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federal register

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Rules and Regulations

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

DEPARTMENT OF AGRICULTURE

Federal Crop Insurance Corporation

7 CFR Part 427

[Amdt. No. 4]

Oat Crop Insurance Regulations

AGENCY: Federal Crop Insurance Corporation, USDA.

ACTION: Final rule.

SUMMARY: The Federal Crop Insurance Corporation (FCIC) hereby amends the Oat Crop Insurance Regulations (7 CFR Part 427), effective with the 1983 and succeeding crop years by: (1) Adding a Section 11 to the Appendix to the Policy to prescribe FCIC's liability in cases of loss by fire when the insured has other insurance covering fire losses, (2) prescribing the interest to be charged when premium payments are not made within a certain time, (3) adding a provision to require the insured to file a notice of probable loss when the crop is damaged and leave intact a representative sample of the unharvested crop, and (4) making certain other technical changes to language. The intended effect of this rule is to restore a provision in the regulations regarding losses by fire, improve the debt management practices of FCIC, and revise the system of reporting losses to crops to make the administration of the program more effective. This final rule confirms the interim rule published in the **Federal Register** on April 29, 1982, and is referred to in this document.

EFFECTIVE DATE: August 26, 1982.

ADDRESS: Comments on this final rule may be sent to the Office of the Manager, Federal Crop Insurance Corporation, U.S. Department of Agriculture, Washington, D.C. 20250.

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

The Impact Statement describing the options considered in developing this rule and the impact of implementing each option is available upon request from Peter F. Cole.

SUPPLEMENTARY INFORMATION: Information collection requirements contained in the regulations to which this amendment applies (7 CFR Part 427) have been approved by the Office of Management and Budget (OMB) under the provisions of 44 U.S.C. Chapter 35 and have been assigned OMB Nos. 0563–0003 and 0563–0007.

This action has been reviewed under USDA procedures established in Secretary's Memorandum No. 1512–1 (June 11, 1981).

On Thursday, April 29, 1982, the Federal Crop Insurance Corporation published an interim rule in the **Federal Register** at 47 FR 18319, which amended the Oat Crop Insurance Regulations (7 CFR Part 427) in three instances to:

1. Restore Section 11 to the Appendix to the Policy to provide that if the insured has other insurance against fire losses, FCIC shall be liable for loss due to fire only for the smaller of the amount of indemnity under the FCIC contract or the amount by which the loss from fire exceeds the indemnity paid under such other insurance.

2. Amend Section (d) of 7 CFR 427.7(d), Terms and Conditions to provide that, for the 1983 and succeeding crop years, unpaid premiums will bear interest at the rate of 1½% simple interest per month, or any part thereof, starting on the first day of the month following the month in which the acreage reporting date for the crop in the county occurred.

3. Add to paragraph 7 of 7 CFR 427.7(d), Terms and Conditions to provide that if a crop is damaged to the extent that a loss is probable, the insured is required to give written notice of damage at least 15 days prior to the beginning of harvest. If a probable loss is not determined until less than 15 days prior to harvest, the insured is required to give such notice immediately and leave a representative sample of unharvested crop intact for 15 days after the date of the notice.

In addition to these changes, FCIC amended the regulations to make minor corrections to language and format to include correcting the table of contents, and redesignating Appendix B as Appendix A to list counties where Oat crop insurance is available.

The public was given 60 days following publication of the interim rule in which to submit written comments, data, and opinions on the rule.

One response in opposition to the rule was received from the National Association of Crop Insurance Agents (NACIA) during the 60-day comment period.

The comment concerned the following:

1. The establishment of interest rates on any unpaid premium balances.

2. The proposed billing date established in relationship to the acreage reporting date.

3. The adoption of an interim rule without the opportunity for prior public comment.

The response of the Federal Crop Insurance Corporation is as follows:

1. The Federal Crop Insurance Act, as amended, is silent on the issue of charging interest rates on unpaid premium balances. The general government-wide policy, however, requires that interest be charged on past-due accounts (Office of Inspector General Audit No. 5099–17; Treasury Fiscal Requirements Manual, Section 8020; 7 AR 1206.5; Department of Agriculture's Phase I Study).

Although premiums are due at the time insurance attaches, FCIC has not considered them delinquent until the termination date of the policy. This has adversely affected the cash flow plans of the agency since most premiums were not paid until after indemnities were paid by the Corporation. This free credit to the insured is contrary to the general industry practices and required that the Corporation expend large amounts of interest on funds borrowed from the Treasury.

It is the intention of the present administration to improve the debt management practices within the Federal Government; therefore, FCIC is committed to charge an interest rate on any unpaid premium balance. This provision only advances the application date of the interest charge and applicable rate of interest.

2. The billing dates, as contained in the interim rule, were reviewed by FCIC. The interim rule states that interest will

accrue at the rate of one and a half percent (1½%) simple interest per calendar month, or any part thereof, *starting on the first day of the month following the month in which the acreage reporting date for the crop in the county occurs.* (emphasis added)

As this formula would apply to a spring-planted crop for example, the acreage reporting of which is June 25, the first premium billing date is September 1. Under this proposal, the insured would have until October 1 to pay premium without interest. If the premium was not paid by that date, interest would be computed from July 1 (the first day of the month following the month in which the acreage reporting date occurred), resulting in an immediate four-month interest charge.

While the premium is due and payable when insurance attaches, usually at the time of seeding or planting, the common practice is to meet the growing season obligations from the proceeds of the crop at harvesttime. With this in mind, FCIC has historically deferred collection of premium until after harvest.

FCIC has decided to amend the provision to provide that interest will attach on the first day of the month following the first premium billing date. This will result in little, if any, departure from the general practice of collecting premiums at harvest, thus providing the insured with protection while deferring premium payment until harvesttime. We believe this amendment satisfactorily addresses the concern expressed by NACIA. In addition, all insureds have been notified of this change in the billing process and alerted as to the first premium billing date for their crop(s).

3. The determination to adopt the interim rule without prior public comment was made under the provisions for such emergencies contained in Secretary's Memorandum No. 1512–1 (June 11, 1981), and described in the rule.

Under the provisions of the regulations for insuring oats, any amendments or revisions to the regulations must be placed on file 15 days before the cancellation date. The earliest cancellation date for oats was April 30; therefore, any amendment must have been placed on file by April 15 in order to be effective for the 1983 crop year.

Final approval of the provision governing the interest rate charge was not made final until just prior to publication of the interim rule; Therefore, there would not have been sufficient time to permit public comment prior to making the rule effective. FCIC provided 60 days for such comment after publication so that the rule could be scheduled for review and necessary amendments to the rule could be published.

Merrit W. Sprague, Manager, FCIC, has determined that: (1) This action is not a major rule as defined by Executive Order No. 12291 (February 17, 1981), (2) this action does not increase the Federal paperwork burden for individuals, small businesses, or other persons, and (3) this action conforms to the Federal Crop Insurance Act, as amended (7 U.S.C. 1501 *et seq.*), and other applicable law.

The title and number of the regulations to which this amendment applies are: Title—Crop Insurance; Number 10.450.

This action will not have a significant impact specifically upon area and community development; therefore, review as established in OMB Circular A–95 was not used to assure the units of local government are informed of this action.

It has been determined that this action is exempt from the provisions of the Regulatory Flexibility Act; Therefore, no Regulatory Impact Statement was prepared.

It has also been determined that this action does not constitute a review as to the need, currency, clarity, and effectiveness of these regulations under the provisions of Secretary's Memorandum No. 1512–1 (June 11, 1981). That review will be completed prior to the sunset review date of October 22, 1984.

List of Subjects in 7 CFR Part 427

Crop insurance, Oats.

Final Rule

PART 427—OAT CROP INSURANCE

Accordingly, pursuant to the authority contained in the Federal Crop Insurance Act, as amended (7 U.S.C. 1501 *et seq.*), the Federal Crop Insurance Corporation hereby amends the Oat Crop Insurance Regulations (7 CFR Part 427), effective with the 1983 and succeeding crop years, in the following instances:

1. The authority for 7 CFR Part 427 is revised to read as follows:

Authority: Secs. 506, 516, Pub. L. 75–430, 52 Stat. 72, as amended (7 U.S.C. 1506, 1516).

2. The table of contents is revised to read as follows:

Secs.

427.1 Availability of oat crop insurance.
427.2 Premium rates, production guarantees, coverage levels, and prices at which indemnities shall be computed.
427.3 Reserved.
427.4 Creditors.
427.5 Good faith reliance on misrepresentation.
427.6 The contract.
427.7 The application and policy.
Appendix A—Counties Designated for Oat Crop Insurance.

3. Paragraph 5(d) of the Terms and Conditions section of the Policy as found in 7 CFR 427.7(d), is revised to read as follows:

§ 427.7 The application and policy

* * * * *

(d) * * *

Oat Crop Insurance Policy

Terms and Conditions

* * * * *

5. *Annual Premium.* * * *

(d) Interest will accrue at the rate of one and a half percent (1½%) simple interest per calendar month, or any part thereof, on any unpaid premium balance starting on the first day of the month following the first premium billing date.

4. Paragraph 7 of the Terms and Conditions section of the Policy as found in 7 CFR 427.7(d) is amended by revising 7(c), redesignating 7 (d) and (e) as 7 (e) and (f), respectively, and adding a new 7(d) as follows.

* * * * *

7. Notice of damage or loss.

* * * * *

(c) Notice shall be given at least 15 days prior to the beginning of harvest if the oats on any unit are damaged to the extent that a loss is probable. If probable loss is not determined until less than 15 days prior to the beginning of harvest on a unit, notice shall be given immediately and a representative sample of the unharvested oats (at least 10 feet wide and the entire length of the field) shall remain intact for a period of 15 days from the date of notice, unless the Corporation gives written consent to the insured to harvest the representative sample.

(d) In addition to the notices required in paragraphs (b) and (c) of this section, if a loss is to be claimed on any unit, the insured shall give written notice thereof to the Corporation at the office for the county not later than *30 DAYS* after the earliest of (1) the date the harvest is completed on the unit, (2) the calendar date for the end of the insurance period, or (3) the date the entire oat crop on the unit is destroyed, as determined by the Corporation. The Corporation reserves the right to provide additional time if there are extenuating circumstances.

* * * * *

5. The Appendix to the Oat Crop Insurance Policy (Additional Terms and Conditions) as found in the appendix to 7 CFR 427.7 is hereby amended by adding Section 11 to read as follows:

* * * * *

Appendix to the Oat Crop Insurance Policy—(Additional Terms and Conditions)

* * * * *

11. Other Insurance Against Fire. If the insured has other insurance against damage

by fire during the insurance period, the Corporation shall be liable for loss due to fire only for the smaller of (a) the amount of indemnity determined by the Corporation under the policy with the Corporation or (b) the amount by which the loss from fire exceeds the indemnity paid or payable under such other insurance. For the purposes of this section, the amount of loss from fire shall be the difference between the fair market value of the production on the unit before the fire and after the fire, as determined by the Corporation from appraisals made by the Corporation.

6. Appendix B to 7 CFR Part 427 is redesignated as Appendix A and revised to read as follows:

Appendix A—Counties Designated for Oat Crop Insurance—7 CFR Part 427

In accordance with the provisions of 7 CFR 427.1, the following counties are designated for oat crop insurance:

Alabama

Baldwin

Arkansas

Arkansas

California

Modoc
Siskiyou

Colorado

Alamosa

Idaho

Kootenai

Illinois

Boone
Bureau
Carroll
De Kalb
Henry
Jo Daviess
Kane
Knox
LaSalle
Lee
McHenry
Mercer
Ogle
Stephenson
Warren
Whiteside
Will
Winnebago

Iowa

(All counties)

Kansas

Dickinson
Marion

Michigan

Allegan
Alpena
Barry
Calhoun
Clinton
Eaton
Genesee
Huron
Ionia
Isabella
Jackson
Kent
Lapeer
Lenawee
Montcalm
St. Clair
Sanilac
Shiawassee
Tuscola
Washtenaw

Minnesota

(All counties except the following)

Aitkin
Carlton
Cook
Itasca
Koochiching
Lake
Ramsey
St. Louis

Montana

Hill
Judith Basin
Phillips
Richland
Roosevelt
Valley

Nebraska

Antelope
Boone
Boyd
Burt
Butler
Cedar
Colfax
Cuming
Dakota
Dawes
Dixon
Gage
Holt
Knox
Madison
Pierce
Platte
Saunders
Sheridan
Stanton
Thurston
Washington
Wayne

New York

Allegany
Cattaraugus
Cayuga
Erie
Genesee
Herkimer
Jefferson
Livingston
Madison
Monroe
Montgomery
Niagara
Oneida
Onondaga
Ontario
Orleans
Otsego
Seneca
Steuben
Tompkins
Wayne
Wyoming
Yates

North Carolina

Rowan

North Dakota

(All counties)

Ohio

Allen
Ashland
Ashtabula
Auglaize
Carroll
Columbiana
Coshocton
Crawford
Darke
Defiance
Hardin
Holmes
Huron
Knox
Logan
Lorain
Mahoning
Medina
Mercer
Paulding
Portage
Putman
Richland
Seneca
Shelby
Stark
Trumbull
Van Wert
Wayne
Wood

Oregon

Klamath
Marion
Polk
Yamhill

Pennsylvania

Armstrong
Bedford
Berks
Bradford
Butler
Cambria
Centre
Chester
Clarion
Columbia
Crawford
Cumberland
Dauphin
Erie
Franklin
Indiana
Juniata
Lawrence
Lebanon
Lehigh
Lycoming
Mercer
Northumberland
Perry
Schuylkill
Snyder
Somerset
Tioga
Union
Washington
Westmoreland
York

South Carolina

Sumter

South Dakota

(All counties except the following)

Custer
Fall River
Jones
Shannon
Washabaugh
Washington

Texas

Archer
Bell
Bexar
Bosque
Brown
Coleman
Collin
Concho
Cooke
Coryell
Dallas
Denton
Erath
Falls
Gillespie
Hamilton
Hill
Hunt
Johnson
Kaufman
Lamar
Limestone
McCulloch
McLennan
Medina
Runnels
San Saba
Tarrant
Taylor
Uvalde

Washington

Spokane
Stevens

Wisconsin

(All counties except the following)

Ashland
Bayfield
Douglas
Florence
Forest
Iron
Lincoln
Menominee
Milwaukee
Oneida
Price
Sawyer
Vilas

Wyoming

Cook

Approved by the Board of Directors on February 4, 1982.

Done in Washington, D.C., on August 18, 1982.

Peter F. Cole,

Secretary, Federal Crop Insurance Corporation.

Dated: August 18, 1982.

Approved by: Robert H. Sindt, *Deputy Manager.*

[FR Doc. 82-23395 Filed 8-25-82; 8:45 am]

BILLING CODE 3410-08-M

7 CFR Part 442

Prevented Planting Regulations

AGENCY: Federal Crop Insurance Corporation, USDA.

ACTION: Final rule.

SUMMARY: The Federal Crop Insurance Corporation (FCIC) herewith issues regulations prescribing procedures for a pilot program of prevented planting insurance in certain counties, effective with the 1982 and succeeding crop years, to cover prevented planting due to excess moisture. This action is promulgated under the authority contained in the Federal Crop Insurance Act, as amended.

EFFECTIVE DATE: August 26, 1982.

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

The Final Impact Statement describing the options considered in developing this rule and the impact of

implementing each option is available upon request from Peter F. Cole.

SUPPLEMENTARY INFORMATION:

Information collection requirements contained in these regulations (7 CFR Part 442—Prevented Planting Regulations) have been approved by the Office of Management and Budget (OMB) under the provisions of 44 U.S.C. Chapter 35 and have been assigned OMB Nos. 0563–0001, 0563–003, and 0563–0007. This action has been reviewed under USDA procedures established in Secretary's Memorandum No. 1512–1 (June 11, 1981). Merritt W. Sprague, Manager, FCIC, has determined that (1) this action is not a major rule as defined by Executive Order No. 12291 (February 17, 1981), (2) this action does not increase the Federal paperwork burden for individuals, small businesses, and other persons, and (3) this action conforms to the Federal Crop Insurance Act, as amended (7 U.S.C. 1501 *et seq.*), and other applicable law.

The title and number of the Federal Assistance Program to which these regulations apply are: Title—Crop Insurance; Number 10.450.

This action will not have a significant impact specifically on area and community development; therefore, review as established by OMB Circular A–95 was not used to assure that units of local government are informed of this action.

It has been determined that this action constitutes a review as to need, currency, clarity, and effectiveness of these regulations under the provisions of Secretary's Memorandum No. 1512–1 (June 11, 1981). The sunset review date established for these regulations is October 1, 1986.

It has also been determined that this action is exempt from the provisions of the Regulatory Flexibility Act; therefore, no Regulatory Impact Statement was prepared.

On December 2, 1981, FCIC published a notice of proposed rulemaking in the **Federal Register** at 46 FR 58492–58497, in which FCIC proposed to issue regulations prescribing procedures for a pilot program of prevented planting due to excess moisture in response to many requests that such a program be established. FCIC proposed to initially offer such insurance protection in 10 counties. As insuring experience is gained from these pilot county programs in prevented planting, consideration will be given to expansion.

The counties selected for prevented planting insurance were based on recommendations from the Agricultural Stabilization and Conservation Service (ASCS) and/or a review of prevented planting payments made under the provisions of the Food and Agriculture Act of 1977. These counties are listed in Appendix A to this document.

The prevented planting insurance concept will assure a producer that he will not lose his investment when he is unable to plant a crop. All of the cropland to be planted will be considered and the insurance protection will be offered against prevented planting due to excess moisture.

The public was given 60 days in which to submit written comments on the proposed rule, but none were received.

List of Subjects in 7 CFR Part 442

Crop insurance, Prevented planting.

Final Rule

Accordingly, pursuant to the authority contained in the Federal Crop Insurance Act, as amended (7 U.S.C. 1501 *et seq.*), the Federal Crop Insurance Corporation hereby issues a new Part 442 in Title 7 of the Code of Federal Regulations prescribing procedures for insuring against prevented planting due to excess moisture, effective with the 1982 and succeeding crop years, to be known as 7 CFR Part 442—Prevented Planting Insurance Regulations, to read as follows:

PART 442—PREVENTED PLANTING INSURANCE

Subpart—Regulations for the 1982 and Succeeding Crop Years

Sec.

442.1 Availability of prevented planting insurance.
442.2 Premium rates, amounts of insurance and coverage levels.
442.3 [Reserved].
442.4 Creditors.
442.5 Good faith reliance on misrepresentation.
442.6 The contract.
442.7 The application and policy.
Appendix A—Counties Designated for Prevented Planning Insurance

Authority: Secs. 506, 516, Pub. L. 75–430, 52 Stat. 72, as amended (7 U.S.C. 1506, 1516).

Subpart—Regulations for the 1982 and Succeeding Crop Years

§ 422.1 Availability of prevented planting insurance.

Insurance shall be offered under the provisions of this subpart on prevention of planting in counties within limits prescribed by and in accordance with the provisions of the Federal Crop Insurance Act, as amended. The counties shall be designated by the Manager of the Corporation from those approved by the Board of Directors of the Corporation.

§ 442.2 Premium rates, amounts of insurance and coverage levels.

(a) The Manager of the Corporation shall establish premium rates, amounts of insurance and coverage levels for prevention of planting which shall be shown on the county actuarial table on file in the service office and may be changed from year to year.

(b) At the time the application for insurance is made, the applicant shall elect an amount of insurance per acre from among those amounts shown on the actuarial table for the crop year.

§ 442.3 [Reserved]

§ 442.4 Creditors.

An interest of a person in an insured crop existing by virtue of a lien, mortgage, garnishment, levy, execution, bankruptcy, or an involuntary transfer shall not entitle the holder of the interest to any benefit under the contract except as provided in the policy.

§ 442.5 Good faith reliance on misrepresentation.

Notwithstanding any other provision of the prevented planting insurance contract, whenever (a) an insured person under a contract of crop insurance entered into under these regulations, as a result of a misrepresentation or other erroneous action or advice by an agent or employee of the Corporation, (1) is indebted to the Corporation for additional premiums, or (2) has suffered a loss which is not insured or for which the insured person is not entitled to an indemnity because of failure to comply with the terms of the insurance contract, but which the insured person believed to be insured, or believed the terms of the insurance contract to have been complied with or waived, and (b) the Board of Directors of the Corporation, or the Manager of the Corporation in cases involving not more than $20,000, finds (1) that an agent or employee of the Corporation did in fact make such misrepresentation or take other erroneous action or give erroneous advice, (2) that said insured person relied thereon in good faith, and (3) that to require the payment of the additional premiums or to deny such insured's entitlement to the indemnity would not be fair and equitable, such insured person shall be granted relief the same as if otherwise entitled thereto.

§ 442.6 The contract.

The insurance contract shall become effective upon the acceptance by the Corporation of a duly executed application for insurance on a form prescribed by the Corporation. The

contract shall cover the prevention of planting as provided in the policy. The contract shall consist of the application, the policy, the attached Appendix A, and the provisions of the county actuarial table. Any changes made in the contract shall not affect its continuity from year to year. Copies of forms referred to in the contract are available at the service office.

§ 442.7 The application and policy.

(a) Application for insurance on a form prescribed by the Corporation may be made by any person to cover such person's insurable share in the cultivated acreage intended for planting as landlord, owner-operator, or tenant. The application shall be submitted to the Corporation at the service office on or before the applicable closing date on file in the service office.

(b) The Corporation may discontinue the acceptance of applications in any county upon its determination that the insurance risk involved is excessive. The Manager of the Corporation is authorized in any crop year to extend the closing date for submitting applications or contract changes in any county, by placing the extended date on file in the service office and publishing a notice in the **Federal Register** upon the Manager of the Corporation's determination that no adverse selectivity will result during the period of such extension: *Provided, however,* that if adverse conditions should develop during such period, the Corporation will immediately discontinue the acceptance of applications.

(c) The provisions of the application and Prevented Planting Insurance Policy for the 1982 and succeeding crop years, and the appendix to the Prevented Planting Insurance Policy are as follows:

FCI–12
Rev. (9–81)

UNITED STATES DEPARTMENT OF AGRICULTURE

FEDERAL CROP INSURANCE CORPORATION

CROP INSURANCE APPLICATION

CONTINUOUS CONTRACT

1 Name of Applicant

2 Agent, Administrator, Executor, Etc.

3 Street or Mailing Address

4 City and State

5 ZIP Code □□□□□□□□□

6 State and County □□–□□□

7 Contract Number □□□□□

8 County

9 State

10 Identification Number □□□□□□□□□

11 SSN Tax □□

12 Type of Entity

13 Applicant is Over 18: Yes——No——

If No, Date of Birth ——————

A. The applicant, subject to the provisions of the regulations of the Federal Crop Insurance Corporation (herein called "Corporation"), hereby applies to the Corporation for insurance on the applicant's share in the crop(s) shown below planted on insurable acreage as shown on the county actuarial table for the above-stated county. The applicant elects from the actuarial table the coverage level and, where applicable, a price election or plan of insurance. The premium rate and applicable production guarantee or amount of insurance per acre shall be those shown on the applicable county actuarial table filed in the office for the county for each crop year.

14	15	16	17	18
Effective crop year	Crop	Type, class plan of insurance	Price election	Level election
			●	
			●	
			●	
			●	
			●	
			●	
			●	
			●	

FOR AGENCY USE ONLY

19	20	21
	(A)	(P)
□		
□		
□		
□		
□		
□		
□		
□		

22 Crop(s) **NOT** insured the first year:

B. This application is accepted by the Corporation unless the applicant is notified of rejection within 30 days of the date hereof. Rejection shall be accomplished by depositing notification thereof in the United States Mail, postage paid, to the above address. Rejection may be for any reason which would also serve as a basis for termination under the policy, the Federal Crop Insurance Act, or the regulations issued thereunder. Outstanding and delinquent indebtedness to any United States Government Agency may be grounds for rejection. The contract shall be in effect for the crop year specified above, unless the time for submitting applications has passed at the time this application is filed, and shall continue for each succeeding crop year until canceled or terminated as provided in the contract. This accepted application, the insurance policy(ies), the attached appendix(es), and the provisions of the county actuarial table showing the insurable and uninsurable acreage, coverage levels, premium rates, and where applicable, the production guarantees, amounts of insurance, or plan of insurance shall constitute the contract. No term or condition of the contract shall be waived or changed except in writing by the Corporation. A material failure to include complete and accurate information on this application may invalidate the automatic acceptance provision hereof.

23 □ Applicant has received the policy(ies) and appendix(es) for the crop(s) shown above.

24 □ Previous Carrier

25 Policy Number ——————

26 Applicant's Signature

27 Date ——————, 19——

28 Code No. □□□□□

29 Witness to Signature

30 Location of Farm Headquarters

Phone ——————

31 Address of Your Service Office

Phone ——————

32 NSIOT–FUR

33 Page —— of —— pages

See reverse side of form for statement required by Privacy Act of 1974.

Prevented Planting Insurance Policy

Terms and Conditions

1. Causes of loss. (a) The insurance provided is against unavoidable prevention of planting insured acreage during the insurance period, due to excessive moisture conditions occurring within the insurance period, subject to any exceptions, exclusions or limitations shown on the actuarial table. (b) The contract shall not cover any prevention of planting due to (1) the neglect or malfeasance of the insured, any member of the insured's household, tenants or employees, (2) failure to follow recognized good farming practices, (3) the backing up of water by any governmental or public utilities dam or reservoir project, or (4) the failure to plant insured acreage due to any cause

other than excessive moisture, as determined by the Corporation.

2. Acreage insured. (a) The acreage insured for each crop year shall be the cultivated acreage intended for planting times the coverage level, times the insured's share therein (i) as reported by the insured or as determined by the Corporation, whichever the Corporation shall elect, and (ii) which has been assigned an amount of insurance and premium rate per acre on the actuarial table. (b) The Corporation reserves the right to limit the insured acreage to any acreage limitations established under any Act of Congress, provided the insured is so notified in writing prior to planting. (c) If the insured does not submit an acreage report on or before the acreage reporting date on file in the service office, the Corporation may elect to declare the insured acreage to be "zero". If the insured does not have a share in any insured acreage in the county for any year, the insured shall submit a report so indicating. Any acreage report submitted by the insured may be revised only upon approval of the Corporation.

3. Responsibility of insured to report acreage and share. The insured at the time of filing the application shall also report (a) all cultivated acreage intended for planting in the county for the crop year (including a designation of any cultivate acreage intended for planting to which insurance does not attach) and (b) the insured's share therein at the time of reporting.

This report shall be submitted annually on or before January 31. Any acreage report submitted by the insured may be revised only upon approval of the Corportion.

4. Amounts of insurance and coverage levels. For each crop year, the amounts of insurance and coverage levels shall be those shown on the actuarial table.

5. Annual premium. (a) The annual premium is earned and payable at the time the acreage is considered reported and the amount thereof shall be determined by multiplying the insured acreage times the applicable premium per acre.

(b) For premium adjustment purposes, only the years during which premiums were earned shall be considered.

(c) The premium shall be adjusted as shown in the following table:

PERCENT ADJUSTMENTS FOR FAVORABLE CONTINUOUS INSURANCE EXPERIENCE

Loss ratio [1] through previous crop year	Numbers of years continous experience through previous year															
	0	1	2	3	4	5	6	7	8	9	10	11	12	13	14	15 or more
	Percentage Adjustment Factor For Current Crop Year															
.00 to .20	100	95	95	90	90	85	80	75	70	70	65	65	60	60	55	50
.21 to .40	100	100	95	95	90	90	90	85	80	80	75	75	70	70	65	60
.41 to 60	100	100	95	95	95	95	95	90	90	90	85	85	80	80	75	70
.61 to .80	100	100	95	95	95	95	95	95	90	90	90	90	85	85	85	80
.81 to 1.09	100	100	100	100	100	100	100	100	100	100	100	100	100	100	100	100

[1] Loss Ratio means the ratio of indemnity(ies) paid to premium(s) earned.

PERCENT ADJUSTMENT FOR UNFAVORABLE INSURANCE EXPERIENCE

Loss ratio [1] through previous crop year	Number of loss years through previous year [2]															
	0	1	2	3	4	5	6	7	8	9	10	11	12	13	14	15
	Percentage adjustment factor for current crop year															
1.10 to 1.19	100	100	100	102	104	106	108	110	112	114	116	118	120	122	124	126
1.20 to 1.39	100	100	100	104	108	112	116	120	124	128	132	136	140	144	148	152
1.40 to 1.69	100	100	100	108	116	124	132	140	148	156	164	172	180	188	196	204
1.70 to 1.99	100	100	100	112	122	132	142	152	162	172	182	192	202	212	222	232
2.00 to 2.49	100	100	100	116	128	140	152	164	176	188	200	212	224	236	248	260
2.50 to 3.24	100	100	100	120	134	148	162	176	190	204	218	232	246	260	274	288
3.25 to 3.99	100	100	105	124	140	156	172	188	204	220	236	252	268	284	300	300
4.00 to 4.99	100	100	110	128	146	164	182	200	218	236	254	272	290	300	300	300
5.00 to 5.99	100	100	115	132	152	172	192	212	232	252	272	292	300	300	300	300
6.00 to Up	100	100	120	136	158	180	202	224	246	268	290	300	300	300	300	300

[1] Loss Ratio means the ratio of indemnity(ies) paid to premium(s) earned.
[2] Only the most recent 15 crop years will be used to determine the number of "Loss Years". (A crop year is determined to be a "Loss Year" when the amount of indemnity for the year exceeds the premium for the year.)

(d) Interest will accure at the rate of one and a half percent (1½%) simple interest per calendar month, or any part thereof, on any unpaid premium balance starting on the first day of the month following the first premium billing date.

(e) Any unpaid amount due the Corporation may be deducted from any indemnity payable to the insured by the Corporation or from any loan or payment to the insured under any Act of Congress or program administered by the U.S. Department of Agriculture, when not prohibted by law.

6. Insurance period. Insurance on insured acreage shall attach March 5 of the crop year shall cease upon the earlier of (a) planting the acreage or (b) the prevented planting date.

7. Notice of damage or loss. If an indemnity is to be claimed in any crop year, the insured shall give written notice thereof to the Corporation at the service office not later than 5 days after the prevented planting date. The Corporation reserves the right to reject any claim for indemnity if any of the requirements of this section are not met.

(8) Claim for indemnity. (a) It shall be a condition precedent to the payment of any indemnity that the insured (1) establish that any prevention of planting on the unit was directly caused by excessive moisture conditions during the insurance period for the crop year for which the indemnity is claimed and (2) furnish any other information regarding the manner and extent of loss as may be required by the Corporation.

(b) The amount of indemnity under the contract shall be determined by (1) multiplying the insured acreage on the unit times the amount of insurance per acre, and (2) subtracting therefrom the amount obtained by multiplying the spring-planting acreage, plus any acreage which was intended for planting from which a forage crop is harvested, plus any acreage the Corporation determines could have been planted, times the amount of insurance per acre times the insured share: *Provided,* That if the premium computed on the insured acreage and share is more than the premium computed on the reported acreage and share, the amount of indemnity shall be computed on the insured acreage and share and then reduced proportionately.

9. Misrepresentation and fraud. The Corporation may void the contract without affecting the insured's liability for premiums or waiving any right, including the right to collect any unpaid premiums if, at any time, the insured has concealed or misrepresented any material fact or committed any fraud relating to the contract, and such voidance shall be effective as of the beginning of the crop year with respect to which such act or omission occurred.

10. Transfer of right to indemnity on insured share. If the insured transfers any part of the insured share during the crop year, the insured may transfer the right to an indemnity on an approved form. Both the insured and the

transferee shall be jointly and severally liable for the premium. If such form is executed, the transferee shall have the same rights and responsibilities as the original insured for the current crop year.

11. Records and access to farm. The insured shall keep or cause to be kept for two years after the time of loss, records of all insured, uninsured, and planted acreage in the insured's farming operation. The Corporation shall have access to such records and the farm for purposes related to the contract.

12. Life of contract: Cancellation and termination. (a) The contract shall be in effect for the crop year specified on the application and may not be canceled for such crop year. Thereafter, either party may cancel the insurance for any crop year by giving a signed notice to the other on or before the cancellation date preceding such crop year.

(b) The contract will terminate as to any crop year if any amount due the Corporation under this contract is not paid on or before the termination date for indebtedness preceding such crop year: *Provided,* That the date of payment for premium (1) if deducted from an indemnity claim shall be the date the insured signs such claim or (2) if deducted from payment under another program administered by the U.S. Department of Agriculture shall be the date such payment was approved.

(c) The cancellation and termination dates are:

County	Cancellation date	Termination date for indebtedness
All counties	Dec. 31	Jan.10.

(d) In the absence of a notice from the insured to cancel, and subject to the provisions of subsections (a) (b) and (c) of this section, and section 17 of this policy, the contract shall continue in force for each succeeding crop year.

13. Meaning of terms. For the purposes of prevented planting insurance:

(a) "Actuarial table" means the forms and related material for the crop year approved by the Corporation which are on file for public inspection in the service office, and which show the premium rates, amounts of insurance, coverage levels, insurable and uninsurable acreage, and related information regarding prevented planting insurance in the county.

(b) "County" means the county shown on the application and any additional land located in a local producing area bordering on the county, as shown on the actuarial table.

(c) "Coverage level" means the percentage of coverage (50%, 65%, or 75%) elected by the insured from the actuarial table.

(d) "Crop year" means the period within which the crops to be planted on insured acreage are normally planted and shall be designated by the calendar year in which such crops are normally planted.

(e) "Cultivated acreage" means cultivated land intended for planting that was ready, or except for excessive moisture could have been made ready for planting but does not include (i) land on which a perennial forage crop is being grown or on which a crop has been planted prior to the acreage reporting date, (ii) land on which a prevented planting indemnity has been received in the preceding crop year if the land is not worked prior to the October 31 preceding the crop year of (iii) land which will not be planted in order to comply with any other USDA or state program or for any other reason.

(f) "Insurable acreage" means the land classified as insurable by the Corporation and shown as such on the county actuarial table.

(g) "Insured" means the person who submitted the application accepted by the Corporation.

(h) "Person" means an individual, partnership, association, corporation, estate, trust, or other business enterprise or legal entity, and wherever applicable, a State, a political subdivision of a State or any agency thereof.

(i) "Prevented Planting Date" means the latest final planting date for any insured spring planted crop, except tobacco, in the county, including any extended date, on file in the service office.

(j) "Service Office" means the office serving the insured's contract as shown on the application for insurance or such other office as may, in writing, be selected by the insured after approval by the Corporation or designated by the Corporation upon written notice to the insured.

(k) "Share" means the interest of the insured as landlord, owner-operator, or tenant in the insured acreage at the time the acreage is considered reported, as reported by the insured or as determined by the Corporation, whichever the Corporation shall elect, and no other share shall be deemed to be insured.

(l) "Spring planted acreage" means the insured acreage (1) planted to any crop during the insurance period or (2) which could have been planted during the insurance period, as determined by the Corporation, to a crop normally included in the insured's farming operation or shown on the actuarial table as suitable for production in the county.

(m) "Tenant" means a person who rents land from another person for a share of the crop(s) or the proceeds therefrom.

(n) "Unit" means all insurable acreage in the county which the insured intends to plant (1) in which the insured has a 100% share or (2) which is owned by one entity and operated by another entity on a share basis. Land rented for cash, a fixed commodity payment, or any consideration other than a share in the crop shall be considered as owned by the lessee.

14. Annual premium. (a) If there is no break in the continuity of participation, any premium adjustment applicable under section 5 of the policy shall be transferred to (1) the contract of the insured's estate or surviving spouse in case of the death of the insured, (2) the contract of the person who succeeds the insured if such person had previously participated in the farming operation, or (3) the contract of the same insured who stops farming in one county and starts farming in another county.

(b) If there is a break in the continuity of participation, any reduction in premium earned under section 5 of the policy shall not thereafter apply; *however,* any previous unfavorable insurance experience shall be considered in premium computation following a break in continuity.

15. Claim for and payment of indemnity. (a) Any claim for indemnity on a unit shall be submitted to the Corporation on a form prescribed by the Corporation.

(b) In the event that any claim for indemnity under the provisions of the contract is denied by the Corporation, an action of such claim may be brought against the Corporation under the provisions of 7 U.S.C. 1508(c), as amended: *Provided,* That the same is brought within one year after the date notice of denial of the claim is mailed to and received by the insured.

(c) Any indemnity will be payable within 30 days after a claim for indemnity is approved by the Corporation. *However,* in no event shall the Corporation be liable for interest or damages in connection with any claim for indemnity whether such claim be approved or disapproved by the Corporation.

(d) If the insured is an individual who dies, disappears, or is judicially declared incompetent, or the insured is an entity other than an individual and such entity is dissolved after insurance attaches for any crop year, any indemnity will be paid to the person(s)

the Corporation determines to be beneficially entitled thereto.

(e) The Corporation reserves the right to reject any claim for indemnity if any of the requirements of this section or section 8 of the policy are not met and the Corporation determines that the amount of loss cannot be satisfactorily determined.

16. Subrogation. The insured (including any assignee or transferee) assigns to the Corporation all rights of recovery against any person for loss or damage to the extent that payment hereunder is made by the Corporation. The insured thereafter shall execute all papers required and take appropriate action as may be necessary to secure such rights.

17. Termination of the contract. If the insured is an individual who dies or is judicially declared incompetent, or the insured entity is other than an individual and such entity is dissolved, the contract shall terminate as of the date of death, judicial declaration, or dissolution; *however*, it such event occurs after insurance attaches for any crop year, the contract shall continue in force through such crop year and terminate at the end thereof. Death of a partner in a partnership shall dissolve the partnership unless the partnership agreement provides otherwise. If two or more persons having a joint interest are insured jointly, death of one of the persons shall dissolve the joint entity.

18. Amounts of insurance and coverage levels. (a) If the insured has not elected on the application an amount of insurance and coverage level from among those shown on the actuarial table, the amount of insurance and coverage level which shall be applicable under the contract, and which the insured shall be deemed to have elected, shall be as provided on the actuarial table for such purposes.

(b) The insured may, with the consent of the Corporation, change the amount of insurance and/or coverage level for any crop year on or before the closing date for submitting applications for that crop year.

19. Assignment of indemnity. Upon approval of a form prescribed by the Corporation, the insured may assign to another party the right to an indemnity for the crop year and such assignee shall have the right to submit the loss notices and forms as required by the contract.

20. Contract changes. The Corporation reserves the right to change any terms and provisions of the contract from year to year. Any changes shall be mailed to the insured or placed on file and made available for public inspection in the service office at least 15 days prior to the cancellation date preceding the crop year for which the changes are to become effective, and such mailing or filing shall constitute notice to the insured. Acceptance of any changes will be conclusively presumed in the absence of any notice from the insured to cancel the contract as provided in section 12 hereof.

Appendix A—Counties Designated for Prevented Planting Crop Insurance—7 CFR Part 442

In accordance with the provisions of 7 CFR 442.1, the following counties are designated for Prevented Planting Crop Insurance:

INDIANA	
Posey	Vanderburgh
MINNESOTA	
Marshall	Kittson
MISSISSIPPI	
Leflore	Sunflower
OHIO	
Brown	Highland
WISCONSIN	
Clark	Eau Claire

Done in Washington, D.C., on August 9, 1982.

Peter F. Cole,

Secretary, Federal Crop Insurance Corporation.

Approved by:

Robert H. Sindt,

Deputy Manager.

August 8, 1982.

[FR Doc. 82-23397 Filed 8-25-82; 8:45 am]

BILLING CODE 3410-08-M

FEDERAL RESERVE SYSTEM

12 CFR Part 225

[Docket No. R-0363]

Bank Holding Companies and Change in Bank Control, Data Processing, and Electronic Funds Transfer Activities

AGENCY: Board of Governors of the Federal Reserve System.

ACTION: Final rule and interpretation.

SUMMARY: The Board of Governors of the Federal Reserve System is amending its Regulation Y which concerns bank holding companies and changes in bank control, and related interpretation to clarify and expand the scope of permissible data processing activities in which a bank holding company may engage. The revised interpretation describes certain activities the Board considers incidental to permissible data processing and data transmission activities. The new activities include the transmission of data, the provision of data bases, and the provision of data processing hardware in conjunction with permissible software.

EFFECTIVE DATE: September 25, 1982.

FOR FURTHER INFORMATION CONTACT: Richard M. Ashton, Assistant General Counsel (202) 452-3750, or Jennifer Johnson, Senior Attorney (202) 452-3584, Legal Division, Board of Governors of the Federal Reserve System.

SUPPLEMENTARY INFORMATION: Section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) permits bank holding companies to hold shares of "any company the activities of which the Board, after due notice and opportunity for hearing, determines by order or regulation to be so closely related to banking or managing or controlling banks as to be a proper incident thereto."[1] Section 225.4(a)(8) of the Board's Regulation Y currently provides that certain data processing activities are closely related to banking and thus permissible for bank holding companies under section 4(c)(8). In 1971, the Board issued an interpretation, which was amended in 1975 (12 CFR 225.123(e)) and stated, among other things, that bank holding companies may perform certain incidental activities necessary to carry on permissible data processing activities.

I. Background

In 1979, Citicorp, New York, New York, applied to the Board for approval to engage in expanded data processing and data transmission activities, and requested the Board to amend Regulation Y in a manner that would specifically permit Citicorp's proposed activities. The application and proposed amendment to Regulation Y were protested by the Association of Data Processing Service Organizations, Arlington, Virginia ("ADAPSO"), and other interested organizations[2]

[1] In *National Courier Association* v. *Board of Governors of the Federal Reserve System*, 516 F.2d 1229 (D.C. Cir. 1975), the court established guidelines to determine whether a particular activity meets the "closely related to banking" test. Under these guidelines an activity may be found to be closely related to banking if it is demonstrated that banks generally (1) have in fact provided the proposed service; or (2) provide services that are operationally or functionally so similar to the proposed services as to equip them particularly well to provide the proposed service; or (3) provide services that are so integrally related to the proposed service as to require their provision in a specialized form.

[2] Other Protestants to the application were Electronic Data Systems Corporation; ADP Network Services, Inc.; Comshare, Inc.; National CSS, Inc.; Quantum Computer Services, Inc.; Tymshare, Inc.; and On-Line Systems, Inc., which subsequently withdrew from the proceeding.

(collectively "Protestants"). On July 22, 1981, the Board published the proposed amendment for public comment and specifically requested comments from those interested persons who did not wish to participate in the formal hearing.

In accordance with the Board's Rules of Practice for Hearings (12 CFR Part 263), a public administrative hearing on the application and proposed rule was held before an Administrative Law Judge. The Administrative Law Judge also considered all the comments received concerning the proposed amendment from interested persons who did not participate in the hearing.

On March 29, 1982, the Administrative Law Judge, after an evaluation of all of the facts of record in this matter, determined that each of the eight activities proposed by Citicorp is closely related to banking and thus permissible for bank holding companies, and recommended that the Board adopt the proposed amendment to Regulation Y, with certain limitations.

On July 9, 1982, the Board, acting by order, approved Citicorp's application to engage in eight categories of data processing and data transmission activities, finding that each activity, as discussed and limited in the order, is either closely related to banking or a permissible incidental activity.[3]

II. Description of the Amendment and Revised Interpretation

Consistent with its approval of the Citishare application, the Board is adopting the amendment to Regulation Y proposed with the application, with the modifications recommended by the Administrative Law Judge and with other modifications explained below. The amendment will make it permissible for bank holding companies to engage in the data processing and transmission services the Board has approved by order in the *Citishare* case.[4] The Board's findings on the permissibility of the services involved are set forth in detail in the Board's *Citishare* order.

A. Permissible Services for Internal Operations

Currently, under Regulation Y, a bank holding company may provide bookkeeping or data processing services for the internal operations of the holding company or its subsidiaries. The proposed amendment would expand the types of services provided for internal operations to include data transmission, information, and facilities.[5] The Administrative Law Judge recommended adoption of this revision.

With one modification, the Board adopts this recommended amendment. It has not been contested that data processing services for the internal use of a bank holding company are closely related to banking. Indeed, such activities are permissible as servicing activities pursuant to section 4(c)(1)(C) of the Act. The Board is concerned, however, that the term "information" as used in the recommended amendment is vague and does not describe the permissible activities with sufficient specificity. It is apparent from Citicorp's application that the use of the term "information" in the proposed amendment was intended to permit providing access to data bases compiled by the holding company. In order to reduce potential ambiguity concerning permissible activities, the final amendment substitutes the term "data bases" for "information."

B. Permissible Services for Others

Services that may be provided to others under the current regulation are limited to storing and processing permissible data, *i.e.*, banking, financial, and related economic data. The proposed amendment, as modified by the Administrative Law Judge, would permit processing and transmitting permissible data, and providing information and facilities for such data. The proposed amendment would also permit access to such services, information, or facilities by any technologically feasible means. The Administrative Law Judge concluded that data processing and transmission services, as well as providing information and facilities, are closely related to banking within certain limitations that he recommended be adopted.

Protestants object to this finding, arguing that the Administrative Law Judge erred by not applying the *National Courier* tests to the technologies bank holding companies would use to process and transmit permissible data. As explained in the *Citishare* decision, however, the Board has consistently taken the position in previous actions regarding data processing activities that the particular technology by which a data processing activity is provided is not determinative of whether the activity is permissible. In its *Decimus* decision, the Board expressly stated that permissible data processing activities may be provided by any technologically feasible method.[6] In the Board's view, the technology is not an activity in itself but a means of providing services that the record indicates are closely related to banking.

Regulation Y, as amended, therefore, incorporates the Recommended Decision's description of permissible types of services, including the recommended provision that such services be provided by any technologically feasible means. However, for the reasons explained above in connection with internal services, the term "data bases" replaces "information" in the revised regulation.

C. Types of Data

The current regulation permits storing and processing of "banking, financial and *related economic data.*" (Emphasis supplied). The proposed amendment would permit data processing activities with regard to "banking, financial and *economic related data.*" The Administrative Law Judge concluded that this portion of the proposed amendment should be adopted.

Protestants object to this finding, asserting that *economic related data* is too broad a category and includes data that are not closely related to banking. The substance of this objection was repeated by other commentors who did not participate in the administrative proceeding. As stated in the *Citishare* decision, the Board agrees that "economic related data" implies a significant expansion of the type of data permitted to be processed by bank holding companies. The Recommended Decision contains no conclusion or finding that supports such a significant expansion of the type of data permitted to be processed. However, the record in this proceeding supports a finding that banks process *economic* data. Accordingly, the amendment as adopted provides that the designated data processing services are permissible where the data to be processed or furnished are banking, financial, or economic.[7]

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[3] *Citicorp* ("Citishare") 68 *Federal Reserve Bulletin* (July 9, 1982).

