*

## PART 36—[AMENDED]

38 CFR Part 36, Loan Guaranty, is amended as follows:

1. In § 36.4212, paragraph (a) is revised as follows:

**§ 36.4212 Interest rates and late charges.**

(a) The interest rate charged the borrower on a loan guaranteed or insured pursuant to 38 U.S.C. 1819 may not exceed the following maxima except on loans guaranteed or insured pursuant to guaranty or insurance commitments issued by the Veterans Administration prior to the respective effective date. (38 U.S.C. 1819(f))

(1) Effective April 13, 1987, 12 percent simple interest per annum for a loan which finances the purchase of a manufactured home unit only.

(2) Effective April 13, 1987, 11½ percent simple interest per annum for a loan which finances the purchase of a lot only and the cost of necessary site preparation, if any.

(3) Effective April 13, 1987, 11½ percent simple interest per annum for a loan which will finance the simultaneous acquisition of a manufactured home and a lot and/or the site preparation necessary to make a lot acceptable as the site for the manufactured home.

* * * * *

2. In § 36.4311, paragraphs (a), (b), and (c) are revised as follows:

**§ 36.4311 Interest rates.**

(a) Excepting loans guaranteed or insured pursuant to guaranty or insurance commitments issued by the VA which specify an interest rate in excess of 9½ per centum per annum, effective April 13, 1987, the interest rate on any home or condominium loan, other than a graduated payment mortgage loan, guaranteed or insured wholly or in part on or after such date may not exceed 9½ per centum per annum on the unpaid principal balance. (38 U.S.C. 1803(c)(1))

(b) Excepting loans guaranteed or insured pursuant to guaranty or insurance commitments issued by the VA which specify an interest rate in excess of 9¾ per centum per annum, effective April 13, 1987, the interest rate of any graduated payment mortgage loan guaranteed or insured wholly or in part on or after such date may not exceed 9¾ per centum per annum. (38 U.S.C. 1803(c)(1))

(c) Effective April 13, 1987, the interest rate on any loan solely for energy conservation improvements or other alterations, improvements or repairs, which is guaranteed or insured wholly or in part on or after such date may not exceed 11 per centum per annum on the unpaid principal balance. (38 U.S.C. 1803(c)(1))

* * * * *

3. In § 36.4503, paragraph (a) is revised as follows:

**§ 36.4503 Amount and amortization.**

(a) The original principal amount of any loan made on or after October 1, 1980, shall not exceed an amount which bears the same ratio to $33,000 as the amount of the guaranty to which the veteran is entitled under 38 U.S.C. 1810 at the time the loan is made bears to $27,500. This limitation shall not preclude the making of advances, otherwise proper, subsequent to the making of the loan pursuant to the provisions of § 36.4511. Except as to home improvement loans, loans made by the VA shall bear interest at the rate of 9½ percent per annum. Loans solely for the purpose of energy conservation improvements or other alterations, improvements, or repairs shall bear interest at the rate of 11 percent per annum. (38 U.S.C. 1811(d)(1) and (2)(A))

* * * * *

[FR Doc. 87-8511 Filed 4-15-87; 8:45 am]

BILLING CODE 8320-01-M

## FEDERAL COMMUNICATIONS COMMISSION

**47 CFR Part 0**

**[86-569]**

### Use of Official Mail in Location and Recovery of Missing Children; Order

**AGENCY:** Federal Communications Commission.

**ACTION:** Final rule.

**SUMMARY:** This action is statutorily required by all federal agencies to assist in the location and recovery of missing children. The prescribed regulations implement the "Missing Children Location Act." The FCC is adopting regulations which were provided by the Office of Juvenile Justice and Delinquency Prevention (OJJDP).

The Managing Director will compile and submit to OJJDP by June 30, 1987, a consolidated report on the FCC's experience with these procedures.

**DATES:** Effective date: February 18, 1987; the Commission implemented these procedures for the period of February 18, 1987 through March 31, 1987.

**FOR FURTHER INFORMATION CONTACT:** John Vallimarescu, Office of General Counsel, Federal Communications Commission, Washington, DC 20554 (202) 632–6990.

**SUPPLEMENTARY INFORMATION:**

Order

In the matter of the use of Penalty mail to aid in the location and recovery of missing children.

Adopted: December 23, 1986.

Released: February 18, 1987.

By the Commission.

1. On August 9, 1985, Congress passed the "Missing Children Location Act" (the "Act")[1] which, *inter alia*, authorizes federal agencies to prescribe regulations under which each agency penalty's mail could be used to assist in the location and recovery of missing children. Pursuant to the Act, the Office of Juvenile Justice and Delinquency Prevention ("'OJJDP") prescribed general guidelines for implementation of S. 1195.[2] These guidelines set forth the form and manner in which information relating to missing children may be included in agency penalty mail.

2. The Commission, in its regulations, delegates to the managing Director the duty to ensure that the objectives of the Act and OJJDP's regulations are carried out. The regulations require the Managing Director to ensure that the Commission's penalty mail contains missing children information in compliance with the Act and OJJDP's regulations. To that end, the Managing Director will obtain camera-ready photographic and biographical information on missing children from the National Center for Missing and Exploited Children and disseminate such information via penalty mail envelopes addressed to the members of the public.

3. In accordance with the Act, the Managing Director will compile and submit to OJJDP by June 30, 1987, a consolidated report on his experience in implementing 39 U.S.C. 3220(a)(2), the OJJDP Guidelines, and the Commission's regulations. This report will consolidate information covering the period February 18, 1987 through March 31, 1987 and shall detail: (i) The FCC's experience in implementation, including problems encountered, successful and or innovative methods adopted to use missing children photographs and information on or in penalty mail, the estimated number of pieces of penalty mail containing such information, and the percentage of total agency penalty mail, domestic mail, and domestic penalty mail directed to members of the public which that number represents; (ii) the estimated total cost to implement the program, with supporting details; (iii) recommendations for changes in the program which would make it more effective.

4. We find for good cause that prior notice and comment procedures are unnecessary to implement the rule amendments in the attached Appendix because they are required by statute and OJJDP Guidelines and generally involve rules of agency organization, practice or procedure. *See* 5 U.S.C. 553(b)(3) (A), (B). Delay in the promulgation of these regulations would be counter to the congressional intent to expedite the location and recovery of missing children.

5. Accordingly, *It Is Ordered*, That, pursuant to Section 1.427(b) of the Commission's Rules, the rule amendments are effective February 18, 1987.

6. *It Is Further Ordered That*, these regulations shall cease to be effective two and one-half years after the enactment of Pub. L. 99–87.

For further information concerning this proceeding contact John Vallimarescu, Office of General Counsel (202) 632–6990.

The officials responsible for this action are the following Commissioners: Mark S. Fowler, Chairman, James H. Quello, Mimi Weyforth Dawson, Dennis R. Patrick, Patricia Diaz Dennis.

Federal Communications Commission.

**William J. Tricarico,**

*Secretary.*

## PART 0—[AMENDED]

Part 0 of Title 47 of the CFR is amended as follows:

1. Authority citation for Part 0 continues to read:

**Authority:** Sec. 5, 48 Stat. 1068, as amended; 47 U.S.C. 155, unless otherwise note.

2. Section 0.231 is amended by adding a new paragraph (k).

**§ 0.231 Authority delegated.**

* * * * *

(k) Pursuant to 39 U.S.C. 3220 and the guidelines prescribed pursuant thereto by the Office of Juvenile Justice and Delinquency Prevention, 50 FR 46622, the Managing Director shall take appropriate measures to ensure that approximately 35% of the penalty mail posted by the Commission contains print pictures and biographies relating to missing children. It is anticipated that the cost will be approximately $75 for the first year of implementation. The contact person for matters relating to the implementation of this section is the Chief, Printing and Mail Branch Office of Managing Director, 1919 M St., NW., Washington, DC 20554, (202) 632–7546.

The following shall be added to the authorities for § 0.231:

**§ 0.231 [Amended]**

39 U.S.C. 3220; Notice of Preliminary Guidelines issued by the Department of Justice, 50 FR 46622, November 8, 1985.

[FR Doc. 87–8405 Filed 4–15–87; 8:45 am]

BILLING CODE 6712–01–M

[1] Pub. L. 99–87, section 1, 99 Stat. 290 (1985). (as codified at 39 U.S.C. 3220).

[2] Notice of Preliminary Guidelines, 50 FR 46622 November 8, 1985).

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## DEPARTMENT OF DEFENSE

### 48 CFR Parts 203 and 252

### Defense Federal Acquisition Regulation Supplement (DFARS); Implementation of Section 931 of the Defense Acquisition Impovement Act of 1986 (Pub. L. 99–500); Conflicts of Interest in Defense Procurement

**AGENCY:** Department of Defense (DOD).

**ACTION:** Interim rule and request for comments.

**SUMMARY:** The Defense Acquisition Regulatory (DAR) Council invites public comment concerning an interim rule amending the Defense Federal Acquisition Regulation Supplement (DFARS) to implement certain provisions of section 931 of the Defense Acquisition Improvement Act of 1986 (Pub. L. 99–500), entitled "Conflict-of-Interest in Defense Procurement." The rule implements a statutory prohibition that a major defense contractor (i.e., one awarded contracts aggregating $10 million or more during the previous government fiscal year) may not offer or provide compensation either directly or indirectly to certain former DoD officials, who within two years prior to their separation from DoD, had certain procurement responsibilities with respect to that contractor. The rule also adopts a contract clause whereby major defense contractors must report annually concerning compensation provided to certain former DoD employees and are made subject to a liquidated damages assessment in the event compensation is knowingly provided to certain former DoD officials in violation of law.

**DATES:** *Effective Date:* April 16, 1987 (Effective on all contracts awarded on or after April 16, 1987).

Comment date: Comments must be received on or before June 16, 1987. Please cite DAR Case 85–220 in all correspondence on this subject.

**ADDRESS:** Interested parties should submit written comments to: Defense Acquisition Regulatory Council, ATTN: Mr. Charles W. Lloyd, Executive Secretary, ODASD(P)DARS, c/o OASD(A&L)(M&RS), Room 3C841, The Pentagon, Washington, DC 20301–3062.

**FOR FURTHER INFORMATION CONTACT:** Mr. Charles W. Lloyd, Executive Secretary, DAR Council, (202) 697–7267.

**SUPPLEMENTARY INFORMATION:**

**A. Background**

Section 931 of the Defense Acquisition Improvement Act of 1986 (Pub. L. 99–500), enacted on October 18, 1986 and codified at 10 U.S.C. 2397b and 2397c, requires that DoD contracts over $100,000 awarded on or after 180 days after date of enactment (i.e., April 16, 1987) contain a contract clause whereby major defense contractors (i.e., those awarded contracts aggregating $10 million or more during the previous Government fiscal year) agree to: (1) not provide compensation to a former DoD official if acceptance would violate 10 U.S.C. 2397b(a)(1); (2) pay to the United States as liquidated damages the greater of $100,000 or three times the compensation paid in violation of 10 U.S.C. 2397b(a)(1); and, (3) file a report listing certain former DoD employees who left DoD service within the past two years and to whom compensation was paid by the contractor, together with identification and descriptive information concerning the person's former DoD duties and work performed on behalf of the contractor. For purposes of the reporting requirement, the rule defines former DoD employees as those who (1) served in a civilian position for which the rate of pay is equal to or greater than the rate of pay for Grade GS–13 Step 1 of the General Schedule or (2) served in the Armed Forces in a pay grade of 04 or higher. An administrative penalty against the contractor of up to $10,000 is specified for knowing failure to file the required report, after opportunity for hearing on the record pursuant to DoD regulation. The statute also prescribes civil fines of up to $250,000 and $500,000 against the person and contractor, respectively, for knowing violation of its compensation prohibitions, in civil actions brought before a U.S. District Court. Because of the detail contained in the statute with respect to prohibitions on compensation and covered positions, it is suggested that the reader consult 10 U.S.C. 2397b and 2397c, specifically.

As stated above, the statute and the interim rule prohibit contractors who were awarded DoD contracts aggregating $10 million or more in a preceding Government fiscal year from offering or providing compensation in the subsequent Government fiscal year to covered former DoD officials. However, the reader should note that the reporting requirement uses a somewhat different baseline. With respect to reporting, the rule requires that a contractor awarded DoD contracts (aggregating $10 million or more in the Government fiscal year ending before the calendar year in which award is made of a contract containing the prescribed clause) render the specified report for the calendar year in which award is made. A report is required for each succeeding calendar year, ending with the calendar year in which final payment is made under the contract, if the contractor has DoD contract awards aggregating $10 million or more in the Government fiscal year ending before each such succeeding calendar year. For example, assume that XYZ Corporation is awarded a contract on November 1, 1987 containing the prescribed clause. During FY 86 (ending September 30, 1986), XYZ was awarded DoD contracts aggregating $12 million and during FY 87 (ending September 30, 1987) was awarded DoD contracts totaling $9 million. XYZ is required to file the specified report for CY 87 as its awards in FY 86 (i.e., the fiscal year ending before the calendar year in which award was made) exceeded $10 million. Conversely, XYZ will not have to file a report for CY 88 (i.e., the succeeding calendar year) because its awards in FY 87 (i.e., the fiscal year ending before the succeeding calendar year) were less than $10 million. Assuming further that final payment is made under XYZ's contract on June 1, 1990, XYZ's last potential reporting period under the contract is CY 90.

A substantial portion of this interim rule was prepared simultaneously with revisions to DoD Directive 5500.7, Standards of Conduct, which will be published in the **Federal Register** in the near future. Specifically, definitions contained in this rule are based upon a present draft version of that revised directive. In order to facilitate the public comment process, the DAR Council will ensure that comments received concerning this Notice of Proposed Rulemaking are provided for consideration in drafting revisions to the Directive. However, in view of the statutory implementation date of April 16, 1987 regarding insertion of the prescribed clause in DoD contracts, it has been determined necessary to proceed with this rule prior to publication of the Directive and in advance of receipt of public comments. In accordance with Pub. L. 98–577, comments received will be considered before a final rule is adopted.

**B. Regulatory Flexibility Act**

The interim rule prescribes requirements for major defense contractors having aggregate contract awards exceeding $10 million during the previous Government fiscal year. Accordingly, few, if any, small entities will be affected and the Department therefore certifies that the rule will not have a significant economic impact upon a substantial number of small entities within the meaning of the Regulatory Flexibility Act of 1980, 5 U.S.C. 601 *et seq.* Comments are invited.

Comments from small entities concerning existing coverage within DFARS Part 203 will also be considered in accordance with section 610 of the Act. Such comments must be submitted separately and cite DAR Case 87–610D in correspondence.

**C. Paperwork Reduction Act**

The interim rule contains information collection requirements within the meaning of 44 U.S.C. 3501, et seq. and an emergency Paperwork Reduction Act clearance for an increase of 100,000 hours of burden has been requested from OMB. However, consistent with the intent of the Act in reducing paperwork burdens, the rule permits contractors to utilize DD Form 1787, Report of DoD and Defense Related Employment, filed with DoD by certain affected former DoD employees, for the purpose of meeting their reporting requirement under the prescribed clause. A regular Paperwork Reduction Act Clearance request, with full justification for the burden estimate, will be submitted to OMB in the near future. Comments concerning that information collection requirement will be solicited by OMB through a subsequent **Federal Register** notice. Comments are invited.

**D. Determination to Issue an Interim Regulation**

A determination has been made under the authority of the Secretary of Defense to issue this coverage as an interim regulation. This action is necessary in order to implement section 931 of the Defense Acquisition Improvement Act of 1986 (Pub. L. 99–500).

**List of Subjects in 48 CFR Parts 203 and 252**

Government procurement.

**Owen L. Green,**

*Acting Executive Secretary, Defense Acquisition, Regulatory Council.*

Therefore, 48 CFR Parts 203 and 252 are amended as follows:

1. The authority citation for 48 CFR Parts 203 and 252 continues to read as follows:

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

## PART 203—IMPROPER BUSINESS PRACTICES AND PERSONAL CONFLICTS OF INTEREST

2. Section 203.170 and sections 203.170–1 through 203.170–5 are added to read as follows:

### 203.170 Statutory compensation prohibitions and reporting requirements relating to certain former Department of Defense (DoD) employees.

#### 203.170–1 Definitions.

"Armed Forces", as used in this section, means the uniformed military services but excluding the U.S. Coast Guard.

"Compensation", as used in this section, means any payment, gift, benefit, reward, favor, or gratuity which is provided directly or indirectly for services rendered by the person accepting such payment and which has a fair market value in excess of $250. Compensation shall be deemed indirectly received if it is paid to an entity other than the individual, in exchange for services performed by the individual.

"Defense contractor", as used in this section, means an entity that contracts directly with the DoD to supply the DoD with goods or services (including affiliates and subsidiaries which clearly engage in the performance of defense contracts). "Defense contractor" does not include a state or local government.

"Defense Agency Ethics Official (DAEO)", as used in this section, means a DoD officer or employee who has been appointed to administer the provisions of the Ethics in Government Act.

"Former DoD Employee", as used in this section, means a person who served in the DoD in a civilian position for which the rate of pay is equal to or greater than the minimum rate of pay for Grade GS–13 Step 1 of the General Schedule, or served in the Armed Forces in a pay grade of 04 or higher.

"Former DoD official", as used in this section, means:

(a) individuals who served in a civilian position for which the rate of pay is equal to or greater than the minimum rate of pay for Grade GS–13 Step 1 of the General Schedule, or who served in the Armed Forces in a pay grade of 0–4 or higher, who:

(1) Spent the majority of their working days during the last two years of DoD service performing a procurement function relating to a DoD contract, at a site or plant that was owned or operated by a contractor, and which was the principal location of their performance of that procurement function; or

(2) Performed, on a majority of their working days during the last two years of DoD service, a procurement function relating to a major defense system and, in the performance of such function, participated on any occasion personally and substantially in a manner involving decision-making responsibilities with respect to a contract for that system through contact with the contractor;

(b) Individuals who served in a civilian position for which the rate of pay is equal to or greater than the minimum rate of pay for a Senior Executive Service position or other executive position at the same or higher level, and individuals who served in the Armed Forces in the pay grade of 07 or higher, if such individuals during the last two years of DoD service:

(1) Acted as a primary representative of the United States in the negotiation with a defense contractor of a defense contract in an amount in excess of $10,000,000 (the actual contractual action taken by the individual must have been in an amount in excess of $10,000,000), or

(2) Acted as a primary representative of the United States in the negotiation of a settlement of an unresolved claim of such a defense contractor in an amount in excess of $10,000,000. An unresolved claim shall be, for the purposes of this section, valued by the greater of the amount of the claim or the amount of the settlement.

"Major defense contractor", as used in this section, means any business entity which, during the Government fiscal year preceding the Government fiscal year in which compensation was first provided to a former DoD employee, was awarded defense contracts in a total amount equal to or greater than $10,000,000.

"Major defense system", as used in this section, means a combination of elements that will function together to produce the capability required to fulfill a mission need. Elements may include hardware, equipment, software, or any combination thereof, but excludes construction or other improvements to real property. A system shall be considered a major defense system if:

(a) The DoD is responsible for the system and the total expenditures for research, development, test and evaluation for the system are estimated to exceed $75,000,000 (based on fiscal year 1980 constant dollars); or, (b) the system is designated a major system by the head of the agency responsible for the system.

"Negotiation", as used in this section, means exchange of views between representatives of the Government and a contractor regarding respective liabilities and responsibilities of the parties on a particular contract or claim. It includes deliberations regarding contract specifications, terms of delivery, allowability of costs, pricing of change orders, etc.

"Primary Government representative", as used in this section, means if more than one Government representative is involved in any particular transaction, the official supervising the Government's effort in the matter. To act as a "representative" requires personal and substantial participation in the transaction, by personal presence, telephone conversation, or similar involvement with representatives of a contractor.

"Procurement related function (or procurement function)", as used in this section, means any function relating to: (a) the negotiation, award, administration or approval of a contract; (b) the selection of a contractor; (c) the approval of a change in a contract; (d) the performance of quality assurance, operational and developmental testing, the approval of payment, or auditing under a contract; or (e) the management of a procurement program.

#### 203.170–2 Policy.

10 U.S.C. 2397b and 2397c prohibit former DoD officials who performed procurement related functions in connection with a major defense contractor, from accepting compensation from that same contractor for a period of two years after such officials have left service with DoD. The statute also bars major defense contractors from offering or providing compensation to these former DoD officials for a period of two years after the officials have left service with DoD. Related implementation of the statute for the DoD may be found in DoD Directive 5500.7, Standards of Conduct.

#### 203.170–3 Reporting requirements.

Major defense contractors are required to report, as delineated in paragraph (c) of the clause at 252.203–7002, on employment of certain former DoD employees. The reports are to be

submitted to the Office of the Assistant General Counsel (Legal Counsel), Standards of Conduct Office, Attn: OAGC/LC, Pentagon, Washington, DC 20301–1600 not later than 1 April following the calendar year period covered by the report.

**203.170–4 Penalties.**

(a) Major defense contractors are subject to the following penalties for knowing failures to comply with the statute or with the contractual prohibition or the reporting requirement specified in the statute:

(1) Civil fines up to $500,000 for failure to comply with the statute;

(2) Liquidated damages in the amount of either $100,000, or three times the amount of compensation paid by the contractor to the former DoD official, whichever is greater, for failure to comply with the contract prohibition; and/or,

(3) An administrative penalty not to exceed $10,000 for failure to report as required by the statute and as implemented in paragraph (c) of the clause at 252.203–7002.

(b) Liquidated damages will be assessed in accordance with agency procedures in coordination with the appropriate DAEO.

**203.170–5 Contract clause.**

Contracting officers shall include the clause at 252.203–7002, Statutory Compensation Prohibitions and Reporting Requirements Relating to Certain Former DoD Employees, in all contracts expected to exceed $100,000.

## PART 252—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

3. Section 252.203–7002 is added to read as follows:

**252.203–7002 Statutory compensation prohibitions and reporting requirements relating to certain former Department of Defense (DoD) employees.**

As prescribed in 203.170–5, insert the following clause:

**Statutory Compensation Prohibitions and Reporting Requirements Relating to Certain Former DOD Employees (Apr. 1987)**

(a) *Definitions.* Terms used in this clause are defined at section 203.170–1 of the Defense Federal Acquisition Regulation Supplement (48 CFR Chapter 2).

(b) *Prohibition on compensation.*

(1) 10 U.S.C. 2397b and 2397c prohibit a major defense contractor from offering or providing any compensation valued in excess of $250 to a former Department of Defense (DoD) official who, while employed by DoD, performed procurement related functions in connection with that same defense contractor. This prohibition runs for the two-year period beginning on the date of such person's separation from service in DoD.

(2) The Contractor, if a major defense contractor, agrees not to provide, for such two-year period, any compensation to such a former DoD official.

(3) DoD employees may request from their Defense Agency Ethics Official (DAEO) a written opinion on the applicability of 10 U.S.C. 2397b prior to the acceptance of compensation. If the opinion rendered by the DAEO states that the law is inapplicable, and that the individual may accept compensation from the contractor, there shall be a conclusive presumption that the offering and the acceptance of such compensation is not a violation of the statute.

(c) *Report concerning former DoD employees.* (1) The Contractor shall submit a separate written report, as described in (c)(2) below, for each calendar year covered by this contract (commencing with the calendar year of award and extending through the end of the calendar year in which final payment is made) if the calendar year commenced after the end of a Government fiscal year in which the Contractor was awarded one or more DoD contracts aggregating $10,000,000 or more. Each report shall be submitted to the Office of the Assistant General Counsel (Legal Counsel), Standards of Conduct Office, Attn: OAGC/LC, Pentagon, Washington, DC 20301–1600 listing those persons in its employ, or whom it has otherwise compensated, if those persons:

(i) Were former DoD employees who left DoD service within the two years immediately preceding the calendar year for which the report is being made; and,

(ii) Served in a civilian position for which the rate of pay is equal to or greater than the minimum rate of pay for Grade GS–13 Step 1 of the General Schedule or served in the Armed Forces in a pay grade of 04 or higher.

(2) The report shall contain the following elements:

(i) Each individual's name and an identification of the agency in which each individual was employed or served on active duty during the last two years of the individual's service with DoD;

(ii) Each individual's job title(s) during the person's last two years of service with DoD and a list of major defense systems on which each individual performed any work;

(iii) A complete description of any work that each individual is performing, or did perform, on behalf of the Contractor during the calendar year covered by the report; and,

(iv) An identification of each major defense system on which each individual has performed any work on behalf of the Contractor.

(3) Each report required under (c)(1) above shall be submitted not later than April 1 following the end of the calendar year for which the report is being made.

(4) A DD Form 1787 properly certified by the individual to whom it relates may be submitted to satisfy the reporting requirement as to any single individual.

(5) The Contractor need not submit duplicate reports to the Government. Submission of a report meeting the requirements of this clause, under another, concurrent contract with DoD will satisfy the reporting requirement of this contract as to any single calendar year.

(d) *Penalties for failure to comply*—(1) *Civil fines for failure to comply with 10 U.S.C. 2397b.* A contractor who knowingly offers or provides any compensation to a former DoD official in violation of the statute, and who knew or should have known that the acceptance of such compensation would be in violation of such statute, shall be subject to a civil fine, not to exceed $500,000.

(2) *Liquidated damages for failure to comply with 10 U.S.C. 2397c.*

(i) For each knowing violation of the statutory prohibition on providing compensation, the Contractor agrees to pay to the United States Government as liquidated damages the greater of either $100,000 or three times the amount of compensation paid by the Contractor to the former DoD official in violation of the statutory prohibition.

(ii) Liability for liquidated damages under this clause survives final payment under this contract and may be recouped against payments due under other contracts with the Contractor.

The rights and remedies under this clause are in addition to and do not limit any rights afforded to the Government under this contract or as otherwise provided by law.

(iii) Liquidated damages will be computed based upon the number of actual violations by the Contractor, and not on the number of contracts in which this clause appears.

(3) *Penalties for failure to report.* If the Contractor knowingly fails to file a report in accordance with (c) above the Contractor shall be subject to an administrative penalty not to exceed $10,000. The final determination of the penalty to be charged to the Contractor shall be made by the Secretary of Defense or designee after the Contractor is afforded an opportunity for an agency hearing on the record in accordance with agency hearing procedures. The Secretary's determination shall form a part of the record and shall be subject to judicial review under Chapter 7 of Title 5, United States Code.

(End of clause)

[FR Doc. 87–8560 Filed 4–15–87; 8:45 am]
BILLING CODE 3810–01–M

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**48 CFR Parts 205 and 252**

## Department of Defense Federal Acquisition Regulation Supplement; Release of Information

**AGENCY:** Department of Defense (DoD).

**ACTION:** Interim rule.

**SUMMARY:** The Defense Acquisition Regulatory (DAR) Council has approved revisions to the Defense Federal Acquisition Regulation Supplement (DFARS) to add a new section 205.470 and clause 252.205–7000 which require defense contractors awarded a contract

in excess of $500,000 to provide entities holding Cooperative Agreements with the Defense Logistics Agency, upon their request, a list of appropriate employees, their business address, telephone number, and area of responsibility, who have responsibility for awarding subcontracts under defense contracts. This interim rule is required to implement Section 957 of the 1987 DoD Appropriations Act, Pub. L. 99–500.

**DATES:** Effective Date: 1 January 1987, Comment Date: Comments must be received on or before (June 15, 1987). Please cite DAR Case 86–171 in all correspondence on this subject.

**ADDRESS:** Interested parties should submit written comments to: Defense Acquisition Regulatory Council, ATTN: Mr. Charles W. Lloyd, Executive Secretary, ODASD(P)DARS, c/o OASD (A&L) (M&RS), Room 3C841, The Pentagon, Washington, DC 20301–3062.

**FOR FURTHER INFORMATION CONTACT:** Mr. Charles W. Lloyd, Executive Secretary, DAR Council, (202) 697–7266.

**SUPPLEMENTARY INFORMATION:**

### A. Background

The Defense Logistics Agency enters into Cooperative Agreements with state and local governments and private, non-profit organizations to support funding of technical assistance centers for the purpose of furnishing procurement technical assistance to business entities. Pub. L. 99–500 requires defense contractors to provide Cooperative Agreements Holders with information on points of contact for subcontract opportunities.

### B. Regulatory Flexibility Act

This interim change to amend Subpart 205.4 and to add a new clause at 252.205–7000 may have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act, 5 U.S.C. 601 et seq., because small businesses will be furnished with points of contact who will provide small business with information needed to obtain additional subcontracts. An Initial Regulatory Flexibility Analysis (IRFA) has been prepared and has been submitted to the Chief Counsel for Advocacy of the Small Business Administration. A copy of the IRFA may be obtained from the individual listed below. Comments are invited. Such comments must be submitted separately and cite DAR Case 87–610D in correspondence.

### C. Paperwork Reduction Act

The rule contains information collection requirements which require OMB approval under 44 U.S.C. 3501 et seq. An expedited clearance approval for burden hours has been submitted to OMB.

### D. Determination to Issue an Interim Regulation

A determination has been made under the authority of the Secretary of Defense to issue this coverage as an interim regulation. This action is necessary in order to implement Section 957 of the Defense Acquisition Improvement Act of 1986 (Pub. L. 99–500).

### List of Subjects in 48 CFR Parts 205 and 252

Government procurement.

**Charles W. Lloyd,**

*Executive Secretary, Defense Acquisition Regulatory Council.*

Therefore, 48 CFR Parts 205 and 252 are amended as follows:

1. The authority citation for 48 CFR Parts 205 and 252 continues to read as follows:

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

## PART 205—PUBLICIZING CONTRACT ACTIONS

### Subpart 205.4—Release of Information

2. Section 205.470 is added to read as follows:

**205.470 Contractor information to be provided to Cooperative Agreements Holders.**

(a) As required by 10 U.S.C. 2413, the Defense Logistics Agency enters into Cooperative Agreements with state or local governments or private, non-profit organizations to furnish procurement technical assistance to business entities.

(b) As required by 10 U.S.C. 2416 any contractor receiving a Defense contract for more than $500,000 must agree, upon request, to provide Cooperative Agreement Holders described in (a) above, with a list of those appropriate employees responsible for entering into subcontracts under prime Defense contracts. The list shall include the business address, telephone number, and area of responsibility of each such employee. A defense contractor need not provide the listing to a particular Cooperative Agreement holder more frequently than once a year.

(c) The contracting officer shall insert the clause at 252.205–7000, Release of Information to Cooperative Agreement Holders, in solicitations and contracts when the contract amount is expected to exceed $500,000.

## PART 252—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

3. Section 252.205–7000 is added to read as follows:

**252.205–7000 Release of Information to Cooperative Agreement Holders**

As prescribed in 205.470, insert the following clause.

**Release of Information to Cooperative Agreement Holders (April 1987)**

(a) Definition. As used in this clause, the term "Cooperative Agreement Holder", means a state or local government or private, non-profit organization which has an agreement with the Defense Logistics Agency to furnish procurement technical assistance to business entities.

(b) The contractor shall provide Cooperative Agreement Holders upon request with a list of those appropriate employees responsible for entering into subcontracts under a Defense contract. The list shall include the business address, telephone number, and area of responsibility of each such employee. A contractor need not provide the listing to a particular Cooperative Agreement Holder more frequently than once a year.

(End of clause)

[FR Doc. 87–8563 Filed 4–15–87–8:45 am]

BILLING CODE 3810–01–M

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## 48 CFR Parts 216, 217, and 243

## Department of Defense Federal Acquisition Regulation Supplement; Undefinitized Contract Actions (UCAs)

**AGENCY:** Department of Defense (DoD).

**ACTION:** Interim rule and request for comment.

**SUMMARY:** The Defense Acquisition Regulatory Council has approved an interim rule which revises the Defense Federal Acquisition Regulation Supplement (DFARS) to add a new Subpart 217.75, Undefinitized Contract Actions (UCAs).

**EFFECTIVE DATE:** April 16, 1987. (Effective on all undefinitized contract actions (UCAs) except for Foreign Military Sales; purchases of less than $25,000; special access programs; and congressionally-mandated long-lead procurement contracts; and all solicitations issued and contracts awarded on or after April 16, 1987 contemplating the use of UCAs.) Comments should be submitted in writing to the Executive Secretary, DAR Council, at the address shown below, on or before June 15, 1987, to be considered in the formulation of the final rule.

Please cite DAR Case 86–160 in all correspondence related to this issue.

**ADDRESS:** Interested parties should submit written comments to: Defense Acquisition Regulatory Council, ATTN: Mr. Charles W. Lloyd, Executive Secretary, ODASD (P)/DARS, c/o OASD (A&L) (M&RS), Room 3C841, The Pentagon, Washington, DC 20301–3062.

**FOR FURTHER INFORMATION CONTACT:** Mr. Charles W. Lloyd, Executive Secretary, DAR Council, (202) 697–7266.

**SUPPLEMENTARY INFORMATION:**

**A. Background**

Section 908 of the 1987 Department of Defense Authorization Act, Pub. L. 99–500 included certain limitations on the use of Undefinitized Contract Actions by Defense Activities. The revisions being made represent implementation of these statutory requirements.

**B. Regulatory Flexibility Act Information**

The interim rule is not expected to have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act, 5 U.S.C. 6701 et seq., because the interim rule is considered to be, in general, formal implementation of procedures already being practiced within DoD, and does not require additional recordkeeping. Moreover, the rule implements statutory requirements which do not provide exemptions for undefinitized contract actions with small business concerns. An initial regulatory flexibility analysis has therefore not been performed. Comments are invited from small businesses and other interested parties. Comments concerning the affected DFARS subpart will also be considered in accordance with Section 610 of the Act. Such comments must be submitted separately and cite DAR Case 87–610D in correspondence.

**C. Paperwork Reduction Act Information**

The proposed rule does not contain information collection requirements which require approval of OMB under 44 U.S.C. 3501 et seq.

**D. Determination to Issue an Interim Regulation**

A determination has been made under the authority of the Secretary of Defense to issue the regulation as an interim regulation. This action is necessary in order to comply with the statutory effective date of April 16, 1986, as cited in Pub. L. 99–500.

**List of Subjects in 48 CFR Parts 216, 217, and 243**

Government procurement.

**Charles W. Lloyd,**

*Executive Secretary, Defense Acquisition Regulatory Council.*

Therefore, 48 CFR Part 216, 217, and 243 are amended as follows:

1. The authority citation for 48 CFR Parts 216, 217, and 243 continues to read as follows:

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

## PART 216—TYPES OF CONTRACTS

2. Section 216.603–3 is added to read as follows:

**216.603–3 Limitations.**

Additional limitations on the use of letter contracts by DoD activities can be found in Subpart 217.75.

3. Section 216.703 is amended by adding at the end of paragraph (c) a sentence to read as follows:

**216.703 Basic ordering agreements.**

* * * * *

(c) * * * Additional limitations on undefinitized orders under basic ordering agreements can be found in Subpart 217.75.

* * * * *

## PART 217—SPECIAL CONTRACTING METHODS

4. Section 217.202 is added to read as follows:

**217.202 Use of options.**

(S–70) See Subpart 217.75 for limitations on the use of undefinitized contract actions.

5. Section 217.7402 is amended by adding paragraph (c) to read as follows:

**217.7402 Acquisition requirements.**

* * * * *

(c) Additional limitations on the use of undefinitized contract actions can be found in Subpart 217.75.

6. A new Subpart 217.75, consisting of sections 217.7500 through 217.7504, is added to read as follows:

**Subpart 217.75—Undefinitized Contract Actions**

Sec.



**217.7500 Scope.**

This subpart prescribes policies and procedures implementing 10 U.S.C. 2326, Undefinitized Contractual Actions Restrictions.

**217.7501 Definitions.**

"Contract action", as used in this subpart, means an action resulting in a contract, as defined in FAR Subpart 2.1, including contract modifications for additional supplies or services, but not including contract modifications that are within the scope and under the terms of the contract, such as contract modifications issued pursuant to the Changes clause, or funding and other administrative changes.

"Definitization", as used in this subpart, means an agreement on or determination of contract terms, specifications, and price, thus converting the undefinitized contract action to a definitive contract.

"Qualifying proposal", as used in this subpart, means a proposal that contains sufficient information to enable the Department of Defense to conduct complete and meaningful audits of the information contained in the proposal and of any other information that the Department is entitled to review in connection with the contract, as determined by the contracting officer.

"Undefinitized contract action", as used in this subpart, means any contract action for which the contract terms, specifications, or price are not agreed upon before performance is begun under the action.

**217.7502 Applicability.**

This subpart applies to all undefinitized contract actions (UCAs) (e.g., letter contracts, unpriced orders under basic ordering agreements or provisioned items) with the exception of UCAs for Foreign Military Sales; purchases of less than $25,000; special access programs; and congressionally-mandated long-lead procurement contracts. In the case of UCAs included in the foregoing exceptions, as well as changes under the Changes clause, the policy set forth in this subpart shall be followed to the maximum extent practical.

**217.7503 Policy.**

(a) *General.* It is the policy of the Department of Defense that the use undefinitized contract instruments should be limited to the maximum extent practicable. UCAs may only be used when:

(1) The negotiation of a definitive contract action is not possible in sufficient time to meet the Government's requirements; and

(2) The Government's interests demand that the contractor be given a

binding commitment so that contract performance can begin immediately. UCAs shall be as complete and definite as feasible under the particular circumstances.

(b) *Limitations.*—(1) *Authorization.* The contracting officer shall not enter into a UCA without prior authorization from the head of the agency or a designee. The request for authorization shall contain a statement of the impact on the requirements of the agency that would result if a delay is incurred for purposes of determining contract terms, specifications, and price before performance is begun under the contract action.

(2) *Price ceiling.* UCAs shall include a maximum not-to-exceed price that the Government can be charged under the contract action and in excess of which the Government will not negotiate in definitizing the action.

(3) *Definitization schedule.* UCAs shall contain definitization schedules which provide for definitization of the contract action by the earlier of—

(i) The end of the 180-day period beginning on the date of issuance of the action (this period may be extended, as required, but may not exceed the 180-day period beginning on the date the contractor submits a qualifying proposal); or

(ii) The date on which the amount of funds obligated or expended under the contract action is equal to more than 50 percent of the maximum not-to-exceed price.

(4) *Limitation on obligations and expenditures.* No more than 50 percent of the maximum not-to-exceed price for the UCA shall be obligated or expended until the contract terms, specifications, and price are definitized. However, if a contractor submits a qualifying proposal to definitize the UCA before 50 percent of the maximum not-to-exceed price is expended by the Government, no more than 75 percent of the maximum, not-to-exceed price may be obligated or expended until the contract terms, specifications, and price are definitized.

(5) *Exception for initial spares.* The limitations set forth in subparagraphs (b)(3) and (b)(4) above do not apply to UCAs for the purchase of initial spares.

(6) *Inclusion of non-urgent requirements.* Requirements for spare parts and support equipment that are not needed on an urgent basis shall not be included in a UCA for spare parts and support equipment that are needed on an urgent basis unless the head of the agency approves such inclusion as being consistent with good business practices and in the best interests of the United States.

(7) *Modification of undefinitized contract actions.* The scope of work specified under a UCA under which performance has begun may not be modified unless the head of the agency approves such modification as being consistent with good business practices and in the best interests of the United States.

(8) *Allowable profit.* The head of an agency or a designee shall ensure that the profit allowed on a UCA, for which the final price is negotiated after a substantial portion of the performance required is completed, reflects:

(i) Any reduced cost risk of the contractor with respect to costs incurred during performance of the contract before the final price is negotiated; and

(ii) The reduced cost risk of the contractor with respect to costs incurred during performance of the remaining portion of the contract.

**217.7504 Contract clauses.**

(a) The clause at FAR 52.216–24, Limitation of Government Liability, shall be included in all undefinitized contract actions, solicitations associated therewith, and basic ordering agreements contemplating the use of undefinitized orders.

(b) A clause substantially the same as the clause at FAR 52.216–25, Contract Definitization, shall be included in all solicitations and contracts when a UCA is contemplated. The term "letter contract" shall be replaced, as necessary, with the term that describes the particular undefinitized action (e.g., "order"). Alternate I to FAR 52.216–25 may only be used for letter contracts.

## PART 243—CONTRACT MODIFICATIONS

7. Section 243.102 is added to read as follows:

**243.102 Policy.**

(b) See 217.7503 for specific limitations on DoD undefinitized contract actions.

8. Section 243.201 is amended by redesignating the existing paragraph (a) as paragraph (S–70) and by adding a new paragraph (S–71) to read as follows:

**243.201 General.**

* * * * *

(S–71) Additional guidance on undefinitized contract actions can be found in Subpart 217.75.

[FR Doc. 87–8564 Filed 4–15–87; 8:45 am]
BILLING CODE 3810–01–M

**48 CFR Parts 225, 245, and 252**

## Department of Defense, Federal Acquisition Regulation Supplement; Foreign Acquisition Restriction on Acquisition of Machine Tools from Foreign Sources

**AGENCY:** Department of Defense (DoD).

**ACTION:** Interim rule and request for comments.

**SUMMARY:** The Defense Acquisition Regulatory Council has approved revisions to the Defense Federal Acquisition Regulation Supplement (DFARS) by revising sections 225.7000 and 225.7001, by inserting a new section 225.7008 to Subpart 225.70, entitled Apropriation Act Restrictions, by adding Section 245.106, and by adding a new clause at 252.245–7000, Acquisition of Foreign Machine Tools. These revisions implement restrictions in the Department of Defense Acquisition Improvement Act of 1987 (Pub. L. 99–500), Section 9118, which prohibits the acquisition of machine tools for Government-owned facilities not manufactured in the United States or Canada.

**EFFECTIVE DATE:** October 18, 1986 (effective on contracts entered into on or after October 18, 1986).

**ADDRESS:** Comments should be submitted in writing on or before June 15, 1987, to Office of International Acquisition, OASD(A&L)(P)(IA), Room 2A326, The Pentagon, Washington, DC 20301–8000. Please cite DAR Case 86–178 in all correspondence related to this issue.

**FOR FURTHER INFORMATION CONTACT:** Mr. Paul Jamushian, telephone (202) 697–9351.

**SUPLEMENTARY INFORMATION:**

### A. Background

Section 9118 of the Department of Defense Acquisition Improvement Act of 1987 (Pub. L. 99–500) prohibits the use of FY 87 funds for the acquisition of certain machine tools not manufactured in the United States or Canada for any Government-owned facility or property under the control of the Department of Defense. This prohibition was effective date of enactment of the Public Law which was October 17, 1986.

### B. Regulatory Flexibility Act

The interim rule does not appear to have a significant economic impact on a substantial number of small entities. The rule affects only those contractors who either manufacture or acquire machine tools for use in a Government-owned facility or property under control of the

DoD. While definitive information is unavailable as to the number of small business manufacturers of machine tools, it is believed there are few, if any. With regard to contractors who purchase machine tools for use in a Government-owned facility or property under control of the DoD, the rule would impact only those small business contractors who rely on foreign suppliers. Again, definitive information is unavailable; however, it is believed this number is minimal. For the above reasons, an initial regulatory flexibility analysis has not been prepared. Comments from small businesses and other interested parties are invited. Comments concerning the affected FAR Subpart will also be considered in accordance with Section 610 of the Regulatory Flexibility Act. Such comments must be submitted separately and cite FAR Case 87–610 in correspondence.

**C. Paperwork Reduction Act Information**

The rule does not contain information collection requirements which require the approval of OMB under 44 U.S.C. 3501 et seq.

**D. Determination to Issue an Interim Rule**

A determination has been made under the authority of the Secretary of Defense to issue this coverage as an interim regulation. This action is necessary in order to implement Section 9118 of the Department of Defense Acquisition Improvement Act of 1987 (Pub. L. 99–500).

**List of Subjects in 48 CFR Parts 225, 245, and 252**

Government procurement.

**Charles W. Lloyd,**

*Executive Secretary, Defense Acquisition, Regulatory Council.*

**Adoption of Amendments**

Therefore, the DoD FAR Supplement contained in 48 CFR Parts 225, 245, and 252 is amended as set forth below:

1. The authority for 48 CFR Parts 225, 245, and 252 continues to read as follows:

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

## PART 225—FOREIGN ACQUISITION

**225.7000 [Amended]**

2. Section 225.7000 is amended by removing in the penultimate sentence after the parenthetical phrase "(see 225.7005)," the word "and", and adding at the end of the same sentence the words "and the restriction on acquisition of machine tools for Government-owned facilities not manufactured in the United States or Canada (see 225.7008)."

3. Section 225.7001 is amended by adding between the definition "Hand or Measuring Tools" and the definition "Possessions" the definition "Machine tools" to read as follows:

**225.7001 Definitions.**

* * * * *

"Machine tools" means those tools listed in Federal Supply Classes of metalworking machinery in categories numbered 3408, 3410–3419, 3426, 3433, 3441–3443, 3446, 3448, 3449, 3460, and 3461.

* * * * *

4. Section 225.7008 is added to read as follows:

**225.7008 Restriction on Acquisition of Machine Tools.**

(a) Pub. L. 99–591 provides that no FY 87 funds appropriated for the Department of Defense may be used to procure the classes of machine tools set forth in 225.7001 for use in any Government-owned facility or property under control of the Department of Defense which machine tools were not manufactured in the United States or Canada.

(b) When adequate domestic supplies of the classifications of machine tools set forth in 225.7001 are not available to meet the needs of the Department of Defense on a timely basis, the procurement restrictions may be waived by the Head of the Component responsible for the procurement on a case-by-case basis. Requests for waivers will contain a full explanation of the facts supporting the waiver and will be submitted in accordance with Departmental procedures.

(c) A machine tool shall be considered to have been manufactured in the United States or Canada if the cost of its components manufactured in the United States or Canada exceeds 50 percent of the cost of all its components. The cost of components shall include transportation costs to the place of incorporation into the end product and duty (whether or not a duty-free entry certificate may be issued).

(d) This restriction does not apply to contracts executed on or before 18 October 1986.

(e) For purchases made by contractors on behalf of DoD, see 245.106(S–70).

## PART 245—GOVERNMENT PROPERTY

4. Subpart 245.1, consisting of section 245.106, is added to read as follows:

**Subpart 245.1—General**

**§ 245.106 Government Property Clauses.**

(S–70) The clause at 252.245–7000, Acquisition of Foreign Machine Tools, shall be included in all solicitations and contracts that obligate FY 87 funds and that contain FAR clause 52.245–2, Government Property (Fixed-Price Contracts), or FAR clause 52.245–5, Government Property (Cost-Reimbursement, Time-and-Material, or Labor-Hour Contracts). (See also 225.7008.)

## PART 252—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

5. Section 252.245–7000 is added to read as follows:

**252.245–7000 Acquisition of foreign machine tools.**

As prescribed in 245.106(S–70), insert the following clause:

**Acquisition of Foreign Machine Tools (Apr 1987)**

(a) Machine tools listed in paragraph (b) of this clause acquired by the Contractor, title to which will vest with the Government, shall be manufactured in the United States or Canada.

(b) The requirement for acquisition of machine tools manufactured in the United States or Canada applies to those listed in Federal Supply Classes of metalworking machinery numbered 3408, 3410–3419, 3426, 3433, 3441–3443, 3446, 3448, 3449, 3460 and 3461.

(c) A machine tool shall be considered to have been manufactured in the United States or Canada if the cost of its components manufactured in the United States or Canada exceeds fifty percent (50%) of the cost of all its components. The cost of components shall include transportation costs to the place of incorporation into the end product and duty (whether or not a duty-free entry certificate may be issued).

(d) Acquisition of machine tools as described in paragraph (b) above, manufactured in a country other than the United States or Canada, if required to meet the delivery schedule or other requirements of this contract, shall be approved in advance by the Government.

(End of clause)

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**48 CFR Parts 227 and 252**

**Department of Defense Federal Acquisition Regulation Supplement; Patents, Data, and Copyrights**

**AGENCY:** Department of Defense (DOD).

**ACTION:** Final rule.

**SUMMARY:** The DAR Council has approved the attached revision to Subpart 227.4 and Part 252 of the Defense Federal Acquisition Regulation Supplement to implement section 953 of the Defense Acquisition Improvement Act of 1986 (Pub. L. 99–500).

**EFFECTIVE DATE:** May 18, 1987. (This is effective as a final regulation for all solicitations and resultant contracts, issued on or after May 18, 1987).

**SUPPLEMENTARY INFORMATION:**

### A. Background

Section 953, Pub. L. 99–500 necessitated that the Department of Defense substantially revise DFARS Subpart 227.4. A proposed rule was published in the **Federal Register** on January 16, 1987 (52 FR 2082). The present action implements the statutory requirement to publish a proposed final regulation 30 days prior to the effective date of this coverage.

Public comments received in response to the notice of the proposed rule were reviewed and evaluated, and as a result of those comments certain changes were made to the proposed rule. In general, the coverage has been revised to more clearly reflect DoD policy that the Government will only acquire data rights essential to meet its minimum needs. Specifically, changes were made in the following areas:

- The definitions of "developed" and of "private expense" were further clarified,
- Guidance was added to allow contracting officers flexibility to take only Government Purpose License Rights (GPLR) when the funding contribution of large business contractors did not exceed 50 percent,
- The procedures for validation of technical data have been clarified,
- Other less significant changes were also made for purposes of clarification.

Several commentors recommended that the coverage be further revised to address non-disclosure agreements and commercialization in greater depth. The DAR Council generally agreed with those observations, however, because such additional coverage has not been subjected to the public comment process, the DAR Council decided to establish two new cases to fully examine the issues raised. The two cases established for this purpose are entitled, "Non-Disclosure Agreements", DAR Case 87–37, and "Commercialization of Data", DAR Case 87–38. Proposed coverage will be published in forthcoming Notices of Proposed Rulemaking.

### B. Regulatory Flexibility Act

A final Regulatory Flexibility Analysis has been prepared and is available upon request by contacting Mr. Owen Green, OASD(A&L)DASD(P)/DARS, DAR Council, c/o Room 3C841, The Pentagon, Washington, DC 20301.

### C. Paperwork Reduction Act

The Paperwork Reduction Act (Pub. L. 96–511) does not apply because the proposed changes do not impose any additional reporting or recordkeeping requirements or collection of information from offerors, contractors, or members of the public which require the approval of OMB under 44 U.S.C. 3501, et seq.

### List of Subjects in 48 CFR Parts 227 and 252

Government procurement.

**Charles W. Lloyd,**

*Executive Secretary, Defense Acquisition Regulatory Council.*

Therefore, 48 CFR Parts 227 and 252 are amended as follows:

1. The authority citation for 48 CFR Parts 227 and 252 continues to read as follows:

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

## PART 227—PATENTS, DATA, AND COPYRIGHTS

2. Subpart 227.4 is revised to read as follows.

### Subpart 227.4—Technical Data, Other Data, Computer Software, and Copyrights

Sec.



### Subpart 227.4—Technical Data, Other Data, Computer Software, and Copyrights

#### 227.470 Scope.

(a) Sections 227.470 through 227.482 set forth the Department of Defense policies, procedures, and implementing instructions relating to requirements for the acquisition of technical data and computer software as well as rights in technical data, other data, computer software, and copyrights. These sections ensure that the DoD shall obtain only such minimum technical data and data rights as are essential to meet Government needs (see 227.472–2).

(b) Specific information concerning requirements for the acquisition of computer software is found in DoD Directive 5000.19–L, Volume II, "Acquisition Management Systems and Data Requirements Control List".

(c) These sections do not encompass rights in computer software acquired under GSA authorized ADP Schedule Pricelist contracts. Such rights are

governed by the terms of the GSA contracts.

**227.471 Definitions.**

"Commercial computer software", as used in this subpart, means computer software which is used regularly for other than Government purposes and is sold, licensed, or leased in significant quantities to the general public at established market or catalog prices.

"Computer", as used in this subpart, means a data processing device capable of accepting data, performing prescribed operations on the data, and supplying the results of these operations; for example, a device that operates on discrete data by performing arithmetic and logic processes on the data, or a device that operates on analog data by performing physical processes on the data.

"Computer data base", as used in this subpart, means a collection of data in a form capable of being processed and operated on by a computer.

"Computer program", as used in this subpart, means a series of instructions or statements in a form acceptable to a computer, designed to cause the computer to execute an operation or operations. Computer programs include operating systems, assemblers, compilers, interpreters, data management systems, utility programs, sort-merge programs, and ADPE maintenance/diagnostic programs, as well as applications programs such as payroll, inventory control, and engineering analysis programs. Computer programs may be either machine-dependent or machine-independent, and may be general-purpose in nature or be designed to satisfy the requirements of a particular user.

"Computer software", as used in this subpart, means computer programs and computer data bases.

"Computer software documentation", as used in this subpart, means technical data, including computer listings and printouts, in human-readable form which (a) documents the design or details of computer software, (b) explains the capabilities of the software, or (c) provides operating instructions for using the software to obtain desired results from a computer.

"Data", as used in this subpart, means recorded information, regardless of form or method of the recording.

"Detailed manufacturing or process data", as used in this subpart, means technical data necessary to enable manufacture of end-items, components and modifications, or to enable the performance of processes.

"Developed", as used in this subpart, means that the item, component, or process exists and is workable. Thus, the item or component must have been constructed or the process practiced. Workability is generally established when the item, component or process has been analyzed or tested sufficiently to demonstrate to reasonable people skilled in the applicable art that there is a high probability that it will operate as intended. Whether, how much, and what type of analysis or testing is required to establish workability depends on the nature of the item, component, or process, and the state of the art. To be considered "developed", the item, component, or process need not be at the stage where it could be offered for sale or sold on the commercial market, nor must the item, component or process be actually reduced to practice within the meaning of Title 35 of the United States Code.

"Form, fit, or function data", as used in this subpart, means technical data pertaining to items, components, or processes for the purpose of identifying sources, size, configuration, mating and attachment characteristics, functional characteristics and performance requirements (e.g., specification control drawings, catalog sheets, envelope drawings, qualification requirements, etc.).

"Government purposes license rights", as used in this subpart, means rights to use, duplicate, or disclose technical data (or in the SBIR Program only computer software), in whole or in part and in any manner, for Government purposes only, and to have or permit others to do so for Government purposes only. Government license rights include purposes of competitive procurement but do not grant to the Government the right to have or permit others to use technical data (or the SBIR Program only computer software) for commercial purposes.

"Limited rights", as used in this subpart, means rights to use, duplicate, or disclose technical data, in whole or in part, by or for the Government, with the express limitation that such technical data shall not, without the written permission of the party asserting limited rights, be: released or disclosed in whole or in part outside the Government; used in whole or in part by the Government for manufacture, or in the case of computer software documentation, for preparing the same or similar computer software; or used by a party other than the Government, except when:

(a) Release, disclosure, or use is necessary for emergency repair or overhaul; provided that such release, disclosure, or use thereof outside the Government shall be made subject to a prohibition against further use, release, or disclosure, and that the party asserting limited rights be notified by the contracting officer of such release, disclosure, or use; or

(b) Release or disclosure of to a foreign government, that is in the interest of the United States and is required for evaluational or informational purpose under the conditions of (a) above, except that such release or disclosure may not include detailed manufacturing or process data.

"Private expense", as used in this subpart, means that the cost of development has not been paid in whole or in part by the Government and that such development was not required as an element of performance under a Government contract or subcontract; provided, however, independent research and development and bid and proposal costs are deemed to be at private expense.

"Restricted rights", as used in this subpart, means rights that apply only to computer software, and include, as a minimum, the right to—

(a) Use computer software with the computer for which or with which it was acquired, including use at any Government installation to which the computer may be transferred by the Government;

(b) Use computer software with a backup computer if the computer for which or with which it was acquired is inoperative;

(c) Copy computer programs for safekeeping (archives) or backup purposes; and

(d) Modify computer software, or combine it with other software, subject to the provision that those portions of the derivative software incorporating restricted rights software are subject to the same restricted rights.

In addition, restricted rights include any other specific rights not inconsistent with the minimum rights in (a)–(d) above that are listed or described in a contract or described in a license or agreement made a part of a contract.

"Technical data", as used in this subpart, means recorded information, regardless of the form or method of the recording of a scientific or technical nature (including computer software documentation). Such term does not include computer software or data incidental to contract administration, such as financial and/or management information.

"Unlimited rights", as used in this subpart, means rights to use, duplicate, release, or disclose, technical data or computer software in whole or in part,

in any manner and for any purpose whatsoever, and to have or permit others to do so.

"Unpublished", as used in this subpart, means that technical data or computer software has not been released to the public nor been furnished to others without restriction on further use or disclosure. For the purpose of this definition, delivery of other than unlimited rights technical data or computer software to or for the Government under a contract does not, in itself, constitute release to the public.

**227.472 Acquisition policy for technical data and rights in technical data.**

**227.472-1 General.**

The acquisition of technical data and the rights to use such data requires a balancing of competitive interests.

(a) *The Government's interests.* The Government has extensive needs for many kinds of technical data and the rights to use such data. Its needs may well exceed those of private commercial customers. For defense purposes, millions of separate equipment and supply items, ranging from standard to unique types, must be acquired, operated, and maintained, often at points remote from the source of supply. Functions requiring varied kinds of technical data include training of personnel, overhaul and repair, cataloging, standardization, inspection and quality control, packaging, and logistics operations. Technical data resulting from research and development and production contracts must be obtained, organized and disseminated to many different users. Finally, the Government must make technical data widely available in the form of contract specifications in the interest of increasing competition, lowering costs, and providing for mobilization by developing and locating alternate sources of supply and manufacture.

(b) *The contractor's interest.* Commercial and non-profit organizations have property rights and a valid economic interest in technical data pertaining to items, components, or processes which they have developed. Such technical data is often closely held in the commercial sector because its disclosure to competitors could jeopardize the competitive advantage it was developed to provide. Public disclosure of such technical data can cause serious economic hardship to the originating company and would not be in the interest of the United States in encouraging innovation as well as encouraging contractors to develop at private expense items, components, or processes for use by the Government.

(c) *The balancing of interests.* (1) There is no necessary correlation between the Government's need for technical data and a contractor's economic interest therein. However, in balancing the Government's requirements for technical data against a contractor's interest in protecting its technical data, there may be a considerable identity of interest. This is particularly true in the case of innovative contractors who can best be encouraged to develop at private expense items of military usefulness where their rights in such items are scrupulously protected.

(2) It is equally important that the Government foster successful contractual relationships and encourage a ready flow of data essential to Government needs by confining its acquisitions of technical data to cases of actual need. Certainly the Government must not be barred from bargaining and contracting to obtain the technical data that it needs, even though that technical data may not be disclosed in commercial practice. Moreover, when the Government pays for research and development work which produces new knowledge, products, or processes, it has an obligation to foster technological progress through wide dissemination of the new and useful information derived from such work and where practicable to provide competitive opportunities for supplying the new products and utilizing the new processses.

(3) At the same time, acquiring, maintaining, storing, retrieving, protecting and distributing technical data in the vast quantities generated by modern technology is costly and burdensome for the Government. For this reason alone, it is necessary to control closely the extent and nature of technical data acquisition. Such control is also necessary to ensure Government respect for its contractors' economic interest in technical data relating to their privately developed items.

**227.472-2 Establishing minimum Government needs.**

It is the policy of the Department of Defense to obtain only such minimum technical data and data rights as are essential to meet Government needs. Consideration shall be given to such factors as: whether or not the item, component, or process will be competitively acquired; whether repair and overhaul work will be contracted out or serviced in-house; whether the repair or replacement parts will be commercial items, or acquired by form, fit or function data, performance specifications, or by detailed engineering drawings. Once the Government's technical data needs are properly established, the appropriate technical data rights to meet those needs can be identified. Whether the Government already has or will need to acquire the necessary rights in the technical data or will need to consider alternate procurement procedures, will depend on either the category of the data or whether the items, component, or process was developed exclusively with Government funds, exclusively at private expense, or in part with Government funds and in part at private expense (see 227.472-5). In deciding how to acquire such data and data rights, or how to otherwise achieve the Government's purposes, it is the policy of the Department of Defense to use procedures that are the least intrusive on the contractor's economic interests as is practicable. (See Subpart 217.72 for additional guidance.)

**227.472-3 Early identification.**

In order to determine what minimum technical data and data rights to obtain in each acquisition, it is necessary for the Government to identify its various uses of and needs for technical data as early as is practicable in the acquisition of any item, component, or process. Such identification should be made before contract award or, for major weapons systems, prior to entering Full Scale Development. It is also important that contractors be required to provide early identification of any technical data that they intend to deliver with any restrictions on its use.

**227.472-4 Statutory prohibitions.**

In accordance with 10 U.S.C. 2320(a)(2)(F), a contractor or subcontractor (or a prospective contractor or subcontractor) may not be required, as a condition of being responsive to a solicitation or as a condition for the award of a contract, to sell or otherwise relinquish to the United States any rights in technical data beyond those to which the Government is entitled under 10 U.S.C. 2320(a)(2) (C) and (D). It is permissible, however, to consider in the evaluation of offers such factors as the impact on life cycle costs of limitations on the Government's ability to use or disclose the technical data. Further, nothing prohibits the Government from mutually agreeing with the contractor or a subcontractor to provide the Government with greater rights than it would normally be entitled to, for a fair and reasonable price. This price may be expressed in terms of a lump sum fee,

royalty fees, or other consideration depending upon the terms and conditions negotiated (e.g. a licensing agreement.)

**9227.472–5 Standard rights in technical data.**

The three categories of standard rights in Technical Data are Limited Rights, Government Purpose License Rights and Unlimited Rights. The standard rights to which the Government is entitled are determined as follows:

(a) If the Government has funded or will fund the entire development of the item, component, or process, then the Government is entitled to and will normally obtain unlimited rights in the technical data.

(b) If the Government has funded or will fund a part of the development of the item, component, or process, then the Government is entitled to unlimited rights in the technical data. However, the Government should not acquire more data rights than it needs. Therefore, unless the contracting officer determines, during the identification of needs process, that unlimited rights are required, the Government will obtain Government Purpose License Rights if the contractor has or will contribute more than 50 percent of the development cost of the item, component, or process, or if the contractor is a small business firm or nonprofit organization that agrees to commercialize the technology. (Note: The requirement to commercialize the technology, as delineated in this paragraph and in 227.472–7, exists because in agreeing to less than unlimited rights, the Government establishes a proprietary interest for the contractor and assumes an administrative burden to safeguard this interest. Further, by encouraging commercialization, the Government intends to promote wider application of such technologies.) The Government will normally obtain unlimited rights in all other cases. However, if the contractor is a large business whose share of development cost has not exceeded or will not exceed 50 percent, the contracting officer should give consideration to obtaining less than unlimited rights as provided in 227.472–7.

(c) If the item, component, or process is developed by a contractor or subcontractor exclusively at private expense, the Government is entitled to limited rights. Such data must be unpublished and identified as limited rights data. However, if the Government determines that it needs rights in technical data greater than limited rights, the contracting officer may negotiate, pursuant to 227.472–6, with a contractor or subcontractor to acquire additional rights necessary to meet the Government's needs, provided that the additional rights are necessary to enhance competition by developing alternative sources of supply and manufacture. As an alternative, the contracting officer may consider alternate proposals from the contractor or subcontractor to enhance competition.

(d) Notwithstanding (a), (b), and (c) above, the Government is entitled to unlimited rights in the technical data in the following categories:

(1) Technical data prepared or required to be delivered under any Government contract or subcontract and constituting corrections or changes to Government-furnished data;

(2) Form, fit or function data pertaining to end-items, components, or processes, prepared or required to be delivered under any Government contract or subcontract;

(3) Manuals or instructional materials (other than detailed manufacturing or process data) prepared or required to be delivered under a Government contract or subcontract necessary for installation, operation, maintenance, or training purposes; and

(4) Technical data which is otherwise publicly available or has been released or disclosed by the contractor or subcontractor without restriction on further release or disclosure.

**227.472–6 Policy for obtaining greater rights in technical data.**

If the Government determines that it needs rights in technical data greater than limited rights, the contracting officer may negotiate with a contractor or subcontractor to acquire the additional rights necessary to meet the Government's needs, provided that the additional rights are necessary to develop alternative sources of supply and manufacture (see 227.473–2). As an alternative to acquiring additional rights, the contracting officer may consider other proposals from the contractor or subcontractor as to how to achieve the same objectives (e.g. see 227.474).

**227.472–7 Waiving unlimited rights in technical data.**

In those cases under 227.472–5 where the Government would normally obtain unlimited rights, the Government may agree to waive these unlimited rights, provided that, in accordance with 10 U.S.C. 2320(a)(2)(G)(ii), the United States receives, as a minimum, a royalty-free license to use, release, or disclose the data for purposes of the United States, including purposes of competitive procurement (i.e., Government Purpose License Rights). In considering whether to waive unlimited rights, the contracting officer should consider substantial contributions by the contractor to the development of the item, component or process even though such contributions do not exceed 50 percent. Also, the contracting officer should consider, where appropriate, such factors as unique contractor qualifications or expertise contributing to the configuration management or development of the item, component or process. However, such lesser rights may only be obtained under this paragraph after a determination by the contracting officer that the Government does not need unlimited rights and if the contractor agrees to commercialize the technology.

**227.472–8 Subcontracts.**

It is the policy of the Department of Defense that prime contractors and higher-tier subcontractors shall not use their power to award subcontracts as economic leverage to acquire rights in the technical data of their subcontractors for themselves. Accordingly, a subcontractor, who would have the right pursuant to 227.472–5 to furnish technical data with limited rights, may furnish such limited rights data directly to the Government rather than through the prime contractor.

**227.473 General procedures.**

**227.473–1 Early identification of Government rights.**

(a) *Prenotification of limitations on Government rights.* In order for the Government to make informed judgments concerning the competitive reprocurement potential of items, components, processed, or computer software developed at private expense that an offeror intends to deliver under a resultant contract, offerors shall identify to the maximum practicable extent in their responses to solicitations such privately developed items, components, processes, or computer software and the technical data which they:

(1) Intend to deliver with limited or restricted rights;

(2) Intend to deliver with Government Purpose License Rights; or

(3) Have not yet determined if such rights should apply.

If delivery of technical data under a resultant contract is expected, the provision at 252.227–7035, Prenotification of Rights in Technical Data, shall be included in the solicitation. If an offeror asserts other

than unlimited rights to any technical data in its proposal responding to this requirement, Government failure to object to or reject any such assertion shall not be construed to constitute agreement to any such data rights assertion. Offerors will furnish, at the written request of the contracting officer, evidence supporting any such assertion. The contracting officer may enter into an agreement with the contractor that the Government is entitled to Government Purpose License Rights or limited rights (See paragraph b(1)(i) and b(2)(ii) of the clause at 252.227–7013). The contracting officer should not request supporting evidence unless the Government intends to enter into an agreement.

(b) *Notification of limitations on Government rights.* Because continuing information is needed under a contract about a contractor's intention to use in the performance of the contract any items, components, processes, or computer software for which technical data or computer software would be subject to other than unlimited rights, the contractor will be required to advise the contracting officer of this fact promptly prior to committing to the use of the privately developed item, component, or process. If possible, the schedule should indicate the specific areas to which limited or restricted rights are of concern, and the notice requirements should only address those areas.

(1) Under the clause at 252.227–7013, the contractor is not required to advise the contracting officer as to items, components, processes, or computer software for which notice was previously given in the same contract pursuant to the prenotification procedure, or with respect to standard commercial items that are manufactured by more than one source of supply. Also, the contractor need not obtain contracting officer approval to use any item, component, process, or computer software in the performance of the contract. If Government control on the contractor's use of privately developed items, components, processes, or computer software is desired, special provisions must be included in the contract.

(2) Subsequent to contractor notification, if the contracting officer agrees that certain technical data would be subject to other than unlimited rights, the contracting officer may then decide to negotiate for a licensing arrangement, the purchase of additional rights, or to adopt another suitable alternative. Such alternatives may include modifying the specifications so as not to require (but see 227.472–4) use of the privately developed items, components, processes, or computer software.

**227.473–2 Procedures for obtaining greater rights in technical data.**

(a) In accordance with 227.472–6, the Government may obtain greater rights or options for such rights in any technical data pertaining to items, components, or processes developed exclusively at private expense for which the Government would otherwise only be entitled to limited rights. These greater rights may be obtained by negotiation of a lump sum fee, royalty, or other consideration, and where appropriate, should also include access to such technical assistance as may be necessary to qualify additional sources. These negotiations may be conducted either by the Government, or upon Government request by the prime contractor or higher-tier subcontractor. However, refusal to negotiate by a contractor or subcontractor shall not constitute the basis for disqualification for award of a contract or subcontract (See 227.472–4). Such greater rights shall be stated in the contract schedule as a separate item with a specific price and shall not be obtained under this paragraph unless it is determined after a finding upon a documented record that—

(1) There is a need or requirement for disclosure of such technical data outside the Government for purposes such as for reprocurement or evaluation of the item, component, or process to which the technical data pertains; and

(2) If the specific rights obtained are for reprocurement, then the anticipated net savings in competitive reprocurements from additional sources will likely exceed the acquisition cost of the technical data and rights therein.

(b) In contracts for major systems or major subsystems, it may be in the best interest of the Government to acquire repair parts of components directly from a subcontractor, rather than obtaining greater rights in technical data. In such cases, the clause at 252.227–7017, Rights in Technical Data—Major System and Subsystem Contracts, may be used. Also, the Government's right to purchase such items directly from subcontractors shall be without the payment of any fee or royalty by the Government or subcontractor for the use of the prime contractor's technical data.

**227.473–3 Certifications.**

(a) The provision at 252.227–7028, Requirement for Technical Data Certification, shall be included in a solicitation that may result in a negotiated contract when information is needed to establish whether an offeror has delivered or is obligated to deliver to the Government under any contract or subcontract the same or substantially the same technical date included in the offer (see 215.406 and FAR 15.406–5(a)). This solicitation provision requires the offeror to submit with the offer a certification as to whether the same or substantially the same technical data that is included in the offer has been delivered or is obligated to be delivered to the Government under any contract or subcontract. If so, the offeror will be required to identify one such contract or subcontract under which such technical data was delivered or will be delivered, and the place of such delivery.

(b) If technical data is required to be delivered under a contract, the clause at 252.227–7036, Certification of Technical Data Conformity, shall be included in solicitations and any resultant contract. The clause requires the contractor to certify in writing that, to the best of its knowledge and belief, technical data delivered under the contract is complete, accurate, and complies with all requirements of the contract. The clause states that technical data deliverable under the contract may be reviewed by the Government both before and after Government acceptance. The clause also contains some illustrative examples of such reviews.

**227.473–4 Marking and identification requirements.**

(a) Technical data delivered to the Government pursuant to any contract requirement shall be marked in accordance with 252.227–7029 with the number of the prime contract, and the name of the contractor and any subcontractor who generated the technical data. Each piece of technical data submitted with other than unlimited rights shall also be marked with—

(1) The authorized restrictive legend; and

(2) An indication (for example, by circling underscoring, or a note) of that portion of the piece of technical data to which the legend is applicable. The Government shall include such identifying markings on all reproductions thereof.

(b) The contractor has the responsibility to assure that no restrictive markings are placed on technical data except in accordance with the "Rights in Technical Data and Computer Software" clause at 252.227–7013. Copyright notices as specified in Title 17 United States Code, Sections 401 and 402, are not considered "restrictive markings". When the clause

at 252.227–7013, "Rights in Technical Data and Computer Software", is required, the clause at 252.227–7018, "Restrictive Markings on Technical Data", shall also be included in the contract. The contractor's procedures required by this clause shall be reviewed by the Contract Administration Office. In addition to the rights afforded to the Government by the clause at 252.227–7018, "Restrictive Markings on Technical Data", the following actions are available to ensure proper marking of technical data:

(1) Failure to establish, maintain and follow such marking procedures may be deemed to render technical data nonconforming and subject to FAR Section 46.102 and to withholding of payments under the "Technical Data—Withholding of Payments" clause.

(2) When a pre-award survey is requested by the purchasing office, the review shall include as an item of special inquiry an examination of the prospective contractor's procedures for complying with the "Restrictive Markings on Technical Data" clause.

(3) The contractor's procedures for complying with the "Restrictive Markings on Technical Data" clause shall be reviewed when holding post-award conferences pursuant to FAR Part 42.

(c) *Unmarked or improperly marked technical data.* Pursuant to the Validation Procedures of 227.473–5 and the clause at 252.227–7037, "Validation of Restrictive markings on Technical Data", the Government has the right to require the contractor or subcontractor to furnish sufficient evidence to justify the propriety of any restrictive markings used by the contract or subcontract. Technical data received without a restrictive legend shall be deemed to have been furnished with unlimited rights. However, within six months after delivery of such data, the contractor may request permission to place restrictive markings on such data at its own expense and the Government may so permit if the contractor—

(1) Demonstrates that the omission of the restrictive marking was inadvertent;

(2) Justifies that the use of the markings is authorized; and

(3) Relieves the Government of any liability with respect to the use or disclosure of such technical data.

(d) If technical data is received with restrictive markings which the Government believes are not justified, the Government will nevertheless honor the restrictive legend until the issue is resolved in accordance with the Validation procedures.

(e) If technical data which the contractor is authorized by the contract to furnish with restrictive markings is received with non-conforming markings, the technical data shall be used according to the proper restriction, and the contractor shall be required by written notice to correct any such markings to conform with those specified in the contract. If the contractor fails to correct the markings within 60 days after notice, Government personnel may correct the markings at the contractor's expense, notify the contractor in writing, and will thereafter use the technical data accordingly.

**227.473–5 Validation of restrictive markings on technical data.**

(a) *Policy and Procedures.*—(1) *General.* 10 U.S.C. 2321 sets forth rights and procedures pertaining to the validation of restrictive markings asserted by contractors and subcontractors on the use, duplication, or disclosure by the Government and others of technical data delivered under contracts or subcontracts for supplies or services. 10 U.S.C. 2320 provides authority for the Department of Defense to establish remedies when data delivered or made available under a contract is found to not satisfy the requirements of the contract (e.g., contains unjustified or non-conforming restrictive legends). The Government may review the validity of any restriction on technical data, delivered or to be delivered under a contract, asserted by the contractor or subcontractor. Such review should be accomplished, if possible, before acceptance of the technical data. During the period within three years of final payment on a contract or within three years of delivery of the technical data to the Government, whichever is later, the contracting officer may review and make a written determination to challenge the restriction. The Government may, however, challenge a restriction on the release, disclosure or use of technical data at any time if such technical data (i) is publicly available; (ii) has been furnished to the United States without restriction; or (iii) has been otherwise made available without restriction. Whenever the contracting officer finds it appropriate to question the validity of restrictive markings on data provided by contractors or subcontractors, the contracting officer shall follow the procedures set forth below. Only the contracting officer's final decision resolving a formal challenge by sustaining the validity of a restrictive marking constitutes "validation" as addressed in 10 U.S.C. 2321. A decision by the Government, or a determination by the contracting officer, to not challenge the restrictive marking or asserted restriction shall not constitute "validation".

(2) *Prechallenge request for information.* (i) Prior to making a written determination to challenge, and to assure that the formal challenge process is not unduly or prematurely invoked, the contracting officer should request the contractor or subcontractor to furnish information explaining the basis for any restriction asserted by the contractor or subcontractor on the right of the United States or others to use technical data developed, delivered, or to be delivered, under a contract. In this regard, if the information provided is incomplete, the contracting officer may request the contractor or subcontractor to furnish additional information in the records of, or otherwise in the possession of or available to, the contractor or subcontractor to justify the validity of the restrictive marking (e.g., a statement of facts accompanied by supporting documentation). Such requests from the contracting officer should be in writing and should state a reasonable time for submission of the required data.

(ii) The contracting officer should also request information and advice from the cognizant Government activity having interest in, or control of, the data regarding the validity of the markings. If the contracting officer receives advice that the validity of restrictive markings on technical data is questionable, the contracting officer shall request that the individual or office raising the question provide written rationale for the assertion.

(iii) If the contracting officer, after reviewing the information provided pursuant to paragraphs (a)(2) (i) and (ii) above, or any other available information, determines that reasonable grounds exist to question the current validity of a restrictive marking, and that continued adherence to the marking would make impracticable subsequent competitive acquisition of the item, component, or process to which the technical data relates, the contracting officer shall proceed in accordance with paragraph (a)(3) of this section. If, when requesting information under paragraph (a)(2)(i) above, the contractor or subcontractor fails to respond to the contracting officer's written request within a reasonable period, the contracting officer shall proceed in accordance with paragraph (a)(3) of this section.

(3) *Challenge.* (i) If the contracting officer determines that a challenge to the restrictive marking is warranted, the contracting officer shall promptly send a written challenge notice to the

contractor or subcontractor. The contracting officer's determination to challenge shall be in writing and shall be made within the three-year period cited in paragraph (a)(1) above. The challenge to the restrictive legend shall be issued by the contracting officer in a written notice, to the contractor asserting the marking, that shall:

(A) State the specific grounds for challenging the asserted restrictions;

(B) Require a response within 60 days justifying and providing appropriate evidence as to the current validity of the asserted restriction;

(C) State that a DoD contracting officer's final decision, issued pursuant to paragraph (f) of the clause at 252.227–7037, sustaining the validity of a restrictive marking identical to the asserted restriction, within the three-year period preceding the challenge, shall serve as justification for the asserted restriction if the validated restriction was asserted by the same contractor or subcontractor (or any licensee of such contractor or subcontractor) to which such notice is being provided;

(D) State that a response will be considered a claim within the meaning of the Contract Disputes Act of 1978 and must be certified in the form prescribed in FAR 33.207, regardless of dollar amount; and

(E) State that failure to respond to the challenge notice may result in the issuance of a final determination pursuant to paragraph (e) of the clause at 252.227–7037.

(ii) The contracting officer shall extend the time for response as appropriate if the contractor or subcontractor submits a written request showing the need for additional time to prepare a response.

(iii) Any written response from the contractor or subcontractor shall be considered a claim within the meaning of the Contract Disputes Act of 1978 (41 U.S.C. 601 et seq.), and must be certified in the form prescribed by FAR 33.207, regardless of dollar amount.

(iv) If a contractor or subcontractor has received challenges to the same restrictive markings from more than one contracting officer, the contractor or subcontractor is to notify each contracting officer of the existence of more than one challenge. This notice shall also indicate which unanswered challenge was received first in time by the Contractor or subcontractor. The contracting officer who initiated the first in time unanswered challenge is the contracting officer who will take the lead in establishing a schedule for the resolution of the challenge to the restrictive markings. This contracting officer shall coordinate with all the other contracting officers, formulate a schedule for responding to each of the challenge notices, and distribute such schedule to all interested parties (all appropriate contracting officers and contractors and subcontractors). The schedule shall provide to the contractor or subcontractor a reasonable opportunity to respond to each challenge notice. All parties will be bound by this schedule.

(4) *Final decision.*—(i) *Final decision when contractor or subcontractor responds.* If the contractor or subcontractor fails to respond to the challenge notice, the contracting officer will then issue a final decision, under the Disputes clause at FAR 52.233–1, that the restrictive markings are not valid and that the Government will either strike or ignore the invalid restrictive markings. This final decision shall be issued as soon as possible after the expiration of the time period of (a)(3)(i) or (ii) above. Following the issuance of the final decision, the contracting officer will comply with the procedures in paragraph (a)(4)(ii)(B) (*2*) through (*5*) below.

(ii) *Final decision when contractor or subcontractor responds.* (A) If, after reviewing the response from the contractor or subcontractor, the contracting officer determines that the contractor or subcontractor has justified the validity of the restrictive marking, the contracting officer shall issue a final decision to the contractor or subcontractor sustaining the validity of the restrictive marking, and stating that the Government will continue to be bound by the restrictive markings. This final decision shall be issued within 60 days after receipt of the contractor's or subcontractor's response to the challenge notice, or within such longer period that the contracting officer has notified the contractor or subcontract of the longer period that the Government will require. The notification of a longer period for issuance of a final decision will be made within 60 days after receipt of the response to the challenge notice.

(B)(*1*) If, after reviewing the response from the contractor or subcontractor, the contracting officer determines that the validity of the restrictive marking is not justified, the contracting officer shall issue a final decision to the contractor or subcontractor in accordance with the Disputes clause at FAR 52.233–1. Notwithstanding paragraph (e) of the Disputes clause, the final decision shall be issued within 60 days after receipt of the contractor's or subcontractor's response to the challenge notice, or within such longer period that the contracting officer has notified the contractor or subcontractor of the longer period that the Government will require. The notification of a longer period for issuance of a final decision will be made within 60 days after receipt of the response to the challenge notice. Such a final decision shall advise the contractor or subcontractor of the rights of appeal under the Contract Disputes Act.

(*2*) The Government will continue to be bound by the restrictive marking for a period of 90 days from the issuance of the contracting officer's final decision under (a)(4)(ii)(B)(*1*) of this section. The contractor or subcontractor, if it intends to file suit in the United States Claims Court, must provide a notice of intent to file suit to the contracting officer within 90 days from the issuance of the contracting officer's final decision under (a)(4)(ii)(B)(*1*) of this section. If the contractor or subcontractor fails to appeal, file suit, or provide a notice of intent to file suit to the contracting officer within the 90-day period, the Government may cancel or ignore the restrictive markings, and the failure of the contractor or subcontractor to take the required action constitutes agreement with such Government action.

(*3*) The Government will continue to be bound by the restrictive marking where a notice of intent to file suit in the United States Claims Court is provided to the contracting officer within 90 days from the issuance of the final decision under (a)(4)(ii)(B)(*1*) of this section. The Government will no longer be bound and may strike or ignore the restrictive markings if the contractor or subcontractor fails to file its suit within one year after issuance of the final decision. Notwithstanding the foregoing, where the head of an agency determines, on a nondelegable basis, that urgent or compelling circumstances significantly affecting the interest of the United States will not permit waiting for the filing of a suit in the United States Claims Court, the agency may, following notice to the contractor or subcontractor, authorize release or disclosure of the technical data. In appropriate circumstances, use of a non-disclosure agreement may be considered. Such agency determination may be made at any time after the issuance of the final decision and will not affect the contractor's or subcontractor's right to damages against the United States where its restrictive markings are ultimately upheld or to pursue other relief, if any, as may be provided by law.

(*4*) The Government will be bound by the restrictive marking where an appeal

or suit is filed pursuant to the Contract Disputes Act until final disposition by an agency Board of Contract Appeals or the United States Claims Court. Notwithstanding the foregoing, where the head of an agency determines, on a nondelegable basis, that urgent or compelling circumstances significantly affecting the interest of the United States will not permit awaiting the decision by such Board of Contract Appeals or the United States Claims Court, the agency may, following notice to the contractor or subcontractor, authorize release or disclosure of the technical data. In appropriate circumstances, use of a non-disclosure agreement may be considered. Such agency determination may be made at any time after issuance of the final decision and will not affect the contractor's or subcontractor's right to damages against the United States where its restrictive markings are ultimately upheld or to pursue other relief, if any, as may be provided by law.

(5) *Appeal or suit.* (i) If the contractor or subcontractor appeals or files suit and if upon final disposition the contracting officer's decision is sustained, the restrictive markings on the technical data shall be cancelled, corrected, or ignored. If, upon final disposition, it is found that the restrictive marking was not substantially justified, the contracting officer shall determine the cost to the Government of reviewing the restrictive marking and the fees and other expenses incurred by the Government in challenging the marking. The contractor is then liable to the Government for payment of these costs unless the contracting officer determines that special circumstances would make such payment unjust.

(ii) If the contractor or subcontractor appeals or files suit and if, upon final disposition, the contracting officer's decision is not sustained, the Government shall continue to be bound by the restrictive markings. Additionally, if the challenge by the Government is found not to have been made in good faith, the Government shall be liable to the contractor or subcontractor for payment of fees or other expenses incurred by the contractor or subcontractor in defending the validity of the marking.

(6) *Privity of contract.* These procedures for reviewing the validity of restrictive markings on technical data do not create or imply a privity of contract between the Government and subcontractors.

**227.473-6 Remedies for noncomplying technical data.**

(a) The Government may suffer injury when data required to be delivered or made available under a contract is incomplete, inadequate, or fails to satisfy established requirements. The contracting officer shall consider all available remedies to the Government including, but not limited to, reduction of progress payments, withholding, termination, and decrease in contract price or fee. The contracting officer shall consult with counsel, as appropriate, to foster selection of a suitable remedy.

**227.473-7 Non-disclosure agreements.**

Technical data obtained with rights other than unlimited shall not be released outside the Government unless the recipient of the data agrees to sign the non-disclosure and/or non-use agreement consistent with the conditions of the restrictive rights. Normally, non-disclosure agreements should be provided by the contractor or subcontractor asserting the restrictive rights. However, such agreements must not be used to impose unreasonable constraints on the ability of other contractors to gain access to the technical data in order to compete for Government contracts. Moreover, it should be clearly stated in the agreement that the Government shall incur no liability for unauthorized use or disclosure by any third party of any such data.

**227.474 Additional methods of obtaining greater rights.**

**227.474-1 Direct licenses.**

Direct licensing is another approach to enhance competition in privately developed items, components, or processes. In this approach, an acquisition strategy is use that calls for a contractor to transfer data and technology directly to another source. While this approach has the advantage of allowing the contractor to maintain direct control over the use of its limited rights data, it may not be useful when the Government needs to maintain direct control over the data to support the competitive procurement. Such direct licensing arrangements are most useful in special situations such as in leader company contracting in accordance with FAR Subpart 17.4. For this reason, direct licenses are generally not appropriate for the acquisition of items, components, or processes having an estimated total acquisition cost of less than $50 million of RDT&E funds or $200 million of production funds.

**227.474-2 Expiration of restrictive rights legends.**

(a) As an alternative to obtaining greater rights in limited rights technical data, the Government may negotiate a time limitation during which limited rights are applicable to such data. Time limits shall be negotiated on a case-by-case basis and shall balance the contractor's economic interest in the data with the Government's need for competition and an enhanced defense industrial base. The negotiation objective will not exceed seven years. At the expiration point, the Government will normally obtain Government purpose license rights.

(b) If it is agreed to establish a time period for the expiration of limited rights legends, the clause at 252.227-7013, "Rights in Technical Data and Computer Software", and its Alternate I, shall be included in solicitations and any resultant contract. The time period, the expiration date of the limited rights, and the rights to be obtained by the Government shall be specified in the contract. Each piece of data furnished under the contract with limited rights shall be marked with the special legend and expiration date set forth in Alternate I to the basic clause at 252.227-7013, "Rights in Technical Data and Computer Software".

(c) If it is agreed that only a portion of the limited rights data delivered under a contract will be acquired with a time period for the expiration of the special legends, the contract shall specifically identify that portion of the data, and Alternate I to the basic clause at 252.227-7013, "Rights in Technical Data and Computer Software", may be appropriately modified to limit its application only to that portion.

**227.475 Other procedures.**

**227.475-1 Data requirements.**

(a) The clause at 252.227-7031, Data Requirements, shall be included in all solicitations and contracts, except that the clause need not be included in—

(1) Any contract, of which the aggregate amount involved does not exceed $25,000 and in any blanket purchase agreement and purchase order utilizing the DD Form 1155 (however, the DD Form 1423 shall be used with orders issued under a basic ordering agreement);

(2) Any contract awarded to a contractor outside the United States, except those under Subpart 225.71, Canadian Purchases;

(3) Any research or exploratory development contract when reports are

the only deliverable item(s) under the contract;

(4) Any service type contract, when the contracting officer determines that the use of the DD Form 1423 (Contract Data Requirements List) is impractical for use with respect to records prepared by a contractor in performing operation and maintenance under the contract;

(5) Any contract under which construction and architectural drawings and specifications are the only deliverable items;

(6) Any contract for commercial items when the only deliverable data is such an item, or would be packaged or furnished with such items in accordance with customary trade practices; or

(7) Any contract for items containing material which, by virtue of its potentially dangerous nature, requires controls to assure adequate safety to life and property, when the only deliverable data is the Materials Safety Data Sheet (MSDS) submitted in compliance with Federal Standard 313A and the clause at FAR 52.223–3, Hazardous Material Identification and Material Safety Data, and when such clause is included in the contract.

(b) The clause at 252.227–7031, Data Requirements, states that the contractor is required to deliver only the data items listed on the DD Form 1423 and the data items identified in and deliverable under any contract clause of Subpart 252.2 and FAR Subpart 52.2 made a part of the contract.

(c) Other than the data items falling within the exceptions set forth in paragraph (a) above, and the data items identified in and deliverable under any contract clause of Subpart 252.2 and FAR Subpart 52.2 made a part of the contract, the requirement for delivery of any data items under the contract can be established only by listing the data items on the DD Form 1423 (see Section 253.270). The clause at 252.227–7031, Data Requirements, shall be inserted in all contracts in which the DD Form 1423 is used. The DD Form 1423 need not be used to list data or software requirements in any of the contracts falling within the exceptions set forth in paragraph (a) above.

**227.475–2 Deferred delivery and deferred ordering.**

(a) *General.* (1) Technical data and computer software is expensive to prepare in the required form and to maintain and update. Every effort, therefore, should be made to avoid placing a requirement upon a contractor to prepare and deliver technical data or software unless the need is positively determined. By delaying the delivery of technical data or software until needed for a specific purpose, storage requirements within DoD of technical data and computer software items are reduced, the handling of technical data and software superseded by updated versions is greatly decreased, and the purchase of technical data or software which may become obsolete by pending hardware changes is minimized.

(2) Economy in the purchase of technical data and software and the probability of greater currency may be achieved by deferring the delivery, and in some cases deferring the ordering, of technical data or software until an operational need is determined, or until stability of design or production is reached during contract performance. The application of the deferred delivery and deferred ordering principles, as explained further, should be made only after a careful evaluation on a case-by-case basis of the anticipated operational uses of technical data or computer software and any other relevant considerations. When it is expected that technical data or computer software may be required, but the precise need at time of contracting has not been determined, deferred ordering will be used to avoid the cost of preparation but allow the ordering of the technical data or software at some point downstream in contract performance should the need arise. When the need but not the time of delivery can be determined, deferred delivery will be used. When deferred delivery is used, it is expected that the contractor will price the technical data and software at the time of contracting and incur the cost of preparation prior to the call for delivery. Therefore, it is important that deferred ordering rather than deferred delivery be used where the need for technical data or software is doubtful. Whether the technique of deferred delivery or deferred ordering is used, the receipt of technical data or software by the Government should be scheduled to be in phase with a specific and planned use of the technical data or software.

(b) Deferred delivery refers to the practice of timing the delivery of technical data or computer software specified in a contract to a firm, operational need. This technique should be used only when a technical data or software requirement can be determined at the time of contracting and therefore is specified on the DD Form 1423, but the time or place of delivery is not firm. The dates for the delivery of data and software should be scheduled to coincide with the needs of the Government. The contractor, however, must be notified sufficiently in advance of a delivery data to enable the contractor to provide the technical data or software in specified form on time. Thus, in any contract the Government may defer the delivery of all or any portion of the technical data or computer software specified in the contract until actual need can be economically determined. The Government may require the contractor to deliver any such data or software, or portions thereof, at any time during the performance of the contract or within two years from either acceptance of all items (other than data and software) under the contract or termination of the contract, whichever is later. However, the contractor's obligation to deliver technical data pertaining to any item obtained from a subcontractor shall cease two years after the date on which it accepts the item. The Government's rights in deferred delivery data and software are as prescribed in the contract under which the data or software is to be delivered. When the delivery of technical data or computer software is to be deferred, the clause at 252.227–7026, "Deferred Delivery of Technical Data or Computer Software", shall be included in the contract.

(c) Deferred ordering refers to delaying the ordering of technical data or computer software generated in the performance of the contract until such time as a need can be established and the requirements can be specifically identified for delivery under the contract. In many instances it is difficult to determine during solicitation and negotiation stages exactly what data or software is needed. The information available at these stages may suggest the need for some data or software but further information may be needed to identify the specific data or software items. In such situations, and also when it is desired to delay the ordering of technical data or computer software until such time as the production design becomes firm, the clause at 252.227–7027, Deferred Ordering of Technical Data or Computer Software, is appropriate. The requirement for technical data or computer software under these circumstances is not listed on the DD Form 1423 until the specific need is determined. Whenever the clause at 252.227–7027, Deferred Ordering of Technical Data or Computer Software, is used, the clause at 252.227–7013, Rights in Technical Data and Computer Software, shall also be included. When data or software items are ordered, the delivery dates shall be negotiated and the contractor shall be compensated for converting the data or software into the prescribed form, for reproduction and delivery to the Government. Compensation to the

contractor shall not include the cost of generating such data or software since it was generated in the performance of work for which the Government has already agreed to pay the contractor.

**227.475–3 Technical data—withholding of payment.**

(a) Timely delivery of technical data is particularly important to the operation and maintenance of equipment as well as competitive procurement of follow-on quantities of contract items and of items broken out from an assembly or equipment. The clause at 252.227–7030, Technical Data—Withholding of Payment, is designed to assure timely delivery of technical data. The clause permits a withholding not exceeding 10 percent of the total contract price or amount, but the contracting officer may specify a lesser amount in the contract if circumstances warrant. A case-by-case determination as to the amount to be withheld shall be made by the contracting officer after considering the estimated value of the technical data to the Government. No amount shall be withheld when the failure to make timely delivery arises out of causes beyond the control and without the fault or negligence of the contractor.

(b) Withholding action under paragraph (b) of the clause should be taken only when the contractor has failed to make timely deliveries of acceptable technical data on other contracts or if the contracting officer has information which would cause the contracting officer to anticipate late delivery of technical data or delivery of deficient technical data. The amount of withholding should be based on the estimated value of the technical data to the Government.

**227.475–4 Warranties of technical data.**

The factors contained in Subpart 246.7, Warranties, shall be considered in deciding whether to provide for warranties of technical data delivered under contracts calling for technical data. The basic technical data warranty clause is set forth at 252.246–7001, Warranty of Data. There are two alternates to the basic clause. The basic clause and the appropriate alternate should be selected in accordance with section 246.708.

**227.475–5 Delivery of technical data to foreign governments.**

As provided in the definition of limited rights in section 227.471, limited rights include the right of the Government to deliver the technical data to foreign governments as the national interest of the United States may require, subject to the same limitations which the Government accepts for itself. When the Government proposes to make technical data subject to limited rights available for use by a foreign government, it will, to the maximum extent practicable, give reasonable notice thereof to the contractor or subcontractor asserting the rights in the technical data.

**227.475–6 Contracts with foreign sources to be performed outside the United States.**

Normally, the clause at 252.227–7032, Rights in Technical Data and Computer Software (Foreign), is used in solicitations and contracts with foreign sources, except that the clause shall not be used in contracts for special works (see section 227.476), contracts for existing works (see section 227.477), or contracts for Canadian purchases (see Subpart 225.71, Canadian Purchases). This clause should be inserted when the Government is to acquire unlimited rights in all technical data, including reports, drawings and blueprints, and all computer software, specified to be delivered to the Government. The clause at 252.227–7013, Rights in Technical Data and Computer Software, shall be inserted when the same rights are to be obtained as would be obtained if contracting with United States firms. Notwithstanding paragraphs 227.403–3(a) and 227.481–2(a), the clause may be modified to meet the requirements necessary for and peculiar to the foreign acquisition; *Provided*, it agrees with the policies and principles of sections 227.403–2 and 227.481.

**227.475–7 Technical data reflecting engineering changes.**

A DD Form 1423 shall be included in contracts which shall require delivery of suitable revisions to technical data provided under that or a predecessor contract which are needed to portray and take into account engineering changes ordered under that contract that affect form, fit, and function of items specified in the contract. A delivery schedule shall be indicated in the contract for the revisions. Such revisions need not be provided for, however, if the contracting officer determines that there is no requirement justifying their purchase.

**227.475–8 Publication for sale.**

The paragraph of Alternate II may be added to the clause at 52.227–7013, Rights in Technical Data and Computer Software, for use in contacts for research when the contracting officer determines, in consultation with counsel, as appropriate, that public dissemination of a work, or certain designated parts of a work, specified to be delivered under the contract is in the best interest of the Government and would be facilitated by the Government relinquishing its right to publish the work for sale, or to have others publish the work for sale on behalf of the Government. This paragraph shall not be used otherwise.

**227.476 Contracts for acquisition of special works.**

(a) The clause at 252.227–7020, Rights in Data—Special Works, shall be used in all contracts for special works, including technical data and computer software, where ownership and control by the Government is desired, for example, in contracts—(1) primarily for the production of audiovisual works including motion pictures or television recordings with or without accompanying sound, or for the preparation of motion picture scripts, musical compositions, sound tracks, translations, adaptations, and the like; (2) for histories of the respective Departments for services or units thereof; (3) for works pertaining to recruiting, morale, training, or career guidance; (4) for surveys of Government establishments; (5) for works pertaining to the instruction or guidance of Government officers and employees in the discharge of their official duties; and (6) primarily for production of technical reports, studies, or similar documents.

(b) Contracts for audiovisual works may include limitations in connection with music licenses, talent releases, and the like which are consistent with the purpose for which the works are acquired.

**227.477 Contracts for acquisition of existing works.**

(a) *Off-the-shelf acquisition of books and similar items.* Notwithstanding the instructions of any other paragraphs in this part, no contract clause contained in this part need be included in contracts for the separate, sole acquisition of data, other than motion pictures, in the exact form in which such material exists prior to the initiation of a request for acquisition (such as the off-the-shelf acquisitions of existing products) unless the right to reproduce such technical data is an objective of the contract.

(b) *Acquisition of existing audiovisual works.* (1) The clause at 252.227–7021, Rights in Data—Existing Works, shall be used in contracts exclusively for the acquisition of existing motion pictures, television recordings, or other audiovisual works. The contract may set forth limitations consistent with the purposes for which the material covered by the contract is being acquired.

Examples of these limitations are—(i) means of exhibition or transmission; (ii) time; (iii) type of audience; and (iv) geographical location. Paragraph (c) of the clause should be modified to make the indemnity coextensive with the rights acquired under paragraph (b) of the clause as limited by the contract.

(2) In contracts which call for the modification of existing motion pictures, television records, or other audiovisual works through editing, translation, or addition of subject matter, the clause at 252.227–7020, Rights in Data-Special Works, appropriately modified, shall be used.

**227.478 Architect-engineer and construction contracts.**

**227.478–1 General.**

This section sets forth policies, procedures, implementing instructions, solicitation provisions, and contract clauses pertaining to data, copyrights, and restricted designs unique to the acquisition of construction and architect-engineer services.

**227.478–2 Acquisition and use of plans, specifications, and drawings.**

(a) *Architectural designs and data clauses for architect-engineer or construction contracts.*—(1) *Plans and Specifications and As-Built Drawings.* (i) Except as provided in (a)(1)(ii) below, insert the clause at 252.227–7022, Government Rights (Unlimited), in solicitations and contracts calling for architect-engineer services or in contracts for construction involving architect-engineer services.

(ii) When the purpose of a contract for architect-engineer services or for construction involving architect-engineer services is to obtain a unique architectural design of building, a monument, or construction of similar nature, which for artistic, aesthetic or other special reasons the Government does not want duplicated by anyone else, the Government may desire to acquire exclusive control of the data pertaining to such design. In those cases only where the contracting officer determines for the foregoing reasons that it is desirable to maintain exclusive control over the design and data, the clause at 252.227–7023, Drawings and Other Data to Become Property of Government, shall be used in solicitation and contracts. If the contract is for architect-engineer services, the clause at 252.227–7022 shall be deleted and the clause at 252.227–7023 substituted therefor. If the contract is for construction involving architect-engineer services, only the clause at 252.227–7023 shall be included.

(2) *Shop drawings for construction.* In acquiring shop drawings for construction, the Government shall obtain the unlimited right to use and reproduce such drawings, but shall not exclude a similar right in the designer or others. Accordingly, in solicitations and contracts calling for delivery of such drawings, insert the clause at 252.227–7033, Rights in Shop Drawings.

**227.478–3 Contracts for construction supplies and research and development work.**

The solicitation provisions and contract clauses in Subpart 227.4 relating to technical data, other data, computer software, and copyrights and prescribed for use in solicitation and contracts for the acquisition of other than construction or architect-engineer services are applicable when the acquisition is limited to either (a) construction supplies or materials as such, as distinguished from construction as defined in FAR 36.102; (b) experimental, developmental, or research work, or test and evaluation studies of structures, equipment, processes, or materials for use in construction; or (c) both. The right of the Government and others to use, duplicate, or disclose such technical data, other data, or computer software will be determined by the terminology of the applicable clauses in the contracts or the terminology of agreements recited-in or made part of the contracts.

**227.478–4 Mixed contracts.**

When solicitations and resulting contracts call for (a) supplies or materials, (b) experimental, developmental or research work, or (c) both, in addition to either construction or architect-engineer work, the solicitation provisions and contract clauses in Subpart 227.4 relating to technical data, other data, computer software, and copyrights and prescribed for use in solicitations and contracts for the acquisition of other than construction or architect-engineer services shall be included in such solicitations and resultant contracts in addition to the appropriate solicitation provisions and contract clauses prescribed for use in solicitations and contracts for construction or architect-engineer services. In such cases, the solicitations and resulting contracts shall clearly indicate which of the solicitation provisions and contract clauses apply only to the supplies or materials being acquired, or to the experimental, developmental, or research work, or to both, and which of the solicitation provisions and contract clauses apply only to the construction or architect-engineer work.

**227.478–5 Approval of restricted designs.**

(a) Specifications for construction should allow for maximum latitude in the use of various types of commercially available products, materials, equipment, or processes which will meet objective Government requirements. However, Government requirements may necessitate, or the architect-engineer may contemplate the use of structures, products, materials, equipment, or processes which are available only from a sole source. In such event, the architect-engineer should report to the contracting officer the items known to be sole source, and the reasons therefor, and advise the contracting officer of the extent to which such items are considered necessary to meet the Government's requirements. This will make possible timely planning and arrangements for the use of sole source items, or where appropriate, consideration of alternate items.

(b) This procedure is not intended to restrict the use of patented or copyrighted items, but is meant to give the Government an opportunity to consider whether the specifications being drawn by the architect-engineer, in regard to any one item, are unnecessarily restricted, according to objective Government requirements to a single sole item. The procedure is primarily for use in instances where the proposed design is expected to be conventional or standard and where the design may be used in subsequent acquisitions. For this purpose, the clause at 252.227–7024, Notice and Approval of Restricted Designs, may be inserted in architect-engineer contracts.

**227.479 Contracts awarded under Small Business Innovation Research Program (SBIR Program).**

(a) Public Law 97–219, "Small Business Innovation Development Act of 1982", requires certain agencies to establish a Small Business Innovation Research Program (SBIR Program). The public law also includes terminology providing for "retention of rights in data generated in the performance of the contract by the small business concern". The Small Business Administration (SBA) issued Policy Directive No. 65–01 on 19 November 1982 to provide policy direction for the conduct of the Small Business Innovation Research Programs within the federal agencies. The Policy directive was issued pursuant to the authority contained in the public law.

(b) In the policy directive, the SBA in essence recommended that, except for

program evaluation, agencies should protect technical data and computer software generated under an SBIR Program contract (funding agreement) for a period of two years from the completion of the contract under which the technical data and computer software were generated, unless the agencies obtained permission to disclose such data and software from the contractor. The SBA also recommended, that, effective at the conclusion of the two-year period, the Government shall have a royalty-free license in the technical data and computer software for Government use. This license has been amended pursuant to Public Law 99–500 and Public Law 99–591 to specifically include the right to use the technical data for competitive procurement. The SBA further recommended that the contractor, with prior written permission of the contracting officer, be afforded ownership of copyright in technical data and computer software generated under an SBIR Program contract and that the contractor be allowed to publish (subject to national security considerations, if any) such data and software. The policy directive considered it appropriate that the Government should receive a royalty-free license under any copyright and that each publication should contain an appropriate acknowledgement and disclaimer statement.

(c) The clause at 252.227–7025, Rights in Technical Data and Computer Software (SBIR Program), incorporates the coverage recommended by the SBA policy directive and shall be included in all contracts awarded under the SBIR Program in which technical data or computer software is required to be prepared, originated, developed, generated, or delivered. The clause differs from the clause at 252.227–7013, Rights in Technical Data and Computer Software, in that it provides for the two-year period of limited rights after which the Government receives a Government purpose license in certain technical data and computer software that would otherwise be subject to unlimited rights. While use of the clause is limited to contracts awarded under the SBIR Program, contracting officers may use the basic concept when negotiating for greater rights in limited rights technical data.

**227.480 Copyrights.**

(a) In general, the copyright law gives an owner of copyright the exclusive rights to—

(1) Reproduce the copyrighted work in copies or phonorecords;

(2) Prepare derivative works;

(3) Distribute copies or phonorecords to the public;

(4) Perform the copyrighted work publicly; and

(5) Display the copyrighted work publicly.

(b) In view of the exclusive rights in subparagraphs (a) (1)–(5) above, any technical data, other data, or computer software that is protected under the copyright law is not in the public domain, even though it may have been published, because acts inconsistent with these rights may not be exercised without a license from the copyright owner.

(c) Department or Defense policy affords the contractor ownership of copyright in any work of authorship first prepared, produced, originated, developed, or generated under a contract, unless the work is designated a "special work" in which case ownership and control of the work is retained by the Government and the contractor is precluded by the terms of the contract from asserting any rights or claim to copyright in the work. Department of Defense policy also requires that the contractor grant to the Government and authorize the Government to grant to others a nonexclusive, paid-up, worldwide license for Government purposes in any work or authorship (other than a "special work") first prepared, produced, originated, developed, or generated and, in addition, requires that the contractor grant to the Government and authorize the Government to grant to others the same license in any work of authorship acquired by the Government under the contract (not first prepared) in which the copyright is owned by the contractor.

(d) Under the clause at 252.227–7013, Rights in Technical Data and Computer Software, the contractor grants to the Government and authorizes the Government to grant to others a nonexclusive, paid-up, worldwide license for Government purposes, under any copyright owner by the contractor in any technical data or computer software prepared for or acquired by the Government under the contract. Under the clause at 252.227–7020, Rights in Data—Special Works, any work first produced in the performance of the contract becomes the sole property of the Government, and the contractor agrees not to assert any rights or establish any claim to copyright in such work. Under this clause, the contractor similary grants to the Government and authorizes the Government to grant to others a nonexclusive, paid-up, worldwide license for Government purposes in any portion of a work which is not first produced in the performance of the contract but in which copyright is owned by the contractor and which is incorporated in the work furnished under the contract.

(e) Under both of the clauses at 252.227–7013 and 252.227–7020, unless written approval of the contracting officer is obtained, the contractor also agrees not to include in any work prepared, produced, originated, developed, genrated, or acquired under the contract, any work of authorship in which copyright is not owned by the contractor without acquiring for the Government and those acting by or on behalf of the Government a nonexclusive, paid-up, worldwide license for Government purposes in the copyrighted work.

**227.481 Acquisition of rights in computer software.**

**227.481–1 Policy**

(a) The Government shall have unlimited rights in:

(1) Computer software resulting directly from or generated as part of the performance of experimental, developmental, or research work specified as an element of performance in a Government contract or subcontract;

(2) Computer software required to be originated or developed under a Government contract, or generated as a necessary part of performing a contract;

(3) Computer data bases, prepared under a Government contract, consisting of (i) information supplied by the Government (ii) information in which the Government has unlimited rights; or (iii) information which is in the public domain;

(4) Computer software prepared or required to be delivered under this or any other Government contract or subcontract and constituting corrections or changes to Government-furnished software; or

(5) Computer software which is in the public domain or has been or is normally furnished by the contractor or subcontractor without restriction.

(b) When the Government has unlimited rights in computer software in the possession of a contractor, no payment will be made for rights of use of such software in performance of Government contracts or for the later delivery to the Government of such computer software, *provided* however, that the contractor shall be entitled to compensation for converting the software into the prescribed form for reproduction and delivery to the Government.

(c) It is Department of Defense policy to acquire only such rights to use, duplicate, and disclose computer software developed at private expense as are necessary to meet Government needs. Such rights should be designed to allow the Government flexibility while, at the same time, adequately preserving the rights of the contractor. Computer software developed at private expense may be purchased or leased. Restrictions may be negotiated with respect to the right of the Government to use, duplicate, or disclose computer programs or computer data bases developed at private expense. As a minimum, however, the Government shall have the rights provided in the definition of restricted rights in Section 227.471.

(d) Patented or copyrighted computer software will not be subject to any agreement prohibiting the Government from infringing a patent or copyright. Title 28, United States Code, Section 1498 provides that the Government is liable only for reasonable compensation for use of a patented invention or for infringement or copyright. However, see Section 227.7011.

(e) When computer software is developed at private expense and acquired with restricted rights, the associated computer software documentation will be acquired with limited rights to the extent provided in the definition of limited rights in Section 227.471, and will not be used for preparing the same or similar computer software.

(f) Commercial computer software and related documentation developed at private expense may be leased, or a license to use may be purchased, by the Government subject to the restriction in paragraph (c)(1)(ii) of the clause at 252.227–7013, Rights in Technical Data and Computer Software.

**227.481–2 Procedures.**

(a) *Deviations.* All requests for deviations from this Section 227.481 shall be submitted to the DAR Council in accordance with the procedures in FAR Section 1.404.

(b) *General.* (1) Except as provided at 252.227–7031, Data Requirements, any computer program or computer data base to be acquired under a contract shall be listed on the Contract Data Requirements List (DD Form 1423). Also, if a contract requires the conversion of data to machine-readable form, the editing or revision of existing programs, or the preparation of computer software documentation, the products of this work, if required to be delivered, shall be included on the DD Form 1423.

(2) The clause at 252.227–7013, Rights in Technical Data and Computer Software, shall be included in every contract under which computer software may be originated, developed, or delivered. That clause establishes the circumstances under which the Government secures unlimited rights in both technical data and computer software, limited rights in technical data, and restricted rights in computer software. In negotiated contracts where the clause at 252.227–7013, Rights in Technical Data and Computer Software, is required, the provision at 252.227–7019, Identification of Restricted Rights Computer Software, shall be included in the solicitation.

(3) Contracts under which computer software developed at private expense is acquired or leased shall explicitly set forth the rights necessary to meet Government needs and restrictions applicable to the Government as to use, duplication and disclosure of the software. Thus, for example, such software may be needed, or the owner of such software will only sell or lease it, for specific or limited purposes such as for internal agency use, or for use in a specific activity, installation or service location. In any event, the contract must clearly define any restrictions on the right of the Government to use such computer software, but such restrictions will be acceptable only if they will permit the Government to fulfill the need for which such software is being acquired. The recital of restrictions may be complete within itself or it may reference the contractor's license or other agreement setting forth restrictions. If referencing is employed, a copy of the license or agreement must be attached to the contract. The minimum rights are provided in the Rights in Technical Data and Computer Software clause at 252.227–7013, and need not be included in the recital.

(4) When computer software developed at private expense is modified or enhanced as a necessary part of performing a contract, only that portion of the resulting product in which the original product is recognizable will be deemed to be computer software developed at private expense to which restricted rights may attach.

(5) The scope of the restrictions on or, conversely, the scope of the use which the Government is permitted to make of such software shall be taken into account in determining the reasonableness of the contract price for the computer software.

(c) *Computer software subject to restricted rights.* (1) Because of the widely-varying restrictions which are likely to be encountered in the purchase or lease of computer software developed at private expense, a standard recital setting forth specific restrictions and rights suitable for all cases is not feasible. If the standard set of restrictions and rights set forth in section 227.481–1(f) for commercial computer software is not appropriate, personnel are urged to consult counsel in any case in which the proposed contractor requests the Government to accept other restrictions on the use of such software.

(2) To apprise user personnel of the restrictions on use, duplication or disclosure agreed to by the Government with respect to such software sold or leased to the Government, the contractor is required to place the following legend on such software:

**Restricted Rights Legend**

Use, duplication or disclosure is subject to restrictions stated in Contract No. _____ with _____ (Name of Contractor).

For commercial computer software and documentation, the contract number may be omitted and replaced by "paragraph (c)(1)(ii) of the Rights in Technical Data and Computer Software clause at 252.227–7013", and the contractor's address added. The Government shall include the same restrictive markings on all its reproductions of the computer software unless the Government cancels such markings pursuant to the procedures in 227.473–4(c).

(3) A statement setting forth the restrictions imposed on the Government to use, duplicate, and disclose computer software subject to restricted rights is required to be prominently displayed in human-readable form in the computer software documentation. The reference to the Rights in Technical Data and Computer Software clause in the Restricted Rights Legend on commercial computer software and documentation satisfies this requirement.

(4) Except as provided in paragraph (b) above, computer programs, computer data bases, and computer software documentation delivered to the Government pursuant to a contract requirement must be identified with the number of the prime contract and the name of the contractor.

(5) All markings, (notice, legends, identifications, etc.) concerning restrictions on the use, duplication, or disclosure of computer software required or authorized by the terms of the contract under which delivery is made are required to be in human-readable form that can be readily and visually perceived and, in addition may

be in machine-readable form as appropriate and feasible under the circumstances. Such markings shall be affixed by the contractor to the computer software prior to delivery of the software to the Government.

(6) The human-readable markings may be applied to card decks, magnetic tape reels, or disc packs. This may be, in the case of a card deck, on a notice card even though the cards of the deck do not contain printed material; in the case of a card deck packaged in a container intended as a permanent receptable for the cards, on the container; in the case of a tape, on the tape reel or on the surface of the leader and trailer of the tape; and in the case of a disc pack, on the hub of the disc.

(d) *Unmarked or improperly marked computer software.* (1) No restrictive markings shall be placed upon computer software unless restrictions are set forth in the contract prior to delivery of the software. Copyright notices as specified in Title 17, United States Code, Sections 401 and 402 are not considered "restrictive markings". The Government may require the contractor to identify the contractual provision setting forth such restrictions before accepting computer software with restrictive markings. If computer software is received with restrictive markings, and there is a question whether it is authorized by the contract to be furnished with restricted rights, it shall be used subject to the asserted restrictions pending written inquiry to the contractor. If no response to an inquiry has been received within 60 days, or if the response fails to identify the restrictions set forth in the contract, the cognizant Government personnel shall cancel or ignore the markings, notify the contractor accordingly in writing, and thereafter use the software with unlimited rights.

(2) Computer software received without a restrictive legend shall be deemed to have been furnished with unlimited rights. However, the contractor may request permission to place restrictive markings on such software at its own expense, and the Government may so permit, if the contractor establishes that the markings are authorized by the contract and demonstrates that the omission was inadvertent. Failure of the contractor to mark such computer software prior to delivery to the Government shall relieve the Government of liability for any use, duplication or disclosure of such computer software.

(3) If computer software authorized by the contract to be furnished with restrictions is received with restrictive markings not in the form prescribed by the contract, the software should be used in accordance with the restrictions provided for in the contract and the contractor shall be required by written notice to correct the markings to conform with those specified in the contract. If the contractor fails to correct the markings within 60 days after notice, Government personnel may correct the markings, and so notify the contractor.

**227.482 Solicitation provisions and contract clauses.**

(a)(1) The contracting officer shall insert the basic data clause at 252.227–7013, Rights in Technical Data and Computer Software, in solicitations and contracts when technical data is specified to be delivered or computer software may be originated, developed, or delivered, *provided* that such clause shall not be used in solicitations and contracts—

(i) When existing works are to be acquired in accordance with section 227.477;

(ii) When special works are to be acquired in accordance with section 227.476;

(iii) When the work will be performed by foreign sources outside the United States, its territories, possessions, or Puerto Rico, which case the clause at 252.227–7032, Rights in Technical Data and Computer Software (Foreign) applies;

(iv) When performance will be limited solely to architect-engineer services or construction, in which case either the clause at 252.227–7022, Architect-Engineer Work—Unlimited Rights, or the clause at 252.227–7023, Architect-Engineer Work—Sole Property Rights, applies; and

(v) When the contract is awarded under the DoD Small Business Innovation Research Program (SBIR Program), in which case the clause at 252.227–7025, Rights in Technical Data and Computer Software (SBIR Program), applies.

(2) The contracting officer shall use the clause with its Alternate I in accordance with the policy at 227.474–4.

(3) The contracting office shall use the clause with its Alternate II under the circumstances specified at 227.475–8.

(b) The contracting officer, in order to prevent any misinterpretation of the scope of the clause at 252.227–7013, Rights in Technical Data and Computer Software, in the contract, may insert the clause at 252.227–7016, Contract Schedule Items Requiring Experimental, Developmental, or Research Work, in solicitations and contracts when the solicitations and contracts, in whole or in part, call for experimental, developmental, or research work as an element of performance.

(c) The contracting officer may insert the clause at 252.227–7017, Rights in Technical Data—Major System and Subsystem Contracts, in solicitations and contracts for major systems or major subsystems under the circumstances specified at 227.473–2(b).

(d) The contracting officer shall insert the clause at 252.227–7018, Restrictive Markings on Technical Data, in all solicitations and contracts in accordance with 227.473–4(b).

(e) The contracting officer shall insert the provision at 252.227–7019, Identification of Restricted Rights Computer Software, in solicitations and contracts in accordance with 227.481.

(f) The contracting officer shall insert the clause at 252.227–7020, Rights in Data—Special Works, in solicitations and contracts as required by 227.476.

(g) The contracting officer shall insert the clause at 252.227–7021, Rights in Data—Existing Works, in solicitations and contracts as required by 227.477.

(h) The contracting officer shall insert the clause at 252.227–7022, Government Rights (Unlimited) in solicitations and contracts in accordance with 227.478–2(a)(1)(i).

(i) The contracting officer shall insert the clause at 252.227–7023, Drawings and Other Data to Become Property of Government, in solicitations and contracts in accordance with 227.478–2(a)(1)(ii).

(j) The contracting officer shall insert the clause at 252.227–7024, Notice and Approval of Restricted Designs, in solicitations and contracts in accordance with 227.478–5.

(k) The contracting officer shall insert the clause at 252.227–7025, Rights in Technical Data and Computer Software (SBIR Program), in solicitations and contracts in accordance with 227.479.

(l) The contracting officer shall insert the clause at 252.227–7026, Deferred Delivery of Technical Data or Computer Software, in solicitations and contracts in accordance with 227.475–2(b).

(m) The contracting officer shall insert the clause at 252.227–7027, Deferred Ordering of Technical Data or Computer Software, in solicitations and contracts in accordance with 227.475–2(c).

(n) The contracting officer shall insert the provisions at 252.227–7028, Requirement for Technical Data Certification, in solicitations in accordance with 227.473–3.

(o) The contracting officer shall insert the clause at 252.227–7029, Identification of Technical Data, in all solicitations and contracts in accordance with 227.473–4.

(p) The contracting officer shall insert the clause at 252.227–7030, Technical Data—Withholding of Payment, in solicitations and contracts in accordance with 227.475–3.

(q) The contracting officer shall insert the clause at 252.227–7031, Data Requirements, in solicitations and contracts, in accordance with 227.475–1.

(r) The contracting officer shall insert the clause at 252.227–7032, Rights in Technical Data and Computer Software (Foreign), in solicitations and contracts in accordance with 227.475–6.

(s) The contracting officer shall insert the clause at 252.227–7033, Rights in Shop Drawings, in solicitation and contracts in accordance with 227.478–2(a)(2).

(t) The contracting officer may insert the provision at 252.227–7035, Prenotification of Rights in Technical Data, in solicitations in accordance with 227.473–1.

(u) The contracting officer shall insert the clause at 252.227–7036, Certification of Technical Data Conformity, in all contracts in accordance with 227.473–3.

(v) The contracting officer shall insert the clause at 252.227–7037, Validation of Restrictive Markings on Technical Data, in solicitations and contracts which require the delivery of technical data.

## PART 252—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

3. Section 252.227–7013 and 252.227–7016 through 252.227–7034 are revised, sections 252.227–7014 and 252.227–7015 are removed and reserved, and sections 252.227–7035 through 252.227–7037 are added to read as follows:

### 252.227–7013 Rights in technical data and computer software.

As prescribed as 227.482(a)(1), insert the following clause:

**Rights in Technical Data and Computer Software (May 1987)**

(a) *Definitions.*

The terms used in this clause are defined in 227.471 of the Department of Defense Federal Acquisition Regulation Supplement (DFARS).

(b) *Rights in Technical Data.*

(1) *Limited Rights.* The Government shall have limited rights in:

(i) technical data, listed or described in an agreement incorporated into the Schedule of this contract, which the parties have agreed will be furnished with limited rights in accordance with 227.473–1(a) and 227.473–1(b)(2) and

(ii) unpublished technical data pertaining to items, components or processes developed exclusively at private expense, and unpublished computer software documentation related to computer software that is acquired with restricted rights, other than such data included in (b)(3)(i), (ii), (iii) or (iv), below.

Limited rights shall be effective provided that only the portion or portions of each piece of data to which limited rights are to be asserted are indentified (for example, by circling, underscoring, or a note), and that the piece of data is marked with the legend below:

(A) the number of the prime contract under which the technical data is to be delivered; and

(B) the name of the Contractor and/or any subcontractor asserting limited rights.

Limited Rights Legend

Contract No. ————.
Contractor: ————.
——— ——— ——— ———
——— ——— ——— ———

The restrictions governing the use of technical data marked with this legend are set forth in the definition of "Limited Rights" in DFARS 227.471. This legend, together with the indications of the portions of this data which are subject to limited rights, shall be included on any reproduction hereof which includes any part of the portions subject to such limited rights. The limited rights legend shall be honored only as long as the data continues to meet the definition of limited rights.

(2) *Government Purpose License Rights.* The Government shall have Government purpose license rights in:

(i) unpublished technical data pertaining to items, components, or processes for which the Government has funded, or will fund, a part of the development cost, unless the contracting officer has determined that the Government requires unlimited rights, and:

(A) the contractor has contributed or will contribute more than fifty percent (50%) of the development cost of the item, component, or process; or

(B) the contractor is a small business firm or nonprofit organization that agrees to commercialize the technology; and

(ii) unpublished technical data listed or described in an agreement incorporated into the Schedule of the contract, which the parties have agreed will be furnished with Government purpose license rights in accordance with DFARS 227.472–6, 227.472–7, 227.473–1(a) and 227.473–1(b)(2).

Government purpose license rights shall be effective provided that only the portion or portions of each piece of data to which such rights are to be asserted are identified (for example, by circling, underscoring, or a note), and that the piece of data is marked with the legend below:

(A) the number of the prime contract under which the technical data is to be delivered; and

(B) the name of the contractor and/or any subcontractor asserting Government Purpose License Rights.

Government Purpose License Rights Legend

Contract No. ————.
Contractor: ————.
——— ——— ——— ———
——— ——— ——— ———

The restrictions governing the use of technical data marked with this legend are set forth in the definition of "Government Purpose License Rights" in DFARS 227.471. This legend, together with the indications of the portions of this data which are subject to such limitations, shall be included on any reproduction hereof which includes any part of the portions subject to such limitations and shall be honored only as long as the data continues to meet the definition of Government purpose license rights.

(3) *Unlimited Rights.* Unless other rights have been agreed to in writing in accordance with DFARS 227.472–7, the Government shall have unlimited rights in:

(i) technical data prepared or required to be delivered under this or any other Government contract or subcontract and constituting corrections or changes to Government-furnished data or computer software;

(ii) form, fit, or function data pertaining to items, components, or processes prepared or required to be delivered under this or any other Government contract or subcontract:

(iii) manuals or instructional materials (other than detailed manufacturing or process data) prepared or required to be delivered under this contract or any subcontract hereunder necessary for installation, operation, maintenance, or training purposes.

(iv) technical data, which is otherwise publicly available, or has been released or disclosed by the contractor or subcontractor, without restriction on further release or disclosure;

(v) technical data pertaining to an item, component, or process for which the Government has funded or will fund the entire development cost.

(vi) technical data pertaining to an item, component, or process, for which the Government has funded or will fund a part of the development costs, and the Contractor has not contributed or will not contribute more than fifty percent (50%) of the development cost;

(vii) technical data pertaining to an item, component, or process for which the Government has funded, or will fund, a part of the development cost, and the contractor is a small business firm or nonprofit organization that does not agree to commercialize the technology;

(viii) technical data pertaining to an item, component, or process, for which the Government has funded, or will fund, a part of the development cost and, notwithstanding (b)(3)(vi) and (vii) above, the Contracting Officer has determined, in accordance with DFARS 227.472–5(b), that the Government requires unlimited rights; and

(ix) technical data resulting directly from performance of experimental, developmental, or research work which was specified as an element of performance in this or any other Government contract or subcontract.

(c) *Rights in Computer Software.*

(1) *Restricted Rights.*

(i) The Government shall have restricted rights in computer software, listed or described in a license or agreement made a part of this contract, which the parties have agreed will be furnished with restricted rights, *Provided,* however, notwithstanding any contrary provision in any such license or

agreement, the Government shall have the rights included in the definition of "restricted rights" in paragraph (a) above. Such restricted rights are of no effect unless the computer software is marked by the Contractor with the following legend:

Restricted Rights Legend

Use, duplication or disclosure is subject to restrictions stated in Contract No.____ with____ (Name of Contractor)____.

and the related computer software documentation includes a prominent statement of the restrictions applicable to the computer software. The Contractor may not place any legend on computer software indicating restrictions on the Governments rights in such software unless the restrictions are set forth in a license or agreement made a part of this contract prior to the delivery date of the software. Failure of the Contractor to apply a restricted rights legend to such computer software shall relieve the Government of liability with respect to such unmarked software.

(ii) Notwithstanding subparagraph (c)(1)(i) above, commercial computer software and related documentation developed at private expense and not in public domain may, if the Contractor so elects, be marked with the following Legend:

Restricted Rights Legend

Use, duplication, or disclosure by the Government is subject to restrictions as set forth in subparagraph (c)(1)(ii) of the Rights in Technical Data and Computer Software clause at 252.227–7013.

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(Name of Contractor and Address)

When acquired by the Government, commercial computer software and related documentation so legended shall be subject to the following:

(A) Title to and ownership of the software and documentation shall remain with the Contractor.

(B) User of the software and documentation shall be limited to the facility for which it is acquired.

(C) The Government shall not provide or otherwise make available the software or documentation, or any portion thereof, in any form, to any third party without the prior written approval of the Contractor. Third parties do not include prime contractors, subcontractors and agents of the Government who have the Government's permission to use the licensed software and documentation at the facility, and who have agreed to use the licensed software and documentation only in accordance with these restrictions. This provision does not limit the right of the Government to use software, documentation, or information therein, which the Government may already have or obtain without restrictions.

(D) The Government shall have the right to use the computer software and documentation with the computer for which it is acquired at any other facility to which that computer may be transferred; to use the computer software and documentation with a backup computer when the primary computer is inoperative; to copy computer programs for safekeeping (archives) or backup purposes; and to modify the software and documentation or combine it with other software, *Provided*, that the unmodified portions shall remain subject to these restrictions.

(2) *Unlimited Rights.* The Government shall have unlimited rights in:

(i) computer software resulting directly from performance of experimental, developmental or research work which was specified as an element of performance in this or any other Government contract or subcontract;

(ii) computer software required to be originated or developed under a Government contract, or generated as a necessary part of performing a contract;

(iii) computer data bases, prepared under a Government contract, consisting of information supplied by the Government, information in which the Government has unlimited rights, or information which is in the public domain;

(iv) computer software prepared or required to be delivered under this or any other Government contract or subcontract and constituting corrections or changes to Government-furnished computer software; and

(v) computer software which is otherwise publicly available, or has been, or is normally released, or disclosed by the contractor or subcontractor without restriction on further release or disclosure.

(d) *Technical Data and Computer Software Previously Provided Without Restriction.* Contractor shall assert no restrictions on the Government's rights to use or disclose any data or computer software which the Contractor has previously delivered to the Government without restriction. The limited or restricted rights provided for by this clause shall not impair the right of the Government to use similar or identical data or computer software acquired from other sources.

(e) *Copyright.*

(1) In addition to the rights granted under the provisions of paragraphs (b) and (c) above, the Contractor hereby grants to the Government a nonexclusive, paid-up license throughout the world, of the scope set forth below, under any copyright owned by the Contractor, in any work of authorship prepared for or acquired by the Government under this contract, to reproduce the work in copies or phonorecords, to distribute copies or phonorecords to the public, to perform or display the work publicly, and to prepare derivative works thereof, and to have others do so for Government purposes. With respect to technical data and computer software in which the Government has unlimited rights, the license shall be of the same scope as the rights set forth in the definition of "unlimited rights" in DFARS 227.471. With respect to technical data in which the Government has limited rights, the scope of the license is limited to the rights set forth in the definition of "limited rights". With respect to computer software which the parties have agreed will be furnished with restricted rights, the scope of the license is limited to such rights.

(2) Unless written approval of the Contracting Officer is obtained, the Contractor shall not include in technical data or computer software prepared for or acquired by the Government under this contract any works of authorship in which copyright is not owned by the Contractor without acquiring for the Government any rights necessary to perfect a copyright license of the scope specified herein.

(3) As between the Contractor and the Government, the Contractor shall be considered the "person for whom the work was prepared" for the purpose of determining authorship under Section 201(b) of Title 17, United States Code.

(4) Technical data delivered under this contract which carries a copyright notice shall also include the following statement which shall be placed thereon by the Contractor, or should the Contractor fail, by the Government:

This material may be reproduced by or for the U.S. Government pursuant to the copyright license under the clause at 252.227–7013 (date).

(f) *Removal of Unjustified and Non-conforming Markings.*

(1) *Unjustified Technical Data Markings.* Notwithstanding any provision of this contract concerning inspection and acceptance, the Government may, at the Contractor's expense, correct, cancel, or ignore any marking not justified by the terms of this contract on any technical data furnished hereunder in accordance with the clause of this contract entitled "Validation of Restrictive Markings on Technical Data", DFARS 252.227–7037.

(2) *Non-conforming Technical Data Markings.* Correction of non-conforming markings is not subject to such clause. The Government may, at the Contractor's expense, correct any non-conforming markings if the Contracting Officer notifies the Contractor and the Contractor fails to correct the non-conforming markings within 60 days.

(3) *Unjustified and Non-conforming Computer Software Markings.* Notwithstanding any provision of this contract concerning inspection and acceptance, the Government may correct, cancel, or ignore any marking not authorized by the terms of this contract on any computer software furnished hereunder, if:

(i) the Contractor fails to respond within sixty (60) days to a written inquiry by the Government concerning the propriety of the markings, or

(ii) the Contractor's response fails to substantiate, within sixty (60) days after written notice, the propriety of restricted rights markings by identification of the restrictions set forth in the contract.

In either case, the Government shall give written notice to the Contractor of the action taken.

(g) *Relation to Patents.* Nothing contained in this clause shall imply a license to the Government under any patent or be construed as affecting the scope of any license or other right otherwise granted to the Government under any patent.

(h) *Limitation on Charges for Data and Computer Software.* The Contractor recognizes that it is the policy of the Government not to pay, or to allow to be paid, any charges for data or computer

software which the Government has a right to use and disclose to others without restriction and Contractor agrees to refund any such payments. This policy applies to contracts that involve payments by subcontractors and those entered into through the Military Assistance Program, in addition to U.S. Government prime contracts. However, it does not apply to reasonable reproduction, handling, mailing, and similar administrative costs.

(i) *Acquisition of Technical Data and Computer Software from Subcontractors.*

(1) Whenever any technical data or computer software is to be obtained from a subcontractor under this contract, the Contractor shall use this same clause in the subcontract without alteration, and no other clause shall be used to enlarge or diminish the Government's or the Contractor's rights in the subcontractor data or computer software which is required for the Government.

(2) Technical data required to be delivered by a subcontractor shall normally be delivered to the next higher-tier contractor. However, when there is a requirement in the prime contract for data which may be submitted with other than unlimited rights by a subcontractor then said subcontractor may fulfill its requirement by submitting such data directly to the Government, rather than through the prime Contractor.

(3) The Contractor and higher-tier subcontractors will not use their power to award subcontracts as economic leverage to obtain rights in technical data or computer software from their subcontractors.

(j) *Notice of Limitations on Government Rights.*

(1) Unless the Schedule provides otherwise, and subject to (j)(2) below, the Contractor will promptly notify the Contracting Officer in writing of the intended use by the Contractor or a subcontractor in performance of this contract of any item, component, or process for which technical data would contain any restrictions on the Government's right to use, disclose, or have others use such data.

(2) Such notification is not required with respect to:

(i) standard commercial items which are manufactured by more than one source of supply; or

(ii) items, components, or processes for which such notice was given pursuant to prenotification of rights in technical data in connection with this contract.

(3) Unless the schedule provides otherwise, Contracting Officer approval is not necessary under this clause for the Contractor to use the item, component, or process in the performance of the contract.

(End of clause)

*Alternate I (May 1987)*

As prescribed at 227.474–4, add the following paragraph to the basic clause:

( )(i) Notwithstanding any other provision of this contract, the Government shall have (specify additional Government rights here, i.e., reprocurement) rights in restrictive rights technical data furnished under this contract, effective on the day immediately following the date specified in the contract for the expiration of the restrictive rights legends. Such expiration date shall be marked on each piece of data subject to expiring restrictions furnished under the contract.

(ii) Technical data subject to the expiration of restrictive rights shall be marked with the limited rights legend set forth in paragraph (b)(2)(i) above with the title of the legend modified to read:

Restrictive Rights Legend (Subject to Expiration)

Contract No. _____
Contractor: _____

The following statement shall also be added to the legend:

Restrictive rights shall become (*specify additional Government rights here, i.e., reprocurement*) rights on (*insert expiration date*).

The modified legend shall be included on any reproduction of the restrictive rights data, in whole or in part.

*Alternate II (May 1987)*

As prescribed at 227.475–8, add the following paragraph to the basic clause:

( ) Publication for sale. If, prior to publication for sale by the Government and within the period designated in the contract or task order, but in no event later than twenty-four (24) months after delivery of such data, the Contractor publishes for sale any data (1) designated in the contract as being subject to this paragraph and (2) delivered under this contract, and promptly notifies the Contracting Officer of these publications, the Government shall not publish such data for sale or authorize others to do so. This limitation on the Government's right to publish for sale any such data so published by the Contractor shall continue as long as the data is protected as a published work under the copyright law of the United States and is reasonably available to the public for purchase. Any such publication shall include a notice identifying this contract and recognizing the license rights of the Government under this clause. As to all such data not so published by the Contractor, this paragraph shall be of no force or effect.

**252.227–7014 [Reserved]**

**252.227–7015 [Reserved]**

**252.227–7016 Contract schedule items requiring experimental, developmental, or research work.**

As prescribed at 227.412(d), insert the following clause:

**Contract Schedule Items Requiring Experimental, Developmental, or Research Work (Mar 1975)**

For purposes of defining the nature of the work and the scope of rights in data granted to the Government pursuant to the "Rights in Technical Data and Computer Software" clause of this contract, it is understood and agreed that items (list applicable schedule line items or sub-line items or data exhibit numbers) require the performance of experimental, developmental, or research work. This clause does not constitute a determination as to whether or not any data required to be delivered under this contract falls within the definition of limited rights data.

(End of clause)

**252.227–7017 Rights in technical data—major system and subsystem contracts.**

As prescribed at 227.482(c), insert the following clause:

**Rights in Technical Data—Major System and Subsystem Contracts (Nov 1971)**

The Contractor agrees that it will neither incorporate any provision in its subcontracts nor enter into any agreement, written or oral, either directly or indirectly, with subcontractors which has or may have the effect of prohibiting subcontractor sales directly to the Government of any supplies, like those manufactured or services like those furnished by such subcontractor under this contract or any follow-on production contract, or under any contract for parts or components of supplies furnished under this or any follow-on production contract. The Contractor further agrees that all data, including data in which the Government may not have unlimited rights, furnished or otherwise made available by the Contractor for use by subcontractors in furnishing such supplies or services, will be furnished to such subcontractors without payment to the Contractor of any fee, royalty or other charge by the subcontractor or the Government for use by such subcontractors in furnishing such supplies or services for sale directly to the Government. For the purpose of this paragraph, the term "fee, royalty or other charge" shall not include within its meaning fees, royalties of charges for reasonable returns on use of patents.

(End of clause)

**252.227–7018 Restrictive markings on technical data.**

As prescribed at 227.473–4(b), insert the following clause:

**Restrictive Markings on Technical Data (May 1987)**

(a) The Contractor shall have, maintain, and follow throughout the performance of this contract, procedures sufficient to assure that restrictive markings are used on technical data required to be delivered hereunder only when authorized by the terms of the "Rights in Technical Data and Computer Software" clause of this contract. Such procedures shall be in writing. The Contractor shall also maintain a quality assurance system to assure compliance with this clause.

(b) As part of the procedures the Contractor shall maintain (1) records to show how the procedures of paragraph (a) above were applied in determining that the markings are authorized, as well as (2) such records as are sufficient to justify the validity of any restrictive markings on technical data delivered under this contract.

(c) The Contractor shall, within sixty (60) days after award of this contract, identify in writing to the Contracting Officer by name or title the person(s) having the final responsibility within Contractor's organization for determining whether restrictive markings are to be placed on technical data to be delivered under this

contract. The Contractor hereby authorizes direct contact between the Government and such person(s) in resolving questions involving restrictive markings.

(d) The Contracting Officer may evaluate or verify the Contractor's procedures to determine their effectiveness. Upon request, a copy of such written procedures shall be furnished. The failure of the Contracting Officer to evaluate or verify such procedures shall not relieve the Contractor of the responsibility for complying with paragraphs (a) and (b) above.

(e) If the Contracting Officer should give written notification of any failure to maintain or follow the established procedures, or of any material deficiency in the procedures, the corrective action shall be accomplished within the time specified by the Contracting Officer.

(f) This clause shall be included in each subcontract under which technical data is required to be delivered. When so inserted, "Contractor" shall be changed to "Subcontractor".

(End of clause)

**252.227-7019 Identification of restricted rights computer software.**

As prescribed at 227.482(e), insert the following provision:

**Identification of Restricted Rights Computer Software (Apr 1977)**

The Offeror's attention is called to the requirement in the "Rights in Technical Data and Computer Software" clause that any restrictions on the Government concerning use or disclosure of computer software which was developed at private expense and is to be delivered under the contract must be set forth in an agreement made a part of the contract, either negotiated prior to award or included in a modification of the contract before such delivery. Therefore, the Offeror is requested to identify in his proposal to the extent feasible any such computer software which was developed at private expense and upon the use of which it desires to negotiate restrictions, and to state the nature of the proposed restrictions. If no such computer software is identified, it will be assumed that all deliverable computer software will be subject to unlimited rights.

(End of provision)

**252.227-7020 Rights in data—special works.**

As prescribed at 227.482(f), insert the following clause:

**Rights in Data—Special Works (Mar 1979)**

(a) The term "works" as used herein includes literary, musical, and dramatic works; patomimes and choreographic works; pictorial, graphic, and sculptural works; motion pictures and other audiovisual works; sound recordings; and works of similar nature. The term does not include financial reports, cost analyses, and other information incidental to contract administration.

(b) All works first produced in the performance of this contract shall be the sole property of the Government, which shall be considered the "person for whom the work was prepared" for the purpose of authorship in any copyrightable work under Section 201(b) of Title 17, United States Code, and the Government shall own all of the rights comprised in the copyright. The Contractor agrees not to assert or authorize others to assert any rights, or establish any claim to copyright, in such works. The Contractor, unless directed to the contrary by the Contracting Officer, shall place on any such work delivered under this contract the following notice:

c *(Year date of delivery)* United States Government as represented by the Secretary of *(department)*. All rights reserved.

In the case of a phonorecord, the c will be replaced by P.

(c) Except as otherwise provided in this contract, the Contractor hereby grants to the Government a nonexclusive, paid-up license throughout the world (1) to reproduce in copies or phonorecords, to prepare derivative works, to distribute copies or phonorecords, and to perform or display publicly any portion of a work which is not first produced in the peformance of this contract but in which copyright is owned by the Contractor and which is incorporated in the work furnished under this contract, and (2) to authorize others to do so for Government purposes.

(d) Unless written approval of the Contracting Officer is obtained, the Contractor shall not include in any works prepared for or delivered to the Government under this contract any works of authorship in which copyright is not owned by the Contractor or the Government without acquiring for the Government any rights necessary to perfect a license of the scope set forth in paragraph (c) above.

(e) The Contractor shall indemnify and save and hold harmless the Government, and its officers, agents and employees acting for the Government, against any liability, including costs and expenses, (1) for violation of proprietary rights, copyrights, or rights of privacy or publicity, arising out of the creation, delivery, or use of any works furnished under this contract, or (2) based upon any libelous or other unlawful matter contained in such works.

(f) Nothing contained in this clause shall imply a license to the Government under any patent, or be construed as affecting the scope of any license of other right otherwise granted to the Government under any patent.

(g) Paragraphs (c) and (d) above are not applicable to material furnished to the Contractor by the Government and incorporated in the work furnished under the contract; *Provided,* such incorporated material is identified by the Contractor at the time of delivery of such work.

(End of clause)

**252.227-7021 Rights in data—existing works.**

As prescribed at 227.482(g), insert the following clause:

**Rights in Data—Existing Works (Mar 1979)**

(a) The term "works" as used herein includes literary, musical, and dramatic works; pantomimes and choreographic works; pictorial, graphic and sculptural works; motion pictures and other audiovisual works; sound recordings; and works of a similar nature. The term does not include financial reports, cost analyses, and other information incidental to contract administration.

(b) Except as otherwise provided in this contract, the Contractor hereby grants to the Government a nonexclusive, paid-up license throughout the world (1) to distribute, perform publicly, and display publicly the works called for under this contract and (2) to authorize others to do so for Government purposes.

(c) The Contractor shall indemnify and save and hold harmless the Government, and its officers, agents, and employees acting for the Government, against any liability, including costs and expenses, (1) for violation of proprietary rights, copyrights, or rights of privacy or publicity arising out of the creation, delivery, or use, of any works furnished under this contract, or (2) based upon any libelous or other unlawful matter contained in some works.

(End of clause)

**252.227-7022 Government rights (unlimited).**

As prescribed at 227.482(h), insert the following clause:

**Government Rights (Unlimited) (Mar 1979)**

(a) The Government shall have unlimited rights, in all drawings, designs, specifications, notes and other works developed in the performance of this contract, including the right to use same on any other Government design or construction without additional compensation to the Contractor. The Contractor hereby grants to the Government a paid-up license throughout the world to all such works to which he may assert or establish any claim under design patent or copyright laws. The Contractor for a period of three (3) years after completion of the project agrees to furnish the original or copies of all such works on the request of the Contracting Officer.

(End of clause)

**252.227-7023 Drawings and other data to become property of government.**

As prescribed at 227.482(i) insert the following clause:

**Drawings and Other Data to Become Property of Government (Mar 1979)**

All designs, drawings, specifications, notes and other works developed in the performance of this contract shall become the sole property of the Government and may be used on any other design or construction without additional compensation to the Contractor. The Government shall be considered the "person for whom the work was prepared" for the purpose of authorship in any copyrightable work under Section 201(b) of Title 17, United States Code. With respect thereto, the Contractor agrees not to assert or authorize others to assert any rights nor establish any claim under the design patent or copyright laws. The Contractor for a period of three (3) years after completion of

the project agrees to furnish all retained works on the request of the Contracting Officer. Unless otherwise provided in this contract, the Contractor shall have the right to retain copies of all works beyond such period.

(End of clause)

**252.227-7024 Notice and approval of restricted designs.**

As prescribed at 227.482(1), insert the following clause:

**Notice and Approval of Restricted Designs (Apr 1984)**

In the performance of this contract, the Contractor shall, to the extent practicable, make maximum use of structures, machines, products, materials, construction methods, and equipment that are readily available through Government or competitive commercial channels, or through standard or proven production techniques, methods, and processes. Unless approved by the Contracting Officer, the Contractor shall not produce a design or specification that requires in this construction work the use of structures, products, materials, construction equipment, or processes that are known by the Contractor to be available only from a sole source. The Contractor shall promptly report any such design or specification to the Contacting Officer and give the reason why it is considered necessary to so restrict the design or specification.

(End of clause)

**252.227-7025 Rights in technical data and computer software (SBIR program).**

As prescribed at 227.479, insert the following clause:

**Rights in technical data and computer software (SBIR program) (May 1987)**

(a) *Definitions.*

The terms used in this clause are defined in 227.471 of the Department of Defense Federal Acquisition Regulation Supplement (DFARS).

(b) *Rights in Technical Data.*

(1) *Limited Rights.* The Government shall have limited rights in:

(i) technical data, listed or described in an agreement incorporated into the Schedule of this contract, which the parties have agreed will be furnished with limited rights in accordance with 227.473–1(a) and 227.473–1(b)(2) and

(ii) unpublished technical data pertaining to items, components or processes developed exclusively at private expense, and unpublished computer software documentation related to computer software that is acquired with restricted rights, other than such data included in (b)(2)(i), (ii), or (iii), below. Limited rights shall be effective provided that only the portion or portions of each piece of data to which limited rights are to be asserted are identified (for example, by circling, underscoring, or note), and that the piece of data is marked with the legend below:

(A) the number of the prime contract under which the technical data is to be delivered; and

(B) the name of the Contractor and/or any subcontractor asserting limited rights.

Limited Rights Legend

Contract No. _____.

Contractor: _____.

_____ _____ _____ _____

_____ _____ _____ _____

The restrictions governing the use of technical data marked with this legend are set forth in the definition of "Limited Rights" in DFARS 227.471. This legend, together with the indications of the portions of this data, shall be included on any reproduction hereof which includes any part of the portions subject to limited rights. The limited rights legend shall be honored only as long as the data continues to meet the definition of limited rights.

(2) *Government Purpose License Rights.* For a period of two (2) years (or such other period as may be authorized by the Contracting Officer for good cause shown) after the delivery and acceptance of the last deliverable item under the contract, the Government shall have limited rights and, after the expiration of the two-year period, shall have Government purpose license rights in:

(i) technical data prepared or required to be delivered under this or any other Government contract or subcontract and constituting corrections or changes to Government-furnished data or computer software;

(ii) form, fit, or function data pertaining to items, components, or processes prepared or required to be delivered under this or any other Government contract or subcontract;

(iii) manuals or instructional materials (other than detailed manufacturing or process data) prepared or required to be delivered under this contract or any subcontract hereunder necessary for installation, operation, maintenance, or training purposes; and

(iv) any other technical data prepared or required to be delivered under this contract or subcontract hereunder, which is not otherwise subject to limited or unlimited rights pursuant to subparagraph (b)(1) or (b)(3) herein;

Government Purpose License Rights must be effective provided that only the portion or portions of each piece of data to which such rights are to be asserted are identified (for example, by circling, underscoring, or a note), and that the piece of data is marked with the legend below:

(A) the number of the prime contract under which the technical data is to be delivered; and

(B) the name of the contractor and/or any subcontractor asserting Government Purpose License Rights.

Government Purpose License Rights (SBIR Program)

Contract No. _____

Contractor: _____

For a period of two (2) years after delivery and acceptance of the last deliverable item under this contract, this technical data shall be subject to the restrictions contained in the definition of "Limited Rights" in Section 227.471 of the DoD FAR Supplement. After the two-year period, the data shall be subject to the restrictions contained in the definition of "Government Purpose License Rights" in Section 227.471 of the DoD FAR Supplement. The Government assumes liability for unauthorized use or disclosure by others. This legend, together with the indications of the portions of the data which are subject to such limitations, shall be included on any reproduction hereof which contains any portions subject to such limitations and shall be honored only as long as the data continues to meet the definition on Government purpose license rights.

(3) *Unlimited Rights.* The Government shall have unlimited rights in:

(i) technical data required to be prepared or delivered under this contract or any subcontract hereunder that was previously delivered or previously required to be delivered to the Government with unlimited rights; and

(ii) technical data or computer software that is publicly available or has been released or disclosed by the Contractor without restriction on further use or disclosure.

(c) *Rights in Computer Software.*

(1) *Restricted Rights.*

(i) The Government shall have restricted rights in computer software, listed or described in a license or agreement made a part of this contract, which the parties have agreed with will be furnished with restricted rights, *Provided*, however, notwithstanding any contrary provision in any such license or agreement, the Government shall have the rights included in the definition of "restricted rights" in paragraph (a) above. Such restricted rights are of no effect unless the computer software is marked by the Contractor with the following legend:

Restricted Rights Legend

Use, duplication or disclosure is subject to restrictions stated in Contract No. _____with_____(Name of Contractor)_____,

and the related computer software documentation includes a prominent statement of the restriction applicable to the computer software. The Contractor may not place any legend on computer software indicating restrictions on the Government's rights on such software unless the restrictions are set forth in a license or agreement made a part of this contract prior to the delivery date of the software. Failure of the Contractor to apply a restricted rights legend to such computer software shall relieve the Government of liability with respect to such unmarked software.

(ii) Notwithstanding subparagraph (c)(1)(i) above, commercial computer software and related documentation developed at private expense and not in public domain may, if the Contractor so elects, be marked with the following Legend:

Restricted Rights Legend

Use, duplication, or disclosure by the Government is subject to restrictions as set forth in subparagraph (c)(1)(ii) of the Rights in Technical Data and Computer Software clause at 252.227–7013.

(Name of Contractor and Address)

When acquired by the Government, commercial computer software and related documentation so legended shall be subject to the following:

(A) Title to and ownership of the software and documentation shall remain with the Contractor.

(B) User of the Software and documentation shall be limited to the facility for which it is acquired.

(C) The Government shall not provide or otherwise make avaialble the software or documentation, or any portion thereof, in any form, to any third party without the prior written approval of the Contractor. Third parties do not include prime contractors, subcontractors and agents of the Government who have the Government's permission to use the licensed software and documentation at the facility, and who have agreed to use the licensed software and documentation, only in accordance with these restrictions. This provision does not limit the right of the Government to use software, documentation, or information therein, which the Government may already have or obtain without restrictions.

(D) The Government shall have the right to use the computer software and documentation with the computer for which it is acquired at any other facility to which that computer may be transferred; to use the computer software and documentation with a backup computer when the primary computer is inoperative; to copy computer programs for safekeeping (archives) or backup purposes; and to modify the software and documentation or combine it with other software, *Provided*, that the unmodified portions shall remain subject to these restrictions.

(2) *Government Purpose License Rights.* For a period of two (2) years (or such other period as may be authorized by the Contracting Officer for good cause shown) after the delivery and acceptance of the last deliverable item under the contract, the Government shall have limited rights and, after expiration of the two-year period, shall have Government purpose license rights in:

(i) computer software resulting directly from performance of experimental, developmental or research work which was specified as an element of performance in this or any Government contract or subcontract;

(ii) computer software required to be originated or developed under a Government contract, or generated as a necessary part of performing a contract; and

(iii) any other computer software prepared or required to be delivered under this contract or subcontract hereunder, which is not otherwise subject to restricted or unlimited rights pursuant to subparagraph (c)(1) or (c)(3) herein.

Government purpose license rights shall be effective provided that each unit of software is marked with an abbreviated license rights legend reciting that the use, duplication, or disclosure of the software is subject to the same restrictions included in the same contract (identified by number) with the same contractor (identified by name). The Government asssumes no liability for unauthorized use, duplication, or disclosures by others.

(3) *Unlimited Rights.* The Government shall have unlimited rights in:

(i) computer software required to be prepared to deliver under this or any subcontract hereunder that was previously delivered or previously required to be delivered to the Government under any contract or subcontract with unlimited rights;

(ii) computer software that is publicly available or has been or is normally released or disclosed by the Contractor without restriction on further use or disclosure; and

(iii) computer data bases, consisting of information supplied by the Government, information in which the Government has unlimited rights, or information which is in the public domain.

(d) *Technical Data and Computer Software Previously Provided Without Restriction.* Contractor shall assert no restrictions on the Government's rights to use or disclose any data or computer software which the Contractor has previously delivered to the Government without restriction. The limited or restricted rights provided for by this clause shall not impair the right of the Government to use similar or identical data or computer software acquired from other sources.

(e) *Copyright.*

(1) In addition to the rights granted under the provisions of paragraphs (b) and (c) above, the Contractor hereby grants to the Government a nonexclusive, paid-up license throughout the world, of the scope set forth below, under any copyright owned by the Contractor, in any work of authorship prepared for or acquired by the Government under this contract, to reproduce the work in copies or phonorecords, to distribute copies or phonorecords to the public, to perform or display the work publicly, and to prepare derivative works thereof, and to have others do so for Government purposes. With respect to technical data and computer software in which the Government has unlimited rights, the license shall be of the same scope as the rights set forth in the definition of "unlimited rights" in DFARS 227.471. With respect to technical data in which the Government has limited rights, the scope of the license is limited to the rights set forth in the definition of "limited rights". With respect to computer software which the parties have agreed will be furnished with restricted rights. The scope of the license is limited to such rights.

(2) Unless written approval of the Contracting Officer is obtained, the Contractor shall not include in technical data or computer software prepared for or acquired by the Government under this contract any works of authorship in which copyright is not owned by the Contractor without acquiring for the Government any rights necessary to perfect a copyright license of the scope specified herein.

(3) As between the Contractor and the Government, the Contractor shall be considered the "person for whom the work was prepared" for the purpose of determining authorship under Section 201(b) of Title 17, United States Code.

(4) Technical data delivered under this contract which carries a copyright notice shall also include the following statement which shall be placed thereon by the Contractor, or should the Contractor fail, by the Government: This material may be reproduced by or for the U.S. Government pursuant to the copyright license under the clause at 252.227-7025 (date).

(f) *Removal of Unjustified and Non-conforming Markings.*

(1) *Unjustified Technical Data Markings.* Notwithstanding any provision of the contract concerning inspection and acceptance, the Government may, at the Contractor's expense, correct, cancel, or ignore any marking not authorized by the terms of this contract on any technical data furnished hereunder in accordance with the clause of this contract entitled "Validation of Restrictive Markings on Technical Data", DFARS 252.227-7037.

(2) *Non-conforming Technical Data Markings.* Correction of non-conforming markings is not subject to DFARS 252.227-7037. The Government may, at the Contractor's expense, correct any non-conforming markings if the Contracting Officer notifies the Contractor and the Contractor fails to correct the non-conforming markings within 60 days.

(3) *Unjustified and Non-conforming Computer Software Markings.* Notwithstanding any provision of this contract concerning inspection and acceptance, the Government may correct, cancel, or ignore any marking not authorized by the terms of this contract on any computer software furnished hereunder, if:

(i) the Contractor fails to respond within sixty (60) days to a written inquiry by the Government concerning the propriety of the markings, or

(ii) the Contractor's response fails to substantiate, within sixty (60) days after written notice, the propriety of restricted rights markings by identification of the restrictions set forth in the contract.

In either case, the Government shall give written notice to the Contractor of the action taken.

(g) *Relation to Patents.* Nothing contained in this clause shall imply a license to the Government under any patent or be construed as affecting the scope of any license or other right otherwise granted to the Government under any patent.

(h) *Limitation of Charges for Data and Computer Software.* The Contractor recognizes that is is the policy of the Government not to pay, or to allow to be paid, any charges for data or computer software which the Government has a right to use and disclose to others without restriction and Contractor agrees to refund any such payments. This policy applies to contracts that involve payments by subcontractors and those entered into through the Military Assistance Program, in addition to U.S. Government prime contracts. However, it does not apply to reasonable reproduction, handling, mailing, and similar administrative costs.

(i) *Acquisition of Data and Computer Software from Subcontractors.*

(1) Whenever any technical data or computer software is to be obtained from a

subcontractor under this contract, the Contractor shall use this same clause in the subcontract, without alteration, and no other clause shall be used to enlarge or diminish the Government's or the Contractor's rights in the subcontractor data or computer software which is required for the Government.

(2) Technical data requird to be delivered by a subcontractor shall normally be delivered to the next high-tier contractor. However, when there is a requirement in the prime contract for data which may be submitted with other than unlimited rights by a subcontractor, then said subcontractor may fulfill its requirement by submitting such data directly to the Government, rather than through the prime Contractor.,

(3) The Contractor and higher-tier subcontractors will not use their power to award subcontracts as economic leverage to obtain rights in technical data or computer software from their subcontractors.

(j) *Notice of Limitations on Government Rights.*

(1) Unless the Schedule provides otherwise, and subject to (j)(2) below, the Contractor will promptly notify the Contracting Officer in writing of the intended use by the Contractor or a subcontractor in performance of this contract of any item, component, or process for which technical data would contain any restrictions on the Government's right to use, disclose, or have others use such data.

(2) Such notification is not required with respect to

(i) standard commercial items which are manufactured by more than one source of supply; or

(ii) items, components, or processes for which such notice was given pursuant to prenotification of rights in technical data in connection with this contract.

(3) Unless the schedule provides otherwise, Contracting Officer approval is not necessary under this clause for the Contractor to use the item, component, or process in the performance of the contract.