[4] These activities are: (1) Data processing through timesharing; (2) on-site data processing; (3) electronic funds transfer and information exchange; (4) home banking; (5) authentication; (6) data processing for the internal operation of Citicorp and its subsidiaries; (7) the sale of by-products of permissible data processing activities, and (8) the sale of excess capacity on data processing and data transmission facilities.

[5] The term data processing "facilities" is defined to include hardware, software, documentation, and operating personnel.

[6] *BankAmerica Corp.* (Decimus Corp.) 66 *Federal Reserve Bulletin* 511, 513 (1980).

[7] Protestants also claim that processing financial and economic data is not closely related to banking because, by definition, such data are not banking data. However, the facts of record indicate that data processing activities of banks today are not limited to banking data but extend to other types of financial and economic data. The Board finds, therefore, under the *National Courier* standards, that processing of "banking, financial and economic data" is closely related to banking.

D. Other Limitations on Permissible Services

As proposed, the amendment to Regulation Y contained no specific limitations on the types of data processing activities permitted. Protestants and the other commentors raised the objection that modern data processing and transmission technologies are such that customers may modify the services and equipment provided to enable the processing of impermissible data. In response to this objection, the Recommended Decision included a limitation in the amendment, which the Board adopts, that all data processing services must be provided pursuant to a written agreement that describes and limits the services to permissible activities. The Board also adopts the Recommended Decision's requirement that all data processing facilities provided by a bank holding company must be designed and marketed for permissilbe data.[8] Moreover, consistent with the Board's finding on this matter in the *Citishare* decision,[9] the amendment also provides that such facilities must also be *operated* for processing and transmitting permissible data. As the Board explained in its order, the data processing industry has the technological capability to limit the use of facilities to permissible data and the Board believes that a bank holding company should take all technical steps necessary to ensure that its facilities are operated only with respect to banking, financial, and economic data.

E. Provision of Hardware

The current regulation does not expressly permit bank holding companies to provide data processing hardware. The proposed amendment would include data processing hardware as part of the facilities permitted to be offered by a bank holding company.

The Administrative Law Judge, finding that it is only questionably economically feasible to offer data processing software without including hardware as part of the service, recommended that Regulation Y be amended expressly to include the provision of hardware under the limitations that such hardware may be offered only in conjunction with software designed and marketed for the processing and transmission of permissible data and that such hardware may not constitute the predominant part of the package. Protestants object to this recommendation asserting that hardware is a separate product from software and that it is not necessary to sell the two products as a package. Other commentors also assert that the provision of data processing hardware is not closely related to banking.

As the Board found in the *Citishare* decision, the record of this proceeding indicates that customers of data processing services require that suppliers provide them with both hardware and software as an integrated package.[10] Where hardware is required to be provided in a specialized form, such as an Automated Teller Machine, its provision meets the third *National Courier* test and is closely related to banking. However, the Board believes that the provision of general purpose hardware is permissible only as an incidental activity. As explained in the *Citishare* decision, the Board believes that a bank holding company may offer general purpose data processing hardware in conjunction with permissible data processing services only if the cost to the bank holding company of such hardware does not exceed approximately 30 per cent of the total cost of the services provided.[11] The amendment adopted by the Board incorporates the limitations on the provision of hardware recommended by the Administative Law Judge, but provides that general purpose hardware provided as a part of a package of data processing services may not constitute more than 30 per cent of any packaged offering.

F. On-site Data Processing Packages

In its *Citishare* decision, the Board found that providing packaged financial systems, including data processing hardware and software, to be installed on the premises of the customer is closely related to banking. Citishare's on-site activities were, however, somewhat limited in scope, since Citishare intended to offer such services to depository or other institutions to perform only banking or banking-related functions, such as check collection or trust department securities recordkeeping. The record on this application and on the proposed amendment was generally restricted to these limited types of on-site data processing services. The Board is concerned that, by its literal terms, the recommended amendment would permit a bank holding company to provide packaged data processing services to *non-depository* institutions to perform *non-banking* related functions. These functions are beyond the scope of the proposal considered by the Board in the Citishare application and the Board has, accordingly, expressed no opinion on the permissibility of such activities. The Board is, therefore, incorporating into its interpretation regarding permissible data processing activities, 12 CFR 225.123(e),[12] a statement that a bank holding company should limit its provision of on-site packaged services to customers that are depository or similar institutions and to providing facilities that perform only banking or banking related functions. This limitation is premised solely on the limited nature of the record before the Board in this proceeding and is not intended to preclude a bank holding company from demonstrating in another case that providing on-site data processing packages to non-depository customers is closely related to banking.

G. Excess Capacity

The sale of excess computer time is currently treated in the Board's data processing interpretation as an incidental activity.[13] The interpretation currently permits a bank holding company to make excess computer time available to anyone so long as the only involvement of the holding company is furnishing the facility and the necessary operating personnel. The proposed amendment would incorporate into Regulation Y a provision permitting the sale of excess capacity on both data processing and data transmission equipment and facilities used in connection with permissible data processing and transmission activities. The Recommended Decision adopted the proposed excess capacity provision but included three limitations on the sale of excess capacity. First, a bank holding company may not purchase data processing equipment solely for the purpose of creating excess capacity. Second, a bank holding company may not sell hardware in connection with excess capacity, and third, a bank

[8] Protestants have raised various other objections to the proposed regulation and the Citishare proposal on the grounds that the activities permitted are not closely related to banking. The Board discussed these objections in detail in its order approving the Citishare proposal and the Board's findings on the objections are specifically incorporated by reference herein.

[9] *Citicorp* ("Citishare") footnote 3, *supra.*

[10] *Citicorp* ("Citishare"), footnote 3, *supra.*

[11] As explained in the *Citishare* decision, the Board expects that in computing relative costs for the purpose of applying this limitation all costs, both direct and indirect, of each component of the package, including the development costs, must be taken into account and the cost of each component will reflect only the cost attributable to that component.

[12] The provisions of the current interpretation concerning the type of data for which processing services may be offered and the development of programs are superseded by provisions in the amended regulation and have been removed.

[13] 12 CFR 225.123(e).

holding company may provide only limited types of software in connection with its sale of excess capacity.[14]

In recommending that the portion of the amendment relating to excess capacity be adopted, the Administrative Law Judge determined that the sale of excess capacity is closely related to banking. Protestants object to this finding and the Board agrees that Protestants are technically correct. The Board believes that providing excess capacity should continue to be treated as a permissible incidental activity. No evidence was introduced in the record of this proceeding that would support a finding that the sale of excess capacity, which under the recommended amendment may be provided for any type of data, is closely related to banking.

Several commentors on the proposed amendment asserted that it is technologically possible to limit the need for excess capacity unless poor planning is involved. These comments also asserted that excess capacity could be created artificially for the purpose of developing an impermissible data processing/communication system. The record of this proceeding shows that data processors that process time-sensitive data must maintain sufficient capacity to meet peak demand and provide back-up capacity in case of equipment failure. Excess capacity necessarily results from these requirements, and the sale of such excess capacity is necessary to reduce costs and remain competitive.[15] The Board believes that the record of this proceeding concerning excess capacity, as discussed in the *Citishare* decision, demonstrates the necessity of the maintenance and sale of excess capacity and its permissibility as an incidental activity. Furthermore, the Board believes that the limitations recommended by the Administrative Law Judge, which the Board adopts, are sufficient to ensure that the sale of excess capacity is limited to a permissible incidental activity. Since the Board has determined that the sale of excess capacity is an incidental and not a closely related activity, the provisions and limitations recommended by the Administrative Law Judge concerning excess capacity are incorporated into the data processing interpretation and replace the existing provisions on excess computer time.

H. By-Products

The sale of by-products of the development of a program for a permissible data processing activity is currently treated in the Board's data processing interpretation as a permissible incidental activity.[16] By-products may be data, software, or data processing techniques or information developed by the bank holding company. The proposed amendment would add a provision to the regulation stating that providing by-products of permissible data processing and transmission services is closely related to banking. Relying on the Board's previous determination that the sale of by-products is an incidental acitivity to permissible data processing, the Administrative Law Judge recommended that Regulation Y be amended to include the sale of any by-products of permissible data processing and transmission activities, so long as the by-products are not designed or appreciably enhanced for the purpose of marketability.

The Board believes the record supports adoption of the Administrative Law Judge's recommendation, but that it is appropriate to continue to treat the sale of by-products in its data processing interpretation as an incidental activity. Accordingly, the by-products provision of the data processing interpretation is revised to incorporate the provisions of the recommended amendment.

I. The Requirement of Separate Bookkeeping

The Administrative Law Judge recommended that the Board include in Regulation Y a separate bookkeeping provision that was not contained in the proposed regulation. Under this recommended provision, where permissible data processing and data transmission activities are provided by a bank holding company subsidiary or related entity, the entity providing the services will have separate books and financial statements and provide these documents to any new or renewal customer who requests financial information.

The Board finds that the recommended provision is appropriate but should not be included as a part of Regulation Y. Section 4(c)(8) of the Bank Holding Company Act requires the Board, in authorizing nonbank activities for bank holding companies, to make two separate determinations. First, the Board must determine that the activity is closely related to banking. Second, the Board must determine whether the public benefits expected from a particular activity outweigh any possible adverse effects, such as unfair competition. In making the closely related to banking finding, the Board may proceed by order or regulation; however, the Board resolves the "public benefits" test on a case-by-case basis. Section 225.4 of Regulation Y designates the nonbanking activities the Board has determined meet the statutory test of being closely related to banking.

The record of this proceeding does not show that the Administrative Law Judge's recommended separate books requirement has any bearing on a determination that the proposed activities are closely related to banking and, accordingly, such a requirement is inappropriate for inclusion in the regulation. However, the Board believes that such a requirement is appropriate to minimize any dangers of adverse competitive effects. Therefore, the Board has determined to include a separate books and financial statements requirement in the revision of its data processing interpretation.

III. Public Comments on the Proposal

The Board received sixty-three comments on the proposed rule, of which thirty-five favored the proposal. The favorable comments, most of which were from banking organizations, asserted that the proposed rule merely reflects the technological developments in the data processing field in the past decade. The commentors also asserted that the services proposed to be provided under the proposed rule are services that banks have always provided to their customers. A few of the favorable comments suggested that the banking industry's involvement in data processing will mean greater innovation and access to the special expertise of banks in financial matters.

Twenty-five comments opposed the proposal, of which twenty-one were from data processing organizations. In addition to generally asserting that the expanded data processing and data transmission activities are not closely related to banking, these data processing organizations asserted that entry of bank holding companies into the field would drive them out of business. These commentors also made four specific assertions concerning adverse effects on competition that would result if bank holding companies were permitted to offer the proposed services. These effects are tying, cross-

[14] These include systems software (*i.e.*, software designed only to control and operate the hardware, not to perform substantive operations), network communications support, and the operating personnel and documentation necessary for the maintenance and use of these facilities.

[15] The *National Courier* court determined that activities that are necessary to the performance of closely related activities are incidental to closely related activities. 516 F.2d at 1241.

[16] Footnote 13. *supra.*

subsidization, manipulation of the stock of data processing companies that banks hold in their portfolios and improper financial leverage.

With the exception of comments concerning the closely relatedness to banking of the proposed services, which are discussed above, the unfavorable comments from the data processing organizations concern adverse competitive effects that may result if bank holding companies engage in the proposed activities. These considerations relate to the public benefits test and, as explained above, the Board must consider the likelihood of the type of anticompetitive consequences raised by the comments with respect to each proposal by a bank holding company to engage in permissible data processing activities.

In addition, the record in this proceeding contains evidence relating to the effect of expanded bank holding company participation in the data processing industry generally and the Administrative Law Judge made explicit findings, which the Board adopts, that expansion of bank holding company data processing activities, as a general matter, is not likely to result in decreased competition, voluntary tying, cross-subsidization or predatory pricing, or undue concentration of resources. These findings, which were based primarily on the highly decentralized structure of the data processing services industry, support the Board's determination that the activities encompassed by the proposed amendment are permissible and appropriate for bank holding companies.

With regard to manipulation of stock and improper financial leverage, the unfavorable commentors provided no indication of exactly what these effects consist of and no evidence that bank holding companies have or are likely to engage in these practices. The Board regards the commentors concerns in this regard to be merely speculative and determines that these comments do not require the Board to disapprove the proposed amendment.

Several banking organizations opposed the amendment asserting that certain aspects of the proposed rule represent a method to circumvent the restrictions on interstate banking. One commentor also stated that the home banking portions of the proposed rule are in conflict with the Electronic Funds Transfer Act, 15 U.S.C. 1601 *et seq.*, the Board's Regulation E, 12 CFR Part 205, and other consumer credit laws.[17]

However, no evidence has been presented that the approved activities would necessarily violate these restrictions or that such activities could not be conducted in compliance with the restrictions against interstate banking or with Regulation E under any circumstances. The Board expects that a bank holding company that has received Board approval to engage in data processing and transmission services covered by the amended regulation will comply with all applicable legal requirements. These considerations do not therefore warrant a decision not to adopt the amendment to Regulation Y.

IV. Regulatory Flexibility Act

The Small Business Administration submitted an opinion that the Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.*, required the preparation of an initial flexibility analysis in conjunction with the notice of proposed rulemaking. The Administrative Law Judge determined that the Regulatory Flexibility Act did not apply to the proposed rule because the initial notice of proposed rulemaking was published before the effective date of that Act.

The Board believes that it is unnecessary to determine whether this rulemaking proceeding preceded the effective date of the Regulatory Flexibility Act. Under section 605(b) of that Act, 5 U.S.C. 605(b), the Act's provisions requiring the preparation of an initial or final flexibility analysis do not apply to any proposed or final rule if the head of the agency certifies that the rule, if promulgated, will not have a significant economic impact on a substantial number of small entities. This amendment clarifies and expands the types of data processing and transmission services that may be engaged in by a bank holding company or its nonbank subsidiaries. As the Administrative Law Judge found, the amendment does not impose any recordkeeping, reporting, or compliance requirement on any entities, including small entities.[18]

Therefore, pursuant to section 605(b) of the Regulatory Flexibility Act, the Board of Governors of the Federal Reserve System certifies that the amendment will not have a significant economic impact on a substantial number of small entities that would be subject to the regulation.

List of Subjects in 12 CFR Part 225

Banks, banking, Holding companies.

Accordingly, pursuant to its authority under sections 4(c)(8), and 5(b) of the Bank Holding Company Act, 12 U.S.C. 1843(c)(8), and 1844(b), the Board of Governors of the Federal Reserve System amends 12 CFR Part 225 as follows:

PART 225—BANK HOLDING COMPANIES AND CHANGE IN BANK CONTROL

I. Section 225.4 amended by revising paragraph (a)(8) to read as follows:

§ 225.4 Nonbanking activities.

(a) * * *

(8)(i) Providing data processing and data transmission services, data bases or facilities (including data processing and data transmission hardware, software, documentation and operating personnel) for the internal operations of the holding company or its subsidiaries;

(ii) Providing to others data processing and transmission services, facilities, data bases or access to such services, facilities, or data bases by any technologically feasible means, where:

(A) Data to be processed or furnished are financial, banking or economic, and the services are provided pursuant to a written agreement so describing and limiting the services;

(B) The facilities are designed, marketed, and operated for the processing and transmission of financial, banking or economic data; and

(C) Hardware in connection therewith is offered only in conjunction with software designed and marketed for the processing and transmission of financial, banking or economic data, and where the general purpose hardware does not constitute more than 30 percent of the cost of any packaged offering.

II. Section 225.123(e) is amended by revising the introductory paragraph, paragraph (e)(1) and (e)(2), and by adding a new undesignated paragraph to follow paragraph (e)(4) to read as follows:

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[17] The comment stated that Regulation E requires written documentation of certain electronic funds transfers and home banking terminals currently in use do not provide such documentation.

[18] The Small Business Administration, supported by Protestants, asserts that the amendment will have a substantial economic effect on nonbank data processing service organizations, many of which are small entities, by permitting large banking organizations, such as Citicorp, to compete with such organizations. A review of the terms, purpose and legislative history of the Regulatory Flexibility Act demonstrates, however, that by applying the Act to a rule with significant economic impact on small entities, Congress meant regulations that directly impose federal recordkeeping, compliance and reporting requirements that may result in potentially unnecessary legal, accounting, and consulting costs on institutions with limited resources. *See* 94 Stat. 1164. The amendment adopted by the Board imposes no such regulatory or reporting requirements.

§ 225.123 Activities closely related to banking

* * * * *

(e) *Data Processing:* In providing packaged data processing and transmission services for banking, financial and economic data for installation on the premises of the customer, as authorized by § 225.4(a)(8)(ii), a bank holding company should limit its activities to providing facilities that perform banking functions, such as check collection, or other similar functions for customers that are depository or other similar institutions, such as mortgage companies. In addition, the Board regards the following as incidental activities necessary to carry on the permissible activities in this area:

(1) Providing excess capacity, not limited to the processing or transmission of banking, financial or economic data on data processing or transmission equipment or facilities used in connection with permissible data processing and data transmission activities, where:

(A) equipment is not purchased solely for the purpose of creating excess capacity;

(B) hardware is not offered in connection therewith; and

(C) facilities for the use of the excess capacity do not include the provision of any software, other than systems software (including language), network communications support, and the operating personnel and documentation necessary for the maintenance and use of these facilities.

(2) Providing by-products of permissible data processing and data transmission activities, where not designed, or appreciably enhanced, for the purpose of marketability.

(3) * * *

* * * * *

In order to eliminate or reduce to an insignificant degree any possibility of unfair competition where services, facilities, by-products or excess capacity are provided by a bank holding company's nonbank subsidiary or related entity, the entity providing the services, facilities, by-products and/or excess capacity should have separate books and financial statements, and should provide these books and statements to any new or renewal customer requesting financial data. Consolidated or other financial statements of the bank holding company should not be provided unless specifically requested by the customer.

By order of the Board of Governors of the Federal Reserve System, effective August 20, 1982.

William W. Wiles,

Secretary of the Board.

[FR Doc. 82-23374 Filed 8-25-82; 8:45 am]

BILLING CODE 6210-01-M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 82-NM-12-AD; Amdt. 39-4444]

Airworthiness Directives; Boeing Model 747 Series Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment adds a new Airworthiness Directive which requires modification of the existing main deck smoke sampling tube on certain Boeing 747 airplanes. This action is necessary to prevent snagging of the rudder cables during hard application of rudder pedal force. A production freighter was found to have a rudder control cable which could snag on the smoke detection tube during limit load application of rudder control. This interference could require excess application of rudder pedal forces and, at worst, loss of rudder control.

DATES: Effective date September 30, 1982. Compliance schedule as prescribed in the body of the AD, unless already accomplished.

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

FOR FURTHER INFORMATION CONTACT: Mr. Owen E. Schrader, Airframe Branch, ANM-120S, Seattle Area Aircraft Certification Office, FAA Northwest Mountain Region, 9010 East Marginal Way South, Seattle, Washington, telephone (206) 767-2516. Mailing address: FAA Northwest Mountain Region, 17900 Pacific Highway South, C-68966, Seattle, Washington 98168.

SUPPLEMENTARY INFORMATION: A proposal to amend Part 39 of the Federal Aviation Regulations to include an AD requiring the modification of the existing main deck smoke sampling tube on certain Boeing airplanes was published in the **Federal Register** on March 22, 1982, (47 FR 12189). The comment period for the proposal closed on April 30, 1982.

The proposal was prompted by a report that a production freighter airplane was found to have a rudder control cable which could snag during limit load application of rudder control and result in excessive pedal forces and, at worst, loss of rudder control. This was attributed to snagging of the rudder cables on the main deck smoke sampling tube during hard application of rudder pedal force.

Boeing has issued Service Bulletin 747-26-2083 which modifies the existing smoke sampling tube to replace a section of it with a new tube rerouted to clear the control cables. Revision 1 to the Service Bulletin was issued to provide alternate rerouting instructions for airplanes with different interior configurations. Production freighter aircraft after line No. 520 have an equivalent change incorporated during manufacturing. Since this condition is likely to exist or develop in other airplanes of the same type design, this AD requires the incorporation of this modification on certain Boeing 747 series aircraft within 1,500 hours time-in-service after the effective date of this AD.

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

The manufacturer requested that the wording of the AD be changed by replacing the phrase "inadvertent rudder hardover" with "excessive rudder pedal forces." The FAA concurs with this change.

One commenter requested a delay in the effective date. The FAA does not concur with this request; sufficient time will have elapsed prior to the effective date of this AD so that no operator will be unduly burdened by it.

It is estimated that 31 airplanes on the U.S. Registry will be affected by this AD, that it will take approximately 4 man hours per airplane to accomplish the required actions, and that the average labor cost will be $40 per man hour. Repair parts are estimated at $50 per airplane. Based on these figures, the total cost impact of the AD is estimated to be $6,510. For these reasons, this rule is not considered to be a major rule under the criteria of Executive Order 12291.

After careful review of the available data, including the comments noted above, the FAA has determined that air safety and the public interest require the adoption of the proposed rule with the changes previously noted.

List of Subjects in 14 CFR Part 39

Aviation safety, Aircraft.

Adoption of the Amendment

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

Boeing: Applies to Model 747 series freighter airplanes as listed in Boeing Service Bulletin No. 747–26–2083, Revision 1, or later FAA approved revisions, certificated in all categories. To prevent the rudder cable from possible hangup on the smoke detection tube, accomplish the following:

A. Within the next 1,500 hours time-in-service after the effective date of this AD, unless previously accomplished, modify the smoke detection tube in accordance with Boeing Service Bulletin No. 747–26–2083, Revision 1, or later FAA approved revision.

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

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

The manufacturer's specifications and procedures identified and described in this directive are incorporated herein and made part hereof pursuant to 5 U.S.C. 552(a)(1).

All persons affected by this directive who have not already received these documents from the manufacturer may obtain copies upon request to Boeing Commercial Airplane Company, P.O. Box 3707, Seattle, Washington 98124. These documents may also be examined at FAA Northwest Mountain Region, 9010 East Marginal Way South, Seattle, Washington.

This amendment becomes effective September 30, 1982.

(Secs. 313(a), 601, and 603, Federal Aviation Act of 1958, as amended (49 U.S.C. 1354(a), 1421 and 1423); Sec. 6(c), Department of Transportation Act (49 U.S.C. 1655)(c)); and 14 CFR 11.89)

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

Issued in Seattle, Washington, on August 16, 1982.

Wayne J. Barlow,

Acting Director, Northwest Mountain Region.

[FR Doc. 82–23337 Filed 8–25–82; 8:45 am]

BILLING CODE 4910–13–M

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14 CFR Part 39

[Docket No. 81–NM–90–AD; Amdt. 39–4445]

Airworthiness Directives; Boeing Model 707/720 Series Airplanes Prior to Line No. 885

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This document amends an existing Airworthiness Directive which required a one-time visual inspection of the wing station 733 production break rib lower outboard and inboard chord for cracks on Boeing Model 707/720 airplanes. This Amendment adds a repetitive inspection requirement to insure that cracks do not progress to the extent that they may degrade the structural capability of the wing below fail-safe limits.

DATE: Effective date September 30, 1982.

ADDRESSES: The applicable service bulletin may be obtained from the Boeing Commercial Airplane Company, P.O. Box 3707, Seattle, Washington 98124, or may be examined at the address shown below.

FOR FURTHER INFORMATION CONTACT: Mr. James W. Hart, Airframe Branch ANM–120S, Seattle Area Aircraft Certification Office, FAA Northwest Mountain Region, 9010 East Marginal Way South, Seattle, Washington, telephone (206) 767–2516. Mailing address: FAA Northwest Mountain Region, 17900 Pacific Highway South, C–68966, Seattle, Washington, 98168.

SUPPLEMENTARY INFORMATION: A proposal to amend Part 39 of the Federal Aviation Regulations to include an Airworthiness Directive amending an existing Airworthiness Directive, T81–06–51, Amendment No. 39–4110, (46 FR 25428; May 7, 1981) was published in the **Federal Register** on December 24, 1981, (46 FR 62466). The proposal was to add a repetitive inspection requirement. The comment period for the proposal closed on January 29, 1982.

The existing Airworthiness Directive, T81–06–51, Amendment No. 39–4110, (46 FR 25428; May 7, 1981) required a one-time visual inspection of the wing station 733 production break rib lower outboard and inboard chords for cracks. This action was necessary because a 21-inch long crack was found in the aft lower outboard wing splice rib chord which resulted in degradation of the structural capability of the wing below fail-safe regulatory requirements. As a result of this inspection, operators reported finding several rib chords with small cracks none of which seriously compromised the strength of the wing. However, analysis and evaluation subsequent to issuing the requirement for a one-time inspection has shown that the cracks were caused by stress corrosion in the 7079–T6 aluminum alloy rib chords. Repetitive inspections are therefore necessary to insure that cracks are discovered before they progress so far as to endanger the structural integrity of the wing.

Description of the inspection procedures and related documents are included in Boeing Service Bulletin A3308, Revision 2, dated July 10, 1981.

Inspections in accordance with D6–44860 (Supplemental Structural Inspection Document for High Time 707/720 Aircraft) which were permitted under the original AD are not acceptable for this Amendment since the much longer inspection intervals for this detail were established for detection of fatigue damage and did not consider the faster crack progression of stress corrosion damage in these parts.

Cracks in the rib chords of the Wing Station 733 production break, if left undetected, could result in degradation of the wing structural capability below fail-safe regulatory requirements.

It is estimated that 279 airplanes on the U.S. Registry will be affected by this AD, that it will take approximately 8 man hours per airplane per year to accomplish the inspections, and that the average labor cost will be $300 per airplane per year, for a total impact of approximately $84,000 per year. For these reasons this rule is not considered to be a major rule under the criteria of Executive Order 12291.

Interested parties have been afforded an opportunity to participate in the making of this amendment.

The ATA commented on behalf of its affected member operator. The operator had no basic objection to the proposal, but suggested a phase-in of the repetitive inspection, allowing one year from the last inspection or 90 days after the effective date of the amendment, whichever occurs later.

The FAA agrees with the suggested phase-in of the repetitive inspections and the proposed rule is revised accordingly.

Another operator commented that its aircraft are on an annual visit maintenance program, but they

suggested that an 18-month interval would be easier to schedule.

Since the one year interval would have minimum impact on their existing maintenance program, the FAA will retain the inspection interval as proposed.

A technical services company representing several business jet operators has commented that longer intervals between inspections should be specified because of low utilization times for the 707/720 fleet.

The FAA disagrees because the inspections are for stress corrosion damage which is primarily time dependent.

Having considered the above comments, the FAA has determined that safety and the public interest require the adoption of the rule with the change previously noted.

List of Subjects in 14 CFR Part 39

Aviation safety, Aircraft.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, § 39.13 of Part 39 of the Federal Aviation Regulations (14 CFR 39.13) is amended by amending Airworthiness Directive T81-06-51 (Amendment 39-4110; 46 FR 25248 dated May 7, 1981) as follows:

1. Revise paragraph 1 to read as follows:

"1. Perform a one-time visual inspection and repeat visual inspections at intervals not exceeding one year, in accordance with Boeing Service Bulletin A3308, Revision 2, dated July 10, 1981, or later revision approved by the Manager, Seattle Area Aircraft Certification Office, FAA Northwest Mountain Region. The first repetitive inspection shall be accomplished within a year of the last inspection (AD 81-06-51) or within 90 days after the effective date of this amendment, whichever occurs later."

2. Delete the following Note:

Note.—Close visual inspection of the forward and aft inboard and outboard lower chords in accordance with D6-44860 (Supplemental Inspection Document) is an approved alternate means of compliance with paragraph 1 above.

The manufacturers specifications and procedures identified and described in this amendment are incorporated herein and made a part hereof pursuant to 5 U.S.C. 552(a)(1).

All persons affected by this directive who have not already received the service document from the manufacturer may obtain copies upon request to The Boeing Company, P.O. Box 3707, Seattle, Washington 98124. These documents also may be examined at FAA Northwest Mountain Region, 9010 East Marginal Way South, Seattle, Washington.

(Secs. 313(a), 601, and 603, Federal Aviation Act of 1958, as amended (49 U.S.C. 1354(a), 1421, and 1423); sec. 6(c), Department of Transportation Act (49 U.S.C. 1655(c)); and 14 CFR 11.89)

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

Issued in Seattle, Washington, on August 16, 1982.

Wayne J. Barlow,

Acting Director, Northwest Mountain Region

[FR Doc. 82-23338 Filed 8-25-82; 8:45 am]

BILLING CODE 4910-13-M

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14 CFR Part 39

[Airworthiness Docket No. 82-ASW-50; Amdt. 39-4441]

Airworthiness Directives; Societe Nationale Industrielle Aerospatiale (S.N.I.A.S.) Model SA 330 Series Helicopters

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD) which requires inspection for evidence of fretting, at the bolted junction of the main bevel gear wheel to its shaft, in certain main gearbox (MGB) assemblies on Aerospatiale Model SA 330 (AS 330) helicopters. The AD is needed to detect fretting which could result in MGB bearing failure from metal particle suspension in the MGB lubricating oil supply. Bearing failure can result in loss of main rotor drive and the need for an emergency landing.

DATES: Effective September 7, 1982. Compliance required as prescribed in body of AD.

ADDRESSES: The applicable service information may be obtained from Aerospatiale, 2701 Forum Drive, Grand Prairie, Texas 75051.

A copy of the service bulletin is contained in the rules docket, Regional Counsel, Southwest Region, Federal Aviation Administration (FAA), P.O. Box 1689, Fort Worth, Texas 76101.

FOR FURTHER INFORMATION CONTACT: C. Christie, Chief, Aircraft Certification Staff, AEU-100, Europe, Africa, and Middle East Region, Federal Aviation Administration, c/o American Embassy, Brussels, Belgium, telephone 513.38.30 or Sam Brodie, Helicopter Policy and Procedures Staff, ASW-110, Federal Aviation Administration, P.O. Box 1689, Forth Worth, Texas 76101, telephone (817) 625-4911, extension 504.

SUPPLEMENTARY INFORMATION: The FAA has determined that there have been reports of fretting in the main gearbox of the Aerospatiale (S.N.I.A.S.) Model SA 330 helicopter. The fretted condition was found during overhaul of the MGB at the bolted junction of the main bevel gear wheel to its shaft. Metal particles produced by fretting can lead to premature bearing failures within the MGB and loss of main rotor drive. Based on these findings, Aerospatiale issued Service Bulletin No. 05.64, dated April 28, 1982, which specifies inspection for evidence of the fretting condition. If evidence is found, the service bulletin specifies the sequential steps necessary to maintain airworthiness of the MGB. The French civil aviation authority subsequently issued French AD No. 82-63-41(B), which specifies compliance with Service Bulletin No. 05.64.

Since this condition is likely to exist or develop on other helicopters of the same type design, an airworthiness directive is being issued which requires inspection and corrective measures corresponding to Aerospatiale (S.N.I.A.S.) Service Bulletin No. 05.64.

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

Approximately 14 aircraft could be affected by the requirements of this AD for an estimated impact of $37,240 or $2,660 per aircraft.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, and Safety.

Adoption of the Amendment

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

Societe Nationale Industrielle Aerospatiale: applies to Model SA 330F, SA 330G, and AS 330J helicopters certificated in all categories and equipped with any dash number of main gearbox (MGB), Part Number (P/N) 330A32.2000, 330A32.3000, 330A32.4000, or 330A32.6000, which has not incorporated Aerospatiale modification No. AMS 330A07.52.171, or

for which the Spectrometric Oil Analysis Procedure (SOAP) is not included in the routine maintenance of the MGB.

Compliance is required as indicated unless already accomplished.

To prevent possible bearing failure within the MGB due to fretting in the main bevel gear wheel-to-shaft junction, accomplish the following:

(a) In accordance with the instructions in paragraphs 1.C(1) and 1.C(2) of Aerospatiale SA 330 PUMA Service Bulletin No. 05.64, dated April 28, 1982, or an FAA approved equivalent, gain access and inspect the bolted junction of the main bevel gear wheel and its shaft inside the MGB for evidence of fretting. Compliance with this inspection is required within the following time periods:

(1) For an overhauled MGB:

(i) Within the next 50 hours' time in service after the effective date of this AD, if the MGB has accumulated 200 hours' or more since overhaul on the effective date of this AD, or

(ii) Before reaching 250 hours' time in service since the last overhaul, if the MGB has accumulated less than 200 hours' time in service since the overhaul on the effective date of this AD.

(2) For an MGB which has not been overhauled:

(i) Within the next 100 hours' time in service after the effective date of this AD, if the MGB has accumulated 1,100 hours' or more time in service on the effective date of this AD, or

(ii) Before reaching 1,200 hours' time in service, if the MGB has accumulated less than 1,100 hours' time in service on the effective date of this AD.

(b) When no evidence of fretting is found during the inspection required by paragraph (a) of this AD, the MGB may be returned to service in accordance with paragraph 1.C(4) of Aerospatiale SA 330 PUMA Service Bulletin No. 05.64 or FAA approved equivalent.

(c) When evidence of fretting is found during the inspection required by paragraph (a) of this AD, before further flight and in accordance with the instructions given in paragraph 1.C(3)(b) of Aerospatiale SA 330 PUMA Service Bulletin No. 05.64 or an FAA approved equivalent, inspect each of the 18 nuts on the bolts joining the main bevel gear wheel to its shaft for rotation/slippage.

Dispose of findings as follows:

(1) When nut rotation/slippage is found, remove the MGB from service before further flight.

(2) When no nut rotation/slippage is found, the MGB may be returned to service with repetitive nut inspections not to exceed 400 hours' time in service since the last inspection.

(d) A special flight permit may be issued, in accordance with FAR 21.197 and 21.199, to operate the helicopter to a base where the requirements of paragraph (c) of this AD may be accomplished.

(e) Equivalent means of compliance must be approved by the Chief, Aircraft Certification Staff, FAA, Europe, Africa, and Middle East Office, c/o American Embassy, Brussels, Belgium.

This amendment becomes effective September 7, 1982.

(Secs. 313(a), 601, and 603, Federal Aviation Act of 1958, as amended (49 U.S.C. 1354(a), 1421, and 1423); Sec. 6(c), Department of Transportation Act (49 U.S.C. 1655(c)); 14 CFR 11.89)

Note.—The FAA has determined that this document involves a regulation that is not considered to be major under Executive Order 12291 or significant under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979). A copy of the final regulatory evaluation prepared for this action is contained in the regulatory docket. A copy of it may be obtained by contacting the person identified under the caption **"FOR FURTHER INFORMATION CONTACT."**

This rule is a final order of the Administrator. Under Section 1006(a) of the Federal Aviation Act of 1958, as amended (49 S.C. 1486(a)), it is subject to review only by the courts of appeals of the United States, or the United States Court of Appeals for the District of Columbia.

Issued in Fort Worth, Texas, on August 12, 1982.

C.R. Melugin, Jr.,

Director, Southwest Region.

[FR Doc. 82-23339 Filed 8-25-82; 8:45 am]

BILLING CODE 4910-13-M

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14 CFR Part 71

[Airspace Docket No. 82-ASW-37]

Designation of Transition Area: Grove, OK

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment will designate a transition area at Grove, OK. The intended effect of the amendment is to provide controlled airspace for aircraft executing a new instrument approach procedure to the Grove Airport, OK. This amendment is necessary to provide protection for aircraft executing RNAV approaches to Runways 18 and 36 and VOR/DME approach using the Neosho VORTAC. Coincident with this action, the airport is changed from visual flight rules (VFR) to instrument flight rules (IFR).

EFFECTIVE DATE: October 28, 1982.

FOR FURTHER INFORMATION CONTACT: Kenneth L. Stephenson, Airspace and Procedures Branch (ASW-535), Air Traffic Division, Southwest Region, Federal Aviation Administration, P.O. Box 1689, Fort Worth, TX 76101, telephone (817) 624-4911, extension 302.

SUPPLEMENTARY INFORMATION:

History

On June 24, 1982, a notice of proposed rulemaking was published in the Federal Register (47 FR 27374) stating that the Federal Aviation Administration proposed to designate the Grove, OK, transition area. Interested persons were invited to participate in this rulemaking proceeding by submitting written comments on the proposal to the Federal Aviation Administration. Comments were received without objections. Except for editorial changes, this amendment is that proposed in the notice.

List of Subjects in 14 CFR Part 71

Control zones and/or transition areas.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me, by the Administrator, Subpart G of Part 71, § 71.181, of the Federal Aviation Regulations (14 CFR Part 71) as republished in Advisory Circular AC 70-3 dated January 29, 1982, is amended, effective 0901 G.m.t. October 28, 1982, as follows:

Grove, OK New

That airspace extending from 700 feet above the surface within a 6.5-mile radius of the Grove Airport (latitude 36°34'14" N., longitude 94°44'19" W.) and within 2 miles each side of the Neosho VORTAC 226° radial extending from the 6.5-mile radius to 7.5 miles northeast of the airport and within 2.5 miles each side of a 180° bearing and 360° bearing from the runway thresholds extending for the 6.5-mile radius to 8.5 miles south and 8.5 miles north of the airport.

(Sec. 307(a), Federal Aviation Act of 1958, as amended (49 U.S.C. 1348(a)); sec. 6(c), Department of Transportation Act (49 U.S.C. 1655(c)); and 14 CFR 11.61(c))

Note.—The FAA determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore: (1) Is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 1103; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. It is certified that the rule will not have a significant economic impact on a substantial number of small entities as the anticipated impact is minimal.

Issued in Fort Worth, TX, on August 17, 1982.

F. E. Whitfield,

Acting Director, Southwest Region.

[FR Doc. 82-23340 Filed 8-25-82; 8:45 am]

BILLING CODE 4910-13-M

14 CFR Part 71

[Airspace Docket No. 82-AWP-18]

Redesignation of Control Zone, Flagstaff, Arizona

AGENCY: Federal Aviation Administration (FAA) DOT.

ACTION: Final Rule; request for comments.

SUMMARY: This amendment redesignates the Control Zone for Pulliam Airport, Flagstaff, Arizona. The Control Zone is necessary to provide controlled airspace for Instrument Flight Rule (IFR) operations.

EFFECTIVE DATE: 0900 GMT, October 28, 1982. Comments on the rule must be received by September 30, 1982.

ADDRESSES: Send comments on the proposal in triplicate to Director, Federal Aviation Administration, Attn: Manager, Airspace and Procedures Branch, AWP-530, 15000 Aviation Boulevard, Lawndale, California 90261. A public docket will be available for examination in the Office of the Regional Counsel, Federal Aviation Administration, 15000 Aviation Boulevard, Lawndale, California 90261; telephone: (213) 536-6270.

FOR FURTHER INFORMATION CONTACT: Mateo M. Palenzuela, Airspace and Procedures Branch, Air Traffic Division, Federal Aviation Administration, 15000 Aviation Boulevard, Lawndale, California 90261; Telephone (213) 536-6182.

SUPPLEMENTARY INFORMATION:

History

The purpose of this amendment to Part 71 of the Federal Aviation Regulations (14 CFR Part 71) is to redesignate a control zone to provide controlled airspace for IFR operations. Due to the controller action of August 3, 1981, it was necessary to temporarily close the airport control tower. Weather observations were also discontinued; therefore, the Control Zone at Pulliam Airport was revoked. Effective July 11, 1982, weather observations are again available between the hours of 5:30 a.m. until 9:30 p.m., seven days a week. The basic requirements of weather observations and communications to the surface having been met, we are redesignating the Pulliam Airport Control Zone in the interest of safety.

Request for Comments on the Rule

Althought this action is in the form of a final rule and was not preceded by notice and public procedure, comments are invited on the rule. When the comment period ends, the FAA will use the comments submitted, together with other available information, to review the regulation. After the review, if the FAA finds that changes are appropriate, it will initiate rulemaking proceedings to amend the regulation. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in evaluating the effects of the rule and determining whether additional rulemaking is needed. Comments are specifically invited on the overall regulatory, aeronautical, economic and energy aspects of the rule that might suggest the need to modify the rule.

The Rule

This amendment to Subpart F of Part 71 of the Federal Aviation Regulations (14 CFR Part 71) designates a control zone at Pulliam Airport, Flagstaff, Arizona. Therefore, I find that notice or public procedure under 5 U.S.C. 553 is impractical and good cause exists for making the rule effective without prior notice and public procedure hereon.

List of Subjects in 14 CFR Part 71

Aviation safety, Control zones.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, § 71.171 of Part 71 of the Federal Aviation Regulations (14 CFR Part 71) as published in Advisory Circular AC-70-3 dated January 29, 1982, is amended effective 0901 G.m.t. October 28, 1982, as follows:

§ 71.171 Flagstaff, Arizona. (Pulliam Airport)

Within a 7-mile radius of Pulliam Airport (latitude 35°08'16"N., longitude 111°40'17"W.) and within 2 miles each side of the Flagstaff VOR 127° radial, extending from the 7-mile radius zone to 10 miles southeast of the VOR. This control zone is effective from 0600 to 2100 hours, local time daily, or during specific dates and times established in advance by a Notice to Airmen which thereafter will be continuously published in the Airport/Facility Directory.

(Secs. 307(a) and 313(a), Federal Aviation Act of 1958 (49 U.S.C. 1348(a), 1354(a); and 1510, Executive Order 10854 (24 FR 9565); sec. 6(c), Department of Transportation Act (49 U.S.C. 1955(c)); and 14 CFR 11.69.)

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

Issued in Los Angeles, California, on August 13, 1982.

H. C. McClure,

Director, Western-Pacific Region.

[FR Doc. 82-23336 Filed 8-25-82; 8:45 am]

BILLING CODE 4910-13-M

14 CFR Part 71

[Airspace Docket No. 82-ASW-56]

Alteration of Control Zone: Clovis, NM

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule; request for comments.

SUMMARY: This amendment alters the control zone at Clovis, NM. This amendment will return to public use airspace no longer required for the protection of aircraft arriving/departing Cannon AFB, Clovis, NM. The amendment is necessary since there is a proposed change in the standard instrument approach procedures (SIAP's) at Cannon AFB, and the new revised approaches will not require the present designated airspace.

DATES:

Effective date—October 28, 1982.

Comments on the rule must be received before October 10, 1982.

ADDRESSES: Send comments on the action in triplicate to: Manager, Airspace and Procedures Branch, Air Traffic Division, Southwest Region: Docket No. 82-ASW-56, Federal Aviation Administration, P.O. Box 1689, Fort Worth, TX 76101.

FOR FURTHER INFORMATION CONTACT: Kenneth L. Stephenson, Airspace and Procedures Branch (ASW-535), Air Traffic Division, Southwest Region, Federal Aviation Administration, P.O. Box 1689, Forth Worth, TX 76101, telephone (817) 624-4911, extension 302.

SUPPLEMENTARY INFORMATION:

History

Federal Aviation Regulation Part 71, Subpart F § 71.171 as republished in Advisory Circular AC 70-3 dated January 29, 1982, contains the description of control zones designated to provide controlled airspace for the benefit of aircraft conducting instrument

flight rules (IFR) activity. Alteration of the control zone at Clovis, NM, will necessitate an amendment to this subpart. A review of the required controlled airspace has revealed that a reduction in the dimensions can be made and adequate protection for aircraft can be provided.

The Rule

This amendment to Part 71 of the Federal Aviation Regulations (14 CFR Part 71) amends the dimensions of the Clovis, NM, control zone. Because this action reduces a burden on the public by releasing controlled airspace, I find that notice and public procedure and publication 30 days before the effective date are unnecessary; however, comments are invited on the rule. When the comment period ends, the FAA will use the comments and any other available information to review the regulation.

List of Subjects in 14 CFR Part 71

Control zones and/or transition areas.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me, § 71.171 of Part 71 of the Federal Aviation Regulations (14 CFR Part 71) as republished in Advisory Circular AC 70–3 dated January 29, 1982, is amended, effective 0901 G.m.t., October 28, 1982, as follows:

Clovis, NM Amended

Within a 6-mile radius of Cannon AFB (latitude 34°22'58"N., longitude 103°19'18"W.); and within 2 miles each side of the Cannon TACAN 038° and 230° bearing extending from the 6-mile radius area to 7.5 miles northeast and southwest of the TACAN.

(Sec. 307(a), Federal Aviation Act of 1958, as amended (49 U.S.C. 1348(a)); sec. 6(c), Department of Transportaton Act (49 U.S.C. 1655(c)); and 14 CFR 11.61(c))

Note.—The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore: (1) Is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 1103; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. It is certified that the rule will not have a significant economic impact on a substantial number of small entities as the anticipated impact is minimal.

Issued in Fort Worth, TX, on August 17, 1982.

F. E. Whitfield,

Acting Director, Southwest Region.

[FR Doc. 82-23341 Filed 8-25-82; 8:45 am]

BILLING CODE 4910-13-M

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Social Security Administration

20 CFR Part 416

[Regulations No. 16]

Supplemental Security Income for the Aged, Blind, and Disabled; Burial Plots and Prepaid Burial Contracts

Correction

In FR Doc. 82–22582, beginning on page 35948 in the issue of Tuesday, August 17, 1982, make the following corrections:

1. On page 35948, middle column, in the 22nd line from the bottom of the page, "special situation" should have read "special situations".

2. On the same page, third column, there was text duplicated. The first nineteen lines are to remain, and the sentence beginning at that line is completed to read as follows: "Therefore, a regulatory flexibility analysis as provided in Pub. L. 96–354, the Regulatory Flexibility Act, is not required." The remaining text between that sentence and the cite for the Catalog of Federal Domestic Assistance Program No. (between line nineteen and line sixty one) is deleted because it repeats portions of the text above it.

3. On page 35949, in § 416.1201(a)(2), line 8, "who is apply" should have read "who is applying". In line 16, "connections with" should have read "connection with".

BILLING CODE 1505-01-M

Assistant Secretary for Housing—Federal Housing Commissioner

24 CFR Part 890

[Docket No. R-82-1012]

Annual Contributions for Operating Subsidy Performance Funding System

AGENCY: Assistant Secretary for Housing—Federal Housing Commissioner, HUD.

ACTION: Interim rule.

SUMMARY: This interim rule amends 24 CFR Part 890 to change the method by which the inflation factor used each fiscal year to update the Allowable Expense Level is developed and to provide for a one-time retrospective adjustment that will permit PHAs to calculate their 1982 operating subsidy eligibility, based on an Allowable Expense Level which compensates for prior year inadequacies.

EFFECTIVE DATE: August 26, 1982.

COMMENT DUE DATE: October 25, 1982.

ADDRESS: Interested persons are invited to submit comments regarding this rule to the Office of General Counsel, Rules Docket Clerk, Room 10278, Department of Housing and Urban Development, 451 Seventh Street, SW, Washington DC 20410. Communications should refer to the above docket number and title. A copy of each comment submitted will be available for public inspection during regular business hours at the above address.