(End of clause)

**252.227-7026 Deferred delivery of technical data of computer software.**

As prescribed at 227.482(1), insert the following clause:

**Deferred Delivery of Technical Data or Computer Software (Nov 1974)**

The Government shall have the right to require, at any time during the performance of this contract, within two (2) years after eigher acceptance of all items (other than data or computer software) to be delivered under this contract or termination of this contract, whichever is later, the delivery of any technical data or computer software item identified in this contract as "deferred delivery" data or computer software. The obligation to furnish such technical data required to be prepared by a subcontractor and pertaining to an item obtained from him shall expire two (2) years after the date Contractor accepts the last delivery of that item from that subcontractor for use in performing this contract.

(End of clause)

**252.227-7027 Deferred ordering of technical data or computer software.**

As prescribed at 227.482(m), insert the following clause;

**Deferred Ordering of Technical Data or Computer Software (Nov 1974)**

In addition to technical data or computer software specified elsewhere in this contract to be delivered hereunder, the Government may, at any time during the performance of this contract or within a period of three (3) years after acceptance of all items (other than technical data or computer software) to be delivered under this contract or the termination of this contract, order any technical data or computer software (as defined in the "Rights in Technical Data and Computer Software" clause of this contract) generated in the performance of this contract or any subcontract hereunder. When such technical date or computer software is ordered, the Contractor shall be compensated for converting the data or computer software into the prescribed form, for reproduction and delivery. The obligation to deliver such technical data of a subcontractor and pertaining to an item obtained from him shall expire three (3) years after the date the Contractor accepts the last delivery of that item from that subcontractor under this contract. The Government's rights to use said data or computer software shall be pursuant to the "Rights in Technical Data and Computer Software" clause of this contract.

(End of clause)

**252.227-7028 Requirement for technical data certification.**

As prescribed at 227.482(n), insert the following provision:

**Requirement for Technical Data Certification (Apr 1974)**

The Offeror shall submit with its offer a certification as to whether the Offeror has delivered or is obligated to deliver to the Government under any contract or subcontract the same or substantially the same technical data included in its offer; if so, the Offeror shall identify one such contract or subcontract under which such technical data was delivered or will be delivered, and the place of such delivery.

(End of provision)

**252.227-7029 Identification of technical data.**

As prescribed at 227.482(o), insert the following clause:

**Identification of Technical Data (Mar 1975)**

Technical Data (as defined in the "Rights in Technical Data and Computer Software" clause of this contract) delivered under this contract shall be marked with the number of this contract, name of Contractor, and name of any subcontractor who generated the data.

(End of clause)

**252.227-7030 Technical data—withholding of payment.**

As prescribed at 227.482(p), insert the following clause:

**Technical Data—Withholding of Payment (Jul 1976)**

(a) If "Technical Data" as defined in the clause of this contract entitled "Rights in Technical Data and Computer Software"), or any part thereof, specified to be delivered under this contract, is not delivered within the time specified by this contract or is deficient upon delivery (including having restrictive markings not specifically authorized by this contract), the Contracting Officer may until such data is accepted by the Government, withhold payment to the Contractor of ten percent (10%) of the total contract price or amount unless a lesser withholding is specified in the contract. Payments shall not be withheld nor any other action taken pursuant to this paragraph when the Contractor's failure to make timely delivery or to deliver such data without deficiencies arises out of causes beyond the control and without the fault or negligence of the Contractor.

(b) After payments total ninety percent (90%) of the total contract price or amount and if all technical data specified to be delivered under this contract has not been accepted, the Contracting Officer may withhold from further payment such sum as the Contracting Officer considers appropriate, not exceeding ten percent (10%) of the total contract price or amount unless a lesser withholding limit is specified in the contract.

(c) The withholding of any amount or subsequent payment to the Contractor shall not be construed as a waiver of any rights accruing to the Government under this contract.

(End of clause)

**252.227-7031 Data requirements.**

As prescribed at 227.482(q), insert the following clause:

**Data Requirements (Apr 1972)**

(a) Data means recorded information, regardless of form or characteristics.

(b) The Contractor is required to deliver only the data items listed on DD Form 1423 (Contract Data Requirements List) and data items identified in and deliverable under any contract clause of FAR Subpart 52.2 and DoD FAR Supplement Subpart 52.2 made a part of the contract.

(End of clause)

**252.227-7032 Rights in technical data and computer software (foreign).**

As prescribed at 227.482(r), insert the following clause:

**Rights in Technical Data and Computer Software (Foreign) (Jun 1975)**

The United States Government may duplicate, use, and disclose in any manner for any purposes whatsoever, including delivery

to other governments for the furtherance of mutual defense of the United States Government and other governments, all technical data including reports, drawings and blueprints, and all computer software, specified to be delivered by the Contractor to the United States Government under this contract.

(End of clause)

**252.227-7033 Rights in shop drawings.**

As prescribed at 227.482(s), insert the following clause:

**Rights in Shop Drawings (Apr 1966)**

(a) Shop drawings for construction means drawings, submitted to the Government by the Construction Contractor, subcontractor or any lower tier subcontractor pursuant to a construction contract, showing in detail (i) the proposed fabrication and assembly of structural elements and (ii) the installation (i.e., form, fit, and attachment details) of materials or equipment. The Government may duplicate, use, and disclose in any manner and for any purpose shop drawings delivered under this contract.

(b) This clause, including this paragraph (b), shall be included in all subcontracts hereunder at any tier.

(End of clause)

**252.227-7034 Patents-subcontracts.**

As prescribed at 227.304-4, insert the following clause:

**Patents-Subcontracts (Apr 1984)**

The Contractor will include the clause at FAR 52.227-12, Patent Rights—Retention by the Contractor (Long Form) suitably modified to identify the parties, in all subcontracts, regardless of tier, for experimental, developmental, or research work to be performed by other than a small business firm or nonprofit organization.

(End of clause)

**252.227-7035 Prenotification of rights in technical data.**

As prescribed at 227.482(t), insert the following provision:

**Prenotification of Rights in Technical Data (May 1987)**

(a) *Prenotification of Limitations on Government Rights.*

In order for the Government to make informed judgments concerning the competitive reprocurement potential of items, components, processes, or computer software developed at private expense that an Offeror intends to deliver under a resultant contract, Offerors shall identify to the maximum practicable extent in their response to this solicitation such privately developed items, components, processes, or computer software and the technical data which they:

(1) intend to deliver with limited rights;

(2) intend to deliver with Government Purpose License Rights; or

(3) have not yet determined if such rights should apply.

This requirement does not apply to standard commercial items which are manufactured by more than one source of supply. If an Offeror asserts other than unlimited rights to any technical data in its proposal responding to this requirement, Government failure to object to or reject any such assertion shall not be construed to constitute agreement to any such data rights assertion. Offerors will furnish, at the written request of the Contracting Officer, evidence to support any such assertion.

(End of provision)

**252.227-7036 Certification of technical data conformity.**

As prescribed at 227.482(u), insert the following clause:

**Certification of Technical Data Conformity (May 1987)**

(a) All technical data delivered under this contract shall be accompanied by the following written certification:

The Contractor, _____, hereby certifies that, to the best of its knowledge and belief, the technical data delivered herewith under Contract No. _____ is complete, accurate, and complies with all requirements of the contract.

Date _____

Name and Title of Certifying Official _____

This written certification shall be dated and the certifying official (identified by name and title) shall be duly authorized to bind the Contractor by the certification.

(b) The Contractor shall identify, by name and title, each individual (official) authorized by the Contractor to certify in writing that the technical data is complete, accurate, and complies with all requirements of the contract. The Contractor hereby authorizes direct contact with the authorized individual responsible for certification of technical data. The authorized individual shall be familiar with the Contractor's technical data conformity procedures and their application to the technical data to be certified and delivered.

(c) Technical data delivered under this contract may be subject to reviews by the Government during preparation and prior to acceptance. Technical data is also subject to reviews by the Government subsequent to acceptance. Such reviews may be conducted as a function ancillary to other reviews, such as in-process reviews or configuration audit reviews.

(End of clause)

**252.227-7037 Validation of restrictive markings on technical data.**

As prescribed in 227.482(v) insert the following clause:

**Validation of Restrictive Markings on Technical Data (May 1987)**

(a) *Definition.* The terms used in this clause are defined in 227.471 of the Department of Defense Federal Acquisition Regulation Supplement (DFARS).

(b) *Justification.* The Contractor or subcontractor at any tier is responsible for maintaining records sufficient to justify the validity of its markings that impose restrictions on the Government and others to use, duplicate, or disclose technical data delivered or required to be delivered under the contract or subcontract, and shall be prepared to furnish to the Contracting Officer a written justification for such restrictive markings in response to a challenge under paragraph (d) below.

(c) *Prechallenge Request for Information.*

(1) The Contracting Officer may request the Contractor or subcontractor to furnish a written explanation for any restriction asserted by the Contractor or subcontractor on the right of the United States or others to use technical data. If, upon review of the explanation submitted, the Contracting officer remains unable to ascertain the basis of the restrictive marking, the Contracting Officer may further request the Contractor or subcontractor to furnish additional information in the records of, or otherwise in the possession of or reasonably available to, the Contractor or subcontractor to justify the validity of any restrictive marking on technical data delivered or to be delivered under the contract or subcontract (e.g., a statement of facts accompanied with supporting documentation). The Contractor or subcontractor shall submit such written data as requested by the Contracting Officer within the time required or such longer period as may be mutually agreed.

(2) If the Contracting Officer, after reviewing the written data furnished pursuant to paragraph (c)(1) above, or any other available information pertaining to the validity of a restrictive marking, determines that reasonable grounds exist to question the current validity of the marking and that continued adherence to the marking would make impracticable the subsequent competitive acquisition of the item, component, or process to which the technical data relates. (Note: The Contracting Officer may also challenge the validity of the restricted markings if such technical data is publicly available, has been furnished to the Government without restriction, or has been otherwise made available without restriction.) When challenging the validity of restrictive markings, the Contracting Officer will follow the procedures described in paragraph (d) below.

(3) If the Contractor or subcontractor fails to respond to the Contracting Officer's request for information under paragraph (c)(1) above, and the Contracting Officer determines that continued adherence to the marking would make impracticable the subsequent competitive acquisition of the item, component, or process to which the technical data relates, the Contracting Officer may formally challenge the validity of the marking as described in paragraph (d) below.

(d) *Challenge.*

(1) Notwithstanding any provision of this contract concerning inspection and acceptance, if the Contracting Officer determines that a challenge to the restrictive marking is warranted, the Contracting Officer shall send a written challenge notice to the Contractor or subcontractor asserting the restrictive markings. Such challenge shall:

(i) state the specific grounds for challenging the asserted restriction;

(ii) require a response within sixty (60) days justifying and providing sufficient evidence as to the current validity of the asserted restriction; and

(iii) state that a DoD Contracting Officer's final decision, issued pursuant to paragraph (f) below, sustaining the validity of a restrictive marking identical to the asserted restriction, within the three-year period preceding the challenge, shall serve as justification for the asserted restriction if the validated restriction was asserted by the same Contractor or subcontractor (or any licensee of such Contractor or subcontractor) to which such notice is being provided.

(iv) State that failure to respond to the challenge notice may result in issuance of a final decision pursuant to paragraph (e) below.

(2) The Contracting Officer shall extend the time for response as appropriate if the Contractor or subcontractor submits a written request showing the need for additional time to prepare a response.

(3) The Contractor's or subcontractor's written response shall be considered a claim within the meaning of the Contract Disputes Act of 1978 (41 U.S.C. 601 et seq.), and shall be certified in the form prescribed by FAR 33.207, regardless of dollar amount.

(4) A Contractor or subcontractor receiving challenges to the same restrictive markings from more than one Contracting Officer shall notify each Contracting Officer of the existence of more than one challenge. The notice shall also state which Contracting Officer initiated the first in time unanswered challenge. The Contracting Officer initiating the first in time unanswered challenge after consultation with the Contractor or subcontractor and the other Contracting Officers, shall formulate and distribute a schedule for responding to each of the challenge notices to all interested parties (all appropriate Contracting Officers and Contractors and subcontractors). The schedule shall afford the Contractor or subcontractor an equitable opportunity to respond to each challenge notice. All parties will be bound by this schedule.

(e) *Final Decision When Contractor or Subcontractor Fails to Respond.* Upon a failure of a Contractor or subcontractor to submit any response to the challenge notice the Contracting Officer will issue a final decision to the Contractor or subcontractor in accordance with the Disputes clause at FAR 52.233–1, pertaining to the validity of the asserted restriction. This final decision shall be issued as soon as possible after the expiration of the time period of paragraph (d)(1)(ii) or (2) above. Following the issuance of the final decision, the Contracting Officer will comply with the procedures in (f)(2)(ii) through (iv) below.

(f) *Final Decision When Contractor or Subcontractor Responds.*

(1) If the Contracting Officer determines that the Contactor or subcontractor has justified the validity of the restrictive marking, the Contracting Officer shall issue a final decision to the Contractor or subcontractor sustaining the validity of the restrictive marking, and stating that the Government will continue to be bound by the restrictive marking. This final decision shall be issued within sixty (60) days after receipt of the Contractor's or subcontractor's response to the challenge notice, or within such longer period that the Contracting Officer has notified the Contractor or subcontractor that the Government will require. The notification of a longer period for issuance of a final decision will be made within sixty (60) days after receipt of the response to the challenge notice.

(2)(i) If the Contracting Officer determines that the validity of the restrictive marking is not justified, the Contracting Officer shall issue a final decision to the Contractor or subcontractor in accordance with the Disputes clause at FAR 52.233–1. Notwithstanding paragraph (e) of the Disputes clause, the final decision shall be issued within sixty (60) days after receipt of the Contractor's or subcontractor's response to the challenge notice, or within such longer period that the Contracting Officer has notified the Contractor or subcontractor of the longer period that the Government will require. The notification of a longer period for issuance of a final decision will be made within sixty (60) days after receipt of the response to the challenge notice.

(ii) The Government agrees that it will continue to be bound by the restrictive marking for a period of ninety (90) days from the issuance of the Contracting Officer's final decision under paragraph (f)(2)(i) of this clause. The Contractor or subcontractor agrees that, if it intends to file suit in the United States Claims Court it will provide a notice of intent to file suit to the Contracting Officer within ninety (90) days from the issuance of the Contracting Officer's final decision under paragraph (f)(2)(i) of this clause. If the Contractor or subcontractor fails to appeal, file suit, or provide a notice of intent to file suit to the Contracting Officer within the ninety (90)-day period, the Government may cancel or ignore the restrictive markings, and the failure of the Contractor or subcontractor to take the required action constitutes agreement with such Government action.

(iii) The Government agrees that it will continue to be bound by the restrictive marking where a notice of intent to file suit in the United States Claims Court is provided to the Contracting Officer within ninety (90) days from the issuance of the final decision under paragraph (f)(2)(i) of this clause. The Government will no longer be bound, and the Contractor or subcontractor agrees that the Government may strike or ignore the restrictive markings, if the Contractor or subcontractor fails to file its suit within one (1) year after issuance of the final decision. Notwithstanding the foregoing, where the head of an agency determines, on a nondelegable basis, that urgent or compelling circumstances significantly affecting the interest of the United States will not permit waiting for the filing of a suit in the United States Claims Court, the Contractor or subcontractor agrees that the agency may, following notice to the Contractor or subcontractor, authorize release or disclosure of the technical data. Such agency determination may be made at any time after issuance of the final decision and will not affect the Contractor's or subcontractor's right to damages against the United States where its restrictive markings are ultimately upheld or to pursue other relief, if any, as may be provided by law.

(iv) The Government agrees that it will be bound by the restrictive marking where an appeal or suit is filed pursuant to the Contract Disputes Act until final disposition by an agency Board of Contract Appeals or the United States Claims Court. Notwithstanding the foregoing, where the head of an agency determines, on a nondelegable basis, following notice to the Contractor that urgent or compelling circumstances significantly affecting the interest of the United States will not permit awaiting the decision by such Board of Contract Appeals or the United States Claims Court, the Contractor or subcontractor agrees that the agency may authorize release or disclosure of the technical data. Such agency determination may be made at any time after issuance of the final decision and will not affect the Contractor's or subcontractor's right to damages against the United States where its restrictive markings are ultimately upheld or to pursue other relief, if any, as may be provided by law.

(g) *Final Disposition of Appeal or Suit.*

(1) If the Contractor or subcontractor appeals or files suit and if, upon final disposition of the appeal or suit, the Contracting Officer's decision is sustained—

(i) The restrictive marking on the technical data shall be cancelled, corrected or ignored; and

(ii) If the restrictive marking is found not to be substantially justified, the Contractor or subcontractor, as appropriate, shall be liable to the Government for payment of the cost to the Government of reviewing the restrictive marking and the fees and other expenses (as defined in 28 U.S.C. 2412(d)(2)(A)) incurred by the Government in challenging the marking, unless special circumstances would make such payment unjust.

(2) If the Contractor or subcontractor appeals or files suit and if, upon final disposition of the appeal or suit, the Contracting Officer's decision is not sustained—

(i) The Government shall continue to be bound by the restrictive marking; and

(ii) The Government shall be liable to the Contractor or subcontractor for payment of fees and other expenses (as defined in 28 U.S.C. 2412(d)(2)(A)) incurred by the Contractor or subcontractor in defending the marking, if the challenge by the Government is found not to have been made in good faith.

(h) *Duration of Right to Challenge.* The Government may review the validity of any restriction on technical data, delivered or to be delivered under a contract, asserted by the Contractor or subcontractor. During the period within three (3) years of final payment on a contract or within three (3) years of delivery of the technical data to the Government, whichever is later, the Contracting Officer may review and make a written determination to challenge the restriction. The Government may, however, challenge a restriction on the release, disclosure or use of technical data at any time if such technical data (1) is publicly

available; (2) has been furnished to the United States without restriction; or (3) has been otherwise made available without restriction. Only the Contracting Officer's final decision resolving a formal challenge by sustaining the validity of a restrictive marking constitutes "validation" as addressed in 10 U.S.C. 2321. A decision by the Government, or a determination by the Contracting Officer, to not challenge the restrictive marking or asserted restriction shall not constitute "validation".

(i) *Privity of Contract.* The Contractor or subcontractor agrees that the Contracting Officer may transact matters under this clause directly with subcontractors at any tier that assert restrictive markings. However, this clause neither creates nor implies privity of contract between the Government and subcontractors.

(j) *Flowdown.* The Contractor or subcontractor agrees to insert this clause in subcontracts at any tier requiring the delivery of technical data.

(End of clause)

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## Department of the Air Force

## 48 CFR Part 5315

## Department of the Air Force Federal Acquisition Regulation Supplement; Contracting by Negotiation

**AGENCY:** Department of the Air Force, Department of Defense.

**ACTION:** Final rule.

**SUMMARY:** FAR Subpart 15.8, Price Negotiation, is being supplemented by the Air Force to set forth the Air Force policy on the use and control of Formula Pricing Agreements (FPAs).

**EFFECTIVE DATE:** April 29, 1987.

**FOR FURTHER INFORMATION CONTACT:** Capt. Jeff Parsons, SAF/AQCP, Room 4C251, Pentagon, Washington, DC 20330-1000, (202) 697-6522.

**SUPPLEMENTARY INFORMATION:**

### A. Background

In a recent spare parts pricing review, the GAO identified instances where buyers were using the existence of Formula Pricing Agreements (FPAs) as justification for accepting proposed prices without performing adequate price analysis. A review of this finding by members of the Air Staff determined that inadequate control and guidance on the use of FPAs contributed to this problem.

FPAs are a very effective tool for pricing large volumes of spare parts when used properly. Normally, they are written agreements between the Government and a contractor and set forth a methodology and the specific rates and factors to follow when pricing items covered by the FPA. However, their use cannot be taken for granted because they do not in all cases, guarantee fair and reasonable prices for each individual item.

In order to maintain FPAs as an effective pricing tool, the Air Force has determined that the proper controls for their use need to be clarified in the AF FAR Supplement.

### B. Public Comments

On October 22, 1986, a notice of the proposed rule was published in the **Federal Register** (51 FR 37451) requesting interested parties to submit comments to be considered in the formulation of the final rule. As a result of the notice, 3 comments were received and considered.

### C. Regulatory Flexibility Act

In accordance with the Regulatory Flexibility Act, this rule does not have a significant economic impact on a substantial number of small entities because FPAs shall be negotiated only with contractors (1) having a significant volume of Government business, (2) who are under Government in-plant contract administration, and (3) who have a resident DCAA auditor.

### D. Paperwork Reduction Act

The 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 5315

Government procurement.

Therefore, Title 48 of the Code of Federal Regulations is amended by adding Part 5315 to read as follows:

## PART 5315—CONTRACTING BY NEGOTIATION

### Subpart 5315.8—Price Negotiation

Sec.



**Authority:** 5 U.S.C. 301 and FAR 1.301.

### Subpart 5315.8—Price Negotiation

#### 5315.890 Formula pricing agreements (FPA).

#### 5315.890-1 Description.

Formula pricing agreements (FPAs), sometimes referred to as spare parts pricing agreements, set forth a pricing methodology and the specific rates and factors to be used when pricing items covered by the FPA. An FPA differs from a Forward Pricing Rate Agreement (FPRA) in that an FPA addresses a pricing methodology limited to a specific group of items and its use by different buying activities is optional; whereas FPRAs are generally limited to agreements on individual rates or factors (including Cost Estimating Relationships (CERs)), apply to many items, and are required to be used by all buying activities. Any pricing agreement made with a contractor shall be considered to be an FPA if it contains the following features:

(a) The agreement governs the pricing methodology of more than one future contract action and identifies the category(s) of purchases to be covered (for example, F-100 replenishment spares).

(b) The pricing agreement is expressed in terms which specify the direct cost inputs and the rates and/or factors to be applied to identified bases plus profit or fee.

#### 5315.890-2 Policy.

FPAs should be established as necessary to ease negotiation of large numbers of contract actions and reduce administrative costs and lead time. However, FPAs shall only be negotiated with contractors having a significant volume of Government business and application normally shall be limited to acquisitions under $100,000. FPAs anticipating individual acquisitions over $100,000, shall be approved by the HCA and shall specifically establish the maximum dollar amount for an acquisition priced using the FPA. Proposals received above $100,000 must be submitted with an SF 1411 and a certificate of current cost or pricing data. All FPAs shall—

(a) Be in writing and signed by a contracting officer;

(b) Only be negotiated with contractors who are under Government in-plant contract administration cognizance and have a resident DCAA auditor. (This requirement may be waived with HCA approval);

(c) Not cover cost elements, such as those portions of direct labor and material costs which require discrete estimating and analysis;

(d) Identify all rates/factors that are a part of the FPA; however, the FPA may reference a FPRA(s) as long as the agreement prescribes the effect and treatment of changes in the FPRA;

(e) Provide specific terms and conditions covering expiration date, application, and data requirements (e.g. actual cost data) for systematic

monitoring to assure the continuing validity of the agreement;

(f) Provide for cancellation at the option of either party;

(g) Require the contractor to submit to the contracting officer, and to the cognizant contract auditor, any significant change in cost or pricing data, estimating system, or accounting system and its impact on the FPA;

(h) Require the contractor to identify the FPA and the date of the latest certification of cost or pricing data supporting the FPA in each specific pricing proposal where the formula is used. The contractor shall also be required to identify those items that were not priced with the formula if they are commingled in a proposal that contains items priced with the formula;

(i) Provide that the FPA shall not be used if the contractor's purchasing, estimating, or accounting system are disapproved by the Government;

(j) Provide that the contracting officer, or designated representative, may perform detailed cost or price analysis on random samples of proposed items and/or those items that have units which are significantly higher than previous buys;

(k) Be supported by certified cost or pricing data in accordance with FAR 15.804, including the submission of a signed certificate of current cost or pricing data at the time agreement is reached on the FPA (and on an annual basis thereafter), and shall provide that contractual documents for items priced using the FPA, shall include the clause at FAR 52.215–22, "Price Reduction for Defective Cost or Pricing Data;"

(l) Provide that the price of individual contract actions priced under the FPA shall be adjusted if—

(1) It is found that the cost or pricing data supporting the FPA was not accurate, current, or complete;

(2) The contractor fails to comply with 5315.890–2(g); or

(3) The price was developed through incorrect application of the FPA;

(m) Provide that individual contract actions priced using the FPA shall contain a clause incorporating the FPA by reference; and

(n) Be based on a pricing methodology that ensures that unit prices are in proportion to the item's base cost (see FAR 15.812).

**5315.890–3 Responsibilities.**

(a) Major commands shall—

(1) Establish appropriate approval level for FPAs;

(2) Maintain a list of FPAs which identifies the company and group of items to be purchased;

(3) Conduct periodic reviews of FPAs and contract actions priced using FPAs; and

(4) Establish agreements with other DOD agency contract administration offices to provide field pricing support, negotiation support, and administrative support of Air Force negotiated FPAs.

(b) Air Force contract administration offices shall—

(1) Comply with the requirements of 5315.890–3(c) for those FPAs negotiated by the administrative contracting officer (ACO) for their own use;

(2) Make any FPA negotiated by the ACO available to any other buying activity for their use;

(3) Provide field pricing support to contracting officers in the evaluation of FPAs;

(4) Participate in the negotiation of FPAs;

(5) Notify the contracting officer, who negotiated the FPA, when conditions arise that may affect the FPA's validity; for example, changes to an FPRA, disapproval of a contractor's purchasing system, and so forth. When appropriate, recommend the FPA be cancelled and renegotiated;

(6) Periodically validate the contractor's compliance with the FPA; and

(7) Monitor rates and factors incorporated into each FPA.

(c) Contracting officers shall—

(1) Be responsible for the negotiation of the FPA and ensure that it complies with the requirements contained in 5315.890–2 (this responsibility may be delegated to the ACO);

(2) Obtain field pricing support, including contract audit and technical reviews, in the evaluation of FPAs;

(3) Prepare a price negotiation memorandum covering the pricing factors used in the FPA;

(4) Request CAO participation in negotiations;

(5) Semi-annually, through the ACO, request the DCAA resident auditor to determine if the contractor is complying with the FPA procedures;

(6) Annually, review the FPA to determine its validity by evaluating recorded cost data, and renegotiate the FPA if appropriate;

(7) Determine the effect of changed conditions that may affect an FPA's validity, cancel FPAs when appropriate, and notify all interested parties upon cancellation of the FPA;

(8) Not use an FPA that has been cancelled;

(9) At a minimum, conduct the following evaluation of each proposal generated under an FPA;

(i) Determine the applicability of the FPA to the items proposed.

(ii) Determine the reasonableness of direct cost inputs to the formula.

(iii) Determine the reasonableness of any non-covered cost proposed, such as nonrecurring costs.

(iv) Compare prices generated by the FPA to prior prices, government estimates, PR estimates, to ensure reasonableness. The existence of an FPA does not relieve the contracting officer from the responsibility of assuring that a price is fair and reasonable;

(10) Conduct detailed cost analysis on random samples of proposed items and/or those items that have unit prices which are significantly higher than previous buys;

(11) Ensure that individual contract actions priced using the FPA comply with the terms of the FPA; and

(12) Comply with 5315.905–1(b)(7)(C) when pricing an undefinitized contractual action using an FPA.

5315.890–4 FPAs negotiated by other DOD agencies. FPAs negotiated by other agencies shall not be used by any Air Force activity unless they comply with the requirements in 5315.890–2.

**Patsy J. Conner,**

*Air Force Federal Register Liaison Officer.*

[FR Doc. 87–8492 Filed 4–15–87; 8:45 am]

BILLING CODE 3910–01–M

## INTERSTATE COMMERCE COMMISSION

### 49 CFR Part 1244

**[Ex Parte No. 385 (Sub-No. 2)]**

### Procedures on Release of Data From the ICC Waybill Sample

**AGENCY:** Interstate Commerce Commission.

**ACTION:** Final rules.

**SUMMARY:** These final rules set forth procedures concerning the type of data and information that may be obtained from the "ICC Waybill Sample." (49 CFR Part 1244). They establish specific guidelines for the release of waybill data according to five classes of users, and formalize notice and protest procedures for the possible release of waybill data to other users to protect against inappropriate release of confidential data. These rules, with some refinements, essentially adopt the policy of the Office of Transportation Analysis for handling waybill requests. (48 FR 40328, September 6, 1983). They also expand the content of the Commission's Public Use File. In addition, they include procedures for filing complaints for confidentiality

violations, aggregating shipper waybill data, and filing waybill data requests.

**EFFECTIVE DATE:** May 18, 1987.

**FOR FURTHER INFORMATION CONTACT:**
James A. Nash, Tel: (202) 275–6864
or
Elaine K. Kaiser, (202) 275–7003

**SUPPLEMENTARY INFORMATION:** On January 8, 1986 we proposed rules concerning the release of waybill data from the ICC Waybill Sample. 51 FR 767. Comments on the proposed rules were due on February 24, 1986. On February 27, 1986, we granted an extension of time to file comments pursuant to a request by the Association of American Railroads (AAR).

Additional information is contained in the Commission's decision. To purchase a copy of the full decision, write to T.S. InfoSystems, Inc., Room 2229, Interstate Commerce Commission Building, Washington, DC 20423, or call 289–4357 (DC Metropolitan area).

This action will not significantly affect either the quality of the human environment or energy conservation. This action will not have a significant economic impact on a substantial number of small entities nor increase the compliance burden on regulated carriers or members of the public who have an interest in these proceedings.

**List of Subjects in 49 CFR Part 1244**

Railroads and reporting and recordkeeping requirements.

(49 U.S.C. 10303, 10321, 10709, 11144, 11145 and 5 U.S.C. 552 and 553)

Decided: March 31, 1987.

By the Commission, Chairman Gradison, Vice Chairman Lamboley, Commissioners Sterrett, Andre, and Simmons.

Noreta R. McGee,

*Secretary.*

## PART 1244—[AMENDED]

Title 49, Part 1244 will be amended to read as follows:

1. The authority citation for Part 1244 is revised to read as follows:

Authority: 49 U.S.C. 10303, 10321, 10709, 11144, 11145; 5 U.S.C. 522 and 553.

2. Section 1244.8 is added to read as follows:

**§ 1244.8 Procedures for the release of waybill data.**

(a) *General.* The procedures for the release of waybill data identify five classes of users of the ICC Waybill Sample, define the waybill information or data that each class of users may obtain, and set forth the applicable requirements for the data's release. They also formalize notice and protest procedures for the possible release of waybill data to other users to protect against the inappropriate release of confidential data. The Director of the Office of Transportation Analysis shall be responsible for releasing waybill data in accordance with these procedures.

(b) *Class of user, available data, and applicable release requirements.*—(1) *Railroads.* Each requesting railroad may obtain any waybill record from the ICC Waybill Sample covering traffic that originated, terminated, or was bridged by that railroad. The railroad shall not have access to waybill data pertaining to traffic in which it did not participate. Also, it must meet all ICC and legal requirements concerning release of shipper information in accordance with 49 U.S.C. 11910(a).

(2) *Federal agencies.* Each requesting Federal agency (including quasi-governmental agencies) may obtain any waybill record from the ICC Waybill Sample subject to the following requirements:

(i) The Federal agency shall make the information contained in the ICC Waybill Sample available only to its employees or those contractors working on the particular project or study requiring the waybill data.

(ii) The Federal agency will ensure that railroads and shippers are afforded the same privilege and protection against disclosure of the waybill data as the Commission provides.

(iii) The Federal agency will not release any data to the public unless the data elements are aggregated to contain at least three shippers and to prevent identification of an individual railroad.

(iv) The Federal agency will refer any requests for waybill data and accompanying documentation to the ICC for processing and will so inform the requesting party of such referral to the Commission.

(v) The Federal agency must sign an agreement annually with the Commission agreeing to these restrictions.

(3) *States.* Each requesting State may obtain any waybill record pertaining to traffic that was originated, terminated, interchanged in, or that passed through its State subject to the same requirements imposed on federal agencies under paragraphs (b)(2)(i) through (v) of this section.

(4) *Transportation practitioners, consulting firms, and law firms—specific proceedings.* Transportation practitioners, consulting firms and law firms may use data from the ICC Waybill Sample in preparing verified statements to be submitted in formal proceedings before the ICC and/or State Commissions (Commission) subject to the following requirements:

(i) The ICC Waybill Sample is the only single source of the data or obtaining the data from other sources is burdensome or costly, and the data is relevant to issues pendng before the Commission.

(ii) The requestor submits to the ICC a written waybill request that complies with § 1244.8(e).

(iii) All waybill data must be returned to the ICC, and the firm must not keep any copies.

(iv) A transportation practitioner, consulting firm, or law firm must submit any evidence drawn from the ICC Waybill Sample to the Commission only unless the evidence is aggregated to the level of at least three shippers and will prevent the identification of an individual railroad. Nonaggregated evidence submitted to the Commission will be made part of the public record only if the Commission finds that it does not reveal competitively sensitive data. However, evidence found to be sensitive may be provided to counsel or other independent representatives for other parties subject to the usual and customary protective order issued by the Commission or appropriate authorized official.

(v) For each Commission proceeding, a firm must sign a confidentiality agreement with the ICC agreeing to the above restrictions before any data will be released. This agreement will permit use of the released data for a period of one year from the date the agreement is signed by the user. If the data is required for an additional period of time because a proceeding is still pending before the Commission, the firm must sign a new confidentiality agreement covering the data needed for each additional year the proceeding is opened.

(5) *Public use.* Nonconfidential waybill data may be obtained from the "Public Use Waybill File". Reports produced from the Public Use Waybill File may be used, published, or released. The Public Use Waybill File contains the following nonconfidential items:

(i) Waybill Date (Month, Day, Year).
(ii) Accounting Period (Month, Year).
(iii) Number of Carloads.
(iv) Car Ownership (Rail or Private).
(v) AAR Car Type.
(vi) AAR Mechanical Designation.
(vii) ICC Car Type.
(viii) TOFC/COFC Plan.
(ix) Number of TOFC/COFC Units.
(x) TOFC/COFC Unit Ownership.
(xi) TOFC/COFC Unit Type (Trailer or Container).

(xii) Hazardous/Bulk Material in Box Car Flag.
(xiii) Commodity Code—Excluding STCC 49/50 (All 5 digit STCC Codes, except STCC 19).
(xiv) Billed Weight in Tons.
(xv) Actual Weight in Tons.
(xvi) Linehaul Freight Revenue.
(xvii) Transit Revenue.
(xviii) Miscellaneous Revenue.
(xix) Interstate/Intrastate Code.
(xx) Type of Move (Import/Export/Minibridge).
(xxi) All Rail/Intermodal Code.
(xxii) Type Move Via Water.
(xxiii) Outbound Transit Code.
(xxiv) Substituted Truck for Rail Service.
(xxv) Rebill Code.
(xxvi) Estimate of Miles.
(xxvii) Stratum Identification.
(xxviii) Replicate Number.
(xxix) Population Count/Strata Count (expansion factor).
(xxx) Theoretical Expansion Factor.
(xxxi) Number of Interchanges.
(xxxii) Origin BEA (omitted if STCC and BEA pair reveals competitively sensitive shipper data).
(xxxiii) Origin ICC Rate Territory.
(xxxiv) States of Interchanges (first through ninth).
(xxxv) Termination BEA (omitted if STCC and BEA pair reveals competitively sensitive shipper data).
(xxxvi) Termination ICC Rate Territory.
(xxxvii) Waybill Reporting Period Length.
(xxxviii) AAR Provided UMBLER Data.
(xl) Bad Routing Code.
(xli) Miscellaneous Factored Expanded Data (e.g., carloads).

(c) *Other Users.* (1) Users other than those described in paragraphs (b)(1) through (b)(5) of this section may file written requests in accordance with paragraph (e) of this section for permission to use data from the ICC Waybill Sample.

(2) All written requests filed by such users are subject to the notice and protest procedures described in paragraph (d) of this section.

(d) *Notice and protest procedures for waybill requests by other users.* Railroads and shippers will be notified and afforded the opportunity to protest waybill requests filed by users other than those described in paragraphs (b)(1) through (b)(5) of this section in accordance with the following procedures:

(1) *Notice of request for confidential waybill data.* Affected railroads and shippers will receive notice by **Federal Register** Publication. If railroad specific or shipper specific data are requested, those parties will be given written notice of the request.

(2) *Form of notice.* The notice shall identify the parties requesting the data; describe the type of waybill data requested; and state the purpose for which the data is requested. The notice shall include a statement that parties seeking information concerning the filing of objections should refer to Ex Parte No. 385 (Sub-No. 2), 49 CFR 1224.8, or contact the Interstate Commerce Commission's Office of Transportation Analysis.

(3) *Objections to release.* (i) Objections to release of the confidential waybill data must be filed by the railroad and/or shipper no later than 14 calendar days from publication of the notice in the **Federal Register.**

(ii) An original and 3 copies of each objection shall be filed with the Director, Office of Transportation Analysis, Interstate Commerce Commission, Washington, DC 20423.

(iii) The objection shall identify the parties seeking the confidential waybill data, reiterate the purpose for which the data is sought, and state all grounds for objection to full or partial disclosure of the requested data.

(4) *Commission determination.* (i) The Director of the Office of Transportation Analysis will consider all objections in determining whether to release the requested waybill data. Each railroad or shipper who filed objections will be sent written notice of the Director's decision not less than 14 calendar days prior to the disclosure date.

(ii) The Commission reserves the right to deny the release of waybill data although no objections may be filed.

(iii) Appeals must be filed with the Chairman within 10 days of the date of the Director's decision. Responses to appeals must be filed within 10 days thereafter (49 CFR 1011.7(b)(1)). The filing of an appeal will automatically stay the effect of the Director's decision.

(e) *Content of waybill requests.* (1) All requestors under paragraphs (b)(4) and (c) of this section shall include the following information:

(i) A complete and detailed explanation of the purpose for which the requested data are needed.

(ii) A description of the specific waybill data or fields actually required (including pertinent geographic areas).

(iii) A detailed justification as to why the specified waybill data are needed.

(2) An original and 2 copies of the waybill request shall be filed with the Director, Office of Transportation Analysis, Interstate Commerce Commission, Washington, DC 20423.

(f) Aggregation of confidential shipper data.

(1) Any shipper data obtained from the Waybill Sample shall not be publicly released unless the data are aggregated to include at least three shippers.

(2) To aggregate the waybill data to the level of three shippers, the three-FSAC Rule shall be used. Under this rule, there must be at least three different freight stations as identified by the Freight Station Accounting Code (FSAC) on one railroad or there must be at least two more FSAC's than there are railroads present in the waybill data being aggregated.

(3) The three-FSAC Rule shall apply to every number and calculation publicly released.

(4) The Director of OTA will consider requests to apply an alternative aggregation method provided the requestor establishes that a particular project necessitates an alternative approach and that approach effectively protects the identity of individual shippers.

(g) *Complaint procedures.* (1) Complaints for alleged breaches of confidentiality or misuse of confidential waybill data must include the following:

(i) Identification of all known parties involved in the alleged violation.

(ii) The approximate date(s) of the alleged violations.

(iii) A full and detailed description of the alleged violation.

(iv) A description of any resulting harm to the complainant.

(2) Prior to filing a complaint, a complainant, upon written request, may obtain a copy of the incoming waybill request and the applicable confidentiality agreement. This request must identify the party involved, give the approximate date the data was released, briefly describe the alleged violation, and substantiate the need for this information for purposes of filing a complaint.

(3) An original and three (3) copies of the complaint shall be filed with the Director, Office of Transportation Analysis, Interstate Commerce Commission, Washington, DC 20423. A copy of the complaint shall also be served on the alleged violator(s).

(4) An answer must be filed within 20 days after service of the complaint.

(5) All parties will be notified in writing of the Director's decision. If the Director determines that a violation has occurred, the offending parties will be denied access to the waybill sample for a period of time commensurate with the nature of the violation.

(6) Appeals to the Director's determination shall be filed in accordance with paragraph (d)(4)(iii) of this section.

(h) *Munitions shipments.* All waybill requests for munition data at the 3-digit Standard Transportation Commodity Code (STCC) level or greater will be forwarded by the ICC to the Department of Defense's Military Traffic Management Command (MTMC). The ICC will not release this type of information without MTMC's consent.

**Attachment—Data Elements Contained in Master Waybill File**

Note: The following attachment will not be published in the Code of Federal Regulations.

The Master Waybill File contains the following items:

Serial Number
Waybill Number
Waybill Date
Accounting Month & Year (Machine Readable Input (MRI) only)
Number of Cars on Original Waybill Document
Car Initial & Number
Origin Railroad & Station Number (FSAC)
Termination Railroad & Station Number (FSAC)
Transit Flag
Interstate/Intrastate Flag
All Rail/Intermodal Flag
Import/Export Flag
Rebill Flag
Commodity Code Including STCC49 (Hazardous Materials Code)
Waybill Weight (Hundred-Weight)
Freight Revenue on Original Document
TOFC Plan—First Field
TOFC Plan—Second Field
Number of Trailers/Containers
Trailer/Container Initial & Number
Actual Weight
Transit Charges
Miscellaneous Charges
Sample Strata
Subsample Replicate Number
Railroad Waybill ID (MRI Only)
Reporting Railroad
Origin Standard Point Location Code
Origin Rate Area
Origin Rate Territory
Termination Standard Point Location Code
Termination Rate Area
Termination Rate Territory
Short Line Miles (9999 if Unknown)
Car Type
Tons—Computed from Original Weight
Expansion Factor
Local or Route Code
Junction Frequency
First to Ninth Junction Stations
First to Eight Junction Railroads
STCC Commodity Code Without STCC49 (Hazardous Material Codes)
Princeton Rail Network Model Junction Points
Cars—Factored by Strata
Net Tons—Factored by Strata
Total Revenue—Factored by Strata
Trailer Count—Factored by Strata
Route Segment Distances (Up to ten segments)
Total Distance (99999 if Unknown)
Factored Revenue for Each Segment (Up to ten segments)
Error Codes (Flags Placed by Waybill Edit Programs)
First Route Segment Distance
Second Route Segment Distance
Third Route Segment Distance
Fourth Route Segment Distance
Fifth Route Segment Distance
Sixth Route Segment Distance
Seventh Route Segment Distance
Eighth Route Segment Distance
Ninth Route Segment Distance
Tenth Route Segment Distance
Factored Revenue, Segment 1
Factored Revenue, Segment 2
Factored Revenue, Segment 3
Factored Revenue, Segment 4
Factored Revenue, Segment 5
Factored Revenue, Segment 6
Factored Revenue, Segment 7
Factored Revenue, Segment 8
Factored Revenue, Segment 9
Factored Revenue, Segment 10
AAR Provided UMLER Data

The ICC may add, delete, or revise items from this list as necessary.

[FR Doc. 87-8554 Filed 4-15-87; 8:45 am]
BILLING CODE 7035-01-M

# Proposed Rules

Federal Register
Vol. 52, No. 73
Thursday, April 16, 1987

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

### Food and Nutrition Service

### 7 CFR Part 220

### School Breakfast Program; Nutritional Improvements and Offer Versus Serve

**AGENCY:** Food and Nutrition Service, USDA.

**ACTION:** Proposed rule.

**SUMMARY:** This rule proposes to revise the breakfast meal pattern for the School Breakfast Program to Implement several provisions of the School Lunch and Child Nutrition Amendments of 1986. This rule proposes to require that cereal fortified to at least 25 percent of the United States Recommended Dietary Allowance for iron per 1 ounce or ¾ cup be offered daily in the School Breakfast Program. This rule also proposes to allow schools, at the discretion of the local School Food Authority, to permit students participating in the School Breakfast Program to refuse *one food item* of a four food item breakfast that they do not intend to eat. To retain the nutritional integrity of the breakfast, this rule proposes to limit the offer versus serve option to those schools offering an extra bread/bread alternate food item. This rule is expected to improve the nutritional quality of breakfasts offered under the program while maintaining local flexibility in meal service.

**DATE:** Comments must be received or postmarked no later than June 15, 1987.

**ADDRESS:** Comments should be sent to: Cynthia Ford, Chief, Technical Assistance Branch, Nutrition and Technical Services, Food and Nutrition Service, United States Department of Agriculture, Alexandria, Virginia 22302.

**FOR FURTHER INFORMATION CONTACT:** Ms. Ford at the above address, or phone (703) 756–3556.

**SUPPLEMENTARY INFORMATION:**

#### Classification

This proposed rule has been reviewed under Executive Order 12291 and has been classified as not major because it does not meet any of the three criteria identified under the Executive Order. This action will not have an annual effect on the economy of $100 million or more, nor will it result in major increases in costs or prices for consumers, individual industries, Federal, State or local government agencies, or geographic regions. Furthermore, it will not have significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

This rule has been reviewed with regard to the requirements of the Regulatory Flexibility Act (5 U.S.C. 601 through 612). The Administrator of the Food and Nutrition Service has certified that this rule will not have a significant economic impact on a substantial number of small entities.

The School Breakfast Program is listed in the Catalog of Federal Domestic Assistance under No. 10.553 and is subject to the provisions of Executive Order 12372 which require intergovernmental consultation with State and local officials (7 CFR Part 3015, Subpart V and 48 FR 29112, June 24, 1983).

No new data collection or recordkeeping requiring Office of Management and Budget (OMB) approval under the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 through 3520) are included in this proposed rule. The School Breakfast Program requirements have been approved by OMB (OMB No. 0584–0012).

#### Background

Schools participating in the School Breakfast Program are required to serve breakfasts which meet specified nutritional standards in order to be eligible to receive Federal reimbursement. Section 220.8 of program regulations requires that each breakfast served to pre-school and school age children include, at a minimum, food items representing each of three food components (milk, fruit/vegetable, and bread/bread alternate) in specified quantities.

More specifically, each breakfast served to school age children is required to contain at least the following food items in the quantities indicated:

(1) One-half pint of fluid milk served as a beverage or on cereal or used in part for each purpose; and

(2) One-half cup of fruit or vegetable or both, or full strength fruit or vegetable juice; and

(3) One slice of whole-grain or enriched bread, or an equivalent serving of cornbread, biscuits, rolls, muffins, etc. made of whole-grain or enriched meal or flour, or ¾ cup (volume) or 1 ounce (weight), whichever is less, of whole grain cereal or enriched or fortified cereal or an equivalent quantity of any combination of these foods.

Program regulations also require that, to the extent practicable, breakfasts for children over 1 year of age contain meat or meat alternates such as a one ounce serving of meat, poultry, or fish; or one ounce of cheese; or one egg; or two tablespoons of peanut butter; or an equivalent quantity of any combination of any of these foods. Also, since May 7, 1986 (51 FR 16807) nuts and seeds and their butters have been allowed as meat alternates.

In 1979, the Department began a national evaluation of the School Lunch, School Breakfast, and Special Milk Programs in order to determine whether the nutritional objectives of the programs were being satisfied. The "National Evaluation of School Nutrition Programs" compared National School Lunch Program participants who participated in the School Breakfast Program to others who did not participate in the School Breakfast Program and concluded the following:

(1) The breakfast served in the School Breakfast Program is superior to home breakfasts for milk related nutrients (protein, calcium, magnesium and phosphorus).

(2) The school breakfast provides significantly less iron, vitamin A, vitamin $B_6$, niacin and thiamin than home breakfasts.

(3) Over 24 hours, the intake of problem nutrients by School Breakfast Program participants differs from students having home breakfast only by having significantly higher calcium intakes.

#### Congressional Concerns

*Nutrition*

The findings of this study sparked congressional concern regarding the nutritional quality of the breakfasts

served under the School Breakfast and Child Care Food Programs. In the recently enacted School Lunch and Child Nutrition Amendments of 1986, as included in Pub. L. 99–500 and Pub. L. 99–591, Congress directed the Department to review and revise the nutritional requirements for breakfasts served under the School Breakfast and Child Care Food Programs to improve their nutritional quality.

Section 330 of Pub. L. 99–500 and Pub. L. 99–591 requires improvements in the nutritional quality of the meals, ". . . taking into consideration both the findings of the National Evaluation of School Nutrition Programs and the need to provide increased flexibility in meal planning to local food authorities." To this end, in the same legislation, Congress increased by 3 cents the payment for each reimbursable breakfast served under each program. Notice of the 3 cent increase in per breakfast reimbursement was published in the **Federal Register** on January 20, 1987 (52 FR 2122).

*Offer Versus Serve*

Section 331 of Pub. L. 99–500 and Pub. L. 99–591 amended section 4(e) of the Child Nutrition Act of 1966 (42 U.S.C. 1773(e)) to extend the offer versus serve option to the School Breakfast Program. New paragraph (e)(2) states: "At the option of a local school food authority, a student in a school under the authority that participates in the school breakfast program under this Act may be allowed to refuse not more than one item of a breakfast that the student does not intend to consume. A refusal of an offered food item shall not affect the full or reduced price charge to the student for a breakfast meeting the requirements of this section or the amount of payments made under this Act to a school for the breakfast."

**Considerations in the Improvement of Nutritional Quality**

By the time of enactment of the School Lunch and Child Nutrition Amendments of 1986, the Department had already undertaken a review of the nutritional quality of school breakfasts. A reanalysis of data from the National Evaluation of School Nutrition Programs provided more direct information by studying all foods eaten in the morning before classes start. Also, the analysis methods used to separate School Breakfast Program effects from other variables were improved. The results of this study, "The Dietary Impacts of the School Breakfast Program" confirmed the earlier findings of significantly higher calcium intake and lower iron intake at breakfast for School Breakfast participants. It was also found that over 24 hours intake of certain nutrients, including iron, vitamin $B_6$ and magnesium, was low for both breakfast program participants and non-participating schoolchildren. School Breakfast Program participation was also associated with reduced cholesterol intake, but there was no significant difference in the proportions of protein, fat and carbohydrate due to program participation.

Based on a review of these findings, the Department concluded that, most Importantly, the iron content of program breakfasts needs to be increased. An additional 4.6 milligrams of iron per week is needed to raise the iron content of program breakfasts to the level of home breakfasts. Although there are many sources from which children receive this additional iron at home, the major source is from eating fortified cereal in large amounts and more frequently than is served at school.

Iron can also be found in meat and in some meat alternates. At this time, a meat or a meat alternate continues to be recommended for the breakfast program. Including a requirement for a meat or a meat alternate could improve the iron provided by the breakfast, depending on the items served.

Whole-grain and enriched grain products (breads or bread alternates such as pancakes, cereals, etc.) provide another source of iron. However, whole-grain and enriched breads and cereals in most cases provide less than 1 milligram of iron per serving.

Therefore, the Department is conoentraing on fortified cereal as the most accessible and affordable source of iron for the breakfast meal. Cereals that are fortified (primarily cereals eaten cold), generally are fortified to a level of at least 25 percent of the United States Recommended Dietary Allowance (U.S. RDA) per ounce for major nutrients, including iron. Twenty-five percent of the U.S. RDA for iron is 4.5 milligrams. School Breakfast Program participants now average about two servings of cereal (all types) per week. In other words, one additional serving of iron fortified cereal per week would provide almost exactly the amount of iron sought. Further, fortified cereals also provide substantial amounts of Vitamin $B_6$, Vitamin A, and magnesium which are the other nutrients for which the school breakfast was found to be low.

Some cereals are highly fortified, up to 45 percent or even 100 percent of the U.S. RDA per ounce for major nutrients. These highly fortified cereals are allowed, but the Department believes that, if consumed frequently, cereal fortified to at least 25 percent of the U.S. RDA for iron is sufficient to provide the level of iron needed to improve the breakfast meal pattern. Consequently, the Department proposes that each school day, cereal fortified to at least 25 percent of the U.S. RDA for iron per 1 ounce of ¾ cup be *offered* to students as a breakfast item. Other choices of breakfast items may also be offered at local discretion.

The Department considered requiring that fortified cereal be served as the bread/bread alternate daily; however, such a change was considered restrictive and deviates from any previous meal pattern requirement by requiring the service of one particular food item rather than a general food component. While it is generally agreed that daily consumption of fortified cereals would improve the nutrient content of the breakfast, it is believed that to serve only cereal is contrary to good nutrition education. It is also contrary to current menu planning guidance which recommends serving a variety of foods. Further, such an approach might also have a negative effect upon program participation.

Consideration was also given to requiring that *only* fortified cereal be served as the bread/bread alternate 2 or 3 days a week. In other words, schools would have "cereal-only days" on which students would automatically be served cereal. However, the Department was concerned that the program might still tend to become a "cereal-only program." Since it could be easier for local districts to plan cereal 5 days a week to regulate food production schedules, it was felt that incentives to offer choices and innovative breakfast programs might diminish.

**Considerations in the Implementation of Offer Versus Serve**

Given congressional concerns regarding improvements in the nutritional quality of the breakfast program, the Department is proposing implementation of the offer versus serve option within parameters designed to support efforts to improve the nutritional contribution of the meal.

If the Department were to allow the offer versus serve option with the currently required three food item breakfast, the nutritional quality of the breakfasts would be seriously jeopardized. A child could elect to decline one of the three food times, thereby, reducing the breakfast to as little as one slice of toast and ½ pint of milk. This would contravene the intent of Congress. Clearly Congress did not provide an additional 3 cents per

breakfast reimbursement for a meal which is lower nutrients and which costs less to produce than the current breakfast pattern.

For these reasons, the Department is proposing to limit the offer versus serve option to those schools which offer a minimum of four food items, i.e. three food items from the required three food component breakfast plus an extra bread/bread alternate food item. Whole-grain, fortified and enriched grain products are low cost sources of iron. Compared to the milk, fruit/vegetable, and optional meat/meat alternate components, a second offering of whole wheat toast or fortified cereal is relatively inexpensive. This approach would most effectively address both the nutritional as well as cost concerns. Further, it should not contribute significantly to plate waste. The school breakfast studies conducted by the Department indicated that older boys who eat dry cereal at home eat twice as much as they currently receive at school; younger children eat 1½ times as much at home. Cooked cereal is eaten in even larger quantities at home than in school; almost all age groups eat at least twice as much at home. The bread or toast ratio is not as great, but even those items are eaten in greater quantities at home by all age groups.

### Summary of School Breakfast Program Proposals

Based on the reasons stated above, the Department is proposing to revise the School Breakfast Program meal pattern requirements to require that cereal fortified to at least 25 percent of the U.S. RDA for iron per 1 ounce or ¾ cup by *offered* daily. This approach is believed to be consistent with the objective of increasing iron without overly increasing costs. Further, this approach is expected to provide participating students with an additional choice of food items from which they may select their breakfast meal since many schools will frequently offer another breakfast choice. Commenters will note that the minimum serving sizes remain unchanged for all age/grade groups.

This rule also proposes to allow school food authorities to authorize the offer versus serve option in only those schools offering two food items from the bread/bread alternate component. One of the offered bread/bread alternate food items must be iron-fortified cereal. The second bread/bread alternate may also be cereal or may be any of the other bread/bread alternate food items. Students participating in the program in such schools may be allowed to refuse not more than one item from any food component of the breakfast that the student does not intend to consume. Acceptance of all four food items or refusal of one offered food item is not to affect the price of the lunch.

Several technical amendments are also proposed in this rule. A breakfast meal pattern table replaces paragraphs (a)(1), (b)(1) and (b)(3) of § 220.8. The table updates existing requirements to include the proposed provisions and is expected to clarify the meal pattern requirements. In addition, the regulatory language, including the newly added table, is revised to include the provisions of the recently issued final rule which allows nuts and seeds and nut or seed butters to be used as meat alternates (51 FR 16807) in the National School Lunch Program. While the provisions of that rule were administratively extended to cover the breakfast program, no regulatory changes were made in Part 220 at that time since the service of meat/meat alternates in the breakfast program is a recommendation, not a requirement.

### Child Care Food Program

The Department will address the Child Care Food Program separately.

### List of Subjects in 7 CFR Part 220

Food assistance programs, School Breakfast Program, Grant programs-social programs, Nutrition, Children, Reporting and recordkeeping requirements, Surplus agriculture commodities.

Accordingly, 7 CFR Part 220 is proposed to be amended as follows:

## PART 220—SCHOOL BREAKFAST PROGRAM

1. The authority citation for Part 220 continues to read as follows:

**Authority:** Secs. 4 and 10, 80 Stat. 886, 889 (42 U.S.C. 1773, 1779), unless otherwise noted.

2. In § 220.8:

a. Paragraph (a) is revised.

b. Paragraphs (b)(1) and (b)(3) are removed.

c. Introductory paragraph (b)(2) and paragraphs (b)(2)(i), (b)(2)(ii), and (b)(2)(iii) are redesignated as introductory paragraph (b) and paragraphs (b)(1), (b)(2), and (b)(3) respectively.

The revisions specified above read as follows:

### § 220.8 Requirements for breakfast.

(a) *Minimum required breakfast quantities.* Except as otherwise provided in this section, and in any appendix to this part, schools shall ensure that each breakfast eligible for Federal cash reimbursement is served with the objective of providing the per breakfast minimums for the age and grade levels specified in the following table:

SCHOOL BREAKFAST MEAL PATTERN

| Food components/items | Preschool | | Grades K-12 |
|---|---|---|---|
| | Ages 1 and 2 | Ages 3 to 6 | |
| **Required Minimum Servings** | | | |
| Milk (fluid milk as a beverage, on cereal, or both). | ½ cup | ¾ cup | ½ pint. |
| Fruit/vegetable: | | | |
| Fruit or vegetable or both or full-strength fruit juice or vegetable juice. | ¼ cup | ½ cup | ½ cup. |
| Bread/bread alternate (one of the following or an equivalent combination—except that each day a serving of iron-fortified cereal must be offered): | | | |
| Iron-fortified cereal (25% of the U.S. RDA for iron per 1 ounce or ¾ cup). | ¼ cup volume or ⅓ oz weight. | ⅓ cup volume or ½ oz weight. | ¾ cup volume or 1 oz weight. |
| Cereal (whole-grain or enriched or fortified). | ¼ cup volume or ⅓ oz weight. | ⅓ cup volume or ½ oz weight. | ¾ cup volume or 1 oz weight. |
| Bread (whole-grain or enriched) | ½ slice | ½ slice | 1 slice. |
| Biscuit, roll, muffin, cornbread, etc. (whole-grain or enriched meal or flour). | ½ serving | ½ serving | 1 serving. |
| **Servings To Increase Nutritional Value Required as Often as Practicable** | | | |
| Meat/meat alternate (one of the following or a combination): | | | |
| Meat, poultry, or fish | 1 oz | 1 oz | 1 oz. |
| Cheese | 1 oz | 1 oz | 1 oz. |
| Egg | 1 | 1 | 1 |
| Peanut butter or other nut or seed butters. | 2 tbsp | 2 tbsp | 2 tbsp. |
| Nuts and/or seeds | 1 oz | 1 oz | 1 oz. |

(1) *Iron fortified cereal requirement.* To improve the iron content of breakfasts offered under the program for participating children over 1 year of age, on a daily basis schools shall offer iron-fortified cereal i.e., cereal fortified to at least 25 percent of the United States Recommended Dietary Allowance (U.S. RDA) for iron per 1 ounce or 3/4 cup.

(2) *Meat/meat alternate recommendation.* To improve the nutrition of the participating children over 1 year of age, breakfast shall also include, as often as practicable, meat or meat alternate such as a one ounce serving (edible portion as served) of meat, poultry, or fish; or one onuce of cheese; or one egg; or two tablespoons of peanut butter or other nut or seed butters; or one ounce of nuts and/or seeds as defined in program guidance; or an equivalent quantity of any combination of any of these foods. To avoid choking, nuts or seeds served to children under 5 years of age should be ground or finely chopped and incorporated into foods.

(3) *Offer versus serve.* At the option of the school food authority, each school offering students two food items from the bread/bread alternate component may allow participating students to refuse not more than one food item, from any component, that the student does not intend to consume. At least one of the offered bread/bread alternative items shall be the iron-fortified cereal specified under paragraph (a) (1) of this section. No school food authority may claim reimbursement for breakfasts served which contain less than three food items. A student's decision to accept all four food items decline one of the four food items shall not affect the charge for the breakfast.

* * * * *

Dated: April 10, 1987.

**S. Anna Kondratas,**

*Acting Administrator.*

[FR Doc. 87-8514 Filed 4-15-87; 8:45 am]

BILLING CODE 3410-30-M

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## Food Safety and Inspection Service

### 9 CFR Parts 307 and 308

**[Docket No. 82-008P]**

## Safety and Sanitation Requirements for Electrical Stimulating Equipment

**AGENCY:** Food Safety and Inspection Service, USDA.

**ACTION:** Proposed rule.

**SUMMARY:** This is a proposed rule that would amend the Federal meat inspection regulations to specify safety and sanitation requirements for electrical stimulating (EST) equipment. Federally inspected establishments may use EST equipment to accelerate rigor mortis in slaughtered meat animals (cattle, sheep, swine, goats, horses, mules or other equines). The safety requirements would protect inspection personnel working near that equipment from the hazard of potentially lethal electric shock or other injury. The sanitation requirements would prevent adulteration of the carcasses.

**DATE:** Comments must be received on or before June 12, 1987.

**ADDRESS:** Written comments to: Policy Office, Attn: Annie Johnson, Room 3803, South Building, Food Safety and Inspection Service, U.S. Department of Agriculture, Washington, DC 20250. (See also "Comments" under Supplementary Information.)

**FOR FURTHER INFORMATION CONTACT:** Mr. Bartie T. Woods, Jr., Director, Facilities, Equipment and Sanitation Division, Meat and Poultry Inspection Technical Services, Food Safety and Inspection Service, U.S. Department of Agriculture, Washington, DC 20250, (202) 447-5627.

**SUPPLEMENTARY INFORMATION:**

### Executive Order 12291

This proposed rule conforms to Executive Order 12291 and is designated a "non-major" rule. It will not result in an annual effect on the economy of $100 million or more. There will be no major increase in costs or prices for consumers, individual industries, Federal, State or local government agencies, or geographic regions. It will not have a significant effect on competition, employment, investment, productivity, or the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

This proposal would make existing guidelines on the safe use and appropriate sanitation of EST equipment mandatory. Any resulting costs would be voluntarily assumed by individual processing plants which determine that the use of EST equipment is economically feasible.

### Effect on Small Entities

The Administrator has made an initial determination that this proposed rule 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 *et seq.*). If adopted this proposal would serve to codify current provisions for the safe and sanitary use of all EST equipment.

There are currently approximately 2000 low voltage units in operation which may have to be modified under the proposed regulation. Consultation with the Occupational Safety and Health Administration (OSHA), National Electrical Code (NEC) members and the National Aeronautics and Space Administration (NASA) has produced a Department position on EST equipment. The Department believes that even though the more recent EST equipment operates at a lower voltage, it represents a reduced but still unacceptable hazard unless the equipment's use is regulated. This is consistent with both the NEC and NASA position. Therefore, this proposal applies to all EST equipment.

To meet the proposed safety requirements, stimulator manufacturers have estimated a one-time cost of not more than $5000. The estimated costs would include any necessary equipment modifications, and purchase and installation of the safety devices and signals. Costs could be less than $5000, as they would vary for each establishment, and would depend on the type of equipment and safety features currently in place. FSIS believes that barriers, warning devices and signals for EST equipment not already in voluntary compliance with FSIS guidelines are necessary to provide Federal inspectors adequate safety. Although FSIS has no record of any injuries to Federal inspectors since EST equipment was first approved in 1979, the Agency believes that the potential hazards to inspectors justify preventative regulatory action. FSIS is interested, however, in any suggestions that commenters may have on alternative approaches that may promote inspector safety less expensively or more effectively.

### Comments

Interested persons are invited to submit written comments concerning this proposal. Send comments in duplicate to the Policy Office and refer to the docket number that appears in the heading of this document. The public may inspect all comments in the Policy Office between 9:00 a.m. and 4:00 p.m., Monday through Friday.

### Background

The Department reviews the equipment used in official establishments to ensure its use will not render meat and meat food products adulterated within the meaning of the Federal Meat Inspections Act (FMIA) (21 U.S.C. 601(m)). The equipment must not pose a safety hazard to Department

employees and must be constructed of acceptable materials.

Electrical stimulating equipment consists of two separate pieces—the control system and the applicator. The EST control system contains the circuitry to generate pulsed DC or AC voltge for stimulation. The applicator delivers the voltage to the carcass. The voltage can be applied by inserting a probe that penetrates the carcass or is inserted in the rectum, placing a clamp in the nose, a carcass rub-bar, a conveyor with energized surfaces traveling with the carcass or any other method approved by the Administrator.

EST equipment is used to apply a pulsating direct or alternating electrical current to the livestock carcass. This pulsating current hastens certain chemical reactions in the muscle tissues producing a stiffening of the muscles known as rigor mortis. Without electrical stimulation, rigor mortis may not occur for eight hours or more after death. With electrical stimulation, the time may be as short as one hour.

If meat is chilled or frozen before the onset of rigor mortis, a toughening of the muscle tissue known as "cold shortening" may occur. "Cold shortening" may not be important if the meat is to be ground, but it would be economically important if the meat were to be used as steaks, chops or roasts where taste and palatability is important.

The proven effect of the use of EST equipment is acceleration of rigor mortis, but research is continuing on other possible effects. Some researchers[1] claim that EST releases natural proteolytic enzymes which chemically tenderize the meat. Other researchers claim that electrical stimulation mechanically tenderizes meat by breaking muscle bonds. Additional claims have been made that electrical stimulation reduces shrinkage, accelerates the visibility of marbling, prevents a type of discoloration known as "heat ring," improves the color of the meat, and increases the chill rate.

*Food Additive Status Concerning the Use of EST Equipment*

Prior to drafting this proposal, the Department consulted with the Food and Drug Administration (FDA) because of that Agency's authority under the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 301 *et seq.*) to determine the safety of food additives. FDA was asked if food additive clearance would be required because of the chemical changes that result in carcasses when electrical stimulation occurs.

The Director of the then Bureau of Foods, FDA, (now the Center for Food Safety and Applied Nutrition FDA), concluded that the available data did not suggest that meat from electrically stimulated carcasses had ". . . a chemical composition significantly different than meat traditionally consumed." The Director also stated, "It would be difficult to design definitive experiments that would show a chemical composition outside the range normally encountered with meat of the same type. Results of any studies that would be developed would likely be inconclusive. . . ." In response to assertions that use of the process represents a generally recognized as safe (GRAS) situation, the Director stated, "Based on the facts before us, we do not contest such a judgment." The Department concurs in this determination.

*Approved EST Equipment Now in Use; Potential Hazard*

The Department has approved 15 EST systems made by six manufacturers for use in official establishments. There are two general types of systems: (1) Manually operated for use in small plants; and (2) automatic for stimulating more than one carcass at a time up to approximately 350 per hour. Both types of systems apply pulses of direct or alternating current to the carcasses through electrodes. Stimulation of each carcass may last from 10 seconds to 3 minutes. The proposed rule is consistent with existing guidelines used by the Department to review this equipment and its safe operation.[2]

To date, the approved voltage varies from 10 to 600. The high voltage electrical stimulators operate at a voltage between 500 and 600 which presents potentially lethal electrical shock hazards. This concern resulted in the development of later models that operated below 50 volts. Approval by FSIS of the use of below 50 volts EST equipment in establishments was based in part on earlier discussions with electrical safety personnel in the Occupational Safety and Health Administration and the interpretation of provisions in the National Electrical Code. The NEC is the nationally accepted minimum electrical construction standard.

At the time of initial approval of high voltage EST equipment, the use of below 50 volts EST equipment did not appear to pose a significant threat to human safety and would not require shock hazard protection. However, Underwriters Laboratory, a recognized national standards organization, has cited research stating that 0.5 percent of the population would be unable release from contact with an electrode emitting 10.5 volts alternating current. As the electrical voltage increases, a progressively larger segment of the population becomes unable to release from this contact. The wet conditions prevalent in the slaughterhouse environment increase the likelihood and seriousness of electrical shock. After discussions with NEC specialists, it has been determined that exposure to any voltage may be unsafe. In addition, the National Aeronautics and Space Administration (NASA) conducted extensive testing of the effect of voltage in sensing bodily functions of astronauts in space, and NASA determined that exposure to very low voltage levels can be hazardous to humans. Therefore, exposure to any unprotected stimulating voltage cannot be permitted. This proposal provides safety requirements needed to eliminate or minimize the possibility of electrical shock to Federal inspectors.

*Sanitary Considerations in the Installations and Use of EST Equipment*

EST may be conducted at any of three stages during the slaughtering operation: (1) Before hide removal (after or during bleeding, but before any other cuts have been made in the hide, except foot removal); (2) after hide removal and before evisceration; or (3) after removal of both the hide and viscera.

When electrical stimulation is used before hide removal, the electrodes should be designed so that the hide is not penetrated. Hide penetration will force surface contamination from the hide into tissue. If hide penetration occurs, the penetrated tissue must be trimmed during the dressing operation. Expulsion of feces, ingesta, and/or urine before hide removal will not cause contamination because the hide protects the edible parts of the carcass.

If EST equipment is used or applied to a carcass after the hide is removed, the electrodes must be disinfected after each use to prevent the transfer of contaminants to the next carcass.

EST voltage causes strong muscle contractions in the carcass. For those carcasses that have not been eviscerated, contraction of the abdominal muscles may force the

[1] Articles are available for viewing at the Policy Office, Room 3803, South Building, Food Safety and Inspection Service, U.S. Department of Agriculture, Washington, DC 20250.

[2] Written guidelines are available from the Facilities, Equipment and Sanitation Division, Meat and Poultry Inspection Technical Services, U.S. Department of Agriculture, Washington, DC 20250, (202) 447-5627.

expulsion of feces from the rectum and/or urine from the bladder and/or contents from the stomach which will contaminate edible tissue. There are several alternatives to prevent contamination: (1) Leave the sphincter muscles intact so they will contract during stimulation and provide a natural barrier; (2) cut the rectum and the urethra free from surrounding tissue and securely tie them off to prevent leakage; (3) partially open the mid-line and/or saw the brisket to reduce pressure on the visceral organs; or (4) use any other pressure-relieving or discharge-restricting alternatives that are acceptable to the Administrator. Alternatives should be presented in writing, through the inspector-in-charge, to the Program for approval.

Some early EST equipment was used on partially skinned carcasses. This proved to be insanitary. Dirt from the flopping hide contaminates the exposed surfaces of the carcass when the carcass is stimulated and muscle contractions occur. Consequently, EST equipment may not be used on partially skinned carcasses.

*Safety Consideration in the Installation and Use of EST Equipment*

Under the FMIA (21 U.S.C. 621 *et seq.*) and its regulations, the Administrator must provide a safe workplace for Federal inspectors. To avoid conflicting or inconsistent regulatory requirements, the Department consulted with officials of OSHA to develop appropriate safety procedures. The Director of Federal Compliance and State Programs, OSHA, concurred in the safety procedures set forth in this proposal. A directive reflecting these procedures was issued by OSHA and forwarded to all national, regional, and area OSHA offices. However, this proposed rule would not preclude any rulemaking that OSHA may find necessary.

The proposed safety provisions are designed to and would protect Department inspectors who are exposed to EST equipment from potentially lethal electrical shock and from being struck by a carcass while it is undergoing the violent contractions caused by the electrical current. These safety provisions are basic electrical safety provisions adapted to the slaughterhouse environment.

**Compliance with the National Electrical Code**

The circuit grounding and electrical source provisions were developed with the assistance and concurrence of some manufacturers of EST equipment and are consistent with the National Electrical Code. These provisions are designed to and would minimize the possibility of electric shock to personnel.

Stimulating Area

Use of electrical stimulating equipment must occur in an area that will prevent persons from contacting an energized surface. This area may be enclosed by either physical, sound or light barriers. If the area is surrounded by physical barriers, the barriers must be either electrically grounded or they must be made of materials that do not conduct electricity. The interior of the stimulating area must be visible from the start switch so that the operator can be assured that there is nothing or no one present that should not be there before the equipment is started. An enclosure formed completely or partially by sound or light barriers must automatically shut off EST equipment when the sensor signals are interrupted or broken.

Warning Devices and Signals

At each opening to the stimulating area through which a person would normally enter, the following warning devices must be installed. These warning devices or signals are designed to attract attention and to alert persons to an electrical hazard or dangerous situation.

1. Flashing Red Light—Installation and use of a red light that flashes a distinct warning during the equipment operating cycle.

2. Warning Signs—Warning signs reading "Danger Electrical Hazard" for posting with use of low voltage equipment and "Danger High Voltage" for posting with use of high voltage equipment. The Occupational Safety and Health Administration requires that warning signs follow American National Standards Institute (ANSI) standard Z53.1-Color Code which prescribe the wording, color and size of lettering needed to attract attention to the sign's message. These signs must be posted conspicuously at eye level, between 4½–5½ feet high, to have the maximum warning effect.

3. Emergency Stop Button—By their nature, emergency stop buttons are noticeable and can be easily operated in case of equipment malfunction or sudden hazard.

4. Original Warning Horn—A warning horn may be installed in or near the stimulating area. Installation and use of a warning horn is optional, but, if used, the signal must be loud enough to be distinctly heard above all background noises. The horn signal must sound for at least one second before each manual stimulation or before the carcass chain is started in an automatic system to provide an adequate warning.

**Provisions for Manually Operated Equipment**

When EST equipment is not in use, stimulating probes or clamps must be disinfected and stored in a sanitary insulated container. Storage of the probes or clamps in an insulated container will prevent any accidental contact with the stimulating surface and will keep the probes or clamps sanitary.

To minimize the possibility of electric shock to personnel, the length and location of electric wires attached to a clamp or probe must reduce the likelihood of contact between the probe or clamp and an electrical ground and must not extend outside the enclosure.

**The Proposal**

The Department is proposing to revise Parts 307 and 308 of the Federal meat inspections regulations (9 CFR Parts 307 and 308) by adding two new §§ 307.7 and 308.16, to the current regulations. These new sections address the safety and sanitation requirements for electrical stimulating equipment.

**List of Subjects**

*9 CFR Part 307*

Equipment and official establishments.

*9 CFR Part 308*

Equipment and sanitation.

Accordingly, Parts 307 and 308 of the Federal meat inspection regulations would be amended by adding two new §§ 307.7 and 308.16.

## PART 307—[AMENDED]

1. The authority citation for Part 307 continues to read as follows:

**Authority:** 41 Stat. 241, 7 U.S.C. 394; 34 Stat. 1264, as amended; 21 U.S.C. 621; 62 Stat. 334; 21 U.S.C. 695.

2. Part 307 would be amended by adding a new § 307.7 to read as follows:

**§ 307.7 Safety requirements for electrical stimulating (EST) equipment.**

(a) *General.* Electrical stimulating (EST) equipment is equipment that provides electric shock treatment to carcasses for the purposes of accelerating rigor mortis. Electrical stimulating equipment consists of two separate pieces—the control system and the applicator. The EST control system contains the circuitry to generate pulsed DC or AC voltage for stimulation and is separate from the equipment used to apply the voltage to the carcass. The

voltage is applied by inserting a probe that penetrates the carcass or is inserted in the rectum, placing a clamp in the nose, a carcass rub-bar, a conveyor with energized surfaces traveling with the carcass, or any other method approved by the Administrator. The Administrator shall approve the use of any EST equipment before it is installed in an official establishment as set forth under § 308.5 of this chapter.

(b) *Safety Requirements*—(1) *Circuits, grounding.* Either a bonded grounding conductor shall lead from each section of the carcass rail within the stimulating enclosure to the service ground, or the secondary voltage (stimulating circuit) shall be insulated from the service ground. If the stimulating section of the carcass rail and carcass drive mechanisms are insulated from the service ground then the stimulating rail or the return path shall be electrically bonded to the transformer secondary to isolate the stimulation voltage.

(2) *Enclosure.* Electrical stimulation shall occur in an area that will prevent persons from contacting an energized surface. If the area is surrounded by physical barriers, the enclosure shall be either electrically grounded or it shall be made of materials that do not conduct electricity. The interior of the stimulating area shall be visible from the start switch so the operator can be assured that there is no person, equipment or material present that should not be there prior to starting the stimulation sequence. If light or sound beam sensors form the enclosure, the stimulating equipment shall be automatically shut off when the sensor signals are broken.

(3) *Mandatory Warning Divices and Signals.* The following warning devices or signals shall be installed at each opening to the stimulating area through which a person would normally enter:

(i) A red light that flashes distinctly during the operating cycle of the stimulating equipment.

(ii) An ANSI Z53.1-Color Code conventional sign reading (a) "Danger Electrical Hazard" for stimulating voltage below 50 or (b) "Danger High Voltage" for stimulating voltage above 50.

(iii) An emergency stop button.

(4) *Optional Warning Device—Horn.* If a warning horn is installed, the signal shall be distinctly audible above background noises in the vicinity, and it shall sound for at least 1 second before each manual stimulation or before the carcass chain is started in an automatic system.

(c) *Operation—(1) Training.* Only persons who have received safety instruction by the equipment manufacturer or designee may operate electrical stimulating equipment.

(2) *Cleaning amd Maintenance.* To prevent an electrical shock to personnel, the electricity supplied to the stimulating surfaces shall be locked-off when cleaning, mechanical inspection, maintenance and testing are performed.

(3) *Water.* To prevent an electrical shock, personnel shall not spray streams of water on energized carcasses or on energized stimulating surfaces.

(d) Special provisions for manually operated equipment.

(1) After use, stimulating probes or clamps shall be disinfected and stored in a sanitary, insulated container.

(2) The length and location of electric wires attached to a clamp or probe shall reduce the likelihood of contact between the probe or clamp and an electrical ground and shall not extend outside the enclosure.

## PART 308—[AMENDED]

3. The authority citation for Part 308 continues to read as follows:

**Authority:** 34 Stat. 1260, 79 Stat. 903 as amended, 81 Stat. 584, 84 Stat. 91, 438; 21 U.S.C. 71 *et seq.*, 601 *et seq.*, 33 U.S.C. 1254.

4. Part 308 would be amended by adding a new § 308.16 to read as follows:

**§ 308.16 Sanitation requirements for electrical stimulating equipment.**

(a) *Hide-on stimulation.* Automatic and manually operated equipment may be used to apply electrical stimulation to the hide-on surface of slaughtered carcasses provided no opening cuts other than the stick wound or foot removal have been made in the carcass. If the hide is penetrated by electrodes, the penetrated tissue shall be trimmed. Disinfection of electrodes between each carcass stimulation is not necessary.

(b) *Hide-off stimulation.* (1) Automatic or manually operated equipment may be used to apply electrical stimulation to carcasses after complete hide removal. Partially skinned carcasses shall not be stimulated.

(2) The carcass contact surfaces of the equipment shall be disinfected before stimulation of each carcass.

(3) In the event that carcass contact surfacers cannot be cleaned and disinfected between carcass stimulations, those surfaces shall be immediately removed from exposed carcass contact and cleaned and disinfected before carcass contact is resumed.

(c) *Preventing product contamination.* Carcass contamination of edible tissue by stomach contents, feces and/or urine is unacceptable. To prevent such occurrences, any of the following optional procedures may be used before stimulation to eliminate this contamination:

(1) Leave the sphincter muscles intact;

(2) Cut the rectum and the urethra free from surrounding tissue and securely tie each off;

(3) Partially open the mid-line and/or saw the brisket to reduce pressure on the visceral organs; or

(4) Any other pressure-relieving or discharge-restricting alternative acceptable to the Administrator. Alternatives should be presented in writing, through the inspector-in-charge, to the Program for approval.

(d) *Cleaning.* All equipment must be thoroughly cleaned at least daily.

Done at Washington, DC on: April 13, 1987.

**Donald L. Houston,**

*Administrator, Food Safety and Inspection Service.*

[FR Doc. 87–8599 Filed 4–15–87; 8:45 am]

BILLING CODE 3410–DM–M

## FEDERAL HOME LOAN BANK BOARD

## 12 CFR PART 522

**[No. 87–386]**

## Indemnification of Directors, Officers and Employees of Federal Home Loan Banks

Dated: April 1, 1987.

**AGENCY:** Federal Home Loan Bank Board.

**ACTION:** Proposed rule and solicitation of comment.

**SUMMARY:** The Federal Home Loan Bank Board ("Board") is proposing to amend its regulations governing the indemnification of directors, officers, and employees of the Federal Home Loan Banks ("FHLBanks" or "Banks"). This amendment would clarify that expenses incurred by FHLBank directors, officers, and employees in connection with litigation are to be reimbursed as they are incurred, but that, by majority vote of it broad of directors, a FHLBank could require repayment of expenses that it finds to have been beyond the scope of the Board's indemnification regulation.

**DATE:** Comments must be received on or before June 15, 1987.

**ADDRESS:** Send comments to Director, Information Services Section, Office of the Secretariat, Federal Home Loan Bank Board, 1700 G Street, NW., Washington, DC 20552. Comments will be available for inspection at this address.

**FOR FURTHER INFORMATION CONTACT:** Karen Knopp O'Konski, (202) 377–7240, Deputy Director, Division of Regulations and Legislation, Office of General Counsel, at the above address.

**SUPPLEMENTARY INFORMATION:** The Board's regulations governing the FHLBank System contain a provision requiring each FHLBank to indemnify any current and former director, officer, or employee for expenses that person incurs as a result of litigation brought or threatened against him or her because of his or her position in the FHLBank. 12 CFR 522.72(b). The indemnification is unconditional if the director, officer, or employee wins a final favorable judgment on the merits of the suit. 12 CFR 522.72(c)(1). Certain conditions apply in cases where the suit concludes with settlement, final judgment against the director, officer, or employee, or final judgment in that person's favor other than on the merits. 12 CFR 522.72(c)(2). In such cases, indemnification depends on a finding by a majority of the FHLBank's directors that the person "was acting in good faith within the scope of his employment or authority as he could reasonably have perceived it under the circumstances and for a purpose he could reasonably have believed under the circumstances was in the best interest of the Bank or its members." *Id.* Moreover, notice of the board of directors' intent to indemnify in such cases must be served on the Board, which then may object to the indemnification *Id.* When indemnification is proper, it includes any amount that the director, officer, or employee must pay as a result of a judgment in the action and "reasonable costs and expenses, including reasonable attorney's fees. . . ." 12 CFR 522.72(b).

The indemnification rule also contains a provision governing payment of expenses. In pertinent part, this section permits a majority of the Bank's directors to authorize payment of reasonable costs and expenses, including reasonable attorney's fees, if the majority "concludes that any person *may ultimately become entitled to indemnification*" under the rule. 12 CFR 522.72(e) (emphasis supplied). In the Board's view,the italicized language is properly interpreted to mean that, in an appropriate case, the Bank may reimburse a director, officer, or employee for expenses in advance of the conclusion of the litigation, that is, as those expenses are incurred. *See* 46 FR 63833 (Dec. 30, 1981) (payment of litigation expenses of Federal Home Loan Bank officers, directors, and employees). It has, however, come to the Board's attention that the language of paragraph (e) admits the possibility that a majority of a Bank's directors could withhold reimbursement during the progress of the litigation even where the majority had concluded that the person seeking indemnification was likely to fall within the scope of the rule.

This possibility has caused concern within the FHLBank System because of its potential adverse consequences for directors, officers, or employees who could be required to deplete their own resources even though they might finally obtain an indemnification payment at the conclusion of the case. The Board recognizes that the cost of litigation can be exorbitant, particularly when the suit continues for months or years. Moreover, the Board believes that the possibility of a large personal financial loss may prompt directors, officers, and employees to leave the FHLBank System, and may discourage talented and qualified persons from seeking to join it. Therefore, the Board is proposing to amend its indemnification rule to clarify that, in an appropriate case, the FHLBank pay litigation expenses as they are incurred. The rule's current language defining what is an appropriate case would remain unchanged; an appropriate case is one in which "a majority of the directors of a Bank concludes that . . . any person ultimately may become entitled to indemnification" under the rule. 12 CFR 522.72(e). However, to protect directors against the possibility that a disinterested majority of directors may in a particular case be unable to so conclude as to utimate indemnification, today's proposal would add a new sentence to the regulation requiring that in any case involving a director such expenses be paid as they are incurred. Finally, today's proposal would permit the Bank to require a director, officer, or employee to repay expenses that the Bank has reimbursed if a majority of its directors subsequently determines that the expenses fall beyond the scope of the indemnification rule. The Board solicits comment on all aspects of this proposal and invites suggestion of any alternative or variation which might better achieve the purposes of the proposal as described above.

The Board believes that this proposed rule does not come within the scope of the Administrative Procedure Act's notice and comment provisions because it applies only to FGHLBank personnel and affects only FGHLBank's internal operations. *See* 5 U.S.C. 553(a), (b)(3)(A). Nonetheless, the Board finds that the public interest would best be served by providing an opportunity for public comment on the action it is contemplating. The Board is allowing 60 days for comment on the proposal.

### Initial Regulatory Flexibility Analysis

Pursuant to section 3 of the Regulatory Flexibility Act, 5 U.S.C. 603, the Board is providing the following regulatory flexibility analysis:

1. *Need for and objectives of the rule.* These elements are incorporated above in **SUPPLEMENTARY INFORMATION.**

2. *Small entities to which the rule applies.* This rule applies only to directors, officers, and employees of the FGHLBanks, none of which falls within the definition of a "small financial institution" given by the Small Business Administration.

3. *Impact of the rule on small entities.* See item 2, above.

4. *Overlapping or conflicting federal rules.* There are no known federal rules that duplicate, overlap, or conflict with this rule.

5. *Alternatives to the proposed rule.* As mentioned above, the Board invites comment on such alternatives.

### List of Subjects in 12 CFR Part 522

Conflict of interests, Federal home loan banks.

Accordingly, the Board hereby proposes to amend Part 522, Subchapter B, Chapter V, Title 12, Code of Federal Regulations as set forth below.

## SUBCHAPTER B—FEDERAL HOME LOAN BANK SYSTEM

## PART 522—ORGANIZATION OF THE BANKS

1. The authority citation for Part 522 continues to read as follows:

**Authority:** Sec. 5B, 47 Stat. 727, as added by sec. 4, 80 Stat. 824, as amended (12 U.S.C. 1425b); secs. 6–7, 47 Stat. 727, 730, as amended (12 U.S.C. 1426–1427); sec. 17, 47 Stat. 736, as amended (12 U.S.C. 1437); sec. 5, 48 Stat. 132, as amended (12 U.S.C. 1464); secs. 402–403, 407, 48 Stat. 1256–1257, 1260, as amended (12 U.S.C. 1725–1726, 1730); sec. 207, 62 Stat. 692, as added by sec. 1a, 76 Stat. 1123, as amended (18 U.S.C. 207); sec. 602, 92 Stat. 2115, as amended (42 U.S.C. 8101 *et seq.*) Reorg. Plan No. 3 of 1947, 12 FR 4981, 3 CFR, 1943–48 Comp., p. 1071; Reorg. Plan No. 6 of 1961, *reprinted ion* 12 U.S.C.A. 1437 App. (West Supp. 1986).

### § 522.72 [Amended]

2. Amend § 522.72 by removing from the first sentence of paragraph (e) the word "may" after the phrase "the directors" and inserting, in lieu thereof, the word "shall"; by removing the period at the end of the first sentence of paragraph (e) and inserting therein the clause ", as they are incurred,"; and by

adding the following two sentence immediately before the last sentence of paragraph (e): "A bank shall in any case pay such expenses incurred by a director or former director of the Bank as they are incurred. The Bank may require repayment of expenses reimbursed pursuant to this paragraph if a majority of its directors determines that the expenses are not within the indemnification authorized by § 522.72."

By the Federal Home Loan Bank Board.

Jeff Sconyers

*Secretary.*

[FR Doc. 87-8581 Filed 4-15-87; 8:45 am]

BILLING CODE 6720-01-M

## NATIONAL CREDIT UNION ADMINISTRATION

### 12 CFR Part 705

### Community Development Revolving Loan Program for Credit Unions

**AGENCY:** National Credit Union Administration (NCUA).

**ACTION:** Proposed rule.

**SUMMARY:** This proposed regulation establishes a revised program under which loans from the Community Development Credit Union Revolving Loan Fund will be made to participating credit unions. The proposed regulation sets forth, among other things, the scope and purpose of the program, application procedures, types of activities participating credit unions will perform, and how loans will be made and collected under the program.

**DATE:** Comments must be received on or before June 17, 1987.

**ADDRESS:** Send comments to Becky Baker, Acting Secretary, NCUA Board, National Credit Union Administration, 1776 G Street, NW., Washington, DC 20456.

**FOR FURTHER INFORMATION CONTACT:** Hattie Ulan, Staff Attorney, NCUA, Office of General Counsel, at above address, or telephone: (202) 357-1030; or Harry Blaisdell, Special Assistant to Board Member, NCUA, at above address, or telephone: (202) 357-1100.

**SUPPLEMENTARY INFORMATION:**

#### Background

In 1979, Congress appropriated $6,000,000 to the Community Development Credit Union Revolving Loan Fund. In 1980, the NCUA issued a regulation in conjunction with the Community Services Administration implementing the revolving fund program. (See 45 FR 15171, March 10, 1980.) The regulation was codified in 12 CFR 705. In 1981, Congress passed the Omnibus Budget Reconciliation Act and transferred the authority for implementation of the Community Development Credit Union Revolving Loan Fund from the Community Services Administration to the Secretary of Health and Human Services. In 1983, the Department of Health and Human Services issued a new regulation implementing the program. (See 48 FR 53560, November 28, 1983.) The regulation was codified at 45 CFR Part 1076 and applied to loans made after November 23, 1983. In November of 1986, Congress transferred the Community Development Credit Union Revolving Loan Fund and the authority to administer the Fund to the NCUA. Hence, this proposed regulation is being promulgated.

The purpose of the Program is to make reduced rate loans to both federally- and state-charted credit unions serving low income communities so that those credit unions may provide needed financial services and help to stimulate the economy in the communities served. Credit Unions need not be federally insured to participate in the Program. The Program is neither a start-up program nor a remedial program for problem credit unions. Rather, it is for established, financially sound credit unions that wish to increase member services in their communities.

Currently, Part 705 of the NCUA Regulations is entitled "Community Development Credit Union Program." Credit unions participating in the program have been referred to as community development credit unions or CDCU's. This name has caused some confusion due to the fact that many credit unions that have not participated in the program are members of a trade association called the National Federation of CDCU's. All references to CDCU's have been eliminated in the proposed regulation. The proposed regulation is entitled "Community Development Revolving Loan Program for Credit Unions" (Program). Credit unions taking part in the Program are referred to in the proposed regulation as "participating credit unions." This change should clarify any confusion caused in the past.

#### Analysis of the Proposed Rule

Most of the proposed regulation is self-explanatory. However, this section of the supplementary information will provide a summary of each section of the regulation. Comments are welcome and requested on any aspect of the proposed regulation.

*Section 705.0—Applicability*

This proposed regulation, when finalized, will only apply to loans made after its effective date. Loans made under current Part 705 of NCUA's Rules and Regulations (only two loans outstanding) and those loans made under 45 CFR Part 1076 of the Department of Health and Human Services will continue to be subject to those regulations.

*Section 705.1—Scope*

This section states that the Community Development Revolving Loan Program for Credit Unions is now under the sole administration of the NCUA. It also sets forth the major provisions of the regulation.

*Section 705.2—Purpose of the Program*

The purpose of the Program is to make loans to participating credit unions to enable them to provide basic financial and related services and to stimulate economic activities in the communities they serve.

*Section 705.3—Definitions*

Two definitions are set forth. First, a "participating credit union" is defined. In order to participate in the Program, a credit union must, among other things, be a community credit union, and must serve predominantly low income members as defined in the NCUA regulations (excluding student credit unions) for FCU's. (See section 700.1(h) and (i) of NCUA Rules and Regulations, 12 CFR 700.1(h) and (i).) State-chartered credit unions must obtain a similar designation from their state supervisor. If a similar designation is unavailable from the state supervisor, NCUA will make such determination during the application process (see section 705.5). The second term defined is "loans." According to the definition, NCUA will make a determination as to whether the participating credit union will record the loan as a note payable or as a nonmember deposit. Under the HHS regulation in effect for most of the outstanding monies in the Program, a loan is defined as a loan or nonmember deposit (see 45 CFR 1076.60-3(b). Federal credit unions (FCU's) interested in participating in the Program should be aware that they may only borrow up to 50 percent of their paid-in unimpaired capital and surplus, from all sources. (See section 107(9) of the FCU Act, 12 U.S.C. 1757(9).) If the loan is recorded as a note payable, this limitation will apply. State-chartered credit unions should consult the state act under which they operate to determine if a similar restriction applies. Comment is

specifically requested on whether Program funds received by participating credit unions should be recorded as a note payable, a nonmember deposit or either one at NCUA's option.

*Section 705.4—Program Activities*

This section sets forth various activities that a participating credit union shall and may provide to its members. A participating credit union must provide basic member share account and loan services. Additional activities that a participating credit union may provide are also listed in this section.

*Section 705.5—Application for Participation*

This section sets forth the application procedures for those credit unions wishing to participate in the Program. Section 705.5(b)(3) requires that applicant credit unions be designated as both low income and community credit unions. Such designations are made by the NCUA for FCU's. If the designations are unavailable from the state supervisor for state-chartered credit unions, the determination will be made by NCUA using the same standards applied to FCU's. All applicant credit unions must maintain their community and low income designations even if changes in their field of membership are made.

*Section 705.6—Community Development Committee*

This section sets forth the requirement that credit unions participating in the Program have a Community Development Committee. The committee serves as a liaison with the community and determines the types of services needed in the community that the credit union may be able to provide. The Community Development Committee shall report annually to the credit union membership, either at the credit union's annual meeting or in a written report distributed to all members. Credit unions may also wish to post the committee's report in the credit union.

*Section 705.7—Loans to Participating Credit Unions*

Loans to participating credit unions will be made up to $200,000. Loan funds must be matched dollar for dollar by the participating credit union. Matching has historically been an important aspect of the Program. The matching requirement will enable participating credit unions to strengthen their capital base and provide increased services to their membership. If the matching requirement is not met dollar for dollar, but at least twenty-five percent of the match is made, the loan will be reduced to the amount of the match. If less then twenty-five percent of the match is met, NCUA may require immediate and full repayment of the loan.

The term of a loan shall not exceed five years. Interest and principal payments will be made semiannually. The interest rate on loans made to participating credit unions will be adjusted semiannually and will be at a rate of four points below the average of the ninety-day Treasury bill with a two percent floor. There is no maximum cap on the interest rate. NCUA requests comment on whether the monies received as interest payments on loans should be used to provide technical assistance to participating credit unions and what types of technical assistance participating credit unions might desire. This section also addresses default. Of course, all loan terms will be set forth in the loan agreement entered into between the participating credit union and the NCUA.

*Section 705.8—State Chartered Credit Unions*

This section states that state-chartered credit unions must have the approval of their state supervisor in order to participate in the Program. State-chartered credit unions must meet all other requirements set forth in this regulation. Although language does not appear in the proposed regulation, comment is requested on whether nonfederally-insured state-chartered participating credit unions should be subject to NCUA examination to ensure compliance with this regulation.

*Section 705.9—Application Period*

Comment is requested on how long the application period for Program participation should remain open. After an initial set of loans is made and a substantial repayment is made back to the revolving fund, a new application period will open. Notification of new application periods will be published in the **Federal Register.**

**Regulatory Procedures**

*Regulatory Flexibility Act*

The NCUA Board has determined and certifies that the proposed amendments, if adopted, will not have a significant economic impact on a substantial number of small credit unions. The proposed rule will affect only a small number of credit unions and will not impose an additional burden on them. Accordingly, the Board has determined that a Regulatory Flexibility Analysis is not required.

*Paperwork Reduction Act*

The proposed regulation does contain two collection of information requirements. Proposed section 705.5 contains the application procedures for a credit union wishing to participate in the Program. Section 705.6(a)(2) contains the requirement that participating credit unions develop a community needs plan.

These collection requirements will be submitted to the Office of Management and Budget for review under the Paperwork Reduction Act. Written comments and recommendations regarding the collection requirements should be forwarded directly to the OMB Desk Officer indicated below at the following address: OMB Reports Management Branch, New Executive Office Building, Room 3208, Washington, DC 20503, ATTN: Robert Neal.

**List of Subjects in 12 CFR Part 705**

Credit unions, Community development revolving loan program.

By the National Credit Union Administration Board, this 9th day of April, 1987.

**Becky Baker,**

*Acting Secretary of the Board.*

Accordingly, NCUA proposes to revise Part 705 of its regulations as follows:

**PART 705—COMMUNITY DEVELOPMENT REVOLVING LOAN PROGRAM FOR CREDIT UNIONS**

Sec.



**Authority:** Public Law 97–35, 95 Stat. 498; Pub. L. 99–609 (H.R. 5554).

**§ 705.0 Applicability.**

Monies from the Community Development Revolving Loan Fund for Credit Unions obligated after [effective date of final rule] are governed by this regulation.

**§ 705.1 Scope.**

(a) This Part implements the Community Development Revolving Loan Program for Credit Unions (Program) under the sole administration of the National Credit Union Administration.

(b) This Part establishes the following:

(1) Definitions;

(2) The application process for participation in the program;

(3) Requirements for program participation;

(4) How loan funds are to be made available and their repayment.

**§ 705.2 Purpose of the program.**

The Community Development Revolving Loan Program for Credit Unions is intended to support the efforts of participating credit unions through loans to those credit unions in:

(a) Providing basic financial and related services to residents in their communities; and

(b) Stimulating economic activities in the communities they service which will result in increased income, ownership and employment opportunities for low income residents, and other community growth efforts.

**§ 705.3 Definitions.**

(a) *Participating credit union.* For purposes of this Part, a state- or federally-chartered community credit union that is specifically involved in stimulation of economic development activities and community revitalization efforts aimed at benefitting the community it serves; that meets the defninitions of predominantly low income as found in § 700.1(h) and (i) of the NCUA Regulations, excluding § 700.1(h)(4); or applicable state standards; and has submitted an application and has been selected for participation in the Program in accordance with this Part.

(b) *Loans.* For purposes of this Part, a loan made by NCUA from the Community Development Revolving Loan Fund for Credit Unions to a participating credit union up to the amount of $200,000. At the discretion of NCUA, such loans will be recorded by the participating credit union as a note payable or as a nonmember deposit.

**§ 705.4 Progam activities.**

In order to meet the objectives of the Program, a credit union applicant must provide a variety of financial and related services designed to meet the particular needs of the low income community served. These activities shall include basic member share account and member loan services. In addition, these activities may include, but are not limited to, the following:

(a) Member services, including:

(1) Financial counseling;

(2) Consumer education programs;

(3) Home owner counseling;

(4) Check cashing;

(5) Money orders;

(6) Bill paying services; and

(7) Direct deposit of recurring payments.

(b) Increased membership and capitalization activities, including:

(1) Membership drives;

(2) Systematic savings plans;

(3) Encouraging community organizations to open and increase share accounts.

**§ 705.5 Application for participation.**

(a) Application to participate in the Program shall be submitted to:

National Credit Union Administration, Community Development Revolving Loan Program For Credit Unions, 1776 G Street, NW., Washington, DC 20456.

(b) The application shall contain the following information:

(1) Information demonstrating a sound financial position and the credit union's ability to manage its day-to-day business affairs. Credit unions shall submit the following for the most recent month-end and each of the twelve months perceding that month-end:

(i) Balance sheet;

(ii) Income and expense statement;

(iii) Delinquent loan list.

(2) Evidence that the credit union has a need for increased funds in order to improve financial services to its members.

(3) The following information concerning the credit union's field of membership:

(i) Current field of membership as set forth in the credit union's charter establishing it as a community-based credit union;

(ii) Changes, if any, to be made to the field of membership for participation in the Program, including:

(A) Evidence of approval of change by credit union board of directors;

(B) Evidence of submission and approval of change by either NCUA Regional Director or State Supervisor;

(iii) Current designation as a low-income credit union.

(4) Specifics of how the credit union proposes to serve the needs of its members and the community with Program funds. The applicant credit union will also construct and submit a plan for its growth and development. The plan will set forth financial growth, credit union development, capitalization, and the means for achieving these objectives.

(5) How the credit union proposes to cooperate with existing community development programs of state and Federal agencies, including the Department of Housing and Urban Development, the Department of Health and Human Services as well as others.

(c) NCUA will notify applicant credit unions as to whether they have qualified for a loan under this Part.

**§ 705.6 Community Development Committee.**

(a) Each participating credit union, in addition to its other committees, shall have a Community Development Committee. The responsibilities of the Community Development Committee fall into two interrelated categories: coordination (liaison) and identification of community needs.

(1) *Coordination.* The Community Development Committee must establish and maintain liaison with government agencies and others having developmental projects in the community. This liaison will help ensure a united effort at redeveloping the community with a minimum of duplication. The Community Development Committee shall see to it that the community is kept informed of the participating credit union's activities.

(2) *Community Needs Plan.* Within 60 days after a credit union has been selected for participation in the Program, the Community Development Committee will prepare and present to the participating credit union's board of directors, a Community Needs Plan. This Plan will set forth the coordination contacts established and the details of these initiatives. The plan will also contain, in priority sequence, a list of community needs which the credit union may or may not be able to fulfill. The participating credit union's board of directors will make the decision as to what services the credit union can provide. The Committee's responsibility is to advise the board on needs and to provide sufficient cost estimates and "how to" recommendations to enable the board to reach the best decisions.

(b) The Community Development Committee shall be appointed by the board from among the members of the credit union, one of whom must be a board member of the participating credit union. The Board shall determine the number of members on the committee which shall not be fewer than three nor more than five. Regular terms of the committee shall be for one or two years as the board shall determine; *Provided,* however, that all terms shall be for the same number of years and until the appointment and qualification of successors. No members of the Community Development Committee shall be compensated as such.

(c) In addition to the Community Development Committee working with the credit union board of directors, they will report to the credit union members once a year either at the annual meeting or in a written report sent to all members.

**§ 705.7 Loans to participating credit unions.**

(a) *Amount of loans.* A credit union selected for participation in the Program will be eligible to receive up to $200,000 in the form of a loan from the Community Development Revolving Loan Fund for Credit Unions. The amount of the loan will be based on the creditworthiness of the participating credit union, financial need, and a demonstrated capability of a participating credit union to provide financial and related services to its members as set forth in its application.

(b) *Matching requirements.* Participating credit unions will be encouraged to develop, as rapidly as possible, a permanent capital source of member shares.

(1) Loan monies made available must be matched by the participating credit union by increasing its member and nonmember share deposits in an amount at least equal to the loan amount. Participating credit unions must meet this matching requirement within one year of the approval of the loan application and must maintain the increase in the total amount of member share deposits for the duration of the loan.

(2) Drawdown of the loan to a participating credit union may be made in a maximum of two payments only. Upon approval of its loan application, and before it meets its matching requirement, a participating credit union may receive 50% of the loan committed. The remaider of the funds committed will be available to the participating credit union only after it has documented that it has met the match requirement for the total amount of the loan committed.

(3) Failure of a participating credit union to generate the required match within one year of the approval of the loan will result in the reduction of the loan proportionate to the amount of match actually generated. Payment of any additional funds initially approved will be limited as appropriate to reflect the revised amount of loan approved, and any funds already advanced to the participating credit union in excess of the revised amount of loan approved must be returned immediately to NCUA. Failure to return such funds to NCUA upon demand shall result in the default of the entire loan.

(4) Failure by a participating credit union to produce at least 25% of its proposed match may result in the requirement by NCUA that immediate and full repayment of the loan may be made.

(c) *Terms and repayment.* (1) Assistance made available in this program is in the form of a loan and must be repaid to NCUA. All loans will be scheduled for repayment within the shortest time compatible with sound business practices and with the objectives of the program, but in no case will the term exceed five years. The policy of the NCUA is to revolve these funds to qualifying credit unions as often as practical, in order to gain maximum economic impact on as many credit unions that are qualified to participate in the Program as possible.

(2) Semiannual interest payments (beginning six months after the initial distribution of a loan) and semiannual principal payments (beginning one year after the initial distribution of a loan) will be required.

(3) Participating credit unions will be billed semiannually by NCUA for their principal and interest payments due.

(d) *Interest rates.* Loans made under this rule shall bear interest at an adjustable rate based on a semiannual average of the 90-day Treasury bill rate less four percentage points with a two percent floor. The interest rate will be adjusted semiannually. If the 90-day Treasury bill becomes unavailable, NCUA will substitute an alternative index for it.

(e) *Default, collections and adjustments.* The terms of each loan agreement shall provide for the immediate acceleration of the unpaid balance for breach or default in the performance by the participating credit union of the terms or conditions of the loan. This will include misrepresentations, default in making interest/principal payments, failure to report, insolvency, failure to maintain adequate match for the duration of the loan period, etc. The unpaid balance will also be accelerated and immediately due if any part of the loan funds are improperly used, or if uninvested loan proceeds remain unused for an unreasonable or unjustified period of time.

**§ 705.8 State-chartered credit unions.**

State-chartered credit union applicants approved for participation by NCUA must obtain written concurrence from their respective state regulatory authority.

**§ 705.9 Application period.**

Applications for participating in the program will be accepted through ———. As additional funds become available, new applications will be accepted. Notices of availability of funds will be published in the **Federal Register.**

[FR Doc. 87–8531 Filed 4–15–87; 8:45 am]

BILLING CODE 7535-01-M

## FEDERAL TRADE COMMISSION

### 16 CFR Part 13

**[Docket No. 8908]**

### Encyclopaedia Britannica, Inc.; Prohibited Trade Practices

**AGENCY:** Federal Trade Commission.

**ACTION:** Notice of 30 day period for public comment on petition by Encyclopaedia Britannica, Inc. to reopen and modify the order in Docket No. 8908.

**SUMMARY:** Encyclopaedia Britannica, Inc., the respondent in Docket No. 8908, filed a petition on April 2, 1987, requesting that the Commission reopen the proceedings and set aside the order or, in the alternative, modify the order to expire on June 30, 1988, and provide interim relief by modifying several provisions of the order.

**DATE:** The deadline for filing comments in this matter is May 8, 1987.

**ADDRESS:** Comments should be sent to the Office of the Secretary, Federal Trade Commission, 6th Street and Pennsylvania Avenue, NW., Washington, DC 20580. Requests for copies of the petition should be sent to Public Reference Branch, Room 130.

**FOR FURTHER INFORMATION CONTACT:** Craig Tregillus, Jock Chung, staff attorneys, or Justin Dingfelder, Assistant Director, Enforcement Division, Bureau of Consumer Protection, Federal Trade Commission, Washington, DC 20580, (202) 326–2970, 326–2984, and 326–3017.

**SUPPLEMENTARY INFORMATION:** The petitioner, Encyclopaedia Britannica, Inc., sells encyclopedias and related products and services direct to the consumer by means of in-home, over-the-counter, direct mail and telephone sales solicitations. The order modification request is based on claimed changes in conditions of fact and law. The petition was placed on the public record on April 8, 1987.

**List of Subjects in 16 CFR Part 13**

Encyclopedia sales, Trade practices.

Emily H. Rock,

*Secretary.*

[FR Doc. 87–8522 Filed 4–15–87; 8:45 am]

BILLING CODE 6750-01-M

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Food and Drug Administration

### 21 CFR Part 312

[Docket No. 82N-0394]

### Investigational New Drug, Antibiotic, and Biological Drug Product Regulations; Treatment Use and Sale; Extension of Comment Period

**AGENCY:** Food and Drug Administration.

**ACTION:** Reproposed rule; extension of comment period.

**SUMMARY:** The Food and Drug Administration (FDA) is extending the comment period on a reproposal of procedures that would make investigational new drugs available to desperately ill patients before general marketing begins. These procedures are intended to facilitate the availability of promising new drugs to patients as early in the drug development process as possible and would apply to patients with immediately life-threatening or other serious diseases for which no satisfactory alternative therapies exist. The new procedures would also allow sale of drugs, when no satisfactory alternative therapy is available, when the drugs are provided for treatment use to large numbers of patients prior to general marketing. This document responds to requests for an extension of the comment period.

**DATE:** Written comments by May 5, 1987.

**ADDRESS:** Written comments to the Dockets Management Branch (HFA-305), Food and Drug Administration, Room 4-62, 5600 Fishers Lane, Rockville, MD 20857.

**FOR FURTHER INFORMATION CONTACT:** Steven H. Unger, Center for Drugs and Biologics (HFN-362), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301-295-8049.

**SUPPLEMENTARY INFORMATION:** In the Federal Register of March 19, 1987 (52 FR 8840), FDA published reproposed procedures to facilitate the availability of promising new drugs to desperately ill patients, with immediately life-threatening or other serious diseases, as early in the drug development process as possible. The new procedures would also allow the sale of drugs, when no satisfactory alternative therapy is available, when the drugs are provided for treatment use to large numbers of patients prior to general marketing.

Believing that the compelling public health advantages to be gained from issuing a final rule as quickly as possible constitute good cause under 21 CFR 10.40(b)(2) for providing less than the normal 60-day comment period, FDA originally provided 30 days for public comment on the reproposed procedures, and announced plans to issue a final rule by May 18, 1987.

FDA has now received requests to extend this comment period from a wide range of interested persons and groups, and in an abundance of caution and with the desire to have all groups have the opportunity for full and adequately prepared participation, is granting a 15-day extension of the comment period until May 5, 1987. However, FDA continues to be convinced of the public health advantages to be gained from issuing a final rule as quickly as possible and, accordingly, still intends to issue a final rule by May 18, 1987.

Interested persons may, on or before May 5, 1987, submit to the Dockets Management Branch (address above) written comments regarding the reproposed rule. 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: April 14, 1987.

**Frank E. Young,**

*Commissioner of Food and Drugs.*

[FR Doc. 87-8670 Filed 4-14-87; 1:46 pm]

BILLING CODE 4160-01-M

## DEPARTMENT OF TRANSPORTATION

### Coast Guard

### 33 CFR Part 117

[CGD7 87-05]

### Drawbridge Operation Regulations; New Pass, FL

**AGENCY:** Coast Guard, DOT.

**ACTION:** Proposed rule.

**SUMMARY:** At the request of the Florida Department of Transportation the Coast Guard is considering a change to the regulations governing the New Pass bridge on State Road 789 at Sarasota, Florida, by permitting the number of openings to be limited on Saturdays, Sundays, and federal holidays. This proposal is being made because of complaints about vehicular traffic delays. This action should accommodate the needs of highway traffic and still provide for the reasonable needs of navigation.

**DATE:** Comments must be received on or before June 1, 1987.

**ADDRESSES:** Comments should be mailed to Commander (oan), Seventh Coast Guard District, 51 SW. 1st Avenue, Miami, Florida 33130-1608. The comments and other materials referenced in this notice will be available for inspection and copying at 51 SW. 1st Avenue, Room 816, Miami, Florida. Normal office hours are from 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:** Mrs. Zonia C. Reyes, (305) 536-4103.

**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 the bridge, 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 action on this proposal. The proposed regulations may be changed in light of comments received.

#### Drafting Information

The drafters of this notice are Mrs. Zonia C. Reyes, Bridge Administration Specialist, project officer, and Lieutenant Commander S.T. Fuger, Jr., project attorney.

#### Discussion of Proposed Regulations

A new drawbridge across New Pass, at Sarasota, Florida, was opened to highway traffic in October, 1986. The bridge currently opens on signal for the passage of vessels. The Coast Guard has received many complaints about vehicular delays caused by frequent opening of the drawspan. The Florida Department of Transportation (FDOT) has requested that the draw open on signal; except that from 7 a.m. to 6 p.m. on Saturdays, Sundays and federal holidays, the draw need not open except on the hour, twenty minutes past the hour and forty minutes past the hour. In addition to the FDOT request, the Coast Guard has received a variety of other proposals to limit the number of openings. Drawbridge operation records show that the draw averages less than one opening per hour on weekdays, but may average up to 5 openings an hour on weekends. Weekend traffic problems

appear to be greatest between 10:00 a.m. and 6:00 p.m. The proposed rule should reduce or eliminate highway traffic congestion caused by "back-to-back" opening by allowing sufficient time for accumulated vehicular traffic to disperse between openings.

**Economic Assessment and Certification**

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

The economic impact of this proposal is expected to be so minimal that a full regulatory evaluation is unnecessary. We conclude this because the regulations exempt tugs with tows. 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:

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

2. Part 117 is proposed to be amended by adding a new § 117.311 to read as follows:

**§ 117.311 New Pass.**

The draw of the State Road 789 bridge, mile 0.0, at Sarasota shall open on signal; except that from 10 a.m. to 6 p.m., on Saturdays, Sundays, and federal holidays, the draw need not open except on the hour, twenty minutes past the hour and forty minutes past the hour. Public vessels of the United States, tugs with tows, and vessels in a situation where a delay would endanger life or property shall, upon proper signal, be passed at anytime.

Dated: March 27, 1987.

M. J. O'Brien,

*Captain, U.S. Coast Guard Commander, Seventh Coast Guard District Acting.*

[FR Doc. 87–8571 Filed 4–15–87; 8:45 am]

BILLING CODE 4910–14–M

## POSTAL SERVICE

## 39 CFR Part 111

## Change to COD Service Allowing Acceptance of Personal Checks For COD Payment

**AGENCY:** Postal Service.

**ACTION:** Proposed rule.

**SUMMARY:** On February 6, 1987, the Postal Rate Commission issued an Advisory Opinion in response to the Postal Service's Request in which it supported a change in COD service proposed by the Postal Service. The change will allow recipients of Collect On Delivery Service (COD) packages to pay the charges with personal checks made out to the COD mailer as a means of reducing fraudulent use of COD service. The existing regulation requires payment to be made either by check made payable to the Postal Service, or by cash. A postal money order is then issued and remitted to the mailer. Under the new procedures, when an addressee pays the COD charges by check, that check will be promptly transmitted to the mailer. Mailers will continue to receive a money order when the addressee pays in cash.

Implementation of this change was approved by the Board of Governors of the Postal Service at their meeting on April 6, 1987. This proposed rule concerns adjustments in Postal Service regulations needed to implement the change.

**DATE:** Comments must be received on or before May 18, 1987.

**ADDRESS:** Written comments should be mailed or delivered to the Director, Office of Classification and Rates Administration, U.S. Postal Service, Room 8430, 475 L'Enfant Plaza, West SW., Washington, DC 20260–5360. Copies of all written comments will be available for inspection and photocopying between 9:00 a.m. and 4:00 p.m., Monday through Friday, In Room 8430 at the above address.

**FOR FURTHER INFORMATION CONTACT:** Mr. Edmund J. Wronski, (202) 268–5320.

**SUPPLEMENTARY INFORMATION:** Fradulent use of COD mail has become a serious problem. In 1985, based only on the number of open Inspection Service cases involving COD fraud, approximately 600,000 COD parcels were directly connected to some deceptive scheme.

The proposed rules published below primarily deal with the internal procedures the Postal Service uses to account for delivered COD articles. In essence, when a COD package is tendered for delivery, the delivering employee will accept either cash, or a personal check made payable to the mailer. If payment is made in cash, the Postal Service will issue a money order and send it to the mailer (this part of COD regulations remains unchanged). If payment is made by personal check, the Postal Service will send the personal check to the mailer. Checks made payable to U.S. Postal Service will no longer be accepted.

If a mailer files a claim for a lost COD article, the postmaster at the office of address will search his records for a record of delivery. If a record is found, the claim form will be annotated with the date of delivery, the check number, and the date if it was sent to the mailer. The claim will then be forwarded to the St. Louis Postal Data Center for adjudication. In cases where post office records show that the addressee's personal check was sent to the mailer, the claim will be denied. Indemnity will be paid only presentation of additional evidence that the check was not cashed.

**Note.**—The section of the F–1, *Post Office Accounting Procedures* mentioned in section 914.54a. below has been reprinted as an appendix for reference purposes only.

Although exempt from the notice and comment requirements of the Administrative Procedure Act [5 U.S.C. 553(b), (c) regarding proposed rulemaking by 39 U.S.C. 410(a)], the Postal Service invites public comment on the following proposed amendment of the Domestic Mail Manual, which is incorporated by reference in the Code of Federal Regulations. See 39 CFR 111.1

**List of Subjects in 39 CFR Part 111**

Postal Service.

## PART 111—[AMENDED]

1. The authority citation for 39 CFR Part 111 continues to read as follows:

Authority: 5 U.S.C. 552(a); 39 U.S.C. 101, 401, 404, 3001–3011, 3201–3219, 3403–3406, 3621, 5001.

PART 1—DOMESTIC MAIL SERVICES

2. Change § 149.343b(1)(b), as follows:

PART 149—INDEMNITY CLAIMS

* * * * *

149. Insured and COD Claims.

* * * * *

(b) *Record is Found.* If there is a record of delivery, date stamp, write the date of delivery, to whom delivered, indicate any unusual delivery conditions, whether payment was made by check, the check number, and the date the check was mailed. Where

appropriate, furnish the money order number(s). If none were issued, so indicate. Attach a copy of Form 3818 if applicable.

* * * * *

PART 9—SPECIAL SERVICES

3. Change section 914, as follows:

PART 914—COLLECT ON DELIVERY MAIL

914.1 Description.

.11 *Purpose.* Customers may mail an article for which they have not been paid and have the price and the cost of the postage collected from the addressee when the article is delivered. This is collect-on-delivery or COD service. The addressee has the option of remitting the amount due sender either by cash or by personal check made payable to the mailer. The Postal Service will forward the check to the mailer if payment is made by check. If the addressee pays by cash, a postal money order will be sent to the mailer. The fees for COD service include insurance against loss, rifling, or damage to the article, or failure to receive a postal money order if payment has been made by cash, or the addressee's check if payment is made by check. Return receipt and restricted delivery services are available upon payment of the prescribed fees (see 932 and 933).

* * * * *

.18 *Delays in Remittance.* Mailers are encouraged to report instances in which there has been undue delay in receiving money orders or addressee's checks in payment for COD articles. The mailer should normally receive payment within 45 days of the day of mailing (75 days for parcels sent by surface ocean transportation). Delays in excess of these periods should be reported to the local postal inspector-in-charge giving the date of mailing, parcel number, address of delivery, whether payment was by check or money order, date payment was received, and the number and date of the payment. Payment not received within these periods may be considered a loss for purposes of filing a claim in accordance with 149.

* * * * *

.33 *Nursery Stock Shipments.* Firms mailing nursery stock may print special COD tags bearing instructions as to disposition of shipments that are not immediately delivered. These tags must contain a remittance coupon that will be returned with the money order, or addressee's check.

(The remainder of 914.33 is unchanged)

.33b(2) Return this coupon with money order, or addressee's check.

(The remainder of 914.33b(2) is unchanged)

914.4 Mailing.

.41 *Preparation for Mailing.*

* * * * *

.413 The sender must securely affix a COD tag to each COD article. The tag must show article number, names and addresses of sender and addressee, amount due sender, and amount of money order fee necessary to make remittance. Delivery employees will not collect the money order fee if the addressee pays by check made payable to the mailer.

(The remainder of 914.413 is unchanged)

* * * * *

.53 *Delivery.*

.531 *At Offices With Carrier Delivery.*

Deliver COD mail as follows:

* * * * *

j. The addressee must have the amount of the COD charges as the carrier is not furnished change. The carrier will also accept the addressee's check, made payable to the mailer, for the amount of the COD charges. When the addressee pays by check, the carrier does not collect a money order fee.

* * * * *

.533 *On Highway Contract Routes Affording Delivery Service.*

Highway contract route carriers will deliver COD mail if required by the contract. Customers should present either the exact amount of money needed to pay the COD charges and the money order fee or a check made payable to the mailer for the amount due sender. No money order fee will be collected if the addressee presents a check.

* * * * *

.54 *Collection of Charges.*

Collect charges as follows:

a. Collect at time of delivery the charges entered on the tags. The addressee has the option of paying the charges either by cash (in which case a money order fee will be collected), or by check made payable to the mailer (no money order fee is collected). Do not accept checks made payable to the U.S. Postal Service. Delivery employees must accept personal checks and see identification as required in accordance with the provisions of section 311.3 of Handbook F–1, Post Office Accounting Procedures.

(The remainder of 914.54 is unchanged)

.62 *Payment By Money Order.*

* * * * *

.622 *Remitting to Sender.*

Mail personal checks in a penalty envelope and money orders in an EM03 penalty envelope on the day of issue or not later than the following workday. Use prepaid (or business reply) envelopes, when furnished by mailer. Enclose any extra COD tag coupons to be returned.

* * * * *

4. Delete 914.624, add new .63 and .64 as follows, and renumber .63 through .67 as .65 through .68.

.63 *Payment by check.*

.631 The addressee's check must be made payable to the mailer. Checks must be processed daily as provided in 914.621. Prepare as follows:

a. Examine check for completeness.

b. Enter COD number in memo portion of check if addressee has not already done so.

c. Correct the address printed on the check, if necessary.

d. Annotate the back of the COD form to show that payment was made by check. Enter the check number and date the check was mailed.

.632 *Remitting to sender.*

Return check to mailer in accordance with 914.622. File COD tag in accordance with 914.621f.

.633 *Missing or illegible name of sender.* Obtain the name and address of the sender from the addressee and request the postmaster at the office of mailing to review the sender's mailing receipt in order to verify that the package was mailed by him. If the sender cannot be verified, and the addressee desires to pay cash, deliver the article in accordance with 914.623. Otherwise, handle the article in accordance with 159.5c.

.64 *Returned Money Orders and Checks.*

Try to obtain the correct address for money orders and checks returned as unclaimed. If the payee cannot be located, handle as follows:

a. Forward the money order and a statement of the facts to the Money Order Division, Postal Data Center, P.O. Box 14795, St. Louis, MO 63182–9400.

b. Send money orders returned to postmasters endorsed "Refused, Out of Business, or Fictitious," to the same address.

c. Annotate the back of the COD tag to show when a check has been returned and forward the returned check to the mailer.

d. If money orders or checks are returned to postmasters "Fraudulent," make every effort to return the check to the addressee, or the amount of the money order to the purchaser. If this cannot be accomplished, forward money orders to the Money Order Division and

attach checks to the COD tag and file the tag. In each instance, note the disposition of the money order or check on the COD tag and file the tag.

* * * * *

5. Move the text in existing 914.66 to the end of renumbered 914.66 as follows:

.66 *Loose or Tape-on Tags.*

* * * * *

d. When tape-on tags, Form 3816a–S have been used on the parcels, fasten the loose ends down before forwarding or returning the parcels.

* * * * *

6. Add new 914.69 as follows:

.69 *Claims and Inquiries Regarding Nonreceipt of Checks or Money Orders.*

a. Inquiries or claims involving the nonreceipt of addressee's checks or money orders must be submitted on Form 3812 in accordance with the provisions of DMM 149.2 and 149.3.

b. The postmaster at the office of address will indicate whether or not post office records show delivery including the date of delivery, to whom delivered, whether payment was made by either check or money order, and the money order number (see 149.343b(1)(b)).

c. Postmasters will not participate in any disputes regarding the addressee's check.

* * * * *

7. Change 914.7, as follows:

914.7 Special Instructions

.71 *Office With 950 or More Revenue Units.*

* * * * *

.712 *Recording Section.*

* * * * *

b. Clear carriers as follows:

(1) At the end of each trip, or daily, give the carrier a receipt, in duplicate, on the right side of Form 3821. Show number of receipted tags, total amount collected (including the amounts to be remitted by check, by money order, and the money order fees), and number of returned packages.

* * * * *

.715 *Remitting Units.*

* * * * *

e. At office operating under system B:

* * * * *

8. Add the following section (e) to .715e(2):

(e) Process COD tags with checks made payable to the mailer in accordance with 914.63.

(3) The station or branch superintendent, or designee, will receive the receipted original Form 3822 from the COD clerk and compare the amounts thereon with the totals on Forms 3821. These must agree. This individual will also receive the COD tags from the money order clerk with customers' receipts attached. Verify separately, all COD tags annotated to show payment by check.

(The remainder of 914.715 is unchanged)

* * * * *

9. Make the following changes to 914.71 through 914.73, as follows:

.716 *Main Office Window Unit.*

a. Issue the money orders and mail addressee's checks to the mailer, if paid by check (see 914.62).

b. Staple the customer's receipt to the COD tag if appropriate, or annotate the back of the COD tag as required in 914.631d.

* * * * *

g. Check one day's COD business each month to make sure money orders are being properly prepared and promptly issued, and that COD tags are properly annotated when paid by check.

(The remainder of 914.716 is unchanged)

* * * * *

.72 *Offices Having From 190 Through 949 Revenue Units.*

.721 *Assignment of Clerks.*

Assign different clerks to the following work if possible:

* * * * *

c. *Money order clerk.* To issue money orders in payment of COD charges and to mail addressee's checks to the mailer, if paid by check.

* * * * *

.725 *Check of COD Business.*

* * * * *

b. *Method.* Perform the examination as follows:

* * * * *

(3) Check the COD tag file to verify that packages shown on Form 3814–C have been delivered. Where applicable, compare dates of money orders with dates of delivery as shown on the COD tags and Form 3814–C.

* * * * *

(5) Select at random several delivering employees' receipts and, if paid by money order, compare dates of delivery with recorded dates of COD money orders.

* * * * *

.735 *Delivery From Rural Station.*

* * * * *

c. Process the money order and checks in accordance with 914.62 and 914.63.

* * * * *

e. When appropriate, attach customer's receipt portions of money orders to delivery office portions of COD tags and send them to the main post office.

f. The main post office will complete Form 3850 to show delivery and file COD tags. Customers receipt portions of money orders will be attached to the tags if this method of payment was chosen.

An appropriate amendment to 39 CFR 111.3 will be published if these changes are adopted.

**Fred Eggleston,**

*Associate General Counsel, Legislative Division.*

**Appendix**

F–1, *Post Office Accounting Procedures*

CHAPTER 3—HANDLING POSTAL FUNDS AND PROTECTING FUNDS AND ACCOUNTABLE PAPER

* * * * *

331.3 *Personal Checks.*

* * * * *

.31 The customer's name and complete address must be printed on the check. The customer's telephone number must be recorded on the check.

.32 When a customer is known by name to a postal employee on duty in the unit, the employee making the identification should note "Cutomer Known" on the back of the check and then sign it.

.33 If the customer is unknown, two current forms of identification from the following list must be recorded on the check:

a. Driver's license;

b. Military identification card;

c. Passport;

d. Credit Card; or

e. Other credentials showing the signature and having serial number or other indicia that can be traced to the bearer. Social Security cards are not acceptable identification.

.34 Compare the signature on the check with the signature on the identification. If signatures do not match, do not accept the check.

.35 Record on the back of the check the particular postal transaction involved, such as COD number, permit number, or postage meter serial number.

[FR Doc. 87–8552 Filed 4–15–87; 8:45 am]

BILLING CODE 7710–12–M

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**39 CFR Part 265**

## Release of Information; Implementation of Freedom of Information Reform Act

**AGENCY:** Postal Service.

**ACTION:** Proposed rule.

**SUMMARY:** The Postal Service proposes to amend its Freedom of Information Act regulations to incorporate the recent changes made by the Freedom of Information Reform Act of 1986 relating to requests for law enforcement records and to the fees that may be charged in connection with FOIA requests for

records. The proposed rules follow the guidelines recently issued by the Office of Management and Budget.

**DATE:** Comments concerning the proposed fee provisions should be received on or before April 20, 1987, so that the Postal Service can meet its statutory requirement to publish revised FOIA fee regulations in final form no later than April 25, 1987. Comments submitted after April 20, but no later than May 15, 1987, will also be considered and incorporated by further amendment if warranted. Comments on the law enforcement provisions must be received by May 15, 1987.

**ADDRESS:** Written comments should be addressed to USPS Records Office, U.S. Postal Service, 475 L'Enfant Plaza, SW., Washington, DC 20260–5010. Copies of all written comments will be available for public inspection and photocopying between 9:00 a.m. and 4:00 p.m. in Room 8121 at the above address.

**FOR FURTHER INFORMATION CONTACT:** Martha J. Smith, Program Manager, Records Office (202) 268–2931.

**SUPPLEMENTARY INFORMATION:** The Freedom of Information Reform Act, Pub. L. 99–570 (Reform Act), which was signed into law on October 27, 1986, requires each agency to promulgate, by April 25, 1987, new FOIA fee regulations to implement the changes made by the Reform Act. The fee provisions must conform to guidelines promulgated by the Office of Management and Budget (OMB). OMB published its final Uniform Freedom of Information Act Fee Schedule and Guidelines on March 27, 1987 (52 FR 10012). The fee schedule included in this proposal conforms in all substantial respects to OMB's final guidelines. The Postal Service's existing fee regulations that are unaffected by the recent legislation are retained without substantive change, and are included in this notice for the sake of readability.

The Reform Act also expanded the FOIA exemption for law enforcement records. These provisions were effective immediately upon enactment. This proposal incorporates the new statutory language verbatim into the Postal Service's regulations concerning access under the FOIA to law enforcement records.

**List of Subjects in 39 CFR Part 265**

Release of information, Postal Service.

For the reasons set out in this notice, the Postal Service proposes to amend Part 265 of 39 CFR as follows:

## PART 265—RELEASE OF INFORMATION

1. The authority citation for Part 265 continues to read as follows:

Authority: 39 U.S.C. 401; 5 U.S.C. 552.

2. Paragraph (c) of § 265.6 is revised to read as follows:

**§ 265.6 Availability of records.**

* * * * *

(c) *Records of information compiled for law enforcement purposes.* (1) Investigatory files compiled for law enforcement purposes, whether or not considered closed, are exempt by statute from mandatory disclosure except to the extent otherwise available by law to a party other than the Postal Service, 39 U.S.C. 410(c)(6). As a matter of policy, however, the Postal Service will normally make records or information compiled for law enforcement purposes available upon request unless the production of these records:

(i) Could reasonably be expected to interfere with enforcement proceedings;

(ii) Would deprive a person of a right to a fair trial or an impartial adjudication;

(iii) Could reasonably be expected to constitute an unwarranted invasion of personal privacy;

(iv) Could reasonably be expected to disclose the identity of a confidential source, including a State, local, or foreign agency or authority or any private institution which furnished information on a confidential basis, and, in the case of a record or information compiled by a criminal law enforcement authority (such as the Postal Inspection Service) in the course of a criminal investigation, or by an agency conducting a lawful national security intelligence investigation, information furnished by a confidential source;

(v) Would disclose techniques and procedures for law enforcement investigations or prosecutions, or would disclose guidelines for law enforcement investigations or prosecutions if such disclosure could reasonably be expected to risk circumvention of the law; or

(vi) Could reasonably be expected to endanger the life or physical safety of any individual.

(2) Whenever a request is made which involves access to records described in § 265.6(c)(1)(i) and (i) the investigation or proceeding involves a possible violation of criminal law; and (ii) there is reason to believe that (A) the subject of the investigation or proceeding is not aware of its pendency, and (B) disclosure of the existence of the records could reasonably be expected to interfere with enforcement proceedings, the Postal Service may, during only such time as that circumstance continues, treat the records as not subject to the requirements of the Freedom of Information Act.

(3) Whenever informant records maintained by a criminal law enforcement agency (such as the Postal Inspection Service) under an informant's name or personal identifier are requested by a third party according to the informant's name or personal identifier, the records may be treated as not subject to the requirements of the Freedom of Information Act unless the informant's status as an informant has been officially confirmed.

(4) Authority to disclose records or information compiled for law enforcement purposes to persons outside the Postal Service must be obtained from the Chief Postal Inspector, U.S. Postal Service, Washington, DC 20260–2100, or his designee.

3. Paragraph (d)(1) of § 265.6 is amended by striking out "(d)(3) and (e)(8) of § 265.8" in the second sentence and inserting in lieu thereof "(e)(3) and (g)(5) of § 265.8"; and by striking out "(e)(8) of § 265.8" in the final sentence and inserting in lieu thereof "(g)(5) of § 265.8".

4. Paragraph (d)(2) of § 265.6 is amended by striking out "(e)(8) of § 265.8" in the last sentence and inserting in lieu thereof "(g)(5) of § 265.8."

5. Paragraph (d)(3) of § 265.6 is amended by striking out "(d)(2) of § 265.8" at the end of the first sentence and inserting in lieu thereof "(b) of § 265.8."

6. Paragraph (a)(1) of § 265.7 is amended by striking out "(3)(2) § 265.8" in the next to last sentence, and inserting in lieu thereof "(f)(2) of § 265.8"; and by striking out "$10" in the last sentence and inserting in lieu thereof "$25".

7. Paragraph (a)(4) of § 265.7 is revised to read as follows:

**§ 265.7 Procedure for inspection and copying records.**

(a) * * *

(4) *Request for waiver of fees.* The requester may ask that fees or the advance payment of fees be waived in whole or in part. A fee waiver request shall indicate how the information will be used; to whom it will be provided; whether the requester intends to use the information for resale at a fee above actual cost; any personal or commercial benefit that the requester expects as a result of disclosure; and information as to the intended user's identity.

qualifications, expertise in the subject area, and ability and intention to disseminate the information to the public. (See § 265.8(g)(3).)

* * * * *

8. Paragraph (c)(2) of § 265.7 is revised to read as follows:

* * * * *

(2) Any fees authorized or required to be paid in advance by § 265.8(f)(3) shall be paid by the requester before the record is made available or a copy is furnished unless payment is waived or deferred pursuant to § 265.8(g).

* * * * *

9. Section 265.8 is revised to read as follows:

**§ 265.8 Schedule of Fees**

(a) *Policy.* The purpose of this section is to establish fair and equitable fees to permit the furnishing of records to members of the public while recovering the full allowable direct costs incurred by the Postal Service. The Postal Service will use the most efficient and least costly methods available to it when complying with requests for records.

(b) *Standard rates.*—(1) *Record retrieval.* Searches may be done manually or by computer using existing programming.

(i) *Manual search.* The fee for each quarter hour spent by clerical personnel in searching for records is $4.40. When a search cannot be performed by clerical personnel and must be performed by professional or managerial personnel, the fee for each quarter hour in searching for records is $5.35.

(ii) *Computer search.* The fee for retrieving data by computer is the actual direct cost of the retrieval, including computer search time, runs, and operator salary, as calculated in accordance with the Information Services Price List in effect at the time that the retrieval services are performed. The list is subject to periodic revision. A copy of the list is included within the public index. (See Appendix A for the list in effect on January 1, 1987.)

(2) *Duplication.* (i) Except where otherwise specifically provided in postal regulations, the fee for duplicating any record or publication is $.15 per page.

(ii) The Postal Service may at its discretion make coin-operated copy machines available at any location or otherwise give the requester the opportunity to make copies of Postal Service records at his own expense. Unless authorized by the Records Officer, however, no off-site copying shall be permitted of records which, if lost, could not be replaced without inconvenience to the Postal Service.

(iii) The Postal Service will normally furnish only one copy of any record. If duplicate copies are furnished at the request of the requester, the per-page fee shall be charged for each copy of each duplicate page without regard to whether the requester is eligible for free copies pursuant to paragraph (c) or (g). At his discretion, when it is reasonably necessary because of a lack of adequate copying facilities or other circumstances, the custodian may make the requested record available to the requester for inspection under reasonable conditions and need not furnish a copy thereof.

(3) *Review.* The fee for each quarter hour spent by clerical personnel in reviewing records located in response to a commerical use request is $4.40. When review cannot be performed by clerical personnel and must be performed by professional or managerial personnel, the fee for each quarter hour is $5.35. Only requesters who are seeking documents for commerical use may be charged for review. "Review" is defined in paragraph (h)(4) of this section; "commerical use" is defined in paragraph (h)(5) of this section.

(4) *Micrographics.* Paragraphs (b) (1), (2) and (3) of this section also apply to information stored within micrographic systems.

(c) *Four categories of fees to be charged.* For the purpose of assessing fees under this section, a requester shall be classified into one of four categories: commerical use requesters; educational and noncommerical scientific institutions; representatives of the news media; and all other requesters. Requesters in each category must reasonably describe the records sought. Fees shall be charged requesters in each category in accordance with the following.

(1) *Commerical use requesters.* Fees shall be charged to recover the full direct costs of search, review and duplication in accordance with the rates prescribed in paragraphs (b)(1) through (3) of this section, subject only to the general waiver set out in paragraph (g)(1) of this section. The term "commerical use request" is defined in paragraph (h)(5).

(2) *Educational and noncommerical scientific institutions.* Fees shall be charged only for duplication in accordance with paragraph (b)(2) of this section, except that the first 100 pages furnished in response to a particular request shall be furnished without charge. (See also the general waiver provision in paragraph (g)(1) of this section.) To be eligible for the reduction of fees applicable to this category, the requester must show that the request is being made as authorized by and under the auspices of a qualifying institution and that the records are not sought for a commerical use, but are sought in furtherance of scholarly or scientific research. These institutions are defined in paragraphs (h)(6) and (h)(7) of this section, respectively.

(3) *Representatives of the news media.* Fees shall be charged only for duplication in accorance with paragraph (b)(2) of this section, except that the first 100 pages furnished in response to a particular request shall be furnished without charge. (See also the general waiver provision in paragraph (g)(1) of this section.) To be eligible for the reduction of fees applicable to this category, the requester must meet the criteria in paragraphs (h)(8) of this section, and the request must not be made for a commerical use.

(4) *All other requesters.* Fees shall be charged for search and duplication in accordance with paragraphs (b) (1) and (2) of this section, except that the first 100 pages of duplication and the first two hours of search time shall be furnished without charge. (See also paragraphs (g)(1) and (g)(2) of this section.)

(d) *Aggregating requests.* When the custodian reasonably believes that a requester is attempting to break a request down into a series of requests in order to evade the assessment of fees, the custodian may aggregate the requests and charge accordingly. The custodian shall not aggregate multiple requests when the requests pertain to unrelated subject matter. Requests made by more than one requester may be aggregated only when the custodian has a concrete basis on which to conclude that the requesters are acting in concert specifically to avoid payment of fees.

(e) *Other costs.*—(1) *Publications.* Publications and other printed materials may, to the extent that they are available in sufficient quantity, be made available at the established price, if any, or at cost to the Postal Service. Fees established for printed materials pursuant to laws, other than the Freedom of Information Act, that specifically provide for the setting of fees for particular types of records are not subject to waiver or reduction under this section.

(2) *Other charges.* When a response to a request requires services or materials other than the common ones listed in paragraph (b) of this section, the direct cost of such services or materials to the Postal Service may be charged, but only if the requester has been notified of the nature and estimated amount of such cost before it is incurred.

(3) *Change of address orders.* Although change of address information is not required by the Freedom of Information Act to be made available to the public, the fee for obtaining this information in accordance with paragraph (d)(1) of § 265.6 is included in this section as a matter of convenience. The fee for searching for a change of address order is $1.00. This fee is charged regardless of whether a permanent change of address is found in file. (See paragraph (g)(5) of this section.)

(f) *Advance notice and payment of fees.*—(1) *Liability and payment.* The requester is responsible, subject to limitations on liability provided by this section, for the payment of all fees for services resulting from his request, even if responsive records are not located or are determined to be exempt from disclosure. Checks in payment of fees should be made payable to "U.S. Postal Service."

(2) *Advance notice.* To protect members of the public from unwittingly incurring liability for unexpectedly large fees, the custodian shall nofity the requster if the estimated cost is expected to exceed $25. When search fees are expected to exceed $25, but it cannot be determined in advance whether any records will be located or made available, the custodian shall notify the requester of the estimated amount and of the responsibility to pay search fees even though records are not located or are determined to be exempt from disclosure. The notification shall be transmitted as soon as possible after physical receipt of the request, giving the best estimate then available. It shall include a brief explanatory statement of the nature and extent of the services upon which the estimate is based and shall offer the requester an opportunity to confer with the custodian or his representative in an attempt to reformulate the request so as to meet his needs at lower cost. The time period for responding to the request shall not run during the interval between the date such notification is transmitted and the date of receipt of the requester's agreement to bear the cost. No notification is required if the request specifically states that whatever cost is involved is acceptable or is acceptable up to a specified amount that covers estimated cost or if payment of all fees in excess of $25 has been waived.

(3) *Advance payment.* Advance payment of fees shall not be required, except:

(i) When it is estimated that the fees chargeable under this section are likely to exceed $250. If the requester has a history of prompt payment of FOIA fees, the custodian shall notify the requester of the likely cost and obtain satisfactory assurance of full payment before commencing work on the request. If the requester has no history of payment, the custodian may require an advance payment of an amount up to the full estimated charge before commencing work on the request.

(ii) When a requester has previously failed to pay a fee in a timely fashion (i.e., within 30 days of the date of the billing), the requester shall be required to pay the full amount owed, and to make an advance payment of the full amount of the estimated fee before processing will begin on a new or pending request.

(iii) When advance payment is required under paragraph (f)(3) (i) or (ii) of this section, the time periods for responding to the initial request or to an appeal shall not run during the interval between the date that notice of the requirement is transmitted and the date that the required payment or assurance of payment is received.

(g) *Restrictions on Assessing Fees.*—(1) *General waiver.* Fees shall not be charged to any requester if they would amount, the aggregate, for a request or a series of related requests, to $10 or less. When the fees for the first 100 pages or the first two hours of search time are excludable under paragraph (c) of this section, additional costs will not be assessed unless they exceed $10. This general waiver does not apply to the fee for providing change of address information.

(2) *Certain fees not charged.*—(i) *All requests except those for commercial use.* Fees shall not be charged for the first 100 pages of duplication and the first two hours of search time except when the request is for a commercial use as defined in paragraph (h)(5) of this section. When search is done by computer, the fees to be excluded for the first two hours of search time shall be determined on the basis of the standard rates set out in the Information Services Price List then in effect. (See Appendix A.) Assessment of search fees will begin at the point when the cost of the search (including the cost of equipment use and operator's time) reaches the equivalent dollar amount of the operator's basic rate for two hours plus a factor to cover benefits.

(ii) *Requests of educational and noncommercial scientific institutions, and representatives of the news media.* Fees shall not be charged for time spent searching for records in response to requests submitted by educational and noncommercial scientific institutions or representatives of the news media.

(3) *Public interest waiver.* The custodian shall waive a fee, in whole or in part, and any requirement for advance payment of such a fee, when he determines that furnishing the records is deemed to be in the public interest because it (a) is likely to contribute significantly to public understanding of the operations or activities of the federal government, and (b) is not primarily in the commercial interest of the requester. This waiver may be granted notwithstanding the applicability of other fee reductions prescribed by this section for requesters in certain categories. In determining whether disclosure is in the public interest for the purposes of this waiver, the following factors may be considered:

(i) The relation of the records to the operations or activities of the Postal Service;

(ii) The informative value of the information to be disclosed;

(iii) Any contribution to an understanding of the subject by the general public likely to result from disclosure;

(iv) The significance of that contribution to the public understanding of the subject;

(v) The nature of the requester's personal interest, if any, in the disclosure requested; and

(vi) Whether the disclosure would be primarily in the requester's commercial interest.

(4) *Waiver by officer.* Any officer of the Postal Service, as defined in § 221.8, his designee, or the USPS Records Officer may waive in whole or in part any fee required by this part or the requirement for advance payment of any fee.

(5) *Waiver of fee for changes of address.* The fee prescribed by paragraph (e)(3) of this section is waived when change of address information is provided:

(i) To a Federal, State or local government agency upon prior written certification that the information is required for the performance of its duties.

(ii) To persons requesting the information for the purpose of serving legal process in accordance with paragraph (d)(6)(ii) of § 265.6.

(iii) In compliance with a subpoena or other court order.

(iv) To a law enforcement agency, for oral requests made through the Inspection Service in accordance with paragraph (d)(6)(iv) of § 265.6

(v) To postage meter manufacturers when they are attempting to locate a missing meter.

This waiver does not apply to fees for services performed in accordance with section 122.5 of the Domestic Mail Manual.

(h) *Definitions.* As used in this section, the term:

(1) "Direct costs" include expenditures actually incurred in searching for and duplicating (and in the case of commercial requesters, reviewing) documents to respond to a FOIA request. Direct costs include, for example, the salary of the employee performing work (the basic rate of pay for the employee plus a factor to cover benefits) and the cost of operating duplicating machinery. Not included in directs costs are overhead expenses such as costs of space, and heating or lighting the facility in which the records are stored.

(2) "Search" includes all time spent looking for material that is responsive to a request, including page-by-page or line-by-line identification of material within documents. Searches may be done manually or by computer using existing programming. A line-by-line search will be conducted only when necessary to determine whether the document contains responsive information and will not be employed in those instances in which duplication of the entire document would be the less expensive and quicker method of complying with a request. "Search" does not include review of material to determine whether the material is exempt from disclosure (see paragraph (h)(4) of this section.

(3) "Duplication" refers to the process of making a copy of a document necessary to respond to a FOIA request. Such copies can take the form of paper copy, microform, audio-visual materials, or machine readable documentation (e.g., magnetic tape or disk), among others. The copy provided must be in a form that is reasonably usable by requesters.

(4) "Review" refers to the process of examining documents located located in response to a request that is for a commercial use (see paragraph (h)(5) of this section to determine whether any portion of any document located is exempt from mandatory disclosure. It also includes processing any documents for disclosure, e.g., doing all that is necessary to excise them and otherwise prepare them for release. Review does not include time spent resolving general legal or policy issues regarding the application of exemptions. Charges may be assessed only for the initial review, i.e., the first time the applicability of a specific exemption is analyzed. Costs for a subsequent review are properly assessable only when a record or portion of a record withheld solely on the basis of an exemption later determined not to apply must be reviewed again to determine the applicability of other exemption not previously considered.

(5) "Commercial use request" refers to a request from or on behalf of one who seeks information for a use or purpose that furthers the commercial, trade, or profit interests of the requester or the person on whose behalf the request is made. In determining whether a request properly belongs in this category, the Postal Service will look to the use to which the requester will put the documents requested. If the use is not clear from the request itself, or if there is reasonable cause to doubt the requester's stated use, the custodian shall seek additional clarification from the requester before assigning the request to this category.

(6) "Educational institution" refers to a pre-school, a public or private elementary or secondary school, an institution of graduate higher education, an institution of undergraduate higher education, an institution of professional education, and an institution of vocational education, which operates a program or programs of scholarly research.

(7) "Noncommercial scientific institution" refers to an institution that is not operated on a "commercial" basis as that term is defined in paragraph (h)(5) of this section, and which is operated solely for the purpose of conducting scientific research the results of which are not intended to promote any particular product or industry.

(8) "Representative of the news media" refers to any person actively gathering news for an entity that is organized and operated to publish or broadcast news to the public. The term "news" means information that is about current events or that would be of current interest to the public. Requests by news organizations for information that will be used for the furtherance of the organization's commercial interests, rather than for the dissemination of news to the public, shall be considered commercial use requests. Examples of news media entities include television or radio stations broadcasting to the public at large, and publishers of periodicals (but only in those instances when they can qualify as disseminators of "news") who make their products available for purchase or subscription by the general public. These examples are not intended to be all-inclusive. A "freelance" journalist will be regarded as a representative of the news media if he can demonstrate a solid basis for expecting publication through a news organization, even though not actually employed by it. This may be demonstrated either by a publication contract with the news organization or by the past publication record of the requester.

* * * * *

10. Appendix A to Part 265 is revised to read as follows:

**APPENDIX A—INFORMATION SERVICES PRICE LIST IN EFECT JANUARY 1, 1987**

Whenever an individual requests information which must be retrieved by computer, standard charges will be incurred based upon resources required to furnish this information. Estimates are provided to the requester in advance and are based on the following standard price list.

| Description of services | Price | Unit |
|---|---|---|
| A. System utilization services: | | |
| Central Processor Unit (CPU). | | Hour. |
| 3085Q NISDC | $5,643.84 | |
| 3084QX St. Louis | 5,978.73 | |
| 3084QX Wilkes-Barre | 5,978.73 | |
| 3090-200 St. Louis | 6,208.84 | |
| 4381-2 NISDC & Wilkes-Barre. | 554.73 | |
| 5870 Minneapolis | 4,725.46 | |
| 5880 San Mateo | 4,951.46 | |
| 5880 New York | 5,670.55 | |
| 5890 Minneapolis | 8,978.38 | |
| Disk Usage (Selector) Channel. | 203.53 | Hour. |
| Multiplexor (Byte) Channel | 153.41 | Hour. |
| Tape Usage (Block MPX) Channel. | 6.44 | Hour. |
| Volume Mounts | 1.47 | Mount. |
| Minimum Job Charge | 1.00 | Job. |
| 3800 Printing | 2.57 | 1000 lines. |
| B. System occupancy charges: | | |
| Tape Occupancy | 50.63 | Hour. |
| Teleprocessing Occupancy | 10.46 | Hour. |
| C. System spooling charges: | | |
| Cards Read, Local | .59 | 1000 Cards. |
| Cards Read, Remote | .06 | 1000 Cards. |
| Lines Printed, Local | 2.57 | 1000 Lines. |
| Lines Printed, Remote | .26 | 1000 Lines. |
| Cards Punched, Local | 5.73 | 1000 Cards. |
| Cards Punched, Remote | .58 | 1000 Cards. |
| D. Peripheral charges: | | |
| Keypunching | 5.60 | 100 Cards. |
| Key-to-Tape | 32.18 | Hour. |
| Microfilm Processing, Off-line. | 51.69 | Frame. |
| Microfiche Processing | .01 | Frame. |
| Microfiche Duplicating | .05 | Sheet. |
| Programmer Support | 31.45 | Hour. |
| Programmer Support, Overtime. | 47.18 | Hour. |
| Systems Analysis Support | 36.90 | Hour. |
| Systems Analysis Support, Overtime. | 55.35 | Hour. |
| Inspection Service Processing. | 2,960.00 | Per A/P. |
| Customer Support Technician. | 16.00 | Hour. |
| Computer Support Specialist. | 16.90 | Hour. |
| Telecommunications Hardware Technician. | 18.80 | Hour. |
| Computer Systems Specialist. | 19.50 | Hour. |
| Telecommunications Hardware Specialist. | 23.50 | Hour. |
| Nucleus Processing | 9.14 | 1000 Trans. |

**Fred Eggleston,**

*Assistant General Counsel, Legislative Division.*

[FR Doc. 87-8440 Filed 4-15-87; 8:45 am]

BILLING CODE 7710-12-M

**DEPARTMENT OF TRANSPORTATION**

**Coast Guard**

**46 CFR Ch. I**

**[CGD 86-074]**

## Regulations for Self-elevating Offshore Service Vessels (Liftboats)

**AGENCY:** Coast Guard, DOT.

**ACTION:** Advanced Notice of Proposed rulemaking.

**SUMMARY:** The Coast Guard is soliciting early public input and comment concerning a proposal to establish safety standards for self-elevating offshore service vessels, commonly known as liftboats. The high rate of casualties experienced by these vessels emphasizes the need for specific regulations addressing the hazards inherent to their operations. The primary areas of regulation tentatively being considered relate to vessel design, equipment, and operating standards for both new and existing vessels. The Coast Guard anticipates that the development and enforcement of standards specifically addressing the unique hull forms and operating characteristics associated with liftboats should significantly improve their safety record.

**DATES:** Comments must be received on or before July 15, 1987.

**ADDRESSES:** Comments should be mailed to Commandant (G-CMC/21)(CGD 86-074), U.S. Coast Guard, Washington, DC, 20593-0001. Comments on this notice will be available for examination and copying between 8 a.m. and 4 p.m., Monday through Friday, except holidays at the Office of the Marine Safety Council (G-CMC/21), Room 2110, Coast Guard Headquarters, 2100 Second Street, SW., Washington, DC 20593-0001. Comments may also be hand delivered to this address.

**FOR FURTHER INFORMATION CONTACT:** Commander G. Randy Speight, Office of Marine Safety, Security and Environmental Protection (G-MVI-4), (202) 267-2307.

**SUPPLEMENTARY INFORMATION:** Interested persons are invited to participate in this advance notice of proposed rulemaking (ANPRM) by submitting written views, data, or other input. Comments should include the names and addresses of the persons making them, identify the ANPRM (CGD 86-074) and the portion of the notice to which the comment applies. All comments received before the comment period expires will be considered in determining the course of action to be taken. Receipt of comments will be acknowledged if a stamped self-addressed post card is enclosed.

On February 14, 1983, the Coast Guard published an ANPRM concerning new construction of Offshore Supply Vessels (OSVs) (48 FR 6636). The information in that ANPRM presents the Coast Guard's overall approach with respect to developing comprehensive standards for conventional offshore supply vessels as contrasted with liftboats and other non-conventional OSVs. On March 7, 1985 the Coast Guard published an ANPRM (CGD 84-098) for revising the Regulations that apply to Outer Continental Shelf Activities (50 FR 9290). Some of the comments received in that rulemaking addressed liftboats and will be considered along with the comments received in response to this notice.

### Drafting Information

The principal persons involved in drafting this notice are Commander G. Randy Speight, Office of Marine Safety, Security and Environmental Protection (G-MVI-4), and William R. Register, Office of Chief Counsel.

### Background

An offshore supply vessel (OSV) is defined in 46 U.S.C. 2101(19) as a motor vessel of more than 15 gross tons but less than 500 gross tons that regularly carries goods, supplies, or equipment *in support of* exploration, exploitation, or production of offshore mineral or energy resources and is not a small passenger vessel. These vessels are regulated under the authority contained in 46 U.S.C. 3306 which also requires that in prescribing OSV regulations their characteristics, methods of operation, and the nature of their service must be taken into account.

Conventional offshore supply vessels have been regulated principally under applicable provisions of 46 CFR Subchapter I since the enactment of Pub. L. 96-378 in October 1980. However, many non-conventional offshore supply vessels, including liftboats, are not inspected under these regulations. Heretofore, these non-conventional offshore supply vessels have been regulated primarily under the provisions of 46 CFR Subchapter C, which contains safety regulations for uninspected vessels.

The Coast Guard estimates that there are nearly 500 of these non-conventional offshore supply vessels in service that meet the 46 U.S.C. 2101(19) definition of OSVs. These vessels are used primarily as temporary platforms from which a small crew can perform well and platform maintenance projects. These vessels have become more and more sophisticated in recent years. Approximately 250 of these are self-elevating, self-propelled service vessels, i.e., liftboats, of less than 300 gross tons that operate primarily in the Gulf of Mexico.

A review of casualties involving liftboats, indicates that for the three year period beginning in 1982, 5.6% of the liftboat fleet of approximately 250 vessels have been involved in sinking or capsizing casualties. The major causes of the casualties have been operator error, inadequate stability, or leg failures. The casualty rate for liftboats is 11 times greater than that for the conventional OSV fleet. Additionally, the National Transportation Safety Board, in their recommendations M-84-004, M-85-112 through 115, and M-86-119, resulting from their investigation into three liftboat casualties, recommended that the Coast Guard establish regulations addressing these vessels, particularly in the area of stability, operating conditions, and operator qualifications. As a result of these findings, it has become clear that the regulations for Uninspected Vessels contained in 46 CFR Subchapter C are inadequate in regulating liftboat operation.

### Proposal

The Coast Guard intends to pursue development of regulations for non-conventional OSVs in two distinct phases. The first phase will address liftboats. These vessels will be addressed first because of their particularly high casualty rate. The second phase will consist of regulation development for those vessels having traditional hull forms and which meet the 46 U.S.C. 2101(19) definition of offshore supply vessel but which heretofore have not been regulated under 46 CFR Subchapter I. This notice solicits comments only on the phase of regulation development addressing liftboats. Regulation development under the second phase will be considered at a future time.

The primary areas of regulation being considered relate to vessel design, equipment, and operating standards. It is envisioned that any new standards developed would incorporate existing requirements wherever possible, particularly those that have and are being applied to conventional OSVs. However, because of the unique design and operating characteristics exhibited by these liftboats, many of the current requirements applied in inspecting and certificating conventional OSVs are inadequate to ensure the safe operation of these vessels.

In order to resolve the problems that currently plague liftboats, the Coast Guard is considering addressing the following safety concerns:

1. Development of specific stability and structural criteria which account for variations in the area of operation.
2. The need for vessel operating manuals addressing various operating modes under differing environmental and loading conditions.
3. Upgrading of lifesaving equipment requirements.
4. Upgrading of fire protection requirements.
5. Development of standards for transport of hazardous chemicals on board these vessels.
6. Development of minimum standards of qualification for vessel operators of these vessels.
7. Development of workplace safety standards for industrial workers that work on these vessels.

In this notice, the Coast Guard is specifically requesting input and comments relating to the topics listed above. Additionally, comments are requested regarding development of separate standards for existing liftboats, as contrasted with new construction, together with information identifying probable difficulties that existing vessels may encounter in meeting standards in the above categories.

### Economic and Other Impact

This rulemaking action is classified as non-major under Executive Order 12291 and as significant rulemaking under DOT policies and procedures (44 FR 11034; February 26, 1979). This rulemaking represents a significant change in policy with respect to liftboats since, as mentioned above, these vessels have been previously regulated primarily under Title 46 CFR Subchapter C.