FOR FURTHER INFORMATION CONTACT: J. Milton Slifkin, Fiscal Management Division, Room 4218, Office of Public Housing, Department of Housing and Urban Development, 451 Seventh Street, SW, Washington, DC 20410, telephone (202) 755–7989. This is not a toll-free number.

SUPPLEMENTARY INFORMATION: A major finding of the comprehensive evaluation of the Performance Funding System (PFS) recently completed by Abt Associates was the inadequacy of the inflation factor as it relates to non-utility, non-wage expenses. The study found that some PHAs were relatively underfunded during the years 1977 through 1981 due to the underprediction of the PFS inflation factor based on the Census Bureau Survey of Local Government Wages because it did not adequately reflect inflationary increases in PHA non-utility, non-wage expenses which increased at a higher rate than wages. The study did indicate that the current wage prediction equation did a reasonable job of predicting wage levels.

The Department is therefore amending 24 CFR Part 890 to establish an inflation factor for each PHA which is a weighted average of the Local Government Wage Inflation Factor and the Implicit Price Deflator for State and Local Government Purchases of Goods and Services. The Implicit Price Deflator is developed by the Department of Commerce. HUD will supply the inflation factor to each PHA on a periodic basis. The rule amends 24 CFR Part 890.102 and 105 to incorporate the revised Local Inflation Factor into the procedures used by PHAs to compute their Allowable Expense Levels under the PFS. The Local Inflation Factor has been weighted to reflect the average proportion of wage expenditures to non-wage expenditures (less utilities) for PHAs. In addition, the rule would enable a PHA to apply a one-time retrospective adjustment to its Allowable Expense Level in order to

compensate for the inadequacy of the inflation factor used in the PFS since Federal Fiscal Year 1977. This adjustment will not reduce any PHA's 1981 Allowable Expense Level. However, the retrospective adjustment is not intended to provide additional operating subsidy eligibility for PHA fiscal years prior to those beginning January 1, 1982. Section 890.105(e) of this rule sets forth the procedures to be used by PHAs in applying the adjustment.

The rule is intended to implement provisions of the Department of Housing and Urban Development-Independent Agencies Appropriation Act, 1982, Pub. L. 97–101 and the Urgent Supplemental Appropriations Act of 1982, Pub. L. 97–216, to provide for an increase in PHA operating subsidies based, in part, upon the use of the revised Local Inflation Factor and its retrospective adjustment. In order to implement this change in the PFS during the limited time available in the fiscal 1982 funding cycle, this regulation should be promulgated as an interim rule. Accordingly, the Secretary has determined that notice and prior public procedure are impracticable and contrary to the public interest and that good cause exists for making this rule effective as soon after publication as possible, so that PHAs can incorporate the revised Local Inflation Factor and retrospective adjustment into the calculations of their operating subsidy eligibility for fiscal years beginning January 1, 1982 and thereafter. This is essential so that a PHA will be in a position to prepare an operating budget which reflects the maximum subsidy available and the level of services possible within this amount of subsidy. Issuance of an interim rule provides the most expedient route for making these changes to the PFS, while still allowing adquate opportunity for public comment. Any comments received regarding this rule will be considered by the Department in the adoption of a final regulation.

The Secretary has also determined that, for the reasons stated above, good cause exists for exempting the interim rule from the 30-day delay in effectiveness required by 5 U.S.C. 553(d). In addition, section 7(o)(3) of the Department of HUD Act (42 U.S.C. 3535(o)(3), which provides for a delay in effectiveness for a period of 30 calendar days of continuous session of Congress after publication, has been waived by the Chairmen and Ranking Minority Members of the Senate Committee on Banking, Housing and Urban Affairs, and the House Committee on Banking, Finance and Urban Affairs. Accordingly, the interim rule will become effective on the date set forth above.

This rule does not constitute a "major rule" as that term is defined in Section 1(b) of the Executive Order 12291 on Federal Regulation issued on February 17, 1981. Analysis of the rule indicates that it does not: (1) Have an annual effect on the economy of $100 million or more; (2) cause a major increase in cost or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; or (3) have a significant adverse effect on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

A Finding of No Significant Impact with respect to the environment has been made in accordance with HUD regulation 24 CFR Part 50 which implements Section 102(2)(C) of the National Environmental Policy Act of 1969. The Finding of No Significant Impact is available for public inspection during regular business hours in the Office of General Counsel, Rules Docket Clerk, Room 10278, 451 Seventh Street, SW, Washington, DC 20410.

Pursuant to the provisions of 5 U.S.C. 605(b), (the Regulatory Flexibility Act), the Undersigned hereby certifies that this rule does not have a significant economic impact on a substantial number of small entities since the rule will have an equal effect upon all PHAs.

This rule was not listed in the Department's Semi-Annual Agenda of Regulations published on August 17, 1981 (46 FR 41708) pursuant to Executive Order 12291 and the Regulatory Flexibility Act.

The Catalog of Federal Domestic Assistance program number is 14.146.

List of Subjects in 24 CFR Part 890

Grant programs: housing and community development, Low and moderate income housing, Public housing.

PART 890—ANNUAL CONTRIBUTIONS FOR OPERATING SUBSIDY

Accordingly, 24 CFR Chapter VIII is amended by revising § 890.102(i), and amending 890.105 as follows:

1. Section 890.102(i) is revised to read as follows:

§ 890.102 Definitions.

* * * * *

(i) Local inflation factor. The weighted average percentage increase in local government wages and salaries for the area in which the PHA is located and non-wage expenses based upon the Implicit Price Deflator for State and Local Government Purchases of Goods and Services. This weighted average percentage will be supplied by HUD. HUD anticipates that it will update the Local Inflation Factor each year. This revised Local Inflation Factor shall be applicable to PHA fiscal years beginning January 1, 1982, April 1, 1982, July 1, 1982 and October 1, 1982, and for all future fiscal years thereafter.

* * * * *

2. Section 890.105(b), (d) (1)(iii), (2)(ii), (3)(ii), and (e) is revised to read as follows:

§ 890.105 Computation of allowable expense level.

* * * * *

(b) Computation of formula expense level. The PHA shall compute its Formula Expense Level in accordance with this subsection. The weights of the Formula and the Formula published in the Interim Rule on April 16, 1975, at 40 FR 17008 apply to PHA fiscal years beginning April 1, 1975 and July 1, 1975. The weights of the Formula published in the Final Rule on January 15, 1976, at 41 FR 2344 superseded the weights published in the Interim Rule and were applicable to PHA fiscal years beginning October 1, 1975, January 1, 1976, April 1, 1976, and July 1, 1976. PHAs were notified directly of the updating of the weights of the Formula for subsequent fiscal years. The weights of the Formula and the Formula itself are subject to updating by HUD annually or at any other time. This updating will be accomplished by publication in the **Federal Register**, or by notification given directly to PHAs, whichever is considered appropriate. The resulting amount after application of the revised weights is increased by the Local Inflation Factor.

* * * * *

(d) * * *

(1) * * *

(iii) the sum of the Base Year Expense Level, and paragraphs (d)(1) (i) and (ii) of this section multiplied by the Local Inflation Factor.

(2) * * *

(ii) The sum of the figure equal to the top limit of its Range and Paragraph (d)(2)(i) of this section, multiplied by the Local Inflation Factor. (If the Base Year Expense Level is above the Allowable Expense Level, computed as provided above, the PHA may be eligible for Transition Funding under § 890.106.)

(3) * * *

(ii) The sum of the Allowable Expense Level for the previous budget year plus

paragraph (d)(3)(i) of this section, multiplied by the Local Inflation Factor.

* * * * *

(e) Retrospective adjustment. A PHA may apply a one-time retrospective adjustment to its Allowable Expense Level to compensate for the inadequacy of the inflation factors used in the PFS in the Federal fiscal years 1977 through 1981. This adjustment has the effect of increasing the non-utility portion of the Allowable Expense Level to a level that would have resulted if the proper percentages derived from the combined inflation factor had been used in those years. This adjustment is to be applied to the HUD approved Allowable Expense Level Per Unit Month (PUM) amount for PHA fiscal years beginning January 1, 1981, April 1, 1981, July 1, 1981, or October 1, 1981. Even though the adjustment is termed retrospective, it does not provide additional operating subsidy eligibility for PHA fiscal years prior to those beginning January 1, 1982. This adjustment shall be applied as follows:

(1) A PHA (a) in operation during the PHA fiscal year beginning January 1, 1977, April 1, 1977, July 1, 1977, or October 1, 1977, or (b) which entered into operation subsequent to these fiscal years but before the PHA fiscal year of January 1, 1982, April 1, 1982, July 1, 1982, or October 1, 1982 and which used a comparable PHA's Allowable Expense Level, shall apply the retrospective adjustment percentage provided by HUD.

(2) A PHA which entered operation during the PHA fiscal year beginning January 1, 1978, April 1, 1978, July 1, 1978, or October 1, 1978 but before the PHA fiscal year beginning January 1, 1982, April 1, 1982, July 1, 1982, or October 1, 1982, and which computed its own Allowable Expense Level for purposes of the PFS calculation shall request the appropriate adjustment percentage from HUD which will reflect the number of years the PHA has been in operation. This adjustment percentage shall be applied in accordance with this regulation.

(3) A PHA which enters operation during the PHA fiscal year beginning January 1, 1982, April 1, 1982, July 1, 1982, or October 1, 1982, or thereafter, shall not apply an adjustment since its beginning Allowable Expense Level will properly reflect the Local Inflation Factor.

* * * * *

(Sec. 9, United States Housing Act of 1937 (42 U.S.C. 1437g); Sec. 201(b), Housing and Community Development Act of 1974 (42 U.S.C. 1437 note); Sec. 7(d), Department of HUD Act (42 U.S.C. 3535(d)))

Dated: August 16, 1982.

Philip Abrams,

General Deputy Assistant Secretary for Housing—Deputy Federal Housing Commissioner.

[FR Doc. 82-23392 Filed 8-25-82; 8:45 am]

BILLING CODE 4210-27-M

DEPARTMENT OF DEFENSE

Office of the Secretary

32 CFR Parts 1-39

[DAC 76-34]

Defense Acquisition Regulation

AGENCY: Defense.

ACTION: Final rule.

SUMMARY: This document publishes changes to the Defense Acquisition Regulation contained in the Code of Federal Regulations. The changes are the same as those in Defense Acquisition Circular 76-34. Some of the changes include notice of deviations; deviations from the DAR; small business size determinations and size appeal procedures; corrections to DAC #76-24; Vinson-Trammel Act Modifications; editorial corrections to DAC #76-33; evaluation of bids for multiple awards; contract audit follow-up; cost or pricing data for subcontracts involving foreign governments; corrections to DAC #76-25; special country requests with respect to sales commissions and fees; U.S./Canada Letter of Agreement; lobbying costs; architect-engineer selection approvals; reporting requirements for nonprofit organizations; and editorial changes.

EFFECTIVE DATE: April 27, 1982.

FOR FURTHER INFORMATION CONTACT: J. Brannan, Director, Defense Acquisition Regulatory Council, Room 3C257, Pentagon, Washington, D.C. 20301, Telephone (202) 697-7266.

SUPPLEMENTARY INFORMATION:

Background

The Defense Acquisition Regulation (DAR) is codified in Title 32, Parts 1-39, Volumes I, II, and III, of the Code of Federal Regulations (CFR). The August 1, 1981 revision of the CFR is the most recent edition of that title. It reflects amendments to the 1976 edition of the DAR made by Defense Acquisition Circulars 76-1 through 76-27.

The Department of Defense announced the promulgation of the 1979 CFR edition in the **Federal Register** of December 31, 1979 (44 FR 77158), and also announced at that time that subsequent amendments to the DAR would be published in the **Federal Register.**

Defense Acquisition Circular 76-34

This document contains amendments to the Defense Acquisition Regulation in the form of replacement pages which were included in DAC 76-34, issued April 27, 1982. The following is a summary of the amendments:

Notice of Deviations. DAR 1-109.2 is clarified as to the type of information to be included in the written notice of deviation furnished to offices within the Department of Defense.

Deviations from the DAR. DAR 1-109.2 states that deviations from the DAR or a DoD Directive that affect only one contract or procurement may be made by the Departments. While this is generally true, there are exceptions. Certain clauses that are required by statute, executive order or otherwise specifically reserved as a matter of DoD policy have been exempt from this "one-time" deviation authority. DAR 1-109.2 is therefore modified to emphasize that such exceptions exist and to provide some examples of such provisions.

Small Business Size Determinations and Size Appeal Procedures. DAR Section I, Part 7 has been revised to reflect the size determination procedures published by the Small Business Administration (SBA) as a final rule in the **Federal Register** of 12 January 1981. The changes clarify the basis for computing annual receipts and the treatment to be accorded affiliates, establishing the point of submission of a bid or offer as the point in time for a determination concerning the size status of the offeror, and the role of the SBA Size Appeals Board in determining the eligibility of a concern to be designated as a small business. A change is also made to Classification Code 2076 by including corn as an exception to the employment size standard.

Corrections to DAC #76-24. Editorial corrections are made to DAR coverage issued in Item II, DAC #76-24, dated 28 August 1980.

Vinson-Trammel Act Modifications. The DoD Authorization Act of 1982 repealed the profit limitations of the Vinson-Trammel Act, as codified in 10 USC 2382 and 7300. Based on the Authorization Act, the DAR is being modified to delete the "Excess Profit" coverage. Since contract profit controls during emergency periods are now dependent on presidential action, no new DAR coverage is set forth at this time.

Editorial Corrections to DAC #76-33. Editorial corrections are made to 2-201(a) and 3-501(b)(3) with respect to

requirement for "Jewel Bearings and Related Items Certificate," to re-number the subparagraphs erroneously shown in DAC #76–33.

Evaluation of Bids for Multiple Awards. DAR 3–501 and 7–2003.23 have been revised to permit the use of multiple awards in negotiated actions as well as those which are formally advertised.

Contract Audit Follow-Up. DAR 3–801.2 is revised to require the cognizant auditor to be notified in writing concerning situations where the audit report relates to a canceled or unsuccessful procurement action. Timely compliance with this requirement will assure that the data base is properly limited to those actions subject to follow-up procedures.

Cost or Pricing Data for Subcontracts Involving Foreign Governments. DAR 3–807.4(e) is revised to permit the Secretary or his designee to waive the requirements for subcontractor cost or pricing data if the subcontractor is a foreign government or its agency.

Corrections to DAC #76–25. Editorial corrections are made to DAR coverage issued in DAC #76–25, dated 31 October 1980.

Special Country Requests with Respect to Sales Commissions and Fees. DAR 6–1305.6 is revised to include Venezuela (Air Force) in the list of countries which have indicated that they will not accept a Letter of Offer and Acceptance (LOA) which contains agent's fees or commissions without their prior approval.

U.S./Canada Letter of Agreement. DAR 6–1406.1(a) is revised to reflect an amendment to paragraph 2(a) of the U.S./Canada Letter of Agreement (LOA), dated 27 July 1956, authorized by the Secretary of Defense and a representative of the Government of Canada.

Lobbying Costs. DAR 15–205.51, Lobbying Costs, is amended by the addition of language in paragraph (c) to clarify when communications considered lobbying are allowable.

Architect-Engineer Selection Approvals. DAR 18–402.3 is revised to delete the requirement for approval by the Assistant Secretary of Defense (MRA&L) of contracts exceeding $1 million, since it has been determined the requirement is unnecessary.

Reporting Requirements for Nonprofit Organizations. Defense Acquisition Circular No. 76–30 (Item IV), dated 30 September 1981, established a requirement for reporting of contracts awarded to certain nonprofit organizations; i.e., National Industries for the Blind and National Industries for the Severely Handicapped (NIB/NISH). As a result of determination by the Small Business Administration that reporting requirements, prescribed in DAR 21–400, are no longer necessary, Section XXI, Part 4 is canceled.

Editorial Changes. Editorial changes are included to correct typographical errors or administrative oversight.

Because the Defense Acquisition Regulation concerns agency management, public property, and contracts, it is not necessary to issue proposed rules for public comment. Neither is it necessary to delay the effective date until 30 days after the date of publication of these rules, 5 U.S.C. 533(a) and (d). The amendments became effective on April 27, 1982.

How To Use Replacement Pages

Reproduced at the end of this document are replacement pages from DAC 76–34. The number at the top of each page (for example, 1:7) identifies the page from the Regulation which is being replaced. The number at the bottom of the page is a reference to the last appearing numbered paragraph on that page, or if none shows, on a preceding page. The vertical line in the right margin indicates where the amendment is located.

List of Subjects in 32 CFR Parts 1–39

Government procurement.

Adoption of Amendments

Therefore, the Defense Acquistion Regulation contained in the August 1, 1981 edition of 32 CFR Parts 1–39, Volumes I, II, and III, is amended in the DAR paragraphs indicated by substitution of the replacement pages listed in the table.

DAR paragraph	Replacement pages
VOLUME I	
1–109.2	1:7, 1:8.
1–109.3	1:8.
1–109.4	1:8, 1:8-A.
1–319 (deleted) Reserved	1:34, 1:37 (1:35 and 1:36 removed).
1–701.1	1:104, 1:107.
1–701.5	1:111.
1–703	1:116-A.
1–704.1	1:120.
1–704.3	1:122-B.
1–705.4	1:128.
1–706.3	1:142-C.
1–707.1	1:146.
1–707.2	1:146-B, 1:148.
1–800	1:150.
1–805.4 (deleted) Reserved	1:158.
2–201	2:11.
3–501	3:66-C, 3:67.
3–608.2	3:90.
3–801.2	3:111.
3–807.4	3:126.
6–001.5	6:2.
6–803.2	6:37.
6–1305.6	6:56.
6–1310.3	6:59, 6:60.
6–1403.2	6:69.
6–1406.1	6:74.
6–1406.5	6:118.
6–1406.6	6:119.
6–1406.7	6:130, 6:133
VOLUME II	
7–104.3	7:32.
7–104.11 (deleted) Reserved	7:51.
7–104.14	7:52-B, 7:52-D, 7:53, 7:53-B, 7:54-A, 7:54-B.
7–204.11 (deleted) Reserved	7:194.
7–303.4 (deleted) Reserved	7:231.
7–403.4 (deleted) Reserved	7:259.
7–602.28 (deleted) Reserved	7:288.
7–605.32 (deleted) Reserved	7:327.
7–607.17 (deleted) Reserved	7:339.
7–607.26 (deleted) Reserved	7:339.
7–702.38 (deleted) Reserved	7:360.
7–703.30 (deleted) Reserved	7:363.
7–901.24 (deleted) Reserved	7:388.
7–1909.12 (deleted) Reserved	7:461.
7–1909.25 (deleted) Reserved	7:461.
7–2003.23	7:507.
7–2101.24 (deleted) Reserved	7:535.
15–205.51	15:52-B
VOLUME III	
18–402.3	18:18, 18:18-A.
Section XXI, Part 4 (deleted)	21:30 removed.

Dated: August 20, 1982.

M. S. Healy,

OSD Federal Register Liaison Officer, Washington Headquarters Services, Department of Defense.

BILLING CODE 3810–01–M

zant unified Commander advised of significant deviations effected under this subparagraph (i));

(ii) when a contract clause is set forth in ASPR but not for use verbatim, use of a contract clause covering the same subject matter which is inconsistent with the intent, principle and substance of the ASPR clause or related coverage of the subject matter;

(iii) omission of any mandatory contract clause constitutes a deviation;

(iv) when a Standard, DD, or other form is prescribed by ASPR or a Department of Defense Directive, use of any other form for the same purpose constitutes a deviation;

(v) alteration of a Standard, DD, or other form (other than Departmental forms), except as authorized by ASPR or a Department of Defense Directive constitutes a deviation;

(vi) when limitations are imposed in ASPR or a Department of Defense Directive upon the use of a contract clause, form, procedure, type of contract, or any other procurement action, including but not limited to the making or amendment of a contract, or actions taken in connection with the solicitation of bids or proposals, award, administration or settlement of contracts, the imposition of lesser or greater limitations constitutes a deviation;

(vii) when a policy, procedure, method or practice of conducting procurement actions of any kind at any stage of the procurement process is covered by ASPR, any policy, procedure, method, or practice which is inconsistent with that set forth constitutes a deviation; or

(viii) issuance of any instructions described in 1-108(a) (including an instruction for any additional contract clause, form, or type, or additional procurement policy, procedure, method or practice, not covered in ASPR or in Department of Defense Directives) constitutes a deviation unless permitted under 1-108(a)(i)-(vii).

1-109.2 *Deviations Affecting One Contract or Transaction.*

(a) Deviations from this Regulation or a Department of Defense Directive which affect only one contract or procurement may be made or authorized in accordance with Departmental procedures *provided* (i) such circumstances justify a deviation; and (ii) written notice of such deviation, describing its nature and the basis for its justification, is furnished to each of the following:

The Deputy Under Secretary (Acquisition Management), OUSD(R&E)
Attention: DAR Council — The Pentagon — Washington, D.C. 20301

The Assistant Secretary of the Army (RDA)
Attn: DAR Council Policy Member — The Pentagon — Washington, D.C. 20310

The Assistant Secretary of the Navy (S&L)
Attn: DARS Staff
Crystal Plaza, Bldg. 5 — Washington, D.C. 20360

The Director of Contracting and Manufacturing Policy
Attn: AF/RDC(DAR) — The Pentagon — Washington, D.C. 20330

Executive Directorate, Contract Management
Defense Logistics Agency
Attn: DLA-AA — Cameron Station — Alexandria, Virginia 22314

The Director
National Security Agency
Fort George G. Meade, Maryland 20755

The Director
Defense Communications Agency
Washington, D.C. 20305

The Deputy Director, Operations and Administration
Defense Nuclear Agency
Washington, D.C. 20305

The Director, Logistics Office
Defense Mapping Agency
Bldg. 56, Naval Observatory — Washington, D.C. 20390

Such written notice shall be given in advance of the effective date of such deviations unless exigency of the situation requires immediate action.

(b) Deviations from certain DAR provisions, although affecting only one contract or transaction, are not permitted under (a) above. For example:

(i) revisions required by statute or executive order;

(ii) Section IX, Part 2, except as noted (see 9-202.3(a));

(iii) Section XV, Part 1 (see 15-107(b));

(iv) Section XV, Part 2 (see 15-204(a)); and

(v) Appendix E (see E-218).

1-109.3 *Deviations Affecting More Than One Contract or Contractor.* Except as authorized in 1-109.2, deviations from this Regulation or a Department of Defense Directive will not be effected unless approved in advance by the Deputy Under Secretary of Defense Research and Engineering (Acquisition Management) (DUSD(AM)); *provided*, however that unanimous approval by the members of the DAR Council will constitute approval of the DUSD(AM) of all matters except those involving major policy. Written requests for such approval will be submitted to the DUSD(AM) through the DAR Council as far in advance as exigencies of the situation will permit.

1-109.4 *Deviations Required by Government-to-Government Agreements.* Notwithstanding 1-109.2 and 1-109.3, any deviation from this Regulation that is required in order to comply with a treaty or executive agreement to which the United States is a party is authorized unless the deviation would substantively affect a provision of this Regulation that is based on the requirements of a law enacted after execution of the treaty or executive agreement. In the latter event, the deviation shall, in accordance with Departmental procedures, be referred to the DAR Council for consideration, and the cognizant unified Commander shall be advised of such action. Any procurement action which constitutes a

deviation from a DAR provision based on such a requirement of law shall be held in abeyance pending consideration by the DAR Council. However, if the subject matter of the DAR provision is not covered in such a treaty or executive agreement and it is decided to treat the subject matter of such a DAR provision in the contract, the treatment must be in accord with the intent, principle, and substance of the DAR provision; *provided* that, if such treatment involves a significant deviation from a clause set forth verbatim in this Regulation, the cognizant unified Commander shall be advised.

1-109.5 *Request for Approval of Proposed Deviation.* Request for approval of any deviation shall be forwarded to the approving authority through procurement channels. Each submission shall contain as a minimum:

(i) identification of the ASPR requirement from which deviation is sought;
(ii) a full description of the deviation and the circumstances in which it will be used;
(iii) a description of the intended effect of the deviation;
(iv) a copy of any pertinent document, including forms or clauses and the proposed contractor's request, if any;
(v) a statement of the period of time for which the deviation is needed; and
(vi) detailed reasons supporting the request.

1-110 Reports of Purchases and Contracts. Periodic and special reports on purchases and contracts are prescribed by the Department of Defense. These reports are designed to meet statutory and other Congressional requirements,

1-315 Capital Investment by Contractors. It is DoD policy to encourage contractor capital investment for efficient capability in the research, development and/or production of weapon systems and material. Techniques to support this policy and incentivize contractor capital investment include the DoD profit policy (3-808.2), multi-year procurement (1-332), award fee contracts (3-405.5), and special capital investment incentive provisions (3-815).

1-316 Disclosure of Contractor Performance Data to Other Government Agencies and Foreign Governments. Subject to any applicable security requirements, the Departments shall honor the requests of other Government agencies for readily available information relating to the performance of their prime contractors. The agency requesting the information shall be advised that it will be responsible for any further release of such information. A request from a foreign government for such information should similarly be honored. However, if there is any question as to propriety of divulging the information for any reason, including the security aspect, the reply should be forwarded through appropriate Departmental channels.

1-317 Rental in Lieu of Purchase. There are situations in which the Government's equipment requirements may be more economically filled by rental than by purchase. This is particularly true in the case of certain expensive commercial equipments. The decision to rent rather than purchase must be made on a case-by-case basis, and rental should be used where it is in the Government's interest. The criteria to be considered in each case include the following:

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(i) the Government requirement is of short duration, and purchase would be costlier than rental (generally, long-term rentals should be avoided in the absence of compelling circumstances);

(ii) the probability that the equipment will become obsolete and that replacement within a short period will be necessary;

(iii) the equipment is special or technical, and the lessor will provide the equipment, as well as maintenance and repair services, at a lower cost than would otherwise be available to the Government.

1–318 Contracts Conditioned Upon the Availability of Funds.

(a) *Fiscal Year Contracts.* To effect procurements promptly upon the beginning of a new fiscal year, it may at times be necessary to initiate a procurement properly chargeable to funds of the new fiscal year prior to the availability of such funds. In such instances, the clause in 7–104.91(a) shall be included in the contract. This authority shall be used only for operation and maintenance and continuing services (such as rentals, utilities, and items of supply which are not financed by stock funds) which are necessary for normal operation and for which the Congress consistently appropriates funds.

(b) *Contracts Crossing Fiscal Years.* A one-year requirements or indefinite quantity contract for services funded by annual appropriations may extend beyond the end of the fiscal year current at the beginning of the contract term provided that any specified minimum quantities are certain to be ordered in the fiscal year current at the beginning of the contract term (see 22–107). In this case, the clause in 7–104.91(b) shall be included in the contract. Also, a contract for expert or consultant services entered into in accordance with 22–204.2 and calling for an end product which cannot feasibly be subdivided for separate performance in each fiscal year may cross fiscal years.

(c) *Acceptance of Supplies or Services.* When either of the Availability of Funds clauses is used, the supplies or services shall not be accepted by the Government until funds are available to the contracting officer for the procurement and until the contracting officer has given notice to the contractor (to be confirmed in writing) of such availability. Records will be maintained to insure adequate administrative control of funds.

1–319 Reserved.

[The next page is 1:37.]

1–320 Industry Security. Procedures required to safeguard classified defense information which U.S. contractors, subcontractors, vendors, or suppliers will possess or have access to, are set forth in the Department of Defense Industrial Security Regulation (DoD 5220.22–R), hereinafter referred to as the ISR, and its companion publication, the Department of Defense Industrial Security Manual for Safeguarding Classified Information (DoD 5220.22–M), hereinafter referred to as the ISM, together with supplements and revisions thereto. Procedures for the protection of information covered by foreign classified contracts awarded to U.S. industry and instructions for the protection of U.S. classified information in connection with classified contracts awarded to foreign firms are explained in Section VIII, ISR (also see 9–106).

1–321 Procurements Involving Work To Be Performed in Foreign Countries by United States Contractors.

(a) When a contract which requires work to be performed in a foreign country by personnel of a United States or third country national contractor, is contemplated by a purchasing activity not within the command jurisdiction of the

unified or specified commander involved, coordination shall be effected with the appropriate senior component commander in the country involved. In the event there is no such component command in the country, or the procurement does not pertain to a component command, this action shall be effected through either the unified commander, the unified command representative, or the designated commanding officer of the unified command for that country. Such coordination shall be effected as early as possible, preferably prior to the issuance of the solicitation, but in any event prior to award of a contract. When such coordination is initiated prior to, or at the time of solicitation, the notification should include a copy of the solicitation, and as much of the information listed in (c) as is then available.

(b) The contracting officer shall request the following information from the overseas Commander:

(i) the applicability of any international agreements to the requirement being procured;

(ii) security requirements applicable to the area concerned;

(iii) standards of conduct required to be observed by the prospective contractor and his employees, and any action that may be taken against them in the event required standards are not maintained; and

(iv) requirements pertaining to the use of foreign currencies, including applicability of United States holdings of excess foreign currencies.

(c) The contracting officer shall furnish the overseas Commander the following information prior to any contract performance:

(i) any contractor logistical support desired,

(ii) contract performance period and estimated contract value,

(iii) number and nationality of contractor employees and date of planned arrival of contractor personnel,

(iv) contract security requirements, and

(v) other pertinent information to effect complete coordination and cooperation.

(d) The contract file shall be documented as indicated in 6-903.

(e) In accordance with 11-403.1(b), the contracting officer shall, at the time of negotiation of a contract that is to be performed in a country or area listed in Q-301 (*Appendix Q*), obtain from the appropriate Designated Commanding Officer detailed information concerning the taxes and duties from which the Government of the United States is exempt under the provisions of applicable international agreements or foreign law.

Part 7-Small Business and Small Disadvantaged Business Concerns

1-700 Scope of Part. This Part, which applies only in the United States, its possessions, Puerto Rico, and the Trust Territory of the Pacific Islands, implements the Armed Services Procurement Act, as amended (10 U.S.C. 2301), and the Small Business Act as amended (15 U.S.C. 631 et seq.) and sets forth policy and procedures governing (i) contract awards to small business concerns and small businesses owned and controlled by socially and economically disadvantaged individuals, (ii) relationships with the Small Business Administration (SBA), (iii) small business set-asides, (iv) contracting with the SBA under Section 8(a) of the Small Business Act, and (v) subcontracting with small business concerns and small business concerns owned and controlled by socially and economically disadvantaged individuals.

1-701 Definitions. The definitions of small business concerns and small business concerns owned and controlled by socially and economically disadvantaged individuals are promulgated by the Small Business Administration. Unless otherwise specified, the term small business concern as used herein shall also mean small business concerns owned and controlled by socially and economically disadvantaged individuals. As used throughout this Part, the following terms shall have the meanings set forth below. When a Department is in doubt as to the specific small business definition that should apply to a particular acquisition, advice from the Small Business Administration office having jurisdiction over the geographical area in which the contracting officer is located shall be requested to assist in making a determination.

1-701.1 *Small Business Concern.*

(a) (1) *General Definition.* A small business concern is a concern that is independently owned and operated, is not dominant in the field of operation in which it is bidding on Government contracts, and with its affiliates, can further qualify under the criteria set forth in (2) and (3) below. "*Concern*" means any business entity organized for profit with a place of business in the United States, its possessions, Puerto Rico, or the Trust Territory of the Pacific Islands, including but not limited to an individual, partnership, corporation, joint venture, association, or cooperative. For the purpose of an acquisition of a product or service that could be classified into two or more industries with different size standards, the applicable size standard is that for the industry whose products or services account for the greatest proportion of the contract price.

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(2) *Industry Small Business Size Standards.* In addition to being independently owned and operated, and not dominant in the field of operation in which it is bidding on Government contracts, a small business concern in order to qualify as such must meet the criteria established for the industries set forth below. "*Annual receipts*" means the gross income (less returns and allowances, sales of fixed assets and interaffiliate transactions) of a concern (and its affiliates) from sales of products and services, interest, rents, fees, commissions, and/or from whatever other source derived, as entered on its regular books of account for its most recently completed fiscal year (whether on a cash accrual, completed contracts, percentage of completion, or other acceptable accounting basis) and in the case of a concern subject to U.S. Federal income taxation reported or to be reported to the U.S. Treasury Department, Internal Revenue Service, for Federal income tax purposes. If a concern has been in business less than one year, its annual receipts shall be computed by determining its average weekly receipts for the period in which it has been in business and multiplying such figure by 52. If a concern has been in business less than 3 years, its average annual receipts for the purpose of a size standard based on 3 years' receipts shall be computed by determining its average weekly receipts for the period in which it has been in business and multiplying such figure by 52. If a concern has acquired an affiliate during the applicable accounting period, it is necessary in computing the applicant's annual receipts to include the affiliate's receipts during the entire applicable accounting period, rather than only its receipts during the period in which it has been an affiliate. The receipts of a former affiliate are not included even if such a concern had been an affiliate during a portion of the applicable accounting period. In computing the annual receipts, or average annual receipts, of a concern (not including its affiliates) that has 50 percent or more of its annual receipts attributable to business activity within one of the States and nonforeign areas set forth below, such annual receipts, or average annual receipts shall be reduced by the percentage prescribed for such State or area.

	Percent
Alaska	25.0
Hawaii	12.5
Virgin Islands	10.0
Puerto Rico	7.5
Guam	7.5

a. Construction Industries. For construction, alteration, or repair (including painting and decorating), of buildings, bridges, roads or other real property, as classified in Division C, contract construction, of the Standard Industrial Classification Manual, as amended, the average annual receipts of the concern and its affiliates for its preceding three fiscal years must not exceed $12 million; *provided*, however, that if 75 percent or more (by value) of the work called for by the contract is classified in one of the industries, subindustries, or class of products in the schedule below, it is small if it does not exceed the size standards established therein for such industry. For dredging, the average annual receipts of the concern and its affiliates for its preceding three fiscal years must not exceed $9.5 million and it must perform the dredging of at least 40% of the yardage advertised in the plans and specifications with dredging equipment owned by the bidder or obtained from another small business dredging concern.

c. Nonmanufacturing Industries. For a product not manufactured by the concern submitting a bid or proposal, other than for a construction or service contract, the number of employees of that concern must not exceed 500 persons and, in the case of an acquisition set aside for small business (see 1-706), the concern must agree to furnish in the performance of the contract end items manufactured or produced in the United States, its possessions, Puerto Rico, or the Trust Territory of the Pacific Islands by small business concerns. A small nonmanufacturer responding to small business-small purchase set-asides (1-702(c)) may furnish any domestically produced or manufactured product. In all other instances, a small nonmanufacturer responding in its own name to an unrestricted acquisition and offering the product of a domestic large business shall be eligible for COC consideration. If the product of a large business is supplied, that product and the responsibility of the manufacturer must be acceptable to the contracting office. The SBA certifies the responsibility of the small business dealer, not the responsibility of the manufacturer. However, in the event of equal low bids (2-407.6), preference shall be given to the company offering the product of a small business. On small business set-asides, if the goods to be furnished are wool, worsted, knitwear, duck, or webbing, nonmanufacturers (dealers and converters) shall furnish products that have been manufactured or produced by a small weaver (small knitter for knitwear) and, if finishing is required, by a small finisher. On small business set-asides, if the product to be furnished is thread, nonmanufacturers (dealers and converters) shall furnish thread that has been finished by a small finisher. (Finishing of thread is defined as all "dyeing, bleaching, glazing, mildew proofing, coating, waxing, and other applications required by the pertinent specification, but excluding mercerizing, spinning, throwing, or twisting operations.")

d. Service Industries.

1. Any concern bidding on a contract for services not elsewhere defined in this Section is classified as small if the average annual receipts of the concern and its affiliates for the preceding three fiscal years do not exceed $2 million.

2. Any concern bidding on a contract for engineering services (other than marine engineering services), is classified as small if its average annual receipts for its preceding three fiscal years do not exceed $7.5 million.

3. Any concern bidding on a contract for motion picture production or motion picture services is classified as small if its average annual receipts for its preceding 3 fiscal years do not exceed $8 million.

4. Any concern bidding on a contract for naval architectural and marine engineering services is classified as small if its average annual receipts for its preceding three fiscal years do not exceed $9 million.

5. Any concern bidding on a contract for janitorial and custodial services is classified as small if its average annual receipts for its preceding three fiscal years do not exceed $4.5 million.

6. Any concern bidding on a contract for base maintenance is classified as small if its average annual receipts for its preceding three fiscal years do not exceed $7.5 million. Base maintenance is defined as follows:

> "*Base Maintenance*" means furnishing at an installation within the several States, Commonwealth of Puerto Rico, Virgin Islands, the Trust Territory of the Pacific Islands or the District of Columbia three or more services which may include but are not limited to such maintenance activities as janitorial and custodial services, protective guard services, commissary services, base housing maintenance, fire prevention services, refuse collection services, safety engineering services, messenger services, grounds maintenance and landscaping services, and air conditioning and refrigeration maintenance; *provided*, however, that whenever the contracting officer determines prior to the issuance of bids that the estimated value of one of the foregoing services constitutes more than 50% of the estimated value of the entire contract, the contract shall not be classified as base maintenance but in the industry in which such services is classified.

7. Any concern bidding on contracts for marine cargo handling services is classified as small if its annual receipts do not exceed $7.5 million for the preceding three fiscal years.

8. Any concern bidding on a contract for food services is classified as small if its average annual receipts for its preceding three fiscal years do not exceed $5.5 million.

9. (i) Any concern bidding on a contract for laundry including linen supply, diaper services, and industrial laundering, is classified as small if its average annual receipts for its preceding three fiscal years do not exceed $4 million.

(ii) Any concern bidding on a contract for cleaning and dyeing, including rug cleaning services, is classified as small if its average annual receipts for its preceding three fiscal years do not exceed $1.5 million.

10. Any concern bidding on a contract for computer programming services is classified as small if its average annual receipts for its preceding three fiscal years do not exceed $4 million.

11. Any concern bidding on a contract for flight training services is classified as small if its average annual receipts for its preceding three fiscal years do not exceed $7 million.

12. Any concern bidding on a contract for motorcar rental and leasing services or truck rental and leasing services is classified as small if its average annual receipts for its preceding three fiscal years do not exceed $7 million.

13. Any concern bidding on a contract for tire recapping services is classified as small if its average annual receipts for its preceding three fiscal years do not exceed $4 million. This section applies only to acquisitions requiring the services of tire retreading and repair shops (Standard Industrial Classification Industry No. 7534, Tire Retreading and Repair Shops) and not to acquisitions for the repairing and/or retreading of pneumatic aircraft tires which, by reason of the extent and nature of the equipment and operations required, are considered for size standard purposes to be manufactured within the meaning of Standard Industrial Classification Industry No. 3011, Tires and Inner Tubes.

Classification Code	Industry	Employment Size Standard (Number of Employees)*
	MAJOR GROUP 20—FOOD AND KINDRED PRODUCTS	
2026	Milk, fluid	500
2032	Canned specialties	1000
2043	Cereal breakfast foods	1000
2046	Wet corn milling	750
2052	Cookies and crackers	750
2062	Cane sugar refining	750
2063	Beet sugar	750
2076	Vegetable oil mills, except corn, cottonseed and soybean	1000
2079	Shortening, table oils, margarine and other edible fats and oils, not elsewhere classified	750
2085	Distilled, rectified, and blended liquors	750
	MAJOR GROUP 21—TOBACCO MANUFACTURERS	
2111	Cigarettes	1000
	MAJOR GROUP 22—TEXTILE MILL PRODUCTS	
2211	Broad woven fabric mills, cotton	1000
2261	Finishers of broad woven fabrics of cotton	1000
2271	Woven carpets and rugs	750
2295	Fabrics, not rubberized	1000
2296	Tire cord and fabric	1000
	MAJOR GROUP 26—PAPER AND ALLIED PRODUCTS	
2611	Pulp mills	750
2621	Paper mills, except building paper mills	750
2631	Paperboard mills	750
2646	Pressed and molded pulp goods	750
2654	Sanitary food containers	750
2661	Building paper and building board mills	750
	MAJOR GROUP 28—CHEMICALS AND ALLIED PRODUCTS	
2812	Alkalies and chlorine	1000
2813	Industrial gases	1000
2816	Inorganic pigments	1000
2819	Industrial inorganic chemicals, not elsewhere classified	1000
2821	Plastics materials, synethtic resins, and nonvulcanizable elastomers	750
2822	Synthetic rubber (vulcanizable elastomers)	1000
2823	Cellulose man-made fibers	1000
2824	Synthetic organic fibers, except cellulosic	1000
2833	Medicinal chemicals and botanical products	750
2834	Pharmaceutical preparations	750
2841	Soap and other detergents, except specialty cleaners	750
2865	Cyclic (coal tar) crudes and cyclic intermediates, dyes, and organic pigments (lakes and toners)	750
2869	Industrial organic chemicals, not elsewhere classified	1000
2873	Nitrogenous fertilizers	1000
2892	Explosives	750
	MAJOR GROUP 29—PETROLEUM REFINING AND RELATED INDUSTRIES* **	
2952	Asphalt felts and coatings	750
	MAJOR GROUP 30—RUBBER AND MISCELLANEOUS PLASTICS PRODUCTS	
3011	Tires and innertubes	1000
30111	Passenger car and motorcycle pneumatic tires (casings) ****	
30112	Truck and bus (and off-the-road) pneumatic tires****	
3021	Rubber and plastics footwear	1000
3031	Reclaimed rubber	750

See footnotes at end of list.

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Classification Code	Industry	Employment Size Standard (Number of Employees)*
	MAJOR GROUP 32—STONE, CLAY, GLASS AND CONCRETE PRODUCTS	
3211	Flat glass	1000
3221	Glass containers	750
3229	Pressed and blown glass and glassware, not elsewhere classified	750
3241	Cement, hydraulic	750
3261	Vitreous china plumbing fixtures and china and earthenware fittings and bathroom accessories	750
3275	Gypsum products	1000
3292	Asbestos products	750
3296	Mineral wool	750
3297	Nonclay refractories	750
	MAJOR GROUP 33—PRIMARY METAL INDUSTRIES	
3312	Blast furnaces (including coke ovens), steel works, and rolling mills	1000
3313	Electrometallurgical products	750
3315	Steel wire drawing and steel nails and spikes	1000
3316	Cold rolled sheet, strip and bars	1000
3317	Steel pipe and tubes	1000
3331	Primary smelting and refining of copper	1000
3332	Primary smelting and refining of lead	1000
3333	Primary smelting and refining of zinc	750
3334	Primary production of aluminum	1000
3339	Primary smelting and refining of nonferrous metals, not elsewhere classified	750
3351	Rolling, drawing, and extruding of copper	750
3353	Aluminum sheet, plate and foil	750
3354	Aluminum extruded products	750
3355	Aluminum rolling and drawing, not elsewhere classified	750
3356	Rolling, drawing, and extruding of nonferrous metals, except copper and aluminum	750
3357	Drawing and insulating of nonferrous wire	1000
3398	Metal heat treating	750
3399	Primary metal industries, not elsewhere classified	750
	MAJOR GROUP 34—FABRICATED METAL PRODUCTS, EXCEPT MACHINERY AND TRANSPORTATION EQUIPMENT	
3411	Metal cans	1000
3431	Enameled iron and metal sanitary ware	750
3482	Small arms ammunition	1000
3483	Ammunition except for small arms, not elsewhere classified	1500
3484	Small arms	1000
	MAJOR GROUP 35—MACHINERY, EXCEPT ELECTRICAL	
3511	Steam, gas, and hydraulic turbines; and turbine-generator set units	1000
3519	Internal combustion engines, not elsewhere classified	1000
3531	Construction machinery and equipment	750
3537	Industrial trucks, tractors, trailers and stackers	750
3562	Ball and roller bearings	750
3572	Typewriters	1000
3573	Electronic computing equipment	1000
3574	Calculating and accounting machines, except electronic computing equipment	1000
3585	Air conditioning and warm air heating equipment and commercial and industrial refrigeration equipment	750

See footnotes at end of list.

1-703 Determination of Status as Small Business Concern.

(a) *General.*

(1) *Prior to Solicitation.* If a contracting officer or a small business specialist requires information from SBA concerning the size status of a concern in order to make a determination concerning (i) the initiation of a small business set-aside, or (ii) the forwarding of a small business restricted solicitation to such concern but time considerations preclude obtaining a formal SBA small business size determination, he may request informal advice on the matter from the SBA district office having jurisdiction of the geographical area in which the contracting officer is located. While a contracting officer or a small business specialist may take action on the basis of such informal advice, such advice shall not be binding with respect to the final establishment of the eligibility of a concern as a small business for the purpose of a particular **acquisition**; nor shall it be considered a formal SBA small business size determination (see (b)(3) and (4)).

(2) *Subsequent to Solicitation.* Except as provided in (b) below, the contracting officer shall accept at face value for the particular **acquisition** involved, a representation by the bidder or offeror that it is a small business concern.

(b) *Representation by a Bidder or Offeror.* Representation by a bidder or offeror that it is a small business concern shall be effective, even though questioned in accordance with the terms of this subparagraph (b), unless the SBA, in response to such question and pursuant to the procedures in (3) below, determines that the bidder or offeror in question is not a small business concern. If an **acquisition** calls for more than one item and the solicitation permits bids on any item, all items, or all or none, the offeror must meet the small business size standard for each item it is awarded. If the **acquisition** calls for more than one item and the solicitation requires bids on an all or none basis, the offeror can qualify as small business for such **acquisition** if it meets the size standard for the item accounting for the greatest percentage of the total contract value. The controlling points in time for a determination concerning the size status of a questioned bidder or offeror shall be the date of written representation as a small business submitted, as part of a concern's submission of a bid or offer, to either a contracting officer, if offering as a prime contractor, or to a prime or upper tier subcontractor, if offering as a subcontractor. A representation by a bidder or offeror that it is a small business concern will not be accepted by the contracting officer if it is known that (i) such concern has previously been finally determined by SBA to be ineligible as a small business for the item or service being **acquired**, and (ii) such concern has not subsequently been certified by SBA as being a small business. If SBA has determined that a concern is ineligible as a small business for the purpose of a particular **acquisition**, it cannot thereafter become eligible for the purpose of such **acquisition** by taking affirmative action to constitute itself as small business.

(iii) If the determination of the Chairman, Size Appeals Board, Small Business Administration, on the appeal is not received by the contracting officer within the 30 working day period, it shall be presumed that the SBA District Director's size determination has been sustained.

(iv) Until receipt of the SBA determination of the size status, or expiration of the ten day period (30 days in case of an appeal to the Chairman, Size Appeals Board), whichever occurs first, **contracting** action shall be suspended; however, this suspension shall not apply to any urgent **acquisition** action which the contracting officer determines in writing must be awarded without delay to protect the public interest. The contracting officer's determination shall be placed in the contract file.