Although this rulemaking is expected to establish minimun requirements for existing vessels, the primary thrust will be directed toward vessels constructed after the effective date of the final rules. Additionally, some costs are anticipated to be offset, in substantial part, by the estimated savings in amounts paid in liability claims and insurance premiums because of a reduction in the frequency and severity of the casualties to which these vessels have, historically, been victim. Accordingly, these rules are not expected to impose substantial costs on the liftboat industry. Likewise, no significant energy or environmental impacts are anticipated as a result of this rulemaking; nor are major impacts on state or local government agencies or small entities expected.

Economic impact and other impacts which are expected include:

a. An immediate requirement for a complement of officers and crew that hold appropriate marine licenses and/or documents. The licenses and qualifications would be the same or similar to those required for conventional OSVs and may, in addition, include a requirement for specialized knowledge of the stability and operating characteristics unique to these vessels.

b. Development of adequate stability and operating criteria that will allow for safe operation of these vessels in all modes. This could require the owner to modify the vessel's design and perform stability tests.

c. Development or incorporation of appropriate leg strength and design criteria. This could include certification of design at the expense of the owner.

d. Additional operating expenses due to periodic inspection and routine drydocking requirements.

e. Possible reduction of insurance premiums because of Coast Guard certification.

f. Limitation of the route of existing vessels that do not meet the stability requirements for unrestricted routes.

The Coast Guard plans to prepare a regulatory evaluation at the NPRM stage addressing the above economic and other concerns. Public input and comment relating to anticipated costs, benefits, and impacts of the rulemaking would be helpful and are specifically requested.

### Paperwork Requirements

This rulemaking would require owners of lifeboats to submit a completed "Application for Inspection of U.S. Vessel" (CG–3752) to an Officer in Charge, Marine Inspection. This existing form would be required for the initial inspection and for each subsequent inspection. Estimated time to complete this form is three minutes.

Owners of these vessels would also be required to maintain the "Certificate of Inspection" and "Stability Letter" issued by the Coast Guard aboard the inspected vessel.

Plan or drawing submissions might also be required as a result of this rulemaking. Further, preparation of operating manuals, submittal of those manuals to the Coast Guard, and maintenance of those manuals on the vessel might be required.

### Environmental Considerations

As a part of this rulemaking, the Coast Guard is considering the environmental impact the regulations might have. An environmental assessment will be prepared and placed on file in the rulemaking docket before publishing an NPRM.

### Available Materials

In commenting on this advance notice of proposed rulemaking, commenters may wish to consider the various materials relating to the Coast Guard's casualty review and the NTSB recommendations referenced above. These materials are available for public inspection and copying at the address listed above (under **ADDRESSES**) for submitting comments.

Dated: April 13, 1987.

**P.A. Yost,**

*Admiral, U.S. Coast Guard, Commandant.*

[FR Doc. 87–8572 Filed 4–15–87; 8:45 am]

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## DEPARTMENT OF DEFENSE

## 48 CFR Part 225

## Department of Defense Federal Acquisition Regulation Supplement; Foreign Acquisition

**AGENCY:** Department of Defense (DoD).

**ACTION:** Proposed rule and request for comments.

**SUMMARY:** The Defense Acquisition Regulatory Council is considering changes to DFARS 225.105(S–75) to clarify that the 50% evaluation factor of the Balance of Payments Program shall not apply to any offer submitted in response to a solicitation for a civil works project, funded by civil works appropriations.

**DATE:** Comments on the proposed revisions should be submitted in writing to the Acting Executive Secretary, DAR Council, at the address shown below, on or before June 15, 1987, to be considered in the formulation of the final rule. Please cite DAR Case 86–144 in all correspondence related to this issue.

**ADDRESS:** Interested parties should submit written comments to: Defense Acquisition Regulatory Council, ATTN: Mr. Owen Green, Acting Executive Secretary, ODASD(P)/DARS, c/o OASD(A&L) (M&RS), Room 3C841, The Pentagon, Washington, DC 20301–3062.

**FOR FURTHER INFORMATION CONTACT:** Mr. Owen Green, Acting Executive Secretary, DAR Council, telephone (202) 697–7266.

**SUPPLEMENTARY INFORMATION:**

### A. Background

As currently written, DFARS 225.105(S–75) seems to draw a distinction between offers received from qualifying countries and those received from nonqualifying countries, i.e., in the latter case contracting officers have read the DFARS to require application of the 50% evaluation factor under the Balance of Payments Program. This proposed revision clarifies the coverage and removes the implied distinction.

### B. Regulatory Flexibility Act Information

The proposed rule is not expected to have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act, 5 U.S.C. 601 et seq. because, although the proposed rule will apply to small businesses, it affects only direct purchases made by the Department of Defense and not materiel incidental to civil works construction contracts. Overall, the proposed rule will have very little effect on small businesses since, as a rule, they are not prospective offerors for the types of construction equipment separately acquired in these procurements. An initial regulatory flexibility analysis has therefore not been performed. Comments are invited from small businesses and other interested parties. Comments from small entities concerning the affected DFARS Subpart will also be considered in accordance with section 610 of the Act. Such comments must be submitted separately and cite DAR Case 87–610D in correspondence.

### C. Paperwork Reduction Act Information

The Paperwork Reduction Act (Pub. L. 96–511) does not apply because the proposed changes do not impose any additional reporting or recordkeeping requirements or collection of information from offerors, contractors, or members of the public which require the approval of OMB under 44 U.S.C. 3501, et seq.

### List of Subjects in 48 CFR Part 225

Government procurement.

**Owen L. Green, III,**

*Acting Executive Secretary, Defense Acquisition Regulatory Council.*

Therefore, it is proposed that 48 CFR Part 225 be amended as follows:

## PART 225—FOREIGN ACQUISITION

1. The authority citation for 48 CFR Part 225 continued to read as follows:

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

2. Section 225.105 is amended by revising paragraphs (S–71) and (S–75) to read as follows:

**§ 25.105 Evaluating offers.**

* * * * *

(S–71) Except as provided in this paragraph (S–71) and in accordance with (S–73), (S–74), and (S–75) below, offers shall be evaluated so as to give preference to domestic offers as follows:

* * * * *

(S–75) For equipment or supplies for civil works projects, funded by civil works appropriations, offers shall not be subject to the 50% evaluation factor of the Balance of Payments Program, but shall be subject to the 6% and 12% evaluation factors of the By American Act, unless a specific waiver of the Buy American Act is otherwise obtained for that acquisition through the procedures of this subpart.

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# Notices

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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

### Food and Nutrition Service

### National Advisory Council on Child Nutrition; Meeting

**AGENCY:** Food and Nutrition Service, USDA.

**ACTION:** Notice.

**SUMMARY:** Pursuant to the Federal Advisory Committee Act, Pub. L. 92–463, notice is hereby given that the National Advisory Council on Child Nutrition, established by section 15 of the National School Lunch Act to make a continuing study of the Child Nutrition Programs of the U.S. Department of Agriculture, has scheduled a meeting for June 2–4, 1987.

**DATE:** The meeting will take place from 9:00 a.m. to 5:00 p.m. on Tuesday and Wednesday, June 2 and 3 and Thursday, June 4 from 9:00 a.m. to noon.

**ADDRESS:** The meeting will be held at the Days Inn of Crystal City, 2000 Jefferson Davis Highway, Arlington, Virginia 22202.

**FOR FURTHER INFORMATION CONTACT:** Mr. Lou Pastura, Child Nutrition Division, Food and Nutrition Service, U.S. Department of Agriculture, 3101 Park Center Drive, Alexandria, Virginia 22302, (703) 756–3620.

**SUPPLEMENTARY INFORMATION:** The meeting will be devoted primarily to a discussion of the Department's response to the Council's recommendations contained in the 1986 biennial report to the President and the Congress as well as current program issues. If time permits, the general public will be allowed to participate in the discussions. The agenda will be available 15 days prior to the meeting. Requests for the agenda should be sent to Mr. George A. Braley, Executive Secretary, National Advisory Council on Child Nutrition, U.S. Department of Agriculture, Food and Nutrition Service, 3101 Park Center Drive, Alexandria, Virginia 22302.

Dated: April 9, 1987.

**S. Anna Kondratas,**

*Acting Administrator, Food and Nutrition Service.*

[FR Doc. 87–8515 Filed 4–15–87; 8:45 am]

BILLING CODE 3410–30–M

### Soil Conservation Service

### Bolton Critical Area Treatment RC&D Measure, Warren County, NY

**AGENCY:** Soil Conservation Service, USDA.

**ACTION:** Notice of a finding of no significant impact.

**SUMMARY:** Pursuant to section 102(2)(C) of the National Environmental Policy Act of 1969; the Council on Environmental Quality Guidelines (40 CFR Part 1500); and the Soil Conservation Service Guidelines (7 CFR Part 650); the Soil Conservation Service, U.S. Department of Agriculture, gives notice that an environmental impact statement is not being prepared for the Bolton Critical Area Treatment RC&D Measure, Warren County, New York.

**FOR FURTHER INFORMATION CONTACT:** Paul A. Dodd, State Conservationist, Soil Conservation Service, James M. Hanley Federal Building, 100 S. Clinton Street, Room 771, Syracuse, New York 13260, telephone (315) 423–5521.

**SUPPLEMENTARY INFORMATION:** The environmental assessment of this federally assisted action indicates that the project will not cause significant local, regional, or national impacts on the environment. As a result of these findings, Paul A. Dodd, State Conservationist, has determined that the preparation of an environmental impact statement is not needed for this project.

The measure concerns a plan for reducing critical erosion along a roadbank in the Town of Bolton which results from seepage, unstable slopes, and lack of protective vegetative cover. The amount of sediment entering Huddle Brook and Lake George will be reduced through the installation of project measures. The planned works of improvement include the installation of a drainage system to intercept seepage, the installation of a rock revetment along the lower portion of the slope, and the reshaping and seeding of the eroding bank.

The Notice of Finding of No Significant Impact (FONSI) has been forwarded to the Environmental Protection Agency and to various Federal, State and local agencies and interested parties. A limited number of copies of the FONSI are available to fill single copy requests at the above address. Basic data developed during the environmental assessment is on file and may be reviewed by contacting Paul A. Dodd.

No administrative action on implementation of the proposal will be taken until 30 days after the date of this publication in the **Federal Register.**

(This activity is listed in the Catalog of Federal Domestic Assistance under No. 10.901—Resource Conservation and Development—and is subject to the provision of Executive Order 12372 which requires intergovernmental consultation with State and Local officials.)

Dated: March 19, 1987.

**Paul A. Dodd,**

*State Conservationist.*

[FR Doc. 87–8491 Filed 4–15–87; 8:45 am]

BILLING CODE 3410–16–M

### Soil Conservation Service

### Availability of a Record of Decision; Wolf River Watershed, KS

**AGENCY:** Soil Conservation Service.

**ACTION:** Notice of availability of a record of decision.

**SUMMARY:** James N. Habiger, responsible Federal official for projects administered under the provisions of Pub. L. 83–566, 16 U.S.C. 1001 through 1008, in the State of Kansas, is hereby providing notification that a record of decision to proceed with the installation of the Wolf River Watershed is available. Single copies of this record of decision may be obtained from James N. Habiger at the address shown below.

**FOR FURTHER INFORMATION CONTACT:** James N. Habiger, State Conservationist, Soil Conservation Service, 760 South Broadway, Salina, Kansas 67401. Telephone 913–823–4578.

(This activity is listed in the Catalog of Federal Domestic Assistance under No. 10.904—Watershed Protection and Flood Prevention—and is subject to the provisions of Executive Order 12372 which requires

intergovernmental consultation with State and local officials)

Dated: April 16, 1987.

James N. Habiger,

*State Conservationist.*

[FR Doc. 87-8538 Filed 4-15-87; 8:45 am]

BILLING CODE 3410-16-M

## Mineral County Schools Critical Area Treatment RC&D Measure Plan, West Virginia

**AGENCY:** Soil Conservation Service, USDA.

**ACTION:** Notice of a Finding of No Significant Impact.

**SUMMARY:** Pursuant to section 102(2)(C) of the National Environmental Policy Act of 1969; the Council on Environmental Quality Guidelines, (40 CFR Part 1500); and the Soil Conservation Service Guidelines. (7 CFR Part 650); the Soil Conservation Service, U.S. Department of Agriculture, gives notice that an environmental impact statement is not being prepared for the Mineral County Schools Critical Area Treatment RC&D Measure, Mineral County, West Virginia.

**FOR FURTHER INFORMATION CONTACT:** Rollin N. Swank, State Conservationist, Soil Conservation Service, 75 High Street, Morgantown, West Virginia 26505 telephone 304-291-4151.

**SUPPLEMENTARY INFORMATION:** The environmental assessment of this federally assisted action indicates that the project will not cause significant local, regional, or national impacts on the environment. As a result of these findings, Mr. Rollin N. Swank, State Conservationist, has determined that the preparation and review of an environment impact statement are not needed for this project.

### Mineral County Schools Critical Area Treatment Measure, West Virginia Notice of a Finding of No Significant Impact

The measure consists of critical area treatment at the Frankfort High School. The 6 acre site has a severe erosion and sedimentation problem. The site will be reshaped to control the surface water. Surface and subsurface drains will be installed to remove the excess water from the playground, and will be revegetated as an intensive use area.

The Notice of a Finding of No Significant Impact (FONSI) has been forwarded to the Environmental Protection Agency and to various Federal, State, and local agencies and interested parties. A limited number of copies of the FONSI are available to fill single copy requests at the above address. Basic data developed during the environmental assessment are on file and may be reviewed by contacting Rollin N. Swank, State Conservationist.

No administrative action on implementation of the proposal will be taken until 30 days after the date of this publication in the **Federal Register**.

(Catalog of Federal Domestic Assistance Program No. 10.901, Resource Conservation and Development Program. Office of Management and Budget Circular A-95 regarding State and local clearinghouse review of Federal and federally assisted programs and projects is applicable.)

**Rollin N. Swank,**

*State Conservationist*

April 9, 1987.

[FR Doc. 87-8613 Filed 4-15-87; 8:45 am]

BILLING CODE 3410-16-M

## COMMISSION ON CIVIL RIGHTS

### Alabama Advisory Committee; Agenda and Notice of Public Meeting

Notice is hereby given, pursuant to the provisions of the Rules and Regulations of the U.S. Commission on Civil Rights, that a meeting of the Alabama Advisory Committee to the Commission will convene at 9:00 a.m. and adjourn at 1:30 p.m., on May 15, 1987, at the Holiday Inn Airport, 5000 North 10th Street, Birmingham Alabama. The purpose of the meeting is to develop program plans and to obtain information on the status of civil rights in the State.

Persons desiring additonal information, or planning a presentation to the Committee, should contact Committee Chairperson, Rodney Max, or Melvin Jenkins, Director of the Central Regional Division (816) 374-5253, (TDD 816/374-5009). Hearing impaired persons who will attend the meeting and require the services of a sign language interpreter, should contact the Regional Office at least five (5) working days before the scheduled date of the meeting.

The meeting will be conducted pursuant to the provisions of the rules and regulations of the Commission.

Dated at Washington, DC, April 7, 1987.

**Susan Prado,**

*Acting Staff Director.*

[FR Doc. 87-8539 Filed 4-15-87; 8:45 am]

BILLING CODE 6335-01-M

### Illinois Advisory Committee; Agenda and Notice of Public Meeting

Notice is hereby given, pursuant to the provisions of the Rules and Regulations of the U.S. Commission on Civil Rights, that a meeting of the Illinois Advisory Committee to the Commission will convene at 9:30 a.m. and adjourn at 4:00 p.m., on May 4, 1987, at 55 West Monroe Street, Suite 2400, Chicago, Illinois. The purpose of the meeting is to develop program plans and to obtain information on the status of civil rights in the State.

Persons desiring additional information, or planning a presentation to the Committee, should contact Committee Chairperson, Hugh J. Schwartzberg, or Melvin Jenkins, Director of the Central Regional Division (816) 374-5253, (TDD 816/374-5009). Hearing impaired persons who will attend the meeting and require the services of a sign language interpreter, should contact the Regional Office at least five (5) working days before the scheduled date of the meeting.

The meeting will be conducted pursuant to the provisions of the rules and regulations of the Commission.

Dated at Washington, DC, April 7, 1987.

**Susan Prado,**

*Acting Staff Director.*

[FR Doc. 87-8540 Filed 4-15-87; 8:45 am]

BILLING CODE 6335-01-M

### Minnesota Advisory Committee; Agenda and Notice of Public Meeting

Notice is hereby given, pursuant to the provisions of the Rules and Regulations of the U.S. Commission on Civil Rights, that a meeting of the Minnesota Advisory Committee to the Commission will convene at 6:00 p.m. and adjourn at 9:00 p.m., on May 27, 1987, at the Holiday Inn, 1313 Nocollet Mall, Minneapolis, Minnesota. The purpose of the meeting is to develop program plans and to obtain information on the status of civil-rights in the State.

Persons desiring additional information, or planning a presentation to the Committee, should contact Committee Chairperson, Talmadge L. Bartelle, or Melvin Jenkins, Director of the Central Regional Division (816) 374-5253, (TDD 816/374-5009). Hearing impaired persons who will attend the meeting and require the services of a sign language interpreter, should contact the Regional Office at least five (5) working days before the scheduled date of the meeting.

The meeting will be conducted pursuant to the provisions of the rules and regulations of the Commission.

Dated at Washington, DC, April 7, 1987.

**Susan Prado,**

*Acting Staff Director.*

[FR Doc. 87-8541 Filed 4-15-87; 8:45 am]

BILLING CODE 6335-01-M

### Nebraska Advisory Committee; Agenda and Notice of Public Meeting

Notice is hereby given, pursuant to the provisions of the Rules and Regulations of the U.S. Commission on Civil Rights, that a meeting of the Nebraska Advisory Committee to the Commission will convene at 10:00 a.m. and adjourn at 4:00 p.m., on May 11, 1987, at the University of Nebraska, College of Law, Lincoln, Nebraska. The purpose of the meeting is to develop program plans and to obtain information on the status of civil rights in the State.

Persons desiring additional information, or planning a presentation to the Committee, should contact Committee Chairperson, Richard F. Duncan, or Melvin Jenkins, Director of the Central Regional Division (816) 374–5253, (TDD 816/374–5009). Hearing impaired persons who will attend the meeting and require the services of a sign language interpreter, should contact the Regional Office at least five (5) working days before the scheduled date of the meeting.

The meeting will be conducted pursuant to the provisions of the rules and regulations of the Commission.

Dated at Washington, DC, April 7, 1987.

**Susan Prado,**

*Acting Staff Director.*

[FR Doc. 87–8542 Filed 4–15–87; 8:45 am]

BILLING CODE 6335–01–M

### Ohio Advisory Committee; Agenda and Notice of Public Meeting

Notice is hereby given, pursuant to the provisions of the Rules and Regulations of the U.S. Commission on Civil Rights, that a meeting of the Ohio Advisory Committee to the Commission will convene at 1:00 p.m. and adjourn at 4:00 p.m., on May 28, 1987, at the U.S. Courthouse, Room 22, 85 Marconi Boulevard, Columbus, Ohio. The purpose of the meeting is to develop program plans and to obtain information on the status of civil rights in the State.

Persons desiring additional information, or planning a presentation to the Committee, should contact Committee Chairperson, Donald G. Prock, or Melvin Jenkins, Director of the Central Regional Division (816) 374–5253, (TDD 816/374–5009). Hearing impaired persons who will attend the meeting and require the services of a sign language interpreter, should contact the Regional Office at least five (5) working days before the scheduled date of the meeting.

The meeting will be conducted pursuant to the provisions of the rules and regulations of the Commission.

Dated at Washington, DC, April 7, 1987.

**Susan Prado,**

*Acting Staff Director.*

[FR Doc. 87–8543 Filed 4–15–87; 8:45 am]

BILLING CODE 6335–01–M

## DEPARTMENT OF COMMERCE

### International Trade Administration

## DEPARTMENT OF THE INTERIOR

### Office of the Secretary

**[Docket No. 61090–6237]**

### Allocation of Duty-Exemption for Calendar Year 1987 for the Watch Producer Located in Guam

**AGENCY:** Import Administration, International Trade Administration, Department of Commerce; and Office of the Secretary, Department of the Interior.

**ACTION:** Allocation of duty-exemption for calendar year 1987 for the watch producer in Guam.

**SUMMARY:** This action allocates the 1987 duty-exemption for the watch producer located in Guam pursuant to Pub. L. 97–446.

**FOR FURTHER INFORMATION CONTACT:** Faye Robinson, (202) 377–1660.

**SUPPLEMENTARY INFORMATION:** Pursuant to Pub. L. 97–446, the Departments of the Interior and Commerce (the Departments) share responsibility for the allocation of duty exemptions among watch assembly firms in the insular possessions and the Northern Mariana Islands. The Departments established for 1987 a total quantity of watches and watch movements which could be entered free of duty from the insular possessions and the Northern Mariana Islands of 6,000,000 units, 4,000,000 of which could be allocated to Virgin Islands producers, 1,000,000 to Guam producer, 500,000 to American Samoa producers and 500,000 to Northern Mariana Islands producers (52 FR 3794).

The criteria of the calculation of the 1987 duty-exemption allocations among insular producers are set forth in Section 303.14 of the regulations (15 CFR Part 303) as amended on February 6, 1987 (52 FR 3794). The allocation of duty-exemption for 1987 among watch producers located in the Virgin Islands was published on March 12, 1987 (52 FR 7647).

The Departments have verified the data submitted on application form ITA–334P by the producer in Guam and inspected the current operation of the producer in accordance with Sec. 303.5 of the regulations.

Publication of the Guam data would disclose competitively sensitive information since there is only one producer in Guam.

The duty-exemption allocation for calendar year 1987 for Guam is as follows:

Name of Firm, Timewise Ltd.; Annual Allocation, 500,000.

**Joseph A. Spetrini,**

*Deputy to the Deputy Assistant Secretary for Import Administration.*

**Richard T. Montoya,**

*Assistant to Secretary for Territorial and International Affairs.*

[FR Doc. 87–8580 Filed 4–15–87; 8:45 am]

BILLING CODE 3510–DS–M

BILLING CODE 4310–93–M

### International Trade Administration

### Export Trade Certificates of Review

**AGENCY:** International Trade Administration Commerce.

**ACTION:** Notice of Revocation of Export Trade Certificates of Review Nos. 84–00003 and 84–00013.

**SUMMARY:** The Department of Commerce had issued export trade certificates of review to Am-Tech Export Trading Company, Inc. (Am-Tech) and Equinomics, Inc. (Equinomics). Because the certificate holders have failed to file annual reports as required by law, the Department is revoking both certificates. This notice summarizes the notification letters sent to Am-Tech and Equinomics.

**FOR FURTHER INFORMATION CONTACT:** George Muller, Acting 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, 15 U.S.C. 4011–21) authorizes the Secretary of Commerce to issue export trade certificates of review. The regulations implementing Title III ("the Regulations") are found at 15 CFR Part 325 (1986). Pursuant to this authority, certificates of review were issued on May 7, 1984 and June 24, 1984 to Am-Tech (application #84–00003) and Equinomics (application #84–00013), respectively.

A certificate holder is required by law to submit to the Department of Commerce annual reports that update financial and other information relating to business activities covered by its certificate. Section 308 of the Act, 15 U.S.C. 4018; § 235.14(a) of the Regulations, 15 CFR 325.14(a). The

annual report is due within 45 days after the anniversary date of the issuance of the certificate of review. Section 325.14(b) of the Regulations, 15 CFR 325.14(b). Failure to submit a complete annual report may be the basis for revocation. Sections 325.10(a)(3) and 325.14(c) of the Regulations, 15 CFR 325.10(a)(3) & 325.14(c).

On April 24, 1986, the Department of Commerce sent to Am-Tech a letter containing annual report questions with a reminder that its annual report was due on June 21, 1986. Additional reminders were sent on July 8, July 21, and August 8, 1986. Similar letters were sent on June 13, September 2, September 15, and October 2, 1986 to Equinomics, whose annual report was due on August 9, 1986. The Department received no response from Am-Tech or Equinomics to any of these letters.

On December 4, 1986, and in accordance with § 325.10(c)(2) of the Regulations (15 CFR 325.10(c)(2)), the Department sent letters to notify Am-Tech and Equinomics that the Department was formally initiating the process to revoke their certificates for their failure to file a annual report. In addition, a summary of these letters allowing Am-Tech and Equinomics thirty days to respond was published in the **Federal Register** on December 12, 1986 at 51 FR 44824. Pursuant to § 325.10(c)(2) of the Regulations (15 CFR 325.10(c)(2)), the Department considers the failure of Am-Tech and Equinomics to respond to be an admission of the statements contained in their respective notification letters.

The Department has determined to revoke the certificates issued to Am-Tech and Equinomics for their failure to file an annual report. The Department has sent letters, dated April 9, 1987, to notify Am-Tech and Equinomics of its determination. The revocation is effective thirty (30) days from the date of publication of this notice. Any person aggrieved by such this decision may appeal to an appropriate U.S. district court within 30 days from the date on which this notice is published in the **Federal Register.** Sections 325.10(c)(4) and 325.11 of the Regulations, 15 CFR 325.10(c)(4) & 325.11.

Dated: April 10, 1987.

George Muller,

*Acting Director Office of Export Trading Company Affairs.*

[FR Doc. 87-8579 Filed 4-15-87; 8:45 am]

BILLING CODE 3510-DR-M

## National Oceanic and Atmospheric Administration

**[Docket No. 70471-7071]**

### Information Relating to Bowhead Whales

**AGENCY:** National Marine Fisheries Service (NMFS), NOAA, Commerce.

**ACTION:** Notice of availability of documents and request for public comment.

**SUMMARY:** Information is published by NOAA that is used in the development of the U.S. position to be presented before the International Whaling Commission (IWC) on the aboriginal/subsistence take of bowhead whales and in the domestic allocation of the existing IWC quota for bowhead whales to U.S. natives. By this notice NOAA is advising the public of the availability of and soliciting public comment on the Administrator's initial discretionary views on (1) the current population level and annual net recruitment rate of the bowhead whale, (2) the nature and extent of the aboriginal/subsistence need for bowhead whales, and (3) the level of take of bowhead whales that is consistent with the provisions of the IWC aboriginal/subsistence whaling management scheme. Also available upon request is the list of documents reviewed and used in formulating these initial views.

**DATE:** Written comments on the Administrator's initial views must be submitted by May 18, 1987.

**ADDRESS:** The Administrator's initial views and the list of documents reviewed and used in formulating these initial views are available from Becky Rootes, Office of International Fisheries, National Marine Fisheries Service, Room 919, Universal South Building, 1825 Connecticut Avenue NW., Washington, DC 20235.

**FOR FURTHER INFORMATION CONTACT:** Becky Rootes, (202) 673-5281.

(16 U.S.C. 1361-1407, 1531-1543, 916)

Dated: April 10, 1987.

**James E. Douglas, Jr.,**

*Deputy Assistant Administrator for Fisheries.*

[FR Doc. 87-8568 Filed 4-15-87; 8:45 am]

BILLING CODE 3510-12-M

## Patent and Trademark Office

### Interim Protection for Mask Works of Nationals, Domiciliaries, and Sovereign Authorities of Switzerland

**AGENCY:** Patent and Trademark Office, Commerce.

**ACTION:** Issuance of interim order.

**SUMMARY:** The Secretary of Commerce has delegated to the Assistant Secretary and Commissioner of Patents and Trademarks, by Amendment 1 to Department Organizations Order 10-14, the authority under section 914 of Title 17 of the United States Code (the copyright law) to make findings and issue orders for the interim protection of mask works.

On January 27, 1987, the Swiss Federal Intellectual Property Office submitted a petition on behalf of the Swiss Confederation for the issuance of a interim order. Comments on the petition were requested on or before February 28, 1987, and a hearing was set for March 5, 1987. Requests to testify were received from the Semiconductor Industry Association (SIA) and the Swiss Confederation.

At the March 5, 1987, hearing, after receiving assurance that the protection afforded under Swiss law would be generally similar to that under the SCPA, the SIA supported the issuance of an interim order. SIA urged that, in view of their areas of concern, any order issued should be from one year, should the Commissioner's authority to issue such orders be extended beyond November 8, 1987. The Federation of Swedish Industries urged that the order should issue for one year or for the remaining term of the Commissioner's authority. The Commissioner has determined that Switzerland has demonstrated good faith efforts and reasonable progress toward providing protection for mask works of U.S. nationals and domiciliaries, and has determined that an order should issue until November 8, 1987.

**DATES:** The effective date of this order shall be January 27, 1987, the date of receipt of the petition.

**TERMINATION DATE:** This order shall terminate on November 8, 1987.

**FOR FURTHER INFORMATION CONTACT:** Michael K. Kirk, Assistant Commissioner for External Affairs, by telephone at (703) 557-3065, or by mail marked to his attention and addressed to Commissioner of Patents and Trademarks, Box 4, Washington, DC., 20231.

**SUPPLEMENTARY INFORMATION:** Chapter 9 of Title 17 of the United States Code establishes an entirely new form of intellectual property protection for mask works that are fixed in semiconductor chip products. Mask works are defined in 17 U.S.C. 901(a)(2) as:

"A series of related images, however, fixed or encoded

(A) Having or representing the perdetermined, three-dimensional pattern of metallic, insulating or semiconductor material present or removed from the layers of a semiconductor chip product; and

(B) In which series the relation of the images to one another is that each image has the pattern of the surface of one form of the semiconductor chip product."

Chapter 9 provides for a 10-year term of protection for original mask works, measured from the earlier of their date of registration in the U.S. Copyright Office, or their first commercial exploitation anywhere in the world. Mask works must be registered within 2 years of their first commercial exploitation to maintain this protection.

Foreign mask works are eligible for protection under basic criteria set out in 17 U.S.C. 902. Either (i), the owner of the mask works must be a national, domiciliarly, or sovereign authority of a foreign nation that is a party to a treaty providing for the protection of a mask work to which the United States is also a party, or a stateless person wherever domiciled; (ii) the mask work must be first commercially exploited in the United States; or (iii) the mask work must come within the scope of a Presidential proclamation. Section 902(a)(2) provides that where:

A foreign nation extends to mask works of owners who are nationals or domiciliaries of the United States protection (A) on substantially the same basis as that on which the foreign nation extends protection to mask works of its own nationals and domiciliaries and mask works first commercially exploited in that nation, or (B) on substantially the same basis as provided under this chapter, the President may by proclamation extend protection under this chapter to mask works (i) of owners who are, on the date on which the mask works are registered under section 908, or the date on which the mask works are first commerically exploited anywhere in the world, whichever occurs first, nationals, domiciliaries, or sovereign authorities of that nation, or (ii) which are first commerically exploited in that nation.

In order to encourage steps toward a regime of international comity in mask works protection, section 914(a) provides that the Secretary of Commerce may extent the privilege of obtaining interim protection under chapter 9 to nationals, domiciliaries, and soverign authorities of foreign nations if the Secretary finds:

"(1) That the foreign nation is making good faith efforts and reasonable progress toward—

(A) Entering into a treaty described in section 902(a)(1)(A); or

(B) Enacting legislation that would be in compliance with subparagraph (A) or (B) of section 902(a)(2); and

(2) That the nationals, domiciliaries, and sovereign authorizes of the foreign nation, and persons controlled by them, are not engaged in the misappropriation, or unauthorized distribution or commerical exploitation of mask works; and

(3) That issuing the order would promote the purposes of this chapter and international comity with respect to the protection of mask works."

At the March 5, 1987, hearing, Switzerland was represented by Dr. Roland Grossenbacher, Assistant Director of the Swiss Federal Intellectual Property Office, Mr. Max Hohl representing the Swiss Federation of Commerce and Industry, and Dr. Rudolf Ramsauer, of the Swiss Embassy in Washington. Dr. Ramsauer introduced the witnesses and explained that Dr. Grossenbacher spoke for the Swiss Administration as a whole. Dr. Grossenbacher explained Swiss legislative developments concerning copyright and unfair competition law as they related to the protection of semiconductor chips in the short term, in the medium term and in the long term. He explained that, at present, the 1943 law against unfair competition and the copyright law would provide some measure of protection for semiconductor chip products.

In the medium term, he explained that Switzerland has passed a new unfair competition law which should enter into effect on April 13, 1987. It seems reasonably certain that semiconductor chips will enjoy protection under that law. Products protected under that law will be subject to provisions regarding their reproduction that are roughly equivalent to the SCPA's provisions on reverse engineering. Protection under the Act will be of indefinite term. That is, a product will be protected against copying until the production costs of the product have been amortized.

Dr. Grossenbacher explained further that, in the long term, the Swiss parliament is considering a new copyright law, and that it has directed the Swiss Government to study the protection of technical products. In this context, Switzerland is considering the appropriateness of adopting special provisions for chip protection, possibly as a separate chapter in the copyright law. In this work the Swiss are considering carefully the U.S. SCPA, the directive for the protection of integrated circuits in the European Community, and the activity concerning the development of a new treaty for the protection of integrated circuit layouts in the World Intellectual Property Organization.

Mr. Hohl explained that Swiss industry strongly supports high levels of intellectual property protection, and that it is especially interested in an appropriate legal regime for the protection of chips. Swiss industry is cooperating closely with the Government study commission and supports speedy provision of specific protection for semiconductor chips in Switzerland. Mr. Hohl asserted that semiconductor chip products were not subject to misappropriation in Switzerland.

The SIA was represented by its counsel Daryl Hatano, who expressed SIA's appreciation for the Swiss presentation. He agreed that there was no evidence of misappropriation of U.S. mask works in Switzerland. If certain questions could be clarified the SIA would support an interim order for Switzerland. The first is that the Swiss Government is working toward legislation that will provide protection on substantially the same basis as the SCPA. This means legislation that includes the following elements:

(1) Protection of subject matter that includes semiconductor mask works;

(2) Originality, rather than novelty, as the criterion for protection;

(3) A minimum term of protection of at least 10 years;

(4) An innocent infringement provision similar to that in the SCPA; and,

(5) Provisions allowing reverse engineering as in the SCPA.

Mr. Hatano also expressed concern over the indefinite term of protection under the new law on unfair competition and the provisions of that law which would permit copying if an appropriate expenditure were involved.

Dr. Grossenbacher explained that when legislation to protect chips was established, the term of protection in that legislation would govern, and that the 10-year term of protection was receiving serious consideration. He further explained that Switzerland would not legislative chip protection "in another way than to grant protection on substantially the same basis as the EEC and the U.S. Act." Given these assurances, Mr. Hatano concluded that the SIA would support an interim order for Switzerland.

The record supports the conclusion that the Swiss Confederation is making good faith efforts and reasonable progress toward establishing a system for the protection of mask works in Switzerland on substantially the same basis as under the SCPA. There is no evidence of misappropriation of U.S. mask works in Switzerland, and the support that Switzerland has shown for a new chip protection treaty is strong evidence of Swiss efforts to assist the development of international comity in this important area of intellectual

property law. Accordingly, I have concluded that an interim order should issue for nationals, domiciliaries and sovereign authorities of the Swiss Confederation. This order shall endure until November 8, 1987, and the effective date shall be January 25, 1987, the date of receipt of the petition.

**Order Extending Interim Protection Under Chapter 9, Title 17, United States Code, to Nationals, Domiciliaries, and Sovereign Authorities of Switzerland**

In accordance with the authority vested in me by Amendment 1 to Department Organization Order 10–14 regarding 17 U.S.C. 914, and based upon the records of this proceeding commenced on March 5, 1987, I find that: Switzerland is and has, since January 25, 1987, been making good faith efforts toward enacting legislation that will be in compliance with 17 U.S.C. 902(a)(2); Swiss nationals, domiciliaries, and sovereign authorities and persons controlled by them are not engaged in the misappropriation of unauthorized distribution or commercial exploitation of mask works; and, the issuance of this order will promote international comity with respect to the protection of mask works.

Accordingly, nationals, domiciliaries, and sovereign authorities of Switzerland are entitled to protection under Chapter 9 of 17 U.S.C. subject to compliance with all formalities specified therein. The effective date of this order shall be January 25, 1987, and this order shall terminate on November 8, 1987.

Dated: April 9, 1987.

**Donald J. Quigg,**

*Assistant Secretary and Commissioner of Patents and Trademarks.*

[FR Doc. 87–8525 Filed 4–15–87; 8:45 am]

BILLING CODE 3510–16–M

## COMMISSION ON MERCHANT MARINE AND DEFENSE

### Closed Meeting

**SUMMARY:** The Commission on Merchant Marine and Defense was established by Pub. L. 98–525 (as amended), and the Commission was constituted in December 1986. The Commission's mandate is to study and report on problems relating to transportation of cargo and personnel for national defense purposes in time of war or national emergency, the capability of the Merchant Marine to meet the need for such transportation, and the adequacy of the shipbuilding mobilization base to support naval and merchant ship construction. In accordance with the Federal Advisory Committee Act, Pub. L. 92–463, as amended, the Commission announces the following meeting:

Dates and Times: Monday, April 27, 1987, Beginning 9:00 a.m. and ending 12:30 p.m.; Tuesday, April 28, 1987, Beginning 9:00 a.m.

Place: Suite 520, 4401 Ford Avenue, Alexandria, Virginia, 22301–0268.

Type of Meeting: Closed.

Contact Person: Allan W. Cameron, Executive Director, Commission on Merchant Marine and Defense, Suite 520, 4401 Ford Avenue, Alexandria, Virginia 22301–0268, telephone number (202) 756–0411.

Purpose of Meeting: To receive additional information pertaining to the needs of the national defense for the Merchant Marine and the shipbuilding industry, and to discuss and deliberate facts and opinions obtained from briefings and public hearings.

**SUPPLEMENTARY INFORMATION:** The executive meetings of the Commission will be closed to the public pursuant to Title 5 U.S. Code, sections 552b(c)(1) and 552b(c)(4), in the interests of national security and to protect proprietary information provided to the Commission in confidence. A public meeting and hearing on seagoing labor, announced previously, will be held at 2:00 p.m. on Monday, April 27, 1987, in the Center for Naval Analyses Auditorium, First Floor, 4401 Ford Avenue, Alexandria, Virginia.

**Allan W. Cameron,**

*Executive Director, Commission on Merchant Marine and Defense.*

[FR Doc. 87–8614 Filed 4–15–87; 8:45 am]

BILLING CODE 3820–01–M

## COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

### Adjustment of Import Limits for Certain Cotton and Man-Made Fiber Textile Products Produced or Manufactured in the People's Republic of China

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 Apirl 13, 1987. For further information contact Diana Solkoff, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, Washington, D.C., (202) 377–4212. For information on the quota status of these limits, please refer to the Quota Status Reports which are posted on the bulletin boards of each Customs port or call (202) 566–5810. For information on embargoes and quota re-openings, please call (202) 377–3715.

**Background**

On December 30, 1985 a notice was published in the **Federal Register** (50 FR 53182) which established import restraint limits for certain cotton, wool and man-made fiber textile products, including Category 647, produced or manufactured in the People's Republic of China and exported during the twelve-month period which began on January 1, 1986 and extended through December 31, 1986.

In addition, on December 30, 1986 a notice was published in the **Federal Register** (51 FR 47041) which established import restraint limits for certain cotton, wool and man-made fiber textile products, including Categories 339 and 347/348, produced or manufactured in the People's Republic of China and exported during the twelve-month period which began on January 1, 1987 and extends through December 31, 1987.

In accordance with the terms of the Bilateral Cotton, Wool and Man-Made Fiber Textile Agreement of August 19, 1983, as amended, CITA is adjusting the limits for Categories 647, 339 and 347/348 for swing. The reduction in limits to account for swing applied to Categories 647, 339 and 347/348 will follow in a subsequent directive.

Charges amounting to 42,236 dozen for merchandise in Category 647 exported in 1986 and charged to the current restraint limit will be deducted, charging the same amount to the 1986 restraint limit.

Accordingly, in the letter published below, the Chairman of the Committee for the Implementation of Textile Agreements directs the Commissioner of Customs to adjust the previously established restraint limits for Categories 647, 339 and 347/348 and to deduct charges as designated.

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), July 29, 1986 (51 FR 27068) and in Statistical Headnote 5, Schedule 3 of the Tariff Schedules of the United States Annotated (1987).

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.

**Donald R. Foote,**

*Acting Chairman, Committee for the Implementation of Textile Agreements.*

April 13, 1987.

**Committee for the Implementation of Textile Agreements**

Commissioner of Customs,
*Department of the Treasury,*
*Washington, D.C. 20229.*

Dear Mr. Commissioner: This directive amends, but does not cancel, the directives issued to you on December 24, 1985 and December 23, 1986 by the Chairman, Committee for the Implementation of Textile Agreements, concerning imports into the United States of certain cotton, wool and man-made fiber textile products, produced or manufactured in the People's Republic of China and exported during the 12-month periods which began, in the case of Category 647, on January 1, 1986; and, in the case of Categories 339 and 347/348, on January 1, 1987.

Effective on April 13, 1987, the directives of December 24, 1985 and December 23, 1986 are further amended to include adjustments to the previously established restraint limits for cotton and man-made fiber textile products in the following categories, as provided under the terms of the bilateral agreement of August 19, 1983, as amended [1]

| Category | Adjusted 12-Month Restraint Limit [1] (Jan. 1, 1986–Dec. 31, 1986) |
|---|---|
| 647 | 886,958 dozen |

| Category | Adjusted 12-Month Restraint Limit [2] (Jan. 1, 1987–Dec. 31, 1987) |
|---|---|
| 339 | 1,029,419 dozen |
| 347/348 | 2,009,116 dozen |

[1] The limit has not been adjusted to account for any imports exported after December 31, 1985.
[2] The limit has not been adjusted to account for any imports exported after December 31, 1986.

Also effective on April 13, 1987, you are directed to deduct charges for goods exported in 1986, amounting to 42,236 dozen, from the import restraint limit established for Category 647 for the period which began on January 1, 1987 and extends through December 31, 1987. This same amount is to be charged to the 1986 import restraint limit for Category 647.

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,

**Donald R. Foote,**

*Acting Chairman, Committee for the Implementation of Textile Agreements.*

[FR Doc. 87–8504 Filed 4–15–87; 8:45 am]

BILLING CODE 3510-DR-M

[1] The agreement provides, in part, that (1) with the exception of Category 315, any specific limit may be exceeded by not more than 5 percent of its square yards equivalent total, provided that the amount of the increase is compensated for by an equivalent square yard decrease in one or more other specific limit in that agreement year; (2) the specific limits for certain categories may be increased for carryforward; (3) administrative arrangements or adjustments may be made to resolve minor problems arising in the implementation of the agreement.

## Establishment of Staged Entry for Certain Cotton Textile Products Produced or Manufactured in the People's Republic of China; Correction

April 13, 1987.

In the **Federal Register** notice and the letter to the Commissioner of Customs published on March 25, 1987 (52 FR 9528), the effective date should be changed to April 2, 1987.

**Donald R. Foote,**

*Acting Chairman, Committee for the Implementation of Textile Agreements.*

[FR Doc. 87–8570 Filed 4–15–87; 8:45 am]

BILLING CODE 3510-DR-M

## Directive on Deducting Charges of Certain Cotton, Wool and Man-Made Fiber Textile Products Produced or Manufactured in Mexico

April 13, 1987.

The Chairman of the Committee for the Implementation of Textile Agreements (CITA), under the authority contained in E.O. 11651 of March 3, 1972, as amended, has issued the directive published below to the Commissioner of Customs to be effective on April 16, 1987. For further information contact Janet Heinzen, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 377–4212. For information on the quota status of these limits, please refer to the Quota Status Reports which are posted on the bulletin boards of each Customs port. For information on embargoes and quota re-openings, please call (202) 377–3715.

### Background

During consultations held on March 13, 1987 between the Governments of the United States and the United Mexican States, the United States Goverment agreed to deduct the 1986 overshipments from the 1987 restraint limit established for Categories 310–320, 360–369, 410–429, 464–469, 610–629, 665, 669 and 670, as a group, which were reflected in 1987 import charges in Categories 313, 315, 317, 318, 319, 320, 360, 362, 363, 369, 410, 464, 465, 612, 625, 626, 627, 665, 669 and 670.

Accordingly, in the letter published below the Chairman of the Committee for the Implementation of Textile Agreements directs the Commissioner of Customs to deduct charges as indicated.

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), July 14, 1986 (51 FR 25386), July 29, 1986 (51 FR 27068) and in Statistical Headnote 5, Schedule 3 of the TARIFF SCHEDULES OF THE UNITED STATES ANNOTATED (1987).

**Donald R. Foote,**

*Acting Chairman, Committee for the Implementation of Textile Agreements.*

Apirl 13, 1987.

**Committee for the Implementation of Textile Agreements**

Commissioner of Customs,
*Department of the Treasury, Washington, D.C.*

Dear Mr. Commissioner: To facilitate implementation of the Bilateral Cotton, Wool and Man-Made Fiber Textile Agreement of February 26, 1979, as amended and extended, between the Governments of the United States and Mexico, I request that, effective on April 16, 1987, you deduct charges in the following categories made to the limit established for the period January 1, 1987 through December 31, 1987 for cotton, wool and man-made fiber textile products in Categories 310–320, 360–369, 410–429, 464–469, 610–627, 665, 667–670, as a group. These charges are for goods exported during 1986.

| *Category* | *Amount to be deducted* |
|---|---|
| 313 | 965,386 square yards. |
| 315 | 343,152 square yards. |
| 317 | 800,315 square yards. |
| 318 | 232 square yards. |
| 319 | 49,329 square yards. |
| 320 | 8,497 square yards. |
| 360 | 15 numbers. |
| 362 | 38 numbers. |
| 363 | 264,312 numbers. |
| 369 | 161,041 pounds. |
| 410 | 4,406 square yards. |
| 464 | 146 pounds. |
| 465 | 413 square feet. |
| 612 | 50,957 square yards. |
| 625 | 2,880 pounds. |
| 626 | 4,181 square yards. |
| 627 | 4,918 pounds. |
| 665 | 76 square feet. |
| 669 | 72,736 pounds. |
| 670 | 80,850 pounds. |

This letter will be published in the Federal Register.

Sincerely,

Donald R. Foote,

*Acting Chairman, Committee for the Implementation of Textile Agreements*

[FR Doc. 87-8575 Filed 4-15-87; 8:45 am]

BILLING CODE 3510-DR-M

## Announcement of Import Limits for Certain Cotton and Wool Textiles and Textile Products Produced or Manufactured in Peru

April 13, 1987.

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 May 1, 1987. For further information contact William Dawson, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 377-4212. For information on the quota status of these limits, please refer to the Quota Status Reports which are posted on the bulletin boards of each Customs port. For information on embargoes and quota re-openings, please call (202) 377-3715.

### Background

The Bilateral Cotton, Wool and Man-Made Fiber Textile Agreement of January 3, 1985 between the Governments of the United States and Peru established limits for cotton and wool textile products in Categories 300, 301, 313, 315, 317, 319, 320, 338/339 and 410; Categories 330-359 (cotton apparel group), and Categories 400-469 (wool group), produced or manufactured in Peru and exported during the twelve-month period beginning on May 11, 1987 and extending through April 30, 1988. The directive to the Commissioner of Customs which follows this notice establishes the new 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), July 14, 1986 (51 FR 25386) and in Statistical Headnote 5, Schedule 3 of the TARIFF SCHEDULES OF THE UNITED STATES ANNOTATED (1987).

This letter and the actions taken pursuant to it are not designed to implement all of the provisions of the bilateral agreements, but are designed to assist only in the implementation of certain of its provisions.

**Donald R. Foote,**

*Acting Chairman, Committee for the Implementation of Textile Agreements.*

April 13, 1987.

**Committee for the Implementation of Textile Agreements**

Commissioner of Customs,

*Department of the Treasury, Washington, D.C.*

Dear Mr. Commissioner: Under the terms of Section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854), and the Arrangement Regarding International Trade in Textiles done at Geneva on December 20, 1973, as further extended on July 31, 1986; pursuant to the Bilateral Cotton, Wool and Man-Made Fiber Textile Agreement of January 3, 1985, as amended, between the Governments of the United States and Peru; and in accordance with the provisions of Executive Order 11651 of March 3, 1972, as amended, you are directed to prohibit, effective on May 1, 1987, entry into the United States for consumption and withdrawal from warehouse for consumption of cotton and wool textile products in the following categories, produced or manufactured in Peru and exported during the twelve-month period beginning on May 1, 1987 and extending through April 30, 1988, in excess of the following restraint limits:

| *Category* | *Twelve-month restraint limit* |
|---|---|
| 330-359 | 10,000,000 square yards equivalent. |
| 400-469 | 4,000,000 square yards equivalent. |
| 300 | 3,000,000 pounds. |
| 301 | 2,250,000 pounds. |
| 313 | 20,035,750 square yards. |
| 315 | 4,410,155 square yards. |
| 317 | 18,375,645 square yards of which not more than 5,512,693 square yards shall be in Category 317pt.[1] |
| 319 | 24,500,860 square yards. |
| 320 | 17,763,123 square yards of which not more than 4,900,172 square yards shall be in Category 320pt.[2] |
| 410 | 1,500,000 square yards. |
| 338/339 | 481,500 dozen of which not more than 321,000 dozen shall be in Category 338/339pt.[3] |

[1] In Category 317, only TSUSA items 320.—through 331.—with statistical suffixes 50, 87 and 93.

[2] 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 96.

[3] In Category 338/339, all TSUSA numbers except 381.0220, 381.0230, 381.4010, 381.4120, 384.0205, 384.0207, 384.0208, 384.0212, 384.0219, 384.0220, 384.0221, 384.2806, 384.2810, 384.2812, 384.2814, 384.2910, 384.2914 and 384.2915

In carrying out this directive, entries of textile products in the foregoing categories, produced or manufactured in Peru, which have been exported in the United States on and after May 1, 1986 and extending through April 30, 1987, shall, to the extent of any unfilled balances, be charged to the levels established for that period. In the event the limits established for that period have been exhausted by previous entries, such goods shall be subject to the levels set forth in this directive.

The restraint limits set forth above are subject to adjustment pursuant to the provisions of the bilateral agreement of January 3, 1985 between the Governments of the United States and Peru which provide, in part, that: (1) specific limits may be exceeded by designated percentages, provided a corresponding reduction in equivalent square yards is made in one or more other specific limits during the same agreement year; (2) specific limits may be increased for carryover and carryforward not to exceed 11 percent, and (3) administrative arrangements or adjustments may be made to resolve minor problems arising in 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 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), July 14, 1986 (51 FR 25386) and in Statistical Headnote 5, Schedule 3 of the TARIFF SCHEDULES OF THE UNITED STATES ANNOTATED (1987).

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 (a)(1).

Sincerely,

Donald R. Foote,

*Acting Chairman, Committee for the Implementation of Textile Agreements.*

[FR Doc. 87-8576 Filed 4-15-87; 8:45 am]

BILLING CODE 3510-DR-M

## Rescission of Call on Certain Cotton and Man-Made Fiber Textile Products Produced or Manufactured in Bangladesh

April 13, 1987.

**FOR FURTHER INFORMATION CONTACT:** Janet Heinzen, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, Washington, DC, (202) 377-4212.

### Background

On June 18, 1986, a notice was published in the Federal Register (51 FR 22108) announcing that the Government of the United States had requested the Government of Bangladesh to enter into consultations concerning exports to the United States of certain cotton and man-

made fiber playsuits in Category 337/637, produced or manufactured in Bangladesh.

The purpose of this notice is to announce that, pursuant to an agreement, effected by exchange of letters dated March 27, 1987, between the Governments of the United States and Bangladesh, the United States Government has agreed to withdraw the request for consultations on this category. Should it become necessary to discuss this category with the Government of Bangladesh at a later date, further notice will be published in the **Federal Register**.

A description of the textile categories in terms of T.S.U.S.A. numbers was published in the **Federal Register** on December 13, 1982 (47 FR 55709), as amended on April 14, 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 (1987).

**Donald R. Foote,**

*Acting Chairman, Committee for the Implementation of Textile Agreements.*

[FR Doc. 87-8577 Filed 4-15-87; 8:45 am]

BILLING CODE 3510-DR-M

## DEPARTMENT OF DEFENSE

### Office of the Secretary of Defense

### Advisory Group on Electron Devices; Advisory Committee Meeting

**SUMMARY:** Working Group B (Microelectronics) of the DoD Advisory Group on Electron Devices (AGED) announces a closed session meeting.

**DATE:** The meeting will be held at 0900, Tuesday, 12 May 1987.

**ADDRESS:** The meeting will be held at Palisades Institute for Research Services, Inc., 2011 Crystal Drive, Suite 307, Arlington, VA 22202.

**FOR FURTHER INFORMATION CONTACT:** Becky Terry, AGED Secretariat, 2011 Crystal Drive, Arlington, Virginia 22202.

**SUPPLEMENTARY INFORMATION:** The mission of the Advisory Group is to provide the Under Secretary of Defense for Acquisition, the Director, Defense Advanced Research Projects Agency and the Military Departments with technical advice on the conduct of economical and effective research and development programs in the area of electron devices.

The Working Group B meeting will be limited to review of research and development programs which the military propose to initiate with industry, universities or in their laboratories. The Microelectronics area includes such programs as integrated circuits, charge coupled devices and memories. The review will include classified program details throughout.

In accordance with section 10(d) of Pub. L. 92-463, as amended (5 U.S.C. App. II section 10(d) (1982)), it has been determined that this Advisory Group meeting concerns matters listed in 5 U.S.C. 552b(c)(1) (1982), and that accordingly, this meeting will be closed to the public.

**Patricia H. Means,**

*OSD Federal Register Liaison Officer, Department of Defense.*

April 13, 1987.

[FR Doc. 87-8617 Filed 4-15-87; 8:45 am]

BILLING CODE 3810-01-M

### Department of the Air Force

### USAF Scientific Advisory Board; Strategic Cross-Matrix Panel; Meeting

April 16, 1987.

The USAF Scientific Advisory Board Strategic Cross-Matrix panel will meet at the Pentagon, Washington, DC, Room 5D982, on May 20th, 1987, from 8:00 a.m. to 5:00 p.m..

The purpose of the meeting is to survey the issues associated with the development of the rail-garrison ICBM.

This meeting will involve discussions of classified defense 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 202-697-4811.

**Patsy J. Conner,**

*Air Force Federal Register Liaison Officer.*

[FR Doc. 87-8545 Filed 4-15-87; 8:45 am]

BILLING CODE 3910-01-M

### USAF Scientific Advisory Board; Technology and Air Base Performance Ad Hoc Committee; Meeting

April 7, 1987.

The USAF Scientific Advisory Board Ad Hoc Committee on Technology and Air Base Performance will meet at the Rand Corporation, 1700 Main St. Santa Monica, CA on May 5 and May 6, 1987

The purpose of the meeting is to receive briefings on and to discuss studies on air base operability, survivability, and basing posture conducted by the Rand Corp.

This meeting will involve discussions of classified defense 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) 697-4648.

**Patsy J. Conner,**

*Air Force Federal Register Liaison Officer.*

[FR Doc. 87-8544 Filed 4-15-87; 8:45 am]

BILLING CODE 3910-01-M

### Corps of Engineers, Department of the Army

### Intent To Prepare an Environmental Impact Statement Associated With Bank Stabilization Measures in Order To Preserve and Protect The Fort Toulouse National Historic Landmark and Taskigi Indian Mound, Alabama River, in Elmore County, AL

**AGENCY:** U.S. Army Corps of Engineers, Department of Defense.

**ACTION:** Notice of intent to prepare an environmental impact statement.

**SUMMARY:**

**1. Proposed Action**

Perform bank stabilization measures to preserve and protect the Fort Toulouse National Historic Landmark and Taskigi Indian Mound. The protection measure authorized by the Water Resources Development Act of 1986 (Pub. L. 99-662) consists of constructing a curved 4,500-foot long channel cutoff inside of the existing river bend and fill a portion of the severed bendway adjacent to the cultural resources with the excavated material. Slope protection will involve the placement of stone filter and riprap on the outside of the constructed curved channel for approximate 3,600 feet.

**2. Alternatives**

The following alternatives will be evaluated:

*a. No Action*

This alternative will result in no

anticipated change in existing conditions.

b. Construct a straight channel extending approximately 6,900 feet in length which would eliminate all flow past Ft. Toulouse. In addition, the severed bendway would require complete filling for approximate 2,000 feet fronting the active slide zone.

c. Stabilize the active slide zone by the placement of quarry run stone on the foot of the sliding bank. Dredging would be required to compensate for the area occupied by the stone. Further slope protection would include the placement of stone on the outside of the existing slope upstream for approximate 1,200 feet.

**3. Scoping Process**

a. The scoping process, as outlined by the Council on Environmental Quality in the November 29, 1978 **Federal Register**, National Environmental Policy Act of 1969—Regulations, will be utilized to involve Federal, State, local agencies and other interested persons. Identification of significant issues to be addressed in the Environmental Impact Statement will be determined through the scoping process. The views and concerns of agencies and individuals will be obtained through personal telephone and mailing communications, as well as scoping meetings.

b. The Fish and Wildlife Service of the Department of Interior will be invited to be a cooperating agency because of the importance of wildlife habitat near the proposed site. Further coordinating efforts will be made with Alabama State Historical Preservation Officer and the National Park Service of the Department of the Interior due to the sensitivity of culture resource involved. Coordination required by other laws and regulations will also be conducted.

**4. EIS Preparation**

Estimated date of availability to the public May 1988.

**ADDRESS:** Questions about the proposed action and Environment Impact Statement can be answered by: Mr. Brian Peck, PD–EI, U.S. Army Engineer District, Mobile, Post Office Box 2288, Mobile, Alabama 36628, Telephone: (205) 690–2750, FTS 537–2750.

Dated: March 24, 1987.

**C. Hilton Dunn, Jr.,**

*Colonel, CE Commanding.*

[FR Doc. 87–8493 Filed 4–15–87; 8:45 am]

BILLING CODE 3710-92-M

## San Francisco District; Intent To Prepare a Draft Supplemental Environmental Impact Statement; Richmond Harbor Deep-Draft Navigation Improvements Contra Costa County, CA

**1. Summary**

The proposed action is the modification of approximately four miles of the Richmond Inner Harbor Channel in Contra Costa County. Richmond Harbor is located approximately 14 miles northeast of the Golden Gate Bridge. It is comprised of an Outer and Inner Harbor.

Richmond Outer Harbor is about four miles long and includes the 600' wide southampton Shoal Channel beginning at a point midway between Angel Island and the Richmond Long Wharf, and the Long Wharf Maneuvering Area. The Southampton Shoal Channel and the Long Wharf Maneuvering Area were authorized and constructed to a depth of −45' MLLW under the John F. Baldwin Ship Channel Project.

The Richmond Inner Harbor is about four miles long and extends from the south end of the Maneuvering area to the head of the Santa Fe Channel. The Inner Harbor Channel width varies. It is 600' wide in the entrance channel; between 500' and 600' wide in the Potrero Reach which is the stretch of channel between Pt. Richmond and Pt. Potrero; 1105' wide (720' at −35' MLLW and 430' at −30' MLLW) at the Pt. Potrero turn, and 850' in the Inner Harbor Channel. The Santa Fe Channel is 200' wide. The existing Inner Harbor depth is −35 feet MLLW. A 10,000-foot breakwater extends in a westerly direction from the north end of Brooks Island and protects the shore and channel between Point Potrero and Point Richmond.

The Richmond Channel is no longer adequate to efficiently and cost-effectively accommodate modern deep-draft vessels. The Corps of Engineers and the Port of Richmond are planning to construct a turning basin north of the Potrero turn at the Old Ford Channel, to deepen the channel, and to dispose of dredged material at an ocean disposal site located outside the Golden Gate. Environmental impacts of the proposed construction were assessed in 1981, and reported in the *Final Environmental Impact Statement, Deep-Draft Navigation Improvements of Richmond Harbor Channels.* The FEIS was filed with the Environmental Protection Agency on March 14, 1982. Changes in the project requiring preparation of a Supplemental EIS included:

*a. Disposal of Dredged Material*

The FEIS anticipated that 7.2 million cubic yards of sediment would be disposed at the in-Bay site situated adjacent to Alcatraz Island (SF–11); however, the Alcatraz site has been accumulating sediment more rapidly than it can be dispersed and disposal of dredged material at an ocean disposal site is now under consideration. The former 100-fathom ocean disposal site has not been available since its inclusion in 1981 in the Gulf of the Farallones National Marine Sanctuary. The Corps, in conjunction with the Environmental Protection Agency, is in the process of identifying and selecting new ocean disposal site. Final designation of EPA is scheduled for February 1988; however, under section 103 of the Marine Protection Research an Sanctuaries Act the Corps may select and use a site for a specific project. The determination of the appropriate disposal alternative will be described in the Supplemental EIS.

*b. Phased Construction*

In the FY 85 Appropriation Act, Congress authorized the Richmond Harbor project for a FY 86 start; however, the Port of Richmond, as local sponsor, has requested phased construction of the project in order to ameliorate their cost-sharing obligations. The Inner Harbor project extends from the south end of the Long Wharf Maneuvering Area to the entrance of the Santa Fe Channel. The Santa Fe Channel and Lauritzen Canal are not included in the project.

(1) *Phase I Construction*

The existing Inner Harbor Channel would be deepened from −35 feet MLLW to −38 feet MLLW. A turning basin 1200 feet in diameter would be constructed south of the Old Ford Channel. 1.4 million cubic yards of fine-grained sediment and 2600 cys. of rock would be removed from the channel; 82,000 cubic yards of fine-grained sediment from the berthing areas. Phase I construction is anticipated to begin in October 1988.

(2) *Phase II Construction*

It is anticipated that the channel would be further deepened to −41 feet MLLW; the turning basin enlarged to 1425 feet in diameter. The need for widening the channel is being investigated and, if necessary, would be constructed during Phase II. Approximately 3.9 million cubic yards of sediment and 3690 cys. of rock would be removed from the channel and turning basin. Construction of Phase II would be

deferred until requested by the local sponsor and is unlikely to occur within the next five years; therefore, the Supplemental EIS will address the Phase I construction impacts only.

*c. Annual Maintenance*

Annual dredging requirements for Phase I of the project would be increased by 77,000 cubic yards. Previously the annual increase for the entire project was estimated at 237,000 cubic yards.

*d. Rock Escavation*

In Phase I, approximately 2600 cubic yards of fractured sandstone rock at two areas adjacent to the Potrero Sharp turn would be removed and deposited at the site of the former Kaiser Shipyard No. 3. The shipyard is also known as Richmond Shipyard No. 3 and has been determined eligible for listing in the *National Register of Historic Places.* In Phase II 3690 cubic yards of rock would be removed. The disposal location of rock removed during Phase II has not been determined.

**2. Alternatives**

Several alternative plans (including "No Action") were evaluated in the Final Feasibility Report and Environmental Statement for the Richmond Harbor navigation improvements. The environmental impacts of the channel deepening are the same as those for the original project. Changes in conditions at the Alcatraz disposal site have resulted in the need to reconsider disposal site alternatives including use of an ocean disposal site.

**3. Scoping**

Federal, State and local agencies, and interested private organizations and individuals are invited to submit written comments on the proposed action within 30 days of the date of this notice to Rod Chisholm, Chief, Environmental Branch, San Francisco District Corps of Engineers, 211 Main Street, San Francisco, California 94105 (ATTN: Patricia Duff, SPNPE-R).

**4. Important Issues**

a. The following environmental issues have been identified and addressed in the Final Environmental Impact Statement:

(1) Water Quality
(2) Benthos
(3) Energy
(4) Navigation Safety
(5) Commercial Shipping
(6) Hydrography

b. Impacts identified as being relevant to the project modifications which will be addressed in the SEIS include:

(1) Water Quality—at the dredge site and disposal site
(2) Chemical Impacts
(3) Transport of Sediments
(4) Impacts on Marine Life
(5) Impacts on Cultural Resources

5. The Draft SEIS is scheduled for agency review on August 19, 1987; the final SEIS is scheduled for completion March 25, 1988.

6. Questions about the proposed Action and SEIS can be directed to Partricia Duff at (415) 974–0441 or FTS 454–0441.

Dated: April 2, 1987.

**Andrew M. Perkins, Jr.,**

*Lieutenant Colonel, Corps of Engineers, District Engineer.*

[FR Doc. 87–8546 Filed 4–15–87; 8:45 am]

BILLING CODE 3710-FS-M

## DEPARTMENT OF DEFENSE

## GENERAL SERVICES ADMINISTRATION

## NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

### Federal Acquisition Regulation (FAR); Information Collection Under OMB Review

**AGENCY:** Department of Defense (DOD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

**ACTION:** Notice.

**SUMMARY:** Under the provisions of the Paperwork Reduction act of 1980 (44 U.S.C Chapter 35), the Federal Acquisition Regulation (FAR) Secretariat has submitted to the Office of Management and Budget (OMB) a request to review and approve an extension of a currently approved information collection concerning Transportation Requirements.

**ADDRESS:** Send comments to Mr. Ed Springer, FAR Desk Officer, Room 3235, NEOB, Washington, DC 20503.

**FOR FURTHER INFORMATION CONTACT:** Ms. Linda Klein, Office of Federal Acquisition and Regulatory Policy, (202) 523–3775.

**SUPPLEMENTARY INFORMATION:**

a. *Purpose:* FAR Part 47 and related clauses contain policies and procedures for applying transportation and traffic management considerations in the acquisition of supplies and acquiring transportation or transportation-related services. Generally, contracts involving transportation require information regarding the nature of the supplies, method of shipment, place and time of shipment, applicable charges, marking of shipments, shipping documents and other related items. (Examples Attached)

b. *Annual reporting burden:* The annual reporting burden is estimated as follows: Respondents, *65,000;* responses per respondent, *5;* total annual responses, *325,000;* hours per response, *.23;* and total burden hours, *74,750.*

Obtaining copies of Proposals: Requesters may obtain copies from the General Services Administration, FAR Secretariat (VRS), Room 4041, Washington, DC 20405, telephone (202) 523–4755. Please cite OMB Control No. 9000–0061, Transportation Requirements.

Dated: March 31, 1987.

**Margaret A. Willis,**

*FAR Secretariat.*

[FR Doc. 87–8547 Filed 4–15–87; 8:45 am]

BILLING CODE 6820-61-M

## DEPARTMENT OF EDUCATION

### Notice Inviting Applications for New Awards Under the Emergency Immigrant Education Program for Fiscal Year 1987 (CFDA No.: 84.162)

*Purpose:* This program provides financial assistance to SEAs for educational services and costs for eligible immigrant children enrolled in elementary and secondary public and nonprofit private schools.

*Deadline for Transmittal of Applications:* May 22, 1987.

*Applications Available:* Application packages may be obtained by writing to the 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. The Office of Bilingual Education and Minority Languages Affairs will mail application forms and program information packages to all SEAs.

*Available Funds:* $30,000,000.00.

*Project Period:* 12 Months.

*Programmatic Information:* A State educational agency (SEA) may apply for a grant if it meets the eligibility requirements contained in 34 CFR 581.2 This program provides financial assistance to SEAs for educational services and costs for eligible immigrant children enrolled in elementary and secondary public and nonprofit private schools. To be eligible for a grant, an SEA must submit a count of immigrant children, referred to in 34 CFR 581.11(b) (1) and (2), eligible for assistance under the Emergency Immigrant Education

Program. The count must be conducted on April 13 or a date thereafter which is no later than May 1, 1987.

*Applicable Regulations:*

(a) The regulations governing the Emergency Immigrant Education Program in 34 CFR Part 581, and (b) the Education Department General Administrative Regulations (EDGAR) in 34 CFR Parts 74, 76, 77, 78, and 79.

*For Applications or Information:* For further information contact Jonathan Chang, 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) 245–2609.

*Program Authority:* 20 U.S.C. 4101–4108.

(Catalog of Federal Domestic Assistance Number 84.162, Emergency Immigrant Education Program)

Dated: April 13, 1987.

**William J. Bennett,**

*Secretary of Education.*

[FR Doc. 87–8611 Filed 4–15–87; 8:45 am]

BILLING CODE 4000–1–M

## Notice Inviting Applications for New Awards Under the Transition Program for Refugee Chidren for Fiscal Year 1987 (CFDA No.: 84.164)

*Purpose:* Provides grants to SEAs to assist LEAs to provide supplemental educational services to meet the special needs of eligible refugee children.

*Deadline for Transmittal of Application:* May 22, 1987.

*Applications Available:* Application packages may be obtained by writing to the 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. The Office of Bilingual Education and Minority Language Affairs will mail application forms and program information packages to all SEAs.

*Funds Available:* $15,886,000.00.

*Project Period:* 12 months.

*Programmatic Information:* A State educational agency (SEA) may apply for a grant if it meets the eligibility requirements contained in 34 CFR 538.2. To be eligible for a grant, an SEA must submit a count of refugee children eligible for assistance under the Transition Program for Refugee Children conducted on April 13, 1987 or a date thereafter which is no later than May 1, 1987.

A grant is made to an SEA based on the number of eigible children enrolled in public and nonprofit private schools in the State, using the weighting factors announced in this notice. Using the same formula, the SEA awards subgrants to local educational agencies (LEAs) in its State that propose to serve eligible chidren within their jurisdictions. As provided in 34 CFR 538.20, the SEA makes subgrants to LEAs within 60 days after the State receives the grant award funds. If a LEA does not apply to serve its eligible children, the SEA provides services directly to those children or arranges for provision of services to those children through subgrants, contracts, and cooperative agreements with other public and private nonprofit organizations, agencies and institutions.

Awards under this program are to provide educational services to eligible children during the 1987–1988 school year.

*Weighting factors:* Section 538.31 of the program regulations authorizes the Secretary to announce the weighting factors to be used in distributing funds under this program. For the award of fiscal year 1987 funds, the Secretary uses the following formula for distributing funds:

| Recency of arrival in the United States (in years) | Weighting factors by school level | |
|---|---|---|
| | Elementary grade levels | Secondary grade levels |
| Less than 1 year | 10 | 10 |
| 1 to 2 years | 3 | 5 |
| 2 to 3 years | 0 | 3 |
| 3 to 4 years | 0 | 0 |
| More than 4 years | 0 | 0 |

*Applicable Regulations:*

(a) The regulations governing the Transition Program for Refugee Children in 34 CFR Part 538, (b) Regulations governing the Refugee Resettlement Program in 45 CFR Part 400, and to the extent provided in 34 CFR 538.3(a)(2), (c) the Education Department General Administrative Regulations (EDGAR) in 34 CFR Parts 74, 76, 77, and 78.

*For Applications or Information Contact:* Jonathan Chang, Office of Bilingual Education and Minority Languages Affairs, U.S. Department of Education, 400 Maryland Avenue, SW. (Room 421, Reporters Building), Washington, DC 20202. Telephone: (202) 245–2609.

*Program Authority:* 20 U.S.C. 4101–4108.

(Catalog of Federal Domestic Assistance Number 84.146, Transition Program for Refugee Children)

Dated: April 13, 1987.

**William J. Bennett,**

*Secretary of Education.*

[FR Doc. 87–8612 Filed 4–15–87; 8:45 am]

BILLING CODE 4000–01–M

## DEPARTMENT OF ENERGY

## Intent To Prepare an Environmental Impact Statement on the Safety Enhancement Program for the N Reactor Located at the Hanford Site Near Richland, WA

**AGENCY:** Department of Energy (DOE).

**ACTION:** Notice of Intent (NOI) to Prepare an Environmental Impact Statement (EIS).

**SUMMARY:** The DOE announces its intent to prepare an EIS in accordance with section 102(2)(C) of the National Environmental Policy Act (NEPA) of 1969, on the proposed Safety Enhancement Program (SEP) (Ref.: DOE/RL 87–05, N Reactor Safety Enhancement Program Summary Description, April 1987) for the N Reactor at the Hanford Site near Richland, Washington. While the DOE believes the continued operation of the N Reactor for the reproduction of defense materials does not present an unacceptable level of risk of a serious reactor accident for workers and the public, the purpose of the SEP is to assure that improvements are accomplished which will achieve even greater margins of safety.

The purpose of this NOI is to present pertinent background information on the proposed scope and content of the EIS and to solicit comments and suggestions for consideration in its preparation. Federal, State and local agencies, interested organizations and individuals desiring to submit comments or suggestions for consideration in the preparation of this EIS are invited to do so. Upon conmpletion of the Draft EIS (DEIS), its availability will be announced in the **Federal Register**, at which time comments from the public will again be solicited. Comments received during the DEIS public review period will be used in preparing the Final EIS.

**ADDRESS:** Written comments or suggestions on the scope of the EIS and requests to speak at the scoping meetings may be submitted to: Mr. Tom Bauman, Office of Communications, U.S. Department of Energy, P.O. Box 550, Richland, Washington 99352.

**DATES:** To ensure that the full range of issues related to this proposal are addressed and all significant issues identified, comments and suggestions on the proposed scope of the EIS are invited from all interested parties. Written comments or suggestions to assist DOE in identifying significant environmental issues and the appropriate scope of the EIS are

requested within seven days after the last public scoping meeting. Written comments received after this time will be considered to the degree practicable. Written comments should be submitted to Mr. Tom Bauman at the address above.

Public Scoping Meetings: Public scoping meetings are scheduled as follows:

1. Date: *May 11, 1987*
   Place: Richland Federal Building Auditorium, 825 Jadwin, Richland, Washington
   Time: 2:00 p.m.–5:00 p.m. and 7:00 p.m.–10:00 p.m.
2. Date: *May 12, 1987*
   Place: City Council Chambers, W. 808 Spokane Falls Blvd., Spokane, Washington
   Time: 2:00 p.m.—5:00 p.m. and 7:00 p.m.—10:00 p.m.
3. Date: *May 14, 1987*
   Place: Bonneville Power Administration Building Auditorium, 1002 NE. Holladay, Portland, Oregon
   Time: 2:00 p.m.—5:00 p.m. and 7:00 p.m.—10:00 p.m.

Additional information concerning the place and time of day of these scoping meetings may also be announced through local news media and will be available by calling Office of Communications, DOE-Richland telephne number (509) 376–7501.

**FOR FURTHER INFORMATION CONTACT:** For general information on the EIS process, contact: Carol M. Borgstrom, Acting Director (202) 586–9326, Office of NEPA Project Assistance, U.S. Department of Energy, 1000 Independence Avenue, SW., Washington, DC 20585.

Background Information: The DOE's Hanford Site is a 570 square mile, controlled access area that is dedicated to a variety of nuclear-related activities which include defense materials production, nuclear generated electrical power of commercial use, radioactive waste management, and nuclear and environmental research.

N-Reactor is a graphite-moderated, light-water-cooled, horizontal pressure tube nuclear reactor. The reactor core comprises an 1800-ton graphite cuboid, 33 ft. by 33 ft. at the face and 39 ft. long. A total of 1003 horizontal zircaloy-2 pressure tubes, designed for 1825 lb/in$^2$ (psi) of system pressure, penetrate the graphite moderator. The reactor coolant flows through the pressure tubes and transfers heat from approximately 366 metric tons of zircaloy-clad, low-enrichment, metallic uranium tube-in-tube fuel elements to the secondary coolant in the steam generators.

The N-Reactor has operated since 1963 for production of special nuclear materials and since 1966 for production of special nuclear materials and by-product steam (dual purpose operation). The N-Reactor was designed to operate at 4000 megawatts thermal (MWt) with provisions for conversion to electric power generation. During normal production of special nuclear materials and by-product steam, the excess steam is delivered to the Washington Public Power Supply System to produce electricity. While most of the steam produced is available to generate electricity, some is reserved to power the reactor coolant system pump drive turbines and the in-plant turbine generator. Backup cooling systems and standby power sources are provided to ensure adequate safety and continuity of operation of the reactor.

The Office of the Assistant Secretary for Environment, Safety and Health accelerated the planned Technical Safety Appraisal, conducted a special safety review of the confinement system and graphite fire protection, and a Design Review of the reactor's design safety basis following the April 26, 1986 accident at the Chernobyl Nuclear Power Plant in the Soviet Union. In addition, six outside expert consultants were commissioned by the Secretary of Energy to conduct a further review of the reactor in light of the Chernobyl accident. Reviews were also conducted by the General Accounting Office and a review group established by former Governor Atiyeh of Oregon. The individual consultant reports and DOE reviews found that the reactivity excursion accident which occurred at Chernobyl is not possible at the N-Reactor due to inherent design differences between the two reactors. It was concluded by DOE that the probability of a serious accident is sufficiently low and that the continued operation of the N-Reactor does not present an unacceptable level of risk to workers or the public. However, at the conclusion of the N-Reactor safety reviews, it was decided to place the reactor in an extended stand down condition at the next scheduled outage so that certain of the planned safety improvements could be accelerated. This stand down has been scheduled for a six month period (and began in January 1987) during which a number of high priority tasks are being accomplished. The safety reviews that have been conducted on the N-Reactor since the Chernobyl accident have resulted in recommendations addressing the reduction of accident probability and the mitigation of potential accident consequences. Work is underway to install additional capabilities to reduce the probability of accidents and mitigate their consequences. The collection of activities that address all of these recommendations constitutes the N-Reactor Safety Enhancement Program (SEP). This program, the accelerated portion of which is presently being implemented, is designed to assure that necessary improvements are accomplished which will achieve even greater margins of safety.

**Proposed Action:**

The proposed action is to implement the SEP for the N-Reactor. Activities within the SEP can be divided into three major categories as follows:

*Category 1.* Plant improvements intended to achieve further reductions in the risks associated with potentially serious accidents. These include work to:

A. Install hydrogen monitoring instrumentation and install equipment to extend the capabilities of the reactor confinement system to mitigate the consequences of hydrogen evolution in confinement following a reactor accident.

B. Reduce the discharge of primary system coolant to the soil column in the event of an accident.

C. Install an alternate/supplemental Emergency Core Cooling System (ECCS) and improve reliability of the ECCS and Graphite Shield Cooling System (GSCS) in seismic and fire events.

D. Improve reactor control room habitability.

E. Provide improved remote reactor shutdown capability.

F. Upgrade or provide Emergency Control Center, Technical Support Center, and Operational Support Center.

G. Improve plant annunciation and emergency warning systems.

*Category 2.* Additional technical studies and evaluations. Descriptions of these technical studies and evaluations are provided in the SEP. The major studies include the following:

A. Conduct enhanced reactor core surveillance activities including pressure tube and graphite evaluation.

B. Complete a Level III Probabilistic Risk Assessment (PRA).

C. Improve confinement system testing.

D. Re-analyze hypothetical accidents.

E. Extend the analyses of hydrogen evolution during accidents.

F. Re-evaluate chemical forms and quantities of iodine releases as a result of an accident.

G. Develop equipment qualification techniques.

*Category 3.* Improvement of safety management systems including training. Descriptions of such safety management system improvements are listed in the Safety Enhancement Program.