(4) *Appeal From Size Determination.* An appeal from a size determination made by an SBA District Director may be taken before the close of business on the fifth working day after the receipt of such decision. Unless such written notice of appeal is received by the SBA Size Appeals Board, Washington, D.C., within this time and the contracting officer has been notified of such appeal prior to award, the appellant will be deemed to have waived its rights of appeal insofar as the pending procurement is concerned.

(5) *Award of Set-Aside Acquisitions.* Except as provided in 3-508.1 or when the contracting officer determines in writing that award must be made without delay to protect the public interest, award will not be made prior to (i) five working days after the bid opening date for **acquisitions** placed through small business restricted advertising, or (ii) the deadline date for submitting a protest set forth in the notification to the apparently unsuccessful offeror(s) for small business set-aside **acquisitions** placed through conventional negotiation.

(c) *Product Classification.*

(1) *Determination by Contracting Officer.* The contracting officer shall determine the appropriate classification of a product or service establishing the small business definition to be used in a specific **acquisition**. If different products or services are being **acquired** on the same solicitation, an appropriate small business size standard shall be established for each product or service. Both the classification and the applicable size standard (number of employees, average annual receipts, etc.), pursuant to 1-701, shall be set forth in each solicitation in excess of $10,000, and in each solicitation of $10,000 or less which is a small business set-aside. The contracting officer's determination shall be final unless appealed in accordance with (2) below.

(2) *Appeal From Classification.* An appeal from a product or service classification determination by a contracting officer must be taken:

(i) not less than 10 working days before the bid opening date or the deadline for submitting proposals or quotations where this date or deadline is more than 30 days after the issuance of the invitation for bids or request for proposals or quotations; or

(ii) not less than five working days before the bid opening date or the deadline for submitting proposals or quotations where this date or deadline is 30 or less days after the issuance of the invitation for bids or request for proposals or quotations.

Such appeals shall be directed to the Chairman, Size Appeals Board, Small Business Administration, Washington, D.C. 20416.

(3) *Action of Size Appeals Board.* The Size Appeals Board will promptly notify the contracting officer of the receipt of a valid appeal and, if possible, will inform the contracting officer prior to the date set for opening of the solicitation of its ruling on the appeal. The SBA decision, if received prior to the opening date, shall be considered final, and solicitations will be modified to reflect such decision, if necessary. Where appropriate, opening dates may be extended. SBA rulings received after the opening date shall not apply to the current **acquisition** but shall apply in future **acquisitions** of the product or service.

1-704 Small and Disadvantaged Business Utilization Officials.

1-704.1 (a) Director of Small and Disadvantaged Business Utilization. The Director of Small and Disadvantaged Business Utilization is responsible for the overall management and direction of the DoD small business, disadvantaged business utilization, and labor surplus area programs and for advising the Secretary of Defense and the Deputy Secretary of Defense in matters relating to these programs. To that end, the Director will provide guidance to the Departments and periodically review the direction and implementation of their activities in promoting contract awards to small business, small disadvantaged business, and labor surplus area concerns.

(b) Director of Small Business and Economic Utilization Policy. The Director of Small Business and Economic Utilization Policy is responsible for the establishment, implementation, and execution of DoD small business and labor surplus area programs. Negotiations with the SBA, the Office of Federal Procurement Policy, the Office of Management and Budget, and other agencies or departments outside the Department of Defense, concerning small business and labor surplus area policy, programs, and DoD goals shall be conducted by the Director of Small Business and Economic Utilization Policy or, with his authorization, by representatives of the Departments. The Director of Small Business and Economic Utilization Policy, on behalf of the Director of Small and Disadvantaged Business Utilization, will provide guidance to the Departments' Directors of Small and Disadvantaged Business Utilization regarding small business and labor surplus area matters.

(c) Director of Disadvantaged Business Utilization Policy. The Director of Disadvantaged Business Utilization Policy is responsible for the establishment, implementation, and execution of the DoD socially and economically disadvantaged business utilization program. Negotiations with the Small Business Administration, the Office of Federal Procurement Policy, the Office of Management and Budget, and other agencies or departments outside the Department of Defense, concerning disadvantaged business

(ii) Navy - Head of a contracting activity or the official in charge of an activity having purchase authority of $10,000 or more, or in charge of a contract administration activity;
(iii) Air Force - Commander of each central procurement activity; the Wing/Base Commander of each local purchasing activity and the Chief of each contract administration activity. In addition, an Executive for Small and Disadvantaged Business Utilization shall be appointed by the Commander of each Major Air Command in the United States, not mandatorily reporting directly to the Commander but having ready access to such person, who will have primary responsibility for the effective implementation of the Air Force small business, small disadvantaged business utilization and labor surplus area program(s) within the Command;
(iv) Defense Logistics Agency - Commanders of Defense Supply Centers, Commanders, Defense Contract Administration Services Regions and Commanders of other DLA contracting activities;
(v) National Security Agency - the Director;
(vi) Defense Communications Agency - the Director;
(vii) Defense Nuclear Agency - the Director;
(viii) Defense Mapping Agency - Director; directors of subordinate components.

A copy of each appointment and termination of appointment of all such specialists shall be forwarded to the appropriate Department or Agency Office of Small and Disadvantaged Business Utilization (1-704.2). In addition to performing that portion of the specific program outlined in (b) below that is normally performed in the activity to which he is assigned, the small and disadvantaged business utilization specialist shall advise the head of the activity and shall perform such additional functions as are prescribed for him in furtherance of the overall small business, small disadvantaged business utilization and labor surplus area programs. A small and disadvantaged business utilization specialist shall be appointed on a full-time basis in all activities having sufficient business or program responsibility to justify such action. When the volume of contracting does not warrant assignment of a full time small and disadvantaged business utilization specialist, an individual shall be appointed as the specialist on a part-time basis. The responsibilities of this assignment shall take precedence over collateral responsibilities.

(b) A small and disadvantaged business utilization specialist (SADBU), appointed pursuant to (a) above, shall: perform the following duties, as determined to be appropriate to the activity by the appointing officer or by the Departmental or Agency Director or Staff Director of Small and Disadvantaged Business Utilization. The SADBU shall:
(i) maintain a program designed to locate capable small business, small disadvantaged business and labor surplus area business sources for current and future acquisitions, through SBA or other methods;
(ii) coordinate inquiries and requests for advice from small business, small disadvantaged business and labor surplus area business concerns on acquisition matters;
(iii) prior to the issuance of solicitations or contract modifications (A) for additional supplies or services in excess of $2,500 which have not been set aside under 1-706.1(c) or (B) for a dissolved small business-small purchase set-aside (1-702(c)), review the contracting officer's justification for either action. In automated contracting systems, such reviews will be accomplished prior to entering the item into the automated system after which no further review of the individual acquisition will be necessary if the automated system is so programmed that any changes in the acquisition of the item satisfy the provisions of 1-702(c), 1-706.1(c) and (f), and 1-706.5(a)(1). Disagreements between the specialist and the contracting officer on proposed set-aside actions for small business (not including small business-small purchase set-asides (1-702(c))) shall be resolved under 1-706.3.
(iv) when small business concerns cannot be given an opportunity to compete because adequate specifications or drawings are not available, unless there are sufficient and valid reasons to the contrary, initiate action, in writing, with appropriate technical and contracting personnel to insure that necessary specifications or drawings for the current or future acquisitions, as appropriate, are available;
(v) review acquisition programs for possible breakout of items suitable for acquisition from small business concerns;
(vi) insure that financial assistance, available under existing regulations, is offered and that requests by small business concerns for proper assistance are not treated as a handicap in the award of contracts. (See Appendix E, Parts 4 and 5.)

(d) It is the policy of the Department of Defense to endeavor to reach agreement with the SBA regarding the responsibility of a small business concern. To assist the SBA and to insure that it has the benefit of the view of the Department, the SBA shall be furnished three copies of the solicitation, one copy of the pertinent drawings and specifications, the preaward survey findings, pertinent technical and financial information, and, if available, the abstract of bids and other pertinent information which supported the contracting officer's determination of nonresponsibility.

(e) SBA field offices will notify the PCO of each case where they (i) plan to issue a Certificate of Competency or (ii) are submitting a case to SBA, Washington, D.C., for approval prior to issuance of a Certificate of Competency, and will provide the contracting officer or his designated representative with a brief written statement citing the reasons for SBA's proposed affirmative action. Prior to final SBA action, the PCO (or the preaward survey activity when authorized to act as his representative) will be afforded an opportunity to meet or communicate with SBA field office representatives and furnish to them new or additional information on the case. Copies of significant data developed by SBA that are pertinent to the case will be available, upon request, to the PCO or his representative at such a meeting or through correspondence. SBA case files may be examined at the meeting and pertinent notes taken by the contracting officer or his representative, but such files will not be released outside of SBA. Personnel from a contracting office or surveying activity who participated in a preaward survey of the prospective contractor or other personnel having cognizance of the survey shall be prepared to discuss with the SBA the basis for the preaward findings. Every effort should be made to resolve any differences between the SBA and the Departments through a complete exchange of preaward information developed by each agency.

(f) If, after complying with (e) above, doubt still exists as to the ability of the contractor to perform, the contracting officer shall request the SBA field office to suspend action and to forward the case to SBA, Washington, D.C. (HQ SBA), for review. If HQ SBA does not concur with the proposed affirmative action of its field office, it will so inform the contracting officer by telephone followed by written confirmation. If HQ SBA concurs with the affirmative

action proposed by its field office, it will so inform the Department or Agency Director or Staff Director of Small and Disadvantaged Business Utilization identified in 1-704.2, providing a brief written statement of reasons for the proposed affirmative action. Within 10 working days after receipt of written confirmation, or such longer periods as may be agreed upon between them, the Department Director of Small and Disadvantaged Business Utilization will inform HQ SBA whether his Department will present a formal appeal to HQ SBA for its consideration prior to its reaching a final decision on the issuance of a COC. Such appeal will be presented to HQ SBA within a maximum of 10 working days after HQ SBA is informed that an appeal will be taken, or at such longer period as may be agreed upon by the Department Director or Staff Director of Small and Disadvantaged Business Utilization and HQ SBA. The 15-day period referred to in (c) shall be automatically suspended when the contracting officer requests SBA to suspend action and forward the request to HQ SBA for review in accordance with this paragraph. If the Department elects to present a formal appeal to HQ SBA, a factual case shall be prepared as expeditiously as possible and processed through departmental channels for approval at the Secretarial level prior to presenting the matter to HQ SBA. Any competent level of review within the Department or Agency may conclude that a formal appeal should not be made and that the contract should be awarded to the small business concern in question without a COC or that a COC should be accepted and the award made. If such action is taken, the contracting officer and HQ SBA shall be advised accordingly. OSD Director of Small and Disadvantaged Business Utilization will be informed by the Department or Agency Director of Small and Disadvantaged Business Utilization of proposed appeals to HQ SBA and a representative of OSD Director of Small and Disadvantaged Business Utilization may join with a Department team on each formal appeal to HQ SBA. Following an appeal, the determination, if affirmative, made by the SBA Associate Administrator relative to Certificate of Competency action shall be considered conclusive, and the contracting officer shall award the contract to the concern without requiring the concern to meet any other requirement of responsibility.

(f) Any contracting action which has been appealed by the SBA representative shall be suspended pending the decision of the Chief of the Contracting Office. If the decision sustains the contracting officer, and if the SBA representative requests further suspension in accordance with (e) above, the suspension shall continue until (i) the SBA appeal is deemed to have been withdrawn (as provided in (e) above), or (ii) the matter is determined by the Secretary of the Department concerned. However, this procedure shall not apply to any particular contracting action that the contracting officer determines must be initiated without delay in order to protect the public interest, and as to which he inserts in the contract file a signed statement of justification approved at a level above the contracting officer. The contracting officer shall promptly give written notice to the SBA representative of any such contracting action initiated.

(g) The Secretary of the Department concerned will have 30 working days to either sustain or deny the appeal for set-aside action. Should it be determined that a decision cannot be made within this time, a later date will be established in writing by the Secretary of the Department concerned to the Administrator, SBA, citing the reasons why additional time is required. A copy of such correspondence will be provided to the Director of Small and Disadvantaged Business Utilization, Office of the Deputy Secretary of Defense.

(h) In those cases where an SBA representative is not assigned or available, and the contracting officer disagrees with the recommendation of the small business specialist regarding a small business set-aside for an individual acquisition or class of acquisitions or a portion thereof and so notifies the small business specialist in writing, or if the small business specialist disagrees with the contracting officer regarding a withdrawal or modification of a set-aside determination, the small business specialist may appeal in writing to the appointing authority (see 1-704.3(a)) for decision. A memorandum of the decision by the appointing authority shall be placed in the contract file. After receipt of a decision from the appointing authority, which shall be final, and if the decision approves the action of the contracting officer, the small business specialist shall forward for information and management purposes complete documentation of the case to the appropriate Departmental Director for Small and Disadvantaged Business Utilization or his designee as identified in 1-704.2.

(i) A signed memorandum of nonconcurrence in a recommended set-aside action or of any withdrawal or modification shall be made and retained in the contract file.

1-706.4 *Reporting for Department of Commerce Procurement Synopsis.* See 1-1003.8.

1-706.5 *Total Set-Asides.*

(a)(1) Subject to the order of precedence established in 1-706.1(a), the entire amount of an individual acquisition or class of acquisitions, including contracts for architectural and engineering services, research, development, test and evaluation, maintenance repair, and construction, except small business-small purchase set-asides (1-702(c)), shall be set aside for exclusive small business participation (1-701.1) if the contracting officer determines that there is a reasonable expectation that (i) offers will be obtained from at least two responsible small business concerns offering the products of different small business concerns and (ii) awards will be made at reasonable prices (1-706.3(a)). Total set-asides shall not be made unless such a reasonable expectation exists (but see 1-706.6 as to partial set-asides). Although past acquisition history of the item or similar items is always important, it is not the only factor to be considered in determining whether a reasonable expectation exists. In making R&D small business set-sides, there must also be a reasonable expectation of obtaining from small business the best scientific and technological sources consistent with the demands of the proposed acquisition for the best mix of cost, performances, and schedules.

(2) Every proposed acquisition for construction, including maintenance and repairs, in excess of $2,500 and under $2 million (except dredging under $1 million) shall be considered individually, as though the Small and Disadvantaged Business Utilization Specialist had initiated a set-aside request, and the procedures of 1-706.3 shall apply.

(3) Every proposed acquisition of $2 million or more for construction, or $1 million or more for dredging, shall be considered on an individual acquisition basis under (1) above.

(b) Contracts for total small business set-asides may be entered into by conventional negotiation or by a special method of contracting known as "Small Business Restricted Advertising." The latter method shall be used wherever possible (see also 3-201.3). Where multiyear contracting procedures are appropriate (see 1-322), total set-asides may be made in connection therewith. Solicitations shall be restricted to small business concerns. Small Business Restricted Advertising, including awards thereunder, shall be conducted in the same way as prescribed for formal advertising in Section II, except that bids and awards shall be restricted to small business concerns. Bids received from firms that do not qualify as small business concerns shall be considered as nonresponsive and shall be rejected.

(c) In acquisitions involving total set-asides for small business, each solicitation shall contain the clause in 7-2003.2. The applicable size standards shall be set forth in Section C of the solicitation.

in the clause. An offeror entitled to receive the award for quantities of an item under the non LSA set-aside portion and who accepts the award of additional quantities under the LSA set-aside portion shall not be requested to accept a lower price because of the increased quantities of the award, nor shall negotiation be conducted with a view to obtaining such a lower price based solely upon receipt of award of both portions of the acquisition. This does not prevent acceptance by the contracting officer of voluntary reductions in price from the low eligible offeror prior to award, acceptance of voluntary refunds (see 1-312), or the changes of prices after award by negotiation of a contract modification.

(2) Offers obtained under the provisions of the set-aside clause from firms eligible for the set-aside portion of the requirement shall be in writing and shall include (i) agreement as to the established set-aside price for the available set-aside quantity, (ii) agreement as to the required delivery, (iii) agreement that all other terms and conditions of the solicitation will apply to the set-aside award, and (iv) agreement to inclusion of the clauses "*Examination of Records by the Comptroller General*" in 7-104.15 and "*Audit by Department of Defense*" in 7-104.41(a).

(3) When the award of the non-set-aside portion has been made to a small business concern and the same small business concern is entitled to receive the set-aside portion of the solicitation, the LSA set-aside portion may be added to the basic contract by supplemental agreement utilizing Standard Form 30. The supplemental agreement shall (i) include a reference to the contractor's letter offering on the set-aside quantity, (ii) state the price and delivery schedule applicable to the set-aside quantity, and (iii) include the clauses "*Examination of Records by the Comptroller General*" in 7-104.15 and "*Audit by Department of Defense*" in 7-104.41(a), applicable to the LSA set-aside portion only. Copies of all pertinent documents, including the signed offer, shall be attached. The supplemental agreement shall be signed by the contracting officer but need not be signed by the contractor since his signature on the attached offer will be deemed sufficient.

(4) When the award for the non-set-aside portion has been made to a firm other than the concern entitled to receive the set-aside portion of the solicitation, award of the set-aside portion will be made utilizing Standard Form 26. The offers obtained and the award utilized shall reference and include the same data indicated in paragraphs (2) and (3) above. Also, the award shall reference in Block 26 of Standard Form 26, the applicable solicitation and the contractor's written offer, and copies of the solicitation and offer shall be attached. The Standard Form 26 shall be signed by the contracting officer but need not be signed by the contractor. The contractor's signature on the attached offer will be deemed sufficient.

For purposes of 21-102 and 21-201, the non-LSA-set-aside portion shall be reported separately.

1-706.8 *Automatic Dissolution of Set-Asides.* If the entire set-aside portion is not procured by the method(s) set forth in 1-706.5, 1-706.6, or 1-706.7, the determination referred to in 1-706.1 is automatically dissolved as to the unawarded portion of the set-aside, and such unawarded portion may be procured by advertising or negotiation as appropriate in accordance with existing regulations (see 3-201.2(b)(ii) and 3-210.3 as to negotiation). Since a considerable

time may have elapsed since the initiation of the requirement, contracting officers, prior to issuing a new solicitation, shall review the required delivery schedule (see 1-305.2) to insure that it is realistic in the light of all relevant factors including the capabilities of small business concerns.

1-707 Subcontracting With Small Business and Small Disadvantaged Business Concerns.

1-707.1 *General.*

(a) Pursuant to Section 8(d) of the Small Business Act (15 U.S.C. 637(d)), it is the policy of the United States that small business concerns, and small business concerns owned and controlled by socially and economically disadvantaged individuals, shall have the maximum practicable opportunity to participate in the performance of contracts let by any Federal agency. For purposes of this part, the term "subcontract" means any agreement (other than one involving an employer-employee relationship) to be entered into by a Federal Government prime contractor or subcontractor calling for supplies or services required for the performance of the original contract or subcontract.

(b) Contract modifications (1-201.2) to contracts which do not contain the clause in 7-104.14(a) and which are within the scope of the contract do not require subcontracting plans. However, a modification which reflects the addition of work beyond the scope of the contract and which is made for administrative convenience when a separate contract would otherwise have been appropriate shall require a subcontracting plan if the criteria of 1-707.3(a) and (b) are met.

(c) The value of options and similar provisions shall be included in determining whether the contract may exceed the dollar threshold for subcontract plans. Such options shall be included in the subcontracting plan.

(d) Letter contracts and similar undefinitized instruments, which would otherwise meet the requirements of 1-707.3(a) and (b), shall contain at least a preliminary basic plan addressing the requirements of 7-104.14(b) and in such cases require the negotiation of the final plan within 90 days after award or before definitization, whichever occurs first.

(e) Due to their unique circumstances, major weapons system acquisition programs, as well as other complex or sensitive acquisitions involving formal source selection procedures, may necessitate the negotiation of subcontracting plans with all firms in a competitive range in order to afford the maximum practicable opportunity for small business and small disadvantaged business concerns participation and

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preserve the integrity of the competitive process. When the simultaneous negotiation of such plans is necessary, the solicitation (i) may require offerors to include proposed subcontracting plans in their initial proposals and (ii) may indicate that subcontracting plans will be negotiated concurrently with cost, technical, and management proposals.

1-707.2 *Review Responsibilities.*

(a) *General.* The clause specified in 1-707.3(a) requires the contractor to afford small business concerns the maximum practicable opportunity to participate in contracts consistent with their efficient performance. The clauses specified in 1-707.3(b) and (c) require the submission of subcontracting plans regarding the contractor's obligation to award subcontracts to small business concerns.

(b) *PCO Responsibilities.*

(1) The PCO shall:

(i) assure that a subcontracting plan is submitted when required.

(ii) determine the adequacy of the subcontracting plan.

(iii) consider the contractor's past compliance with the clause specified in 1-707.3(a) and with subcontracting plans as a factor in determining the contractor responsibility.

(iv) determine any fee payable when an incentive is used in conjunction with the subcontracting plan.

(v) notify the SBA's resident Procurement Center Representative (PCR) of and provide him an opportunity to review solicitations for contracts which will include the clause at 7-104.14(a) and which may exceed $1 million in the case of contracts for construction and $500,000 in the case of all other contracts. The notice shall be issued in sufficient time to provide the resident PCR a reasonable time to review the solicitation prior to its public release.

(vi) notify the resident PCR of and provide him the opportunity to review all proposed subcontracting plans under negotiated contracts, including proposed contract modifications, prior to their acceptance by the PCO. Additionally, the apparent successful offeror's proposal and its supporting documentation, if any, which has been furnished to the Government in the course of the negotiations, shall also be made available to the resident PCR upon request. The notice shall be issued in sufficient time to provide the resident PCR

a reasonable time to review the subcontracting plan proposal and related documents and to submit advisory recommendations to the PCO. Failure of the PCR to respond to the PCO in a reasonable time shall not delay award of the contract.

(vii) upon award of a contract or other contractual action containing a subcontracting plan, provide a copy of the award document (a copy of the DD 350 will suffice) to the Assistant Regional Administrator for Regional Programs in the SBA region where the principal contract performance is to take place and a copy of the plan to the resident PCR.

(viii) negotiate appropriate revisions to previously approved subcontracting percentage and dollar goals if subsequent modifications will have a major impact on the original planned volume or type of subcontracting effort.

(2) Subcontracting plans shall be reviewed by the PCO for adequacy. All plans must include the six elements required by the clause. On negotiated contracts, the adequacy of the plan is determined by the PCO based on the negotiations of each of the six elements. The final plan must be acceptable to the PCO before the award can be made. If, under a formally advertised solicitation, a bidder submits a plan which does not cover each of the six elements, the contracting officer should advise him of the deficiency and request submission of a new plan by a specific date. If, after such notification, the bidder does not submit a complete and responsive plan within the time allotted, the bid should be rejected as nonresponsive. If the plan, although responsive, evidences the bidder's intention not to comply with its obligations under the clause at 7-104.14(a), the contracting officer may find the bidder nonresponsible in accordance with 1-903.

(3) The ACO shall monitor contractor compliance in accordance with 1-406(c)(xlvi) and apprise the PCO. Upon contract completion, if the contractor did not comply in good faith with the subcontracting plan and/or the clause specified in 1-707.3(a), the PCO, based on recommendations from the ACO, shall document the noncompliance in writing and include the reasons. A copy of this documentation shall be provided to the ACO.

(c) *ACO Responsibilities.* The ACO is responsible for assisting in the evaluation of subcontracting plans, and for monitoring, evaluating, and documenting contractor performance under the clause specified in 1-707.3(a) and any subcontracting plan included in a contract. The SADBUS assigned to the contract administration office shall provide the PCO advice and assistance for use in determining the acceptability

of a plan and, through the ACO, shall provide the necessary information and advice to support the PCO, as appropriate, by furnishing:

(i) documentation on a contractor's performance and compliance with subcontract plans under previous contracts;

(ii) information on the extent to which the contractor's goals for small business and small disadvantaged business participation are being met;

(iii) information on whether the contractor's efforts to insure such participation are in accordance with the efforts described in the subcontracting plan;

(iv) information on whether the contractor is requiring its subcontractors to adopt similar subcontracting plans; and

(v) immediate notice if, during performance, the contractor is failing to meet his commitments under the clause at 1-707.3(a) or the subcontracting plan.

(d) *Evaluation of Plans and Performance.* The clauses specified in 1-707.3(b) and (c) require the minimum information goals and assurances that each subcontracting plan shall include. There are no detailed standards which apply to every situation. The PCO's consideration of a plan must reflect the circumstances of the particular acquisition. Factors to consider include—

(i) previous involvement of small business concerns as prime or subcontractors in similar acquisitions;

(ii) methods of involving small business concerns as subcontractors in such acquisitions; and

(iii) the type of records which contractors have maintained to demonstrate the methods by which they intend to meet the goals and requirements of the plan.

(e) *Involvement of the Small Business Administration.* The Small Business Administration is authorized to:

(i) assist both departments and contractors in complying with their responsibilities with regard to subcontracting plans;

(ii) review any solicitation for any contract which is to include the clause required by 1-707.3(b) or (c) to determine whether maximum practicable opportunity has been afforded small and small disadvantaged businesses to participate as subcontractors

in the performance of any contract resulting from any solicitation and to submit its findings, which shall be advisory in nature, to the contracting activity; and

(iii) evaluate compliance with subcontracting plans, either on a contract-by-contract basis or, in the case of contractors having multiple contracts, on an aggregate basis.

The SBA is not authorized to prescribe the extent to which any contractor or subcontractor shall subcontract; specify concerns to which subcontracts shall be granted; or exercise any authority regarding the administration of individual prime contracts or subcontracts. The Office of Minority Small Business and Capital Ownership Development, Small Business Administration, has final authority to determine the eligibility of a concern to be designated as a small disadvantaged business. The SBA Size Appeals Board has final authority to determine the eligibility of a concern to be designated as a small business. The contracting officer, in connection with small business subcontracting requirements, may question the prime contractor concerning a written representation of small business status, or the refusal to accept such written representation by either the prime contractor or a subcontractor, of a concern offering as a subcontractor on a particular acquisition. Other interested parties may also question such representation or refusal. If the matter(s) cannot be resolved, the contractor (prime or sub) is responsible for referring it for a size determination to the SBA Regional Office in which region the concern submitting the written representation has its principal office.

1-707.3 *Required Clauses.* In compliance with the requirements of the Small Business Act, the following clauses, as appropriate, shall be included in prime contracts.

(a) The Utilization of Small Business and Small Disadvantaged Business Concerns clause in 7-104.14(a) shall be included in all contracts exceeding $10,000 except those which, including all subcontracts, will be performed entirely outside any State, territory, or possession of the United States, the District of Columbia, or the Commonwealth of Puerto Rico or those which are for services personal in nature.

(b) The Subcontracting Plan for Small Business and Small Disadvantaged Business Concerns (Negotiated) clause in 7-104.14(b) shall be included in all solicitations for negotiated contracts or modifications (including contracts and modifications placed on a sole source basis) which (i) offer subcontracting possibilities; (ii) are expected to exceed $500,000 or, in the case of contracts for the construction of any public facility, $1 million; and (iii) are required to include the clause in 7-104.14(a). However, the clause at 7-104.14(b) shall not be included in any solicitation which

has been set aside for small business concerns or which requirement is to be procured through the Section 8(a) program.

(c) The Subcontracting Plan for Small Business and Small Disadvantaged Business Concerns (Advertised) clause in 7-104.14(c) shall be included in all solicitations for formally advertised contracts or modifications which (i) offer subcontracting possibilities; (ii) are expected to exceed $500,000 or, in the case of contracts for the construction of any public facility, $1 million; and (iii) are required to include the clause in 7-104.14(a). However, the clause at 7-104.14(c) shall not be included in any solicitation which has been set aside for small business concerns or which requirement is to be procured through the Section 8(a) program.

(d) In determining whether subcontracting possibilities exist, the contracting officer should consider whether firms which are engaged in the business of performing the work or supplying the items to be required under a contract customarily contract with third parties for the specific purpose of performing a part of such work rather than maintaining sufficient in-house capability to perform the work. The existence of subcontracting possibilities may also be affected, but not necessarily negated, by circumstances such as a potential contractor's long-standing contractual relationship with its suppliers or product prequalification requirements for various supplies or components. In those situations where there is a determination that no subcontracting possibilities exist, such determination shall be approved by the chief of the contracting office and placed in the contract file.

(e) The Small Business Act encourages Federal agencies to provide incentives to increase subcontracting opportunities for small business and small disadvantaged business concerns as may be commensurate with the efficient and economical performance of the contract. Various approaches may be used in the development of incentives. They can take many forms, from a fully quantified schedule of payments based on actual subcontract achievement to an award fee approach employing subjective evaluation criteria. In negotiated contracts for which a subcontract plan is required in accordance with 1-707.3(b), contracting officers may include provisions to effect these incentives. Such provisions should normally be negotiated subsequent to reaching agreement upon the subcontract plan. A sample incentive clause is contained in 7-104.14(d). The use of any contractual incentive provision based upon rewarding the contractor monetarily for exceeding goals established in the subcontracting plan must ensure that (i) the goals are realistic and (ii) that any monetary rewards for exceeding the goals must be commensurate with the contractor's efforts which would not otherwise have been expended

(e.g., administrative reclassification by the SBA during performance or uneconomic and unnecessary subcontract decisions to take inappropriate advantage of the incentive).

(f) The small disadvantaged business concern representation in 7-2003.74 shall be included in all solicitations and all contracts which are awarded without reference to a solicitation, other than those involving small purchase. Failure to execute the representation will be deemed a minor informality and the bidder or offeror shall be permitted to satisfy the requirement prior to award.

1-707.4 *Reserved.*
1-707.5 *Reserved.*
1-707.6 *Reserved.*
1-707.7 *Reserved.*

1-708 Women-Owned Business Concerns.

(a) Executive Order 12138 created a National Women's Business Enterprise Policy and prescribed arrangements for developing, coordinating, and implementing a national program for women's business enterprises.

(b) To encourage the use of women-owned businesses in subcontracting, the clause in 7-104.52 shall be included in all contracts expected to exceed $10,000 except (i) contracts which, including all subcontracts thereunder, are to be performed entirely outside the United States, its possessions, Puerto Rico, and the Trust Territory of the Pacific Islands; and (ii) contracts for services which are personal in nature.

Part 8—Labor Surplus Area Concerns

1-800 Scope of Part. This Part sets forth Department of Defense policy and procedures with respect to aiding labor surplus areas in the United States, its possessions, Puerto Rico, and the Trust Territory of the Pacific Islands. This Part implements Defense Manpower Policy No. 4A, 27 Oct 1977 (32A CFR Part 134), and the Small Business Act as amended (15 USC 631), and U.S. Department of Labor Regs (20 CFR Part 654). Defense Manpower Policy No. 4A states the policy of the Government to encourage the placing of contracts and facilities in labor surplus areas and to assist such areas in making the best use of their available resources.

1-801 Definitions.

1-801.1 *Labor Surplus Area Concerns.* The term "labor surplus area concern" means a concern that agrees to perform or cause to be performed a substantial proportion of a contract in labor surplus areas. A concern shall be deemed to perform a substantial proportion of a contract in labor surplus areas if the aggregate costs that will be incurred by the concern or its first tier subcontractors, on account of manufacturing or production performed in labor surplus areas amount to more than 50% of the contract price.

Example A. ABC Company, manufacturing in a labor surplus area, bids on a contract at $1,000. ABC Company will incur the following costs:

Direct labor	$230
Overhead	275
Purchase of materials from RST Company, which manufactures the materials in a full employment area	425

ABC Company qualifies as a substantial labor surplus area concern since it will incur costs in a labor surplus area amounting to more than 50% of the contract price.

1-804.4 *Contract Authority.* Contracts for set-aside made under this Part 8 shall cite as authority 10 U.S.C. 2304(a)(1). For reporting purposes, see 3-201.2(b)(i) for contracts awarded to labor surplus area concerns and 3-201.2 (b)(ii) for contracts awarded to small business concerns which are not labor surplus area concerns.

1-805 Subcontracting With Labor Surplus Area Concerns.

1-805.1 *General Policy.*

(a) It is the policy of the Government to promote equitable opportunities for labor surplus area concerns to compete for defense subcontracts and to encourage placement of subcontracts with concerns which will perform such contracts substantially in labor surplus areas in the order of priority described in 1-802 where this can be done, consistent with efficient performance of contracts, at prices no higher than are obtainable elsewhere.

(b) To more effectively carry out the Government's policy objectives stated in (a) above, prime contractors and subcontractors having labor surplus area subcontracting programs must be informed of (1) the Government's evaluation of their efforts in carrying out an effective labor surplus area subcontracting program, (2) any specific noted deficiencies in their Labor Surplus Area Subcontracting Programs, and (3) any areas of outstanding achievement where they may have exceeded contractual requirements. To motivate a contractor to improve his program, he should be advised in general terms as to the type of actions will result in a reward, penalty, or no impact on profit or fee (see 3-808.5(d)). Any evaluation and remarks to the contractor, including areas of suggested improvement and areas where the contractor has exceeded contractual requirements, must be documented to furnish a basis for evaluation in connection with future awards.

1-805.2 *Labor Surplus Area Subcontracting Program.* The Government's labor surplus area subcontracting program requires Government prime contractors to assume an affirmative obligation with respect to subcontracting with labor surplus area concerns. These obligations are in addition to those required by the minority business enterprise subcontracting program (1-332) and the small business subcontracting program (1-707). In contracts which range from $10,000 to $500,000, the contractor undertakes the simple obligation of using his best efforts to place his subcontracts with concerns which will perform such subcontracts substantially in labor surplus areas where this can be done, consistent with the efficient performance of the contract, at prices no higher than are obtainable elsewhere. This undertaking is set forth in the contract clause prescribed in 1-805.3(a). In contracts which may exceed $500,000, the contractor is required, pursuant to the clause required by 1-805.3(b), to undertake a number of specific responsibilities designed to insure achievement of the objectives referred to above and to impose similar responsibilities on major subcontractors.

1-805.3 *Required Clauses.*

(a) The Utilization of Labor Surplus Area Concerns clause in 7-104.20(a) shall be inserted in all contracts which may exceed $10,000, except:

(1) contracts with foreign contractors which, including all subcontracts thereunder, are to be performed entirely outside the United States, its possessions, Puerto Rico, and the Trust Territory of the Pacific Islands;

(2) contracts for services which are personal in nature;

(3) contracts for construction; and

(4) contracts with the petroleum and petroleum products industry.

(b) The Labor Surplus Area Subcontracting Program clause in 7-104.20(b) shall be included in all contracts which may exceed $500,000, but which contain the clause required by (a) above and which, in the opinion of the purchasing activity, offer substantial subcontracting possibilities. Prime contractors who are to be awarded contracts that do not exceed $500,000, which in the opinion of the purchasing activity offer substantial subcontracting possibilities, shall be urged to accept the clause.

1-805.4 *Reserved.*

1-806 Depressed Industries.

1-806.1 *General.* When an entire industry is depressed, the Director of the Federal Preparedness Agency of the General Services Administration may, under Defense Manpower Policy No. 4A, establish appropriate measures on an industry-wide, rather than on an area, basis. Designations of such industries are made by the Federal Preparedness Agency and such industries will be given special treatment as specified therein. Paragraph 1-806.2 reflects pertinent requirements with respect to the Petroleum and Petroleum Products Industry.

1-806.2 *Petroleum and Petroleum Products Industry. (Notification No. 58).* There shall be no labor surplus area set-asides in this industry.

(B) include in Section L of the solicitation a provision substantially as follows:

MINIMUM ACCEPTANCE PERIOD (1975 MAR)

Offerors allowing less than the number of calendar days specified in the "Offer" portion of SF 33 for acceptance by the Government will be rejected as nonresponsive.

(End of provision)

(xviii) when the contract is to contain a first article approval clause, the statement required by 1-1903;
(xix) any applicable notices of small business or labor surplus area set-asides (see 1-706.6 and 1-804.2);
(xx) the applicable small business size standard and product classification (see 1-701 and 1-703);
(xxi) any offer by the Government to provide Government production and research property for the performance of the contract (see Section XIII, Part 3) (see, for example, 13-202(b));
(xxii) the provision in 7-2003.10 when a "brand name or equal" item is being acquired;
(xxiii) in unusual cases, where bidders are required to have special technical qualifications due to the complexity of the equipment being acquired, or for some other special reason, a statement of such qualifications;
(xxiv) if the solicitation is to include an Industrial Preparedness Production Planning line item, the provision in 7-2003.69 will be included (see 1-2206);
(xxv) in accordance with 3-213.4, insert the Notice of Possible Standardization provision in 7-2003.38;
(xxvi) when the statement of work requires the design, development, or operation of a system of records on individuals for an agency function, insert the provision in 7-2003.72;
(xxvii) for solicitations involving FMS requirements, insert the clause in 7-104.107 concerning special limitations with respect to sales commissions and fees, when required by 6-1305.6;
(xxviii) when the solicitation is subject to an in-house versus contract cost comparison (Section IV, Part 12), include the provision in 7-2003.89(a);
(xxix) insert the solicitation provision at 7-2003.90 requesting the offeror to supply his Data Universal Numbering System (DUNS) Number with his offer;
(xxx) reserved; and
(xxxi) information as to requirements for a Jewel Bearing and Related Items Certificate when required by 1-2207.2.

PROCUREMENT BY FORMAL ADVERTISING

SECTION M - Evaluation Factors for Award.

(i) a statement of the exact basis upon which bids will be evaluated and award made, to include any Government costs or expenditures (other than bid prices) to be added or deducted, or any provisions for economic price adjustment as factors for evaluation. (The amount of any royalty payable under the royalty-sharing provisions of a previously accepted value engineering change proposal incorporated in the solicitation will be considered in evaluating offers when the value engineering change is one of two or more acceptable alternatives under the solicitation.) See also 1-304.3.

(ii) if the solicitation contains an economic price adjustment clause, the provision in 7-2003.23(a);

(iii) when the contracting officer determines that it is necessary to consider the advantages or disadvantages to the Government that might result from making more than one award (multiple awards) (see 2-407.5(iii)), the provision in 7-2003.23(b);

(iv) discount provision (see 2-407.3);

(v) when bids (or proposals) are to be solicited f.o.b. origin only and when requirement exists for transit arrangements at transit point(s) in the United States (excluding Alaska and Hawaii) (see 19-206(a)), the provision in 7-2003.23(c);

(vi) to establish the means the Government will use in f.o.b. origin solicitations in applying transportation costs for evaluation (see 19-208.2(c)), the provision in 7-2003.23(d) (which may be modified to accommodate other methods of transportation);

(vii) when the exact destination is not known (see 19-208.4(a)), the provision in 7-2003.24(a);

(viii) when the exact destination is not known (see 19-208.4(a)), or when f.o.b. origin contracts may result (see 19-209), the provision in 7-2003.24(b);

(ix) when the supplies may be purchased f.o.b. origin (see 19-212), the provision in 7-2003.24(c);

(x) when both f.o.b. origin and f.o.b. destination bids are desired (see 19-104.2(b)), the provision in 7-2003.24(d);

(xi) any provision concerning evaluation or award peculiar to the kind of contract (for example, the provision required by 22-702.1 for laundry and drycleaning services, that required by 22-502 for mortuary services, that required by 22-600.3 and 22-600.4 for the preparation of personal property for shipment or storage and the performance of intra-area movement);

PROCUREMENT BY NEGOTIATION

(xxxvii) when the solicitation is subject to an in-house versus contract cost comparison (Section IV, Part 12), include the clause in 7-2003.89(b);

(xxxviii) insert the solicitation provision at 7-2003.90 requesting the offeror to supply his Data Universal Numbering System (DUNS) Number with his offer;

(xxxix) reserved; and

(xl) information as to requirements for a Jewel Bearing and Related Items Certificate when required by 1-2207.2.

SECTION M - Evaluation Factors for Award.

(i) factors other than price (including technical quality when technical proposals or quotations are requested), which will be given paramount consideration in the awarding of the contract; when an award is to be based upon technical and other factors, in addition to price or cost, the solicitation shall clearly inform offerors of (A) the significant evaluation factors, (B) the relative order of importance the Government attaches to price and all such other factors, and (C) the multiple awards provision in 7-2003.23(b) (see 2-407.5(iii)). Numerical weights, which may be employed in the evaluation of proposals, shall not be disclosed in solicitations;

(ii) statements of information required to enable evaluation of technical and financial capabilities;

(iii) discount provisions (see 2-407.3);

(iv) any provision concerning evaluation or award peculiar to the kind of contract (for example, the provision required by 22-702.1 for laundry and drycleaning services and that required by 22-502 for mortuary services);

(v) if, pursuant to 1-1504, options are to be evaluated for award, the applicable Evaluation of Options provision shall be inserted;

(vi) a statement explaining the evaluation procedure to eliminate the competitive advantage from the rent-free use of Government production and research property (see Section XIII);

(vii) any information pertaining to evaluation and award when first article approval is involved (see 1-1903);

(viii) in a solicitation for supplies of which wool is a component, the Domestic Wool Preference provision in 7-2003.48;

(ix) the appropriate transportation solicitation evaluation provisions in 7-2003.23 and 7-2003.24;

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(x) identification of special factors, such as Government costs or other expenditures, including reliability and maintainability requirements, which must be considered in the evaluation of proposals or quotations (The amount of any royalty payable under the royalty-sharing provisions of a previously accepted value engineering change proposal incorporated in the solicitation will be considered in evaluating offers when the value engineering change is one of two or more acceptable alternatives under the solicitation.); see also 1-304.3;

(xi) when it is determined that transportation costs are not to be evaluated because it is impracticable to do so, the provision in 19-208.4(b).

(c) *Construction Contracts.* Solicitations for negotiated construction contracts shall contain the following information if applicable to the acquisition involved:

(i) requests for proposals number;

(ii) name and address of issuing activity, channels for submission of offer, exact location, including room and building numbers where offers, including a hand-carried offer, must be submitted, and identification of the Government office or individual responsible for supplying additional information and answering inquiries;

(iii) date of issuance;

(iv) closing date and time;

(v) number of pages and list of enclosures;

(vi) requisition or other purchase authority and appropriation and accounting data, if considered appropriate by the contracting activity;

(vii) a brief description of the work to be performed;

(viii) type of contract contemplated, together with type of repricing;

(ix) the time of performance (see 18-805);

(x) bid guarantee, performance bond, and payment bond requirements if any (see Section X, Part 1; 16-401.2(c)(iii)(1); and 18-801). If a bid bond or other form of bid guarantee is required, the solicitation shall include the provision required by 10-102.4;

(xi) a requirement for stipulation of a time within which the Government may accept the proposal;

(xii) consistent with 3-805.1(a)(v), notice to all offerors of the possibility that award may be made without discussion of proposals (All requests for proposals for construction shall contain a provision that in the event several proposals are received and the contracting officer is satisfied that the offerors understand the work and are responsible prospective contractors and that the low proposal is reasonable and does not differ unreasonably from the Government estimate, if any, award may be made to the firm whose proposal is low, without further negotiation.);

(xiii) special provisions necessary for the particular procurement, relating to such matters as progress payments (see Appendix E), patent rights (see 18-908), liquidated damages, or Buy American Act (see 7-2003.65);

(xiv) any applicable wage determinations of the Secretary of Labor (see Section XVIII, Part 7);

(xv) identification of special factors, such as Government costs or other expenditures, including reliability and maintainability requirements, which must be considered in the evaluation of proposals;

(xvi) factors other than price (including technical quality where technical proposals are requested), which will be given paramount consideration in the awarding of the contract;

(xvii) information as to requirements for Certificate of Current Cost or Pricing Data (see 3-807.3);

(xviii) adequate statements of information required to enable evaluation of technical and financial capabilities, and, a statement covering special technical capabilities which the offeror must possess;

(xix) instructions regarding the marking of information which is not to be disclosed to the public or used by the Government for any purpose other than the evaluation of the proposals (see 3-507.1);

(xx) directions for obtaining copies of any documents, such as plans, drawings, and specifications, as well as information as to charge, if any, to be made for drawings and specifications (see 16-401.2(c)(iii)(2)(B));

(xxi) Reserved;

(xxii) description of information required to support proposed prices (subcontract structure, purchasing system, royalty, and cost and price information) (see Section III, Part 8, Section IX, Part 1, and Section XXIII);

(xxiii) a statement of small business set-asides;

(xxiv) required representations regarding small business status;

(xxv) except when a waiver has been granted (see 18-110) prior to solicitation, if the solicitation contains one or more items subject to statutory cost limitation, the *Cost Limitation* provision in 7-2003.27;

(xxvi) provisions for performance of work by contractor, see 18-104 and 2-201(b)(xxxi);

(xxvii) estimated magnitude of the proposed construction, see 18-109, where not provided in a pre-invitation notice (see 18-205);

of paid reimbursement vouchers ordinarily will suffice for the records of the imprest fund cashier.

(j) *Review.* The imprest fund cashier shall be required to account for the established fund at any time, by cash on hand, paid suppliers' receipts, unpaid reimbursement vouchers, and interim receipts for cash. Unannounced inspections, including cash counts are required to be made of each imprest fund at least quarterly by qualified individuals who are under the jurisdiction of the Comptroller or Chief Accounting Officer of the installation, where such positions exist, but in any case by individuals, excluding the disbursing officer advancing the funds and subordinates of the imprest fund cashier.

3–608 Purchase Orders.

3–608.1 *General.*

(a) Negotiated purchases of supplies, nonpersonal services and construction not in excess of $10,000 may be effected by using DD Form 1155 (*Order for Supplies or Services/Request for Quotations*) and its ancillary forms (for construction see also 16–402.2); Standard Form 44 (*Purchase Order - Invoice Voucher*) may also be used for material and nonpersonal services not in excess of $2,500.

(b) The DD Form 1155 provides for the arrangement of information in fixed locations, including sequential numbering of all blocks, and within certain of these blocks a code box for inserting alpha-numeric codes. The uniform arrangement of data and the provision for codes will facilitate manual and automated processing of contractual documents and interchange of information between purchasing offices and contract administration activities.

3–608.2 *Order for Supplies or Services Request for Quotations (DD Forms 1155, 1155r, 1155r–1; Standard Form 36; DD Form 1155c–1 and Standard Form 30).*

(a) *Forms.* The following forms may be used to issue purchase orders:

(i) DD Form 1155 (Order for Supplies or Services/Request for Quotations) which when used with DD Form 1155r in accordance with 3–608.2(b)(1) or with DD Form 1155r–1 in accordance with 3–608.2(b)(2) as appropriate, provides in one document—

(A) a purchase order, a blanket purchase agreement, a delivery order under a contract, or delivery order on Government agencies outside the Department of Defense (see Section V);

(B) a receiving and inspection report;

(C) a property voucher;

(D) a public voucher; and

(E) a document for acceptance by the supplier.

(ii) Standard Form 36 (Continuation Sheet) provides additional space or a blank sheet of paper may be used;

(iii) DD Form 1155c–1 (Commissary Continuation Sheet) (for use on optional basis), provides columns suited for commissary procurements; and

(iv) Standard Form 30 (Amendment of Solicitation/Modification of Contract) shall be used in all modifications to DD Form 1155 (see 3–608.4).

The foregoing forms may be used as snap-out manifold forms, as cut sheets, or as reproducible masters. In addition, DD Form 1155r or DD Form 1155r–1 may be printed on the reverse of DD Form 1155.

(b) *Conditions for Use.*

(1) *Use as a Purchase Order of Not More Than $10,000 in the United States, its Possessions, and Puerto Rico.* DD Form 1155 is authorized for negotiated purchases of not more than $10,000 within the United States, its possessions, and Puerto Rico, *provided:*

(i) The procurement is unclassified, except that DD Form 1155 may be used for classified procurements if:

(A) the Military Security Requirements clause in 7–104.12 is inserted in the Schedule;

(B) DD Form 254 (Contract Security Classification Specification) (see 16–811) is incorporated in the purchase order; and

(C) the contractor's acceptance of the purchase order is obtained by use of DD Form 1155r at the time of issuance of the order.

(ii) No clause covering the subject matter of any clause set forth in this Regulation, other than clauses on DD Form 1155r (see also 16–303) and clauses referred to in (iii) through (xxxi) below, in 3–608.3, 3–608.4, 14–302, 14–303, 14–304, and 14–306(c), is to be used.

(iii) When the contract specifies the delivery of data, one of the clauses in 7–104.9 shall be added as appropriate in accordance with the instructions contained in Section IX, Part 2.

(iv) When required by Section VI, Part 4, the *Communist Areas* clause in 7–103.15 shall be added.

(v) When required, the *Extent of Quantity Variation* clause in 7–103.4(b) shall be added.

(vi) Reserved.

(vii) The *Material Inspection and Receiving Report (MIRR)* clause shall be inserted in the Schedule as provided by 7–104.62 when the purchase is to be assigned to another activity for administration. The clause may also be inserted when otherwise desired by the purchase office.

(viii) When Government property having an acquisition cost in excess of $50,000 is to be furnished (for use in performance of contract or for repair), the appropriate Government Property clause or clauses in 7–104.24 shall be inserted in the Schedule. When Government property having an acquisition cost not in excess of $50,000 is to be furnished for use in performance of the contract or for repair, the Government-Furnished Property (Short Form) clause in 7–104.24(f) shall be inserted in the Schedule; *provided* that use of the clause shall be optional when the acquisition cost of property furnished for repair is not in excess of $10,000. When a Government Property clause is inserted in the Schedule, the contractor's signature shall be obtained on DD Form 1155r.

(ix) When the contract is for Military Assistance Program items, the "United States Products (Military Assistance Program)" certificate

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(ii) the preparation of independent estimates by competent technical personnel.

Occasionally, differences of opinion will exist not only on the reasonableness of cost projections but also on the accounting techniques on which they are based. In addition, it is normally not possible to negotiate a pricing result which is in strict accord with all of the opinions of all of the specialists, or even with the Government's pricing objective. Reasonable compromises are normally necessary and this fact must be understood by all members of the team. For all of these reasons audit reports or pricing recommendations by others must be considered to be advisory only. The contracting officer is responsible for the exercise of the requisite judgments and is solely responsible for the final pricing decision. When the contracting officer does not adopt audit or other specialist recommendations that have particular significance on the contract price, comments should be included in the record of the negotiation.

(e) Whenever it becomes apparent to the contracting officer that the negotiations will require the resolution of complex problems which involve items significant in amount, he shall request attendance by audit or other representatives at the negotiation meeting.

(f) Contracting offices shall cover the disposition of each audit report as follows:

(i) For the audit report where the procurement action was finalized, the cognizant auditor shall be notified in accordance with the requirement of 3-811.

(ii) For those situations where the audit report is related to a cancelled or unsuccessful procurement action, the cognizant auditor shall be notified in writing.

3–801.3 *Responsibility of Requirements and Other Logistics Personnel in Purchasing Offices.* Personnel other than the contracting officer, who determine type, quality, quantity, and delivery requirements for items to be purchased, can influence the degree of competition obtainable and exert a material effect upon prices. Failure to determine requirements in sufficient time to allow:

(i) a reasonable period for preparation of requests for proposals;

(ii) preparation of quotations by offerors;

(iii) contract negotiation and preparation; or

(iv) adequate manufacturing lead time,

causes delays in deliveries and uneconomical prices. Requirements issued on an urgent basis or with unrealistic delivery schedules should be avoided since they generally increase prices or restrict desired competition.

3–801.4 *Responsibility of Pricing Personnel in Purchasing Office.*

(a) The contract pricing team available to support the PCO in the review and analysis of pricing proposals includes the price analyst, negotiator, buyer, project engineer, and liaison auditor at the purchasing office.

(b) The price analyst or negotiator supporting the contracting officer may be designated to develop a Government pricing objective prior to the negotiation. This includes the responsibility for determining the extent of advice required from other specialists, requesting, obtaining, and considering such advice, and for consolidating pricing data, including cost and price analyses, historical cost or pricing data, independent government cost estimates, economic analyses and the like. The advice and assistance of the price analyst/negotiator should always be obtained when complex pricing techniques are indicated, including the use of con-

tract types involving the skillful balancing of price, cost and performance incentive arrangements. In many instances, he will be in the best position to conduct the price negotiation.

3–801.5 *Responsibility of Field Pricing Support Personnel.*

(a) *Field Pricing Support.* Field pricing support involves analysis of the contractor's price proposal by any or all of the field technical and professional specialists including, but not limited to, the Plant Rep/ACO; contract auditor; price analyst; quality assurance personnel, engineers; and legal and small business specialists. The Plant Rep/ACO is the team manager for all PCO requests for field pricing support. Therefore the PCO shall send all requests for field pricing support to the cognizant field contract administration activity; generally, the Plant Representative (Plant Rep) for the Services and the Administrative Contracting Officer (ACO) for DCAS(DSA). However, there shall be no constraints on the lines of communication with the PCO/ACO and contract auditor interface.

(b) *Field Pricing Reports on Contract Price Proposals.*

(1) Prior to negotiation of a contract or modification resulting from a proposal in excess of $100,000 for firm fixed price and fixed price with provision for economic price adjustment, fixed price redeterminable (prospective), time and materials, or labor-hour type of contract, interim and final price redetermination and settlement of incentive types; $250,000 for fixed price incentive, cost plus incentive fee or fixed price redeterminable (retroactive) type of contract; or $500,000 for cost reimbursement, cost sharing, cost plus award fee, or cost plus a fixed fee type of contract, when the price is based on cost or pricing data (3-807.3) submitted by the contractor, the contracting officer (PCO or ACO) or authorized representative shall request a field pricing report (which usually includes an audit review by the contract audit activity), unless information available to the contracting officer is considered adequate to determine the reasonableness of the proposed cost or price. Whenever available data is considered adequate for a reasonableness determination, the contracting officer shall document the contract file to reflect the basis of the determination. Information of the type described in (i) through (vi) below, which is often available to the contracting officer from the Plant Rep/ACO or from the Procurement Liaison Auditor (PLA), should be useful in determining the extent of any field pricing support that is needed.

(i) In-house engineering determination of level of effort required in connection with research and development or study contracts.

(ii) Audited cost information from contract awards in process, or recently negotiated contracts.

(iii) Adequately reviewed data on proposed subcontracts items which constitute the major portion of the prime contract price proposal.

(iv) Prices of standard commercial items which constitute the major portion of the prime contract price proposal.

(v) Special forward pricing formulas or rates such as for support items, or forecast overhead rates, prescribed in an existing advance agreement.

3–807.4 *Subcontractor Cost or Pricing Data.*

(a) Any contractor who is required to submit and certify cost or pricing data shall be required to submit accurate, complete and current cost or pricing data from prospective subcontractors in support of each subcontract cost estimate included in the contractor's submission. This submission shall be required whenever the contracting officer considers such subcontractor data necessary for pricing the prime contract, or, in any event, whenever such subcontractor cost estimate is either (i) $1,000,000 or more, or (ii) both more than $100,000 and more than 10 percent of the prime contractor's proposed contract price. This submission is not required if the contractor demonstrates to the satisfaction of the contracting officer that a prospective subcontract will be based on adequate price competition, or that a prospective subcontract estimate is based on an established catalog or market price of a commercial item sold in substantial quantities to the general public, or a price set by law or regulation. Except for subcontracts within (i) or (ii) above, any such requirement for subcontractor cost or pricing data may be limited by the contracting officer to particular subcontract items or classes of items. However, in the case of subcontracts of $100,000 or less, any such requirement shall be subject to the limitations for contracts of $100,000 or less as set forth in 3–807.3(d). Submission of subcontractor cost or pricing data from more than one subcontractor for each subcontract item shall not ordinarily be required, provided that the contractor's subcontract cost estimate is based upon the cost or pricing data of the subcontractor who is most likely to get the subcontract. Notwithstanding the foregoing, the contractor shall submit other data pertaining to subcontract costs, including other subcontractor quotations.

(b) Prospective subcontractor cost or pricing data shall be accurate, complete and current as of the same date specified in the contractor's certificate. The contractor shall be responsible for updating a prospective subcontractor's data to the above date from the time of original submission by the subcontractor. Failure by the contractor to submit subcontract cost or pricing data may be cause for disqualification of the contractor from further consideration for award of the proposed contract. When the contractor has generally complied with such subcontract cost or pricing data requirements, his failure to do so for particular subcontracts in exceptional cases may be excused by the contracting officer. Such excuse, except when limited to an allowance of additional time, shall be approved by the Chief of the Purchasing Office. For each prospective subcontract so excused, the contracting officer shall either (i) allow additional time for submission of subcontract cost or pricing data up to the date of agreement upon the prime contract price; (ii) withdraw the requirement for subcontract cost or pricing data if he deems that cost or pricing data submitted by the contractor is adequate to support the subcontract estimate; (iii) reserve such subcontract item for future pricing; (iv) consider another contract type; or (v) make other arrangements to provide an adequate basis for agreement upon contract price. Also, for each subcontract so excused, the contractor shall remain obligated to obtain subcontractor cost or pricing data.

(c) These requirements, modified as appropriate to relate to a higher tier subcontractor rather than the prime contractor, shall apply to lower tier subcontracts under subcontracts for which subcontractor cost or pricing data are required.

(d) The contractor shall be required to support subcontract cost estimates below the minimum set forth in (a)(i) and (ii) above, by any data or information needed to establish a reasonable contract price.

(e) Any contractor who has been required to submit and certify cost or pricing data also shall be required to obtain cost or pricing data from his subcontractors under the circumstances set forth in the appropriate clause in 7-104.42, notwithstanding any prior submission from subcontractors. The requirements for submission of subcontractor cost or pricing data for subcontracts may be waived in exceptional cases when the Secretary (or his designee in cases when the subcontract is with a foreign government or agency thereof or is for less than $1 million) authorizes such waiver and states in writing his reasons for such determinations. A copy of each waiver shall be sent to the Assistant Deputy Under Secretary of Defense for Acquisition, Office of the Under Secretary of Defense, Research and Engineering.

(f) Cost or pricing data furnished by a subcontractor or a prospective subcontractor must be submitted to the prime contractor or higher-tier subcontractor. It is the responsibility of the prime contractor and higher-tier subcontractor to review and evaluate the subcontract proposal and supporting cost or pricing data and furnish the results of such review and evaluation to the Government as part of their cost or pricing data submission.

3–807.5 *Refusal to Provide Cost or Pricing Data.* If cost or pricing data from the contractor are required to permit adequate analysis of the contractor's proposal and the contractor has refused to provide such data, the contracting officer shall use those means available to him in attempting to secure such data. If the contractor persists in his refusal to provide necessary data, the contracting officer shall withhold making the award or price adjustment. In such event, he shall refer the procurement action to higher echelons of the Department. Such referral shall include a complete statement of the attempts made to resolve the matter, including (i) steps taken to secure essential cost or pricing data, (ii) efforts to secure the contractor's cooperation in the establishment of a satisfactory business relationship, (iii) any assurances offered, such as agreements to adequately safeguard information furnished, and (iv) a statement concerning the practicability of obtaining the supplies or services from another source.

3–807.6 *Certificate of Current Cost or Pricing Data.*

(a) When a Certificate of Current Cost or Pricing Data is required, the certificate set forth below shall be included in the contract file along with the memorandum of the negotiation, see 3–811. The contractor shall be required to submit only one certificate which shall be submitted as soon as practicable after agreement is reached on the contract or modification price.

CERTIFICATE OF CURRENT COST OR PRICING DATA

This is to certify that, to the best of my knowledge and belief, cost or pricing data as defined in ASPR 3-807.1(a)(1) submitted, either actually or by specific identification in writing (see ASPR 3-807.3(a)) to the Contracting Officer or his representative in support of . . . . . * are accurate, complete, and current as of (day) (month) (year) . . . . . **

This certification includes the cost or pricing data supporting any advance agreement(s) and forward pricing rate agreements between

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SECTION VI

FOREIGN ACQUISITIONS

6-000 Scope of Section. This Section includes restrictions and procedures affecting acquisitions of foreign-made items; restrictions on purchases from Communist countries or areas; procedures affecting acquisitions from Canadian sources; guidance on the use of duty-free entry procedures for foreign items; special guidance (including pricing guidance) for Military Assistance Program acquisitions and Foreign Military Sales; procedures to promote liaison with overseas activities and compliance with government-to-government agreements for acquisition from foreign contractors; procedures for use of U.S.-owned foreign currency for payment of contracts; and procedures for the solicitation and evaluation of offers of defense equipment which are qualifying country end products.

6-001 Definitions. As used throughout this Section, the words and terms defined in this paragraph shall have the meanings set forth below unless a different definition is prescribed for a specific Part.

6-001.1 End Products.

(a) End products means articles, materials, and supplies that are to be acquired for public use. As to a given contract, the end products are the items to be delivered to the Government, as specified in the contract, including supplies to be acquired by the Government for public use in connection with service contracts, but excluding installation and other services to be performed after delivery.

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

(c) Domestic end product means (i) an unmanufactured end product which has been mined or produced in the United States, or (ii) an end product manufactured in the United States if the cost of its qualifying country components and its components which are mined, produced, or manufactured in the United States exceeds 50 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 U.S. duty (whether or not a duty-free entry certificate may be issued). A component shall be considered to have been mined, produced, or manufactured in the United States (regardless of its source in fact) if the end product in which it is incorporated is manufactured in the United States and the component is of a class or kind (i) determined by the Government to be not mined, produced, or manufactured in the United States in sufficient and reasonably available commercial quantities and of a satisfactory quality, or (ii) as to which the Secretary concerned has determined that it would be inconsistent with the public interest to apply the restrictions of the Buy American Act (6-103.3).

(d) Foreign end product means an end product other than a domestic end product.

(e) FMS/offset arrangement country end product means (i) an unmanufactured end product mined or produced in a FMS/offset arrangement country, or (ii) an end product manufactured in a FMS/offset arrangement country if the cost of its qualifying country components and its components which are mined, produced, or manufactured in the United States exceeds 50 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 any duty whether or not duty is in fact paid. To obtain the waivers necessary to accord preferential treatment for a FMS/offset arrangement country end product, see the procedures at 6-1310.3(b)(1).

(f) Participating country end product means (i) an unmanufactured end product mined or produced in a participating country, or (ii) an end product manufactured in a participating country if the cost of its qualifying country components and its components mined, produced, or manufactured in the United States exceeds 50 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 any duty whether or not duty is in fact paid.

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

6-001.2 Components.

(a) Components means those articles, materials, and supplies, which are directly incorporated in end products.

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

6-001.3 Defense equipment means any equipment, item of supply, component, or end product purchased by the Department of Defense.

6-001.4 Source (when restricted by such words as foreign, domestic, qualifying country, etc.) refers to the actual manufacturer or producer of the end product or component (product may encompass a report).

6-001.5 Countries.

(a) A defense cooperation country is a foreign country which has a defense cooperation agreement and for which a Determination and Findings was made by the Secretary of Defense waiving the Buy American Act restrictions for a list of mutually agreed items. These countries are listed at 6-1504.

(b) A FMS/offset arrangement country is a foreign country which has an offset arrangement negotiated in conjunction with a Foreign Military Sale and which arrangement provides for obtaining a waiver of the Buy American Act restrictions on a case-by-case basis. These countries are listed at 6-1310.1.

(c) A participating country is a NATO country which has a Memorandum of Understanding (MOU) or similar agreement with the U.S. and for which a blanket Determination and Finding was made by the Secretary of Defense waiving the Buy American Act restrictions. These countries are listed at 6-1401.

items available in the United States but not available within the time required (for coordinated acquisition specifying a foreign end product, see 5-1106.3(b)).

(xi) Unreasonable Cost--acquisitions, other than those covered in (i) through (x) above where United States end products or services are available and the difference between the domestic cost and the foreign cost exceeds 50 percent of the foreign cost, if so determined in advance by the individuals designated in (b) below.

(b) The individuals listed below, and the immediate deputies of those listed in (1) below, are designated to make the determinations required by (a)(iii), (x) and (xi) above.

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

Department of the Army--
Director for Requirements and Acquisition,
U.S. Army Materiel Development and Readiness Command;
Commander in Chief, U.S. Army, Europe; and
DCSLOG, U.S. Army, Europe;
Commander, Eighth U.S. Army;
Chief of Staff, Eighth U.S. Army;
Chief, U.S. Army Security Agency;
Commander, Corps of Engineers Command;
Commander, U.S. Army, Japan;
Department of the Navy--
Commander-in-Chief, U.S. Naval Forces, Europe;
Commander, U.S. Naval Forces, Japan;
Commander, U.S. Naval Forces, Philippines;
Chief of Naval Material;
Commander in Chief, U.S. Atlantic Fleet;
Commander, Naval Logistics Command, Pacific Fleet;
Commander, Military Sealift Command (MSC);
Commandant, U.S. Marine Corps;
Commander, Naval Facilities Engineering Command;
Commanding General, III Marine Amphibious Force;
Department of the Air Force--
Commander, U.S. Air Forces in Europe;
Commander, Pacific Air Force;
Commander, Military Airlift Command (MAC);
Commander, Air Force Logistics Command;
Commander, Air Force Systems Command;
Commander, Strategic Air Command;
Commander, Tactical Air Command;
Commander, Air Force Communications Service;
Defense Logistics Agency--Executive Director, Contracting;
Defense Communications Agency--Director.

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

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

(i) those set forth in (a)(i), (ii) and (viii) above;

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

(iii) acquisitions other than those covered in (i) and (ii) above when U.S. end products or services are available, and the difference between the domestic cost and the foreign cost exceeds 50 percent of the foreign cost as determined by the individuals designated in (d) below.

Whenever practicable, such acquisitions shall be made on a cost-sharing basis or other arrangement designed to limit any adverse effect on the balance of payments. Policy questions concerning such arrangements should be directed to the Under Secretary of Defense for Research and Engineering.

(d) The individuals listed below (and the immediate deputies of those listed in (1) below) are designated to make the determinations required by (c)(ii) and (c)(iii) above.

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

Department of the Army--
Commanding General, Army Materiel Development and Readiness Command;
Commander, Corps of Engineers Command;
Surgeon General, Army Medical Corps;
Chief of Research, Development and Acquisition;
Department of the Navy--
Chief of Naval Research;
Commander, Naval Air Systems Command;
Commander, Naval Electronics Systems Command;
Commander, Naval Sea Systems Command;
Chief, Bureau of Medicine and Surgery;
Commander, Naval Supply Systems Command;
Chief of Naval Development;
Oceanographer of the Navy;
Commander, Naval Facilities Engineering Command;
Military Sea Lift Command;
DC/S Installations and Logistics Department,
Headquarters U.S. Marine Corps
Department of the Air Force--
Commander, Air Force Systems Command;
Commander, Air Force Logistics Command;

6-1305.4 Applicability and Allowability of Sales Commissions or Fees.

(a) When a contracting officer is requested to obtain price and availability data from a contractor to support the tendering of an Offer and Acceptance, he shall require the contractor to identify the amount of any sales commissions or fees. Allowable costs for sales commissions or fees applicable to contracts for FMS shall not exceed $50,000 per contract (including all modifications and subcontracts thereto) for each foreign customer served by that contract. Although commissions and fees may be less than $50,000 per contract, all such commissions and fees must be justified and supported based on the criteria in 6-1305.4(b). If deviations to this policy are considered necessary, 1-109.3 shall apply. In addition, sales commissions or fees shall not be allowed for follow-on spares provided under DoD Cooperative Logistic Supply Support Arrangements.

(b) In order to provide the appropriate notice and advice regarding sales commissions and fees to a foreign government at the time an Offer and Acceptance is submitted, the contracting officer, except with respect to those contracts excluded in 1-506.3(i) and (ii), shall:

(i) require the contractor to submit a Contractor's Statement of Contingent or Other Fees (Standard Form 119) (including any such fees claimed by subcontractors);

(ii) determine under 1-505 whether a bona fide employee or agency relationship exists; (For the purposes of FMS, the definition in 1-504 of improper influence also extends to officials of the foreign government.)

(iii) require the contractor to submit a breakdown of the fee related to the services performed by the sales representative. Even though a bona fide employee or agency relationship is determined to exist, the basic test of reasonableness for the purposes of making the statement required by 6-1305.3(a)(iii), is an assessment of the services provided, or to be provided, compared to the amount of the fee. In addition to the fee breakdown of services, a comparative analysis may be made of the proposed fee/commission with recent payment for comparable services under commercial sales (non-FMS) of the same or similar items, and sales commissions and fees allowed on previous FMS sales of comparable scope and dollar amounts. In analyzing the fee, consideration should be given to whether the sale is the initial or follow-on sale because the effort for follow-on sales of additional quantities, spares and support equipment would not normally be as great as the effort for the initial sale.

(c) The PCO shall make a determination with respect to a bona fide employee or agency relationship and reasonableness of the commission or fee (i.e., one of the 6-1305.3(a)(iii) fee statements), subject to the approval of the chief of the contracting office.

6-1305.5 Contracting Procedures Relating to Sales, Commissions and Fees.

If, after notification by DoD officials responsible for presentation of the Offer and Acceptance to a foreign government as required by

6-1305.3, the foreign government disapproves the fee, or a portion of the fee, the contracting office shall notify the prospective contractor and request withdrawal of the fee for the sales representative from the proposal. Should the contractor refuse to withdraw the fee, the Department of Defense will notify the foreign government that the Department of Defense is unable to purchase the items or services from that contractor.

6-1305.6 Special Country Requests With Respect to Sales Commissions and Fees. Pursuant to DoD Manual 5105.38-M (Military Assistance and Sales Manual), Letters of Offer and Acceptance for requirements for the governments of Australia, Taiwan, Egypt, Greece, Iran, Israel, Japan, Jordon, Republic of Korea, Kuwait, Pakistan, Philippines, Saudi Arabia, Turkey, Thailand, or Venezuela (Air Force) are required to provide that all U.S. Government contracts resulting from the Letters of Offer shall prohibit the payment of sales commission and fee unless such payments have been identified and payment thereof approved in writing by the government involved before contract award. Therefore, the contracting officer shall insert the clause in 7-104.107 in all solicitations and contracts for FMS awarded on behalf of these purchasers unless such payment has been approved.

6-1306 Recovery of Nonrecurring Costs.

6-1306.1 Policy. It is the policy of the Department of Defense to recover a fair share of its investment in nonrecurring costs related to defense products, and/or a fair price for its contribution to the development of related technology, when such products are sold and when technology relating to the manufacture of the products is sold or licensed to a foreign government, international organization, foreign commercial firm, or domestic organization. Furthermore, in selected cases, it is DoD policy to recover, on behalf of a foreign government or international organization, a fair share of the nonrecurring costs for a special feature or product paid by the foreign government or international organization under a foreign military sales case when subsequent customers purchase the same specialized feature.

6-1306.2 Applicability.

(a) This policy applies to those products and technologies for which investment costs equal or exceed $5 million for any of the following:

(i) Nonrecurring research, development, test, and evaluation (RDT&E) costs to develop defense products and related technology. The determination of RDT&E costs shall be based upon the current and predecessor models of an item or equipment.

(ii) Nonrecurring production costs.

(iii) RDT&E and nonrecurring production costs for special features under a foreign military sale, when requested by the FMS customer and agreed to by the U.S. Government.

(b) In the event an end item contains one or more components which individually meet the above thresholds, recoupment will be made on a component when sold separately.

(c) In the case of product sales, if the dollar threshold is met for either nonrecurring RDT&E or production costs, recoupment for both categories of investment costs will be charged.

responsibility for managing the offset program among two or more Departments. Such management includes (i) the development of special contractual provisions consistent with (d) below, (ii) the consideration of other DoD contract items for competition by foreign sources (to the extent other defense purchasing is involved or becomes necessary), and (iii) the obtaining of appropriate exemptions by the Secretary of the purchasing Department concerned from the Buy American Act under 6-103.3, the Balance of Payments Program, duty and other applicable acquisition restrictions on a purchase-by-purchase basis of defense equipment. (See sample Determination and Findings set forth in (b)(1) below for the exemption of the Buy American Act.) Even though a Military Department or Defense Agency is not responsible for the management of a certain FMS/offset arrangement, it will consider, for competitive acquisitions, offers of defense equipment from FMS/offset arrangement country sources.

(b) Solicitation of FMS/offset arrangement country sources shall be accomplished using procedures like those set forth in 6-1403.1(a) for participating countries. When soliciting sources outside the United States, international air mail shall be utilized where security classification permits. (See 2-202.1, 2-203.1 and 3-503.2.) For the purpose of evaluating an FMS/offset arrangement country offer, it shall be treated as if it were a participating country offer and evaluated in accordance with 6-1403.1(c). If after such evaluation, it is clear that the FMS/offset arrangement country offer is low or otherwise eligible for award, the contracting officer shall request from the Secretary of the Department concerned the appropriate exemptions for the acquisition as set forth in (b)(1) below. The list set forth at 6-1405 shall also apply to FMS/offset arrangement countries.

(1) To obtain an exemption under 6-103.3 of the Buy American Act, the contracting officer shall process a Determination and Findings for the signature of the Secretary of the Department or Agency concerned. The Determination and Findings shall be substantially as follows for end items or modified as necessary for components (see 6-001.2):

SERVICE OR AGENCY _____
EXEMPTION OF THE BUY AMERICAN ACT (41 U.S.C. 10a-d)
DETERMINATION AND FINDINGS

Upon the basis of the following findings and determinations which I hereby make in accordance with the provisions of DAR 6-103.3, acquisition of an _____ (FMS/offset arrangement country) _____ (describe item) _____ may be made as provided below.

FINDINGS

1. The _____ (Contracting Activity) _____ proposes to purchase _____, under contract number _____, mined, produced or manufactured in _____ (country of origin) _____. The total estimated cost of this acquisition is _____.

2. The United States Government (USG) and the Government of _____ have entered into an FMS/offset arrangement whereby the Government of

_____ will purchase US defense articles and services and the USG, through the Department of Defense (DoD) if necessary, will offer potential DoD requirements suitable for purchases of _____ (FMS/offset arrangement country) _____ defense items.

3. The Agreement provides that competitive offers of _____ (FMS/offset arrangement country) _____ end products will be evaluated by the Department of Defense without imposing any price differential under the Buy American Act or Balance of Payments Program and without taking applicable U.S. customs and duties into consideration so that _____ (FMS/offset arrangement country) _____ items may better compete for sales of defense equipment to the Department of Defense. In addition, the Agreement stipulates that acquisitions of _____ (FMS/offset arrangement country) _____ items must fully satisfy Department of Defense requirements for performance, quality, and delivery and shall cost the Department of Defense no more than would comparable U.S. source or other foreign source defense equipment eligible for award.

4. In order to achieve the above objectives, the solicitation contained the Buy American Act and Balance of Payments Program clause, (7-104.3) which states that an exemption from the application of the Buy American Act may be granted by the Secretary of the Department concerned. Offers were solicited from other sources and the offer received for an _____ (FMS/offset arrangement country end item) _____ is found to be acceptable.

DETERMINATION

Pursuant to the Buy American Act (41 U.S.C. 10a-d), I hereby determine that it is inconsistent with the public interest to apply the restrictions of the Buy American Act to the proposed offer.

_____ (Date) _____ _____ (Secretary of Department) _____

(c) To assure that the policy of 6-602 is carried out regarding the issuance of duty-free entry certificates, the contracting officer shall include the clause in 7-104.31(a) or 7-104.31(b), as appropriate, in contracts which either contribute, or are anticipated to contribute, to the fulfillment of an FMS/offset arrangement.

(d) The clause set forth at 7-104.105 shall be used in a contract when the domestic concern involved in the Foreign Military Sale has accepted responsibility for accomplishing any portion of an FMS/offset arrangement. (Paragraph (a) of the clause should be modified as necessary to state any special terms and conditions of the FMS/offset arrangement, such as competitive prices or otherwise, period of offset accomplishment, special type or nature of offset required, and so forth.)

(e) When an FMS/offset arrangement program is structured to provide offset potential on a number of DoD purchases, as opposed to only within the prime FMS contracts, DoD solicitations which contemplate proposals

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where such restriction or rejection is considered necessary for reasons of the national interest. (See 6-104.4(d).)

6-1403.2 Subcontracting with Participating Country Sources.

In reviewing prime contractor subcontracting procedures, the contracting officer shall assure that the prime contractor does not preclude participating country sources from competing for subcontracts, except when restricted by national security interest reasons or mobilization base considerations. (See 6-104.4(d) and 6-1405.)

6-1403.3 Required Clause.

The clause at 7-104.106 shall be inserted in all solicitations and contracts for supplies and for services involving the furnishing of end items (e.g., leasing of equipment).

6-1403.4 Industrial Security for Participating Countries.

Required procedures designed to safeguard classified defense information which may be necessary for the performance of contracts awarded to participating country sources are set forth in the DoD Industrial Security Regulation, DoD 5220.22-R (implemented for the Army by AR 380-131; for the Navy by OPNAV Instruction 5540.8E; for the Air Force by AFR 205-4; for the Defense Logistics Agency by DLAM 8500.1; for the Defense Communications Agency by DCA Inst. 240-50-7; and for the Defense Mapping Agency by DMA Inst. 5220.22).

6-1404 Contract Administration.

When Contract Administration Services are requested on contracts to be performed in participating countries, except Canada (see 6-505), the request should be directed to the cognizant activity in accordance with DoD 4105.59-H, Section II, Part 2 (DoD Directory of Contract Administration Services Components). Contract Administration Services required with respect to DoD subcontracts placed by participating country sources, except Canada (see 6-505), in the United States will be arranged by the cognizant activity in accordance with DoD 4105.59-H, Section II, Part 2 (DoD Directory of Contract Administration Services Components).

6-1405 List of Excluded Items. The policies and procedures of this Part do not apply to offers of the following items of defense equipment unless the quantity being acquired is greater than that required to maintain the U.S. defense mobilization base. This restriction does not apply to Canadian Planned Producers (see 6-504.1(a)(2)). Items may be added to or deleted from the list from time to time. Information concerning this list may be obtained from OUSDRE(AP), International Acquisition. (See also 1-2207.)

Navy

Fuzes, Safe and Arm Devices, and Similar Items

MK-13 Safe and Arm Device
MK-13 Triggering Device
MK-17 Safe and Arm Device
MK-33 Safe and Arm Device
MK-330 Fuze

MK-334 Fuze
MK-404 Fuze
MK-407 Fuze
FMU-109 Fuze

Missiles and Missile Components

AIM-7F Sparrow Missile
Guidance and Controls Section
MK-58 Rocket Motors
MK-71 Warhead Metal Parts

AIM-9L Sidewinder Missile
Guidance and Control Section
MK-36 Rocket Motors
DSU-15 Target Detector
AN/WDU-17 Warhead
MK 1 Wing and AN/BSU-32 Fins

Trident I (C-4) Missile System
Guidance and Control System
MK-5 Electronic Assemblies (EA)
MK-5 Inertial Measurement Unit Electronics (IMUE) and Monitor Component Assembly (MCA)
Backfit of Poseidon (C-3) SSBNs

Flares

MK-46 Flares, Infrared Decoy

Sonobuoys and Components

AN/SSQ-36
AN/SSQ-41B
AN/SSQ-53A
AN/SSQ-57A
AN/SSQ-62

Ship Gun Systems

MK-75 Gun Mounts

Submarine Systems

Type 18B/D Periscope System
TR 155 K 33 Transducers

Military Sealift Cargo

Ocean Transportation and Services

Laser Range Finder VVG-2 and M21 for Solid State Ballistic Computer for M60 Series Tank
Limited Light Sight
MX-9644 Image Intensifer Tube 25mm
MX-7845 Image Intensifer Tube (1st generation)
MX-8501 Image Intensifer Tube (1st generation)
BA-4386 Battery
AN/PVS-4 Night Vision Sights
AN/PVS-5 Night Vision Goggles
AN/PVS-5A Night Vision Goggles
AN/VVS-2 Viewer
AN/VSS-3 Searchlight
Common Module Program (Thermal Imaging System)
Tactical Night Vision Systems -
AN/TAS-4
AN/TAS-5
AN/TAS-6
GLLD/TAS-4
Machine Gun M240
Machine Gun M240 Spare Parts
Electronic Time Fuze XM587E2/XM724
Power Supply PS127
Fuze Setter XM36E1
Tank Thermal Sights AN/VSG-2
Night Vision Goggles AN/PVS-5A
Image Intensifer Assy MX-9916/UV
Battery, Dry BA-4386
Maintenance of idle portions of 21 GOCO facilities
Consolidated Facilities Scranton AAP
Hydraulic Turbine (Civil Works)

6-1406 Participating Country Agreements, Memoranda of Understanding and Accompanying Annexes. The following agreements, memoranda of understanding, and annexes are provided for information purposes only. Determination and Findings have been executed by the Secretary of Defense waiving the application of the Buy American Act in order to implement the MOUs contained in this Part.

6-1406.1 Canadian Agreements.

(a) Letter of Agreement With Canada.

1. This agreement applies to all contracts placed, on or after October 1, 1956, by any of the Military Departments with the Corporation. It shall remain in force from year to year until terminated by mutual consent; however, it can be terminated on the 31st day of December or the 30th day of June in any year by either party provided that six months notice of termination has been given in writing. In addition, this agreement provides for certain reciprocal arrangements

facilitating procurement by each of the parties in the country of the other.

2.(a) The Corporation agrees that it will cause all first-tier subcontracts under contracts covered by this agreement to be placed in accordance with the practices, policies, and procedures of the Government of Canada covering procurement for defence purposes; and agrees that if the aggregate profit realized under such subcontracts by any first-tier subcontractor exceeds that which is allowed by the Government of Canada under the above mentioned practices, policies, and procedures, the amount of such excess will be refunded by the Corporation to the Military Departments. There shall also be refunded profits on any subcontract in excess of amounts which the Minister of Defence Production (Canada) in the exercise of said practices, policies and procedures considers to be fair and reasonable, recovered by the Minister pursuant to Section 21 of the Defence Production Act (Canada) from any individual subcontractor of any tier. It is recognized that the practices, policies and procedures of the Government of Canada referred to above permit various rates of profit in accordance with the terms of the said practices, policies, and procedures as from time-to-time amended; however, in no case will the rate of profit be allowed to exceed any limit prescribed by statute of the Government of the United States. For the purpose of this paragraph, the Corporation will cause to be conducted such audits in accordance with the Costing Memorandum (DDP-31) of the Department of Defence Production (Canada) and such verifications of cost as are in accordance with the said practices, policies, and procedures. The Corporation will render to the Military Departments its certificate that the provisions of this paragraph have been observed.

(b) Contracts for communication and transportation services, and the supply of power, water, gas and other utilities shall be excepted from the provisions of subparagraph (a) above, provided the rate or charges for such services or utilities are fixed by public regulatory bodies; and provided further the Military Departments are accorded any special rates that may be available to the Canadian Government with respect to such contracts.

(c) The Canadian Government, its Department and Agencies, including but not limited to the Corporation and Canadian Arsenals Limited, a Crown Company wholly owned by the Canadian Government, shall not be entitled to any profit on any contract or contracts covered by this agreement. Any profits which may be realized shall be returned to the Military Departments except as hereinafter provided: Before refunding profits realized from the following sources:

(i) net profits of the Canadian Government, its Departments and Agencies, as defined above, with respect to contracts and subcontracts covered by this agreement.

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4.2 To the extent that any items, plans, specifications or information furnished in connection with the specific implementation of this Memorandum of Understanding are classified by either Party for security purposes, the other Party shall maintain a similar classification and employ all measures necessary to preserve such security equivalent to those measures employed by the classifying Party throughout the period during which the classifying Party may maintain such classification.

4.3 Information that has been provided by either of the Parties to the other on condition that it remain confidential shall either retain its original classification designation, or be assigned a classification designation that shall ensure a degree of protection against disclosure equivalent to that required by the other Government. To assist in providing the desired protection, each Party will mark such information furnished with a legend indicating the origin of information, that the information relates to the MOU and Annexes thereto, and that the information is furnished in confidence.

ARTICLE V

Administration

5.1 Each Party will designate points of contact at the Ministry of Defense level and in each purchasing service/agency.

5.2 The German-American Committee for Mutual Cooperation, referred to in Article II above, will meet as agreed or at the request of either Party to review progress in implementing the Memorandum of Understanding. It will discuss development, production, procurement and logistic support needs of each country and the likely areas of cooperation; agree to the basis of, and keep under review, the financial statement referred to below; and consider any other matters relevant to this Memorandum of Understanding.

ARTICLE VI

Duration

6.1 This Memorandum of Understanding will remain in effect for a six-year period following its signing. Unless otherwise agreed by both Parties, the duration will be extended for another six years.

6.2 If, however, either Party considers it necessary for compelling national reasons to discontinue its participation under this Memorandum of Understanding before the end of the six-year period, or any extension thereof, written notification of its intention will be given to the other Party six months in advance of the effective date of discontinuance. Such notification of intent would be a matter of immediate consultation with the other Party to enable the Parties fully to

evaluate the consequences of such termination and, in the spirit of cooperation, to take such actions as necessary to alleviate problems that may result from the termination. In this connection, although the Memorandum of Understanding may be terminated by the Parties, any contract entered into consistent with the terms of this Memorandum of Understanding shall continue in effect, unless the contract is terminated in accordance with its own terms.

ARTICLE VII

Implementation

7.1 Each Party must agree in writing to any amendment of this Memorandum of Understanding.

7.2 Details pertaining to implementation of the principles set forth herein will be set out in annexes to this Memorandum of Understanding.

7.3 Any differences of opinion over the interpretation and implementation of this Agreement and its Annexes shall be resolved by consultation between the DoD and MoD.

7.4 This Memorandum of Understanding will come into effect on the date of the last signature.

The Secretary of Defense of the United States of America	The Federal Minister of Defense of the Federal Republic of Germany
Harold Brown	Hans Apel
Date October 17, 1978	October 17, 1978

6-1406.6 MEMORANDUM OF UNDERSTANDING BETWEEN THE GOVERNMENT OF ITALY AND THE GOVERNMENT OF THE UNITED STATES OF AMERICA CONCERNING THE PRINCIPLES GOVERNING MUTUAL COOPERATION IN THE RESEARCH, DEVELOPMENT, PRODUCTION AND PROCUREMENT OF DEFENSE EQUIPMENT.

PREAMBLE

The Government of the United States of America and the Government of Italy, hereinafter referred to as "the Governments":

Intending to increase their respective defense capabilities through more efficient cooperation in the field of research and development, production, procurement, and logistic support of defense equipment, in order to:

- Make the most cost-effective and rational use of the funds allocated to defense to the extent permitted by their national policies, assuring the most satisfactory level of reciprocal balance; and

- Promote the widest possible use of standard or interoperable equipment; and

- Develop and maintain an advanced technological capability for the North Atlantic Alliance, and particularly with respect to the parties to this Agreement;

Noting that no agreement covers harmonization of mutual procurements, although specific offset agreements have existed between them in the past, and

Seeking to improve the present situation and to strengthen their military capability and economic position through the further acquisition of standard or interoperable equipment have entered into this Memorandum of Understanding in order to achieve the above aims.

This Memorandum of Understanding (MOU) sets out the guiding principles governing mutual cooperation in defense equipment research and development, production, procurement and logistic support.

The Government of the United States of America and the Government of Italy conclude this Memorandum of Understanding to strengthen the North Atlantic Alliance.

The two Governments agree that this Memorandum of Understanding should be incorporated in the larger context of the cooperation between Europe and North America within the Alliance.

All agreements, or the relevant provisions contained therein, between the Independent European Program Group (IEPG) and the United States of America, shall take precedence over this Memorandum of Understanding, provided that Italy is a party to the specific agreement.

ARTICLE I

Principles Governing Mutual Defense Cooperation

1. Both Governments will take immediate steps to achieve and maintain an equitable balance in their exchanges, in terms of the value of contracts and technological levels, to the maximum practicable extent consistent with their national policies. An equitable balance, in principle, shall be achieved when the two Governments have implemented all practicable means at their disposal to maximize defense R&D cooperation and reciprocal procurement to the extent compatible with the nature of each country's technological and industrial base. Items procured under offset agreements by either Government with an industry of the other

will apply to the achievement of the balance contemplated by this agreement.

2. This agreement is intended to cover areas in which possible bilateral cooperation could be achieved in conventional defense equipment research and development, production, procurement, and logistic support complementing the work of the Conference of National Armament Directors (CNAD), Senior NATO Logisticians Conference (SNLC) and the Independent European Program Group (IEPG).

3. The two Governments will, consistent with their laws and regulations give full consideration to all requests for cooperative R&D and to all requests for production and procurement which are intended to maximize Alliance standardization and/or interoperability.

4. The two Governments shall, in the spirit of cooperation, mutually determine the counting procedures that will apply to all items under this agreement (and associated services included in a contract) purchased either directly by the two Governments or through their defense industries.

5. In the interests of standardization and the effective utilization of scarce resources the two Governments shall, if possible, select qualified defense items that have been developed and produced in the other country to meet their requirements in accordance with the procedures of paragraph 9 below.

6. Each Government may propose to the other any particular item of defense equipment that might be suitable for use by the other Government.

7. Both Governments will provide appropriate policy guidance and administrative procedures within their respective defense procurement organizations to facilitate achievement of the aims described in paragraph 5.

8. Barriers to procurements or coproduction of an item of defense equipment that has been developed in the other country shall be removed, insofar as laws and regulations permit, such as not applying customs duties and other discriminatory levies in evaluating bids submitted in accordance with this MOU, as well as the waiver of protectionist provisions. Defense items or services are those items or services which may be procured utilizing appropriated funds of the US Department of Defense or budgeted funds of the Italian Ministry of Defense.

9. Competitive contracting procedures normally shall be used in acquiring items of conventional defense equipment developed in each other's country.

designation, that shall ensure a degree of protection against disclosure equivalent to that required by the other Government. To assist in providing the desired protection, each Government will mark such information furnished with a legend indicating the origin of information, that the information relates to the "Memorandum of Understanding" and Annexes thereto, and that the information is furnished in confidence.

ARTICLE V

Administration

1. The Portugal-U.S. Committee for Mutual Cooperation, referred to in Article II above, will meet as agreed or at the request of either Government to review progress in implementing the MOU. They will discuss research and development, production and procurement needs of each nation and the likely areas of cooperation; agree to the basis of and keep under review, the financial statement referred to below; and consider any other matters relevant to this MOU.

2. Each Government will designate points of contact at the Ministry of Defense level and in each purchasing service/agency under the Ministries of Defense.

3. An annual United States-Portugal statement of the current balance, and long-term trends, of R&D cooperation and purchases between the two nations will be prepared on a basis to be mutually agreed.

ARTICLE VI

Annexes

Annexes negotiated by the responsible officials and approved by the appropriate Government authorities will be incorporated in this MOU.

ARTICLE VII

Duration

1. This MOU will remain in effect for a ten-year period and will be extended for successive five-year periods, unless the Governments mutually decide otherwise.

2. If, however, either Government considers it necessary for compelling national reasons to terminate its participation under this MOU before the end of the ten-year period, or any extension thereof, written notification of its intention will be given to the other Government six months in advance of the effective date of termination. Such notification of intent shall become a matter of immediate consultation with the other Government to enable the Governments fully to evaluate the consequences of such termination and, in the spirit of cooperation, to take

such actions as necessary to alleviate problems that may result from the termination. In this connection, although the MOU may be terminated by the Parties, any contract entered into consistent with the terms of this MOU shall continue in effect, unless the contract is terminated in accordance with its own terms.

ARTICLE VIII

Implementation

This MOU will come into effect on the date of the last signature.

For the Government of the United States of America The Secretary of Defense	For the Government of Portugal The Minister of Defense
Harold Brown	José Alberto Loureiro dos Santos
Date 28 March 1979	18 December 1978

ANNEX I

TO THE MEMORANDUM OF UNDERSTANDING BETWEEN THE GOVERNMENT OF THE UNITED STATES OF AMERICA AND THE GOVERNMENT OF PORTUGAL CONCERNING THE PRINCIPLES GOVERNING MUTUAL COOPERATION IN THE RESEARCH AND DEVELOPMENT, PRODUCTION, PROCUREMENT, AND LOGISTIC SUPPORT OF DEFENSE EQUIPMENT, DATED 28 MARCH 1979.

PRINCIPLES GOVERNING IMPLEMENTATION

1. INTRODUCTION

On 28 March 1979, the Government of the United States and the Government of Portugal signed a Memorandum of Understanding (MoU) relating to the principles governing mutual cooperation in research and development, production, procurement, and logistic support of defense equipment. This document sets forth the agreed implementing procedures for carrying out the MoU.

2. MAJOR PRINCIPLES

2.1 The U.S. Department of Defense (DoD) and the Ministry of Defense of Portugal (MoD) will consider for their defense requirements qualified defense items and services developed or produced in the other country.

2.2 It will be the responsibility of government and/or industry representatives in each country to acquire information concerning the other country's proposed research, developments, and purchases and to respond to requests for proposals in accordance with the prescribed acquisition

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4.1.5 Acquisitions by either country of defense items resulting from common funded projects to which the US and Portugal are contributors, to be credited in proportion to each country's financial contribution to the project, and to work carried out in each country. The extent to which such acquisitions will be counted against the goals of the MoU will be, at the time of procurement, mutually agreed between MoD and DoD on a case-by-case basis.