While all portions of the SEP contribute in some sense to safety, the technical studies and evaluations and the improvement of management systems including training (Categories 2 and 3) and normal routine maintenance are not amenable to quantitative analysis. Accordingly, the EIS will contain qualitative analyses of these items. The DOE believes that these activities make a valuable contribution to continued safe operation of the N Reactor and invites public comments on the items described in these areas. During preparation of the EIS, DOE intends to continue to proceed with certain safety improvements which would not have an adverse environmental impact nor limit the choice of reasonable alternatives being considered, as provided for in the regulations of the Council on Environmental Quality (40 CFR 1506.1(a)).

**Alternatives to the Proposed Action:**

The proposed action is implementation of the SEP. Alternatives include:

1. *Design Alternatives of the Proposed Action:* Different designs and/or systems have been considered to achieve the desired safety enhancements for the plant modifications. Options under consideration for the modifications listed in Category 1 above include the following:

A. Hydrogen monitoring instrumentation and equipment to extend the capabilities of the reactor confinement system to mitigate the consequence of hydrogen evolution following a reactor accident.

(1) Monitoring:

(a) In-confinement monitoring or sample withdrawal system.

(b) Use of electrochemical or thermal conductivity sensors.

(2) Mitigation:

(a) Post-accident inerting of confinement.

(b) Dilution by mixing with air into confinement.

(c) Localized burning within confinement.

(d) Recombination (thermal, flame, or catalytic).

(e) Maintain confinement in inerted condition during reactor operation.

B. Reduce the discharge of primary system coolant to the soil column in event of an accident.

(a) Full or partial physical/chemical treatment of effluent.

(b) Eliminate possibility of discharge to the old 1301–N crib.

(c) Use lower levels of Reactor Zone I for temporary storage of effluent.

(d) Provide a lined and covered emergency water retention basin.

C. Install an alternative/supplemental Emergency Core Cooling System (ECCS).

(a) Alternative (long-term) cooling, either once-through or recirculation, using either various Hanford water sources or a modified emergency water tank with pumps for circulation.

(b) Supplemental (short-term) supply from various sources to either the GSCS, the ECCS, or both.

(c) Provide improved separation of safety-related diesel-driven pumps.

(d) Upgrade GSCS to a safety-grade system (i.e., seismic, fire protection, etc.).

D. Improve reactor control room habitability.

(a) Modify control room to allow minimum of seven-day isolation period following a major plant accident.

E. Provide remote reactor shutdown capability.

(a) Make procedural modifications for use under emergency conditions.

(b) Provide a remote emergency shutdown panel.

F. Upgrade Emergency Control Center, Technical Support Center and Operational Support Center.

(1) Emergency Control Center:

(a) Various existing Hanford-site facilities.

(b) Construction of a new facility.

(c) Rattlesnake Mountain facility.

(2) Technical Support Center:

(a) Construction of a new facility.

(b) Utilize existing space in rear of Building 105–N Control Room.

(3) Operational Support Center:

(a) Utilize Building 105–N lunchroom.

(b) Utilize existing outage center.

G. Improve plant annunication and emergency warning systems.

(a) Issue radios to all personnnel within the protected area.)

(b) Extend currrent annunciation and warning systems.

(c) Utilize existing outage center.

2. No Action: The no-action alternative is the continued operation of the N Reactor with routine maintenance but without carrying out the Safety Enhancement program.

**Identification of Environmental Issues**

The following issues will be analyzed for the proposed action and alternatives during the preparation of the EIS. This list is intended neither to be all-inclusive nor a predetermination of the impacts:

- Effects on the general population and workers from radioactive and nonradioactive releases with and without the implementation of the SEP.
- Effect on air and water quality and other environmental consequences with and without implementation of the SEP.
- Applicable regulations and guidelines.
- Socioeconomic impacts to the surrounding communities.
- Mitigation measures.
- Cumulative effects.
- Irretrievable and irrreversible commitment of resources.

**Comments and Scoping**

All interested parties are invited to submit written comments or suggestions concerning the scope of the issues that should be addressed in the Draft EIS. They may also attend public scoping meetings at which oral comments and suggestions will be received.

DOE will establish procedures governing the conduct of the public scoping meetings. The meetings will not be conducted as evidentiary hearings, and those who choose to make statements may not be cross-examined by other speakers. To provide DOE with as much pertinent information as possible and as many views as can be reasonably obtained, and to provide interested persons with equitable opportunities to express their views, the following procedures will be used:

Those individuals desiring to make oral comments should mail their requests to Mr. Tom Bauman at the address listed above. DOE reserves the right to arrange the times and schedules of presentations to be heard and to establish procedures governing the conduct of the meeting. By May 4, 1987, interested individuals and organizations should notify DOE in writing of their desire to speak. Before the meetings DOE will, in turn, notify prospective speakers before the meeting of the times and schedules for presentations. Requests should include a telephone number for such notification. Those persons wishing to speak on behalf of an organization should identify their affiliation in their request. Also persons who have not submitted a request to speak in advance may register to speak at the scoping meeting and will be called on to present their comments if time permits. To assure that all persons wishing to make presentations can be heard, a 5 minute limit for each individual has been established.

2. If subsequent to the meetings, any person or organization desires to provide further information for the record it must be submitted to Mr. Tom

Bauman at the address listed above within one week after the last scoping meeting. Comments received after that date will be considered to the degree practicable.

3. A transcript of the meeting will be taken, retained by DOE, and made available for public review at the locations given below.

Those not desiring to submit comments or suggestions at this time but who would like to receive a copy of the Draft EIS for review and comment when it is issued should notify Mr. Tom Bauman at the address listed above. When the Draft EIS is complete, its availability will be announced in the **Federal Register** and in local news media, and comments will again be solicited.

**Related NEPA Documentation**

NEPA documents have been or are being prepared for other activities at Hanford that are related to but not within the scope of the proposed SEP. These EIS's are:

1. U.S. Department of Energy, Draft Environmental Impact Statement, Disposal of Hanford Defense High-Level, Transuranic and Tank Wastes, DOE/EIS–0113, Vol. 1, 2, and 3, March 1986. U.S. Department of Energy, Washington, DC.

2. U.S. Department of Energy, 1982 Final Environmental Impact Statement—Operation of PUREX and Uranium Oxide Plant Facilities, DOE/EIS–0089, 1982. U.S. Department of Energy, Washington, DC.

3. U.S. Energy Research and Development Administration, 1975 Final Environmental Statement, Waste Management Operations, Hanford Reservation, Richland, Washington, Vol. 1 and 2, ERDA–1538. U.S. Energy and Research Development Administration, Washington, DC.

**Other Documentation**

Copies of the Safety Enhancement Program (Ref.:DOE/ RL 87–05, N Reactor Safety Enhancement Program Summary Description, April 1987) and other DOE documents referenced in this notice that are planned to be used in preparing this EIS and other related background information are available for inspection at the following locations:

1. U.S. Department of Energy, Forrestal Building, Freedom of Information Reading Room IE–190, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 586–6020.

2. Richland Public Library, Swift and Northgate Richland, WA 99352, (509) 943–9117.

3. Spokane Public Library, Comstock Building Library, W. 906 Main Avenue, Spokane, WA 99201, (509) 838–4226.

4. Timberland Regional Library, 415 Airindustrial Way SW., Olympia, WA 98501. (206) 943–5001

5. Multnomah County Library, 801 SW. 10th Avenue, Portland, OR 97205, (503) 233–7201

6. U.S. Department of Energy, Public Reading Room. P.O. Box 900, Federal Building, Room 157, Richland, WA 99352, (509) 376–8583.

7. Walla Walla Public Library, 238 E. Alder, Walla Walla, WA 99362, (509) 527–4550.

8. Seattle Public Library, 1000 4th Avenue, Seattle WA 98104, (206) 625–2665.

Signed in Washington, DC, this 10th day of April, 1987, for the United States Department of Energy.

**Mary L. Walker,**

*Assistant Secretary Environment, Safety and Health.*

[FR Doc. 87–8620 Filed 4–15–87; 8:45 am]

BILLING CODE 6450–01–M

## Federal Energy Regulatory Commission

**[Docket No. CP87–283–000]**

## Texas Gas Transmission Corp.; Application

April 13, 1987.

Take notice that on April 2, 1987, Texas Gas Transmission Corporation (Texas Gas), P.O. Box 1160, Owensboro, Kentucky 42302, filed in Docket No. CP87–283–000, an application [1] pursuant to section 7(c) of the Natural Gas Act so as to authorize the transportation of natural gas on an interruptible basis for certain customers, all as more fully set forth in the application on file with the Commission and open to public inspection.

Texas Gas states that this application is filed to comply with the Commission's order in Docket No. CP86–531–000 and to cure the deficiencies identified therein.[2] On April 10, 1987, Texas Gas filed a supplement to the referenced docket incorporating by reference the information filed in Docket No. CP86–531–000.

Texas Gas states that the following information is included in its application: (1) A list of customers, the contract demand for each customer and whether each customer is a local distribution customer (LDC), an LDC acting on behalf of an end-user(s), a broker acting on behalf of one or several LDCs, or some other category of shipper (list attached); (2) copies of pro forma "T" and "TSC" rate transportation agreements which contain the basic terms and conditions under which service would be rendered; (3) specific points of receipt and delivery for each customer and data submitted by each customer which reflects for *each* point of receipt listed in the transportation agreement:

(a) The seller of the supply located at that point; [3] (b) a statement that the customer has entered into a gas purchase agreement for that particular source of gas; (c) all third party transporters associated with the delivery of the gas to Texas Gas; and (c) an estimate of volumes to be delivered to Texas Gas at such point; and (3) for those customers who are acting on behalf of LDCs, information containing the names of those LDCs and an estimate of the daily volume to be delivered to each LDC.

Texas Gas states that it will charge each customer the appropriate rate for service under either Texas Gas' "T" rate schedule or "TSC" rate schedule as found on Third Revised Sheet Nos. 11 and 12, respectively, of Volume No. 1 of Texas Gas' FERC Gas Tariff. Texas Gas states that it would also collect the applicable GRI funding unit where appropriate.

Texas Gas states that no new facilities are necessary to effectuate the transportation service. Further, Texas Gas states that the term of the subject transportation service is proposed to commence on the date of initial deliveries after certification pursuant to this docket and would continue until 30

[1] This application was originally assigned Docket No. CP86–531–001 and was filed as a petition to amend an application. However, it is considered to be an original application since there is no pending application to amend. This notice will supercede the notice issued on April 9, 1987, in Docket No. CP86–531–001.

[2] Docket No. CP86–531–000, Order Denying Certificate, issued March 16, 1987 (38 FERC ¶ 61,261).

[3] Hadson Gas Systems, Inc. (Hadson), and Citizens Energy Corporation and Citizens Gas Supply Corporation (Citizens) filed on April 2, 1987, in Docket No. CP86–531–001, requests pursuant to Section 388.110 of the Regulations that certain information relating to sellers of gas to Hadson and Citizens either not be required in order to evaluate Texas Gas' petition to amend or that the Commission maintain confidential treatment of such information. Hadson and Citizens contend that the identity of producer/sellers behind each receipt point is competitively sensitive and must be treated by the Commission as confidential and non-public information.

days after Texas Gas accepts a blanket certificate issued pursuant to its Docket No. CP86–521–000 (Texas Gas' 436 application).

Any person desiring to be heard or to make any protest with reference to said application should on or before April 24, 1987, file with the Federal Energy Regulatory Commission, Washington, DC 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.214 or 385.211) and the Regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's Rules.

Take further notice that, pursuant to the authority contained in and subject to jurisdiction conferred upon the Federal Energy Regulatory Commission by sections 7 and 15 of the Natural Gas Act and the Commission's Rules of Practice and Procedure, a hearing will be held without further notice before the Commission or its designee on this application if no motion to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that a grant of the certificate is required by the public convenience and necessity. If a motion for leave to intervene is timely filed, or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for Texas Gas to appear or be represented at the hearing.

**Kenneth F. Plumb,**

*Secretary.*

| Contract No. | Name | Daily contract demand | Rate schedule and delivery zone | Category |
|---|---|---|---|---|
| 1253.01 | EnTrade | 150,000 | T–4, T–SL | Broker/LDCs |
| 1256.01 | Louisville/Frito Lay | 800 | TSC–4 | LDC/End–User |
| 1255.01 | Western/Pinkerton | 1,500 | TSC–3 | LDC/End–User |
| 1257.01 | Western/Ragu | 1,400 | TSC–3 | LDC/End–User |
| 1258.01 | Sigeco/GE | 10,000 | TSC–3 | LDC/End–User |
| 1259.01 | Western/GAF | 3,100 | TSC–2 | LDC/End–User |
| 1260.01 | Western/Sikes | 1,500 | TSC–4 | LDC/End–User |
| 1261.01 | Memphis/St. Francis | 1,000 | TSC–1 | LDC/End–User |
| 1263.01 | Western/Kendall | 750 | TSC–3 | LDC/End–User |
| 1267.01 | Jackson/Florida Steel | 3,000 | TSC–1 | LDC/End–User |
| 1265.01 | Western/Willamette | 6,400 | TSC–3 | LDC/End–User |
| 1264.01 | Louisville/Heaven Hill | 1,000 | TSC–4 | LDC/End–User |
| 1268.01 | Western/Commonwealth Aluminum | 13,000 | TSC–3 | LDC/End–User |
| 1274.01 | Sigeco/Farm Bureau | 1,500 | TSC–3 | LDC/End–User |
| 1269.01 | Western/Pennwalt | 3,900 | TSC–2 | LDC/End–User |
| 1270.01 | Central Illinois/Marathon | 20,000 | TSC–3 | LDC/End–User |
| 1275.01 | Memphis/Taylor Forge | 850 | TSC–1 | LDC/End–User |
| 1272.01 | Western/Alcan Aluminum | 3,000 | TSC–3 | LDC/End–User |
| 1276.01 | Western/Borg Warner | 600 | TSC–3 | LDC/End–User |
| 1277.01 | Baltimore Gas & Electric/System Supply | 60,000 | T–4 | LDC |
| 1155.01 | Dayton Power & Light/System Supply | 75,000 | T–4 | LDC |
| 1278.01 | Indiana Gas/General Motors | 4,800 | TSC–3 | LDC/End–User |
| 1266.01 | Memphis/Cargill | 2,650 | TSC–1 | LDC/End–User |
| 1281.01 | Western/Grace | 1,700 | TSC–3 | LDC/End–User |
| 1279.01 | Western/Kentucky-Tennessee Clay | 500 | TSC–2 | LDC/End–User |
| 1283.01 | Louisville/Cargill | 1,800 | TSC–4 | LDC/End–User |
| 1280.01 | Louisville/Edible Oil | 1,600 | TSC–4 | LDC/End–User |
| 1289.01 | Niagara Mohawk/System Supply | 200,000 | T–4 | LDC |
| 1290.01 | City of Hamilton/Beckett Paper | 2,200 | TSC–4 | LDC/End–User |
| 1294.01 | Louisville/United Catalysts | 3,485 | TSC–4 | LDC/End–User |
| 1295.01 | TXG Marketing | 50,000 | T–4 | Broker/LDCs |
| 1288.01 | Boonville/System Supply/End-Users | 5,000 | TSC–3 | LDC and LDC/End–User |
| 1479.01 | Boonville/System Supply/End-Users | 5,000 | T–3 | LDC and LDC/End–User |
| 1296.01 | Western/Ohio Valley Aluminum | 2,500 | TSC–4 | LDC/End–User |
| 1292.01 | Western/Filtration Sciences | 1,450 | TSC–3 | LDC/End–User |
| 1282.01 | Citizens Energy | 180,000 | T–4, T–SL | Broker/LDCs |
| 1286.01 | Miss. Valley/Alumax Extrusions | 600 | TSC–1 | LDC/End–User |
| 1297.01 | Western/System Supply—Zone 2 | 45,364 | TSC–2 | LDC |
| 1299.01 | Western/System Supply—Zone 3 | 90,923 | TSC–3 | LDC |
| 1271.01 | Sigeco/Alcoa | 25,000 | TSC–3 | LDC/End–User |
| 1303.01 | Ohio River/Colgate* | 5,000 | TSC–4 | Interstate Pipeline/End–User |
| 1304.01 | Indiana Gas/System Supply | 105,522 | TSC–3 | LDC |
| 1305.01 | Memphis/System Supply | 150,000 | TSC–1 | LDC |
| 1301.01 | Henderson/System Supply | 17,751 | TSC–3 | LDC |
| 1302.01 | Louisville/System Supply | 231,753 | TSC–4 | LDC |
| 1310.01 | Sigeco/System Supply | 75,000 | TSC–3 | LDC |
| 1311.01 | Western/Eaton | 1,140 | TSC–3 | LDC/End–User |
| 1314.01 | New York State Electric & Gas/System Supply | 37,000 | T–4 | LDC |
| 1316.01 | Indiana Gas/Eli Lilly | 13,000 | TSC–3 | LDC/End–User |
| 1291.01 | Louisville/Reynolds Metals | 1,100 | TSC–4 | LDC/End–User |
| 1317.01 | Memphis/Fruehauf | 550 | TSC–1 | LDC/End–User |
| 1321.01 | EnTrade | 150,000 | T–4 | Broker/LDCs |
| 1324.01 | United Cities/System/Supply/End-Users | 12,721 | TSC–2 | LDC and LDC/End–User |
| 1306.01 | Chandler Natural Gas/System Supply | 1,883 | TSC–3 | LDC |
| 1480.01 | Chandler Natural Gas/System Supply | 1,883 | T–3 | LDC |

| Contract No. | Name | Daily contract demand | Rate schedule and delivery zone | Category |
|---|---|---|---|---|
| 1319.01 | Terre Haute/System Supply | 24,000 | TSC-3 | LDC |
| 1326.01 | Indiana Gas/Cummins | 3,400 | TSC-3 | LDC/End-User |
| 1327.01 | Citizens Energy | 180,000 | T-4 | Broker LDCs |
| 1328.01 | Central Illinois Public/Service/Briggs | 2,000 | TSC-3 | LDC/End-User |
| 1325.01 | Mississippi Valley/System Supply | 18,000 | TSC-1 | LDC |
| 1309.01 | Western/Air Products | 2,350 | TSC-2 | LDC/End-User |
| 1169.01 | Indiana Gas/A. E. Staley | 8,000 | TSC-3 | LDC/End-User |
| 1331.01 | Jackson Utilities/System Supply | 12,000 | TSC-1 | LDC |
| 1337.01 | Indiana Gas/Borg Warner | 8,000 | TSC-3 | LDC/End-User |
| 1338.01 | Indiana Gas/Chrysler | 9,800 | TSC-3 | LDC/End-User |
| 1335.01 | Indiana Gas/RCA | 1,000 | TSC-3 | LDC/End-User |
| 1343.01 | Ohio River/Gohmann Asphalt* | 1,100 | TSC-4 | Interstate Pipeline/ End-User |
| 1161.02 | Ohio River/Occidental Chem.* | 1,500 | TSC-4 | Interstate Pipeline/ End-User |
| 1336.01 | Western/Barmet | 1,500 | TSC-3 | LDC/End-User |
| 1344.01 | Hoosier Gas/System Supply | 29,586 | TSC-3 | LDC |
| 1284.01 | Memphis/Kroger | 250 | TSC-1 | LDC/End-User |
| 1307.01 | West Ohio Gas/System Supply | 12,500 | T-4 | LDC |
| 1347.01 | Terre Haute/Eli Lilly | 7,400 | TSC-3 | LDC/End-User |
| 1349.01 | Indiana Gas/Bausback | 650 | TSC-3 | LDC/End-User |
| 1350.01 | Indiana Gas/Electro Sound | 650 | TSC-3 | LDC/End-User |
| 1363.01 | Ohio Valley Gas Corp.—Zone 3/System Supply | 8,309 | TSC-3 | LDC |
| 1362.01 | Ohio Valley Gas Corp.—Zone 4/System Supply | 15,286 | TSC-4 | LDC |
| 1364.01 | Dome Gas Company/System Supply | 4,609 | TSC-3 | LDC |
| 1526.01 | Dome Gas Company/System Supply | 4,609 | T-3 | LDC |
| 1361.01 | Terre Haute/Alcan | 6,368 | TSC-3 | LDC/End-User |
| 1366.01 | Western/North Star Steel | 2,565 | TSC-2 | LDC/End-User |
| 1370.01 | ANR Gathering | 60,000 | T-SL | Broker/LDCs |
| 1354.01 | Western/Korger | 200 | TSC-3 | LDC/End-User |
| 1375.01 | Memphis/Celotex | 375 | TSC-1 | LDC/End-User |
| 1374.01 | Memphis/Cleo Wraps | 700 | TSC-1 | LDC/End-User |
| 1373.01 | Memphis/Lehman Roberts | 900 | TSC-1 | LDC/End-User |
| 1243.01 | Memphis/Memphis State University | 1,500 | TSC-1 | LDC/End-User |
| 1346.01 | Ohio River Pipeline/System Supply* | 54,407 | TSC-4 | Interstate Pipeline |
| 1333.01 | Mountaineer Gas/System Supply | 40,000 | T-4 | LDC |
| 1300.01 | Western/System Supply—Zone 4 | 13,402 | TSC-4 | LDC |
| 1345.01 | Bridgeline | 150,000 | T-SL | LDC |
| 1367.01 | Ohio Valley Gas, Inc./System Supply | 4,399 | TSC-3 | LDC |
| 1525.01 | Ohio Valley Gas, Ind./System Supply | 4,399 | T-3 | LDC |
| 1341.01 | Corning Natural Gas Corp. | 3,156 | T-4 | LDC |
| 1329.01 | Quivira Gas Company | 5,000 | T-1, T-SL | Intrastate Pipeline |
| 1313.01 | Hadson Gas System | 50,000 | T-SL | Broker/LDCs |

* These transportation arrangements involving an interstate pipeline are presently being accomplished under Section 311 of the NGPA, by means of an agency arrangement with an LDC, Indiana Gas.

[FR Doc. 87-8550 Filed 4-15-87; 8:45 am]
BILLING CODE 6717-01-M

## ENVIRONMENTAL PROTECTION AGENCY

[FRL-3187-7]

## Privacy Act of 1974, System of Records

**AGENCY:** Environmental Protection Agency.

**ACTION:** Privacy Act of 1974, proposed new system of records.

**SUMMARY:** Pursuant to the Privacy Act of 1974 (5 U.S.C. 552a), the U.S. Environmental Protection Agency is proposing to formally establish and maintain a system of records. This system is the "Official U.S. Government Identification Card Record." EPA will use the records to prepare identification cards for Agency and contract employees to identify those who need access to EPA buildings and offices.

**EFFECTIVE DATE:** The Environmental Protection Agency is requesting a waiver from the Office of Management and Budget of its sixty-day advance review period. If the Office of Management and Budget grants the waiver, this system shall become operational thirty days after publication unless comments are received which would result in a contrary determination.

**FOR FURTHER INFORMATION CONTACT:** Luther E. Mellen, Chief, Security and Property Management Branch, Facilities Management and Services Division (PM-215), U.S. Environmental Protection Agency, Washington, DC 20460, telephone (202) 382-2110.

Dated: March 20, 1987.

**C. Morgan Kinghorn,**

*Acting Assistant Administrator for Administration and Resources Management.*

**EPA-FMSD-19**

**SYSTEM NAME:**

Official U.S. Government Identification Card Record—EPA-FMSD-19.

**SECURITY CLASSIFICATION:**

None.

**SYSTEM LOCATION:**

1. Facilities Management and Services Division, Security and Property Management Branch, U.S. Environmental Protection Agency, 401 M Street SW, Washington, DC 20460.

2. Field activities listed in Appendix.

**CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:**

EPA employees and EPA contract employees who require access to EPA buildings and offices.

**CATEGORIES OF RECORDS IN THE SYSTEM:**

1. EPA Form 5110-1, EPA Identification Card Acknowledgement, which contains the following information: Name, EPA identification card number, height, weight, color of eyes/hair, date of birth, social security number, position title, grade, EPA office

location, signature, date of issuance, and a photograph of the person issued the identification card.

2. EPA Form 1480–39, Official U.S. Government Identification, which contains the following information: Name, social security number, location, date of birth, height, weight, color of eyes/hair, signature, card number, date of issuance and photograph of person issued the identification card.

**AUTHORITY FOR MAINTENANCE OF THE SYSTEM:**

40 U.S.C. 486(c), Federal Property and Administrative Services Act of 1949 (authority for establishing housekeeping records); Executive Order 9397 (authority to collect social security numbers for identification purposes).

**PURPOSES:**

EPA will use the records to issue official U.S. Government Identification cards to EPA employees and EPA contract employees requiring access to EPA buildings and offices. The records will also be used to maintain a record of all holders of identification cards, for renewal and recovery of expired cards, and to identify lost or stolen cards. At Headquarters the records may be used to identify employees whose names have not been entered in the EPA locator system.

**ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:**

Disclosure of information may be made:

1. To the Department of Justice to the extent that each disclosure is compatible with the purpose for which the record was collected and is relevant and necessary to litigation or anticipated litigation in which one of the following is a party or has an interest: (a) EPA or any of its components, (b) an EPA employee in his or her official capacity, (c) an EPA employee in his or her individual capacity where the Department of Justice is representing or considering representation of the employee, or (d) the United States where EPA determines that the litigation is likely to affect the Agency.

2. In a proceeding before a court, other adjudicative body or grand jury, or in an administrative or regulatory proceeding, to the extent that each disclosure is compatible with the purpose for which the record was collected and is relevant and necessary to the proceeding in which one of the following is a party or has an interest: (a) EPA or any of its components, (b) an EPA employee in his or her official capacity, (c) an EPA employee in his or her individual capacity where the Department of Justice is representing or considering representation of the employee, or (d) the United States where EPA determines that the litigation is likely to affect the Agency. Such disclosures include those made in the course of presenting evidence, conducting settlement negotiations, and responding to subpoenas and requests for discovery.

3. To a Federal agency which has requested information relevant to its decision in connection with the hiring or retention of an employee; the reporting of an investigation on an employee; the letting of a contract; or the issuance of a security clearance, license, grant, or other benefit.

4. To a Federal, State or local agency where necessary to enable EPA to obtain information relevant to an EPA decision concerning the hiring or retention of an employee; the letting of a contract; or the issuance of a security clearance, license, grant, or other benefit.

5. To an appropriate Federal, State, local or foreign agency responsible for investigating, prosecuting, enforcing, or implementing a statute, rule, regulation or order, where there is an indication of a violation or potential violation of the statute, rule, regulation or order and the information disclosed is relevant to the matter.

6. To a Member of Congress or a congressional office in response to an inquiry from that Member or office made at the request of the individual to whom the record pertains.

7. To EPA contractors who have been engaged to assist EPA in the performance of activities directly related to this system of records and who need to have access to the records in order to perform under the contract. Contractors are required to maintain the records in accordance with the requirements of the Privacy Act.

8. To representatives of the General Services Administration and the National Archives and Records Administration who are conducting records management inspections under the authority of 44 U.S.C. 2904 and 2906.

**POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:**

**STORAGE:**

File folders in file cabinets.

**RETRIEVABILITY:**

Records are retrieved by name of individual on whom they are maintained.

**SAFEGUARDS:**

Only authorized EPA employees with an official need-to-know are allowed access to the system. The files are stored in cabinets secured with locking bars and padlocks. The cabinets are located in a locked room in a building with controlled access.

**RETENTION AND DISPOSAL:**

Records are destroyed three months after termination of employment or severance of association with EPA. See EPA Records Control Schedule, Appendix B, Part 3, Item 25.

**SYSTEM MANAGER(S) AND ADDRESS:**

Headquarters: Chief, Security and Property Management Branch (PM–215), 401 M Street SW., Washington, D.C. 20460.

Other locations: General Services Manager at address listed in the Appendix.

**NOTIFICATION PROCEDURES:**

Inquiries should be addressed to the System Manager at the location where the records are maintained (with notarized signature if request is made by mail or with suitable identification if request is made in person). Any additional information or requirement will be provided by the System Manager.

**RECORD ACCESS PROCEDURES:**

Same as Notification Procedures. Individuals should reasonably specify the record contents being sought, and provide any other names officially used during period of employment.

**CONTESTING RECORD PROCEDURES:**

Same as Notification Procedures. The record and the specific information being contested should be identified. The corrective action sought and supporting justification for the correction should be provided by the individual.

**RECORD SOURCE CATEGORIES:**

The individual on whom the record is maintained and EPA personnel records.

**SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:**

None.

APPENDIX:

In addition to Headquarters, the General Services Manager at the following EPA field activities have identification card records:

EPA Region I, Federal Center, Boston, MA 02203
EPA Region II, 26 Federal Plaza, New York, NY 10278
EPA Region III, 841 Chestnut Street, Philadelphia, PA 19107
EPA Region IV, 345 Courtland Street, N.E., Atlanta, GA 30365
EPA Region V, 230 S. Dearborn Street, Chicago, IL 60604
EPA Region VI, 1201 Elm Street, Dallas, TX 75270
EPA Region VII, 726 Minn. Avenue, Kansas City, KS 66101
EPA Region VIII, 999 18th Street, Suite 1300, Denver, CO 80202
EPA Region IX, 215 Fremont Street, San Francisco, CA 94105
EPA Region X, 1200 6th Avenue, Seattle, WA 98101
Environmental Research Laboratory, P.O. Box 1198, Ada, OK 74820
Motor Vehicle Emission Laboratory, 2565 Plymouth, Ann Arbor, MI 48105
Environmental Research Laboratory, Athens, GA 30613
Office of Administration, 26 W. St. Clair St., Cincinnati, OH 45268
Environmental Research Laboratory, 6201 Congdon Blvd., Duluth, MN 55804
Environmental Research Laboratory, P.O. Box 15027, Las Vegas, NV 89114
Environmental Research Laboratory, South Ferry Rd., Narragansett, RI 02882
National Enforcement Investigations Center, Bldg. 53, Box 25227 Denver, CO 80225
Office of Administration, Research Triangle Park, NC 27711

[FR Doc. 87-8606 Filed 4-15-87; 8:45 am]
BILLING CODE 6560-50-M

## FEDERAL HOME LOAN BANK BOARD

### Central Savings and Loan Association; San Diego, CA; Appointment of Receiver

Notice is hereby given that pursuant to the authority contained in section 406(c)(2) of the National Housing Act, 12 U.S.C. 1729(c)(2) (1982), the Federal Home Loan Bank Board duly appointed the Federal Savings and Loan Insurance Corporation as sole receiver for Central Savings and Loan Association, San Diego, California on April 10, 1987.

Dated: April 13, 1987.

**Jeff Sconyers,**

*Secretary.*

[FR Doc. 87-8583 Filed 4-15-87; 8:45 am]
BILLING CODE 6720-01-M

### Central Savings and Loan Association; San Diego, CA; Appointment of Receiver

Notice is hereby given that the Superior Court for the County of San Diego has confirmed the appointment by the Commissioner, Department of Savings and Loan for the State of California ("Commissioner") of a receiver for Central Savings and Loan Association, San Diego, California ("Association"), and that pursuant to the authority contained in section 406(c)(1) of the National Housing Act, as amended, 12 U.S.C. section 1729(c)(1) (1982), the Federal Savings and Loan Insurance Corporation accepted the tender of the Commissioner of the appointment as receiver for the Association, for the purpose of liquidation, effective April 10, 1987.

Dated: April 13, 1987.

**Jeff Sconyers,**

*Secretary.*

[FR Doc. 87-8584 Filed 4-15-87; 8:45 am]
BILLING CODE 6720-01-M

### First Southern Savings Association of Jackson County; Pascagoula, MS; Appointment of Receiver

Notice is hereby given that, pursuant to the authority contain in section 406(c)(2) of the National Housing Act, as amended, 12 U.S.C. 1729(c)(2) (1982), the Federal Home Loan Bank Board duly appointed the Federal Savings and Loan Insurance Corporation as sole receiver for the purpose of liquidation for First Southern Savings Association of Jackson County, Pascagoula, Mississippi on March 20, 1987.

Dated: April 13, 1987.

By the Federal Home Loan Bank Board.

**Jeff Sconyers,**

*Secretary.*

[FR Doc. 87-8585 Filed 4-15-87; 8:45 am]
BILLING CODE 6720-01-M

### Future Savings and Loan Association; Albany, OR; Appointment of Receiver

Notice is hereby given that pursuant to the authority contained in section 406(c)(2) of the National Housing Act, as amended, 12 U.S.C. 1729(c)(2) (1982), the Federal Home Loan Bank Board appointed the Federal Savings and Loan Insurance Corporation as sole receiver for Future Savings and Loan Association, Albany, Oregon on April 10, 1987.

Dated: April 13, 1987.

**Jeff Sconyers,**

*Secretary.*

[FR Doc. 87-8586 Filed 4-15-87; 8:45 am]
BILLING CODE 6720-01-M

### Future Savings and Loan Association; Albany, OR; Appointment of Conservator

Notice is hereby given that the Circuit Court of the State of Oregon for the County of Linn has confirmed the appointment by the Supervisor, Savings and Loan, Credit Union and Consumer Finance Section, Financial Institutions Division for the State of Oregon ("Oregon") of a conservator for Future Savings and Loan Association, Albany, Oregon ("Future") and that pursuant to the authority contained in section 406(c)(1) of the National Housing Act, as amended (12 U.S.C. section 1729(c)(1)) (1982), the Federal Savings and Loan Insurance Corporation accepted the tender of the Supervisor of the appointment as conservator for Future, for the purpose of liquidation, effective April 10, 1987.

Dated: April 13, 1987.

By the Federal Home Loan Bank Board.

**Jeff Sconyers,**

*Secretary.*

[FR Doc. 87-8582 Filed 4-15-87; 8:45 am]
BILLING CODE 6720-01-M

### Summit Savings and Loan Association; Park City, UT; Replacement of Conservator With Receiver

Notice is hereby given that pursuant to the authority contained in section 5(d)(6)(D) of the Home Owner's Loan Act of 1933, as amended, 12 U.S.C. § 1464(d)(6)(D) (1982), the Federal Home Loan Bank Board on April 10, 1987 duly replaced the Federal Savings and Loan Insurance Corporation ("FSLIC") as conservator for Summit Savings and Loan Association, Park City, Utah ("Association") by the FSLIC as sole receiver for the Association.

Dated: April 13, 1987.

**Jeff Sconyers,**

*Secretary.*

[FR Doc. 87-8587 Filed 4-15-87; 8:45 am]
BILLING CODE 6720-01-M

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Food and Drug Administration

**[Docket No. 87E-0059]**

### Determination of Regulatory Review Period for Purposes of Patent Extension; Exirel

**AGENCY:** Food and Drug Administration.

**ACTION:** Notice.

**SUMMARY:** The Food and Drug Administration (FDA) has determined the regulatory review period for Exirel and is publishing this notice of that determination as required by law. FDA has made the determination because of the submission of an application to the Commissioner of Patents and Trademarks, Department of Commerce, for the extension of a patent which claims that human drug product.

**ADDRESS:** Written comments and petitions should be directed to the Dockets Management Branch (HFA–305), Food and Drug Administration, Room 4–62, 5600 Fishers Lane, Rockville, MD 20857.

**FOR FURTHER INFORMATION CONTACT:** Philip L. Chao, Office of Health Affairs (HFY–20), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–443–1382.

**SUPPLEMENTARY INFORMATION:** The Drug Price Competition and Patent Term Restoration Act of 1984 (Pub. L. 98–417) generally provides that a patent may be extended for a period of up to 5 years so long as the patented item (human drug product, medical device, food additive, or color additive) was subject to regulatory review by FDA before the item was marketed. Under that act, a product's regulatory review period forms the basis for determining the amount of extension an applicant may receive.

A regulatory review period consists of two periods of time: a testing phase and an approval phase. For human drug products, the testing phase begins when the exemption to permit the clinical investigations of the drug becomes effective and runs until the approval phase begins. The approval phase starts with the initial submission of an application to market the human drug product and continues until FDA grants permission to market the drug product. Although only a portion of a regulatory review period may count toward the actual amount of extension that the Commissioner of Patents and Trademarks may award (for example, half the testing phase must be subtracted as well as any time that may have occurred before the patent was issued), FDA's determination of the length of a regulatory review period for a human drug product will include all of the testing phase and approval phase as specified in 35 U.S.C. 156(g)(1)(B).

FDA recently approved for marketing the human drug product Exirel (Pirbuterol Acetate), which is indicated for the prevention and reversal of bronchospasm in patients with reversible bronchospasm including asthma and may be used with or without concurrent theophylline and/or steroid therapy. Subsequent to this approval, the Patent and Trademark Office received a patent term restoration application for Exirel (U.S. Patent No. 3,786,160) from Pfizer, Inc., and requested FDA's assistance in determining the patent's eligibility for patent term restoration. In a letter dated March 3, 1987, FDA advised the Patent and Trademark Office that the human drug product has undergone a regulatory review period and that the active ingredient, Pirbuterol Acetate, represented the first permitted commercial marketing or use of that active ingredient. This **Federal Register** notice now represents FDA's determination of the product's regulatory review period.

FDA has determined that the applicable regulatory review period for Exirel is 2,835 days. Of this time, 1,485 days occurred during the testing phase of the regulatory review period, while 1,350 days occurred during the approval phase. These periods of time were derived from the following dates:

1. *The date an exemption under section 505(i) of the Federal Food, Drug, and Cosmetic Act became effective:* March 29, 1979. The applicant claims that the notice of claimed investigational exemption (IND) for the drug became effective on July 30, 1978. However, FDA records indicate that the IND was placed on clinical hold and therefore the actual effective date for the IND is March 29, 1979.

2. *The date the application was initially submitted with respect to the human drug product under section 505(b) of the Federal Food, Drug, and Cosmetic Act:* April 21, 1983. FDA has verified the applicant's claim that the new drug application for Exirel (NDA 19–009) was initially submitted on April 21, 1983.

3. *The date the application was approved:* December 30, 1986. FDA has verified the applicant's claim that NDA 19–009 was approved on December 30, 1986.

This determination of the regulatory review period establishes the maximum potential length of a patent extension. However, the U.S. Patent and Trademark Office applies several statutory limitations in its calculations of the actual period for patent extension. In its application for patent extension, this applicant seeks 2 years of patent extension.

Anyone with knowledge that any of the dates as published is incorrect may, on or before June 15, 1987, submit to the Dockets Management Branch (address above) written comments and ask for a redetermination. Furthermore, any interested person may petition FDA, on or before October 13, 1987, for a determination regarding whether the applicant for extension acted with due diligence during the regulatory review perid. To meet its burden, the petition must contain sufficient facts to merit an FDA investigation. (See H. Rept. 857, Part 1, 98th Cong., 2d Sess., pp. 41–42, 1984.) Petitions should be in the format specified in 21 CFR 10.30.

Comments and petitions should be submitted to the Dockets Management Branch (address above) in three copies (except that individuals may submit single copies) and identified with the docket number found in brackets in the heading of this document. Comments and petitions may be seen in the Dockets Management Branch between 9 a.m. and 4 p.m., Monday through Friday.

Dated: April 8, 1987.

**Stuart L. Nightingale,**

*Associate Commissioner for Health Affairs.*

[FR Doc. 87–8507 Filed 4–15–87; 8:45 am]

BILLING CODE 4160–01–M

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**[Docket No. 78P–0173 et al.]**

## Approved Variances for Laser Light Shows; Availability

**AGENCY:** Food and Drug Administration.

**ACTION:** Notice.

**SUMMARY:** The Food and Drug Administration (FDA) is announcing that variances from the performance standard for laser products have been approved by FDA's Center for Devices and Radiological Health (CDRH) for 12 organizations that manufacture and produce laser light shows, light show projectors, or both. The projectors provide a laser light display to produce a variety of special lighting effects. The principal use of these products is to provide entertainment to general audiences.

**DATES:** The effective dates and termination dates of the variances are listed in the table below under "Supplementary Information."

**ADDRESS:** The applications and all correspondence on the applications have been placed on display in the Dockets Management Branch (HFA–305), Food and Drug Administration, Room 4–62, 5600 Fishers Lane, Rockville, MD 20857.

**FOR FURTHER INFORMATION CONTACT:** Sally Friedman, Center for Devices and Radiological Health (HFZ–84), 5600 Fishers Lane, Rockville, MD 20857, 301–443–4874.

**SUPPLEMENTARY INFORMATION:** Under § 1010.4 (21 CFR 1010.4) of the

regulations governing establishment of performance standards under section 358 of the Radiation Control for Health and Safety Act of 1968 (42 U.S.C. 263f), FDA has granted each of the 12 organizations listed in the table below a variance from the requirements of § 1040.11(c) (21 CFR 1040.11(c)) of the performance standard for laser products.

Each variance permits the listed manufacturer to introduce into commerce a demonstration laser product assembled and produced by the manufacturer, which is its particular variety of laser light show, laser light show projector, or both. Each laser product involves levels of accessible laser radiation in excess of Class II levels but not exceeding those required to perform the intended function of the product.

CDRH has determined that suitable means of radiation safety and protection are provided by constraints on the physical and optical design and by warnings in the user manual and on the products. Therefore, on the effective dates specified in the table below, FDA approved the requested variances by a letter to each manufacturer from the Deputy Director of CDRH.

So that each product may show evidence of the variance approved for the manufacturer of the product, each product shall bear on the certification label required by § 1010.2(a) (21 CFR 1010.2(a)) a variance number, which is the FDA docket number, and the effective date of the variance as specified in the table below.

| Docket No. | Organization granted the variance | Demonstration laser product | Effective date termination date |
|---|---|---|---|
| 78P-0173 (Amendment). | Laser Images, Incorporated, 6907 Hayvenhurst Avenue, Van Nuys, CA 91406. | LASERIUM (krypton) and Concert System (CS) Series of Class III and IV laser projectors manufactured by Laser Images, Incorporated and for laser light shows assembled and produced by Laser Images Incorporated incorporating these projectors or the Foursight Visual Systems Incorporated Model 4 projectors. | Dec. 4, 1986—Aug. 22, 1988. |
| 79P-0257 (Renewal) | Knotts Berry Farm, 8039 Beach Boulevard, Post Office Box 5002, Buena Park, CA 90620. | Laser light show in Studio "K" and in the "Good Time Theater" within Knotts Berry Farm. | Jan. 8, 1987—Oct. 6, 1989. |
| 86V-0194 (Amendment). | Lasertainment, 551 NE. 49th Avenue, Columbia Heights, MN 55421. | Lasertainment laser light show using the Laser Fantasy Class IIIb Rainbow Model Series Ar/HeNe and HeNe laser projection systems. | Dec. 10, 1986—Oct. 16, 1988. |
| 86V-0315 | California Technical Associates, 3856 California Street, Suite 4, San Francisco, CA 94118. | California Technical Associates laser light shows incorporating the firm's laser projection system with an Ion Laser Technology Series ILT 5000 argon or krypton laser. | Jan. 8, 1987—Jan. 8, 1989. |
| 86V-0379 | Laservisions Productions, 25 Midland Avenue, Budd Lake, NJ 07828. | Laservisions Productions laser light show incorporating the Coherent Innovations' Rainbow Class IV helium-neon/argon laser projection system. | Nov. 24, 1986—Nov. 24, 1988. |
| 86V-0381 | La Jolla Centre Partners, Ltd., 4350 Executive Drive, Suite 100, San Diego, CA 92121. | La Jolla Centre Partners, Ltd, laser light show for the First California Bank incorporating a Laser Media LMS laser projector containing a Class IV krypton ion laser. | Dec. 30, 1986—Dec. 30, 1988. |
| 86V-0407 | Numbers Nightclub, 300 Westheimer, Houston, TX 77006 | Numbers Nightclub laser light show incorporating the Laser Media LMS laser projector system with Class IV argon and Class III krypton ion lasers. | Jan. 8, 1987—Jan. 8, 1989. |
| 86V-0434 | GTE Marketing Center, 5500 Tennyson, Plano, TX 75024 | GTE Marketing Center Media Show using the LaserMedia LMS Series Class IV Argon projection system. | Jan. 8, 1987—Jan. 8, 1989. |
| 86V-0461 | TRW, Incorporated, TRW Federal Systems Group, 2751 Prosperity Avenue (FVA6/2270), Fairfax, VA 22031. | Laser video displays assembled and produced by TRW, Incorporated in their facility's conference room and, occasionally, at customer facilities in marketing demonstrations. These displays will incorporate a certified Class IV Visulux Laser Projector Model Series 1000. | Dec. 17, 1986—Dec. 17, 1988. |
| 86V-0480 | Market Tavern, Incorporated, dba Hammerjacks, 1101 South Howard Street, Baltimore, MD 21230. | Market Tavern, Incorporated, dba Hammerjacks, laser light shows incorporating the Laser Media LMS projector with argon or helium-neon lasers. | Dec. 30, 1986—Dec. 30, 1988. |
| 86V-0487 | Phase II, dba Etcetera, 8796 North Central Expressway, Dallas, TX 75231. | Etcetera laser light show using the Laser Media Class IV LMS laser projection system with argon, krypton, or helium-neon lasers. | Dec. 30, 1986—Dec. 30, 1988. |
| 86V-0504 | BCD South N.Y. Corporation, dba Chez Paree, 235 South New York Avenue, Atlantic City, NJ 08401. | Chez Paree laser light show incorporating a Laservision Model H174 Class IV argon laser projector. | Dec. 30, 1986—Dec. 30, 1988. |

In accordance with § 1010.4, the applications and all correspondence on the applications have been placed on public display under the designated docket number in the Dockets Management Branch (address above) and may be seen in that office between 9 a.m. and 4 p.m., Monday through Friday.

This notice is issued under the Public Health Service Act as amended by the Radiation Control for Health and Safety Act of 1968 (sec. 358, 82 Stat. 1177–1179 (42 U.S.C. 263f)) and under authority delegated to the Commissioner of Food and Drugs (21 CFR 5.10) and redelegated to the Director, Center for Devices and Radiological Health (21 CFR 5.86).

Dated: April 9, 1987.

**John C. Villforth,**

*Director, Center for Devices and Radiological Health.*

[FR Doc. 87–8506 Filed 4–15–87; 8:45am]

**BILLING CODE 4160-01-M**

**[Docket No. 87M-0066]**

## Palomex Instrumentarium Corp.; Premarket Approval of Acutscan® Model 100 MRI System

**AGENCY:** Food and Drug Administration.

**ACTION:** Notice.

**SUMMARY:** The Food and Drug Administration (FDA) is announcing its approval of the application by Palomex Instrumentarium Corp., Washington, DC, for premarket approval, under the Medicial Device Amendments of 1976, of the Acutscan ® Model 100 MRI System. After reviewing the recommendation of the Radiologic Devices Panel, FDA's Center for Devices and Radiologic Health (CDRH) notified the applicant of the approval of the application.

**DATE:** Petitions for administrative review by May 18, 1987.

**ADDRESS:** Written requests for copies of the summary of safety and effectiveness data and petitions for administrative review to the Dockets Management Branch (HFA–305), Food and Drug Administration, Room 4–62, 5600 Fishers Lane, Rockville, MD 20857.

**FOR FURTHER INFORMATION CONTACT:** Robert A. Phillips, Centers for Devices and Radiological Health (HFZ–430), Food and Drug Administration, 8757 Georiga Ave., Silver Spring, MD 20910, 301–427–7514.

**SUPPLEMENTARY INFORMATION:** On July 10, 1986, Palomex Instrumentarium Corp., c/o Hyman & Phelps & McNamara, 1120 G St, NW., Washington, DC, 20005, submitted to CDRH an application for premarket approval of the Acutscan ® Model 100 MRI System. The device is a nuclear magnitic resonance imaging (MRI) device with multi-slice operation and a resistive magnet operating at 0.02 tesla. The Acutscan ® Model 100 MRI System is indicated for use as a diagnostic imaging system that within its limitations for resolution and slice

thickness produces cross-sectional transaxial, coronal, and segittal images that display anatomic structure of the head or body. MR images correspond to the spatial distribution of protons (hydrogen nuclei) that exhibit nuclear magnitic resonance. The consequent MR properties of head or body tissues and fluids are: hydrogen density, spin-lattice relation time (TI), spin-spin relaxation time (T2), and flow velocity. When interpreted by a trained physician, these images yield infomation that can be useful in the determination of a diagnosis. All other uses of the Acutscan ® Model 100 MRI System remain investigational.

On November 24, 1986, the Radiologic Devices Panel, an FDA advisory committee, reviewed and recommended approval of the application. On February 20, 1987, CDRH approved the application by a letter to the applicant from the Director of the Office of Device Evaluation, CDRH.

A summmary of the safety and effectiveness data on which CDRH based its approval is on file in the Dockets Management Branch (address above) and is available from the office upon written request. Requests should be identified with the name of the device and the docket number found in brackets in the heading of this document.

A copy of all approved labeling is available for public inspection at CDRH—contact Robert A. Phillips (HFZ–430), address above.

### Opportunity for Administrative Review

Section 515(d)(3) of the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 360e(d)(3)) authorizes any interested person to petition, under section 515(g) of the act (21 U.S.C. 360e(g)), for administrative review of CDRH's decision to approve this application. A petitioner may request either a formal hearing under Part 12 (21 CFR Part 12) of FDA's administrative practices and procedures regulations or a review of the application and CDRH's action by an independent advisory committee of experts. A petition is to be in the form of a petition for reconsideration under § 10.33(b) (21 CFR 10.33(b)). A petitioner shall identify the form of review requested (hearing or idependent advisory committee) and shall submit with the petition supporting data and infomation showing that there is a genuine and substantial issue of material fact for resolution through administrative review. After reviewing the petition, FDA will decide whether to grant or deny the petition and will publish a notice of its decision in the **Federal Register.** If FDA grants the petition, the notice will state the issue to be reviewed, the form of review to be used, the persons who may participate in the review, the time and place where the review will occur, and other details.

Petitioners may, at any time on or before May 18, 1987 file with the Dockets Management Branch (address above) two copies of each petition and supporting data and infomation, identified with the name of the device and the docket number found in brackets in the hearing of this document. Received petitions may be seen in the office above between 9 a.m. and 4 p.m., Monday through Friday.

This notice is issued under the Federal Food, Drug, and Cosmetic Act (secs. 515(d), 520(h), 90 Stat. 554–555, 571 (21 U.S.C. 360e(d), 360j(h))) and under authority delegated to the Commissioner of Food and Drugs (21 CFR 5.10) and redelegated to the Director, Center for Devices and Radiological Health (21 CFR 5.53).

Dated: April 9, 1987.

**John C. Villforth,**

*Director, Center for Devices and Radiological Health.*

[FR Doc. 87–8506 Filed 4–15–87; 8:45 am]

BILLING CODE 4160–01–M

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**[Docket No. 87M–0104]**

## Paco Pharmaceutical Services, Inc.; Premarket Approval of Charter Labs Hydrogen Peroxide Disinfection System

**AGENCY:** Food and Drug Administration.

**ACTION:** Notice.

**SUMMARY:** The Food and Drug Administration (FDA) is announcing its approval of the application by Paco Pharmaceutical Services, Inc., Lakewood, NJ, for premarket approval, under the Medical Device Amendments of 1976, of the Charter Labs Hydrogen Peroxide Disinfection System. After reviewing the recommendation of the Ophthalmic Devices Panel, FDA's Center for Devices and Radiological Health (CDRH) notified the applicant of the approval of the application.

**DATE:** Petitions for administrative review by May 18, 1987.

**ADDRESS:** Written requests for copies of the summary of safety and effectiveness data and petitions for administrative review to the Dockets Management Branch (HFA–305), Food and Drug Administration, Room 4–62, 5600 Fishers Lane, Rockville, MD 20857.

**FOR FURTHER INFORMATION CONTACT:** David M. Whipple, Center for Devices and Radiological Health (HFZ–460), Food and Drug Administration, 8757 Georgia Ave., Silver Spring, MD 20910, 301–427–7940.

**SUPPLEMENTARY INFORMATION:** On June 16, 1986, Paco Pharmaceutical Services, Inc., Lakewood, NJ 08701, submitted to CDRH an application for premarket approval of the Charter Labs Hydrogen Peroxide Disinfection System consisting of the Charter Labs Hydrogen Peroxide Solution, Charter Labs Saline for Sensitive Eyes, Charter Labs Disinfection Cup, and Charter Labs Rinse Cup. The system is indicated for disinfecting, rinsing, and soaking for the chemical (not heat) disinfection of daily and extended wear soft (hydrophilic) contact lenses.

On October 21, 1986, the Ophthalmic Devices Panel, an FDA advisory committee, reviewed and recommended approval of the application. On March 12, 1987, CDRH approved the application by a letter to the applicant from the Director of the Office of Device Evaluation, CDRH.

A summary of the safety and effectiveness data on which CDRH based its approval is on file in the Dockets Management Branch (address above) and is available from that office upon written request. Requests should be identified with the name of the device and the docket number found in brackets in the heading of this document.

A copy of all approved labeling is available for public inspection at CDRH—contact David M. Whipple (HFZ–460), address above.

The labeling of the Charter Labs Hydrogen Peroxide Disinfection System states that the system is indicated for disinfecting, rinsing, and soaking for the chemical (not heat) disinfection of daily and extended wear soft (hydrophilic) contact lenses. Manufacturers of soft (hydrophilic) contact lenses that have been approved for marketing are advised that whenever CDRH publishes a notice in the **Federal Register** of the approval of a new solution for use with an approved soft contact lens, the manufacturer or PMA holder of each lens shall correct its labeling to refer to the new solution at the next printing or at such other time as CDRH prescribes by letter to the applicant.

### Opportunity for Administrative Review

Section 515(d)(3) of the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 360e(d)(3)) authorizes any interested person to petition, under section 515(g) of the act (21 U.S.C. 360e(g)), for administrative review of CDRH's decision to approve this application. A petitioner may request

either a formal hearing under Part 12 (21 CFR Part 12) of FDA's administrative practices and procedures regulations or a review of the application and CDRH's action by an independent advisory committee of experts. A petition is to be in the form of a petition for reconsideration under § 10.33(b) (21 CFR 10.33(b)). A petitioner shall identify the form of review requested (hearing or independent advisory committee) and shall submit with the petition supporting data and information showing that there is a genuine and substantial issue of material fact for resolution through administrative review. After reviewing the petition, FDA will decide whether to grant or deny the petition and will publish a notice of its decision in the **Federal Register.** If FDA grants the petition, the notice will state the issue to be reviewed, the form of review to be used, the persons who may participate in the review, the time and place where the review will occur, and other details.

Petitioners may, at any time on or before May 18, 1987, file with the Dockets Management Branch (address above) two copies of each petition and supporting data and information, identified with the name of the device and the docket number found in brackets in the heading of this document. Received petitions may be seen in the office above between 9 a.m. and 4 p.m., Monday through Friday.

This notice is issued under the Federal Food, Drug, and Cosmetic Act (secs. 515(d), 520(h), 90 Stat. 554–555, 571 (21 U.S.C. 360e(d), 360j(h)) and under authority delegated to the Commissioner of Food and Drugs (21 CFR 5.10) and redelegated to the Director, Center for Devices and Radiological Health (21 CFR 5.53).

Dated: April 9, 1987

**John C. Villforth,**

*Director, Center for Devices and Radiological Health.*

[FR Doc. 87–8510 Filed 4–15–87; 8:45 am]

BILLING CODE 4160–01–M

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[Docket No. 87M–0085]

## Cardiac Control Systems, Inc.; Premarket Approval of Models 505 and 509 Pulse Generator With Models 1000 and 1006 Programmer

**AGENCY:** Food and Drug Administration.

**ACTION:** Notice.

**SUMMARY:** The Food and Drug Administration (FDA) is announcing its approval of the application by Cardiac Control Systems, Inc., Palm Coast, FL, for premarket approval, under the Medical Device Amendments of 1976, of the Maestro® Series 500 Models 505 and 509 Pulse Generator with Models 1000 and 1006 Programmer. After reviewing the recommendation of the Circulatory System Devices Panel, FDA's Center for Devices and Radiological Health (CDRH) notified the applicant of the approval of the application.

**DATE:** Petitions for administrative review by May 18, 1987.

**ADDRESS:** Written requests for copies of the summary of safety and effectiveness data and petitions for administrative review to the Dockets Management Branch (HFA–305), Food and Drug Administration, Room 4–62, 5600 Fishers Lane, Rockville, MD 20857.

**FOR FURTHER INFORMATION CONTACT:** Donald F. Dahms, Center for Devices and Radiological Health (HFZ–450), Food and Drug Administration, 8757 Georgia Avenue, Silver Spring, MD 20910, 301–427–7594.

**SUPPLEMENTARY INFORMATION:** On November 20, 1986, Cardiac Control Systems, Inc., Palm Coast, FL, 32037, submitted to CDRH an application for premarket approval of the Maestro® Series 500 Models 505 and 509 Pulse Generator with Models 1000 and 1006 Programmer. The device is indicated for dualchamber and atrial or ventricular applications. Indications for ventricular pacing include but are not limited to: Sick sinus syndrome, first-degree A–V block, second-degree Mobitz Types I and II block, third-degree A–V block, Adams-Stokes syndrome, third-degree A–V block with congestive heart failure, trifascicular bundle branch block, and right bundle branch block with axis deviation. Indications for atrial pacing include, but are not limited to sick sinus syndrome, sino-atrial (S–A) block, sinus arrest, and bradycardiatachycardia syndrome. Indications for dual-chamber pacing include but are not limited to: Various degrees of A–V block, bradycardia-related cardiac output insufficiency or congestive heart failure, and pacemaker syndrome (ventricular demand pacing intolerance). Certain modes of pacing may be contraindicated in the presence of various arrhythmias and conduction characteristics. For example, the atrial-tracking ventricular pacing modes may be contraindicated in patients suffering from atrial fibrillation or atrial flutter with or without A–V block or from persistent rapid atrial tachycardias.

On January 16, 1987, the Circulatory System Devices Panel, an FDA advisory committee, reviewed and recommended approval of the application by a letter to the applicant from the Director of the Office of Device Evaluation, CDRH.

A summary of the safety and effectiveness data on which CDRH based its approval is on file in the Dockets Management Branch (address above) and is available from the office upon written request. Requests should be identified with the name of the device and the docket number found in brackets in the heading of this document.

A copy of all approved labeling is available for public inspection at CDRH—contact Donald F. Dahms (HFZ–450), address above.

### Opportunity for Administrative Review

Section 515(d)(3) of the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 360e(d)(3)) authorizes any interested person to petition, under section 515(g) of the act (21 U.S.C. 360e(g)), for administrative review of CDRH's decision to approve this application. A petitioner may request either a formal hearing under Part 12 (21 CFR Part 12) of FDA's administrative practices and procedures regulations or a review of the application and CDRH's action by an independent advisory committee of experts. A petition is to be in the form of a petition for reconsideration under § 10.33(b) (21 CFR 10.33(b)). A petitioner shall identify the form of review requested (hearing or independent advisory committee) and shall submit with the petition supporting data and information showing that there is a genuine and substantial issue of material fact for resolution through administrative review. After reviewing the petition, FDA will decide whether to grant or deny the petition and will publish a notice of its decision in the **Federal Register.** If FDA grants the petition the notice will state the issue to be reviewed, the form of review to be used, the persons who may participate in the review, the time and place where the review will occur, and other details.

Petitioners may, at any time on or before May 18, 1987, file with the Dockets Management Branch (address above) two copies of each petition and supporting data and information, identified with the name of the device and the docket number found in brackets in the heading of this document. Received petitions may be seen in the office above between 9 a.m. and 4 p.m., Monday through Friday.

This notice is issued under the Federal

Food, Drug, and Cosmetic Act (secs. 515(d), 520(h), 90 Stat. 554–555, 571 (21 U.S.C. 360e(d), 360j(h))) and under authority delegated to the Commissioner of Food and Drugs (21 CFR 5.10) and redelegated to the Director, Center for Devices and Radiological Health (21 CFR 5.53).

Dated: April 9, 1987.

**John C. Villforth,**

*Director, Center for Devices and Radiological Health.*

[FR Doc. 87–8509 Filed 4–15–87; 8:45 am]

BILLING CODE 4160–01–M

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## National Institutes of Health

### National Cancer Institute; Meetings

Pursuant to Pub. L. 92–463, notice is hereby given of the meetings of the Board of Scientific Counselors, Division of Cancer Prevention and Control, and its Subcommittees.

These meetings will be open to the public to discuss administrative details or other issues relating to committee activities as indicated in the notice. Attendance by the public will be limited to space available.

Mrs. Winifred Lumsden, the Committee Management Office, National Cancer Institute, Building 31, Room 10A06, National Institutes of Health, Bethesda, Maryland 20892–3100 (301/496–5708) will provide summaries of the meetings and rosters of members upon request.

Other information pertaining to the meetings can be obtained from the Executive Secretary, Linda M. Bremerman, National Cancer Institute, Blair Building, Room 1A07, National Institutes of Health, Bethesda, Maryland 20892–4200 (301/427–8630).

Name of Committee: Prevention Subcommittee
Date of Meeting: May 6, 1987, 4 p.m.—adjournment
Place of Meeting: Building 31, Conference Room 2, 9000 Rockville Pike, Bethesda, Maryland 20892–3100
Agenda: Discuss current and future programs of the Prevention Program.

Name of Committee: Budget and Evaluation Subcommittee
Date of Meeting: May 6, 1987, 7:30 p.m.—adjournment
Place of Meeting: Building 31, Conference Room 7, 9000 Rockville Pike, Bethesda, Maryland 20892–3100
Agenda: Review of budgetary and fiscal items.

Name of Committee: Board of Scientific Counselors, Division of Cancer Prevention and Control
Date of Meeting: May 7–8, 1987, 8:30 a.m.—adjournment
Place of Meeting: Building 31, Conference Room 6, 9000 Rockville Pike, Bethesda, Maryland 20892–3100
Agenda: Review progress of programs within the Division and review of concepts being considered for fundir g.

Dated: April 9, 1987.

**Betty J. Beveridge,**

*Committee Management Officer, NIH.*

[FR Doc. 87–8532 Filed 4–15–87; 8:45 am]

BILLING CODE 4140–01–M

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### National Cancer Institute; Meeting of Cancer Biology-Immunology Contract Review Committee

Pursuant to Pub. L. 92–463, notice is hereby given of the meeting of the Cancer Biology-Immunology Contract Review Committee, National Cancer Institute, National Institutes of Health, May 15, 1987, Bethesda Holiday Inn, Maryland Room, 8120 Wisconsin Avenue, Bethesda, Maryland 20814.

This meeting will be open to the public on May 15 from 9 a.m. to 9:30 a.m to discuss administrative details. Attendance by the public will be limited to space available.

In accordance with provisions set forth in secs. 552b(c)(4) and 552b(c)(6), Title 5, U.S.C. and section 10(d) of Pub. L. 92–463, the meeting will be closed to the public on May 15 from 9:30 a.m. to adjournment for the review, discussion and evaluation of individual contract proposals. These proposals and the discussions could reveal confidential trade secrets or commercial property such as patentable material and personal information concerning individuals associated with the proposals, disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Mrs. Winifred Lumsden, the Committee Management Officer, National Cancer Institute, Building 31, Room 10A06, National Institutes of Health, Bethesda, Maryland 20892 (301/496–5708) will provide summaries of the meeting and rosters of committee members upon request.

Dr. Wilna A. Woods, Executive Secretary, Cancer Biology-Immunology Contract Review Committee, 5333 Westbard Avenue, Room 807, Bethesda, Maryland 20892 (301/496–7153) will furnish substantive program information.

Dated: April 6, 1987.

**Betty J. Beveridge,**

*Committee Management Officer, NIH.*

[FR Doc. 87–8533 Filed 9–15–87; 8:45 am]

BILLING CODE 4140–01–M

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### National Institute of Child Health and Human Development; Meeting of the National Advisory Child Health and Human Development Council

Pursuant to Pub. L. 92–463, notice is hereby given of the meeting of the National Advisory Child Health and Human Development Council, June 1–2, 1987, in Building 31, Conference Room 6, Natioal Institutes of Health, Bethesda, Maryland, and the meeting of the Subcommittee on Planning on June 1 from 8:30 a.m. to 9:30 a.m. in Building 31, Room 2A03.

The Council meeting will be open to the public on June 1 from 9:30 a.m. until 5:00 p.m. The agenda includes a report by the Director, NICHD, and a presentation by the Pregnancy and Perinatology Branch, Center for Research for Mothers and Children. The meeting will be open on June 2 immediately following the review of applications if any policy issues are raised which need further discussions. The Subcommittee meeting will be open on June 1 from 8:30 a.m. to 9:30 a.m. to discuss program plans and the agenda for the next Council meeting. Attendance by the public will be limited to space available.

In accordance with the provision set forth in secs. 552b(c)(4) and 442b(c)(6), Title 5, U.S.C. and sec. 10(d) of Pub. L. 92–463, the meeting will be closed to the public on June 2 from 8:30 a.m. to completion of the review, discussion, and evaluation of individual grant applications. These applications and the discussions could reveal confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the applications, disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Mrs. Marjorie Neff, Council Secretary, NICHD, Landow Building, Room 6C08, National Institutes of Health, Bethesda, Maryland 20892, Area Code 301, 496–1485, will provide a summary of the meeting and a roster of Council members as well as substantive program information.

(Catalog of Federal Domestic Assistance Program Nos. 13.864, Population Research, and 13.865, Research for Mothers and Children, National Institutes of Health)

Dated: April 6, 1987.

**Betty J. Beveridge,**

*Committee Management Officer, NIH.*

[FR Doc. 87–8534 Filed 4–15–87; 8:45 am]

BILLING CODE 4140–21–M

## National Institute of Diabetes and Digestive and Kidney Diseases; Meeting of the National Diabetes and Digestive and Kidney Diseases Advisory Council and its Subcommittees

Pursuant to Pub. L. 92–463, notice is hereby given of a meeting of the National Diabetes and Digestive and Kidney Diseases Advisory Council and its subcommittees, National Institute of Diabetes and Digestive and Kidney Diseases, on May 27 and 28, 1987, Conference Room 10, Building 31, National Institutes of Health, Bethesda, Maryland. The meeting will be open to the public May 27 from 8:30 a.m. to 12 noon and again on May 28 from 1 p.m. to adjournment to discuss administrative details relating to Council business and special reports. Attendance by the public will be limited to space available.

In accordance with the provisions set forth in secs. 552b(c)(4) and 552b(c)(6), Title 5, U.S.C. and section 10(d) of Pub. L. 92–463, the following subcommittees will be closed to the public on May 27 from 1 p.m. to recess: Diabetes, Endocrine and Metabolic Diseases; Digestive and Nutrition; Kidney, Urology and Hematology. The full Council meeting will be closed on May 28 from 8:30 a.m. to approximately 12 noon for the review, discussion and evaluation of individual grant applications. These deliberations could reveal confidential trade secrets or commercial property, such as patentable materials, and personal information concerning individuals associated with the applications, disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Further information concerning the Council meeting may be obtained from Dr. Walter Stolz, Executive Secretary, National Diabetes and Digestive and Kidney Diseases Advisory Council, NIDDK, Westwood Building, Room 657, Bethesda, Maryland 20892, (301) 496–7277.

A summary of the meeting and roster of the members may be obtained from the Committee Management Office, NIDDK, Building 31, Room 9A19, National Institutes of Health, Bethesda, Maryland 20892, (301) 496–6917.

(Catalog of Federal Domestic Assistance Program No. 13.847–849, Diabetes, Endocrine and Metabolic Diseases; Digestive Diseases and Nutrition; and Kidney Diseases, Urology and Hematology Research, National Institutes of Health)

Dated: April 6, 1987.

**Betty J. Beveridge,**

*NIH, Committee Management Officer.*

[FR Doc. 87–8535 Filed 4–15–87; 8:45 am]

BILLING CODE 4140–01–M

## National Institute of Environmental Health Sciences; Meeting of National Advisory Environmental Health Sciences Council

Pursuant to Pub. L. 92–463, notice is hereby given of the meeting of the National Advisory Environmental Health Sciences Council, June 1–2, 1987, in Building 31C, Conference Room 7, National Institutes of Health, Bethesda, Maryland.

This meeting will be open to the public on June 1 from 9 a.m. to approximately 12 noon for the report of the Director, NIEHS, and for discussion of the NIEHS budget, program policies and issues, recent legislation, and other items of interest. Attendance by the public will be limited to space available.

In accordance with the provisions set forth in secs. 552b(c)(4) and 552b(c)(6), Title 5, U.S.C. and section 10(d) of Pub. L. 92–463, the meeting will be closed to the public June 1, from approximately 1 p.m. to adjournment on June 2, for the review, discussion and evaluation of individual grant applications. These applications and the discussions could reveal confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the applications, the disclusure of which would constitute a clearly unwarranted invasion of personal privacy.

Winona Herrell, Committee Management Officer, NIEHS, Bldg. 31, Rm. 2B55, NIH, Bethesda, Md. 20892 (301) 496–3511, will provide summaries of the meeting and rosters of council members.

Dr. Anne Sassaman, Associate Director for Extramural Program, NIEHS, P.O. Box 12233, Research Triangle Park, North Carolina 27709, (919) 541–7723, FTS 629–7723, will furnish substantive program information.

(Catalog of Federal Domestic Assistance Program Nos 13.112, Characterization of Environmental Health Hazards; 13.113, Biological Response to Environmenal Health Hazards; 13.114, Applied Toxicological Research and Testing; 13.115, Biometry and Risk Estimation; 13.894, Resource and Manpower Development, National Institutes of Health)

Dated: April 6, 1987.

**Betty J. Beveridge,**

*Committee Management Officer, NIH.*

[FR Doc. 87–8536 Filed 4–15–87; 8:45 am]

BILLING CODE 4140–01–M

## DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

**[Docket No. N–87–1693]**

## Submission of Proposed Information Collections to OMB

**AGENCY:** Office of Administration, HUD.

**ACTION:** Notice.

**SUMMARY:** The proposed information collection requirements described below have been submitted to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act. The Department is solicting public comments on the subject proposals.

**ACTION:** Interested persons are invited to submit comments regarding these proposals. Comments should refer to the proposal by name and should be sent to:

John Allison, OMB Desk Officer, Office of Management and Budget, New Executive Office Building, Washington, DC 20503.

**FOR FURTHER INFORMATION CONTACT:** David S. Cristy, Reports Management Officer, Department of Housing and Urban Development, 451 7th Street, SW., Washington, DC 20410, telephone (202) 755–6050. This is not a toll-free number.

**SUPPLEMENTARY INFORMATION:** The Department has submitted the proposal described below for the collection of information to OMB for review, as required by the Paperwork Reduction Act (44 U.S.C. Chapter 35).

The Notice lists the following information: (1) The title of the information collection proposal; (2) the office of the agency to collect the information; (3) the description of the need for the information and its proposed use; (4) the agency form number, if applicable; (5) what members of the public will be affected by the proposal; (6) how frequently information submissions will be required; (7) an estimate of the total number of hours needed to prepare the information submission; (8) whether the proposal is new, an extension, reinstatement, or revision of an information collection requirement; and (9) the names and telephone numbers of an agency official familiar with the proposal and of the OMB Desk Officer for the Department.

Copies of the proposed forms and other available documents submitted to OMB may be obtained from David S. Cristy, Reports Management Officer for the Department. His address and telephone number are listed above. Comments regarding the proposal should be sent to the OMB Desk Officer at the address listed above.

The proposed information collection requirement is described as follows:

**Submission of Proposed Information Collection to OMB**

Proposal: Analysis of Proposed Main Construction Contracts.
Office: Public and Indian Housing.
Description of the Need for the Information and Its Proposed Use: This form is a comparison of actual bid costs on a conventionally developed public housing project to the approved pre-bid estimates. It is prepared by a PHA and submitted to HUD to gain approval for award of construction contract.
Form Number: HUD–52396.
Respondents: State of Local Governments and Non-Profit Institutions.
Frequency of Submission: On Occasion.
Estimated Burden Hours: 248.
Status: Extension.
Contact: William C. Thorson, HUD, (202) 755–6460; John Allison, OMB, (202) 395–6880.

(Authority: Sec. 3507 of the Paperwork Reduction Act, 44 U.S.C. 3507; Sec. 7(d) of the Department of Housing and Urban Development Act, 42 U.S.C. 3535(d).)

Dated: April 9, 1987.

**Submission of Proposed Information Collection to OMB**

Proposal: Change and Proceed Order, Formats, and Changes Order Register, 24 CFR 841.
Office: Public and Indian Housing.
Description of the Need for the Information and Its Proposed Use: The Change Order is needed to formalize a change in construction of a housing project. It directs a contractor to add, delete, or substitute certain construction elements and establishes a cost for the work and a timeframe for completion. The change is prepared by the project architect, reviewed and concurred on by the PHA, accepted by the contractor and submitted to HUD for approval.
Form Number: None.
Respondents: State of Local Governments and Non-Profit Institutions.
Frequency of Submission: On Occasion.
Estimated Burden Hours: 5,081.
Status: Extension.
Contact: William C. Thorson, HUD, (202) 755–6460; John Allison, OMB, (202) 395–6880.

(Authority: Sec. 3507 of the Paperwork Reduction Act, 44 U.S.C. 3507; Sec. 7(d) of the Department of Housing and Urban Development Act, 42 U.S.C. 3535(d).)

Dated: April 9, 1987.

**Submission of Proposed Information Collection to OMB**

Proposal: Agreement Between Owner and Architect, 24 CFR 841.
Office: Public and Indian Housing.
Description of the Need for the Information and Its Proposed Use: An agreement is used by a PHA to obtain the professional services of an architect or engineer to prepare necessary documents for the construction or rehabilitation of a housing development and to administer the Construction Contract on behalf of the PHA. HUD approves the contracts.
Form Number: HUD–51915.
Respondents: State of Local Governments and Non-Profit Institutions.
Frequency of Response: On Occasion.
Estimated Burden Hours: 359.
Status: Extension.
Contact: William C. Thorson, HUD, (202) 755–6460; John Allison, OMB, (202) 395–6880.

(Authority: Sec. 3507 of the Paperwork Reduction Act, 44 U.S.C. 3507; Sec. 7(d) of the Department of Housing and Urban Development Act, 42 U.S.C. 3535(d).)

Dated: April 9, 1987.

**Submission of Proposed Information Collection to OMB**

Proposal: Certificate of Need for Health Facility and Assurance of Enforcement of State Standards.
Office: Housing.
Description of the Need for the Information and Its Proposed Use: The Certificate of Need is used to comply with Section 232 and Section 242 of the National Housing Act for nursing homes, intermediate care facilities, and hospitals; which require the States to certify as to need and compliance with minimum standards for licensure and methods of operations governing it.
Form Number: HUD–2576–HF.
Respondents: State or Local Governments, Businesses or Other For-Profit, and Non-Profit Institutions.
Frequency of Response: On Occasion.
Estimated Burden Hours: 40.
Status: Reinstatement.
Contact: C. Edward Lewis, HUD, (202) 755–6223; John Allison, OMB, (202) 395–6880.

(Authority: Sec. 3507 of the Paperwork Reduction Act, 44 U.S.C. 3507; Sec. 7(d) of the Department of Housing and Urban Development Act, 42 U.S.C. 3535(d).)

Dated: April 9, 1987.

John T. Murphy,
*Director, Information Policy and Management Division.*

[FR Doc. 87–8621 Filed 4–15–87; 8:45 am]
BILLING CODE 4210–01–M

[Docket No. D–87–837]

## Office of the Regional Administration—Regional Housing Commissioner, Region V (Chicago); Designation of Order of Succession—Cleveland Office

**AGENCY:** Department of Housing and Urban Development.

**ACTION:** Designation of Order of Succession—Cleveland Office.

**SUMMARY:** The Regional Administrator—Regional Housing Commissioner is designating officials who may serve at the Acting Manager during the absence, disability or vacancy in the position of the Manager of the Cleveland Office.

**EFFECTIVE DATE:** The designation is effective April 12, 1987.

**FOR FURTHER INFORMATION CONTACT:** Lewis Nixon, Regional Counsel, Chicago Regional Office, Department of Housing and Urban Development, 300 South Wacker Drive, Chicago, Ill. 60606–6765; Telephone: 312–353–4681 (This is not a toll-free number).

**Designation:** Each of the officials holding the following listed positions is designated to serve as Acting Manager during the absence, disability, or vacancy in the position of the Manager, with all the powers, functions and duties redelegated or assigned to the Manager: Provided, that no official is authorized to serve as Acting Manager unless all officials where titles precede his or hers in this designation are unavailable to act by reason of absence, disability or vacancy in the position.

1. Deputy Manager
2. Director, Housing Development
3. Director, Housing Management
4. Chief, Loan Management Branch
5. Chief, Property Disposition Branch
6. Chief Attorney
7. Chief, Architectural, Engineering and Cost Branch

This designation supersedes the designation published at Docket No. D–84–760, **Federal Register** Vol. 49, No. 95, dated Tuesday, May 15, 1984.

**Authority:** Delegation of Authority by the Secretary effective October 1, 1970, 36 FR 3389, February 23, 1971.

Gertrude W. Jordan,
*Regional Administrator—Regional Housing Commissioner Region No. 5.*

[FR Doc. 87–8622 Filed 4–15–87; 8:45 am]
BILLING CODE 4210–32–M

## DEPARTMENT OF THE INTERIOR

### Office of the Secretary

### Privacy Act of 1974—Deletion of Notice of System of Records

Pursuant to the provisions of the Privacy Act of 1974, as amended (5 U.S.C. 552a), notice is hereby given that the Department of the Interior is deleting a notice describing a system of records maintained by the Bureau of Mines. The notice, entitled "Emergency Minerals Administration of the National Defense Executive Reserve Files—Interior, Mines–10," was previously published in the **Federal Register** at 51 FR 26064 on July 18, 1986, and is deleted from the Department's inventory of Privacy Act systems of records notices.

The records formerly described in the deleted notice are now covered by a governmentwide Privacy Act system of records notice (FEAMA/GOVT–1) published in the **Federal Register** at 52 FR 3344 on February 3, 1987, by the Federal Emergency Management Agency.

This change shall be effective on April 16, 1987. Additional information regarding this action may be obtained from the Department Privacy Act Officer, Office of the Secretary (PIR), Main Interior Building, Room 7357, U.S. Department of the Interior, Washington, DC 202450.

Dated: April 8, 1987.