4.1.6 License fees, royalties and other associated income resulting from orders placed by DoD or MoD and/or industry in one country with a licensed company in the other country; or in MoD-DoD transactions.

4.2 The following non-defense items also will be counted against the goals of the MoU:

4.2.1 Purchases by the MoD or DoD from the industry of the other country, on behalf of other governmental departments and agencies.

4.2.2 Purchases by a third country government from the MoD or DoD or from industries of these two countries as a direct result of the efforts of the MoD/DoD of the other country.

5. ADMINISTRATION

5.1 Each country will designate points of contact at the Ministry of Defense level.

5.2 MoD and DoD representatives will meet periodically, alternately in each country, to review the projects undertaken in implementing the MoU. They will discuss acquisition and logistic support needs of each country and the likely areas of cooperation; they will update the financial statement referred to in paragraph 5.3 below as a means of judging the progress of activity in the period under review; and they will consider other matters relevant to this MoU. Specific tasks of the representatives are:

5.2.1 Review the status of acquisitions on the basis of the data available concerning such acquisitions, in comparable terms to be agreed upon by both Parties.

5.2.2 Consider additional steps necessary to facilitate the actions called for in paragraph 3.

5.3 An annual US/Portugal statement consolidating the current balance of defense equipment acquisition and logistic support between the two countries, as well as the long term trends, will be prepared on a basis to be mutually agreed.

5.4 Quality assurance procedures outlined in STANAG 4107 and 4108 (subject to the USG reservation concerning US reimbursement) will apply

unless other provisions are mutually agreed to on any specific contract. Reimbursement for services provided shall be in accordance with national laws and regulations of each country.

5.5 This annex will come into effect on the date of the last signature.

For the Government of the United States of America	For the Government of Portugal National Armament Director & Ministry of Sec. State Industry
William J. Perry	Brig. Jose Maria da Costa Alvares Cardoso Cunha
Date 7 July 1980	12 December 1979

ANNEX II

TO THE MEMORANDUM OF UNDERSTANDING BETWEEN THE GOVERNMENT OF THE UNITED STATES OF AMERICA AND THE GOVERNMENT OF PORTUGAL CONCERNING MUTUAL COOPERATION IN DEFENSE EQUIPMENT RESEARCH AND DEVELOPMENT, PRODUCTION, PROCUREMENT, AND LOGISTIC SUPPORT, DATED 28 MARCH 1979.

PRINCIPLES GOVERNING LOGISTIC SUPPORT OF COMMON EQUIPMENT

In implementing Article 1, paragraph 14 of the MoU, the two Governments shall be governed by the following:

1. When developing or procuring defense equipment, both Governments will agree upon the basis for joint follow-on logistic support in areas such as configuration control; interchangeability of assemblies, components and spare parts; maintenance; conversion; storage, spare parts provisioning; etc.

2. Arrangements and procedures for logistic support, paragraph 9, Article 1 of the MoU normally shall apply.

4. Both Governments will issue directives and guidelines to their respective armaments and logistics agencies to achieve the described goals of this MoU.

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CONTRACT CLAUSES AND SOLICITATION PROVISIONS

WORKMEN'S COMPENSATION AND WAR HAZARD INSURANCE OVERSEAS (1968 JUL)

(a) This clause applies if the Contractor employs any person who, but for a waiver granted by the Secretary of Labor, would be subject to Workmen's Compensation Insurance under the Defense Base Act (42 U.S.C. 1651). On behalf of such waived employees, the Contractor, before commencing performance under this contract shall provide, and thereafter maintain, at least such Workmen's Compensation Insurance or the equivalent as may be required by the laws of the country of which such waived employees are nationals. The Contractor further agrees to insert in all subcontracts hereunder to which the Defense Base Act would be applicable but for the waiver, a clause similar to this paragraph (a), including this sentence, imposing on all such subcontractors a like requirement to provide such Workmen's Compensation Insurance coverage.

(b) This paragraph applies if the Contractor or any of his subcontractors employs any person who, but for a waiver granted by the Secretary of Labor, would be subject to the War Hazards Compensation Act, as amended (42 U.S.C. 1701 et seq). On behalf of such waived employees the Contractor shall subject to reimbursement as elsewhere herein provided, afford protection the same as that provided in the War Hazards Compensation Act, except that the level of benefits shall conform to any law or international agreement controlling the benefits to which the employees may be entitled. In all other respects, the standards of the War Hazards Compensation Act shall apply; e.g., with respect to the definition of war hazard risks (injury, death, capture or detention as the result of a war hazard as defined in the Act), proof of loss, and exclusion of benefits otherwise covered by Workmen's Compensation Insurance or equivalent. Unless the Contractor elects to directly assume the liability to subcontractor employees created by this clause, the Contractor further agrees to insert in all subcontracts hereunder to which the War Hazards Compensation Act would be applicable but for the waiver, a clause similar to this paragraph (b), including this sentence, imposing on all such subcontractors a like requirement to provide War Hazard benefits.

(End of clause)

(c) When the clause in (b) above is required, the following clause shall also be inserted in the contract, but only if the Head of a Procuring Activity or his designee has decided that the contractor shall not purchase insurance against the liability described in 10–403(d)(2) (see also 10–501.1(c)).

REIMBURSEMENT FOR WAR HAZARD LOSSES (1968 JUL)

(a) The Contractor's costs for assuming liability for employee protection against war hazard risks pursuant to paragraph (b) of the clause of this contract entitled "Workmen's Compensation and War Hazard Insurance" shall be an allowable cost under this contract, subject to the following:

(i) The Contractor shall submit proof of loss files to support payment or denial of each claim.

(ii) As soon as practicable, but no later than one year after the expiration or termination of this contract, unless the time shall be extended by Contracting Officer, the Contractor shall, convert each claim which has not been finally settled into a suitable arrangement under which the claim can be extinguished by the Contractor with a lump sum payment. Subject to approval by the Contracting Officer, the Contractor shall thereupon obtain necessary release documents and settle the claim by lump sum arrangement, taking into account any payments previously made.

(iii) As to any potential claim which is known to, or reasonably should be within the knowledge of, the Contractor at the time of final settlement under this contract, the Contractor shall, at that time, present to the Government a full report and evaluation, indicating as to each potential claim that a reasonable investigation of the circumstances has been made, the results thereof, an evaluation of the merits, and an estimate of the amount involved should the potential claim mature into a valid obligation.

(iv) The cost of insurance against a liability reimbursable under this clause shall not be an allowable cost or otherwise recoverable under this contract.

CONTRACT CLAUSES AND SOLICITATION PROVISIONS

(b) The Government may require the Contractor to assign to the Government in the manner, at the times, and to the extent directed by the Contracting Officer all right, title and interest of the Contractor to any refund, rebate or recapture arising out of any claim settlement. The Government may handle such assigned entitlements in such manner as it deems appropriate and may recover any benefits related to claim settlements.

(c) The Contractor shall, as soon as practicable after an occurrence which appears to give rise to a claim under this portion of the contract, perform such investigations as may be appropriate and promptly notify the Contracting Officer in writing of any additional amount estimated to be necessary to be obligated on account of such claim or potential claim. In addition, the Contractor shall give the Government or its representatives immediate written notice of any suit or action filed, the cost or expense of which may be reimbursable to the Contractor under this clause. The Contractor agrees to render full assistance to the Government in connection with any third party suit or claim relating to this clause or its subject matter which the Government elects to prosecute or defend in its own behalf.

(End of clause)

7-104.3 *Buy American Act and the Balance of Payments Program.* The following clause shall be inserted in all contracts not utilizing small purchase procedures for supplies and in contracts for services which require the furnishing of supplies (e.g., the leasing of equipment), in accordance with 6-104.5 and 6-803.1(e).

BUY AMERICAN ACT AND BALANCE OF PAYMENTS PROGRAM (1980 OCT)

(a) This clause implements the Buy American Act (41 U.S.C. Section 10a-d) and the Department of Defense Balance of Payments Program by providing a preference to domestic end products over foreign end products except for certain foreign end products which meet the requirements for classification as qualifying country end products. For the purpose of this clause—

(i) "Components" means those articles, materials, and supplies which are directly incorporated into end products.

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

(iii) "End products" means articles, materials, and supplies which are to be acquired for public use. As to a given contract, the end products are the items to be delivered to the Government, as specified in the contract, including supplies to be acquired by the Government for public use in connection with service contracts but excluding installation and other services to be performed after delivery.

sated by the Government, he shall equitably reimburse the Government. The Contractor shall do nothing to prejudice the Government's rights to recover against third parties for any such damage, loss, or destruction and, upon the request of the .....,* shall at the Government's expense furnish to the Government all reasonable assistance and cooperation (including the prosecution of suit and the execution of instruments of assignment or subrogation in favor of the Government) in obtaining recovery.

(End of clause)

*In the foregoing clause, insert in contracts of the Department of the Army, the Department of the Navy, the Department of the Air Force, and in contracts to be administered by the Defense Contract Administration Services the activity designated in combined regulation identified as Air Force Regulation 55-22, Army Regulation 95-20, NAVAIR Instruction 3710.1A, Defense Supply Agency Regulation 8210.1, dated 8 October 1971, subject, Requirements for Contractor Operating Procedures and Flight Crews, enclosure 1.

7-104.11 *Reserved.*

7-104.12 *Military Security Requirements.* Insert the following clause in all classified contracts (see 1-201.34). If the situation warrants because of the nature of the item, or the location or the conditions under which the contract is to be performed, such contract shall include a separate provision for such additional security safeguards as may be required (see paragraphs 1-103, 1-108, 1-115, and 1-116, ISR). When the Military Security Requirements clause is inserted in any contract, the contracting officer or his authorized representative shall approve and transmit a Contract Security Classification Specification (DD Form 254) in accordance with 16-811 and Section VII, DoD 5220.22-R. The DD Form 254 is required in connection with all classified subcontracts unless excepted by DoD 5220.22-R.

MILITARY SECURITY REQUIREMENTS (1971 APR)

(a) The provisions of this clause shall apply to the extent that this contract involves access to information classified ""Confidential," "Secret" or "Top Secret."

(b) The Contractor shall comply with (i) the Security Agreement (DD Form 441), including the attached Department of Defense Industrial Security Manual for Safeguarding Classified Information (DoD 5220.22-M); and (ii) any revisions thereto, notice of which has been furnished to the Contractor.

(c) If, subsequent to the date of this contract, the security classification or security requirements under this contract are changed by the Government as provided in this clause and the security costs or time required for delivery under this contract are thereby increased or decreased, the contract price, delivery schedule, or both and any other provision of the contract that may be affected shall be subject to an equitable adjustment by reason of such increased or decreased costs. Any equitable adjustment shall be accomplished in the same manner as if such changes were directed under the "Changes" clause of this contract.

(d) The Contractor agrees to insert in all subcontracts hereunder which involve access to classified information provisions which shall conform substantially to the language of this clause, including this paragraph (d) but excluding the last sentence of paragraph (c) of this clause.

(End of clause)

7-104.13 *Preference for Certain Domestic Commodities.* The following clause shall be included in all contracts for the acquisition of food, clothing and textiles as identified.

PREFERENCE FOR CERTAIN DOMESTIC COMMODITIES (1980 OCT)

The Contractor agrees that there will be delivered under this contract only such articles of food, clothing, cotton, woven silk and woven silk blends, spun silk yarn for cartridge cloth, synthetic fabric, coated synthetic fabric, or wool (whether in the form of fiber or yarn or contained in fabrics, materials, or manufactured articles) as have been grown, reprocessed, reused, or produced in the United States, its possessions, or Puerto Rico; *Provided,* That (i) this clause shall have no effect to the extent that the Secretary has determined that a satisfactory quality and sufficient quantity of such articles cannot be acquired as and when needed at U.S. market prices; (ii) nothing herein shall preclude the delivery, under this contract, of foods which have been manufactured or processed in the United States, its possessions, or Puerto Rico; and (iii) this clause shall not apply to chemical warfare protective clothing produced in qualifying countries (see Section VI).

(End of clause)

7-104.14 *Utilization of Small Business and Small Disadvantaged Business Concerns.*

(a) In accordance with 1-707.3(a), insert the following clause.

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CONTRACT CLAUSES AND SOLICITATION PROVISIONS

UTILIZATION OF SMALL BUSINESS AND SMALL DISADVANTAGED BUSINESS CONCERNS (1980 AUG)

(a) It is the policy of the United States that small business and small business concerns owned and controlled by socially and economically disadvantaged individuals shall have the maximum practicable opportunity to participate in the performance of contracts let by any Federal agency.

(b) The Contractor hereby agrees to carry out this policy in the awarding of subcontracts to the fullest extent consistent with the efficient performance of this contract. The term "subcontract" means any agreement (other than one involving an employer-employee relationship) to be entered into by a Federal Government prime contractor or subcontractor calling for supplies or services required for the performance of the original contract or subcontract. The Contractor further agrees to cooperate in any studies or surveys as may be conducted by the United States Small Business Administration or the awarding agency of the United States as may be necessary to determine the extent of the Contractor's compliance with this clause.

(c) As used in this contract, the term "small business concern" shall mean a small business as defined pursuant to Section 3 of the Small Business Act and relevant regulations promulgated pursuant thereto. The term "small business concern owned and controlled by socially and economically disadvantaged individuals," hereafter referred to as disadvantaged business, shall mean a small business concern -

(1) which is at least 51 per centum owned by one or more socially and economically disadvantaged individuals; or, in the case of any publicly owned business, at least 51 per centum of the stock of which is owned by one or more socially and economically disadvantaged individuals; and

(2) whose management and daily business operations are controlled by one or more of such individuals. The Contractor shall presume that socially and economically disadvantaged individuals include Black Americans, Hispanic Americans, Native Americans (i.e., American Indians, Eskimos, Aleuts and Native Hawaiians), Asian-Pacific Americans (i.e., U.S. citizens whose origins are from Japan, China, the Philippines, Vietnam, Korea, Samoa, Guam, the U.S. Trust Territories of the Pacific, Northern Marianas, Laos,

Cambodia, and Taiwan, and other minorities, or any individuals found to be disadvantaged by the Administration pursuant to Section 8(a) of the Small Business Act.

(d) Contractors acting in good faith may rely on written representations by their subcontractors regarding their status as either a small business concern or a small business concern owned and controlled by socially and economically disadvantaged individuals.

(End of clause)

(b) In accordance with 1-707.3(b), insert the following clause in negotiated contracts.

SUBCONTRACTING PLAN FOR SMALL BUSINESS AND SMALL DISADVANTAGED BUSINESS CONCERNS (NEGOTIATED) (1982 APR)

(a) This provision does not apply to small business concerns.

(b) The apparent successful offeror, upon request by the Contracting Officer, shall submit and negotiate a subcontracting plan which addresses separately subcontracting with small business concerns and small disadvantaged business concerns and which shall be included in and made a part of the resultant contract. The subcontracting plan shall be negotiated within the time specified by the contracting officer. Failure to submit and negotiate the subcontracting plan shall make the offeror ineligible for award of a contract. As a minimum, the subcontracting plan shall include—

(1) Separate percentage goals (expressed in terms of percentage of total planned subcontracting dollars) for the utilization as subcontractors of small business concerns and small business concerns owned and controlled by socially and economically disadvantaged individuals. For the purposes of the subcontracting plan, the Contractor shall include all subcontracts to be awarded for the specific purpose of performing this contract and may include a proportionate share of supplies and services whose costs are normally allocated as indirect or overhead costs when reasonably determined to be attributable to this contract.

a. A statement of: (i) total dollars planned to be subcontracted; (ii) total dollars planned to be subcontracted to small business; and (iii) total dollars planned to be subcontracted to small disadvantaged business.

b. A description of the principal supply and service areas to be subcontracted and an identification of those areas where it is planned to use (i) small business subcontractors, and (ii) small disadvantaged business subcontractors.

c. A statement of the method used in developing proposed subcontracting goals for small business and small disadvantaged business concerns.

d. If the offeror includes indirect and overhead costs as an element in establishing the goals in the subcontracting plan, the method used in determining the proportionate share of indirect and overhead costs incurred with (i) small business, and (ii) small disadvantaged business concerns.

e. A statement of the method used for solicitation purposes (e.g., did the offeror use company source lists, the small business and disadvantaged small business source identification system provided by the Small Business Administration's Procurement Automated Source System, the National Minority Purchasing Council Vendor Information Service, or the services provided by the U.S. Department of Commerce Minority Business Development Agency's Research and Information Division, and the facilities of small business and disadvantaged business trade associations?).

(2) The name of an individual within the employ of the offeror who will administer the subcontracting plan of the offeror and a description of the duties of such individual;

(3) A description of the efforts the offeror will make to assure that small business and small disadvantaged business concerns will have an equitable opportunity to compete for subcontracts;

(4) Assurances that the offeror will include the clause entitled Utilization of Small Business and Small Disadvantaged Business Concerns in all subcontracts which offer further subcontracting possibilities in the United States and will require all subcontractors (except small business concerns) who receive subcontracts in excess of $500,000 or, in the case of a contract for the construction of any public facility, $1 million, to adopt a plan in consonance with this clause;

(5) Assurances that the offeror will submit such periodic reports and cooperate in any studies or surveys as may be required by the contracting agency or the Small Business Administration in order to determine the extent

of compliance by the offeror with the subcontracting plan; and

(6) A recitation of the types of records the offeror will maintain to demonstrate procedures which have been adopted to comply with the requirements and goals set forth in the plan, including the establishment of source lists of small business and small disadvantaged business concerns; and efforts to identify and award subcontracts to such small business concerns. The records shall include at least the following (these records may be maintained on a plant-wide or company-wide basis unless otherwise indicated):

a. Small and small disadvantaged business source lists, guides, and other data identifying small and small disadvantaged business vendors.

b. Organizations contacted for small and small disadvantaged business sources.

c. On a contract-by-contract basis, records on all subcontract solicitations over $100,000, indicating on each solicitation (i) whether small business was solicited and if not, why not; (ii) whether small disadvantaged business was solicited and if not, why not; and (iii) reasons for the failure of responding small businesses to receive the subcontract award.

d. Records to support such efforts as:

(i) contacts with disadvantaged and small business trade associations;

(ii) contacts with business development organizations; and

(iii) attendance at small and small disadvantaged business procurement conferences and trade fairs.

e. Records to support internal activities to guide and encourage buyers such as:

(i) workshops, seminars, training programs, etc.; and

(ii) monitoring activities to evaluate compliance.

f. On a contract-by-contract basis, records to support award data submitted to the Government to include name, address, and size status of subcontractor.

(c) In order to effectively implement this plan the Contractor shall:

(1) Issue and promulgate company-wide policy statements in support of this effort, develop written procedures and work instructions, and assign specific responsibilities regarding requirements of this clause.

(2) Demonstrate continuing management interest and involvement in support of this effort through such actions as regular reviews of progress and establishment of overall corporate and divisional goals and objectives.

(3) Train and motivate contractor personnel regarding the support of small and small disadvantaged business firms.

(4) Assist small business and small disadvantaged business concerns by arranging solicitations, time for the preparation of bids, quantities, specifications, and delivery schedules so as to facilitate the participation by such concerns. Where the Contractor's lists of potential small business and small disadvantaged subcontractors are excessively long, reasonable effort shall be made to give all such small business concerns an opportunity to compete over a period of time.

(5) Provide adequate and timely consideration of the potentialities of small business and small disadvantaged business concerns in all "make-or-buy" decisions.

(6) Counsel and discuss subcontracting opportunities with representatives of small and small disadvantaged business firms as are referred by the Small and Disadvantaged Business Utilization Specialist responsible for monitoring performance under this program and representatives of the SBA.

(d) The Contractor shall submit DD Form 1140-1 in accordance with instructions provided on the form.

(e) The offeror understands that:

(1) An acceptable plan must, in the determination of the contracting officer, provide the maximum practicable opportunity for small business and small disadvantaged business concerns to participate in the performance of the contract.

(2) The Contracting Officer shall notify the Contractor in writing of his reasons for determining a subcontracting plan to be unacceptable. Such notice shall be given early enough in the negotiation process to allow the Contractor sufficient time to modify the plan within the time limits prescribed.

(3) Prior compliance of the offeror with other such subcontracting plans under previous contracts will be considered by the Contracting Officer in determining the responsibility of the offeror for award of the contract.

(4) The failure of any contractor or subcontractor to comply in good faith with (i) the clause entitled Utilization of Small Business and Small Disadvantaged Business

Concerns or (ii) an approved plan required by this Small Business and Small Disadvantaged Business Subcontracting Plan (Negotiated) provision, will be a material breach of such contract or subcontract.

(f) In the acquisition of commercial products, the offeror further understands that:

(1) If a commercial product (defined below) is offered, the required subcontracting plan may cover the company's commercial production generally, both for Government contracts and for regular commercial sales, rather than just this acquisition. In such cases, the Contractor may request approval from the Contracting Officer to submit one company-wide, or division-wide, annual plan. If such request is deemed appropriate, the offeror shall submit a proposed company-wide, or division-wide, annual plan for acceptance.

(2) Upon approval by the Contracting Officer, the plan will remain in effect for the company's entire fiscal year. During this period, Government contracts for commercial products of the affected company or division will not be required to contain individual subcontracting plans relating only to the supply or services being acquired, unless the Contracting Officer determines for a particular contract that there are unforeseen possibilities for small business and small disadvantaged business subcontracting.

(3) At least 60 days before the scheduled termination of the company or division-wide plan, the Contractor may submit to the Contracting Officer a proposed company or division-wide subcontracting plan for its commercial products for the succeeding fiscal year. If the plan would otherwise terminate prior to approval of the succeeding fiscal year's plan, it will remain in effect until the succeeding plan is accepted or rejected, but no longer than 60 days after the end of the company's fiscal year.

(4) For the purpose of this program, the term "commercial product" means a product in regular production sold in substantial quantities to the general public and/or industry at established catalog or market prices. A product which, in the opinion of the Contracting Officer, differs only insignificantly from the Contractor's commercial product may be regarded for the purpose of this clause as a commercial product.

(End of clause)

(c) In accordance with 1-707.3(c), insert the following clause in formally advertised contracts.

SUBCONTRACTING PLAN FOR SMALL BUSINESS AND SMALL DISADVANTAGED BUSINESS CONCERNS (FORMALLY ADVERTISED) (1982 APR)

(a) This provision does not apply to small business concerns.

(b) The apparent low bidder, upon request by the Contracting Officer, shall submit a subcontracting plan which addresses separately subcontracting with small business concerns and small disadvantaged business concerns, and which shall be included in and made a material part of the resultant contract. The subcontracting plan shall be submitted within the time specified by the Contracting Officer. Failure to submit the subcontracting plan shall make the bidder ineligible for the award of a contract. As a minimum, the subcontracting plan shall include:

(1) Separate percentage goals (expressed in terms of percentage of total planned subcontracting dollars) for the utilization as subcontractors of small business concerns and small business concerns owned and controlled by socially and economically disadvantaged individuals; for the purposes of the subcontracting plan, the Contractor shall include all subcontracts to be awarded for the specific purpose of performing this contract and may include a proportionate share of supplies and services whose costs are normally allocated as indirect or overhead costs when reasonably determined to be attributable to this contract.

a. A statement of: (i) total dollars planned to be subcontracted; (ii) total dollars planned to be subcontracted to small business; and (iii) total dollars planned to be subcontracted to small disadvantaged business.

b. A description of the principal supply and service areas to be subcontracted and an identification of those areas where it is planned to use (i) small business subcontractors, and (ii) small disadvantaged business subcontractors.

c. A statement of the method used in developing proposed subcontracting goals for small business and small disadvantaged business concerns.

d. If the offeror includes indirect and overhead costs as an element in establishing the goals in the subcontracting plan, the method used in determining the proportionate share of indirect and overhead costs incurred

with (i) small business, and (ii) small disadvantaged business subcontractors shall be explained.

e. A statement of the method used for solicitation purposes (e.g., did the offeror use company source lists, the small business and disadvantaged small business source identification system provided by the Small Business Administration's Procurement Automated Source System, the National Minority Purchasing Council Vendor Information Service, or the services provided by the U.S. Department of Commerce Minority Business Development Agency's Research and Information Division, and the facilities of small business and disadvantaged business trade associations?).

(2) The name of an individual within the employ of the bidder who will administer the subcontracting plan of the bidder and a description of the duties of such individual;

(3) A description of the efforts the bidder will make to assure that small business and small disadvantaged business concerns will have an equitable opportunity to compete for subcontracts;

(4) Assurances that the bidder will include the clause entitled Utilization of Small Business and Small Disadvantaged Business Concerns in all subcontracts which offer further subcontracting possibilities in the United States, and that the bidder will require all subcontractors (except small business concerns) who receive subcontracts in excess of $1 million in the case of a contract for the construction of any public facility, or in excess of $500,000 in the case of all other contracts, to adopt a plan in consonance with this clause;

(5) Assurances that the bidder will submit such periodic reports and cooperate in any studies or surveys as may be required by the contracting agency or the Small Business Administration in order to determine the extent of compliance by the bidder with the subcontracting plan; and

(6) A recitation of the types of records the successful bidder will maintain to demonstrate procedures which have been adopted to comply with the requirements and goals set forth in the plan, including the establishment of source lists of small business concerns and small disadvantaged business concerns; and efforts to identify and award subcontracts to such small business concerns. The records shall include at least the following (these records may be maintained on a plant-wide or company-wide basis unless otherwise indicated):

a. Small and small disadvantaged business source lists, guides, and other data identifying small and small disadvantaged business vendors.

b. Organizations contacted for small and small disadvantaged business sources.

c. On a contract-by-contract basis, records on all subcontract solicitations over $100,000, indicating on each solicitation (i) whether small business was solicited and if not, why not; (ii) whether small disadvantaged business was solicited and if not, why not; and (iii) reasons for the failure of responding small businesses or small disadvantaged businesses to receive the subcontract award.

d. Records to support such efforts as:

(i) contacts with disadvantaged and small business trade associations;

(ii) contacts with business development organizations; and

(iii) attendance at small and small disadvantaged business procurement conferences and trade fairs.

e. Records to support internal activities to guide and encourage buyers such as:

(i) workshops, seminars, training programs, etc., and

(ii) monitoring activities to evaluate compliance.

f. On a contract-by-contract basis, records to support award data submitted to the Government to include name, address, and size status of subcontractor.

(c) In order to effectively implement this plan, the Contractor shall:

(1) Issue and promulgate company-wide policy statements in support of this effort, develop written procedures and work instructions, and assign specific responsibilities regarding the requirements of this clause.

(2) Demonstrate continuing management interest and involvement in support of these programs through such actions as regular reviews of progress and establishment of overall corporate and divisional goals and objectives.

(3) Train and motivate contractor personnel in support of these programs.

(4) Assist small business and small disadvantaged business concerns by arranging solicitations, time for the preparation of bids, quantities, specifications, and delivery schedules so as to facilitate the participation

by such concerns. Where the Contractor's lists of potential small business and small disadvantaged subcontractors are excessively long, reasonable effort shall be made to give all such small business concerns an opportunity to compete over a period of time.

(5) Provide adequate and timely consideration of the potentialities of small business and small disadvantaged business concerns in all "make-or-buy" decisions.

(6) Counsel and discuss subcontracting opportunities with representatives of small and small disadvantaged business firms as are referred by the Small and Disadvantaged Business Utilization Specialist responsible for monitoring performance under this program and representatives of the SBA.

(d) The Contractor shall submit DD Form 1140-1 in accordance with instructions provided on the form.

(e) The bidder understands that:

(1) Prior compliance of the bidder with other such subcontracting plans under previous contracts will be considered by the Contracting Officer in determining the responsibility of the bidder for award of the contract.

(2) The failure of any contractor or subcontractor to comply in good faith with (i) the clause entitled Utilization of Small Business Concerns and Small Disadvantaged Business Concerns, or (ii) the terms of any subcontracting plan required by this Small Business and Small Disadvantaged Business Subcontracting Plan (Advertised) provision, will be a material breach of the contract or subcontract.

(f) In the acquisition of commercial products, the bidder further understands that:

(1) If a commercial product (defined below) is offered, the required subcontracting plan may cover the company's production generally, both for Government contracts and for regular commercial sales, rather than just this acquisition. In such cases, the Contractor may request approval from the Contracting Officer to submit one company-wide, or division-wide, annual plan. If such request is deemed appropriate, the offeror shall submit a proposed company-wide, or division-wide, annual plan for acceptance.

(2) Upon approval by the Contracting Officer, the plan will remain in effect for the company's entire fiscal year. During this period, Government contracts for commercial products of the affected company or division will not be required to contain individual subcontracting plans relating only to the supply or services being acquired, unless the Contracting Officer determines for a particular contract that there are unforeseen possibilities for small business and small disadvantaged business subcontracting.

CONTRACT CLAUSES AND SOLICITATION PROVISIONS

7–203.28 *Competition in Subcontracting.* In accordance with 7–104.40, insert the clause therein.

7–203.29 *Audit by Department of Defense.* Insert the clause in 7–104.41(a).

7–203.30 *Price Reduction for Defective Cost or Pricing Data.* In accordance with 7–104.29, insert the applicable clause therein.

7–203.31 *Subcontractor Cost and Pricing Data.* Insert the clause in 7–104.42(a).

7–203.32 *Affirmative Action for Disabled Veterans and Veterans of the Vietnam Era.* Insert the clause in 7–103.27.

7–203.33 *Affirmative Action for Handicapped Workers.* Insert the clause in 7–103.28.

7–203.34 *Clean Air and Water.* In accordance with 1–2302.2, insert the clause in 7–103.29.

7–203.35 *Notice of Intent to Disallow or Not Recognize Costs.* In accordance with 15–206, insert the following clause in all cost-reimbursement type and flexibly priced contracts.

NOTICE OF INTENT TO DISALLOW OR NOT RECOGNIZE COSTS (1978 AUG)

(a) Notwithstanding any other provision of this contract, the Contracting Officer may, at any time, issue to the Contractor a written notice of intent to disallow or not recognize costs. This notice will indicate the Contracting Officer's intent to take exception to specified costs being incurred, or planned for incurrence, which he has determined not to be allowable in accordance with the terms of this contract.

(b) The Contractor may, within sixty (60) days of receipt of such notification, submit a written response to the Contracting Officer, together with justification therefor, against the proposed cost exception.

(c) In the event the Contractor does not file any such written response within the sixty (60) day period in (b) above, the notice shall serve as the Contracting Officer's final decision under the provisions of the clause herein entitled "*Disputes*".

(d) The Contracting Officer shall, within sixty (60) days of receipt of any written response, either withdraw in writing the notification or issue a final decision thereon under the provisions of the clause herein entitled "*Disputes*".

(e) Failure to issue a notice pursuant to this clause shall not alter the Government's rights with respect to exception to incurred costs.

(End of clause)

7–204 Clauses To Be Used When Applicable.

7–204.1 *Clauses for Cost Reimbursement Type Supply Contracts Involving Construction Work.*

(a) In accordance with 12–106 and 18–703, insert the clauses in 7–602.23.

(b) In accordance with 7–602.20 and 7–602.24, insert the clauses therein in addition to the clause in 7–104.3.

7–204.2 *Workmen's Compensation and War Hazard Insurance Overseas.* In accordance with 10–403, insert the clauses in 7–104.2(a) and/or 7–104.2(b) depending on whether all contract employees are subject to the Defense Base Act or whether the Act has been waived as to all or part of the contract employees. Also insert the clause *Reimbursement for War Hazard Losses* in 7–104.2(c) and the schedule language at 10–502(b) and (c) according to the instructions stated in those paragraphs.

7–204.3 *Buy American Act.* In accordance with 7–104.3, insert the clause therein.

7–204.4 *Notice to the Government of Labor Disputes.* In accordance with 7–104.4, insert the clause therein.

CONTRACT CLAUSES AND SOLICITATION PROVISIONS

7–204.5 *Patent Indemnity.* In accordance with 9–103, insert the clause with additional applicable provisions in 7–104.5.

7–204.6 *Filing of Patent Applications.* In accordance with 9–106, insert the clause in 7–104.6.

7–204.7 *Patent Rights.* When experimental, developmental, or research work may be performed under the contract, insert the appropriate clause in 7–302.23.

7–204.8 *Reporting of Royalties.* In accordance with 9–110(d), insert the clause in 7–104.8(a).

7–204.9 *Rights in Data.* In accordance with 7–104.9 insert the appropriate clause, or clauses, therein.

7–204.10 *Quality Program.* In accordance with 14–304, insert the clause in 7–104.28.

7–204.11 *Reserved.*

7–204.12 *Military Security Requirements.* In accordance with 7–104.12, insert the clause therein, deleting paragraphs (c) and (d) and substituting the following:

(c) If, subsequent to the date of this contract, the security classifications or security requirements under this contract are changed by the Government as provided in this clause, and if such changes cause an increase or decrease in the estimated cost or time required for performance of this contract, the estimated cost, fee, delivery schedule, or any other provision of the contract that may be affected, shall be subject to an equitable adjustment. Any such equitable adjustment shall be accomplished in the manner set forth in the "Changes" clause of this contract.

(d) The Contractor agrees to insert, in all subcontracts hereunder which involve access to classified information, provisions which shall conform substantially to the language of this clause, including this paragraph (d) but excluding the last sentence of paragraph (c) of this clause. (1971 APR)

7–204.13 *Preference for Certain Domestic Commodities.* In accordance with 6–305, insert the clause in 7–104.13.

7–204.14 *Gratuities.* Insert the clause in 7–104.16, except in contracts and purchase orders with foreign governments obligating solely funds other than those contained in Department of Defense appropriation acts.

7–204.15 *Priorities, Allocations, and Allotments.* In accordance with the requirements of 1–307.2, insert the clause in 7–104.18.

7–204.16 *Limitation on Sales Commissions and Fees for Foreign Governments.* In accordance with 6–1305.6, insert the clause in 7–104.107.

7–204.17 *Employment of Ocean-Going Vessels—Ocean Transport of Government-Owned Supplies.*

(a) In accordance with 1–1404(a), insert the clause in 7–104.19(a).

(b) In accordance with 1–1404(b)(1), insert the clause in 7–104.19(b).

(c) In accordance with 1–1404(b)(2), insert the clause in 7–104.19(c).

(d) In accordance with 1–1410, insert the clause in 7–104.19(d).

licenses are granted, commercial sale or use in one field of use will not be deemed commercial sale or use as to other fields of use, and a first commercial sale or use with respect to a product of the invention will not be deemed to end the exclusive period to different subsequent products covered by the invention;

(iii) the Contractor shall share any royalties collected on a Subject Invention with the inventor; and

(iv) the balance of any royalties or income earned by the Contractor with respect to Subject Inventions, after payment of expenses (including payments to inventors) incidental to the administration of Subject Inventions, shall be utilized for the support of scientific research or education.

(End of clause)

7-302.24 *Reserved.*

7-302.25 *Military Security Requirements.* Insert the Military Security Requirements clause in accordance with 7-104.12.

7-302.26 *Utilization of Labor Surplus Area Concerns.* In accordance with 1-805.3, insert the clauses in 7-104.20.

7-302.27 *Government Delay of Work.* Insert the clause in 7-104.77.

7-302.28 *Title and Risk of Loss.* Insert the clause in 7-103.6.

7-302.29 *Pricing of Adjustments.* Insert the clause in 7-103.26.

7-302.30 *Affirmative Action for Disabled Veterans and Veterans of the Vietnam Era.* Insert the clause in 7-103.27.

7-302.31 *Affirmative Action for Handicapped Workers.* Insert the clause in 7-103.28.

7-302.32 *Clean Air and Water.* In accordance with 1-2302.2, insert the clause in 7-103.29.

7-303 Clauses To Be Used When Applicable.

7-303.1 *Clauses for Contracts Involving Construction Work.* In accordance with 7-602.23, 12-106, 18-701, and 18-703, insert the Labor Standards Provisions in 7-602.23.

7-303.2 *Filing of Patent Applications.* In accordance with 9-106, insert the clause in 7-104.6.

7-303.3 *Reporting and Refund of Royalties.* In accordance with 9-110(d) and 9-111, insert the appropriate clause or clauses in 7-104.8.

7-303.4 *Reserved.*

7-303.5 *Preference for Certain Domestic Commodities.* In accordance with 6-305, insert the clause in 7-104.13.

7-303.6 *Priorities, Allocations, and Allotments.* In accordance with 1-307.2, insert the clause in 7-104.18.

7-303.7 *Government Property.* When the Government is to furnish, or the contractor is to acquire, Government property, insert the following clause if the contract is with an educational or nonprofit institution, if not, insert the appropriate clauses as provided in 7-104.24. Changes in the clause below, like those in 7-104.24(e), (f) and (g), may be made as therein provided.

GOVERNMENT PROPERTY (FIXED PRICE, NONPROFIT) (1972 SEP)

(a) *Government-furnished Property.* The Government shall deliver to the Contractor, for use in connection with and under the terms of this contract, the property described as Government furnished property in the Schedule or specifications, together with such related data and information as the Contractor may request and as may reasonably be required for the intended use of such property (hereinafter referred to as "Government-furnished property"). The delivery or performance dates for the supplies or services to be furnished by the Contractor under this contract are based upon the expectation that Government-furnished property suitable for use (except for such property furnished "as is") will be delivered to the Contractor at the times stated in the Schedule, or, if not so stated, in sufficient time to enable the Contractor to meet such delivery or performance dates. In the event that Government-furnished property is not delivered to the Contractor by such time or times, the Contracting Officer shall, upon timely written request made by the Contractor, make a determination of the delay, if any, occasioned the Contractor thereby, and shall equitably adjust the delivery or performance dates or the contract price, or both, and any other contractual provision affected by any such delay. Except for Government furnished property furnished "as is", in the event that Government-furnished property is received by the Contractor in a condition not suitable for its intended use, the Contractor shall, upon receipt thereof, notify the Contracting Officer of such fact and, as directed by the Contracting Officer, either (i) return such property at the Government's expense or otherwise dispose of such property, or (ii) effect repairs or modifications. Upon completion of (i) or (ii) above, the Contracting Officer upon timely written request of the Contractor shall equitably adjust the delivery or performance dates or the contract price, or both, and any other contractual provision effected by the return, disposition, repair or modification. The foregoing provisions for adjustment are exclusive and the Government shall not be liable to suit for breach of contract by reason of any delay in delivery of Government-furnished property or delivery of such property in a condition not suitable for its intended use.

(b) *Changes in Government-furnished Property.*

(1) By notice in writing, the Contracting Officer may (i) decrease the property furnished or to be furnished by the Government under this contract, or (ii) substitute other Government-owned property for property to be furnished by the Government, or to be acquired by the Contractor for the Government, under this contract. The Contractor shall promptly take such action as the Contracting Officer may direct with respect to the removal, shipping, and disposal of property covered by such notice.

(2) In the event of any decrease in or substitution of property pursuant to paragraph (1) above, or any withdrawal of authority to use property provided under any other contract or lease, which property the Government had agreed in the Schedule to make available for the performance of this contract, the Contracting Officer, upon the written request of the Contractor (or, if the substitution of property causes a decrease in the cost of performance, on his own initiative), shall equitably adjust such contractual provisions as may be affected by the decrease, substitution or withdrawal, in accordance with the procedures provided in the "Changes" clause of this contract.

(c) *Title.*

(1) Title to all property furnished by the Government shall remain in the Government.

(2) Notwithstanding subparagraph (1) above, title to equipment purchased with funds available for research, having an acquisition cost of less than $1,000, shall vest in the Contractor upon acquisition or as soon thereafter as feasible, provided that the Contractor shall have obtained approval of the Contracting Officer prior to acquisition of such property.

LIABILITY TO THIRD PERSONS (1960 OCT)

(a) The Government does not assume any liability to third persons, nor will the Government reimburse the Contractor for his liability to third persons, with respect to loss due to death, bodily injury, or damage to property resulting in any way from the performance of this contract or any subcontract hereunder.

(b) The Contractor shall give the Government or its representatives immediate notice of any suit or action filed, or prompt notice of any claim made, against the Contractor arising out of the performance of this contract, the cost and expense of which may be reimbursable to the Contractor under the provisions of this contract. The Contractor shall furnish immediately to the Government copies of all pertinent papers received by the Contractor. The Contractor shall, if required by the Government, authorize representatives of the Government to settle or defend any such claim and to represent the Contractor in or take charge of any litigation in connection therewith. The Contractor may, at his own expense, be associated with the representatives of the Government in the settlement or defense of any such claim or litigation.

(End of clause)

7–402.27 *Utilization of Labor Surplus Area Concerns.* In accordance with 1–805.3, insert the clause in 7–104.20.

7–402.28 *Payment for Overtime Premiums.* In accordance with 12–102, insert the clause in 7–203.27.

7–402.29 *Competition in Subcontracting.* In accordance with 7–104.40, insert the clause therein.

7–402.30 *Audit by Department of Defense.* In accordance with 7–104.41(a), insert the clause therein.

7–402.31 *Price Reduction for Defective Cost or Pricing Data.* In accordance with 7–104.29(a), insert the clause therein.

7–402.32 *Subcontractor Cost and Pricing Data.* In accordance with 7–104.42(a), insert the clause therein.

7–402.33 *Reserved.*

7–402.34 *Affirmative Action for Disabled Veterans and Veterans of the Vietnam Era.* Insert the clause in 7–103.27.

7–402.35 *Affirmative Action for Handicapped Workers.* Insert the clause in 7–103.28.

7–402.36 *Clean Air and Water.* In accordance with 1–2302.2, insert the clause in 7–103.29.

7–402.37 *Notice of Intent to Disallow or Not Recognize Costs.* Insert the clause in 7–203.35.

7–403 Clauses To Be Used When Applicable.

7–403.1 *Clauses for Contracts Involving Construction Work.*

(a) In accordance with 18–703, insert the clauses in 7–602.23.

(b) In accordance with 7–602.20 and 7–602.24, insert the clauses therein.

7–403.2 *Filing of Patent Applications.* In accordance with 9–106, insert the clause in 7–104.6.

7–403.3 *Reporting of Royalties.* In accordance with 9–110 (d), insert the clause in 7–104.8(a).

7–403.4 *Reserved.*

7–403.5 *Excusable Delays.* In accordance with 8–708, insert the clause in 7–203.11.

7–403.6 *Preference for Certain Domestic Commodities.* In accordance with Section VI, Part 3, insert the clause in 7–104.13.

7–403.7 *Priorities, Allocations, and Allotments.* In accordance with 1–307.2, insert the clause in 7–104.18.

7–403.8 *Communist Areas.* In accordance with 6–403, insert the clause in 7–103.15.

7–403.9 *Negotiated Overhead Rates - Predetermined.*

(a) In accordance with 3–704, insert the following clause.

NEGOTIATED OVERHEAD RATES—PREDETERMINED (1978 AUG)

(a) Notwithstanding the provisions of the clause of this contract entitled "Allowable Cost and Payment", the allowable indirect costs under this contract shall be obtained by applying predetermined overhead rates to bases agreed upon by the parties, as specified below.

(b) The Contractor, as soon as possible but not later than three (3) months after the expiration of his fiscal year shall submit to the Contracting Officer with a copy to the cognizant audit activity, a proposed predetermined overhead rate or rates based on the Contractor's actual cost experience during that fiscal year, together with supporting cost data. Negotiation of predetermined overhead rates by the Contractor and the Contracting Officer shall be undertaken as promptly as practicable after receipt of the Contractor's proposal.

(c) Allowability of costs and acceptability of cost allocation methods shall be determined in accordance with the Armed Services Procurement Regulation, Section XV, Part 3, as in effect on the date of this contract.

(d) Predetermined rate agreements in effect on the effective date of this contract shall be incorporated into the contract schedule. Rates for subsequent periods shall be negotiated and the results set forth in a written overhead rate agreement executed by both parties. Such agreement shall be automatically incorporated into this contract upon execution and shall specify (i) the agreed predetermined overhead rates, (ii) the bases to which the rates apply, (iii) the fiscal year unless the parties agree to a different period for which the rates apply, and (iv) the specific items treated as direct costs or any changes in the items previously agreed to be direct costs. The overhead rate agreement shall not change any monetary ceiling, contract obligation, or specific cost allowance or disallowance provided for in this contract.

(e) Pending establishment of predetermined overhead rates for any fiscal year or different period agreed to by the parties, the Contractor shall be reimbursed either at the rates fixed for the previous fiscal year or other period or at billing rates acceptable to the Contracting Officer subject to appropriate adjustment when the final rates for that fiscal year or other period are established.

(f) Any failure by the parties to agree on any predetermined overhead rate or rates under this clause shall not be considered a dispute concerning a question of fact for decision by the Contracting Officer within the meaning of the "Disputes" clause of this contract. If for any fiscal year or other period specified in the Schedule of this contract the parties fail to agree to a predetermined overhead rate or rates it is agreed that the allowable indirect costs under this contract shall be obtained by applying negotiated final overhead rates in accordance with the terms of the "*Allowable Cost, Fee, and Payment*" clause of the contract.

(g) Allowable indirect costs for the period until the end of the Contractor's fiscal year during which performance begins shall be obtained by applying the predetermined overhead rate set forth in the Schedule to the bases set forth therein.

(End of clause)

(b) In the case of a facilities contract, change "Part 3" to "Part 5" in paragraph (c) of the clause in (a) above.

7–403.10 *Notice to the Government of Labor Disputes.* In accordance with 7–104.4, insert the clause therein.

7–403.11 *Gratuities.* In accordance with 7–104.16, insert the clause therein.

7–403.12 *Limitation on Withholding of Payments.*

(a) Except as provided in (b) below the following clause shall be inserted in contracts which include more than one clause or Schedule provision authorizing

7–602.27 *Federal, State, Local and Foreign Taxes.* In accordance with Section XI, Part 4, insert the appropriate clause set forth in 7–103.10; and in accordance with 11–302, the following clause.

NORTH CAROLINA STATE AND LOCAL SALES AND USE TAX (1977 JAN)

(a) As used throughout this clause, the term "materials" means building materials, supplies, fixtures and equipment which become a part of or are annexed to any building or structure erected, altered, or repaired under this contract.

(b) If this is a fixed-price type contract as defined in the Armed Services Procurement Regulation, the contract price includes North Carolina State and local sales and use taxes to be paid with respect to materials, notwithstanding any other provision of this contract. If this is a cost-reimbursement type contract as defined in such regulation, any North Carolina State and local sales and use taxes paid by the Contractor with respect to materials shall constitute an allowable cost under this contract.