**Oscar W. Mueller, Jr.,**
*Director, Office of Information Resources Management.*

[FR Doc. 87–8494 Filed 4–15–87; 8:45 am]
BILLING CODE 4310–53–M

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## Bureau of Land Management

**[WY–920–07–4111–15; W–98889]**

### Proposed Reinstatement of Terminated Oil and Gas Lease; Big Horn County, WY

April 10, 1987.

Pursuant to the provisions of Pub. L. 97–451, 96 stat. 2462–2466, and Regulation 43 CFR 3108.2–3(a) and (b)(1), a petition for reinstatement of oil and gas lease W–98889 for lands in Big Horn County, Wyoming, was timely filed and was accompanied by all the required rentals accruing from the date of termination.

The lessee has agreed to the amended lease terms for rentals and royalties at rates of $5 per acre, or fraction thereof, per year and 16⅔ percent, respectively.

The lessee has paid the required $500 administrative fee and $106.25 to reimburse the Department for the cost of this **Federal Register** notice. The lessee has met all the requirements for reinstatement of the lease as set out in section 31 (d) and (e) of the Mineral Lands Leasing Act of 1920 (30 U.S.C. 188), and the Bureau of Land Management is proposing to reinstate lease W–98889 effective June 1, 1986, subject to the original terms and conditions of the lease and the increased rental and royalty rates cited above.

**Andrew L. Tarshis,**
*Chief, Leasing Section.*

[FR Doc. 87–8498 Filed 4–15–87; 8:45 am]
BILLING CODE 4310–22–M

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**[WY–920–07–4111–15; W–72196]**

### Proposed Reinstatement of Terminated Oil and Gas Lease; Fremont County, WY

April 10, 1987.

Pursuant to the provisions of Pub. L. 97–451, 96 Stat. 2462–2466, and Regulation 43 CFR 3108.2–3 (a) and (b)(1), a petition for reinstatement of oil and gas lease W–72196 for lands in Fremont County, Wyoming, was timely filed and was accompanied by all the required rentals accruing from the date of termination.

The lessee has agreed to the amended lease terms for rentals and royalties at rates of $5 per acre, or fraction thereof, per year and 16⅔ percent, respectively.

The lessee has paid the required $500 administrative fee and $106.25 to reimburse the Department for the cost of this **Federal Register** notice. The lessee has met all the requirements for reinstatement of the lease as set out in section 31 (d) and (e) of the Mineral Lands Leasing Act of 1920 (30 U.S.C. 188), and the Bureau of Land Management is proposing to reinstate lease W–72196 effective June 1, 1986, subject to the original terms and conditions of the lease and the increased rental and royalty rates cited above.

**Andrew L. Tarshis,**
*Chief, Leasing Section.*

[FR Doc. 87–8497 Filed 4–15–87; 8:45 am]
BILLING CODE 4310–22–M

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**[AZ–020–07–4212–12; A 20346–D]**

### Realty Action: Exchange of Public Lands in Apache County, AZ

BLM proposes to exchange public land in order to achieve more efficient management of the public land through consolidation of ownership.

Portions or all of public lands within the following townships, ranges and sections are being considered for disposal by exchange pursuant to section 206 of the Federal Land Policy and Management Act of October 21, 1976, 43 U.S.C. 1716.

**Gila and Salt River Meridian, Arizona**

*Apache County*

T. 11 N., R. 25 E.,
Sec. 12.
T. 11 N., R. 26 E.,
Secs. 4, 8, 10, 12, 14, 18, 20, 22, 24, 25.
T. 11 N. R. 27 E.,
Secs. 4, 24, 26, 27, 29, 30, 33, 34, 35.
T. 12 N. R. 27 E.,
Sec. 28.
T. 14 N., R. 27 E.,
Sec. 34.
T. 11 N. R. 28 E.,
Secs. 17, 18, 19, 20, 26, 27, 28, 29, 33, 34.
T. 12 N. R. 28 E.,
Secs. 10, 12, 14, 30.
T. 10 N., R. 29 E.,
Sec. 118.
T. 12., R. 29 R.,
Secs. 4, 12, 18, 20, 21, 27, 28, 32.
T. 12 N., R. 30 E.,
Secs. 1, 3, 4, 5, 8, 9, 10, 11, 12, 13, 14, 17, 18, 21, 23, 26, 28, 29, 34, 35.
T. 13 N., R. 30 E.,
Secs. 6, 8, 10, 12, 14, 18, 20, 22, 24, 26, 30, 34.
T. 12 N., R. 31 E.,
Secs. 3, 10, 15, 21, 22, 27, 28, 33, 34.
T. 13 N., R. 31 E.,
Secs. 4, 6, 8, 10, 19, 21, 27, 28, 29, 30, 33, 34.
T. 14 N., R. 31 E.,
Secs. 18, 20, 22, 28, 30, 34.

Containing 48,459.51 acres, more or less.

Copies of complete legal description may be obtained from the Phoenix District Office, address shown below.

Final determination on disposal will await completion of an environmental analysis.

In accordance with the regulations of 43 CFR 2202.1(b), publication of this notice will segregate the public lands described in this notice from appropriation under the public and land laws, including the mining laws, but not the mineral leasing laws or Geothermal Steam Act.

The segregation of the above-described lands shall terminate upon issuance of a document conveying such lands or upon publication in the **Federal Register** of a notice of termination of the segregation or the expiration of two

years from the date of publication, whichever occurs first.

For a period of forty-five (45) days, interested parties may submit comments to the District Manager, Phoenix District Office, 2015 West Deer Valley Road, Phoenix, Arizona 85027.

Dated: April 9, 1987.

**Herman L Kast,**

*Acting District Manager.*

[FR Doc. 87-8499 Filed 4-15-87; 8:45 am]

BILLING CODE 4310-32-M

**[AZ-020-07-4212-12; A 20346-E]**

## Realty Action; Exchange of Public Lands in Pinal County, AZ

BLM proposes to exchange public land in order to achieve more efficient management of the public land through consolidation of ownership.

Portions or all of public lands within the following townships, ranges and sections are being considered for disposal by exchange pursuant to section 206 of the Federal Land Policy and Management Act of October 21, 1976, 43 U.S.C. 1716.

**Gila and Salt River Meridian, Arizona**

*Pinal County*

T. 4 S., R. 10 E.,
Sec. 33.
T. 5 S., R. 10 E.,
Secs. 3, 4, 6, 8, 9, 10, 11, 13, 14, 15, 20, 21, 22, 23, 25, 26.
T. 5 S., R. 11 E.,
Secs. 1, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, 33, 34, 35.

Containing 25,944.32 acres, more or less.

Copies of complete legal discriptions may be obtained from the Phoenix District Office, address shown below.

Final determination on disposal will await completion of an environmental analysis.

In accordance with the regulations of 43 CFR 2201.1(b), publication of this notice will segregate the public lands described in this notice from appropriation under the public land laws, including the mining laws, but not the mineral leasing laws or Geothermal Steam Act.

The segregation of the above-described lands shall terminate upon issuance of a document conveying such lands or upon publication in the **Federal Register** of a notice of termination of the segregation or the expiration of two years from the date of publication, whichever occurs first.

For a period of forty-five (45) days, interested parties may submit comments to the District Manager, Phoenix District Office, 2015 West Deer Vally Road, Phoenix, Arizona 85027.

Dated: April 9, 1987.

**Herman L. Kast,**

*Acting District Manager.*

[FR Doc. 87-8500 Filed 4-15-87; 8:45 am]

BILLING CODE 4310-32-M

**[CA-940-07-5410-10]**

## Realty Action; Conveyance of Mineral Interests in California

**AGENCY:** Bureau of Land Management, Interior.

**ACTION:** Notice of realty action—conveyance of the reserved mineral interest.

**SUMMARY:** The private lands described in this notice will be examined for suitability for conveyance of the reserved mineral interest pursuant to section 209 of the Federal Land Policy and Management Act of October 21, 1976.

The mineral interest will be conveyed in whole or in part upon favorable mineral examination.

| Serial No. | Legal description | Acres | County | Mineral reservation |
|---|---|---|---|---|
| CA 19976 | T. 5 S., R. 4 W., MD Mer. Sec. 34, NE¼NE¼ portion of. | 8.86 | Riverside | 100% all minerals. |

The purpose is to allow consolidation of surface and subsurface of minerals ownership where there are no known mineral values or in those instances where the reservation interferes with or precludes appropriate non-mineral development and such development is a more beneficial use of the land than the mineral development.

Upon publication of this notice of realty action in the **Federal Register** as provided in 43 CFR 2720.1-(b), the mineral interests owned by the United States in the private land conveyed by the application shall be segregated to the extent that they will not be subject to appropriation under the public land laws, including the mining laws. The segregative effect of the application shall terminate either upon issuance of a patent or other document of conveyance to such mineral interest, upon final rejection of the application or two years from the date of filing of the application, whichever occurs first.

**FOR FURTHER INFORMATION CONTACT:** Joan Mangold, Bureau of Land Management, California State Office, 2800 Cottage Way, Room E-2841, Federal Office Building, Sacramento, California 95825, (916) 978-4815.

Dated: April 9, 1987.

**Nancy J. Alex,**

*Chief, Lands Section, Branch of Adjudication & Records.*

[FR Doc. 87-8501 Filed 4-15-87; 8:45 am]

BILLING CODE 4310-40-M

**[CA-010-07-4212-13-2410; CA-018-PX7-024]**

## Realty Action; Exchange of Public Lands in Nevada County, CA

**AGENCY:** Bureau of Land Management (BLM) Interior.

**ACTION:** Notice of realty action; proposed exchange of public land and private land.

**SUMMARY:** The following described public lands are being considered for exchange under section 206 of the Federal Land Policy and Management Act of 1976 (43 U.S.C. 1716):

**Mount Diablo Meridian, CA**

T. 17 N., R. 9 E.,
Section 20: SW¼SE¼, S½SW¼
Section 29: Lots 3, 4, 5, 6, and 7, NW¼NE¼, N½NW¼, SE¼NW¼, S½NE¼

Comprising 487.99 acres, more or less

**SUPPLEMENTAL INFORMATION:** In exchange for these lands, the United States would acquire approximately 600 acres from Bohmia Incorporated. The offered non-Federal lands are in the vicinity of the North Fork of the American River which Congress designated as a wild and Scenic River in 1978.

This notice, as provided in 43 CFR 2201.1 (b), shall segregate the public lands proposed for exchange. By publication of this notice, those vacant, unappropriated and unreserved public lands described above are segregated from settlement, location and entry under the public land laws, including the mining laws, but not the mineral leasing

laws. The segregative effect shall terminate upon issuance of patent, upon publication in the **Federal Register** of a termination of the segregation, or two (2) years from the date of this notice, whichever occurs first. This action is necessary while eliminating conflicting encumberances on the public lands during exchange processing. Once negotiations are completed, a second notice will be published specifying the federal and private lands to be exchanged.

**ADDRESS:** Information concerning this exchange proposal is available from the Folsom Resource Area Office, 63 Natoma Street, Folsom, CA 95630; (916) 985–4474. For a period of forty-five (45) days interested parties may submit comments to the Area Manager at the above listed address.

D.K. Swickard,

*Area Manager.*

[FR Doc. 87–8503 Filed 4–15–87; 8:45 am]

BILLING CODE 4310–40–M

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**[CA–010–07–4212–14–2410; CA 20092]**

## Realty Action; (Public Sale); Folsom Resource Area; Bakersfield District, CA

**AGENCY:** Bureau of Land Management, Interior.

**ACTION:** Sale of public land in Folsom Resource Area, Placer County, Bakersfield District, California.

**SUMMARY:** The following described parcel of land has been examined, and through the development of land use planning decisions based on public input, resource considerations, regulations and Bureau policies, it has been determined that the proposed land sale is consistent with section 203 of the Federal Land Policy and Management Act of October 21, 1976, (90 Stat. 2705; 43 U.S.C. 1713). The parcel will be offered for sale June 26, 1987, at no less than the appraised fair market value using modified competitive bidding; whereby, bidding will be restricted to those landowners that currently adjoin the parcel. This parcel is not affected by the National Wildlife Federation suit (*N.W.F.* v. *Burford et al.).*

**Township 12 North, Range 8 East, MDM**

*Placer County, CA*

Section 18, Lot 14 (Placer Co. Assessor's Parcel 40–03–58)
Containing 7.34 acres more or less
Fair Market Value—$5,000.00

The land is an isolated remnant of public land that lies in a rural residential area near the old mining community of Ophir. It is a narrow strip of land lying mostly in an overflow drainage of Nevada Irrigation District. It has been determined to have no potential for rural residential use due to shape and location which was a significant factor in restricting the sale to the adjourning landowners.

Sale terms and conditions are as follows:

1. There will be reserved to the United States a right-of-way for ditches or canals constructed by the authority of the United States (43 U.S.C. 945).

2. All bidders must be United States citizens; corporations must be authorized to own real property in the State of California; political subdivisions of the State and State instrumentalists must be authorized to hold property. Proof of meeting these requirements shall accompany bids.

3. The mining claim controlled by Joe and Peggy Leonard, which is presently encumbering the property, must be voluntarily relinquished to the Folsom Office, BLM, prior to the designated date of sale.

The bidding will be by sealed bid. sealed bids will be open at 9:00 a.m. on June 26, 1987, at the Folsom Resource Area Office, BLM, 63 Natoma Street, Folsom, California 95630. Sealed bids shall be considered only if received at the above address prior to 9:00 a.m. on June 26, 1987. Each sealed bid shall be accompanied by certified check, postal money order, bank draft or cashier's check made payable to the Department of the Interior—BLM for not less than 10 percent of the bid. The sealed bid envelopes must be marked on the front lower left corner "Folsom Resource Area, June 26, 1987, Land Sale." After opening all sealed bids, if two or more envelopes containing valid bids of the same amount are received, determination of the highest bid will be by oral bidding immediately following the opening of the sealed bids. The successful bidder shall submit the remainder of the full purchase price within 180 days of the sale date. Failure to submit the balance of the full bid within the 180 days shall result in cancellation of the sale and the deposit shall be forfeited. The next high bid will then be honored.

It has been determined that the lands are without known mineral values and a successful bid will constitute an application for conveyance of the mineral estate. As such, the successful high bidder will be required to deposit immediately at the sale a $50.00 nonreturnable filing fee for conveyance of the mineral estate.

Publication of this notice in the **Federal Register** segregates the land from appropriation under the public land laws, including the mining laws. The segretation effect will end upon issuance of a patent or 270 days from the date of publication, whichever occurs first.

**FOR MORE INFORMATION CONTACT:** Dean K. Swickard, Folsom Resource Area Office, 63 Natoma Street, Folsom, California 95630; (916) 985–4474. For a period of 45 days from the date of publication of this notice in the **Federal Register**, parties may submit comments to the District Manager, Bakersfield, California 93301, (805) 861–4191. Objections will be reviewed by the State Director, who may sustain, vacate, or modify this realty action. In the absence of any objections, this realty action will become a final determination of the Department of the Interior.

D.K. Swickard,

*Area Manager.*

[FR Doc. 87–8502 Filed 4–15–87; 8:45 am]

BILLING CODE 4310–40–M

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**[NM–010–4351 10, NM 010–GP7–0118, Designation Order NM–010–87–01]**

## New Mexico; Off-Road Vehicle Designation Decision for Rio Puerco Resource Area

**AGENCY:** Bureau of Land Management, Interior.

**ACTION:** Notice.

**SUMMARY:** The Rio Puerco Resource Area, Albuquerque District, Bureau of Land Management, has completed decisions to designate 1,006,476 acres of public land in Bernalillo, Cibola, Torrance, Valencia, Sandoval, McKinley, and Santa Fe Counties, in New Mexico, as open, limited, or closed to off-road vehicle use. Designations are a result of land use planning decisions made in the 1986 Rio Puerco Resource Management Plan.

**DATE:** The subject designations are published as final today.

**FOR FURTHER INFORMATION CONTACT:**

Herrick E. Hands, Area Manager, Rio Puerco Resource Area, 435 Montano NE, Albuquerque, NM 87107, (505) 761–4596; and 761–4504

L. Paul Applegate, District Manager, Albuquerque District Office, 435 Montano NE, Albuquerque, NM 87107, (505) 761–4504

**SUPPLEMENTARY INFORMATION:** The authority for this decision is derived from Executive Orders 11644 and 11989, and the regulations contained in 43 CFR Part 8340. Under 43 CFR, an appeal may be filed within 30 days with the Interior Board of Land Appeals. Specific area designations are as follows:

**A. Open Designations**

Areas which are designated open to motorized vehicle travel comprise approximately 260,455 acres of public land. Much of the open public lands are scattered tracts intermingled with private and State lands. Permission from Landowners will have to be received by vehicle users to gain access to many of the open public lands.

**B. Limited Designations**

Areas which are designated limited comprise approximately 735,684 acres of public land. Limited designation was determined appropriate to protect the resources of the public land, promote the safety of all users of the public lands, and to minimize conflicts among various users of the public land. The following identifies the type of limitation on motorized vehicle travel, a brief rationale, the specific area(s) where the limitation applies, and the affected acreage.

1. Motorized vehicle travel limited to designated roads and trails to protect highly erosive soils in critical to severe condition watersheds from surface disturbance associated with cross-country motorized vehicle travel.

a. Upper Rio Puerco—382,835 acres.
b. Santa Ana Mesa—12,946 acres.
c. Tent Rocks—8,603 acres.
d. Ball Ranch—22,731 acres.
e. 114 area—22,440 acres.
f. El Malpais—273,500 acres.
g. Petaca Pinta—12,629 acres.

2. Intensive recreation use areas are designated to provide opportunities for quality off-road vehicle (ORV) experiences.

a. San Ysidro Trials Area—The trials area (4,060 acres) located just west of San Ysidro, New Mexico is available for trails motorcycle riding, both as a "play-area" and for competitive events. All other motirized vehicle travel in the area is limited to designated roads and trails.

b. Competitive Dune Buggy Event Area—The event area (2,880 acres) is located in the western portion of the 114 area. The area is designated for competitive dune-buggy events using existing routes. All other motorized vehicle travel in the area is limited to designated roads and trails.

c. Recreation Off-Road Vehicle (ORV) Recreation Trail system. The 124 mile trail system is located in the Upper Rio Puerco. The trail system includes a variety of route conditions from primitive to graded and is designed to accommodate both day-use and overnight through a variety of terrain. It will accommodate both play and exploration demands for a variety of ORV recreation types.

3. "Limited to authorized users only" designations apply to five road segments in two Special Management Areas. The following identifies the Special Management Area where the designation applies, miles of road affected, and provides a brief rationale.

a. Ignacio Chavez Special Management Area—Three road segments totalling about eight miles are limited to use by holders of existing permits or leases. The designation allows for intensive management of 23,587 acres as a primitive recreation use area. All other motorized vehicle travel on the three road segments is prohibited.

b. Ojito Special Management Area/ Area of Critical Environmental Concern (ACEC)—Two road segments totalling about 4 miles in the Las Milpas Gas Storage Area of the ACEC are limited to use by holders of existing permits or leases. Other motorized vehicle use on the two road segments is prohibited. The gas storage area (6,840 acres) is managed as a geologic hazard to protect human life, safety and property. The designation promotes the proper management and safe use of the geologic hazard area.

**C. Closed Designation**

Areas and routes which are designated closed comprise approximately 10,337 acres, and include 8 road segments totalling about 16 miles. The following identifies the type of closure, where the closure applies, a brief rationale, and the affected areas (acres or miles).

*1. Closed Areas*

a. Azabache Station Special Management Area—motorized vehicle travel is prohibited on the 80 acre area to protect the Azabache Stage Station ruins for approved scientific study.

b. Guadalupe Ruin and Community Special Management Area—Motorized vehicle travel is prohibited on the 40-acre ruin area to protect the Chacoan outlier for approved scientific study and public visitation.

c. Cabezon Peak Special Management Area/Area of Critical Environmental Concern—Motorized vehicle travel is prohibited on the 4,765 acre area to protect rare plant communities, socio-cultural values, and to allow for intensive management of the area for semi-primitive non-motorized recreation use.

d. Ojito Special Management Area/ Area of Critical Environmental Concern (ACEC)—Motorized vehicle travel is prohibited on the Querencia Watershed Study ara and on the majority of the Las Milpas Gas Storage Area of the ACEC. The closure protects the integrity of the 640 acre watershed study area to ensure that reliable data is collected from the site. The closure of 3,683 acres of the Las Milpas Gas Storage Area provides for the protection of human life, safety, and property.

e. Bluewater Canyon Special Management Area/Area of Critical Environmental Concern—Motorized vehicle travel is prohibited on the 89-acre area to allow protection and enhancement of the natural values of the canyon, especially riparian habitat for wildlife, visual values, and primitive recreation opportunities.

*2. Closed Roads and Trails*

a. Ignacio Chavez Special Management Area—Motorized vehicle travel is prohibited on two road segments totalling about four miles. The closure allows for intensive management of 3,696 acres for semi-primitive non-motorized recreation use.

b. Ojito Special Management Area/ Area of Critical Environmental Concern—Motorized vehicle use is prohibited on two road segments totalling six miles. The closure allows for intensive management of about 8,200 acres for semi-primitive non-motorized recreation use.

c. Road closures outside Special Managment Areas are described as follows: (1) BLM Route 20–3–20 totalling about two and a half miles is closed to motorized vehicle travel. The road is nonessential and parallels the main road system in the area.

(2) Portions of BLM Routes 21–4–27.1, 21–4–10 and 21–4–16 totalling about three and a half miles are closed to motorized vehicle travel, except that which is needed to perform monitoring studies in the Pelon Watershed Special Management Area. The closed road segments provide the only access into study sites in the watershed area. For all other motorized vehicle travel the road segments are nonessential and parallel the main road system in the area.

Dated: April 7, 1987.

**L. Paul Applegate.**

*District Manager.*

[FR Doc. 87–8496 Filed 4–15–87; 8:45 am]

BILLING CODE 4310-FB-M

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**[UT-040-07-4113-08]**

## Utah: Plan Amendment for Pinyon Plan; Proposed Geothermal Leasing Stipulations, Beaver and Iron Counties

**AGENCY:** Bureau of Land Management, Interior.

**ACTION:** Plan Amendment Decision Notice; Geothermal Leasing Stipulations.

**SUMMARY:** The Cedar City District of the Bureau of Land Management has finalized the environmental assessment/plan amendment to change the geothermal leasing stipulations in the Pinyon Planning Unit. See notice of intent in August 14, 1986 **Federal Register**, page 29164.

The Pinyon Planning Unit is located in western Beaver and Iron Counties of southern Utah. The Pinyon Planning Unit is the westernmost planning unit of the Beaver River Resource Area in the Cedar City District. There are 1,390,800 acres of BLM administered federal land in the planning unit. Only 1,460 acres of this area are now under lease. There is a potential for 93,750 acres to be leased under simultaneous leasing procedures.

Upon their renewal or initial granting, seasonal stipulations will be placed upon geothermal leases for the protection of 3,919 acres of raptor and sage grouse habitat. A no surface occupancy stipulation for the protection of 2,347 acres of Utah prairie dog habitat and three historical recreation sites will be placed upon geothermal leases in the planning unit. Unneeded seasonal stipulations on 15,360 acres will be dropped.

**DATE:** A 30 day protest period will begin on April 16, 1987. Unless a protest is received, these lease stipulations will become final immediately following the protest period. Protests must be in writing and must be sent to the Director of the Bureau of Land Management.

**FOR FURTHER INFORMATION CONTACT:** Pete Wilkins, District Planning Coordinator in the Cedar City District Office, 176 East D.L. Sargent Drive, Cedar City, Utah 84720, (801) 586-2401.

Dated: April 7, 1987.

**Morgan S. Jensen,**

*District Manager.*

[FR Doc. 87-8495 Filed 4-15-87; 8:45 am]

BILLING CODE 4310-DQ-M

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**[NV-943-07-4220-11; Nev-043897]**

## Proposed Modification and Continuation of Withdrawal; Nevada

**AGENCY:** Bureau of Land Management, Interior.

**ACTION:** Notice.

**SUMMARY:** The U.S. Forest Service proposes that the withdrawal of 274 acres covering portions of nine administrative and recreation sites in the Toiyabe National Forest be modified to establish a 25-year term and that certain legal descriptions be modified to conform to current maps, cadastral protraction diagrams, or surveys. The land will remain closed to surface entry and mining, but has been and will remain open to mineral leasing.

**EFFECTIVE DATE:** Comments should be received by July 15, 1987.

**FOR FURTHER INFORMATION CONTACT:** Vienna Wolder, Bureau of Land Management, Nevada State Office, P.O. Box 12000, Reno, NV 89520, (702) 784-5481.

**SUPPLEMENTARY INFORMATION:** The U.S. Forest Service proposes that a portion of the withdrawal made by Public Land Order 1718 of August 15, 1958, be modified to establish a 25-year term and that certain legal descriptions be modified to conform to current maps, cadastral protraction diagrams, or surveys. This action is taken pursuant to section 204 of the Federal Land Policy and Management Act of 1976 (90 Stat. 2751; 43 U.S.C. 1714). The lands are described as follows:

**Indian Valley Administrative Site**

T. 10 N., R. 40 E., (Unsurveyed) sec. 4 described as follows:
Begin at SE Corner of sec. 32, T. 11 N., R. 40 E., MDM Thence S 43°30' E 81.18 chains to true point of beginning Thence N 21° E 3 chains; Thence S 69° E 10 chains; Thence S 21° W 5 chains; Thence N 57° W 10.41 chains to point of beginning.

**Peavine Forest Camp**

(conformed to current maps and protraction diagram)
T. 9 N., R. 42 E., (Unsurveyed)
Sec. 30, W½NW¼NE¼.

**San Juan Administrative Site**

(conformed to current maps and protraction diagram)
T. 15 N., R. 42 E., (Unsurveyed)
Sec. 32, S½NE¼NE¼SE¼, SE¼NW¼NE¼SE¼, E½SW¼NE¼SE¼, SE¼NE¼SE¼.

**Kingston Administrative Site**

T. 16 N., R. 43 E.,
Sec. 17, W½E½NW¼NE¼, W½NW¼NE¼.

**Kingston Forest Camp**

T. 16 N., R. 43 E.,
Sec. 28, SE¼NE¼NE¼, NE¼SE¼NE¼, excepting the areas included in Mineral Survey Nos. 1811 and 3422.

**Big Creek Forest Camp**

(conformed to current maps and survey)
T. 17 N., R. 43 E.,
Sec. 10, S½SW¼SW¼.

**Meadow Canyon Administrative Site**

(conformed to current maps and protraction diagram)
T. 10 N., R. 45 E., (Unsurveyed)
Sec. 21, S½S½NW¼, N½N½SW¼.

**Pine Creek Forest Camp**

T. 11 N., R. 45 E., (Unsurveyed)
Sec. 13, SE¼NE¼.

**Hunts Canyon Administrative Site**

(conformed to current maps and survey)
T. 7 N., R. 46 E.,
Sec. 23, NE¼NE¼SW¼, E½SE¼NE¼SW¼, SW¼NE¼NW¼SE¼, S½NW¼NW¼SE¼, SW¼NW¼SE¼, W½SE¼NW¼SE¼.

The areas described aggregate 274 acres in Nye County.

The purpose of the withdrawal is to provide the minimum essential acreage required to protect these administrative sites and developed recreation sites within the Toiyabe National Forest. Many of these sites have meadow areas which are scarce in such a desert environment and are therefore extremely sensitive to disturbance.

For a period of 90 days from the date of publication of this notice, all persons who wish to submit comments in connection with the proposed withdrawal continuation may present their views in writing to the Chief, Branch of Lands and Minerals Operations, Bureau of Land Management, Nevada State Office, P.O. Box 12000, Reno, Nevada 89520.

The authorized officer of the Bureau of Land Management will undertake such investigations as are necessary to determine the existing and potential demand for the land and its resources. A report will also be prepared for consideration by the Secretary of the Interior, the President, and Congress, who will determine whether or not the withdrawal will be continued and, if so, for how long. The final determination on the continuation of the withdrawal will be published in the **Federal Register**. The existing withdrawal will continue until such final determination is made.

**Robert G. Steele,**

*Deputy State Director, Operations.*

[FR Doc. 87-8549 Filed 4-15-87; 8:45 am]

BILLING CODE 4310-IC-M

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**[NV-020-4132-02]**

## Winnemucca District Advisory Council Meeting and Tour

**AGENCY:** Bureau of Land Management.

**ACTION:** Winnemucca District Advisory Council Meeting and Tour.

**SUMMARY:** Notice is hereby given in accordance with Pub. L. 92-463 that a meeting, including a field tour, of the Winnemucca District Advisory Council will be held on May 26 and 27, 1987. The tour will be conducted in Humboldt County, Winnemucca District.

commencing at the Winnemucca District Office at 705 East Fourth Street, Winnemucca, Nevada 89445 at 10:00 a.m. on May 26 and ending at the same place at 5:00 p.m. that afternoon. The meeting will be held at the Winnemucca District Office from 8:00 a.m. to 11:30 a.m. on May 27. The primary purpose of the meeting and tour is to review, discuss, and make recommendations on mining operations and associated resources.

The agenda for the meeting on May 27 will include:

(1) Review and approval of the minutes of the previous meeting—Advisory Council.

(2) Update—Winnemucca District Manager.

(3) Discussion and recommendations on managing the cumulative effects of mining operations in coordination with other resources and resource users.

The meeting and tour is open to the public. Interested persons may make oral statements to the Council at 10:00 a.m. on May 27 or file a written statement for the Council's consideration. Anyone wishing to make an oral statement must notify the District Manager, 705 East Fourth Street, Winnemucca, Nevada 89445 by May 13, 1987. Depending on the number of persons wishing to make oral statements, a per-person time limit may be established by the District Manager.

Summary minutes of the Council meetings will be maintained in the Winnemucca District Office and available for public inspection (during regular business hours) within 30 days following the meeting.

Dated: April 8, 1987.

**Frank C. Shields,**

*District Manager.*

[FR Doc. 87-8548 Filed 4-15-87; 8:45 am]

BILLING CODE 4310-HC-M

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[ID-020-07-4212-14]

## Notice of Realty Action; Sale of Public Land in Blaine, County, ID

**AGENCY:** Bureau of Land Management, Interior.

**ACTION:** Notice of realty action, sale of public land in Blaine County, Idaho.

**SUMMARY:** The following described lands have been examined and through the public supported land use planning process have been determined to be suitable for disposal by sale pursuant to Section 203 of the Federal Land Policy and Management Act of 1976, at no less than fair market value as determined by an appraisal:

| Parcel No. | Legal description | Appraised fair market value | Sale type |
|---|---|---|---|
| I-23354 | T.7S., R26E., B.M. Section 31: NE¼SW¼ (40 acres). | $1,600 | Modified-Competitive. |

The land will be offered for sale using modified competitive bidding procedures. The adjoining landowners, Roy T. Honsinger, Bertha Kuhlmann, and Split Butte Ranch, Inc., will be given preference rights as designated bidders in accordance with 43 CFR 2711.3-2. This preference right gives those designated bidders, who submit a valid bid, the opportunity to match the highest bid. When patented, the lands will be subject to the following reservations:

Ditches and Canals, Oil and Gas, and Geothermal rights will be reserved to the United States Government.

Continued use of the land by valid right-of-way holders is proper, subject to the terms and conditions of the grant. Administrative responsibility previously held by the United States will be assumed by the patentee.

The previously described lands are hereby segregated from appropriation under the public land laws including the mining laws for a period of 270 days or until patent is issued, whichever comes first.

### Sale Procedures

The parcel will be sold by modified competitive bidding procedures as follows: A sealed bid must be submitted in person or by mail prior to the date and time of sale in the Burley District Office located at Route 3, Box 1, 200 South Oakley Highway, Burley, ID 83318. The bid must be sealed in an envelope with the envelope specifying the serial number and the sale date in the lower left hand corner (i.e., "Sealed Bid—Public Land Sale I-23354—June 24, 1987"). In the case where two or more designated bidders exercise their preference right, the designated bidders shall be given the opportunity to agree upon a division of the lands among themselves. In the absence of a written agreement, the preference right bidders will be allowed to continue bidding to determine the high bid. Bids must be submitted for at least fair market value and will constitute an application to purchase that portion of the mineral estate of no known value. A thirty percent (30%) deposit must accompany each bid as well as an additional $50.00 non-returnable mineral conveyance processing fee. The filing fee and deposit must be paid by certified check, money order, bank draft or cashiers check. Bids will be rejected if accompanied by a personal check.

**DATE AND ADDRESS:** The sale offering will be held on Wednesday, June 24, 1987, at 1:00 pm at the Burley District Office, 200 South Oakley Highway, Burley, ID 83318. Should no valid bids be received, the parcel will be offered every Wednesday through November 25, 1987, on which date this sale offering will be suspended.

**SUPPLEMENTARY INFORMATION:** Detailed information concerning the conditions of the sale can be obtained by contacting Sharon LaBrecque, Snake River Realty Specialist, at (208) 678-5514.

For a period of 45 days from the date of publication of this notice in the **Federal Register**, interested parties may submit comments to the District Manager, Bureau of Land Management, Route 3, Box 1, Burley, ID 83318. Objections will be reviewed by the State Director who may sustain, vacate, or modify this realty action. In the absence of any objections, this realty action will become the final determination of the Department of the Interior.

Dated: April 10, 1987.

**Terrance M. Costello,**

*Snake River Area Manager.*

[FR Doc. 87-8615 Filed 4-15-87; 8:45 am]

BILLING CODE 4310-GG-M

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## Fish and Wildlife Service

## Yukon Delta National Wildlife Refuge Comprehensive Conservation Plan/ Environmental Impact Statement, Wilderness Review, and Wild River Plan (CCP/EIS/WR/WRP), Alaska

**AGENCY:** Fish and Wildlife Service, Interior.

**ACTION:** Notice of availability.

**SUMMARY:** The U.S. Fish and Wildlife Service has prepared for public review a draft CCP/EIS/WR/WRP for the Yukon Delta National Wildlife Refuge, Alaska, pursuant to sections 304(g)(1), 1008, and 1317 of the Alaska National Interest Lands Conservation Act of 1980 (ANILCA); section 3(d) of the Wilderness Act of 1964; and section 102(2)(C) of the National Environmental Policy Act of 1969. The draft CCP/EIS describes four strategies for long-term

management of the refuge which encompasses more than 26 million acres (19.2 million acres in federal ownership). The plan reviews the suitability of federal lands not previously designated as wilderness—about 17.3 million acres—for possible designation and inclusion in the National Wilderness Preservation System.

**DATES:** Comments on the draft document must be submitted on or before June 30, 1987, to receive consideration in the preparation of the final CCP/EIS/WR/WRP. Public meetings will be held in a number of communities within or near the refuge during the Spring of 1987; dates, times, and places for the village meetings will be advertised through various means, including the news media and communication with the village councils. A public hearing will be held in Anchorage, Alaska, at the Fairview Community Center, 1121 E. 10th Ave., on Thursday, May 28, 1987, beginning at 7:00 p.m.

**ADDRESS:** Comments should be addressed to: Regional Director, U.S. Fish and Wildlife Service, 1011 E. Tudor Road, Anchorage, Alaska 99503–6199 (Attn: William Knauer).

**FOR FURTHER INFORMATION CONTACT:** William Knauer, Refuges and Wildlife, U.S. Fish and Wildlife Service, 1011 E. Tudor Road, Anchorage, Alaska 99503–6199; telephone (907) 786–3399.

A summary of the draft CCP/EIS has been prepared and will be sent to all persons and organizations who participated in any part of the planning process, such as scoping meetings, workshops, or in other types of communication with the planning team. Copies of the complete draft CCP/EIS/WR/WRP will be sent to federal and state agencies, regional and village Native corporations, local governments, and other organizations and individuals who have already requested copies. Copies of both documents are available upon request from Mr. Knauer.

Written and oral testimony will be accepted at the public hearing and will be transcribed for the official record. Written and oral comments also will be accepted at the public meetings. All comments and testimony, both oral and written, received prior to the June 30th date, will be considered in the preparation of the final CCP/EIS.

Copies of the draft CCP/EIS are also available for review at the Office of the Regional Director, address as listed previously, as well as at the office of the Yukon Delta National Wildlife Refuge, Bethel, Alaska, and at the following locations:

U.S. Fish and Wildlife Service, Division of Refuges, U.S. Department of the Interior Bldg., 18th and C Streets, NW., Washington, DC 20240
U.S. Fish and Wildlife Service, Refuges and Wildlife, 500 N.E. Multnomah Street, Suite 1692, Portland, OR 97232.
U.S. Fish and Wildlife Service, Refuges and Wildlife, 500 Gold Avenue SW, Room 1306, Albuquerque, NM 87103
U.S. Fish and Wildlife Service, Refuges and Wildlife, Federal Building, Fort Snelling, Twin Cities, MN 55111
U.S. Fish and Wildlife Service, Refuges and Wildlife, Richard B. Russell Federal Bldg., 75 Spring Street, Atlanta, GA 30303
U.S. Fish and Wildlife Service, Refuges and Wildlife, One Gateway Center, Suite 700, Newton Corner, MA 02158
U.S. Fish and Wildlife Service, Refuges and Wildlife, 134 Union Blvd., Lakewood, CO 80225

**SUPPLEMENTARY INFORMATION:** The draft CCP/EIS for the Yukon Delta National Wildlife Refuge was developed by the U.S. Fish and Wildlife Service, U.S. Department of the Interior to fulfill the requirements of section 304 of ANILCA relating to preparation of comprehensive conservation plans and the requirements of section 1317(a) of ANILCA. This requires the Secretary of the Interior to review, in accordance with section 3(d) of the Wilderness Act, all undesignated wilderness lands in refuges in Alaska as to their suitability for preservation as wilderness and report Department recommendations to the President by 1987.

Issues addressed by the plan focus on fish and wildlife management, including the declining populations of four species of arctic-nesting geese on the refuge, reindeer grazing on the refuge, and the introduction of muskox to the mainland of the refuge; designation of additional wilderness on the refuge; whether oil and gas exploration and development should occur on the refuge; management of recreational use on the refuge; the sensitive interrelationships between the people native to the area and the resources they use; and problems with extensive inholdings and development and use of lands adjacent to the refuge.

The plan also describes the general wilderness suitability of approximately 17.3 million acres of refuge lands which are not in the National Wilderness Preservation System. Each management alternative, except the current situation (Alternative A), has a different wilderness proposal (ranging from 10 to 77 percent of the refuge). The Service's preferred alternative, Alternative B, proposes that 10 percent of the refuge be designated as part of the National Wilderness Preservation System.

Other government agencies and the general public contributed to the development of this draft CCP/EIS. The Notice of Intent to prepare the draft CCP/EIS was published in the November 15, 1984, **Federal Register**. Between December 1984 and May 1985, representatives of the Service visited 34 communities in the Yukon-Kuskokwim area, holding meetings or interviewing residents to learn of local issues and concerns. A public meeting was also held in Anchorage during this period. A second series of meetings to discuss management alternatives was held in May and June of 1986, with workshops in Anchorage and twelve communities on the refuge.

All agencies and persons wishing to comment are urged to do so as soon as possible. However, all comments received by the date given above will be considered in preparation of the final CCP/EIS.

Dated: April 10, 1987.

**John P. Rogers,**

*Acting Regional Director.*

[FR Doc. 87–8489 Filed 4–15–87; 8:45 am]

BILLING CODE 4310–55–M

## INTERSTATE COMMERCE COMMISSION

**[Docket No. AB–102 (Sub-No. 24X)]**

### Missouri-Kansas-Texas Railroad Co.; Abandonment; In Tulsa County, OK; Exemption

Applicant has filed a notice of exemption under 49 CFR 1152 Subpart F—*Exempt Abandonments* to abandon its approximately 6.6-mile line of railroad between milepost Z–271.68 and milepost Z–278.34 at Tulsa, in Tulsa County, OK.[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 or may be rerouted, and (2) that no formal complaint 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

[1] Discontinuance of operations between milepost Z–271.68 and milepost Z–278.20 has previously been approved in Docket No. AB–102 (Sub-No. 11X), *Missouri-Kansas-Texas Railroad Company—Abandonment and Discontinuance of Operations Exemption—In Tulsa County, OK* (not printed), served March 18, 1985.

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 abandonment shall be protected pursuant to *Oregon Short Line R. Co.-Abandonment-Goshen*, 360 I.C.C. 91 (1979).

The exemption will be effective [30 days from service of this decision] (unless stayed pending reconsideration). Petitions to stay must be filed by [10 days after service], and petitions for reconsideration, including environmental, energy, and public use concerns, must be filed by [20 days after service] 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: Michael E. Roper, 701 Commerce Street, Dallas, TX 75202.

If the notice of exemption contains false 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: April 7, 1987.

By the Commission, Jane F. Mackall, Director, Office of Proceedings.

Noreta R. McGee,

*Secretary.*

[FR Doc. 87-8519 Filed 4-15-87; 8:45 am]

BILLING CODE 7035-01-M

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[Ex Parte No. 466]

## Railroad Cost of Capital, 1986

**AGENCY:** Interstate Commerce Commission.

**ACTION:** Extension of time to file statements in notice of institution of 1986 railroad cost of capital proceeding.

**SUMMARY:** The Federal Register of March 16, 1987 (52 FR 8119) established the due date for the initial statements by the railroads to be April 30, 1987. The due dates of statements of other interested parties was established to be May 15, 1987, and the due date for railroad rebuttal statements was established to be June 1, 1987. The Association of American Railroads has requested that the due date for the initial railroad submission be extended to May 15, 1987. They also have requested that the due dates for the statements of other interested parties and the railroad rebuttal statement be extended to June 15, 1987, and June 30, 1987, respectively. The petition shall be granted. Additional time is necessary to obtain and prepare data for the initial statement.

**DATES:** Initial statements by the railroads are due May 15, 1987. Statements by other interested parties are due by June 15, 1987, and railroad rebuttal statements are due June 30, 1987.

**ADDRESS:** Send an original and 15 copies of comments to: Office of the Secretary, Case Control Branch, Interstate Commerce Commission, Washington, D.C. 20423.

**FOR FURTHER INFORMATION CONTACT:** Ward L. Ginn, Jr., (202) 275-7489.

**DATED:** April 9, 1987.

By the Commission, Chairman Gradison, Vice Chairman Lamboley, Commissioners Sterrett, Andre, and Simmons. Vice Chairman Lamboley was absent and did not participate.

Noreta R. McGee,

*Secretary.*

[FR Doc. 87-8555 Filed 4-15-87; 8:45 am]

BILLING CODE 7035-1-M

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## Release of Waybill Data for Use To Evaluate TOFC/COFC Traffic in the United States

The Commission has received a request from Temple, Barker & Sloane, Inc. for permission to use certain data from the Commission's 1985 Waybill Sample to evaluate TOFC/COFC traffic, both trailers and containers, based on major container port BEAs and 2-digit SPLC areas for the rest of the United States. Temple, Barker & Sloane, Inc. is requesting the finer level of geographic detail than that shown in the Public Use File to: (1) Better evaluate the differences between domestic and international traffic and (2) distinguish major traffic lanes that may be masked by aggregating at the State level.

The Commission requires rail carriers to file waybill sample information if in any of the past three years they terminated on their lines at least: (1) 4,500 revenue carloads or (2) 5 percent of revenue carloads in any one State (49 C.F.R. Part 1244). From the waybill information, the Commission has developed a Public Use Waybill File that has satisfied the majority of all our waybill data requests while protecting the confidentiality of proprietary data submitted by the railroads. However, if confidential waybill data are requested, as in this case, we will consider releasing the data only after certain protective conditions are met and public notice is given. More specifically, under the Commission's current policy for handling waybill requests, we will not release any confidential waybill data until after: (1) Public notice is provided so affected parties have an opportunity to object and (2) certain requirements designed to protect the data's confidentiality are agreed to by the requesting party (49 Federal Register 40328, September 6, 1983).

Accordingly, if any parties object to this request, they should file their objections (an original and 2 copies) with the Director of the Commission's Office of Transportation Analysis (OTA) within 14 calendar days of the date of this notice. They should also include all grounds for objection to the full or partial disclosure of the requested data. The Director of OTA will consider these objections in determining whether to release the requested waybill data. Any parties who objected will be timely notified of the Director's decision.

Contact: James A. Nash, (202) 275-6864.

Noreta R. McGee,

*Secretary.*

[FR Doc. 87-8556 Filed 4-15-87; 8:45 am]

BILLING CODE 7035-01-M

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# DEPARTMENT OF LABOR

## Bureau of Labor Statistics

## Labor Research Advisory Council Committees; Meeting and Agenda

The regular Spring meetings of committees of the Labor Research Advisory Council will be held on April 28, 29, and 30. The meetings will be held in Room S-2217 of the Frances Perkins Department of Labor Building, 200 Constitution Avenue NW., Washington, DC.

The Labor Research Advisory Council and its committees advise the Bureau of Labor Statistics with respect to technical matters associated with the Bureau's programs. Membership consists of union research directors and staff members. The schedule and agenda of the meetings are as follows:

**Tuesday, April 28, Room S-2217**

*9:30 a.m.—Committee on Wages and Industrial Relations*

1. Review of work in progress
2. Status Report on White-collar Pay and Benefit Survey
3. A look at "Contracting-out" in manufacturing industries
4. New developments in the Employee Benefit Survey data
5. New ECI series and the introduction of Benefit of Cost Indexes

6. Other business

*1:30 p.m.—Committee on Employment Structure and Analysis*

1. Review of the Current Population Survey
2. Issues in employment and structure
   a. Status of the CPS earnings data
   b. Review of annual report on employment related economic status
3. Mass layoff reporting
4. Contingent workforce issues
5. BLS survey of day care in industry
6. Other business

**Wednesday, April 29, Room S–2217**

*9:30 a.m.—Committee on Productivity, Technology, and Economic Growth and Committee on Foreign Labor and Trade*

1. Recent trends in U.S. productivity
2. Additional research accounting for economic growth
3. New industry multifactor productivity measures
4. IPS–3 status report
5. Description of international training program work
6. Economic Growth status report

**Thursday, April 30, Room S–2217**

*9:30 a.m.—Committee on Prices and Living Conditions*

1. Status Reports
   a. Consumer price index
   b. Producer price index
   c. Export and import price indexes
   d. Service sector initiative
2. Other business

*1:30 p.m.—Committee on Occupational Safety and Health Statistics*

1. Recordkeeping
2. National Academy of Sciences panel
3. Congressional hearing
4. Annual survey of fatalities
5. Supplementary data system
6. Work injury reports
7. Health studies

The meetings are open. It is suggested that persons planning to attend as observers contact Henry Lowenstern, Executive Secretary, Labor Research Advisory Council on (Area Code 202) 523–1327.

Signed at Washington, DC this 9th day of April 1987.

**Janet L. Norwood,**

*Commissioner of Labor Statistics.*

[FR Doc. 87–8516 Filed 4–15–87; 8:45 am]

BILLING CODE 4510-24-M

## Mine Safety and Health Administration

**[Docket No. M–87–70–C]**

### Meadows Coal Co. No. 4; Petition for Modification of Application of Mandatory Safety Standard

Meadows Coal Company No. 4, P.O. Box 70, Vansant, Virginia 24656 has filed a petition to modify the application of 30 CFR 75.1701 (abandoned areas, adjacent mines; drilling of boreholes) to its No. 1 Mine (I.D. No. 44–05160) located in Buchanan County, 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 whenever any working place approaches within 50 feet of abandoned areas in the mine as shown by surveys made and certified by a registered engineer or surveyor, or within 200 feet of any other abandoned areas of the mine which cannot be inspected and which may contain dangerous accumulations of water or gas, or within 200 feet of any workings of an adjacent mine, a borehole of boreholes shall be drilled to a distance of at least 20 feet in advance of the working face of such working place and shall be continually maintained to a distance of at least 10 feet in advance of the advancing working face. When there is more than one borehold, they shall be drilled sufficiently close to each other to insure that the advancing working face will not accidentally hole through into abandoned areas or adjacent mines. Boreholes shall also be drilled not more than 8 feet apart in the rib of such working place to a distance of at least 20 feet and at an angle of 45 degrees.

2. Petitioner requests a modification of the standard to allow for a 20-foot cut to be taken in the face. In further support o this request, petitioner states that:

(a) The provision requiring 20-foot test holes to be drilled at a 45 degree angle at 8-foot intervals in the rib restricts the depth of a cut that can be extracted with a continuous miner;

(b) A continuous mining machine is designed to take a 20-foot cut without the controls of the mining machine passing the last row of roof supports;

(c) Petitioner proposes to drill five holes in the face of the entry, spaced at 5-foot intervals; one hole in each corner of the entry 20 feet deep and 3 holes in the face of the entry 30 feet deep. The holes drilled in the corner of the entry will be at 30 degree angles to the rib. The hole drilled 5 feet from the left rib would be on a 105 degree angle to the face. The hole in the middle of the entry will be a 90 degree angle to the face and the hole drilled 5 feet from the right rib will be a 75 degree angle to the face with a margin of error of ± 5 degrees. This pattern will provide a 10-foot barrier in all direction to the cut to be taken. This pattern will also prevent the cut being taken from intersecting with any entry driven in an unexplored old works 10 feet or greater in width; and

(d) It is more practical to drill a 30 degree angle as opposed to drilling a 45 degree angle due to the size of the drill and the length of the drill steel, as well as the restricted area available to maneuver the drilling machine.

3. 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 (May 18, 1987). Copies of the petition are available for inspection at that address.

Dated: April 9, 1987.

**Patricia W. Silvey,**

*Associate Assistant Secretary for Mine Safety and Health.*

[DR Doc. 87–8517 Filed 4–15–87; 8:45 am]

BILLING CODE 4510-43-M

## NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

**[Notice (87–35)]**

### NASA Advisory Council (NAC), Space Systems and Technology Advisory Committee (SSTAC); Meeting

**AGENCY:** National Aeronautics and Space Administration.

**ACTION:** Notice of meeting.

**SUMMARY:** In accordance with the Federal Advisory Committee Act, Pub. L. 92–463, as amended, the National Aeronautics and Space Administration announces a forthcoming meeting of the NASA Advisory Council, Space Systems and Technology Advisory Committee, Reliability, Diagnositics and Quality Assurance Ad Hoc Task Team.

**DATE AND TIME:** May 6, 1987, 9 a.m. to 5 p.m.; May 7, 1987, 9 a.m. to 5 p.m.

**ADDRESS:** Langley Research Center, Building 1218, Room 209, Hampton, VA 23665.

**FURTHER INFORMATION CONTACT:** Mr. John Smith, Office of Aeronautics and Space Technology, National Aeronautics and Space Administration, Washington, DC 20546, 202/453–2834.

**SUPPLEMENTARY INFORMATION:** The NAC Space Systems and Technology Advisory Committee was established to provide overall guidance and direction to the space systems research and technology activities in the Office of Aeronautics and Space Technology (OAST). The ad hoc team on Reliability, Diagnostics and Quality Assurance, chaired by Mr. Adrain P. O'Neal, is comprised of eight members.

The purpose of the team is to ensure that the technology program has the necessary design base to support development of the predictive techniques, design tools, and test methods required for future spaceflight missions. The meeting will be open to the public up to the seating capacity of the room (approximately 12 persons including the task team members and other participants).

Type of Meeting: Open.

Agenda

*May 6, 1987*

9 a.m.—Drafting of Final Report.
5 p.m.—Adjourn.

*May 7, 1987*

9 a.m.—Continuation of Drafting of Final Report.
5 p.m.—Adjourn.

**Richard L. Daniels,**

*Advisory Committee Management Officer, National Aeronautics and Space Administration.*

April 9, 1987.

[FR Doc. 87–8537 Filed 4–15–87; 8:45 am]

BILLING CODE 7510–01–M

## NATIONAL FOUNDATION ON THE ARTS AND THE HUMANITIES

### National Endowment for the Arts; Music Advisory Panel; Meeting

Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), as amended, notice is hereby given that a meeting of the Music Advisory Panel (Solo Recitalists Fellowships Section) to the National Council on the Arts will be held on April 29–30, 1987, from 9:00 a.m.–6:00 p.m. in room 714 of the Nancy Hanks Center, 1100 Pennsylvania Avenue, NW., Washington, DC 20506.

A portion of this meeting will be open to the public on April 30, 1987, from 1:30 p.m.–3:00 p.m. for a discussion of policy issues.

The remaining sessions of this meeting on April 29, 1987, from 9:00 a.m.–6:00 p.m. and on April 30, 1987, from 9:00 a.m.–12:30 p.m. and 3:15–6:00 p.m. are for the purpose of application review. In accordance with the determination of the Chairman published in the **Federal Register** of February 13, 1980, these sessions will be closed to the public pursuant to subsection (c) (4), (6) and 9(b) of section 552b of Title 5, United States Code.

If you need special accommodations due to a disability, please contact the Office for Special Constituencies, National Endowment for the Arts, 1100 Pennsylvania Avenue, NW., Washington, DC 20506, 202/682–5532, TTY 202/682–5496 at least seven (7) days prior to the meeting.

Further information with reference to this meeting can be obtained from Mr. John H. Clark, Advisory Committee Management Officer, National Endowment for the Arts, Washington, DC 20506, or call 202/682–5433.

April 9, 1987.

**John H. Clark,**

*Director, Office of Council and Panel Operations, National Endowment for the Arts.*

[FR Doc. 87–8504 Filed 4–15–87; 8:45 am]

BILLING CODE 7537–01–M

### Federal Council on the Arts and the Humanities; Arts and Artifacts Indemnity Panel; Advisory Committee; Meeting

Pursuant to the provisions of the Federal Advisory Committee Act (Pub. L. 92–463 as amended), notice is hereby given that a meeting of the Arts and Artifacts Indemnity Panel of the Federal Council on the Arts and the Humanities will be held at 1100 Pennsylvania Avenue, NW., Washington, DC 20506, in Room 714, from 9:00 a.m. to 5:30 p.m. on May 7, 1987.

The purpose of the meeting is to review applications for Certificates of Indemnity submitted to the Federal Council on the Arts and the Humanities for exhibitions beginning after July, 1987.

Because the proposed meeting will consider financial and commercial data and because it is important to keep values of objects, methods of transportation and security measures confidential, pursuant to the authority granted me by the Chairman's Delegation of Authority to Close Advisory Committee Meetings, dated April 16, 1978, I have determined that the meeting would fall within exemptions (4) and (9) of U.S.C. 552(b) and that it is essential to close the meeting to protect the free exchange of views and to avoid interference with the operations of the Committee.

It is suggested that those desiring more specific information contact the Advisory Committee Management Officer, Stephen J. McCleary, 1100 Pennsylvania Avenue, NW., Washington, DC 20506, or call 202/786–0322.

**Stephen J. McCleary,**

*Advisory Committee, Management Officer.*

[FR Doc. 87–8551 Filed 4–15–87; 8:45 am]

BILLING CODE 7536–01–M

### National Endowment for the Arts; National Council on the Arts; Meeting

Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), as amended, notice is hereby given that a meeting of the National Council on the Arts will be held on May 1, 1987, from 9:00 a.m.–5:00 p.m.; on May 2, 1987, from 8:30 a.m.–5:30 p.m., and on May 3, 1987, from 8:00 a.m.–2:00 p.m. in the Lafayette Ballroom of the Westin Hotel Utah, Main and South Temple, Salt Lake City, Utah 84111.

A portion of this meeting will be open to the public on Friday, May 1, from 9:00 a.m.–5:00 p.m. and on Saturday, May 2, from 8:30 a.m.–5:30 p.m. The topics for discussion will include Program Review/Guidelines for Dance Program, State Programs, Literature Program, Folk Arts Program and Music Recording/Training/Services and Centers; Endowment Individual Fellowships; Artists Rights; the Arts Education Study; State Programs Reassessment and FY 1989 Budget Planning and Priorities.

The remaining sessions of this meeting on Sunday, May 3, from 8:00 a.m.–2:00 p.m. are for the purpose of application review. In accordance with the determination of the Chairman published in the **Federal Register** of February 13, 1980, these sessions will be closed to the public pursuant to subsection (c) (4), (6) and 9(b) of section 552b of Title 5, United States Code.

If you need special accommodations due to a disability, please contract the Office for Special Constituencies, National Endowment for the Arts, 1100 Pennsylvania Avenue, NW, Washington DC 20506, 202/682–5532, TTY 202/682–5496 at least seven (7) days prior to the meeting.

Further information with reference to this meeting can be obtained from Mr. John H. Clark, Advisory Committee Management Officer, National

Endowment for the Arts, Washington, DC 20506, or call 202/682–5433.

**John H. Clark,**

*Director, Office of Council and Panel Operations, National Endowment for the Arts.*

April 13, 1987.

[FR Doc. 87–8565 Filed 4–15–87; 8:45 am]

BILLING CODE 7537-01-M

## NATIONAL SCIENCE FOUNDATION

### Advisory Committee for Physics; Open Meeting

The National Science Foundation announces the following meeting:

Name: Advisory Committee for Physics.

Date and Time: May 4, 1987; 9:00 a.m. to 6:00 p.m., May 5, 1987; 8:30 a.m. to 5:00 p.m.

Place: Room 540, National Science Foundation, 1800 G Street, NW., Washington, DC 20550.

Type of Meeting: Open.

Contact Person: Dr. Harvey B. Willard, Director, Division of Physics, Room 341, National Science Foundation, Washington, DC 20050, (202) 357–7985.

Minutes: May be obtained from Mrs. Denise S. Henry, Secretary, Division of Physics, Room 341, National Science Foundation, Washington, DC 20550, (202) 357–7985.

Purpose of Meeting: To provide advice and recommendations concerning support for research in physics.

Agenda: *May 4, 1987:* 9:00 a.m.–6:00 p.m., Room 540.

Oversight review of NSF support for Theoretical Physics, including presentations by NSF staff and the report of the Subcommittee for Review of the NSF Theoretical Physics Program. Long range planning.

*May 5, 1987:* 8:30 a.m.–5:00 p.m., Room 540.

Discussion of FY 1987 and FY 1988 budgets. Continuation of discussions of previous day.

April 13, 1987.

**M. Rebecca Winkler,**

*Committee Management Officer.*

[FR Doc. 87–8593 Filed 4–15–87; 8:45 am]

BILLING CODE 7555-01-M

### Advisory Panel for Linguistics; Meeting

The National Science Foundation announces the following meeting:

Name: Advisory Panel for Linguistics.

Date & Time: April 29, 30 and May 1, 1987; 9:00 a.m. to 5:00 p.m. each day.

Place: National Science Foundation, 1800 G Street, NW., Rm 540–B Washington, DC 20550.

Type of Meeting: Part Open—Open 5/1—9:00 a.m. to 12:00 noon, Closed 4/29—9:00 a.m. to 5:00 p.m., Closed 4/30—9:00 a.m. to 5:00 p.m., Closed 5/1—12:00 noon to 5:00 p.m.

Contact Person: Dr. Paul G. Chapin, Program Director for Linguistics, Room 320, National Science Foundation, Washington, DC 20550; (202) 357–7696.

Summary Minutes: May be obtained from the Contact Person at the above address.

Purpose of Meeting: To provide advice and recommendations concerning support for research in linguistics.

Agenda: Open—General discussion of the current status and future plans of the Linguistics Program.

Closed—To review and evaluate research proposals as part of the selection process for awards.

Reason for Closing: The proposals being reviewed include information of a propriety or confidential nature, including technical information: financial data, such as salaries; and personal information concerning individuals associated with the proposals. These matters are within exemptions (4) and (6) of the Government in the Sunshine Act.

April 13, 1987.

**M. Rebecca Winkler,**

*Committee Manager Officer.*

[FR Doc. 87–8591 Filed 4–15–87; 8:45 am]

BILLING CODE 7555-01-M

### Advisory Panel for Molecular and Cellular Neurobiology Program; Meeting

The National Science Foundation announces the following meeting:

Name: Advisory Panel for Molecular and Cellular Neurobiology Program.

Date & Time: May 4, 5, and 6 1987: 9:00 a.m. to 5:00 p.m. each day.

Place: National Science Foundation, 1800 G Street, NW., Washington, DC. Meeting is to be held in the conference room 1242.

Type of Meeting: Part Open—Open Tuesday 5/05/87—1:30 p.m. to 3:00 p.m., Closed 5/04/87 9:00 a.m., to 5:00 p.m., Closed 5/06/87 9:00 a.m. to 5:00 p.m.

Contact Person: Dr. Stephen J. Morris, Program Director for Molecular and Cellular Neurobiology Program, Room 320, National Science Foundation, Washington, DC 20550; Telephone (202) 357–7471.

Summary Minutes: May be obtained from the Contact Person at the above stated address.

Purpose of Meeting: To provide advice and recommendations concerning support for research in Molecular and Cellular Neurobiology Program.

Agenda: Open—General discussion of research trends and opportunities in Molecular and Cellular Neurobiology.

Closed—To review and evaluate research proposals as part of the selection process for awards.

Reason for Closing: The proposals being reviewed include information of a proprietary or confidential nature, including technical information: financial data, such as salaries; and personal information concerning individuals associated with the proposals. These matters are within exemptions (4) and (6) of the Government in the Sunshine Act.

April 13, 1987.

**M. Rebecca Winkler,**

*Committee Management Officer.*

[FR Doc. 87–8592 Filed 4–15–87; 8:45 am]

BILLING CODE 7555-01-M

### Advisory Panel for Political Science; Closed Meeting

The National Science Foundation announces the following meeting:

Name: Advisory Panel for Political Science.

Date/Time: April 30, 1987, 9:00 a.m. to 5:30 p.m., May 1, 1987, 9:00 a.m. to 4:00 p.m.

Place: Room 1243, National Science Foundation, 1800 G Street NW., Washington, DC 20550.

Type of Meeting: Closed.

Contact Person: Dr. Frank P. Scioli, and Dr. Lee P. Sigelman, Program Directors for Political Science; Telephone (202) 357–9406.

Summary Minutes: May be obtained from the Contact Person at the above address.

Purpose of Advisory: To provide advice and recommendation concerning support for research in the Political Science Program.

Agenda: To review and evaluate research proposals and projects as part of the selection process for awards.

Reason for Closing: The proposals being reviewed include information of a proprietary or confidential nature, including technical information; financial data, such as salaries, and personal information concerning individuals associated with the proposals. These matters are within exemptions (4) and (6) of 5 U.S.C. 552b (c), Government in the Sunshine Act.

April 13, 1987.

**M. Rebecca Winkler,**

*Committee Management Officer.*

[FR Doc. 87–8594 Filed 4–15–87; 8:45 am]

BILLING CODE 7555-01-M

### Advisory Panel for Regulatory Biology; Closed Meeting

The National Science Foundation announces the following meeting.

Name: Advisory Panel for Regulatory Biology.

Date and Time: May 6, 7, and 8, 1987, 8:30 a.m. to 5:00 p.m.

Place: Room 1243, National Science Foundation, 1800 G Street NW., Washington, DC 20550.

Type of Meeting: Closed.

Contact Person: Dr. Stephen Bishop, Program Director, Regulatory Biology Program, Room 321, National Science Foundation, Washington, DC 20550. Telephone 202/357-7975.

Purpose of Advisory Panel: To provide advice and recommendation concerning support for research in regulatory biology.

Agenda: To review and evaluate research proposals as part of the selection process for awards.

Reason for Closing: The proposals being reviewed include information of a proprietary or confidential nature, including technical information; financial data, such as salaries; and personal information concerning individuals associated with the proposals. These matters are within exemptions (4) and (6) of 5 U.S.C. 552b(c), Government in the Sunshine Act.

April 13, 1987.

**M. Rebecca Winkler,**

*Committee Management Officer.*

[FR Doc. 87-8595 Filed 4-15-87; 8:45 am]

BILLING CODE 7555-01-M

### Advisory Panel for Decision, Risk, and Management Science Program; Meeting

The National Science Foundation announces the following meeting:

Name: Advisory Panel for Decision, Risk, and Management Science Program.

Date and Time: April 30—May 1, 1987, 8:30 a.m. to 5:00 p.m.

Place: New Orleans Marriott In the French Quarters, New Orleans.

Type of Meeing: Closed.

Contact Person: Dr. Arie Y. Lewin (202) 357-7569 or Dr. Vincent T. Covello (202) 357-7417, Program Directors for Decision, Risk, and Management Science, Room 336, National Science Foundation, Washington, DC 20550.

Summary Minutes: May be obtained from the Contact Person at the above address.

Purpose of Advisory Panel: To provide advice and recommendations concerning support for research in the Decision, Risk, and Management Science Program.

Agenda: To review and evaluate research proposals as part of the selection process for awards.

Reason for Closing: The proposals being reviewed include information of a proprietary or confidential nature, including technical information; financial data, such as salaries; and personal information concerning individuals associated with the proposals. These matters are within exemptions (4) and (6) of 5 U.S.C. 552b(c), Government in the Sunshine Act.

**M. Rebecca Winkler,**

*Committee Management Officer.*

April 13, 1987

[FR Doc. 87-8588 Filed 4-15-87; 8:45 am]

BILLING CODE 7555-01-M

### Advisory Panel for Eukaryotic Genetics Program; Meeting

In accordance with the Federal Advisory Panel Act, as amended, Pub. L. 92-463, the National Science Foundation announces the following meeting.

Name: Advisory Panel for Eukaryotic Genetics.

Date and Time: Thursday, Friday, and Saturday May 7, 8, and 9, 1987 from 8:30 a.m. to 5:00 p.m.

Place: Room 1242, National Science Foundation, 1800 G Street NW., Washington, DC 20550.

Type Meeting: Closed.

Contact Person: DeLill Nasser, Program Director, Eukaryotic Genetics, Room 321L, Telephone: (202) 357-0112.

Purpose of Advisory Panel: To provide advice and recommendations concerning support for research.

Agenda: To review and evaluate research proposals as part of the selection process for awards.

Reason for Closing: The proposals being reviewed include information of a proprietary of confidential nature, including technical information; financial data, such as salaries; and personal information concerning individuals associated with the proposals. These matters are within exemptions (4) and (6) of 5 U.S.C. 552b(c), Government in the Sunshine Act.

**Rebecca Winkler,**

*Committee Management Officer.*

April 13, 1987.

[FR Doc. 87-8589 Filed 4-15-87; 8:45 am]

BILLING CODE 7555-01-M

### Advisory Panel for Law and Social Science; Closed 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 Panel for Law and Social Science.

Date and Time: May 1-2, 1987: 8:30 a.m. to 5:00 p.m., Closed.

Place: Room 643, National Science Foundation, 1800 G Street NW., Washington, DC 20550.

Type of Meeting: Closed.

Contact Person: Dr. Felice J. Levine, Program Director, Law and Social Science, National Science Foundation, Washington, DC 20550, Room 312, Telephone (202) 357-7326.

Purpose of Panel: To provide advice and recommendations concerning research in Law and Social Science.

Agenda: To review and evaluate research proposals as part of the selection process for awards.

Reason for Closing: The proposals being reviewed include information of a proprietary or confidential nature, including technical information; financial data, such as salaries; and personal information concerning individuals associated with the proposals. These matters are within exemptions (4) and (6) of 5 U.S.C. 552b(c), Government in the Sunshine Act.

**M. Rebecca Winkler,**

*Committee Management Officer.*

April 13, 1987.

[FR Doc. 87-8590 Filed 4-15-87; 8:45 am]

BILLING CODE 7555-01-M

## NUCLEAR REGULATORY COMMISSION

**[Docket Nos. 50-454 and 50-455 Licenses No. NPF-37 and NPF-66, EA 86-87]**

### Commonwealth Edison Co., Byron Nuclear Station, Units 1 and 2; Order Imposing Civil Monetary Penalty

I

Commonwealth Edison Company is the holder of Operating Licenses No. NPF-37 and NPF-66 issued by the Nuclear Regulatory Commission on October 3, 1984 and January, 30, 1987. The licenses authorize the licensee to operate the Byron Plant, Units 1 and 2, in accordance with the conditions specified therein.

II

A December 3, 1984, decision by the Department of Labor (DOL) Area Director found that Transco Products, Inc., had discriminated against an employee engaged in protected activities. That decision was upheld by a DOL Administrative Law Judge (ALJ) on March 5, 1985, and the case was settled prior to a decision by the Secretary. The NRC's review of this decision indicated that the licensee had not conducted its activities in full compliance with NRC requirements. A written Notice of Violation and Proposed Imposition of Civil Penalty was served upon the licensee by letter dated June 25, 1986. The Notice stated the nature of the violation, the provisions of the NRC's requirements that the licensee had violated, and the amount of the civil penalty proposed for the violation. The licensee responded to the Notice of Violation and Proposed Imposition of Civil Penalty by letter dated July 29, 1986.

After consideration of the licensee's response and the statements of fact, explanation, and argument for mitigation contained therein, the Director, Office of Inspection and Enforcement, has determined, as set forth in the Appendix to this Order, that the violation occurred as stated and that the penalty proposed for the violation designated in the Notice of Violation and Proposed Imposition of Civil Penalty should be imposed.

IV

In view of the foregoing and pursuant to section 234 of the Atomic Energy Act of 1954, as amended (Act), 42 U.S.C. 2282, and 10 CFR 2.205, it is Hereby Orderd That:

The licensee pay a civil penalty in the amount of Twenty Five Thousand Dollars ($25,000) within 30 days of the date of this Order, by check, draft, or money order, payable to the Treasurer of the United States and mailed to the U.S. Nuclear Regulatory Commission, ATTN: Document Control Desk, Washington, DC 20555.

The licensee may request a hearing within 30 days of the date of this Order. A request for a hearing shall be clearly marked as such and shall be addressed to the U.S. Nuclear Regulatory Commission, ATTN: Document Control Desk, Washington, DC 20555, with a copy to the Regional Administrator, Region III, and a copy to the NRC Resident Inspector, Byron.

If a hearing is requested, the Commission will issue an Order designating the time and place of the hearing. If the licensee fails to request a hearing within 30 days of the date of this Order, the provisons of this Order shall be effective without further proceedings. If payment has not been made by that time, the matter may be referred to the Attorney General for collection. In the event the licensee requests a hearing as provided above, the issues to be considered at such hearing shall be:

(a) Whether the licensee was in violation of the Commission's requirements as set forth in the Notice of Violation and Proposed Imposition of Civil Penalty referenced in Section II above and

(b) Whether, on the basis of such violation, this Order should be sustained.

Dated: at Bethesda, Maryland, this 2d day of April 1987.

For the Nuclear Regulatory Commission.

**Edward L. Jordan,**

*Acting Director, Office of Inspection and Enforcement.*

**Appendix—Evaluations and Conclusions**

On June 25, 1986, a Notice of Violation and Proposed Imposition of Civil Penalty (NOV) was issued for a violation of 10 CFR 50.7 requirements. Commonwealth Edison Company responded to the Notice on July 29, 1986. In its response, the licensee did not take issue with the facts of the case, but stated that it believes that total mitigation of the proposed civil penalty is warranted because of its extensive corrective actions and its prior, good enforcement history. The licensee also requested NRC to reconsider classification of the violation to Severity Level IV. Provided below are (1) restatement of the violation; (2) a summary of the licensee's response in support of this request; (3) the NRC's evaluation of the licensee's response, and (4) the NRC's conclusion.

*Restatement of Violation*

10 CFR 50.7 prohibits discrimination by a Commission licensee, or a contractor or subcontractor of a licensee, against an employee for engaging in certain protected activities. Discrimination includes discharge and other actions that relate to compensation, terms, conditions, and privileges of employment. The activities protected include but are not limited to providing the NRC information about possible violations of NRC requirements and requests to the NRC to take action against an employer for enforcement of NRC requirements.

Contrary to the above, Jeffrey Johnson, an employee of Transco Products, Inc., a subcontractor of Commonwealth Edison Company and a quality control inspector at the Byron Nuclear Power Station, was discharged on November 2, 1984, by Transco for engaging in protected activities which involved reporting to the NRC on October 16, 1984, the employer's inadequate inspection procedures and installation of non-radiation-proof seals.

This is a Severity Level III violation (Supplement VII). Civil Penalty—$25,000.

*Summary of Licensee's Response*

The licensee does not dispute the facts or findings of this event, but disagrees with the NRC's conclusion that the event is properly classified as a Severity Level III violation. The licensee also requests that the NRC further review the positive and extensive corrective actions taken by the licensee.

The licensee states that as soon as it learned of the incident, it began formulating and implementing the corrective actions which address the general area of worker protection to prevent a recurrence of similar events. In the area of past performances, the licensee believes that its performance over the past twelve years shows the effectiveness of Edison's commitment to worker protection as demonstrated by the extremely low number of Department of Labor (DOL) complaints at the LaSalle County, Byron, and Braidwood Stations. The licensee believes that 100% mitigation of the base civil penalty is appropriate for the corrective actions taken and for past performance.

In support of the licensee's arguments concerning reduction of the severity level and civil penalty, the licensee has provided two earlier NRC enforcement cases for consideration. In EA 84–93, the NRC reevaluated a Severity Level II violation at Catawba Nuclear Station and reduced the violation to Severity Level III based on the isolated nature of the incident and the licensee's generally good management of the quality assurance and control program. In EA 85–117, a civil penalty was not proposed for a violation at Vogtle Electric Generating Plant due to the licensee's corrective actions and good enforcement history. The licensee believes that the NRC should consider both of these cases in determining the appropriate sanction for this violation.

*NRC Evaluation of Licensee's Response*

In responding to the licensee's argument that the violation should be reclassified in light of EA 84–93, the violation in that case initially was properly classified as a Severity Level II violation because the incident involved "action by plant management above first-line supervision." That severity level classification was reduced, however, because of the particular facts in that incident and because the incident was a relatively isolated event and the licensee's management of the quality assurance and control program was generally good. (June 30, 1986 Order Imposing Civil Monetary Penalty, Appendix at 6.) The NRC believes that the violation in EA 86–87 was properly classified as a Severity Level III violation.

Regarding the staff's mitigation of the civil penalty in EA 85–117, the corrective action taken was both very extensive and initiated immediately. A prompt thorough investigation was made, and

the cause of the problem was removed by replacement of the manager charged with the intimidation. EA 85–117 concerned remarks by a manager which were perceived by Quality Control (QC) personnel as intimidating regarding their freedom to perform their quality assurance functions. Investigation and subsequent inspections did not disclose that QC inspections were compromised. (November 15, 1985 Notice of Violation at 1.) The QC inspectors continued to perform their job and adverse action was not taken against them.

In the instant case, adverse action was in fact taken against an employee who came forward and reported a safety concern to the NRC. While the NRC will not tolerate either type of behavior, it finds especially serious those situations where actual discrimination, and not just the threat of discrimination, occurs in retaliation for an employee engaging in a protected activity.

The facts of this event show that action was taken against an employee by first-line supervision in violation of Section 210 of the Energy Reorganization Act (ERA). This action is properly categorized as a Severity Level III violation in accordance with 10 CFR Part 2, Appendix C, Supplement VII.C.3. Any incident of discrimination is considered to be serious and not appropriate for reduction below Severity Level III.

The NRC acknowledges that the licensee took corrective actions that were extensive in nature. The NRC also acknowledges the licensee's good enforcement history in this area as well as the apparent isolated nature of the event. For these reasons, partial mitigation of the base civil penalty was considered appropriate. Use of the same factors to also reduce the severity level classification is not considered appropriate, as the significance of the violation determines the severity level, and previous good performance and subsequent corrective actions are factors that determine escalation/mitigation of the civil penalty.

Total mitigation of the civil penalty was not considered appropriate for several reasons. The NRC enforcement policy allows up to 50% reduction of the base civil penalty for unusually prompt and extensive corrective actions. While the licensee's actions were extensive, the NRC does not believe that the actions were prompt in response to the discriminatory act by one of its contractors. The initial complaint to DOL was filed on November 16, 1984. In December 1984 and March 1985, DOL officials found in favor of the complainant. A review of corrective actions taken by Commonwealth Edison shows that these actions were only initiated in response to the NRC enforcement conference in April 1986. In its repsonse, the licensee makes no mention of any corrective actions in response to this event prior to April 1986.

Although the NRC recognizes the licensee's good enforcement history in this area, full mitigation is not considered appropriate. As a result of the enforcement conference and the subsequent corrective actions taken by the licensee, the NRC believes that contractors had not been fully aware of their obligations in this area. Further, even though an event of this kind had occurred, approximately one and one-half years elapsed before the licensee had a mechanism in place to respond adequately and inform workers that such acts would not be tolerated. The absence of a program to inform contractors/employees of their responsibilities in this area as well as the failure of the licensee to respond promptly to prevent potential intimidation of others resulting from this case indicates that the licensee's performance was not adequate to warrant full mitigation of the proposed civil penalty.

*NRC Conclusion*

The NRC staff believes that the violation did occur as stated. The NRC has reviewed Commonwealth Edison Company's response to the proposed imposition of civil penalty and believes that the event was properly classified as a Severity Level III violation. The staff continues to believe that while partial mitigation of the base civil penalty is appropriate, the licensee's actions are not deserving of further mitigation. Consequently, the proposed Civil Penalty in the amount of $25,000 should be imposed.

[FR Doc. 87–8608 Filed 4–15–87; 8:45 am]
BILLING CODE 7590–01–M

## Advisory Committee on Reactor Safeguards, Subcommittee on AC/DC Power Systems Reliability; Meeting

The ACRS Subcommittee on AC/DC Power Systems Reliability will hold a meeting on May 6, 1987, Room 1046, 1717 H Street, NW, Washington, DC.

The entire meeting will be open to public attendance.

The agenda for the subject meeting shall be as follows:

*Wednesday, May 6, 1987—8:30 A.M. until the conclusion of business.*

The Subcommittee will review the proposed Station Blackout rule (SECY–85–163).

Oral statements may be presented by members of the public with the concurrence of the Subcommittee Chairman; written statements will be accepted and made available to the Committee. Recordings will be permitted only during those portions of the meeting when a transcript is being kept, and questions may be asked only by members of the Subcommittee, its consultants, and Staff. Persons desiring to make oral statements should notify the ACRS staff member named below as far in advance as is practicable so that appropriate arrangements can be made.

During the initial portion of the meeting, the Subcommittee, along with any of its consultants who may be present, may exchange preliminary veiws regarding matters to be considered during the balance of the meeting.

The Subcommittee will then hear presentations by and hold discussions with representatives of the NRC Staff, its consultants, and other interested persons regarding this review.

Further information regarding topics to be discussed, whether the meeting has been cancelled or rescheduled, the Chairman's ruling on requests for the opportunity to present oral statements and the time allotted therefor can be obtained by a prepaid telephone call to the cognizant ACRS staff member, Mr. Medhat El-Zeftawy (telephone 202/634–3267) between 8:15 A.M. and 5:00 P.M. Persons planning to attend this meeting are urged to contact the above named individual one or two days before the scheduled meeting to be advised of any changes in schedule, etc., which may have occurred.

Date April 10, 1987.

**Morton W. Libarkin,**

*Assistant Executive Director for Project Review.*

[FR Doc. 87–8618 Filed 4–15–87; 8:45 am]
BILLING CODE 7590–01–M

## SECURITIES AND EXCHANGE COMMISSION

**[Release No. 35–24368]**

## Filings Under the Public Utility Holding Company Act of 1935 ("Act"); Ralls County Electric Cooperative and Laclede Electric Cooperative

April 9, 1987.

Notice is hereby given that the following filing(s) has/have been made with the Commission pursuant to provisions of the Act and rules promulgated thereunder. All interested persons are referred to the

application(s) and/or declaration(s) for complete statements of the proposed transaction(s) summarized below. The application(s) and/or declaration(s) and any amendment(s) thereto is/are available for public inspection through the Commission's Office of Public Reference.

Interested persons wishing to comment or request a hearing on the application(s) and/or declaration(s) should submit their views in writing by May 4, 1987 to the Secretary, Securities and Exchange Commission, Washington, DC 20549, and serve a copy on the relevant applicant(s) and/or declarant(s) at the addresses specified below. Proof of service (by affidavit or, in case of an attorney at law, by certificate) should be filed with the request. Any request for hearing shall identify specifically the issues of fact or law that are disputed. A person who so requests will be notified of any hearing, if ordered, and will receive a copy of any notice or order issued in the matter. After said date, the application(s) and/or declaration(s), as filed or as amended, may be granted and/or permitted to become effective.

**Ralls County Electric Cooperative (31–823)**

Ralls County Electric Cooperative ("Cooperative"), Highway 61 and 19, P.O. Box 157, New London, Missouri 63459, has filed an application for exemption from the provisions of the Act pursuant to section 3(a)(1) thereof.

Cooperative, which is incorporated under the Missouri Rural Electric Cooperative Act, is a nonprofit rural electric cooperative which serves approximately 3,700 retail customers. Its operations are confined to Ralls, Pike, Monroe, Marion, and Audrain counties, all in Missouri. It is financed by the Rural Electrification Administration of the United States Department of Agriculture ("REA") and is designated MISSOURI 26, RALLS. It sells electric energy to its consumer members. Cooperative generates no power of its own, purchasing power from Northeast Missouri Electric Power Cooperative, Palmyra, Missouri. It owns 100% of the stock of Ralls Electric Service Co. ("Service Co."), a Missouri corporation, which is an "electric utility company" under section 2(a)(3) of the Act.

Missouri law limits the service area of rural electric cooperatives to communities with populations of less than 1,500 persons. Service was created as a wholly owned subsidiary of Cooperative to qualify under Missouri law to serve Cooperative members and new customers in areas which may cease to be rural due to annexation by municipalities with populations exceeding 1,500. Cooperative intends, subject to the approval of the Missouri Public Service Commission and the REA, to transfer to Service Co. facilities and members of Cooperative which are in the annexed areas. Service will generate no power. Cooperative will be the sole power supplier of Service, which will make all of its sales to consumers within the State of Missouri.

Cooperative asserts that the public interest does not demand its registration as a "holding company". Cooperative is owned by the several thousand consumer members of the rural electric cooperative. These consumer members elect from their own members those persons who serve on the board of directors of Cooperative. This board in turn elects the persons who serve on the board of directors of Service. It is stated that the election of directors and the management of the affairs of both Cooperative and Service are effectively audited and regulated by the REA.

**Laclede Electric Cooperative (70–7381)**

Laclede Electric Cooperative ("Cooperative"), 1000 E. Seminole, Drawer M, Lebanon, Missouri 65536, has filed an application for exemption from the provisions of the Act pursuant to section 3(a)(1) thereof.

Cooperative, which is incorporated under the Missouri Rural Electric Cooperative Act, is a nonprofit rural electric cooperative which serves approximately 18,000 retail customers. Its operations are confined to Camden, Dallas, Laclede, Pulaski, Webster, and Wright counties, all in Missouri. It is financed by the Rural Electrification Administration of the United States Department of Agriculture ("REA") and is designated MISSOURI 43, LACLEDE. It sells electric energy to its consumer members. Cooperative generates no power of its own, purchasing power from Sho-Me Power Corporation, Marshfield, Missouri. It owns 100% of the stock of Laclede Electric Service Co. ("Service"), a Missouri corporation which is an "electric utility company" under section 2(a)(3) of the Act.

Missouri law limits the service area of rural electric cooperatives to communities with populations of less than 1,500 persons. Service was created as a wholly owned subsidiary of Cooperative to qualify under Missouri law to serve Cooperative members and new customers in areas which may cease to be rural due to annexation by municipalities with populations exceeding 1,500. Cooperative intends, subject to the approval of the Missouri Public Service Commission and the REA, to transfer to Service facilities and members of Cooperative which are in the annexed areas. Service will not generate power, and Cooperative will be its sole power supplier. All of its sales will be made to consumers within the State of Missouri.

Cooperative asserts that the public interest does not demand its registration as a "holding company." Cooperative is owned by the several thousand members of the rural electric cooperative. These consumer members elect from their own members those persons who serve on the board of directors of the Cooperative. This board elects, in turn, the persons who serve on the board of directors of Service. It is stated that the election of directors and the management of the affairs of both Cooperative and Service are effectively audited and regulated by the REA.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

**Jonathan G. Katz,**

*Secretary.*

[FR Doc. 87–8526 Filed 4–15–87; 8:45 am]

BILLING CODE 8010–01–M

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**[Release No. 34–24313; File No. SR–NASD–87–4]**

## Self-Regulatory Organizations; Proposed Rule Change by National Association of Securities Dealers, Inc. Amending the NASD's Initial and Maintenance Margin Requirements

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934, 15 U.S.C. 78s(b)(1), notice is hereby given that on February 3, 1987, the National Association of Securities Dealers, Inc. ("NASD") filed with the Securities and Exchange Commission the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the NASD. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

### I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The proposed rule change amends section 6 of Appendix A to Article III, section 30 of the NASD Rules of Fair Practice to exempt from the initial and maintenance margin requirements of Appendix A, special cash accounts of persons having net tangible assets of sixteen million dollars or more.

**II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change**

In its filing with the Commission, the NASD included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The NASD has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of such statements.

*A. Self-Regulatory Organization's Statement of the Purpose of, and the Statutory Basis for, the Proposed Rule Change*

The proposed rule change was considered by the NASD Capital and Margin Committee in response to a request for exemption submitted by a member firm. The New York Stock Exchange rules and interpretations provide an exemption from the Exchange's margin requirements for those categories of customer accounts currently exempted under section 6 of Appendix A but, in addition, exempt the category of customer accounts covered by the proposed rule change. The NASD determined that no reason existed for maintaining a non-uniform policy that places NASD members at a compretitive disadvantage vis-a-vis Exchange members. For this reason the NASD has adopted the proposed rule change.

The statutory basis for the proposed rule change is found in section 15A(b)(6) of the Securities Exchange Act of 1934 ("Act"), which applies to registered securities associations and requires that rules of the Association be designed to protect the investing public and the public interest and that they not be designed to permit unfair discrimination between customers and between brokers or dealers. The NASD also believes that the rule change is consistent with section 15A(b)(9) of the Act which provides that the rules of an association not impose an unnecessary burden on competition. The NASD believes that the proposed rule change will eliminate a competitive disadvantage without reducing the protections provided to the investing public.

*B. Self-Regulatory Organization's Statement on Burden on Competition*

The Association believes that the proposed rule change does not impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act.

*C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants or Others*

The NASD did not solicit or receive comments on the proposed rule change.

**III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action**

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self/regulatory organization consents, the Commission will:

A. By order approve such proposed rule change, or

B. Institute proceedings to determine whether the proposed rule change should be disapproved.

**IV. Solicitation of Comments**

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of the filing also will be available for inspection and copying at the principal office of the NASD. All submissions should refer to file number SR–NASD–87–4 and should be submitted by May 7, 1987.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority, 17 CFR 200.30–3(a)(12).

Dated: April 9, 1987.

**Jonathan G. Katz,**

*Secretary.*

[FR Doc. 87–8527 Filed 4–15–87; 8:45 am]

BILLING CODE 8010–01–M

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**[Rule 15c3–3; File No. 270–87]**

**Agency Forms Under Review of Office of Management and Budget**

Agency Clearance Officer: Kenneth A. Fogash (202) 272–2142.

Upon Written Request Copy Available from: Securities and Exchange Commission, Office of Consumer Affairs, Washington, DC 20549.

**Extension**

Notice is hereby given that pursuant to the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*), the Securities and Exchange Commission has submitted for extension of OMB approval Rule 15c3–3 (17 CFR 240.15c3–3) under the Securities Exchange Act of 1934 (15 U.S.C. 78 *et seq.*) which requires brokers or dealers to prepare computations with respect to the amount of customer funds they must deposit in Reserve Bank Accounts. One thousand respondents incur a cumulative total of 110,000 burden hours to comply with the rule.

Submit comments to OMB Desk Officer: Mr. Robert Neal, (202) 395–7340, Office of Information and Regulatory Affairs, Room 3228, NEOB, Washington, DC 20503.

April 9, 1987.

**Jonathan G. Katz,**

*Secretary.*

[FR Doc. 87–8600 Filed 4–15–87; 8:45 am]

BILLING CODE 8010–01–M

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**[Release No. IC–15677; 811–3674]**

**California Tax-Free Money Fund; Investment Company Deregistration**

April 10, 1987.

**AGENCY:** Securities and Exchange Commission ("SEC").

**ACTION:** Notice of application for an order under the Investment Company Act of 1940 (the "1940 Act").

*Applicant:* California Tax-Free Money Fund.

*Relevant 1940 Act Section:* Order requesting deregistration under Section 8(f) and Rule 8f–1.

*Summary of Application:* Applicant seeks an order declaring that Applicant has ceased to be an investment company.

*Filing date:* The application was filed on December 30, 1986, and amended on February 13, 1987. A letter was filed as an exhibit to the application on March 30, 1987.

Hearing or Notification of Hearing: If no hearing is ordered, the application will be granted. Any interested person

may request a hearing on this application, or ask to be notified if a hearing is ordered. Any requests must be received by the SEC by 5:30 p.m., on May 5, 1987. Request a hearing in writing, giving the nature of your interest, the reason for the request, and the issues you contest. Serve the Applicant with the request, either personally or by mail, and also send it to the Secretary of the SEC, along with proof of service by affidavit, or for attorneys, by certificate. Request notification of the date of a hearing by writing to the Secretary of the SEC.

**ADDRESSES:** Secretary, SEC, 450 5th Street NW., Washington DC 20549. California Tax-Free Money Fund, One World Trade Center, Suite 8407, New York, New York 10048.

**FOR FURTHER INFORMATION CONTACT:** Sherry A. Hutchins, Staff Attorney at (202) 272–2799 or Brion R. Thompson, Special Counsel at (202) 272–3016, Office of Investment Company Regulation, Division of Investment Management.

**SUPPLEMENTARY INFORMATION:** Following is a summary of the application; the complete application is available for a fee from either the SEC's Public Reference Branch in person or the SEC's commercial copier which may be contacted at (800) 231–3282 (in Maryland (301) 258–4300)).

**Applicant's Representatives**

1. Applicant was organized as a Massachusetts business trust on February 23, 1983. On March 1, 1983, Applicant registered as an open-end, diversified management investment company under the 1940 Act and the initial public offering of its shares commenced on September 24, 1984.

2. Applicant's Board of Trustees adopted a Plan of Liquidation and Termination ("Plan") on October 1, 1986 and Applicant's shareholders adopted the Plan on December 22, 1986. Pursuant to the Plan, all remaining cash after payment of expenses were distributed to all except one of Applicant's shareholders at their net asset value of $1.00 per share during the period from December 22, 1986, to March 27, 1987. No securities of the Applicant have been issued or sold since September 30, 1986.

3. Applicant's sole remaining shareholder owns .390 shares at 1.00 per share. This final distribution remains upaid solely by reason of the inability of Applicant, after sending letters to the last known address and after further diligent effort, to ascertain the whereabouts of such remaining shareholder.

4. Applicant has not retained any assets other than for the purpose of paying expenses and there are no investment securities retained by Applicant. Applicant has not, within the past 18 months, transferred any of its assets to a separate trust, the beneficiaries of which were or are securityholders of Applicant.

5. Applicant has outstanding debt and estimated expenses which amount to approximately $66,000. These expenses include expenses (such as legal and accounting fees and transfer agent fees) incurred in connection with the liquidation, which expenses have been assumed by Dr. Lance M. Brofman.

6. Applicant is not now engaged nor does it propose to engage in any business activities other than those necessary for the winding-up of its affairs. Applicant has not other outstanding liabilities, is not a party to any litigation or administrative proceeding and is currently a trust in good standing under Massachusetts state law. Applicant intends to file all documents and instruments necessary to effect a termination under Massachusetts state law.

For the Commission, by the Division of Investment Management, under delegated authority.

**Jonathan G. Katz,**

*Secretary.*

[FR Doc. 87–8604 Filed 4–15–87; 8:45 am]

BILLING CODE 8010–01–M

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**[Release No. 34–24320; File No. SR–DTC–87–4]**

## Self-Regulatory Organizations; The Depository Trust Co.; Requesting Same-Day Funds Settlement (SDFS) Service; Filing of Proposed Rule Change

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934, 15 U.S.C. 78s(b)(1), notice is hereby given that on March 16, 1987, The Depository Trust Company filed with the Securities and Exchange Commission the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

**I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change**

The Depository Trust Company ("DTC") is filing herewith the following: (1) DTC's Same-Day Funds Settlement (SDFS) Service Plan for certain types of securities that settle in same-day funds as set forth in a Memorandum to Participants dated March 20, 1987; (2) proposed revisions to DTC's Rules necessary to provide for the SDFS service; (3) Operating Procedures; and (4) proposed new fees relating to SDFS transactions.

**II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change**

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The self-regulatory organization has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of such statements.

*(A) Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change*

(a) The purpose of the proposed rule change is to make the depository's services available for certain types of securities that settle in same-day funds. The SDFS service is offered by DTC as an extension of present depository services. The operating procedures followied by Participants, Pledgees, Depository Facilities and Institutional Delivery (ID) system users for basic depository services in eligible securities that settle in next-day funds apply as well to SDFS securities with, in some cases, slight modification.

DTC has requested that the Commission approve a pilot operation of the new system to begin on or about June 1, 1987.

Settlement in the subject service occurs through Fedwire. As a prerequisite to participation in DTC's SDFS service, each Participant has to make formal arrangements with a bank participant and DTC for that bank to settle with DTC on its behalf. This "Settling Bank" can be located in any Federal Reserve district but must have on-line access to DTC and to Fedwire. In order to increase the likelihood of timely settlement and reduce the amount of money Settling Banks send to DTC over Fedwire, DTC provides "net-net" settlement under which Settling Banks settle one net-net amount with DTC comprising all end-of-day net debits and credits in the accounts of Participants for which the Settling Bank settles, including its own accounts. DTC provides each Settling Bank with an on-

line report of the net debit or credit for each Participant it represents and the arithmetic sum of these figures—a single net-net debit or credit—throughout the processing day. The Settling Bank is responsible for collecting final net debits from, and paying final net credits to, the Participants it represents.

The SDFS service plan provides for collateralization of settlement risks. In order for DTC to act on a SDFS transaction in a Participant's account—e.g., a delivery versus payment—the Participant has to have in its account collateral with value sufficient to cover any net debit in its settlement account immediately after that transaction. Such collateral consists of (a) the Participant's mandatory deposits to the "SDFS Fund" (cash and securities required from all SDFS Participants), (b) the Participant's voluntary deposits to the SDFS Fund, (c) SDFS securities in the Participant's account at the beginning of the processing day which are classified as collateral by the Participant, (d) net additions to the Participant's account during the processing day of SDFS securities which are the subject of deliveries versus payment from other Participants and reflected on DTC's books as incomplete transactions, (e) net additions to the Participant's account during the processing day from unvalued transactions in SDFS securities (e.g., deposits) that are not classified as customer securities by the Participant, and (f) net additions of customer SDFS securities (e.g. margin securities) classified as collateral by the Participant during the processing day.

In the event a Settling Bank fails or refuses to settle a Participant's net debit, DTC is in a position to borrow same-day funds to complete settlement by pledging the collateral in the Participant's account to banks with which DTC has established lines of credit. The next day, DTC will normally obtain funds to repay such loans from the Participant that failed to settle. In the rare case of insolvency, DTC will obtain funds to repay the loans by (a) reselling the securities subject of incomplete deliveries to the insolvent party to the deliverers and debiting their settlement accounts, or (b) selling out the securities collateral in the insolvent Participant's account.

In order to protect against potential settlement risk caused by an extraordinarily high net debit, each Participant's net debit is limited throughout the processing day to a net debit cap that is the lesser of four amounts: (1) An amount ten times the Participant's mandatory and voluntary deposits to the SDFS Fund, (2) an amount 75% of DTC's line of credit with proposed lenders, (3) an amount, if any, determined by the Participant's Settling Bank or (4) an amount, if any, determined by DTC.

As one of the features of the SDFS Service Plan, each SDFS Participant has the ability to limit and consider securities deliveries and payment orders above a certain dollar level directed to its account by all other Participants before they are posted to its account. Intended to be used prudently, this control reduces the need for the Participant to reclaim (return) erroneous transactions to the originators after they are posted to its account. This in turn reduces the incidence and financial impact of reclamations attempted by the Participant.

The Proposed revisions to DTC's Rules would, to a very limited extent, affect the rights and obligations of DTC Participants that elect not to participate in the SDFS System. For example, the proposed revisions would clarify the circumstances and timing of DTC's return to retired Participants of their deposits to DTC's Participants Fund and would permit DTC to pass through to a Participant which has failed to settle any interest charges which DTC has incurred as a result of such failure to settle.

The proposed rule change is consistent with the requirements of the Securities and Exchange Act of 1934, as amended (the "Act") in that it promotes the prompt and accurate clearance and settlement of transactions in securities that settle in same-day funds. The proposed rule change will be implemented in a manner designed to safeguard the securities and funds in DTC's custody or under its control. The proposed SDFS system is a tightly controlled system requiring receivers of attempted securities deliveries to have collateral in their accounts adequate to support settlement debits that would result from the deliveries. It permits the depository to accomplish daily settlement when a Participant with a net debit fails to settle for any reason.

*(B) Self-Regulatory Organization's Statement on Burden on Competition*

DTC does not believe that the proposed rule change will impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act.

*Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others*

The depository released memoranda to Participants on this subject in July 1984, December 1984, October 1985 and September 1986. Participant comments indicate a wide consensus that DTC should offer an SDFS service. The features of the proposal which is the subject of this filing have evolved over time to reflect the comments received.

**III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action**

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) By order approve such proposed rule change; or

(B) Institute proceedings to determine whether the proposed rule change should be disapproved.

**IV. Solicitation of Comments**

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room, 450 Fifth Street, NW., Washington, DC. Copies of such filing will also be available for inspection and copying at the principal office of the above-mentioned self-regulatory organization. All submissions should refer to the file number in the caption above and should be submitted by May 1, 1987. For the Commission, by the Division of Market Regulation pursuant to delegated authority.

Dated: April 10, 1987.

**Jonathan G. Katz,**

*Secretary.*

[FR Doc. 87-8601 Filed 4-15-87; 8:45 am]

BILLING CODE 8010-01

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**[Release No. 34-24316; File No. SR-PSDTC-87-04]**

## Self-Regulatory Organizations; Proposed Rule Change; Pacific Securities Depository Trust Co. Regarding Communications Services Liabilities and Rights

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 (the "Act"), 15 U.S.C. 78s(b)(1), notice is hereby given that on March 9, 1987, the Pacific Securities Depository Trust Company ("PSDTC") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II and III below, which items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

### I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

PSDTC is proposing to amend its Rules by adding a new section to PSDTC Rule 4. The proposed new section will codify the rights of PSDTC and its participants and define liability responsibilities in the use of PSDTC's communications services. The current PSDTC Rule 4 has been edited by designating section numbers, altering the sequence and making certain terms consistent with their designation in PSDTC Rule 1.

Attached as Exhibit A to PSDTC's filing is a copy of the text of PSDTC Rule 4, as amended.

### II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The self-regulatory organization has prepared summaries, set forth in sections (A), (B) and (C) below, of the most significant aspects of such statements.

#### (A) Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

Currently, PSDTC and its clearing corporation affiliate, the Pacific Clearing Corporation, offer communications services to their participants and members. PSDTC's communications services permit its members to communicate directly with PSDTC's data center. At present, there is no comprehensive agreement drawn up between PSDTC and its participants who wish to avail of PSDTC's communications services. The proposed rule change will codify the respective rights and liability responsibilities of PSDTC and its participants in the use of the communications services.

The current PSDTC Rule 4 is not designated by section numbers nor is the sequence of paragraphs in consistent order. The proposed rule change intends to establish consistency and order to PSDTC's Rule 4.

The proposed rule change is intended to promote the prompt and accurate clearance and settlement of securities transactions and to foster cooperation and coordination with persons engaged in the clearance and settlement of securities transactions, and thus is consistent with the provisions of section 17A(b)(3)(F) fo the Act.

*(B) Self-Regulatory Organization's Statement on Burden on Competition*

PSDTC perceives no burden on competition by reason of the proposed rule change.

*(C) Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants or Others*

Comments on the proposed rule change were neither solicited nor received.

### III. Date of Effectiveness of the Proposed Rule Change and Time Period for Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) By order approve such proposed rule change, or

(B) Institute proceedings to determine whether the proposed rule change should be disapproved.

### IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth St., NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth St., NW., Washington, DC 20549. Copies of such filing will also be available for inspection and copying at the principal office of PSDTC. All submissions should refer to File No. SR-PSDTC-87-04 and should be submitted by May 7, 1987.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Dated: April 9, 1987.

**Jonathan G. Katz,**

*Secretary.*

[FR Doc. 87-8603 Filed 4-15-87; 8:45 am]

BILLING CODE 8010-01-M

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**[Release No. 34-24318; File No. SR-PCC-87-04]**

## Self-Regulatory Organizations; Proposed Rule Change; Pacific Clearing Corp.; Regarding Communications Services Liabilities and Rights

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the "Act"), 15 U.S.C. 78s(b)(1), notice is hereby given that on March 9, 1987, the Pacific Clearing Corporation ("PCC") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II and III below, which items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

### I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

PCC is proposing to amend its Rules by adding a new section 2 to PCC Rule XX. The proposed new section will

codify the rights of PCC and its members and defines liability responsibilities in the use of PCC's communications services. The current PCC Rule XX (new Section 1) has been edited to make certain terms consistent with their designation in PCC Rule 1, Section 2.

Attached as Exhibit A to PCC's filing is a copy of the text of PCC Rule XX, as amended.

**II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change**

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The self-regulatory organization has prepared summaries, set forth in sections (A), (B) and (C) below, of the most significant aspects of such statements.

*(A) Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change*

Currently, PCC and its securities depository affiliate, the Pacific Securities Depository Trust Company, offer communications services to their members and participants. FCC's communications services permit its members to communicate directly with PCC's data center. At present, there is no comprehensive agreement drawn-up between PCC and its members who wish to avail of PCC's communications services. The proposed rule change will codify the respective rights and liability responsibilities of PCC and its members in the use of the communications services.

The editing of the text of the current PCC Rule XX changes certain terms to make them consistent with their designation in PCC Rule 1, section 2.

The proposed rule change is intended to promote the prompt and accurate clearance and settlement of securities transactions and to foster cooperation and coordination with persons engaged in the clearance and settlement of securities transactions, and thus is consistent with the provisions of section 17A(b)(3)(F) of the Act.

*(B) Self-Regulatory Organization's Statement on Burden on Competition*

PCC perceives no burden on competition by reason of the proposed rule change.

*(C) Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants or Others*

Comments on the proposed rule change were neither solicited nor received.

**III. Date of Effectiveness of the Proposed Rule Change and Time Period for Commission Action**

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) By order approve such proposed rule change, or

(B) Institute proceedings to determine whether the proposed rule change should be disapproved.

**IV. Solicitation of Comments**

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth St., NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth St., NW., Washington, DC 20549. Copies of such filing will also be available for inspection and copying at the principal office of PCC. All submissions should refer to File No. SR-PCC-87-04 and should be submitted by May 7, 1987.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Dated: April 9, 1987.

**Jonathan G. Katz,**

*Secretary.*

[FR Doc. 87-8602 Filed 4-15-87; 8:45 am]

BILLING CODE 8010-01

## TENNESSEE VALLEY AUTHORITY

### Information Collection Under Review by the Office of Management and Budget (OMB)

**AGENCY:** Tennessee Valley Authority.

**ACTION:** Information Collection Under Review by the Office of Management and Budget (OMB).

**SUMMARY:** The Tennessee Valley Authority (TVA) has sent to OMB the following proposal for the collection of information under the provisions of the Paperwork Reduction Act of 1980 (44 U.S.C. Chapter 35), as amended by Pub. L. 99-591.

Requests for information, including copies of the information collection proposed and supporting documentation, should be directed to the Agency Clearance Officer whose name, address, and telephone number appear below. Questions or comments should be directed to the Agency Clearance Officer and also to the Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503; Attention: Desk Officer for Tennessee Valley Authority, 395-7313.

Agency Clearance Officer: Mark R. Winter, Tennessee Valley Authority, 100 Lupton Building, Chattanooga, TN 37401; (615) 751-2524.

Type of Request: Regular submission.

Title of Information Collection: Section 26a Permit Application.

Frequency of Use: On occasion.

Type of Affected Public: Individuals or households, State or local governments, farms, businesses, or other for-profit, Federal agencies or employees, non-profit institutions, small businesses or organizations.

Small Businesses or Organizations Affected: Yes.

Federal Budget Functional Category Code: 452.

Estimated Number of Annual Responses: 1,820.

Estimated Total Annual Burden Hours: 5,460

Need For and Use of Information: Section 26a of the Tennessee Valley Act of 1933, as amended, requires that TVA review and approve plans for the construction, operation, and maintenance of any dam, appurtenant works, or other obstruction affecting navigation, flood control, or public lands or reservations across, along, or in the Tennessee River or any of its tributaries. The information collected is used to assess the impact of the proposed project on the statutory TVA programs and determine if the project can be

approved. Rules on the application for review and approval of such plans are published in 18 CFR Part 1304.

**John W. Thompson,**

*Manager of Corporate Services, Senior Agency Official.*

[FR Doc. 87-8616 Filed 4-15-87; 8:45 am]

BILLING CODE 8120-01-M

## DEPARTMENT OF TRANSPORTATION

### Coast Guard

**[CGD-87-026]**

### National Boating Safety Advisory Council; Meeting

Pursuant to section 10(a) 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 National Boating Safety Advisory Council to be held on Tuesday and Wednesday, May 12 and 13, 1987, at the Marc Plaza Hotel, 509 West Wisconsin Avenue, Milwaukee, Wisconsin, beginning at 9:00 a.m. and ending at 4:00 p.m. on both days. The agenda for the meeting will be as follows:

1. Introduction of new Council Members.
2. Review of action taken at the 38th meeting of the Council.
3. Members' items.
4. Executive Director's report.
5. Consumer Education Subcommittee report.
6. Discussion and vote on need to change capacity plate regulations.
7. Report on 1986 boating statistics.
8. Discussion on policy for inspection and certification of imported boats.
9. Report on National Boating Education Seminar.
10. Report of the Subcommittee on Alcohol in Fuel.
11. Progress report on the plastic newspaper protector bag program.
12. Report on public education by the brewing industry.
13. Status report on public boating education courses.
14. Update on the Personal Flotation Device (PFD) pamphlet project.
15. Report on Coast Guard grants for boating safety.
16. Discussion on possible revision of Hull Identification Number format.
17. Remarks by Chief, Office of Boating, Public, and Consumer Affairs.
18. Reply to members' items.
19. Chairman's session.

Attendance is open to the interested public. With advance notice to the Chairman, members of the public may present oral statements at the meeting. Persons wishing to present oral statements should so notify the Executive Director no later than the day before the meeting. Any member of the public may present a written statement to the Council at any time. Additional information may be obtained from Captain M.B. Stenger, Executive Director, National Boating Safety Advisory Council, U.S. Coast Guard, (G-BBS), Washington, DC, 20593-0001, or by calling (202) 267-0997.

Issued in Washington, DC.

**W.P. Hewel,**

*Captain, U.S. Coast Guard, Acting Chief, Office of Boating Public, and Consumer Affairs.*

April 13, 1987.

[FR Doc. 87-8573 Filed 4-15-87; 8:45 am]

BILLING CODE 4910-14-M

### Federal Aviation Administration

**[Summary Notice No. PE-87-6]**

### Petition for Exemption; Summary of Petitions Received; Dispositions of Petitions Issued; Challenge Air Transport Inc.

**AGENCY:** Federal Aviation Administration (FAA), DOT.

**ACTION:** Notice of petitions for exemption received and of dispositions of prior petitions.

**SUMMARY:** Pursuant to FAA's rulemaking provisions governing the application, processing, and disposition of petitions for exemption (14 CFR Part 11), this notice contains a summary of certain petitions seeking relief from specified requirements of the Federal Aviation Regulations (14 CFR Chapter I), dispositions of certain petitions previously received, and corrections. The purpose of this notice is to improve the public's awareness of, and participation in, this aspect of FAA's regulatory activities. Neither publication of this notice nor the inclusion or omission of information in the summary is intended to affect the legal status of any petition or its final disposition.

**DATE:** Comments on petitions received must identify the petition docket number involved and must be received on or before June 1, 1987.

**ADDRESS:** Send any comments on any petition in triplicate to: Federal Aviation Administration, Office of the Chief Counsel, Attn: Rules Docket (AGC-204), Petition Docket No. , 800 Independence Avenue, SW., Washington, DC 20591.

**FOR FURTHER INFORMATION:** The petition, any comments received, and a copy of any final disposition are filed in the assigned regulatory docket and are available for examination in the Rules Docket (AGC-204), Room 915G, FAA Headquarters Building (FOB 10A), 800 Independence Avenue, SW., Washington, DC 20591; telephone (202) 267-3132.

This notice is published pursuant to paragraphs (c), (e), and (g) of § 11.27 of Part 11 of the Federal Aviation Regulations (14 CFR Part 11).

Issued in Washington, D.C., on April 13, 1987.

**Leonard R. Smith,**

*Manager, Program Management Staff.*

PETITIONS FOR EXEMPTION

| Docket No. | Petitioner | Regulations affected | Description of relief sought |
|---|---|---|---|
| 25151 | Challenge Air Transport, Inc | 14 CFR 121.153(c)(2) | To allow petitioner to operate one leased Short Brothers and Harland Limited, Short SC-5 Belfast aircraft for 2 years even though the aircraft does not have a U.S. type design certificate. NOTE: This petition was previously published on March 24 (52 FR 9377) with the comment period closing on April 13. At the request of the petitioner, the comment period is being reopened for an additional 45 days. |

[FR Doc. 87-8569 Filed 4-15-87; 8:45 am]

BILLING CODE 4910-13-M

## UNITED STATES INFORMATION AGENCY

### United States Advisory Commission on Public Diplomacy; Meeting

A meeting of the U.S. Advisory Commission on Public Diplomacy will be held April 22, 1987, in Room 600, 301 4th Street, SW., Washington, DC from 10:30 a.m. to 11:15 a.m.

The Commission will meet with USIA's Comptroller and Congressional Liaison Officer to discuss USIA's budget.

Please call Gloria Kalamets, (202) 485–2468, if you are interested in attending the meeting since space is limited and entrance to the building is controlled.

Dated: April 13, 1987.

**Charles N. Canestro,**

*Management Analyst, Federal Register Liaison.*

[FR Doc. 87–8528 Filed 4–15–87; 8:45 am]

BILLING CODE 8230–01–M

## VETERANS ADMINISTRATION

### Commission To Assess Veterans' Education Policy; Meeting

The Veterans Administration gives notice that a meeting of the Commission To Assess Veterans' Education Policy, established by Pub. L. 99–576, will be held in Room 418 of the Russell Senate Office Building, Delaware and Constitution Avenues, Washington, DC 20510, April 29, 1987, at 9 a.m. This is the first meeting of the Commission and is expected to be primarily an organizational one. It will be open to the public up to the seating capacity of the hearing room. However, since an open discussion of personnel qualifications for selection of staff would constitute a clearly unwarranted invasion of personal privacy, a portion of the meeting will be closed to the public, in accordance with section (c)(6), 5 U.S.C. 552b as permitted by section 10(d) of the Federal Advisory Committee Act, Pub. L. 92–463, as amended. Interested persons may attend, appear before, or file statements with the Commission. Statements, if in written form, may be filed before or within 10 days after the meeting. Those wishing further information may contact Ms. Vivian L. Drake, (phone (202) 233–5154).

Dated: April 6, 1987.

By direction of the Administrator.

**Rosa Maria Fontanez,**

*Committee Management Officer.*

[FR Doc. 87–8490 Filed 4–15–87; 8:45 am]

BILLING CODE 8320–01–17

# Sunshine Act Meetings

Federal Register
Vol. 52, No. 73
Thursday, April 16, 1987

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).

**FEDERAL DEPOSIT INSURANCE CORPORATION**

Agency Meeting

Pursuant to the provisions of the "Government in the Sunshine Act" (5 U.S.C. 522b), notice is hereby given that at 1:18 p.m. on Tuesday, April 7, 1987, the Board of Directors of the Federal Deposit Insurance Corporation met in closed session, by telephone conference call, to:

(A)(1) Accept the highest acceptable bid which may be submitted in accordance with the "Instructions for Bidding" for a purchase and assumption transaction, or (2) in the event no acceptable bid for a purchase and assumption transaction is submitted, accept the highest acceptable bid for an insured deposit transfer transaction which may be submitted, or (3) in the event no acceptable bid for either type of transaction is submitted, make funds available for the payment of the insured deposits of the closed bank, with respect to each of the following: (a) The Southwestern Bank, National Association, Houston, Texas, which was expected to be closed by the Deputy Comptroller of the Currency, Office of the Comptroller of the Currency, on Thursday, April 9, 1987; (b) The First National Bank of Braman, Braman, Oklahoma, which was expected to be closed by the Deputy Comptroller of the Currency, Office of the Comptroller of the Currency, on Thursday, April 9, 1987; (c) Commonwealth Bank, Glendale, Colorado, which was expected to be closed by the State Bank Commissioner for the State of Colorado on Thursday, April 9, 1987; (d) Deer Lodge Bank and Trust Company, Deer Lodge, Montana, which was expected to be closed by the Commissioner of Financial Insitutions for the State of Montana on Thursday, April 9, 1987; and (e) Bank of Iron County, Parowan, Utah, which was expected to be closed by the Commissioner of Financial Institutions for the State of Utah on Friday, April 10, 1987;

(B)(1) Accept the highest acceptable bid which may be submitted in accordance with the "Instructions for Bidding" for the transfer of insured deposits in The Citizens State Bank, Brownstown, Indiana, which was expected to be closed by the Director of the Department of Financial Institutions for the State of Indiana on Friday, April 10, 1987; or (2) in the event no acceptable bid for a deposit transfer transaction is submitted make funds available for the payment of the insured deposits of the closed bank; and

(C) Consider matters relating to the possible failure of an insured bank.

At the same meeting, the Board of Directors also ratified the Division of Bank Supervision's approval of the application of Zions First National Bank, Salt Lake City, Utah, for consent to merge, under its charter and title, with Foothill Financial, Salt Lake City, Utah, a noninsured thrift and loan association.

In calling the meeting, the Board determined, on motion of Director C. C. Hope, Jr. (Appointive), seconded by Director Robert L. Clarke (Comptroller of the Currency), concurred in by Chairman L. William Seidman, that Corporation business required its consideration of the matters on less than seven days' notice to the public; that no earlier notice of the meeting was practicable; that the public interest did not require consideration of the matters in a meeting open to public observation; and that the matters could be considered in a closed meeting pursuant to subsections (c)(6), (c)(8), (c)(9)(A)(ii), and (c)(9)(B) of the "Government in the Sunshine Act" (5 U.S.C. 552b(c)(6), (c)(8), (c)(9)(A)(ii), and (c)(9)(B)).

Dated: April 13, 1987.

Federal Deposit Insurance Corporation.

**Hoyle L. Robinson,**

*Executive Secretary.*

FR Doc. 87-8712 Filed 4-14-87; 3:58 p.m.]

BILLING CODE 6714-01-M

**FEDERAL MARITIME COMMISSION**

**TIME AND DATE:** 10:00 a.m., April 22, 1987.

**PLACE:** Hearing Room One, 1100 L Street, NW., Washington, DC 20573.

**STATUS:** Open.

**MATTERS TO BE CONSIDERED:**

1. Rules Pertaining to Agreements Under the Shipping Act, 1916—Proposed Update.
2. Petition for Rulemaking—46 CFR Part 510, Licensing of Ocean Freight Forwarders—Filed by the National Customs Brokers & Forwarders Association of America, Inc.
3. Docket No. 86-6—Service Contracts—Consideration of Comments on Proposed Rules.

**CONTACT PERSON FOR MORE INFORMATION:** Joseph C. Polking, Secretary, (202) 523-5725.

**Joseph C. Polking,**

*Secretary.*

[FR Doc. 87-8697 Filed 4-14-87; 2:43 pm]

BILLING CODE 6730-01-M

# Corrections

Federal Register
Vol. 52, No. 73
Thursday, April 16, 1987

This section of the FEDERAL REGISTER contains editorial corrections of previously published Presidential, Rule, Proposed Rule, and Notice documents and volumes of the Code of Federal Regulations. These corrections are prepared by the Office of the Federal Register. Agency prepared corrections are issued as signed documents and appear in the appropriate document categories elsewhere in the issue.

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Food and Drug Administration

[Docket No. 87N-0016]

### International Drug Scheduling; Convention on Psychotropic Substances; Propylhexedrine

*Correction*

In notice document 87-6004 beginning on page 8970 in the issue of Friday, March 20, 1987, make the following corrections:

1. On page 8970, in the third column, under **United Nations-Nations Unies**, in the first paragraph, in the 11th line, "propylhexe-drine" should read "propylhexedrine".

2. On the same page, in the same column, in the third paragraph, in the fifth line, "Expect" should read "Expert" and "of" should read "on"; and in the ninth line, "of" should read "on".

3. On the same page, in the same column, in the fourth paragraph, in the sixth line, "paragraph" should read "paragraphs".

4. On page 8971, in the first column, in the first paragraph, in the first line, "is" should read "in".

5. On the same page, in the same column, under **ANNEX I**, in the first paragraph, in the third line, "of" should read "on"; and in the last line, "of" should read "on".

6. On the same page, in the same column, under **ANNEX II**, in paragraph number 2., in the first line, "is" should read "in".

BILLING CODE 1505-01-D

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Food and Drug Administration

[Docket No. 87N-0015]

### International Drug Scheduling; Convention on Psychotropic Substances; Pyrovalerone

*Correction*

In notice document 87-6006 beginning on page 8971 in the issue of Friday, March 20, 1987, make the following corrections:

1. On page 8972, in the second column, in the second complete paragraph, after the second line, add: "pursuant to article 2, paragraph 2, of the Convention for consideration".

2. On the same page, in the same column, in paragraph number 5., in the first line, "taken" should read "taking".

3. On the same page, in the same column, in paragraph number 6., in the last line, "in" should read "it".

4. On the same page, in the third column, under **ANNEX II**, in the first paragraph, in the first line, "support" was misspelled.

5. On the same page, in the same column, under **ANNEX II**, in paragraph number 4., in the first line, "date" should read "data".

6. On page 8973, in the first column, under **ANNEX III**, in the first line, "Center" should read "Centre".

BILLING CODE 1505-01-D

federal register

Thursday
April 16, 1987

Part II

# Office of Management and Budget

## Cumulative Report on Budget Rescissions and Deferrals; Notice

## OFFICE OF MANAGEMENT AND BUDGET

## Cumulative Report on Rescissions and Deferrals

April 1, 1987.

This report is submitted in fulfillment of the requirements of section 1014(e) of the Impoundment Control Act of 1974 (Pub. L. 93–344). Section 1014(e) provides for a monthly report listing all budget authority for this fiscal year for which, as of the first day of the month, a special message has been transmitted to the Congress.

This report gives the status as of April 1, 1987, of 57 deferrals contained in the five special messages of FY 1987. These messages were transmitted to the Congress on September 26, and December 15, 1986, and January 5 and 28, and March 4, 1987.

### Rescissions (Table A and Attachment A)

As of April 1, 1987, there were no rescission proposals pending before the Congress.

### Deferrals (Table B and Attachment B)

As of April 1, 1987, $6,921.5 million in 1987 budget authority was being deferred from obligation and $3.5 million in 1987 outlays was being deferred from expenditure. Attachment B shows the history and status of each deferral reported during FY 1987.

### Information from Special Messages

The special message containing information on the deferrals covered by this cumulative report is printed in the **Federal Register** listed below:

Vol. 51, FR p. 35967, Tuesday, October 7, 1986
Vol. 51, FR p. 47356, Wednesday, December 31, 1986
Vol. 52, FR p. 964, Friday, January 9, 1987
Vol. 52, FR p. 3552, Wednesday, February 4, 1987
Vol. 52, FR p. 8046, Friday, March 13, 1987

**James C. Miller III,**

*Director.*

BILLING CODE 3110-01-M

TABLE A

STATUS OF 1987 RESCISSIONS

| | Amount (In millions of dollars) |
|---|---|
| Rescissions proposed by the President | $5,835.8 |
| Accepted by the Congress | 0 |
| Rejected by the Congress | 5,835.8 |
| Pending before the Congress | 0 |

**********

TABLE B

STATUS OF 1987 DEFERRALS

| | Amount (In millions of dollars) |
|---|---|
| Deferrals proposed by the President | 11,457.6 |
| Routine Executive releases through March 1, 1987 (OMB/Agency releases of $4,504.8 million and cumulative adjustments of $0.7 million) | -4,504.0 |
| Overturned by the Congress | -28.6 |
| Currently before the Congress | 6,925.0 a/ |

a/ This amount includes $3.6 million in outlays for a Department of the Treasury deferral (D87-21).

Attachments

Attachment A - Status of Rescissions - Fiscal Year 1987

| As of April 1, 1987<br>Amounts in Thousands of Dollars<br>Agency/Bureau/Account | Rescission Number | Amount Previously Considered by Congress | Amount Currently before Congress | Date of Message | Amount Rescinded | Amount Made Available | Date Made Available | Congressional Action |
|---|---|---|---|---|---|---|---|---|
| DEPARTMENT OF AGRICULTURE | | | | | | | | |
| Agricultural Research Service | | | | | | | | |
| Buildings and facilities | R87-1 | 28,000 | | 1-5-87 | | 28,000 | 3-16-87 | |
| | R87-1A | | | 1-28-87 | | | | |
| Agricultural Stabilization and Conservation Service | | | | | | | | |
| Rural clean water program | R87-2 | 6,000 | | 1-5-87 | | 6,000 | 3-16-87 | |
| Agricultural conservation program | R87-3 | 164,356 | | 1-5-87 | | 164,356 | 3-16-87 | |
| Water bank program | R87-4 | 8,166 | | 1-5-87 | | 8,166 | 3-16-87 | |
| Emergency conservation program | R87-5 | 10,000 | | 1-5-87 | | 10,000 | 3-16-87 | |
| Farmers Home Administration | | | | | | | | |
| Rural water and waste disposal grants | R87-6 | 79,500 | | 1-5-87 | | 79,500 | 3-16-87 | |
| Rural community fire protection grants | R87-7 | 2,300 | | 1-5-87 | | 2,300 | 3-16-87 | |
| Rural housing for domestic farm labor | R87-8 | 7,400 | | 1-5-87 | | 7,400 | 3-16-87 | |
| Mutual and self-help housing | R87-9 | 8,000 | | 1-5-87 | | 8,000 | 3-16-87 | |
| Very low income housing repair grants | R87-10 | 9,400 | | 1-5-87 | | 9,400 | 3-16-87 | |
| Compensation for construction defects | R87-11 | 500 | | 1-5-87 | | 500 | 3-16-87 | |
| Rural housing preservation grants | R87-12 | 14,400 | | 1-5-87 | | 14,400 | 3-16-87 | |
| Soil Conservation Service | | | | | | | | |
| Watershed and flood prevention operations | R87-13 | 96,000 | | 1-5-87 | | 96,000 | 3-16-87 | |
| Great Plains conservation program | R87-14 | 8,000 | | 1-5-87 | | 8,000 | 3-16-87 | |
| Resource conservation and development | R87-15 | 5,000 | | 1-5-87 | | 5,000 | 3-16-87 | |
| Forest Service | | | | | | | | |
| Land acquisition | R87-16 | 49,030 | | 1-5-87 | | 49,030 | 3-16-87 | |
| DEPARTMENT OF COMMERCE | | | | | | | | |
| Economic Development Administration | | | | | | | | |
| Economic development assistance programs | R87-17 | 169,718 | | 1-5-87 | | | | |
| | R87-17A | -50 | | 1-28-87 | | 169,668 | 3-16-87 | |
| International Trade Administration | | | | | | | | |
| Operations and administration | R87-18 | 11,400 | | 1-5-87 | | 11,400 | 3-16-87 | |
| National Oceanic and Atmospheric Administration | | | | | | | | |
| Operations, research, and facilities | R87-19 | 58,857 | | 1-5-87 | | 58,857 | 3-16-87 | |
| National Telecommunications and Information Administration | | | | | | | | |
| Public telecommunications facilities, planning and construction | R87-20 | 19,300 | | 1-5-87 | | 19,300 | 3-16-87 | |

Attachment A - Status of Rescissions - Fiscal Year 1987

| As of April 1, 1987<br>Amounts in Thousands of Dollars<br>Agency/Bureau/Account | Rescission Number | Amount Previously Considered by Congress | Amount Currently before Congress | Date of Message | Amount Rescinded | Amount Made Available | Date Made Available | Congressional Action |
|---|---|---|---|---|---|---|---|---|
| DEPARTMENT OF DEFENSE - MILITARY | | | | | | | | |
| Procurement | | | | | | | | |
| Procurement of weapons and tracked combat vehicles, Army | R87-21 | 15,000 | | 1-5-87 | | 15,000 | 3-16-87 | |
| Other procurement, Navy | R87-22 | 116,000 | | 1-5-87 | | 116,000 | 3-16-87 | |
| Military Construction | | | | | | | | |
| Military construction, Air Force | R87-23 | 2,750 | | 1-5-87 | | 2,750 | 3-16-87 | |
| DEPARTMENT OF DEFENSE - CIVIL | | | | | | | | |
| Corps of Engineers - Civil | | | | | | | | |
| Construction, general | R87-24 | 7,715 | | 1-5-87 | | 7,715 | 3-16-87 | |
| DEPARTMENT OF EDUCATION | | | | | | | | |
| Office of Elementary and Secondary Education | | | | | | | | |
| Compensatory education for the disadvantaged | R87-25 | 7,500 | | 1-5-87 | | 7,500 | 3-16-87 | |
| Impact aid | R87-26 | 17,500 | | 1-5-87 | | 17,500 | 3-16-87 | |
| Special programs | R87-27 | 54,980 | | 1-5-87 | | 54,980 | 3-16-87 | |
| Office of Bilingual Education and Minority Languages Affairs | | | | | | | | |
| Bilingual education | R87-28 | 45,886 | | 1-5-87 | | 45,886 | 3-16-87 | |
| Office of Special Education and Rehabilitative Services | | | | | | | | |
| Education for the handicapped | R87-29 | 288,659 | | 1-5-87 | | 288,659 | 3-16-87 | |
| Rehabilitation services and handicapped research | R87-30 | 127,455 | | 1-5-87 | | 127,455 | 3-16-87 | |
| Office of Vocational and Adult Education | | | | | | | | |
| Vocational and adult education | R87-31 | 432,319 | | 1-5-87 | | 432,319 | 3-16-87 | |
| Office of Postsecondary Education | | | | | | | | |
| Student financial assistance | R87-32 | 1,269,000 | | 1-5-87 | | 1,269,000 | 3-16-87 | |
| Higher education | R87-33 | 203,050 | | 1-5-87 | | 203,050 | 3-16-87 | |
| | R87-33A | | | 1-28-87 | | | | |
| Office of Educational Research and Improvement | | | | | | | | |
| Libraries | R87-34 | 34,500 | | 1-5-87 | | 34,500 | 3-16-87 | |

Attachment A - Status of Rescissions - Fiscal Year 1987

| As of April 1, 1987<br>Amounts in Thousands of Dollars<br>Agency/Bureau/Account | Rescission Number | Amount Previously Considered by Congress | Amount Currently before Congress | Date of Message | Amount Rescinded | Amount Made Available | Date Made Available | Congressional Action |
|---|---|---|---|---|---|---|---|---|
| DEPARTMENT OF ENERGY | | | | | | | | |
| Energy Programs | | | | | | | | |
| Energy supply, research and development activities | R87-35 | 81,800 | | 1-5-87 | | 81,800 | 3-16-87 | |
| Fossil energy research and development | R87-36 | 44,464 | | 1-5-87 | | 44,464 | 3-16-87 | |
| Energy conservation | R87-37 | 87,433 | | 1-5-87 | | | | |
| | R87-37A | -3500 | | 1-28-87 | | 83,933 | 3-16-87 | |
| DEPARTMENT OF HEALTH AND HUMAN SERVICES | | | | | | | | |
| Food and Drug Administration | | | | | | | | |
| Buildings and facilities | R87-38 | 500 | | 1-5-87 | | 500 | 3-16-87 | |
| Health Resources and Services Administration | | | | | | | | |
| Health resources and services | R87-39 | 161,210 | | 1-5-87 | | 161,210 | 3-16-87 | |
| | R87-39A | | | 1-28-87 | | | | |
| Indian health facilities | R87-40 | 57,100 | | 1-5-87 | | 57,100 | 3-16-87 | |
| | R87-40A | | | 1-28-87 | | | | |
| National Institutes of Health | | | | | | | | |
| National Library of Medicine | R87-41 | 5,405 | | 1-5-87 | | 5,405 | 3-16-87 | |
| Office of the Assistant Secretary of Health | | | | | | | | |
| Public health service management | R87-42 | 5,000 | | 1-5-87 | | 5,000 | 3-16-87 | |
| Departmental Management | | | | | | | | |
| Policy research | R87-43 | 2,200 | | 1-5-87 | | 2,200 | 3-16-87 | |
| DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT | | | | | | | | |
| Housing Programs | | | | | | | | |
| Annual contributions for assisted housing | R87-44 | 473,313 | | 1-5-87 | | 473,313 | 3-16-87 | |
| Housing counseling assistance | R87-45 | 3,500 | | 1-5-87 | | 3,500 | 3-16-87 | |
| Community Planning and Development | | | | | | | | |
| Community development grants | R87-46 | 375,200 | | 1-5-87 | | 375,200 | 3-16-87 | |
| Urban development action grants | R87-47 | 237,500 | | 1-5-87 | | 237,500 | 3-16-87 | |
| Management and Administration | | | | | | | | |
| Salaries and expenses | R87-48 | 19,042 | | 1-5-87 | | 19,042 | 3-16-87 | |

| As of April 1, 1987<br>Amounts in Thousands of Dollars<br>Agency/Bureau/Account | Rescission Number | Amount Previously Considered by Congress | Amount Currently before Congress | Date of Message | Amount Rescinded | Amount Made Available | Date Made Available | Congressional Action |
|---|---|---|---|---|---|---|---|---|
| DEPARTMENT OF THE INTERIOR | | | | | | | | |
| Bureau of Land Management | | | | | | | | |
| Management of lands and resources | R87-49 | 6,500 | | 1-5-87 | | 6,500 | 3-16-87 | |
| Construction and access | R87-50 | 1,600 | | 1-5-87 | | 1,600 | 3-16-87 | |
| Land acquisition | R87-51 | 2,700 | | 1-5-87 | | 2,700 | 3-16-87 | |
| Bureau of Mines | | | | | | | | |
| Mines and minerals | R87-52 | 16,594 | | 1-5-87 | | 16,594 | 3-16-87 | |
| United States Fish and Wildlife Service | | | | | | | | |
| Resource management | R87-53 | 20,500 | | 1-5-87 | | 20,500 | 3-16-87 | |
| | R87-53A | | | 1-28-87 | | | | |
| Construction | R87-54 | 23,200 | | 1-5-87 | | 23,200 | 3-16-87 | |
| Land acquisition | R87-55 | 26,762 | | 1-5-87 | | 26,762 | 3-16-87 | |
| National Park Service | | | | | | | | |
| Operation of the national park system | R87-56 | 7,950 | | 1-5-87 | | 7,950 | 3-16-87 | |
| Construction | R87-57 | 58,981 | | 1-5-87 | | 58,981 | 3-16-87 | |
| Land acquisition | R87-58 | 97,638 | | 1-5-87 | | 97,638 | 3-16-87 | |
| Historic preservation fund | R87-59 | 15,000 | | 1-5-87 | | 15,000 | 3-16-87 | |
| Bureau of Indian Affairs | | | | | | | | |
| Construction | R87-60 | 22,811 | | 1-5-87 | | 22,811 | 3-16-87 | |
| Territorial and International Affairs | | | | | | | | |
| Administration of territories | R87-61 | 2,500 | | 1-5-87 | | 2,500 | 3-16-87 | |
| DEPARTMENT OF JUSTICE | | | | | | | | |
| Immigration and Naturalization Service | | | | | | | | |
| Salaries and expenses | R87-62 | 24,598 | | 1-5-87 | | 24,598 | 3-16-87 | |
| DEPARTMENT OF LABOR | | | | | | | | |
| Employment and Training Administration | | | | | | | | |
| Training and employment services | R87-63 | 332,000 | | 1-5-87 | | 332,000 | 3-16-87 | |

Attachment A - Status of Rescissions - Fiscal Year 1987

| As of April 1, 1987<br>Amounts in Thousands of Dollars<br>Agency/Bureau/Account | Rescission Number | Amount Previously Considered by Congress | Amount Currently before Congress | Date of Message | Amount Rescinded | Amount Made Available | Date Made Available | Congressional Action |
|---|---|---|---|---|---|---|---|---|
| DEPARTMENT OF THE TREASURY | | | | | | | | |
| Federal Law Enforcement Training Center | | | | | | | | |
| Salaries and expenses..... | R87-64 | 8,450 | | 1-5-87 | | 8,450 | 3-16-87 | |
| Bureau of Alcohol, Tobacco, and Firearms | | | | | | | | |
| Salaries and expenses..... | R87-65 | 15,000 | | 1-5-87 | | 15,000 | 3-16-87 | |
| United States Customs Service | | | | | | | | |
| Salaries and expenses..... | R87-66 | 38,945 | | 1-5-87 | | 38,945 | 3-16-87 | |
| ENVIRONMENTAL PROTECTION AGENCY | | | | | | | | |
| Abatement, control, and compliance..... | R87-67 | 47,500 | | 1-5-87 | | 47,500 | 3-16-87 | |
| Buildings and facilities..... | R87-68 | 2,500 | | 1-5-87 | | 2,500 | 3-16-87 | |
| NATIONAL AERONAUTICS AND SPACE ADMINISTRATION | | | | | | | | |
| Research and development..... | R87-69 | 25,796 | | 1-5-87 | | 25,796 | 3-16-87 | |
| VETERANS ADMINISTRATION | | | | | | | | |
| Medical care..... | R87-70 | 75,000 | | 1-5-87 | | | | |
| OTHER INDEPENDENT AGENCIES | | | | | | | | |
| Appalachian Regional Commission | | | | | | | | |
| Appalachian regional development programs | R87-71 | 31,059 | | 1-5-87 | | 31,059 | 3-16-87 | |
| National Endowment for the Humanities | | | | | | | | |
| National capital arts and cultural affairs | R87-72 | 4,000 | | 1-5-87 | | 4,000 | 3-16-87 | |
| Selective Service System | | | | | | | | |
| Salaries and expenses..... | R87-73 | 409 | | 1-5-87 | | 409 | 3-17-87 | |
| Total, rescissions..... | | 5,835,751 | 0 | | | 5,760,751 | | |

NOTE. - The $75 million proposed for rescission in Rescission Proposal No. R87-70 was never withheld from obligation. Therefore, there was no need to release the funds on March 16.

| As of April 1, 1987<br>Amounts in Thousands of Dollars<br>Agency/Bureau/Account | Deferral Number | Amount Transmitted Original Request | Amount Transmitted Subsequent Change | Date of Message | Cumulative OMB/Agency Releases | Congressionally Required Releases | Congressional Action | Cumulative Adjustments | Amount Deferred as of 4-1-87 |
|---|---|---|---|---|---|---|---|---|---|
| FUNDS APPROPRIATED TO THE PRESIDENT | | | | | | | | | |
| International Security Assistance | | | | | | | | | |
| Foreign military sales credit | D87-22 | 4,040,441 | | 12-15-86 | 1,855,000 | | | | 2,185,441 |
| Economic support fund | D87-1 | 95,000 | | 9-26-86 | | | | | |
| | D87-1A | | 2,351,470 | 12-15-86 | 1,179,690 | | | | 1,266,780 |
| Military assistance | D87-23 | 847,000 | | 12-15-86 | 381,750 | | | | 465,250 |
| International military education and training | D87-24 | 2,000 | | 12-15-86 | 2,000 | | | | 0 |
| Agency for International Development | | | | | | | | | |
| Functional development assistance | D87-32 | 2,278 | | 1-28-87 | | | | | 2,278 |
| International disaster assistance | D87-25 | 57,000 | | 12-15-86 | 38,837 | | | | 18,163 |
| Special Assistance for Central America | | | | | | | | | |
| Assistance for the Nicaraguan Democratic Resistance | D87-26 | 60,000 | | 12-15-86 | 60,000 | | | | 0 |
| Promotion of stability and security in Central America | D87-27 | 1,000 | | 12-15-86 | | | | | 1,000 |
| DEPARTMENT OF AGRICULTURE | | | | | | | | | |
| Commodity Credit Corporation | | | | | | | | | |
| Temporary emergency food assistance | D87-33 | 28,559 | | 1-28-87 | | 28,559 | P.L. 100-6 | | 0 |
| Rural Electrification Administration | | | | | | | | | |
| Reimbursement to the Rural electrification and telephone and revolving fund for interest subsidies and losses | D87-34 | 20,000 | | 1-28-87 | | | | | 20,000 |
| Forest Service | | | | | | | | | |
| State and private forestry | D87-35 | 797 | | 1-28-87 | | | | | 797 |
| Land acquisition | D87-36 | 27,070 | | 1-28-87 | | | | | 27,070 |
| Expenses, brush disposal | D87-2 | 111,202 | | 9-26-86 | | | | | |
| | D87-2A | | 1,534 | 3-4-87 | | | | | 112,736 |
| Timber roads, purchaser election | D87-37 | 11,900 | | 1-28-87 | | | | | 11,900 |
| Timber salvage sales | D87-3 | 29,731 | | 9-26-86 | 6,113 | | | | 23,618 |
| Cooperative work | D87-4 | 526,938 | | 9-26-86 | | | | | |
| | D87-4A | | 8,336 | 3-4-87 | | | | | 535,275 |
| Gifts, donations, and bequests for forest and rangeland research | D87-5 | 200 | | 9-26-86 | 25 | | | | 175 |

Attachment B - Status of Deferrals - Fiscal Year 1987

| As of April 1, 1987<br>Amounts in Thousands of Dollars<br>Agency/Bureau/Account | Deferral Number | Amount Transmitted Original Request | Amount Transmitted Subsequent Change | Date of Message | Cumulative OMB/Agency Releases | Congressionally Required Releases | Congressional Action | Cumulative Adjustments | Amount Deferred as of 4-1-87 |
|---|---|---|---|---|---|---|---|---|---|
| DEPARTMENT OF DEFENSE - MILITARY | | | | | | | | | |
| Military Construction | | | | | | | | | |
| Military construction, Defense | D87-6 | 2,350 | | 9-26-86 | | | | | |
| | D87-6A | | 1,316,152 | 12-15-86 | 779,649 | | | | 538,853 |
| Family Housing | | | | | | | | | |
| Family housing, Defense | D87-7 | 76,943 | | 9-26-86 | | | | | |
| | D87-7A | | 190,022 | 12-15-86 | 103,901 | | | | 163,064 |
| DEPARTMENT OF DEFENSE - CIVIL | | | | | | | | | |
| Soldiers' and Airmen's Home | | | | | | | | | |
| Capital outlays | D87-38 | 1,132 | | 1-28-87 | | | | | 1,132 |
| Wildlife Conservation, Military Reservations | | | | | | | | | |
| Wildlife conservation | D87-8 | 1,065 | | 9-26-86 | | | | | |
| | D87-8A | | 25 | 1-5-87 | | | | | |
| | D87-8B | | 46 | 3-4-87 | 40 | | | | 1,096 |
| DEPARTMENT OF ENERGY | | | | | | | | | |
| Power Marketing Administration | | | | | | | | | |
| Alaska Power Administration, Operation and maintenance | D87-9 | 165 | | 9-26-86 | | | | | 165 |
| Southwestern Power Administration, Operation and maintenance | D87-10 | 7,554 | | 9-26-86 | | | | | |
| | D87-10A | | 6,106 | 1-5-87 | | | | | 13,660 |
| Western Area Power Administration, Construction, rehabilitation, operation and maintenance | D87-29 | 4,485 | | 1-5-87 | | | | | 4,485 |
| Departmental Administration | | | | | | | | | |
| Departmental administration | D87-30 | 24,182 | | 1-5-87 | | | | | 24,182 |

| As of April 1, 1987<br>Amounts in Thousands of Dollars<br>Agency/Bureau/Account | Deferral Number | Amount Transmitted Original Request | Amount Transmitted Subsequent Change | Date of Message | Cumulative OMB/Agency Releases | Congressionally Required Releases | Congressional Action | Cumulative Adjustments | Amount Deferred as of 4-1-87 |
|---|---|---|---|---|---|---|---|---|---|
| DEPARTMENT OF HEALTH AND HUMAN SERVICES | | | | | | | | | |
| Health Resources and Services Administration | | | | | | | | | |
| Indian catastrophic health emergency fund.. | D87-28 | 10,000 | | 12-15-86 | | | | | 10,000 |
| Centers for Disease Control | | | | | | | | | |
| Disease control, research, and training.... | D87-39 | 2,428 | | 1-28-87 | | | | | 2,428 |
| Alcohol, Drug Abuse, and Mental Health Administration | | | | | | | | | |
| Alcohol, drug abuse, and mental health... | D87-40 | 10,000 | | 1-28-87 | | | | | 10,000 |
| Office of Assistant Secretary for Health | | | | | | | | | |
| Scientific activities overseas (special foreign currency program)..... | D87-11 | 2,900 | | 9-26-86 | | | | | 2,900 |
| Social Security Administration | | | | | | | | | |
| Limitation on administrative expenses (construction)..... | D87-12 | 7,073 | | 9-26-86 | | | | | |
| | D87-12A | | 89 | 1-28-87 | | | | | 7,163 |
| Limitation on administrative expenses (information technology systems)..... | D87-57 | 134,437 | | 3-4-87 | | | | | 134,437 |
| DEPARTMENT OF THE INTERIOR | | | | | | | | | |
| Bureau of Land Management | | | | | | | | | |
| Payments for proceeds, sale of Mineral Leasing Act of 1920, Section 40(d)..... | D87-31 | 49 | | 1-5-87 | | | | | 49 |
| DEPARTMENT OF JUSTICE | | | | | | | | | |
| Office of Justice Programs | | | | | | | | | |
| Crime victims fund..... | D87-13 | 70,000 | | 9-26-86 | | | | | 70,000 |
| DEPARTMENT OF LABOR | | | | | | | | | |
| Employment Standards Administration | | | | | | | | | |
| Salaries and expenses..... | D87-41 | 9,659 | | 1-28-87 | | | | | 9,659 |

Attachment B - Status of Deferrals - Fiscal Year 1987

| As of April 1, 1987<br>Amounts in Thousands of Dollars<br>Agency/Bureau/Account | Deferral Number | Amount Transmitted Original Request | Amount Transmitted Subsequent Change | Date of Message | Cumulative OMB/Agency Releases | Congressionally Required Releases | Congressional Action | Cumulative Adjustments | Amount Deferred as of 4-1-87 |
|---|---|---|---|---|---|---|---|---|---|
| DEPARTMENT OF STATE | | | | | | | | | |
| Bureau for Refugee Programs | | | | | | | | | |
| United States emergency refugee and migration assistance fund, executive..... | D87-14 | 6,100 | | 9-26-86 | | | | | |
| | D87-14A | | 14,000 | 1-5-87 | | | | | 20,100 |
| Other | | | | | | | | | |
| Assistance for implementation of a Contadora agreement..... | D87-15 | 2,000 | | 9-26-86 | 2,000 | | | | 0 |
| DEPARTMENT OF TRANSPORTATION | | | | | | | | | |
| Federal Railroad Administration | | | | | | | | | |
| Rail service assistance..... | D87-42 | 462 | | 1-28-87 | | | | | 462 |
| Railroad safety..... | D87-43 | 1,101 | | 1-28-87 | 1,101 | | | | 0 |
| Conrail labor protection..... | D87-44 | 646 | | 1-28-87 | | | | | 646 |
| Northeast corridor improvement program..... | D87-45 | 16,962 | | 1-28-87 | | | | | 16,962 |
| Conrail commuter transition assistance..... | D87-46 | 10,000 | | 1-28-87 | | | | | 10,000 |
| Urban Mass Transportation Administration | | | | | | | | | |
| Research, training and human resources..... | D87-47 | 4,336 | | 1-28-87 | | | | | 4,336 |
| Interstate transfer grants - transit..... | D87-48 | 51,800 | | 1-28-87 | | | | | 51,800 |
| Federal Aviation Administration | | | | | | | | | |
| Operation and maintenance, Metropolitan Washington Airports..... | D87-49 | 12,214 | | 1-28-87 | | | | | 12,214 |
| Facilities and equipment (Airport and airway trust fund)..... | D87-16 | 803,877 | | 9-26-86 | | | | | |
| | D87-16A | | 295,611 | 12-15-86 | 9,996 | | | | 1,079,492 |
| Coast Guard | | | | | | | | | |
| Research, development, test, and evaluation..... | D87-50 | 5,000 | | 1-28-87 | | | | | 5,000 |
| Offshore oil pollution compensation fund... | D87-51 | 2,154 | | 1-28-87 | | | | | 2,154 |
| Deepwater port liability fund..... | D87-52 | 5,176 | | 1-28-87 | | | | | 5,176 |
| Office of the Secretary | | | | | | | | | |
| Payments to air carriers..... | D87-53 | 10,748 | | 1-28-87 | | | | | 10,748 |

Attachment B - Status of Deferrals - Fiscal Year 1987

s of April 1, 1987
Amounts in Thousands of Dollars

| Agency/Bureau/Account | Deferral Number | Amount Transmitted Original Request | Amount Transmitted Subsequent Change | Date of Message | Cumulative OMB/Agency Releases | Congressionally Required Releases | Congressional Action | Cumulative Adjustments | Amount Deferred as of 4-1-87 |
|---|---|---|---|---|---|---|---|---|---|
| DEPARTMENT OF THE TREASURY | | | | | | | | | |
| Office of Revenue Sharing | | | | | | | | | |
| Local government fiscal assistance trust fund | D87-17 | 74,149 | | 9-26-86 | 71,144 | | | | 3,005 |
| Local government fiscal assistance trust fund | D87-21 | 5,981 | | 9-26-86 | 3,105 | | | 723 | 3,599 |
| ENVIRONMENTAL PROTECTION AGENCY | | | | | | | | | |
| Research and development | D87-54 | 11,000 | | 1-28-87 | | | | | 11,000 |
| Abatement, control, and compliance | D87-55 | 11,400 | | 1-28-87 | | | | | 11,400 |
| OTHER INDEPENDENT AGENCIES | | | | | | | | | |
| Commission on the Ukraine Famine | | | | | | | | | |
| Salaries and expenses | D87-18 | 100 | | 9-26-86 | | | | | 100 |
| Office of the Federal Inspector for the Alaska Natural Gas Transportation System, | | | | | | | | | |
| Salaries and expenses | D87-19 | 411 | | 9-26-86 | 411 | | | | 0 |
| Pennsylvania Avenue Development Corporation | | | | | | | | | |
| Land acquisition and development fund | D87-20 | 11,873 | | 9-26-86 | | | | | 11,873 |
| United States Railway Association | | | | | | | | | |
| Administrative expenses | D87-56 | 1,155 | | 1-28-87 | | | | | 1,155 |
| TOTAL, DEFERRALS | | 7,274,185 | 4,183,392 | | 4,504,762 | 28,559 | | 723 | 6,924,979 |

Note: All of the above amounts represent budget authority except the Local Government Fiscal Assistance Trust Fund (D87-21) of outlays only.

[FR Doc. 87-8558 Filed 4-15-87; 8:45 am]
BILLING CODE 3110-01-C

federal register

Thursday
April 16, 1987

Part III

# Department of Education

34 CFR Part 639

Law School Clinical Experience Program; Final Rule and Notice

## DEPARTMENT OF EDUCATION

### 34 CFR Part 639

### Law School Clinical Experience Program

**AGENCY:** Department of Education.

**ACTION:** Final regulations; amendments.

**SUMMARY:** The Secretary amends the regulations governing the Law School Clinical Experience Program. These amendments are needed to implement the change in the Higher Education Act of 1965, as amended by the Higher Education Amendments of 1986, requiring that the Secretary give preference to those applications proposing projects to provide legal experience in the preparation and trial of actual cases, including administrative cases and the settlement of controversies outside the courtroom.

**EFFECTIVE DATE:** These regulations take effect either 45 days after publication in the **Federal Register** or later if the Congress takes certain adjournments. If you want to know the effective date of these regulations, call or write the U.S. Department of Education contact person.

**FOR FURTHER INFORMATION CONTACT:** Dr. Charles H. Miller, Senior Education Program Specialist, Law School Clinical Experience Program, Division of Higher Education Incentive Programs, Office of Higher Education Programs, Office of Postsecondary Education, U.S. Department of Education, Room 3022 ROB–3, 400 Maryland Avenue, SW., Washington, DC 20202. Telephone: (202) 732–4395.

**SUPPLEMENTARY INFORMATION:**

#### Background

The Law School Clinical Experience Program provides assistance to accredited law schools to establish or expand their programs of clinical experience for students in the practice of law. Clinical programs are designed to instill professional responsibility and to improve learning among law students, through actual or simulated legal services to clients.

The Secretary amends the regulations for the Law School Clinical Experience Program to implement the amendment to the program statute requiring that the Secretary give preference to applications proposing projects that provide legal experience in the preparation and trial of actual cases. (See section 961(a) of the Higher Education Act of 1965, as amended by the Higher Education Amendments of 1986 (Pub. L. 99–498)). Under previous regulations, unless other applications were of outstanding quality and scored in the top 10 percent of all applications for which funds were available, applications proposing this type of project, as well as applications proposing activities that provide service to persons who have difficulty in gaining access to legal representation, received funding preference first.

Under these regulations as amended, applications proposing these types of projects will continue to receive a funding preference, but the preferences will be implemented as priorities under the Education Department General Administrative Regulations (EDGAR) at 34 CFR 75.105. The priorities will be announced annually by the Secretary in an application notice published in the **Federal Register.**

#### Waiver of Proposed Rulemaking

Under section 431(b)(2)(A) of the General Education Provisions Act (20 U.S.C. 1232(b)(2)(A), and the Administrative Procedure Act (5 U.S.C. 553) it is the practice of the Department of Education to publish regulations in proposed form and to offer interested parties the opportunity to comment on the proposed regulations. Because these regulations merely incorporate changes made by statute, however, public comment could have no effect. Therefore, publication of this document as a proposed rule for public comment has been determined to be unnecessary and contrary to the public interest under 5 U.S.C. 553(b)(B).

#### Executive Order 12291

These regulations have been reviewed under Executive Order 12291. They are not classified as major because they do not meet the criteria for major regulations established in the order.

#### Regulatory Flexibility Act Certification

The Secretary certifies that these regulations would not have a significant economic impact on a substantial number of small entities. The small entities affected by these regulations are small institutions of higher education. This amendment is beneficial to the accredited law schools affected and gives guidance to applicants by defining the types of projects the Secretary intends to give funding preference to, in the administration of the Law School Clinical Experience Program. It does not affect a substantial number of institutions since it applies only to the preference in the award of funds.

#### Paperwork Reduction Act of 1980

These regulations have been examined under the Paperwork Reduction Act of 1980 and have been found to contain no information collection requirements.

#### Assessment of Educational Impact

The Secretary has determined that the regulations in this document do not require transmission of information that is being gathered by or is available from any other agency or authority of the United States.

#### List of Subjects in 34 CFR Part 639

Accredited law schools, Education, Reporting and recordkeeping requirements.

(Catalog of Federal Domestic Assistance Number 84.097—Law School Clinical Experience Program)

Dated: April 10, 1987.

**William J. Bennett,**

*Secretary of Education.*

## PART 639—LAW SCHOOL CLINICAL EXPERIENCE PROGRAM

The Secretary amends Part 639 of Title 34 of the Code of Federal Regulations as follows:

1. The authority citation for Part 639 is revised to read as follows:

**Authority:** 20 U.S.C. 1134s–1134t, unless otherwise noted.

**§§ 639.1, 639.2, 639.3, 639.4, 639.10, 639.11, 639.30, 639.31 and 639.40 [Amended]**

2. In the list below, for the citation of authority following each section indicated in the left column, remove the current citation and add in its place the citation indicated in the right column:

| Section | Add |
|---|---|
| 639.1 | 20 U.S.C. 1134s. |
| 639.2 | 20 U.S.C. 1134s(d). |
| 639.3 | 20 U.S.C. 1134s. |
| 639.4 | 20 U.S.C. 1134s(a). |
| 639.10 | 20 U.S.C. 1134s(a). |
| 639.11 | 20 U.S.C. 1134s(a). |
| 639.30 | 20 U.S.C. 1134s(a) and 1134t(b). |
| 639.31 | 20 U.S.C. 1134s(a). |
| 639.40 | 20 U.S.C. 1134s(a)–(c). |

3. A new § 639.11 is added to Subpart B to read as follows:

**§ 639.11 How does the Secretary establish priorities?**

(a) The Secretary gives priority to applications proposing projects to provide legal experience in the preparation and trial of actual cases, including administrative cases and the settlement of controversies outside the courtroom.

(b) In addition to the priority in paragraph (a) of this section, the Secretary may give priority to applications that propose activities to provide service to persons who have

difficulty in gaining access to legal representation.

(Authority: 20 U.S.C. 1134s(a))

Note: EDGAR establishes the method for applying priorities. See 34 CFR 75.105.

4. In § 639.30, paragraph (a) is removed; paragraphs (b) and (c) are redesignated as paragraphs (a) and (b), respectively; in paragraph (b)(1), as redesignated, "20 U.S.C. 1134o(b)" is removed; and the introductory text of paragraph (a), as redesignated, is revised to read as follows:

**§ 639.30 How does the Secretary evaluate an application?**

(a) The Secretary evaluates an application on the basis of the criteria in § 639.31.

* * * * *

[FR Doc. 87-8609 Filed 4-15-87; 8:45 am]
BILLING CODE 4000-01-M

## DEPARTMENT OF EDUCATION

### Invitation; Applications for New Awards Under the Law School Clinical Experience Program

*Purpose:* Provides grants to accredited law schools to establish or expand programs of clinical experience for students in the practice of law.

*Deadlines for Transmittal of Applications:* June 1, 1987.

*Applications Available:* April 20, 1987.

*Available Funds:* The Congress appropriated $1,500,000 for this program for fiscal year 1987. The program legislation permits the Secretary to pay up to 90 percent of the cost of projects at law schools. (20 U.S.C. 1134s(a)). The program regulations at 34 CFR 639.40(a)(2) permit the Secretary to establish annually a lower maximum Federal share. The maximum Federal share will be set at 50 percent for fiscal year 1987.

*Priorities:* (a) The Secretary has chosen the following absolute priorities in accordance with 34 CFR 75.105(b)(ii) and § 639.11 (a) and (b):

1. Applications proposing projects to provide legal experience in the preparation and trial of actual cases, including administrative cases and the settlement of controversies outside the courtroom.

2. Applications proposing activities to provide service to persons who have difficulty in gaining access to legal representation.

Only applications which meet both of these absolute priorities will be considered for funding under this competition.

*Estimated Range of Awards:* $15,000 to $58,000.

*Estimated Average Size of Awards:* $37,500.

*Estimated Number of Awards:* 40.

*Project Period:* 12 months.

*Applicable Regulations:* (a) The Law School Clinical Experience Program Regulations, 34 CFR Part 639, and when effective, the amendment to the regulations published in this issue of the **Federal Register**, and (b) the Education Department General Administrative Regulations (EDGAR) 34 CFR Parts 74, 75 and 77.

*For Applications or Information Contact:* Dr. Charles H. Miller on (202) 732–4395 or Barbara J. Harvey on (202) 732–4863, U.S. Department of Education, Mail Stop 3327, 400 Maryland Avenue, SW., Room 3022, ROB–3, Washington, DC 20202.

**Program Authority:** 20 U.S.C. 1134s–1134t.

Dated: April 10, 1987.

**William J. Bennett,**

*Secretary of Education.*

[FR Doc. 87–8610 Filed 4–15–87; 8:45 am]

BILLING CODE 4000–01–M

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Federal Register

Vol. 52, No. 73

Thursday, April 16, 1987

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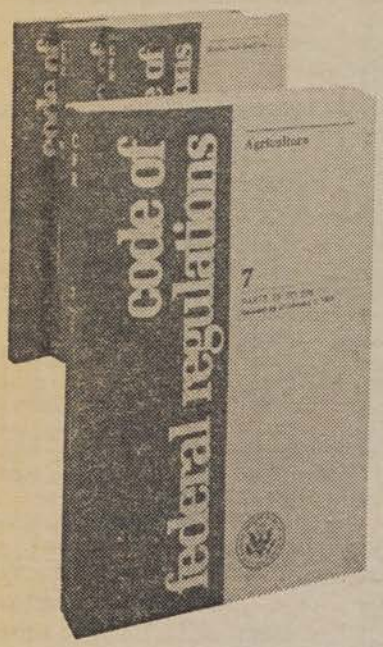


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