(c) At the time specified in paragraph (d) below:

(i) The Contractor shall furnish the Contracting Officer certified statements setting forth the cost of the materials purchased from each vendor and the amount of North Carolina State and local sales and use taxes paid thereon. In the event the Contractor makes several purchases from the same vendor, such certified statement shall indicate the invoice numbers, the inclusive dates of the invoices, the total amount of the invoices and the North Carolina State and local sales and use taxes paid thereon. Such statement shall also include the cost of any tangible personal property withdrawn from the Contractor's warehouse stock and the amount of North Carolina State and local sales or use tax paid thereon by the Contractor. Any local sales or use taxes included in the Contractor's statements must be shown separately from the State sales or use taxes. The Contractor shall furnish such additional information as the Commissioner of Revenue of the State of North Carolina may require to substantiate a refund claim for sales or use taxes.

(ii) The Contractor shall obtain and furnish to the Contracting Officer similar certified statements by its subcontractors.

(d) If this contract is completed before the next October 1, the certified statements to be furnished pursuant to paragraph (c) above shall be submitted within sixty (60) days after completion. If this contract is not completed before the next October 1, such certified statements shall be submitted on or before the 30th day of November of each year and shall cover taxes paid during the twelve month period which ended the preceding September 30.

(e) The certified statements to be furnished pursuant to paragraph (c) above shall be in the following form:

I hereby certify that during the period ..... to ....., (name of contractor or subcontractor) paid North Carolina State and local sales and use taxes aggregating $..... (State) and $..... (local) with respect to building materials, supplies, fixtures and equipment which have become a part of or annexed to a building or structure erected, altered or repaired by (name of contractor) for the United States of America, and that the vendors from whom the property was purchased, the dates and numbers of the invoices covering the purchases, the total amount of the invoices of each vendor, the North Carolina State and local sales and use taxes paid thereon, shown separately, and the cost of property withdrawn from warehouse stock and North Carolina State and local sales or use taxes paid thereon are as set forth in the attachments hereto.

(End of clause)

Note: In ship repair contracts, change paragraph (a) to read as follows:

(a) As used throughout this clause, the term "materials" means materials, supplies, fixtures and equipment which become a part of or are annexed to any vessel altered or repaired under this contract.

7–602.28 *Reserved.*

7–602.29 *Termination for Convenience of the Government.*

(a) *Contracts Over $10,000.* In accordance with 8–701(a), insert the following clause.

TERMINATION FOR CONVENIENCE OF THE GOVERNMENT—CONSTRUCTION (1974 APR)

(a) The performance of work under this contract may be terminated by the Government in accordance with this clause in whole, or from time to time in part, whenever the Contracting Officer shall determine that such termination is in the best interest of the Government. Any such termination shall be effected by delivery to the Contractor of a Notice of Termination specifying the extent to which performance of work under the contract is terminated, and the date upon which such termination becomes effective.

(b) After receipt of a Notice of Termination, and except as otherwise directed by the Contracting Officer, the Contractor shall:

(i) stop work under the contract on the date and to the extent specified in the Notice of Termination;

(ii) place no further orders or subcontracts for materials, services or facilities, except as may be necessary for completion of such portion of the work under the contract as is not terminated;

(iii) terminate all orders and subcontracts to the extent that they relate to the performance of work terminated by the Notice of Termination;

(iv) assign to the Government, in the manner, at the times, and to the extent directed by the Contracting Officer, all of the right, title, and interest of the Contractor under the orders and subcontracts so terminated, in which case the Government shall have the right, in its discretion, to settle or pay any or all claims arising out of the termination of such orders and subcontracts;

(v) settle all outstanding liabilities and all claims arising out of such termination of orders and subcontracts, with the approval or ratification of the Contracting Officer, to the extent he may require, which approval or ratification shall be final for all the purposes of this clause;

(vi) transfer title and deliver to the Government, in the manner, at the times, and to the extent, if any, directed by the Contracting Officer, (A) the fabricated or unfabricated parts, work in process, completed work, supplies, and other material produced as a part of, or acquired in connection with the performance of, the work terminated by the Notice of Termination, and (B) the completed or partially completed plans, drawings, information, and other property which, if the contract had been completed, would have been required to be furnished to the Government;

under paragraph (c) or (e) above, the Government shall pay to the Contractor the following: (i) if there is no right of appeal hereunder or if no timely appeal has been taken, the amount so determined by the Contracting Officer, or (ii) if an appeal has been taken, the amount finally determined on such appeal.

(h) In arriving at the amount due the Contractor under this clause, there shall be deducted (i) all unliquidated advance or other payments theretofore made to the Contractor, applicable to the terminated portion of this contract; (ii) any claim which the Government may have against the Contractor in connection with this contract; and (iii) the agreed price for, or the proceeds of sale of, any materials, supplies, or other things acquired by the Contractor or sold pursuant to the provisions of the clause and not otherwise recovered by or credited to the Government.

(i) In the event of a partial termination, the portion of the fee which is payable with respect to the work under the continued portion of the contract shall be equitably adjusted by agreement between the Contractor and the Contracting Officer, and such adjustment shall be evidenced by an amendment to this contract.

(j) The Government may from time to time, under such terms and conditions as it may prescribe, make partial payments and payments on account against costs incurred by the Contractor in connection with the terminated portion of the contract whenever in the opinion of the Contracting Officer the aggregate of such payments shall be within the amount to which the Contractor will be entitled hereunder. If the total of such payments is in excess of the amount finally determined to be due under this clause, such excess shall be payable by the Contractor to the Government upon demand, together with interest computed at the rate established by the Secretary of the Treasury pursuant to Public Law 92-41; 85 STAT 97 for the Renegotiation Board, for the period from the date such excess payment is received by the Contractor to the date on which such excess is repaid to the Government; *provided*, however, that no interest shall be charged with respect to any such excess payment attributable to a reduction in the Contractor's claim by reason of retention or other disposition of termination inventory until 10 days after the date of such retention or disposition, or such later date as determined by the Contracting Officer by reason of the circumstances.

(k) The provisions of this clause relating to the fee shall be inapplicable if this contract does not provide for payment of a fee.

(End of clause)

7-605.27 *Convict Labor.* In accordance with 12-203, insert the clause in 7-104.17.

7-605.28 *Officials Not To Benefit.* In accordance with 7-602.19, insert the clause therein.

7-605.29 *Covenant Against Contingent Fees.* In accordance with 7-103.20, insert the clause therein.

7-605.30 *Gratuities.* In accordance with 7-104.16, insert the clause therein.

7-605.31 *Assignment of Claims.* If the contract is negotiated in contemplation that the contractor may make an assignment, insert the clause in 7-602.8.

7-605.32 *Reserved.*

7-605.33 *Authorization and Consent.* In accordance with 9-102.1 and 18-902, insert the appropriate clause in 7-103.22 or 7-302.21.

7-605.34 *Notice and Assistance Regarding Patent and Copyright Infringement.* In accordance with 9-104 and 18-904, insert the clause in 7-103.23.

7-605.35 *Patent Indemnity.* In accordance with 18-903.3, insert the clause in 7-602.16.

7-605.36 *Utilization of Small Business and Small Disadvantaged Business Concerns.* In accordance with 1-707.3, insert one or more of the clauses in 7-104.14.

7-605.37 *Competition in Subcontracting.* Insert the clause in 7-104.40.

7-605.38 *Definitions.* In accordance with 7-602.1, insert the clause therein.

7-605.39 *Excusable Delays.* In accordance with 8-708(a), insert the clause in 7-203.11 deleting the words "delivery schedule" in the last sentence and substituting the words "completion time."

7-605.40 *Rights in Shop Drawings.* In accordance with 18-910.1(b), insert the clause in 7-602.47.

7-605.41 *Management Systems Requirements.* In accordance with 16-827.1, insert the clause in 7-104.50.

7-605.42 *Bills of Lading Covering Shipments To or From Contractor's Plant.* In accordance with the requirements of 19-217.1(b), insert the clause in 7-203.14.

7-605.43 *Equal Opportunity Pre-Award Clearance of Subcontracts.* In accordance with 23-201.4, insert the clause in 7-104.22.

7-605.44 *Reserved.*

7-605.45 *Affirmative Action for Disabled Veterans and Veterans of the Vietnam Era.* Insert the clause in 7-103.27.

7-605.46 *Affirmative Action for Handicapped Workers.* Insert the clause in 7-103.28.

7-605.47 *Clean Air and Water.* In accordance with 1-2302.2, insert the clause in 7-103.29.

7-605.48 *Notice of Intent to Disallow or Not Recognize Costs.* Insert the clause in 7-203.35.

7-606 Clauses To Be Used When Applicable for Cost-Reimbursement Type Construction Contracts.

7-606.1 *Incentive Fee Clause for Cost-Type Construction Contracts.* Cost type construction contracts may provide for incentive fee adjustment in accordance with 3-405.4. Incentive fee cost reimbursement construction contracts will be prepared by using the cost-plus-a-fixed-fee construction contract format set forth in 16-402.3, including the clauses in 7-605 and 7-606, modified in the following particulars:

(i) change the title of the format to read "Cost-Plus-Incentive-Fee Construction Contract;"

(ii) delete the clause entitled "Allowable Cost, Fixed Fee and Payment;"

(iii) insert the clause in 7-203.4(b) entitled "Allowable Cost, Incentive Fee and Payment" with the following changes:

(A) Delete paragraph (a)(1) and substitute:

For the performance of this contract, the Government shall pay to the Contractor—

(i) The cost thereof (hereinafter referred to as "allowable cost") determined by the Contracting Officer to be allowable in accordance with—

(A) Section XV, Part 4, of the Armed Services Procurement Regulation as in effect on the date of this contract; and

(B) The terms of this contract; and

(ii) A fee in the amount of ..... dollars ($.....) adjusted as provided in (i) below.

7–607.15 *Contracting Officer's Decisions.*

CONTRACTING OFFICER'S DECISIONS (1965 JAN)

The extent and character of the work to be done by the Architect-Engineer shall be subject to the general supervision, direction, control and approval of the Contracting Officer.

(End of clause)

7–607.16 *Subcontractors and Outside Associates and Consultants.*

SUBCONTRACTORS AND OUTSIDE ASSOCIATES AND CONSULTANTS (1965 JAN)

Any subcontractors and outside associates or consultants required by the Architect-Engineer in connection with the services covered by the contract will be limited to such individuals or firms as were specifically identified and agreed to during negotiations. Any substitution in such subcontractors, associates, or consultants will be subject to the prior approval of the Contracting Officer.

(End of clause)

7–607.17 *Reserved.*

7–607.18 *Gratuities.* In accordance with 7–104.16, insert the clause therein, substituting "Architect-Engineer" for "Contractor."

7–607.19 *Interest.* In accordance with E–620, insert the clause in 7–104.39, substituting "Architect-Engineer" for "Contractor."

7–607.20 *Composition of Architect-Engineer.*

COMPOSITION OF ARCHITECT-ENGINEER (1972 APR)

If the Architect-Engineer hereunder is comprised of more than one legal entity, each such entity shall be jointly and severally liable hereunder.

(End of clause)

7–607.21 *Pricing of Adjustments.* Insert the clause in 7–103.26.

7–607.22 *Audit by Department of Defense.* In accordance with 7–104.41(a), insert the clause therein, substituting "Architect-Engineer" for Contractor."

7–607.23 *Affirmative Action for Disabled Veterans and Veterans of the Vietnam Era.* Insert the clause in 7–103.27, substituting "Architect-Engineer" for "Contractor".

7–607.24 *Affirmative Action for Handicapped Workers.* Insert the clause in 7–103.28.

7–607.25 *Clean Air and Water.* In accordance with 1–2302.2, insert the clause in 7–103.29.

7–607.26 *Reserved.*

7–607.27 *Suspension of Work.*

SUSPENSION OF WORK (1976 OCT)

(a) The Contracting Officer may order the Architect-Engineer in writing to suspend all or any part of the work for such period of time as he may determine to be appropriate for the convenience of the Government.

(b) If the performance of all or any part of the work is, for an unreasonable period of time, suspended or delayed by an act of the Contracting Officer in the administration of this contract, or by his failure to act within the time specified in this contract (or if no time is specified, within a reasonable time), an adjustment shall be made for any increase in cost of performance of this contract (excluding profit) necessarily caused by such unreasonable suspension or delay, and the contract modified in writing accordingly. However, no adjustment shall be made under this clause for any suspension or delay to the extent (1) that performance would have been suspended or delayed by any other cause, including the fault or negligence of the Architect-Engineer or (2) for which an equitable adjustment is provided for or excluded under any other provision of this contract.

(c) No claim under this clause shall be allowed (1) for any costs incurred more than twenty (20) days before the Architect-Engineer shall have notified the Contracting Officer in writing of the act or failure to act involved (but this requirement shall not apply as to a claim resulting from a suspension order), and (2) unless the claim, in an amount stated, is asserted in writing as soon as practicable after the termination of such suspension or delay, but not later than the date of final payment. No part of any claim based on the provisions of this clause shall be allowed if not supported by adequate evidence showing that the cost would not have been incurred but for a delay within the provisions of this clause.

(End of clause)

7–608 Clauses To Be Used When Applicable for Fixed-Price Architect-Engineer Contracts.

7–608.1 *Insurance.* In accordance with 10–405, insert the clause in 7–603.10, substituting "Architect-Engineer" for "Contractor."

7–608.2 *Management Systems Requirements.* In accordance with 16–827.1, insert the clause in 7–104.50, substituting "Architect-Engineer" for "Contractor."

7–608.3 *Redesign Responsibility.*

(a) Insert the following clause in all Architect-Engineer contracts except (i) those involving projects for which the Head of Procuring Activity or his designee determines that cost limitations are secondary to performance considerations and that additional funding can be expected if necessary, and (ii) those for the design of a standard structure which is not intended for a specific location site.

DESIGN WITHIN FUNDING LIMITATIONS (1971 APR)

(a) The Architect-Engineer shall accomplish the design services required under this contract so as to permit the award of a contract, pursuant to standard Department of Defense procedures, for the construction of the facilities designed at a price that does not exceed the estimated construction contract price set forth in this contract. When bids or proposals for the construction contract are received which exceed such estimated price, the Architect-Engineer shall perform such redesign and other services as are necessary to permit contract award within such funding limitation. These additional services shall be performed at no increase in the price of this contract. However, the Architect-Engineer shall not be required to perform such additional services at no cost to the Government if the unfavorable bids or proposals are the result of conditions beyond his reasonable control.

(b) The Architect-Engineer will promptly advise the Contracting Officer if he finds that the project being designed will exceed or is likely to exceed the funding limitations and he is unable to design a usable facility within these limitations. Upon receipt of such information, the Contracting Officer will review the Architect-Engineer's revised estimate of construction cost. The Contracting Officer may, if he determines that the estimated construction contract price set forth in this contract is so low that award of a construction contract not in excess of such estimate is improbable, authorize a change in scope or materials as required to reduce the estimated construction cost to an amount within the estimated construction contract price set forth elsewhere

(B) the retention or storage of the affected Facilities, *provided*, that the Contracting Officer will not direct the Contractor to retain or store any items of Facilities in or on real property not owned by the Government if such retention or storage will interfere with the Contractor's operations;

(C) the restoration of Government-owned land or buildings incident to the removal therefrom of Government-owned Facilities; and

(D) the sale of any affected Facilities in such manner, at such times, and at such price or prices, as may be approved by the Contracting Officer, except that the Contractor shall not be required to extend credit to any purchaser.

(d) If the Contracting Officer fails to give the written notice required by paragraph (c) above within the prescribed ninety (90) day period, or within thirty (30) days after notice as hereinafter provided, the Contractor may, upon not less than thirty (30) days' written notice to the Government and at Government risk and expense, (i) retain the Facilities in place or (ii) remove any of the affected severable Facilities located in Contractor-owned buildings or property and store them elsewhere, at Contractor's plant or in a public insured warehouse, in accordance with sound practice and in a manner compatible with their security classification, if any. Except as provided in this paragraph, the Government shall not be liable to the Contractor for failure to give the written notice required by paragraph (c) above.

(e) Nonseverable items of the Facilities or items of the Facilities subject to patent or proprietary rights shall be disposed of in such manner as the parties may have agreed to in writing.

(f) The Government, either directly or by third persons engaged by it, may remove or otherwise dispose of any Facilities with respect to which the Contractor's authority to use has been terminated, other than those for which specific provision is made in paragraph (e) above.

(g) The Contractor shall, within a reasonable time after the expiration of the ninety (90) day period specified in paragraph (c) above, remove all property owned by him from land or buildings owned or acquired by the Government and take such action as the Contracting Officer may direct in writing with respect to restoring such land or buildings, insofar as they are affected by the installation therein of the Contractor's property, to their condition prior to such installation.

(h) Unless otherwise specifically provided in this contract, the Government shall not be obligated to the Contractor to restore or rehabilitate any property at Contractor's plant, except for restoration or rehabilitation costs caused by removal of the Facilities pursuant to paragraph (c)(ii) above. The Contractor agrees to indemnify the Government against all suits or claims for damages arising out of the Government's failure to restore or rehabilitate any property at the Contractor's plant or property of its subcontractors, except any such damage as may be occasioned by the negligence of the Government, its agents, or independent contractors.

(End of clause)

7–702.27 *Failure to Perform.*

FAILURE TO PERFORM (1964 SEP)

(a) Subject to the provisions of the clause hereof entitled "Excusable Delays", if the Contractor shall fail to perform this contract in accordance with its terms, the Contracting Officer shall give the Contractor written notice thereof. Thereafter, notwithstanding any other provision of this contract, the Contractor shall not be entitled to an equitable adjustment under either this contract or any related procurement contract, to the extent that such equitable adjustment arises out of the Contractor's failure to perform or such reasonable remedial action as may be taken by the Contracting Officer predicated upon such failure.

(b) The failure of the Government to insist, in any one or more instances, upon the performance of any term or terms of this contract shall not be construed as a waiver or relinquishment of the Government's right to future performance of such term or terms, and the Contractor's obligation in respect to such future performance shall continue in full force and effect.

(c) The rights and remedies of the Government provided in this clause are in addition to any other rights and remedies provided by law or under this contract.

(End of clause)

7–702.28 *Disputes.* Insert the clause in 7–103.12.

7–702.29 *Military Security Requirements.* In accordance with 7–104.12, insert the clause therein, deleting paragraphs (c) and (d), and substituting the following paragraphs (c) and (d).

(c) If, subsequent to the date of this contract, the security classifications or security requirements under this contract are changed by the Government as provided in this clause, and if such change causes an increase or decrease in the estimated cost of performance of this contract, the estimated cost, to the extent appropriate, shall be subject to an equitable adjustment. Any such equitable adjustment shall be accomplished in the manner set forth in the "Changes" clause in this contract.

(d) The Contractor agrees to insert, in all subcontracts hereunder which involve access to classified information, provisions which shall conform substantially to the language of this clause, including this paragraph (d) but excluding (c) of this clause. The Contractor may insert in any such subcontract, and any such subcontract entered into may contain, in lieu of paragraph (c) of this clause, provisions which permit equitable adjustments to be made in the subcontract price or in the estimated cost and fixed fee of the subcontract (as appropriate to the type of subcontract involved) on account of changes in security classifications or requirements made under the provisions of this clause subsequent to the date of the subcontract involved. (1973 APR)

7–702.30 *Authorizaton and Consent.* In accordance with 9–102, insert the clause in 7–103.22 or 7–302.21.

7–702.31 *Notice and Assistance Regarding Patent and Copyright Infringement.* In accordance with 9–104, insert the clause in 7–103.23.

7–702.32 *Bills of Lading Covering Shipments To or From Contractor's Plant.* In accordance with the requirements of 19–217.1(b), insert the clause in 7–203.14.

7–702.33 *Subcontracts.* Insert the clause in 7–203.8 except that paragraph (a) shall be appropriately modified to delete references to facilities and special tooling.

7–702.34 *Utilization of Small Business and Small Disadvantaged Business Concerns.* In accordance with 1–707.3, insert one or more of the clauses in 7–104.14.

7–702.35 *Utilization of Labor Surplus Area Concerns.* In accordance with 1–805.3(a), insert the clause in 7–104.20(a).

7–702.36 *Buy American Act.* In accordance with 7–104.3, insert the clause therein. When the contract involves construction work, in accordance with 7–602.20 and 7–602.24 also insert the clauses therein.

7–702.37 *Assignment of Claims.* In accordance with 7–103.8, insert the clause therein.

7–702.38 *Reserved.*

7–702.39 *Officials Not To Benefit.* Insert the clause in 7–103.19.

7–702.40 *Gratuities.* In accordance with 7–104.16, insert the clause therein.

7–702.41 *Covenant Against Contingent Fees.* Insert the clause in 7–103.20.

7–702.42 *Payment for Overtime Premiums.* In accordance with 12–102.4, insert the clause in 7–203.27.

7–702.43 *Convict Labor.* In accordance with 12–202 and 12–203, insert the clause in 7–104.17.

7–702.44 *Equal Opportunity.* In accordance with 12–807.1, insert the applicable clause in 7–103.18.

7–703.28 *Buy American Act.* In accordance with 7–104.3, insert the clause therein. When the contract involves construction work, in accordance with 7–602.20 and 7–602.24 also insert the clauses therein.

7–703.29 *Assignment of Claims.* In accordance with 7–103.8, insert the clause therein.

7–703.30 *Reserved.*

7–703.31 *Officials Not To Benefit.* Insert the clause in 7–103.19.

7–703.32 *Gratuities.* In accordance with 7–104.16, insert the clause therein.

7–703.33 *Covenant Against Contingent Fees.* Insert the clause in 7–103.20.

7–703.34 *Payment for Overtime Premiums.* In accordance with 12–102.4, insert the clause in 7–203.27.

7–703.35 *Convict Labor.* In accordance with 12–202, insert the clause in 7–104.17.

7–703.36 *Equal Opportunity.* In accordance with 12–807.1, insert the applicable clause in 7–103.18.

7–703.37 *Walsh-Healey Public Contracts Act.* In accordance with Section XII, Part 6, insert the clause in 7–103.17.

7–703.38 *Contract Work Hours and Safety Standards Act — Overtime Compensation.* In accordance with 12–301, 12–302, and 12–306, insert the clauses in 7–103.16.

7–703.39 *Supersedure.*

SUPERSEDURE (1964 SEP)

When the acquisition, construction, or installation of the Facilities called for by this contract, or any useable increment thereof, is completed and accepted by the Government, such facilities shall thereafter be subject to the provisions of the related facilities contract by which the use of such items by the Contractor is authorized.

(End of clause)

7–703.40 *Price Reduction for Defective Cost or Pricing Data.* In accordance with 7–104.29, insert the appropriate clause therein.

7–703.41 *Audit by Department of Defense.* In accordance with 7–104.41(a), insert the clause therein as amended by 7–104.41(b).

7–703.42 *Subcontractor Cost and Pricing Data.* In accordance with 7–104.42, insert the appropriate clause therein.

7–703.43 *Competition in Subcontracting.* In accordance with 7–104.40, insert the clause therein.

7–703.44 *Inspection System.* When it is desired to require contractors to maintain an inspection system in accordance with Military Specification MIL-I–45208 (see 14–303), insert the following clause.

INSPECTION SYSTEM (1967 AUG)

The inspection system which the Contractor is required to maintain, as provided in paragraph (e) of the "Inspection" clause of this contract, shall be in accordance with the edition of Military Specification MIL-I–45208 in effect on the date of this contract.

(End of clause)

7–703.45 *Equal Opportunity Pre-Award Clearance of Subcontracts.* In accordance with 23–201.4, insert the clause in 7–104.22.

7–703.46 *Reserved.*

7–703.47 *Affirmative Action for Disabled Veterans and Veterans of the Vietnam Era.* Insert the clause in 7–103.27.

7–703.48 *Property Control.* Insert the clause in 7–702.17.

7–703.49 *Affirmative Action for Handicapped Workers.* Insert the clause in 7–103.28.

7–703.50 *Clean Air and Water.* In accordance with 1–2302.2, insert the clause in 7–103.29.

7–703.51 *Notice of Intent to Disallow or Not Recognize Costs.* Insert the clause in 7–203.35.

7–704 Required Clauses for Facilities Use Contracts. The following clauses shall be inserted in all facilities use contracts except that the clauses in 7–706 may be used in facilities use contracts with nonprofit educational institutions.

7–704.1 *Definitions.* Insert the clause required by 7–702.1. Additional definitions may be included in such clause *provided* they are not inconsistent with such clause or the provisions of this Regulation.

7–704.2 *Use and Charges.* Insert the clause in 7–702.12.

7–704.3 *Allowable Cost and Payment.*

ALLOWABLE COST AND PAYMENT (1965 JUL)

(a) For the performance of any work, duty, or obligation by the Contractor under this contract, which is provided herein to be at Government expense, the Government shall pay the Contractor the cost thereof, determined by the Contracting Officer to be allowable in accordance with (i) Section XV, Part 5, of the Armed Services Procurement Regulation as in effect on the date of this contract; and (ii) the terms of this contract.

(b) Except as otherwise specifically provided in this contract, the failure of this contract to provide for reimbursement shall not preclude the Contractor from including, as part of the price or cost under any other Government contract or subcontract, an allocable portion of the costs incurred in the performance of any work, duty, or obligation under this contract which are not reimbursable hereunder.

(End of clause)

7–704.4 *Limitation of Cost.* Insert the clause in 7–702.11.

7–704.5 *Examination of Records by Comptroller General.* In accordance with 7–104.15, insert the clause therein.

7–704.6 *Location of the Facilities.* Insert the clause in 7–702.8.

7–704.7 *Maintenance.* Insert the clause in 7–702.14.

7–704.8 *Inspection.* Insert the clause in 7–702.6.

7–704.9 *Title.* Insert the clause in 7–702.15, except that the following paragraph (a) shall be substituted for the corresponding paragraph in that clause:

(a) Title to the Facilities shall remain in the Government. Title to parts replaced by the Contractor in carrying out its normal maintenance obligations pursuant to the clause of this contract entitled "Maintenance" shall pass to and vest in the Government upon completion of their installation in the Facilities.

7–704.10 *Access.* Insert the clause in 7–702.16.

7–704.11 *Property Control.* Insert the clause in 7–702.17.

7–704.12 *Representations and Warranties.* Insert the clause in 7–702.5.

ticable at all times (including the period of performance) and places, and in any event prior to acceptance. The Government, through any authorized representative, may inspect the plant or plants of the Contractor or of any of his subcontractors engaged in the performance of this contract. If any inspection or test is made by the Government on the premises of the Contractor or a subcontractor, the Contractor shall provide and shall require subcontractors to provide all reasonable facilities and assistance for the safety and convenience of the Government inspectors in the performance of their duties. All inspections and tests by the Government shall be performed in such a manner as will not unduly delay the work. Except as otherwise provided in this contract, acceptance of services performed and materials furnished under this contract shall be made at the place of delivery as promptly as practicable after delivery and shall be deemed to have been made no later than sixty (60) days after the date of such delivery, if acceptance has not been made earlier within such period.

(b) At any time during performance of this contract, but not later than six (6) months (or such other period as may be provided in the schedule) after acceptance of the services or materials last delivered in accordance with the requirements of this contract, the Government may require the Contractor to remedy by correction or replacement, as directed by the Contracting Officer, any services or materials which at the time of delivery thereof failed to comply with the requirement of this contract. Except as otherwise provided in paragraph (c) hereof, below, the allowability of the cost of any such replacement or correction shall be determined as provided in the "Payments" clause of this contract, but the "hourly rate" for labor hours incurred in such replacement or correction shall be reduced so as to exclude the portion of such rate attributable to profit. Corrected or replacement materials and services shall not be tendered again for acceptance unless the former tender and the requirement of correction or replacement is disclosed. If the Contractor fails to proceed with reasonable promptness to perform such replacement or correction, and if such replacement or correction may be performed within the ceiling price, or the ceiling price as increased by the Government, the Government (i) may by contract or otherwise perform such replacement or correction and charge to the Contractor any increased cost occasioned the Government thereby, and may deduct such increased cost from any amounts due the Contractor under this contract (or require repayment of any payments theretofore made), or (ii) may terminate this contract for default as provided in the "Termination" clause of this contract. Failure to agree to the amount of any such increased cost to be charged to the Contractor, or to such reduction in, or repayment of, any amount due under this contract, shall be a dispute concerning a question of fact within the meaning of the "Disputes" clause of this contract.

(c) Notwithstanding the provisions of paragraph (b) above, the Government may at any time require the Contractor to remedy by correction or replacement, without cost to the Government, any failure by the Contractor to comply with the requirements of this contract, if such failure is due to fraud, lack of good faith or willful misconduct on the part of any of the Contractor's directors or officers, or on the part of any of his managers, superintendents, or other equivalent representatives, who has supervision or direction of (i) all or substantially all of the Contractor's business; (ii) all or substantially all of the Contractor's operations at any one plant or separate location in which this contract is being performed; (iii) a separate and complete major industrial operation in connection with the performance of this contract; or (iv) all or substantially all of the Contractor's operations under this contract. The Government may at any time also require the Contractor to remedy by correction or replacement, without cost to the Government, any such failure caused by one or more individual employees selected or retained by the Contractor after any such supervisory person has reasonable grounds to believe that any such employee is habitually careless or otherwise unqualified.

(d) The provisions of this clause shall apply to any corrected or replacement services or materials.

(e) The Contractor shall provide and maintain an inspection system acceptable to the Government covering the material, fabricating methods, and the work and services hereunder. Records of all inspection work by the Contractor shall be complete and available to the Government at all reasonable times during performance of this contract and for such longer period as may be specified in this contract.

(f) Except as provided in this clause and as may be provided in the Schedule, the Contractor shall have no obligation or liability to correct or replace materials furnished and services performed under this contract which at the time of delivery are defective in material or workmanship or otherwise not in conformity with the requirements of this contract.

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(g) Except as otherwise provided in the Schedule, the Contractor's obligation to correct or replace Government-furnished property (which is property in the possession of or acquired directly by the Government and delivered or otherwise made available to the Contractor) shall be governed by the provisions of the "Government Property" clause of this contract.

(End of clause)

In cases where inspection and acceptance are desired at the contractor's plant, the following may be inserted in place of the last sentence of paragraph (a):

Acceptance by the Government of all the items (other than aircraft to be flown away, if any) to be furnished under this contract shall be at the plant or plants of the Contractor specified in the Schedule, or any other plant or plants approved for such purpose in writing by the Contracting Officer. The Contractor shall inform the inspector or Contracting Officer when the work is ready for inspection. The Government reserves the right to charge to the Contractor any additional cost of Government inspection and test when items are not ready at the time such inspection and test are requested by the Contractor.

7-901.22 *New Material.* In accordance with 1-1208, insert the clause in 7-104.48.

7-901.23 *Pricing of Adjustments.* Insert the clause in 7-103.26.

7-901.24 *Reserved.*

7-901.25 *Inspection System.* When it is desired to require contractors to maintain an inspection system in accordance with Military Specification MIL-I-45208 (see 14-303), insert the following clause.

INSPECTION SYSTEM (1967 AUG)

The inspection system which the Contractor is required to maintain, as provided in paragraph (e) of the "Inspection" clause of this contract, shall be in accordance with the edition of Military Specification MIL-I-45208 in effect on the date of this contract.

(End of clause)

7-901.26 *Quality Program.* In accordance with 14-304, insert the clause in 7-104.28.

7-901.27 *Equal Opportunity Pre-Award Clearance of Subcontracts.* In accordance with 23-201.4, insert the clause in 7-104.22.

7-901.28 *Reserved.*

7-901.29 *Affirmative Action for Disabled Veterans and Veterans of the Vietnam Era.* Insert the clause in 7-103.27.

7-901.30 *Affirmative Action for Handicapped Workers.* Insert the clause in 7-103.28.

7-901.31 *Clean Air and Water.* In accordance with 1-2302.2, insert the clause in 7-103.29.

7-902 Clauses To Be Used When Applicable.

7-902.1 *Utilization of Small Business and Small Disadvantaged Business Concerns.* In accordance with 1-707.3, insert one or more of the clauses in 7-104.14.

7-902.2 *Utilization of Labor Surplus Area Concerns.* In accordance with 1-805, insert the clause in 7-104.20, as appropriate.

7-902.3 *Military Security Requirements.* In accordance with 7-104.12, insert the clause therein, deleting paragraph (c) and substituting the following:

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either to (i) by contract or otherwise have the services reperformed in a manner in conformity with the contract requirements and reduce any fee payable under the contract by an amount which is equitable under the circumstances or (ii) terminate this contract for default as provided in the clause of this contract entitled "Termination."

(c) The Contractor shall provide and maintain an inspection system acceptable to the Government covering the services to be performed hereunder. Records of all inspection work by the Contractor shall be kept complete and available to the Government during the performance of this contract and for such longer period as may be specified elsewhere in this contract.

(End of clause)

7–1909.6 *Assignment of Claims.* In accordance with 7–103.8, insert the clause therein.

7–1909.7 *Subcontracts.* In accordance with 7–203.8, insert the clause therein.

7–1909.8 *Utilization of Small Business Concerns.* In accordance with 1–707.3(a) and (b) and 7–104.14, insert one or both of the clauses in 7–104.14.

7–1909.9 *Termination.* Insert the clause in 7–203.10.

7–1909.10 *Excusable Delays.* Insert the clause in 7–203.11.

7–1909.11 *Disputes.* Insert the clause in 7–103.12.

7–1909.12 *Reserved.*

7–1909.13 *Contract Work Hours and Safety Standards Act—Overtime Compensation.* In accordance with 12–301, 12–302, and 12–306, insert the clauses in 7–103.16.

7–1909.14 *Equal Opportunity.* In accordance with 12–807.1, insert the appropriate clause in 7–103.18.

7–1909.15 *Officials Not To Benefit.* Insert the clause in 7–103.19.

7–1909.16 *Covenant Against Contingent Fees.* Insert the clause in 7–103.20.

7–1909.17 *Government Property (Cost Reimbursement).* In accordance with 7–203.21, insert the clause therein.

7–1909.18 *Insurance—Liability to Third Persons.* Insert the clause in 7–203.22.

7–1909.19 *Authorization and Consent.* In accordance with 9–102.1, insert the clause in 7–103.22.

7–1909.20 *Notice and Assistance Regarding Patent Infringement.* In accordance with 9–104, insert the clause in 7–103.23.

7–1909.21 *Utilization of Labor Surplus Area Concerns.* In accordance with 1–805.3, insert one or both of the clauses in 7–104.20.

7–1909.22 *Payment for Overtime Premiums.* In accordance with 12–102.6, insert the clause in 7–203.27.

7–1909.23 *Competition in Subcontracting.* In accordance with 7–104.40, insert the clause therein.

7–1909.24 *Audit by Department of Defense.* In accordance with 7–104.41, insert the clause therein.

7–1909.25 *Reserved.*

7–1909.26 *Equal Opportunity Pre-Award Clearance of Subcontracts.* In accordance with 23–201.4, insert the clause in 7–104.22.

7–1909.27 *Affirmative Action for Disabled Veterans and Veterans of the Vietnam Era.* Insert the clause in 7–103.27.

7–1909.28 *Affirmative Action for Handicapped Workers.* Insert the clause in 7–103.28.

7–1909.29 *Clean Air and Water.* In accordance with 1–2302.2, insert the clause in 7–103.29.

7–1909.30 *Notice of Intent to Disallow or Not Recognize Costs.* Insert the clause in 7–203.35.

7–1910 Clauses To Be Used When Applicable in Cost Reimbursement Service Contracts.

7–1910.1 *Clauses for Cost Reimbursement Service Contracts Involving Construction Work.*

(a) In accordance with 12–106 and 18–703, insert the clauses in 7–602.23.

(b) In accordance with 7–602.20 and 7–602.24, insert the clauses therein in addition to the clause in 7–104.3.

7–1910.2 *Workmen's Compensation and War Hazard Insurance Overseas.* In accordance with 10–403, insert the clauses in 7–104.2(a) and/or 7–104.2(b) depending on whether all contract employees are subject to the Defense Base Act or whether the Act has been waived as to all or part of the contract employees. Also insert the clause Reimbursement for War Hazard Losses in 7–104.2(c) and the language at 10–502(b) and (c) according to the instructions stated in those paragraphs.

7–1910.3 *Continuity of Services.* When difficulties are anticipated on either the part of the Government or contractors during the transition period from one service contractor to its successor, a clause substantially as follows may be included.

CONTINUITY OF SERVICES

The Contractor recognizes that the services provided by this contract are vital to the Government's overall effort, that continuity thereof must be maintained at a consistently high level without interruption, that upon expiration of this contract a successor—either the Government or another Contractor—may continue these services, that the successor, be it the Government or another Contractor, will need phase-in training, and that the Contractor must give his best efforts and cooperation in order to effect an orderly and efficient transition to a successor.

In view of the above, the Contractor agrees, upon written notification by the Contracting Officer, to provide phase-in, phase-out (PIPO) services for up to sixty (60)* days after this contract expires. After notification, the Contractor agrees to negotiate in good faith with a successor in determining the nature and extent of the PIPO services, including a mutually acceptable detailed plan for PIPO operations. The plan shall design a training program and specify a date for shifting the responsibility to the successor for each division of work set forth in the plan, and shall be subject to the approval of the Contracting Officer. The Contractor shall provide sufficient experienced personnel during the PIPO period to insure that the services called for by this contract are maintained at a high level of proficiency.

The Contractor shall be reimbursed for all reasonable PIPO costs—those costs accruing within the agreed period after contract expiration which result from PIPO operations—and will receive a fee (profit) not to exceed a pro rata portion of the fee (profit) under this contract.

The Contractor agrees to cooperate with the successor, whether it be the Government or another Contractor, in allowing as many personnel as practicable to remain on the job in order to enhance the continuity and consistency of the services called for by this contract. Toward that end the Contractor agrees to disclose necessary personnel records and to allow its successor to conduct on-site interviews with its employees. If said employees are agreeable to the change and are accepted by the successor, then the Contractor shall release them at a mutually acceptable date and shall negotiate the transfer of their earned fringe benefits to the successor.

(End of clause)

**This limitation may be varied from 30 to 90 days.*

7-2003.22 *Rated or Authorized Controlled Material Orders.* Solicitations which will result in the placement of rated orders or authorized controlled material orders (see 1-307) shall contain the following provision.

RATED OR AUTHORIZED CONTROLLED MATERIAL ORDERS (1974 APR)

Contracts or purchase orders to be awarded as a result of this solicitation shall be assigned a [ ] DX — rating; [ ] DO — rating; [ ] DMS allotment number — (*Contracting Officer check appropriate box or boxes*) In accordance with the provisions of DPS Regulation 1 and/or DMS Regulation 1.

(End of provision)

7-2003.23 *Evaluation Factors for Award.*

(a) *Evaluation of Bids Subject to Economic Price Adjustment.* In accordance with 2-201(a)Sec.M(ii), insert the following provision.

EVALUATION OF BIDS SUBJECT TO ECONOMIC PRICE ADJUSTMENT (1974 MAR)

Notwithstanding the provisions of the clause entitled "*.....", bids shall be evaluated on the basis of quoted prices without an amount for economic price adjustment being added. Bids which provide for a ceiling lower than that stipulated, if a ceiling is stipulated in the clause, will also be evaluated on this basis but any resultant award will be made at the lower ceiling. Bids which provide for adjustment that may exceed the maximum adjustment stipulated, if a maximum is stipulated in the clause, or which limit or delete the downward adjustment, if a downward adjustment is stipulated in the clause, shall be rejected as nonresponsive.

(End of provision)

**Insert the title of the clause providing for economic price adjustment.*

(b) *Evaluation of Multiple Awards.* In accordance with 2-201(a)Sec.M(iii), or 3-501(b)Sec.M(i), insert the following provision.

EVALUATION OF OFFERS FOR MULTIPLE AWARDS (1982 APR)

In addition to other factors, offers will be evaluated on the basis of advantages or disadvantages to the Government that might result from making more than one award (multiple awards). For the purpose of making this evaluation, it will be assumed that the sum of $100 would be the administrative cost to the Government for issuing and administering each contract awarded under this solicitation, and individual awards will be for the items and combinations of items which result in the lowest aggregate price to the Government, including such administrative costs.

(End of provision)

(c) *Transit Arrangements.* In accordance with 2-201(a)Sec.M(v), insert the following provision.

TRANSIT ARRANGEMENTS (1968 JUN)

The lowest appropriate common carrier transportation costs, including through transit rates and charges where applicable, from bidder's (or offeror's) shipping points, via the transit point, to the ultimate destination will be used in evaluating bids (or proposals). Transit point(s) .....Destination(s) .....

(End of provision)

(d) *Evaluation—F.O.B. Origin.* In accordance with 2-201(a)Sec.M(vi), insert the following provision.

EVALUATION—F.O.B. ORIGIN (1974 APR)

Land methods of transportation by regulated common carrier are normal means of transportation used by the Government for shipment within the United States (excluding Alaska and Hawaii). Accordingly, for the purpose of evaluating bids (or proposals), only such methods will be considered in establishing the cost of transportation between bidder's (or offeror's) shipping point and destination (tentative or firm, whichever is applicable), in the United States (excluding Alaska and Hawaii). Such transportation cost will be added to the bid (or proposal) price in determining the overall cost of the supplies to the Government. When tentative destinations are indicated, they will be used only for evaluation purposes, the Government having the right to utilize any other means of transportation or any other destination at the time of shipment.

(End of provision)

7-2003.24 *Evaluation Factors for Award.*

(a) *Destination Unknown.* In accordance with 2-201(a)Sec.M(vii), insert the following provision.

DESTINATION UNKNOWN (1968 JUN)

For the purpose of evaluating bids (or proposals), and for no other purpose, the final destination(s) for the supplies will be considered to be as follows:

....

(End of provision)

(b) *F.O.B. Origin—Carload and Truckload Shipments.* In accordance with 2-201(a)Sec.M(viii), insert the following provision.

F.O.B. ORIGIN—CARLOAD AND TRUCKLOAD SHIPMENTS (1968 JUN)

The Contractor agrees that shipment shall be made in carload or truckload lots when the quantity to be delivered to any one destination in any delivery period pursuant to the contract schedule of deliveries is sufficient to constitute a carload or truckload shipment, except as may otherwise be permitted or directed, in writing, by the Contracting Officer. For bid (or proposal) evaluation purposes, the agreed weight of a carload or truckload will be the highest applicable minimum weight which will result in the lowest freight rate (or per car charge) on file or published in common carrier tariffs or tenders as of the date of bid opening (or the closing date specified for receipt of proposals. For purposes of actual delivery, the agreed weight of a carload or truckload will be the highest applicable minimum weight which will result in the lowest freight rate (or per car charge) on file or published as of date of shipment. If the total weight of any scheduled quantity to a destination is less than the highest carload/truckload minimum weight used for bid (or proposal) evaluation, the Contractor agrees to ship such scheduled quantity in one shipment. The Contractor shall be liable to the Government for any increased costs to the Government resulting from failure to comply with the above requirements.

(End of provision)

(c) *Shipping Point(s) Used in Evaluation of F.O.B. Origin Bids (or Proposals).* In accordance with 2-201(a)Sec.M(ix), insert the following provision.

7-2101.19 *Inspection.*

INSPECTION (1976 OCT)

(a) All workmanship (if not otherwise designated by the specifications) shall be subject to inspection and examination by Government inspectors at any and all times during dismantling or demolition and at any and all places where such dismantling or demolition are carried on. The Contractor shall be responsible for any damage to property caused by unworkmanlike performance or by defective workmanship. Any unsatisfactory facilities, materials, and equipment, used by the Contractor, shall be replaced with satisfactory facilities, materials, and equipment, and the Contractor shall promptly segregate and remove such unsatisfactory items from the premises. If the Contractor fails to proceed at once in a workmanlike manner with the performance of the work or with the correction of defective workmanship, the Government may by contract or otherwise, replace such facilities, materials, and equipment or correct such workmanship and charge the cost thereof to the Contractor, and may terminate the right of the Contractor to proceed as provided in the "*Termination for Default — Damages for Delay — Time Extensions*" clause of this contract, the Contractor and surety being liable for any damage to the same extent as provided in said clause for terminations thereunder.

(b) The Contractor shall furnish promptly without additional charge, all reasonable facilities, labor, and materials necessary for the safe and convenient inspection by Government inspectors. All inspection by the Government shall be performed in such manner as to not unnecessarily delay the work.

(End of clause)

7-2101.20 *Operations and Storage Areas.* Insert the clause in 7-602.35.

7-2101.21 *Cleaning Up.*

CLEANING UP (1976 OCT)

The Contractor shall at all times keep the dismantling or demolition area, including storage areas used by him, free from accumulations of waste material or rubbish and prior to completion of the work remove from the premises any rubbish and all tools, scaffolding, equipment, and materials not the property of the Government. Upon completion of the dismantling or demolition, the Contractor shall leave the premises in a clean, neat and workmanlike condition satisfactory to the Contracting Officer.

(End of clause)

7-2101.22 *Accident Prevention.* Insert the clause in 7-602.42(a). In contracts involving work of long duration or of hazardous character, add the paragraph (e) in 7-602.42(b).

7-2101.23 *Composition of Contractor.* Insert the clause in 7-602.32.

7-2101.24 *Reserved.*

7-2101.25 *Liquidated Damages.* Insert the clause in 7-603.39. The rate of liquidated damages will be determined in accordance with 18-113.

7-2101.26 *Pricing of Adjustments.* Insert the clause in 7-103.26.

7-2101.27 *Federal, State and Local Taxes.* Insert the clause in 7-103.10(a).

7-2101.28 *Equal Opportunity.* In accordance with 7-103.18(a), insert the clause therein.

7-2101.29 *Affirmative Action for Disabled Veterans and Veterans of the Vietnam Era.* Insert the clause in 7-103.27.

7-2101.30 *Affirmative Action for Handicapped Workers.* In accordance with 12-1302(a), insert the clause in 7-103.28.

7-2101.31 *Covenant Against Contingent Fees.* Insert the clause in 7-103.20.

7-2101.32 *Officials Not to Benefit.* Insert the clause in 7-103.19.

7-2101.33 *Value Engineering Incentive.* Insert the clause in 7-602.50.

7-2102 Clauses to be Used When Applicable in Contracts for Dismantling, Demolition, or Removal of Improvements.

7-2102.1 *Service Contract Act of 1965.* In accordance with 4-502, and Section XII, Part 10, insert the appropriate clause in 7-1903.41(a) or (b).

7-2102.2 *Contract Work Hours and Safety Standards Act — Overtime Compensation.* In accordance with 12-301 and 12-302, insert the clause in 7-103.16(a).

7-2102.3 *Additional Bond or Other Security.* If the contract will require the contractor to furnish a performance bond or other security (see 4-503 and 7-2101.2), insert the following clause:

ADDITIONAL BOND OR OTHER SECURITY (1976 OCT)

If any surety upon any bond furnished in connection with this contract becomes unacceptable to the Government, or if any such surety fails to furnish reports as to his financial condition from time to time as requested by the Government, or if the contract price is increased to such an extent that the penal sum of any bond becomes inadequate in the opinion of the Contracting Officer, the Contractor shall promptly furnish such additional security as may be required from time to time to protect the interests of the Government.

(End of clause)

7-2102.4 *Availability of Utility Services.* Insert the following clause in contracts for performance at Government installations when it is determined that one or more utility systems and supplies are adequate for the needs and use of both the Government and the contractor and it is advantageous to the Government to furnish such utility services.

AVAILABILITY AND USE OF UTILITY SERVICES (1976 OCT)

(a) The Government will make available to the Contractor, from existing outlets and supplies, all reasonably required amounts of utilities as specified in the Schedule or specifications. Except as otherwise provided in the Schedule or specifications, each utility shall be charged to or paid for by the Contractor at prevailing rates charged to the Government or, where the utility is produced by the Government, at reasonable rates as determined by the Contracting Officer.

(b) The Contractor shall carefully conserve utilities furnished without charge. The Contractor, at his own expense and in a workmanlike manner satisfactory to the Contracting Officer, shall install and maintain all necessary temporary connections and distribution lines and, if necessary to determine charges, all meters required to measure the amount of each utility used; and he shall remove the same prior to final acceptance of the dismantling or demolition.

(End of clause)

full CAS covered contracts on the same date that CAS 417 becomes applicable. For non-CAS covered contracts or modified CAS covered contracts, the cost of money will first be allowable for new awards made on or after the effective date of this cost principle change. Whether or not the contract is otherwise subject to the cost accounting standards, and except as specified in paragraph 3 (below), the cost of money for capital assets under construction, fabrication, or development is allowable only when:

(i) the cost of money is calculated, allocated to contracts, and costed in accordance with 3-1301;

(ii) the contractor maintains adequate records to demonstrate compliance with (i) above;

(iii) the cost of money for tangible capital assets is included in the capitalized cost which provides the basis for allowable depreciation costs, or in the case of intangible capital assets, the cost of money is included in the cost of those assets for which amortization costs are allowable.

(3) Actual interest cost in lieu of the calculated imputed cost of money for capital assets under construction, fabrication, or development is unallowable.

(4) The cost of money for capital assets under construction need not be entered on the contractor's books of account. However, the contractor shall (i) make a memorandum entry of the cost and (ii) maintain, in a manner that permits audit and verification, all relevant schedules, cost data, and other data necessary to support the entry.

(5) Cost of money that is allowable under subparagraph (b) of this cost principle shall be an "incurred cost" for reimbursement purposes under applicable cost reimbursement contracts and for progress payment purposes under fixed-price contracts. (See E-509.5.)

15-205.51 *Lobbying Costs.*

(a) For the purpose of this section, lobbying is defined as any activity or communication which is intended or designed to directly influence or to engage in any campaign to encourage others to influence members of the Congress, their staffs, or the staffs of committees of the Congress to favor or oppose legislation, appropriations or other actions of the Congress, its members, or its committees, for the procurement of specific supplies or services by the federal government. Except as provided in (c) below, lobbying activity includes, but is not limited to, all

forms of communications by the contractor, its employees, or its agents with the Congress, its members, and staffs of members and committees for the above-mentioned purpose.

(b) The costs of lobbying as defined herein, including the applicable portion of the salaries of the contractor's employees and the fees of individuals or firms engaged in lobbying, on behalf of the contractor (whether or not the individuals or firms are registered as lobbyists under any applicable law) are unallowable. In addition, the directly associated costs (see 15-201.6) of lobbying are unallowable.

(c) Legislative liaison activities, such as attendance at committee hearings, gathering information regarding pending legislation, analysis of the effect of pending legislation, and the like are not lobbying and are allowable. In addition, communications to the Congress that would be considered lobbying in accordance with (a) above shall be allowable if they are performed in response to a written request from a congressional source.

15-206 Notice of Intent to Disallow or Not Recognize Costs.

(a) *Purpose.* The clause entitled "*Notice of Intent to Disallow or Not Recognize Costs*" is a required clause for all cost-type contracts and fixed-price incentive contracts and contracts providing for price redetermination (*see 7-203.35*). A Notice of Intent to Disallow or Not Recognize Costs provides the basis under a contract for the contractor to appeal, prior to final settlement of costs of the contract, a determination of exception to costs either incurred or to be incurred. It thereby provides a vehicle for disputes to be settled in a more timely fashion.

(b) At any time during the performance of the contract, the cognizant contracting officer may issue a Notice of Intent to Disallow or Not Recognize Costs stating his intent to take exception to specific costs or portions thereof, under the contract. Usually, the decision to issue a Notice of Intent to Disallow or Not Recognize Costs results from activities performed through monitorship of contractors' cost (*see Section XX, Part 10*), or on advice of auditors or technical personnel. Also, the decision to issue a Notice of Intent to Disallow or Not Recognize Costs shall only be made after discussion between the contracting officer and the contractor. The notice should be specific as to the type of cost to which exception is taken, the amount of such exception (if applicable), reasons for exception, applicable time period of the exception, and should reference the Notice of Intent to Disallow or Not Recognize Costs clause of the contract. When such notification involves elements of indirect costs, the approval of the contracting officer haveing authority for final settlement of overhead shall be obtained prior to issuance of of the notice except that a Corporate Administrative Contracting Officer (CACO) need not obtain the approval of local cognizant ACOs for items of corporate exepnse. When the Notice of Intent to Disallow Not Recognize Costs is issued, the originating contracting officer (CACO or ACO) will distribute information copies to all administrative contracting officers cognizant of that corporation. The notice will allow the contractor sixty days in which to contest the exception in writing and provide justification why the proposed expediture is justifiable

(d) A preselection list of the maximum practicable number of qualified firms shall be prepared by a preselection board from data described in 18–403 and other pertinent information which may be available, and the list shall be approved by the head of the construction activity, or his designee.

(e) Both preselection and selection boards shall consist primarily of senior staff architects or engineers, or military personnel having comprehensive experience in military construction.

(f) Preparation of preselection lists for contracts estimated to cost more than $10,000, and selections for contracts estimated to cost more than $2,500, shall be accomplished by formally constituted boards consisting of at least three members.

(g) The selection board shall review the qualifications and performance data (see 18–403) of each of the firms on the preselection list, in accordance with the policy established in 18–402.1 and the criteria developed pursuant to (b) above, and shall recommend, in order of preference, a minimum of three firms for approval for contract negotiations to the head of the construction activity, or his designee. The selection board may submit four or more firms to allow for possible findings by the construction activity or higher authority (as required by 18–402.3(iv) or (v)), that certain firms on the list are unqualified. (See 18–402.3(b) which requires that a minimum of three firms must remain upon final approval of the selection list.) If for any reason the selection board cannot formulate a slate of at least three firms from the preselection list, the selection board shall advise the preselection board of its inability to formulate a slate, and they shall request additional names for consideration. The selection board shall state the number of additional names needed and may provide guidance stating the reasons that the firms are considered unqualified. The preselection board shall furnish at least three names for each vacancy on the final slate.

(h) In the case of any contract estimated to cost more than $10,000, the selection board shall have conducted oral or written discussions with, as a minimum, all of the firms recommended to the head of the construction activity or his designee. Discussions shall be directed to the specific project or types of projects under consideration and shall include but not necessarily be limited to each firm's technical qualifications, experience, organization, capacity, current workload, immediate availability, key individuals who will be placed on the work, anticipated concepts, relative utility of alternative methods of design approach, and other relevant factors, except fee. Discussions may be conducted by telephone when considered appropriate. The requirement for discussions may be waived in individual cases by the head of the next higher organizational level of the construction activity, or his designee at that level, but only when it is considered to be clearly in the best interests of the Government to do so.

(i) The head of the construction activity, or his designee, shall not add firms to any selection list prepared in accordance with (g) above. Upon approval of the selections by the head of the construction activity, or his designee, and such approval as may be required by 18–402.3, negotiations shall be initiated in accordance with 18–306.2.

(j) All preselection and selection actions shall be fully documented.

18–402.3 *Special Approval of Selections.*

(a) Special approval shall be required for certain selections as indicated below. Dollar amounts cited shall include, where applicable, fees for (I) planning and design, (II) supervision and inspection of construction, and (III) any other architect-engineer services related to construction.

(i) When the estimated cost of a contract to be awarded by a field activity exceeds $200,000, the selection shall require the approval of the next higher organizational level of the construction activity;

(ii) When a firm, to which a field contracting office has previously awarded contracts totaling over $200,000 during the current calendar year, has been selected for an additional award to be made by the same contracting office, the selection shall require, prior to negotiation with the firm, the approval of the next higher organization level of the construction activity;

(iii) When a selection is made by the Army Office of the Chief of Engineers, the Naval Facilities Engineering Command, or the Air Force Directorate of Civil Engineering for a contract whose estimated cost is $500,000 or less, the selection shall require the approval of the Chief of Engineers, the Commander, Naval Facilities Engineering Command, or the Director of Civil Engineering, respectively, or their designees;

(iv) When the estimated cost of a contract exceeds $500,000, the selection shall require the approval of the Secretary of the Department concerned, or his designee;

(v) When supplemental work to be added to an existing contract will bring the total contract cost to any of the various levels of approval noted above, the selection for such work shall require approval as indicated for the appropriate level (such approval is not required for supplemental work accomplished pursuant to the Changes clause of the contract); and

(vi) When approval of a selection for a contract has been obtained at a particular approval level, further approval shall not be required for the selection of the same firm to accomplish supplemental work under that contract, unless the total cost of the basic contract plus all supplemental work is an amount requiring approval of the selection at the next higher approval level.

(b) Approval authorities cited in (a) above shall not add firms to any selection list prepared in accordance with 18–402.2(d). If the firms on a submitted selection list are deemed to be unqualified or the list is considered inadequate for other reasons, the approving authority shall record the reasons and return the list through channels to the preselection board for the preparation of a revised list. However, the finding that certain firms on the selection list are unqualified shall not preclude approval of the list provided that a minimum of three firms remain. In such cases the reasons for finding a firm or firms unqualified shall be recorded and lists may be approved with respect to the three or more qualified firms remaining.

18–403 Architect-Engineer Qualifications and Performance Data.

18–403.1 *General.* Selection of architect-engineer firms shall be based on the effective utilization of qualifications and performance data as described below.

18–403.2 *Architect-Engineer Regions and Areas.* For the purposes of receiving and distributing architect-engineer qualification and performance data, the United States is divided into regions, and the rest of the world into general geographic areas. These regions and areas are described and delineated in a booklet entitled "How to Obtain Consideration for Architect-Engineer Contracts with the Department of Defense," which is published by the Office of the Assistant Secre-

[FR Doc. 82–23216 Filed 8–25–82; 8:45 am]
BILLING CODE 3810–01–C

32 CFR Parts 1–39

[DAC 76–35]

Defense Acquisition Regulation

AGENCY: Defense Department.

ACTION: Final rule.

SUMMARY: This document publishes changes to the Defense Acquisition Regulation contained in the Code of Federal Regulations. The changes are the same as those in Defense Acquisition Circular 76–35. The changes include implementation of the Freedom of Information Act Program.

EFFECTIVE DATE: April 30, 1982.

FOR FURTHER INFORMATION CONTACT: J. Brannan, Director, Defense Acquisition Regulatory Council, Room 3C257, Pentagon, Washington, D.C. 20301, Telephone (202) 697–7266.

SUPPLEMENTARY INFORMATION:

Background

The Defense Acquisition Regulation (DAR) is codified in Title 32, Parts 1–39, Volumes I, II, and III, of the Code of Federal Regulations (CFR). The August 1, 1981 revision of the CFR is the most recent edition of that title. It reflects amendments to the 1976 edition of the DAR made by Defense Acquisition Circulars 76–1 through 76–27.

The Department of Defense announced the promulgation of the 1979 CFR edition in the **Federal Register** of December 31, 1979 (44 FR 77158), and also announced at that time that subsequent amendments to the DAR would be published in the **Federal Register.**

Defense Acquisition Circular 76–35

This document contains amendments to the Defense Acquisition Regulation in the form of replacement pages which were included in DAC 76–35, issued April 30, 1982. The following is a summary of the amendments:

DoD Freedom of Information Act Program. DAR 1–329 is revised to transfer all substantive coverage of the Freedom of Information Act (FOIA) to Appendix L. This appendix also contains the current edition of DoD Directive 5400.7, DoD Freedom of Information Act Program, and DoD Regulation 5400.7–R, DoD Freedom of Information Act Program Regulation.

Because the Defense Acquisition Regulation concerns agency management, public property, and contracts, it is not necessary to issue proposed rules for public comment. Neither is it necessary to delay the effective date until 30 days after the date of publication of these rules, 5 U.S.C. 533(a) and (d). The amendments became effective on April 30, 1982.

How To Use Replacement Pages

Reproduced at the end of this document are replacement pages from DAC 76–35. The number at the top of each page (for example, 1:65) identifies the page from the Regulation which is being replaced.

List of Subjects in 32 CFR Parts 1–39

Government procurement.

Adoption of Amendments

Therefore, the Defense Acquisition Regulation contained in the August 1, 1981 edition of 32 CFR Parts 1–39, Volumes I, II, and III, is amended in the DAR paragraphs indicated by substitution of the replacement pages listed in the table.

DAR paragraph	Replacement pages
VOLUME I	
1–329.1	1:65, 1:71.
1–329.2 (deleted)	1:65.
1–329.3 (deleted)	(1:66 through 1:70 removed).
1–329.4 (deleted)	
VOLUME III	
Appendix L, Table of Contents	1.
Appendix L (Reprint of DoD Directive 5400.7 and DoD Regulation 5400.7–R).	L:1 through L:74.

M. S. Healy,

OSD Federal Register Liaison Officer, Washington Headquarters Services, Department of Defense.

August 20, 1982.

BILLING CODE 3810–01–M

(ii) an agency contracts with a state or private educational organization to provide training, and the records generated on contract students pursuant to their attendance (admission forms, grade reports) are similar to those maintained on other students and are commingled with their records on other students.

1-328 Procurement of Publications.

(a) Subscriptions to newspapers, magazines, or other publications may be entered for periods longer than one year when it is advantageous to the Government for the purpose of economy or otherwise. Payment therefor may be made from current appropriations otherwise available for such purpose.

(b) Advance payments may be made for publications purchased for official use. Publications include books, pamphlets, newspapers, periodicals and prints.

1-329 Release of Procurement Information.

1-329.1 *Purpose and Scope.*

(a) Public Law 89-487 (as codified by Public Law 90-23 in Section 552 of Title 5, United States Code and as amended by Public Law 93-502 and Public Law 94-409) provides that information is to be made available to the public either by (i) publication in the Federal Register, (ii) providing an opportunity to read and copy records at convenient locations, or (iii) upon request, providing a copy of a reasonably described record. Materials to be published or made available under (ii) and (iii) above will be determined in accordance with applicable provisions of Appendix L (DoD Directive 5400.7 and DoD Regulation 5400.7-R) and implementing Departmental regulations. General policy guidelines and procedures to be followed in responding to public requests for procurement records are contained in Appendix L.

(b) Request for copies, or for the inspection of procurement records should be addressed to the procuring activity, purchasing office or other appropriate activity having cognizance of the information or document desired by the party making the request. If the identity of the activity is not known, the request should be addressed to the most appropriate office as follows:

[The next page is 1:71.]

Army:
Deputy Assistant Secretary (Acquisition)
Office of the Assistant Secretary of the Army
(Research, Development, and Acquisition)
Department of the Army
Washington, D. C. 20310

Navy:
Chief of Naval Material (MAT 00D1)
Navy Department
Washington, D. C. 20360

Air Force:
HQ USAF/RDX
The Pentagon
Washington, DC 20330

DLA:
Staff Director, Administration
Headquarters, Defense Logistics Agency
Attention DLA-X
Cameron Station
Alexandria, Virginia 22314

NSA:
Director of Procurement
Fort Meade, MD 20755

DCA:
HQ, Defense Communications Agency
Attention Code 201
Washington, D. C. 20305

DNA:
HQ. Defense Nuclear Agency
Washington, D. C. 20305

DMA:
HQ. Defense Mapping Agency, Attn: DMA-LO,
Washington, D. C. 20390

1-330 Contractor Liability for Damage to Government Property.

(a) *Policy.* It is the policy of the Department of Defense generally to act as a self-insurer for loss of or damage to property of the Government occurring after acceptance of supplies delivered to the Government or performance of services for the Government when the loss of or damage to property results from any defects or deficiencies in such supplies or services. This policy shall not apply:

(i) to loss of or damage to the contract end item itself (except in the case of major items as provided in (c) below); or

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(ii) when contractor liability can be preserved without increasing the contract price; or

(iii) when contractor liability is expressly provided by a clause authorized by this Regulation.

(b) *General.* Except as provided in (a) above or in (c) below, the basic "*Limitation of Liability*" clause in 7–104.45(a) shall be inserted in all contracts exceeding $10,000. This clause relieves the contractor from liability for loss of or damage to Government property except for end items delivered under the contract.

(c) (1) *Major Items* - In the procurement of major items (normally exceeding $100,000 in unit cost) such as missiles, aircraft, tanks, ships, aircraft engines and navigational or communication systems, it is Department of Defense policy, in addition to (a) above, to relieve the contractor from liability for loss of or damage to such major item(s) occurring after acceptance by the Government: (i) for all fixed price type contracts for major items, the clause in 7–104.45(b) shall be substituted for the clause in 7–104.45(a); (ii) for all cost type contracts for major items, the clause in 7–204.33(a) shall be substituted for the clause in 7–104.45(a). These clauses do not limit the Government's rights otherwise arising under the contract to have any defective items or components thereof, corrected, repaired, or replaced when discovery of the defect occurs prior to the loss of or damage to the major item, or equitable relief when the defect is discovered after loss or damage occurs.

(2) *Contracts Providing For Both Major Items And Other Contract End Items.* In a contract providing for the purchase of both major items and other contract end items, both a major items clause and the basic clause shall be inserted in accordance with the instructions in 7–104.45(c) for fixed-price type contracts and 7–204.33(b) for cost type contracts.

(3) *Service Contracts.* The clause in 7–1912 shall be inserted in all contracts requiring the performance of services (see 22–101(a)). For contracts requiring the performance of services and the delivery of supplies as separate line items, the appropriate clause in 7–104.45 shall be used in conjunction with the clause in 7–1912, and the line items to which each applies clearly identified. However, the clause in 7–1912 shall not be inserted in service contracts for the maintenance, repair, rehabilitation or modification of real property (22–101(b)(ii)) or for architect-engineering services (22–101(b)(iii)).

(4) *Subcontracts.* The "*Limitation of Liability*" clauses in 7–104.45, 7–204.33 and 7–1912 require the contractor to insert the substance of the clause applicable to its contract in any subcontracts, except that, a contractor under a contract for major items shall not insert the substance of the major items clause in either 7–104.45(b) or 7–204.33(a) in any subcontracts without the advance written approval of the contracting officer. The contracting officer should give this approval only when the circumstances would dictate use of the major items clause under the guidelines of (1) above if the subcontract were a direct prime contract with the Government.

(5) *Purchase Orders.* The clause in 7–104.45(a) or 7–1912, as applicable, may be used with the DD Form 1155, *Order for Supplies or Services/Request for Quotations* for procurements not in excess of $10,000, when specifically requested for inclusion by the contractor.

DAC #76-35 30 APRIL 1982

APPENDIX L

DOD FREEDOM OF INFORMATION ACT PROGRAM

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APPENDIX L

DEPARTMENT OF DEFENSE DIRECTIVE 5400.7

of

March 24, 1980

SUBJECT: DoD Freedom of Information Act Program

REPRINT - Changes 1, 2, and 3 have been incorporated.

March 24, 1980#
NUMBER 5400.7

ASD(PA)

Department of Defense Directive

SUBJECT: DoD Freedom of Information Act Program

References: (a) DoD Directive 5400.7, "Availability to the Public of Department of Defense Information," February 14, 1975 (hereby canceled)
(b) Title 5, United States Code, Section 552
(c) DoD Directive 5025.1, "Department of Defense Directives System," October 16, 1980 ***
(d) Public Law 86-36, "National Security Information Exemption"
(e) through (g), see enclosure 1

A. REISSUANCE AND PURPOSE

1. This Directive reissues reference (a); establishes policies and procedures for the implementation of the DoD Freedom of Information Act (FOIA) Program under reference (b); and delegates authorities and responsibilities for the effective administration of the program.

2. This Directive also authorizes, in accordance with reference (c), the publication of DoD 5400.7-R, the single DoD regulation on the FOIA Program.

B. APPLICABILITY AND SCOPE

1. The provisions of this Directive apply to the Office of the Secretary of Defense (OSD) and their administrative support agencies, the Military Departments, the Organization of the Joint Chiefs of Staff (OJCS), the Unified and Specified Commands, the Defense Communications Agency (DCA), Defense Contract Audit Agency (DCAA), Defense Intelligence Agency (DIA), Defense Investigative Service (DIS), Defense Logistics Agency (DLA), Defense Mapping Agency (DMA), and the Defense Nuclear Agency (DNA). For the purpose of this Directive, OSD, OJCS, the Unified Commands, and OSD administrative support agencies are considered one "DoD Component." The other DoD Components referred herein are the Military Departments, DCA, DCAA, DIA, DIS, DLA, DMA, and DNA. * ** ***

2. The National Security Agency records are subject to the provisions of this Directive, unless the records are exempt under reference (d).

#First amendment (Ch 1, 4/11/80)
#Second amendment (Ch 2, 4/24/80)
#Third amendment (Ch 3, 12/3/80)

C. DEFINITIONS

*** The terms used in this Directive are defined in DoD 5400.7-R, December 1980. ***

D. POLICY

It is the policy of the Department of Defense to:

1. Promote public trust by making the maximum amount of information available to the public on the operation and activities of the Department of Defense, consistent with DoD's responsibility to ensure national security.

2. Allow a requester to obtain records from the Department of Defense that are available through other public information services without invoking the FOIA.

*** 3. Make available, under the procedures established by Chapters IV, V, and *** *** VI of DoD 5400.7-R, those records that are requested by a member of the general *** public who cites the FOIA.

4. Answer promptly all other requests for information, records, objects, and articles under established procedures and practices.

5. Release records to the public, unless those records are exempt from *** mandatory disclosure as outlined in Chapter III of DoD 5400.7-R. ***

6. Process requests by individuals for access to records about themselves under the Privacy Act procedures as implemented by DoD Directive 5400.11 (reference (e)) or procedures outlined in this Directive when they are more advantageous to the requester.

E. RESPONSIBILITIES

1. The Assistant Secretary of Defense (Public Affairs) (ASD(PA)) shall:

a. Direct and administer the DoD FOIA Program to ensure compliance with policies and procedures that govern the administration of the program.

b. Issue a DoD FOIA regulation and other discretionary instructions and guidance to ensure timely and reasonably uniform implementation of the FOIA in the Department of Defense.

c. Administer internally the FOIA Program for the OSD, the OJCS and, as an exception to DoD Directive 5100.3 (reference (f)), the Unified Commands (the Specified Commands remain under the Military Departments for FOIA matters).

d. As the designee of the Secretary of Defense, serve as the sole appellate authority for appeals to decisions of respective Initial Denial Authorities identified in ASD(PA) supplementing instructions.

2. The General Counsel of the Department of Defense shall provide uniformity in the legal interpretation of this Directive.

#First amendment (Ch 3, 12/3/80)

3. Heads of DoD Components shall:

a. Publish in the Federal Register any instructions necessary for the internal administration of this Directive within a DoD Component that are not prescribed by this Directive or by other issuances of the ASD(PA). For the guidance of the public, the information specified in 5 U.S.C. 552(a)(1) (reference (b)) will be published in accordance with DoD Directive 5400.9 (reference (g)).

b. Conduct training on the provisions of this Directive for officials and employees who implement the FOIA.

*** c. Submit the reports prescribed in Chapter VII of DoD 5400.7-R. ***

d. Make available for public inspection and copying in an appropriate facility or facilities, in accordance with rules published in the Federal Register, the records specified in 5 U.S.C. 552(a)(2) (reference (b)) unless such records are published and copies are offered for sale.

e. Maintain and make available for public inspection and copying current indices of these records.

F. INFORMATION REQUIREMENTS

*** The reporting requirements in Chapter VII of DoD 5400.7-R have been as- *** signed Report Control Symbol DD-PA(TRA&A) 1365.

G. EFFECTIVE DATE AND IMPLEMENTATION

This Directive is effective immediately. Forward two copies of implementing documents to the Office of the Assistant Secretary of Defense (Public Affairs) within 120 days.

W. Graham Claytor, Jr.

W. Graham Claytor, Jr.
Deputy Secretary of Defense

*** Enclosures - 1 ***
References

#First amendment (Ch 3, 12/3/80)

REFERENCES, Continued

(e) DoD Directive 5400.11, "Personal Privacy and Rights of Individuals Regarding their Personal Records," August 4, 1975
(f) DoD Directive 5100.3, "Support of the Headquarters of Unified, Specified and Subordinate Joint Commands," March 17, 1980
(g) DoD Directive 5400.9, "Publication of Proposed and Adopted Regulations Affecting the Public," December 23, 1974

***

***

#First amendment (Ch 3, 12/3/80)

APPENDIX L

DEPARTMENT OF DEFENSE REGULATION 5400.7-R

DOD FREEDOM OF INFORMATION ACT PROGRAM



PUBLIC AFFAIRS

ASSISTANT SECRETARY OF DEFENSE

WASHINGTON, D.C. 20301

5400.7-R

8 NOV 1980

FOREWORD

This regulation is issued under the authority of DoD Directive 5400.7, "DoD Freedom of Information Act Program," March 24, 1980.

It is effective immediately and is mandatory for use by all DoD Components listed at enclosure 2. Heads of DoD Components may elect to issue instructions deemed essential to the accommodation of perceived requirements peculiar to respective Components. Any such instruction may not conflict with the provisions of this regulation.

This regulation incorporates the provisions of enclosures 2 through 7 of DoD Directive 5400.7, March 24, 1980.

Recommendations for amendments shall be forwarded through appropriate channels to Director, Freedom of Information and Security Review, who is authorized to approve and issue amendments to this regulation. Recommendations should be addressed to:

Director
Freedom of Information and Security Review
Office of the Assistant Secretary of Defense (Public Affairs)
Room 2C757, Pentagon
Washington, D. C. 20301

Thomas B. Ross

Thomas B. Ross
Assistant Secretary

(The next page is L:9.)

5400.7-R

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DoD FREEDOM OF INFORMATION ACT PROGRAM

CHAPTER I

GENERAL PROVISIONS

Section 1

REFERENCES

1-100 References

(a) Title 5, United States Code, Section 552
(b) DoD Directive 5400.7, "DoD Freedom of Information Act Program," March 24, 1980
(c) Public Law 86-36, "National Security Information Exemption"
(d) DoD Directive 5400.11, "Personal Privacy and Rights of Individuals Regarding Their Personal Records," August 4, 1975
(e) through (u), see enclosure 1

Section 2

PURPOSE AND APPLICABILITY

1-200 Purpose

The purpose of this Regulation is to provide policies and procedures for the DoD implementation of the Freedom of Information Act (reference (a)) and reference (b) and to promote uniformity in the DoD Freedom of Information Act (FOIA) Program. This Regulation incorporates and amplifies enclosures 2 through 7 of DoD Directive 5400.7 (reference (b)).

1-201 Applicability

a. This Regulation applies to the Office of the Secretary of Defense (OSD) (which includes for the purpose of this Regulation the Organization of the Joint Chiefs of Staff, Unified Commands and OSD administrative support agencies), the Military Departments and the Defense Agencies (hereafter referred to as "DoD Components"), and takes precedence over all Component regulations that supplement the DoD FOIA Program. A list of DoD Components is at enclosure 2.

b. The National Security Agency records are subject to the provisions of this Regulation, only to the extent the records are not exempt under Public Law 86-36 (reference (c)).

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Section 3

DoD PUBLIC INFORMATION

1-300 Public Information

The public has a right to information concerning the activities of its government. DoD policy is to conduct its activities in an open manner and provide the public with a maximum amount of accurate and timely information concerning its activities, consistent always with the legitimate public and private interests of the American people. A DoD record requested by a member of the public who follows rules established by proper authority in the Department of Defense shall be withheld only when it is exempt from mandatory public disclosure under the FOIA and denial would serve a significant, legitimate government purpose. In order that the public may have timely information concerning DoD activities, records requested through public information channels by news media representatives that would not be withheld if requested under the FOIA should be released upon request. Prompt responses to requests for information from news media representatives should be encouraged to eliminate the need for these requesters to invoke the provisions of the FOIA and thereby assist in providing timely information to the public. Similarly, requests from other members of the public for information should continue to be honored through appropriate means even though the request does not qualify under FOIA requirements.

1-301 Control System

A request for records that invokes the FOIA shall enter a formal control system designed to ensure compliance with the FOIA. A release determination must be made and the requester informed within the time limits specified in this Regulation. Any request for DoD records that either explicitly or implicitly cites the FOIA shall be processed under the provisions of this Regulation or under the Privacy Act, when the request is from the subject of the records requested.

Section 4

DEFINITIONS

1-400 Definitions

As used in this Regulation, the following terms and meanings shall be applicable.

1-401 FOIA Request

A written request for DoD records, made by a member of the public, that either explicitly or implicitly invokes the FOIA, DoD Directive 5400.7, this Regulation, or DoD Component supplementing regulations or instructions.

1-402 Agency Record

a. The products of data compilation, regardless of physical form or characteristics, made or received by a DoD Component in connection with the transaction of public business and preserved by a DoD Component primarily as evidence of the organization, policies, functions, decisions, or procedures of the DoD Component.

b. The following are not included within the definition of the word "record":

1. Library and museum material made, acquired, and preserved solely for reference or exhibition.

2. Objects or articles, such as structures, furniture, paintings, sculpture, three-dimensional models, vehicles and equipment, whatever their historical value, or value as evidence.

3. Commercially exploitable resources, including but not limited to, formulae, designs, drawings, maps and charts, map compilation manuscripts and map research materials, research data, computer programs, and technical data packages that were not created and are not utilized as primary sources of information about organizations, policies, functions, decisions, or procedures of a DoD Component.

4. Unaltered publications and processed documents, such as regulations, manuals, maps, charts, and related geophysical materials, that are available to the public through an established distribution system with or without charges.

5. Anything that is not a tangible or documentary record, such as, an individual's memory or oral communication.

6. Personal notes of an individual not made available to other persons in an agency and not filed with agency records.

7. Information stored within a computer for which there is no existing computer program or printout.

c. A record must exist and be in the possession or control of Department of Defense at the time of the request to be considered subject to this Regulation. There is no obligation to create, compile, or obtain a record to satisfy an FOIA request.

1-403 DoD Component

An element of the Department of Defense, as defined in 1-201, authorized to receive and act independently on FOIA requests. A DoD Component has its own initial denial authority (IDA) or authorities and its own appellate authority.

1-404 Initial Denial Authority

An official who has been granted authority by the head of a DoD Component to withhold records requested under the FOIA for one or more of the nine categories of records exempt from mandatory disclosure.

1-405 Appellate Authority

The head of the DoD Component or the Component head's designee having jurisdiction for this purpose over the record.

1-406 Administrative Appeal

A request by a member of the general public, made under the FOIA, asking the appellate authority of a DoD Component to reverse an IDA decision to withhold all or part of a requested record or to deny a request for waiver or reduction of fees.

Section 5

POLICY

1-500 Compliance with the Freedom of Information Act

DoD personnel are expected to comply with the provisions of the FOIA and this Regulation in both letter and spirit. This strict adherence is necessary to provide uniformity in the implementation of the DoD FOIA Program and to create conditions that will promote public trust.

1-501 Openness with the Public

The Department of Defense shall conduct its activities in an open manner consistent with the need for security and adherence to other requirements of law and regulation. Records not specifically exempt from disclosure under the Act shall, upon request, be made readily accessible to the public in accordance with rules promulgated by competent authority, whether or not the Act is invoked.

1-502 Avoidance of Procedural Obstacles

DoD Components shall ensure that procedural matters do not unnecessarily impede a requester from obtaining DoD records promptly. Components shall provide assistance to requesters to help them understand and comply with procedures established by this Regulation and any supplemental regulations published by the DoD Components.

1-503 Prompt Action on Requests

When a member of the public complies with the procedures established in this Regulation for obtaining DoD records, the request shall receive prompt attention; a reply shall be dispatched within 10 working days, unless a delay

is authorized. Requests by individuals for access to records about themselves shall be processed under the Privacy Act procedures, as implemented by DoD Directive 5400.11 (reference (d)), outlined in this Regulation, provided such records are contained in a system of records and are retrievable by reference to the requester's name or other personal identifier. Even though a request that invokes the FOIA is administratively processed under Privacy Act procedures, no record shall be withheld that would be released under FOIA procedures.

1-504 Use of Exemptions

Records that may be withheld under the exemptions outlined in Chapter III of this Regulation shall be made available to the public when no significant, legitimate Government purpose is served by withholding them. Determination of significant and legitimate Government purpose is within the sole discretion of the Component, consistent with statutory requirements, security classification requirements, or other requirements of law.

1-505 Public Domain

Nonexempt records released under the authority of this Regulation are considered to be in the public domain. Exempt records released pursuant to this Regulation or other statutory or regulatory authority however, may be considered to be in the public domain only when their release constitutes a waiver of the FOIA exemption. When the release does not constitute such a waiver, such as when disclosure is made to a properly constituted advisory committee or to a Congressional Committee, the released records do not lose their exempt status. Also, while authority may exist to disclose records to individuals in their official capacity, the provisions of this Regulation apply if the same individual seeks the records in a private or personal capacity.

1-506 Creating a Record

A record must exist and be in the possession or control of the Department of Defense at the time of the request to be considered subject to this Regulation. There is no obligation to create, compile, or obtain a record to satisfy an FOIA request. A DoD Component, however, may compile or create a new record when so doing would result in a more useful response to the requester, or be less burdensome to the agency than providing existing records, and the requester does not object. Cost of creating or compiling such a record may not be charged to the requester unless the fee for creating the record is less than the fee which would be charged for providing the existing record. Fee assessment for direct search and duplication associated with the request shall be in accordance with paragraph 6-101.

1-507 Description of Requested Record

a. Identification of the record desired is the responsibility of the member of the public who requests a record. The requester must provide a description of the desired record, that enables the Government to locate the record with a reasonable amount of effort. The Act does not authorize "fishing expeditions." When a DoD Component receives a request that does not "reasonably describe" the requested record, it shall notify the requester of the defect. * The defect should be highlighted in a specificity letter, asking the * requester to provide the type of information outlined below in paragraph * 1-507b of this regulation. Components are not obligated to act on the * request until the requester responds to the specificity letter. * * * *

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When practicable, Components shall offer assistance to the requester in identifying the records sought and in reformulating the request to reduce the burden on the agency in complying with the Act.

b. The following guidelines are provided to deal with "fishing expedition" requests and are based on the principle of reasonable effort. Descriptive information about a record may be divided into two broad categories.

1. Category I is file-related and includes information such as type of record -- memorandum, title, index citation, subject area, date the record was created and originator.

2. Category II is event-related and includes the circumstances that resulted in the record being created or the date and circumstances surrounding the event the record covers.

c. Generally, a record is not reasonably described unless the description contains sufficient Category I information to permit the conduct of an organized, non-random search based on the Component's filing arrangements and existing retrieval systems, or unless the record contains sufficient Category II information to permit inference of the Category I elements needed to conduct such a search.

d. The following guidelines deal with requests for personal records. Ordinarily, when personal identifiers only are provided in connection with a request for records concerning the requester, only records retrievable by personal identifiers need be searched. Search for such records may be conducted under Privacy Act procedures. No record may be denied that is releasable under the FOIA.

e. The above guidelines notwithstanding, the decision of the DoD Component concerning reasonableness of description must be based on knowledge of its files. If the description enables DoD Component personnel to locate the record with reasonable effort, the description is adequate.

1-508 Referrals

a. A request received by a DoD Component having no records responsive to a request shall be referred routinely to another DoD Component, if the other Component confirms that it has the requested record, and this belief can be confirmed by the other DoD Component. If the DoD Component that is consulted determines that the existence or nonexistence of any record of the DoD Component responsive to the request is in itself classified, the requester will be so notified. Otherwise, the request shall be referred to the other DoD Component, and the requester shall be notified of any such referral. Any DoD Component receiving a request that has been misaddressed shall refer the request to the proper address and advise the requester.

b. Whenever a record, or a portion of a record, is, after prior consultation, referred to another DoD Component or to a government agency outside of the Department of Defense for a release determination and direct response, the requester shall be given a description of the record referred, as furnished by the DoD Component that was consulted. Referred records shall only be identified to the extent consistent with security requirements.

c. A DoD Component shall refer an FOIA request for a classified record that it holds to another DoD Component or agency outside the DoD, if the record originated in the other DoD Component or outside agency or if the classification is derivative. Telephonic coordination with the DoD Component or outside agency shall be made prior to the referral.

d. A DoD Component may also refer a request for a record that it originated to another DoD Component or agency when the record was created for the use of the other DoD Component or agency. The DoD Component or agency for which the record was created may have as significant and as legitimate an interest in withholding the record that the DoD Component that created the record would have. An example of such a situation is a request for audit reports prepared by the Defense Contract Audit Agency. These advisory reports are prepared for the use of contracting officers and their release to the audited contractor should be at the discretion of the contracting officer. Any FOIA request shall be referred to the appropriate contracting officer and the requester shall be notified of the referral.

e. Within DoD, a Component shall ordinarily refer an FOIA request for a record that it holds, but that was originated by another DoD Component or that contains substantial information obtained from another DoD Component, to that Component for direct response, after direct coordination and obtaining concurrence from the Component. Then, the requester shall be notified of such referral. DoD Components shall not, in any case, release or deny such records without prior consultation with the other DoD Component.

f. DoD Components that receive referred requests shall answer them in accordance with the time limits established by the FOIA and this Regulation. Those time limits shall begin to run upon receipt of the referral by the official designated to respond.

g. Agencies outside the Department of Defense that are subject to the FOIA:

1. A Component may refer an FOIA request for any record that originated in an agency outside the Department of Defense or that is based on information obtained from an outside agency to the agency for direct response to the requester after coordination with the outside agency, if that agency is subject to FOIA and if the requester does not object. Otherwise the component must respond to the request.

2. A DoD Component shall not honor any FOIA request for investigative, intelligence or any type of records that are on loan to the Department of Defense for a specific purpose, if the records are restricted from further release and so marked. Such requests shall be referred to the agency that provided the record.

h. To the extent referrals are consistent with the policies expressed by this paragraph, referrals between offices of the same DoD Component are authorized.

1-509 Fee Assessment

a. Fees may not be used to discourage requests, and to this end FOI fees are limited to standard charges for direct document search and duplication. Documents may be furnished without charge or at a reduced charge when the agency determines that waiver or reduction of the fees is in the public interest because furnishing the information can be considered as primarily benefiting the general public. Based on this guidance, the Department of Defense has established a liberal fee schedule, that is outlined in Chapter VI of this Regulation.

b. In order to be as responsive as possible to FOIA requests, while minimizing unwarranted costs to the taxpayer, DoD Components shall adhere to the following procedures:

1. If the requester declares an unwillingness to pay fees and does not substantiate a request for waiver and if it appears that the direct search and reproduction costs associated with the request shall exceed the automatic waiver threshold, the request need not be processed and the requester shall be so informed.

2. If the requester declares a willingness to pay fees up to a specified amount and does not substantiate a request for waiver, then the specified amount or the automatic waiver threshold, whichever is greater, shall not be exceeded without the consent of the requester.

3. If the requester makes no declaration concerning fees and does not substantiate a request for waiver, and if it appears that the direct search and reproduction fees to be assessed shall exceed the automatic waiver threshold, the request shall not be processed until the requester is advised of anticipated charges and agrees to pay them.

4. Components may require payment of all or a portion of estimated fees before processing a request.

5. Subsequent requests from persons who fail to discharge fee obligations need not be processed until previous obligations have been discharged or waived.

1-510 Authentication

Records provided under this Regulation shall be authenticated with an appropriate seal whenever necessary to fulfill an official Government or other legal function. This service, however, is in addition to that required under FOIA and is not included in the FOIA fee schedule. DoD Components may charge for the service at a rate of $3.00 for each authentication.

1-511 Unified and Specified Commands

a. The Unified Commands are placed under the jurisdiction of the OSD, instead of the administering Military Department, only for the purpose of administering the DoD FOIA Program. This policy represents an exception to the policies directed in DoD Directive 5100.3 (reference (e)); it authorizes and requires the Unified Commands to process FOI requests in accordance with DoD Directive 5400.7 (reference (b)) and this Regulation. The Unified Commands shall forward directly to the Office of the Assistant Secretary of Defense (Public Affairs), OASD(PA), all correspondence associated with the appeal of an initial denial for records under the provisions of the FOIA. Procedures to effect this adminstrative requirement are outlined in Appendix A.

b. The Specified Commands remain under the jurisdiction of the administering Military Department. The Commands shall designate IDAs within their headquarters; however, the appellate authority shall reside with the Military Department.

1-512 Records Management

FOIA records shall be maintained and disposed of in accordance with DoD Component disposition instructions and schedules.

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CHAPTER II

FOIA READING ROOMS

Section 1

REQUIREMENTS

2-100 Reading Room

Each Component shall provide an appropriate facility or facilities where the public may inspect and copy or have copied the materials described below. DoD Components may share reading room facilities if the public is not unduly inconvenienced. The cost of copying shall be imposed on the person requesting the material in accordance with the provisions of Chapter VI of this Regulation.

2-101 Material Availability

The FOIA requires that so-called "(a)(2)" materials shall be made available in the FOI reading room for inspection and copying, unless such materials are published and copies are offered for sale. Identifying details that, if revealed, would create a clearly unwarranted invasion of personal privacy may be deleted from "(a)(2)" materials made available for inspection and copying. In every case, justification for the deletion must be fully explained in writing. However, a DoD Component may publish in the Federal Register a description of the basis upon which it will delete identifying details of particular types of documents to avoid clearly unwarranted invasions of privacy. In appropriate cases, the DoD Component may refer to this description rather than write a separate justification for each deletion. So-called "(a)(2)" materials are:

a. Final opinions, including concurring and dissenting opinions, and orders made in the adjudication of cases, as defined in 5 U.S.C. 551 (reference (f)), that may be cited, used, or relied upon as precedents in future adjudications.

b. Statements of policy and interpretations that have been adopted by the agency and are not published in the Federal Register.

c. Administrative staff manuals and instructions, or portions thereof, that establish DoD policy or interpretations of policy that affect a member of the public. This provision does not apply to instructions for employees on tactics and techniques to be used in performing their duties, or to instructions relating only to the internal management of the DoD Component. Examples of manuals and instructions not normally made available are:

1. Those issued for audit, investigation, and inspection purposes, or those that prescribe operational tactics, standards of performance, or criteria for defense, prosecution, or settlement of cases.

2. Operations and maintenance manuals and technical information concerning munitions, equipment, systems, and foreign intelligence operations.

Section 2

INDEXES

2-200 "(a)(2)" Materials

a. Each DoD Component shall maintain in each facility prescribed in paragraph 2-100 an index of materials described in paragraph 2-101 that are issued, adopted, or promulgated, after July 4, 1967. No "(a)(2)" materials issued, promulgated, or adopted after July 4, 1967 that are not indexed and either made available or published may be relied upon, used or cited as precedent against any individual unless such individual has actual and timely notice of the contents of such materials. Such materials issued, promulgated, or adopted before July 4, 1967, need not be indexed, but must be made available upon request if not exempted under this Regulation.

b. Each DoD Component shall promptly publish quarterly or more frequently, and distribute, by sale or otherwise, copies of each index of "(a)(2)" materials or supplements thereto unless it publishes in the Federal Register an order containing a determination that publication is unnecessary and impracticable. A copy of each index or supplement not published shall be provided to a requester at a cost not to exceed the direct cost of duplication as set forth in Chapter VI of this Regulation.

c. Each index of "(a)(2)" materials or supplement thereto shall be arranged topically or by descriptive words rather than by case name or numbering system so that members of the public can readily locate material. Case name and numbering arrangements, however, may also be included for DoD Component convenience.

2-201 Other Materials

a. Any available index of DoD Component material published in the Federal Register, such as material required to be published by Section 552(a)(1) of the FOIA, shall be made available in DoD Component FOIA reading rooms.

b. Although not required to be made available in response to FOIA requests or made available in FOIA Reading Rooms, "(a)(1)" materials shall, when feasible, be made available in FOIA reading rooms for inspection and copying. Examples of "(a)(1)" materials are: descriptions of an agency's central and field organization, and to the extent they affect the public, rules of procedures, descriptions of forms available, instruction as to the scope and contents of papers, reports, or examinations, and any amendment, revision, or report of the aforementioned.

CHAPTER III

EXEMPTIONS

Section 1

GENERAL PROVISIONS

3-100 General

Records that meet the exemption criteria in Section 2 of this Chapter may be withheld from public disclosure and need not be published in the Federal Register, made available in a library reading room, or provided in response to an FOIA request.

3-101 Significant and Legitimate Government Purpose

An exempted record, other than those being withheld pursuant to Exemptions 1, 3 or 6, shall be made available upon the request of any individual when, in the judgment of the releasing DoD Component or higher authority, no significant and legitimate government purpose would be served by withholding it under an applicable exemption. If a DoD Component determines that a record requested under the FOIA meets the Exemption 4 withholding criteria set forth in this Regulation, the DoD Component shall not ordinarily exercise its discretionary power to release, absent circumstances in which a compelling public interest will be served by release of that record.

Section 2

EXEMPTIONS

3-200 FOIA Exemptions

The following types of records may be withheld in whole or in part from public disclosure unless otherwise precribed by law.

Number 1. Those properly and currently classified in the interest of national defense or foreign policy, as specifically authorized under the criteria established by executive order and implemented by regulations, such as DoDD 5200.1-R (reference (g)). Although material is not classified at the time of the FOIA request, a classification review may be undertaken to determine whether the information should be classified. The procedures in DoDD 5200.1-R, Section 2-204f apply.

Number 2. Those containing or constituting rules, regulations, orders, manuals, directives, and instructions relating to the internal personnel rules or practices of a DoD Component if their release to the public would substantially hinder the effective performance of a significant function of the Department of Defense and they do not impose requirements directly on the general public. Examples include:

a. Those operating rules, guidelines, and manuals for DoD investigators, inspectors, auditors, or examiners that must remain privileged in order for the DoD Component to fulfill a legal requirement.

b. Personnel and other administrative matters, such as examination questions and answers used in training courses or in the determination of the qualifications of candidates for employment, entrance on duty, advancement, or promotion.

Number 3. Those concerning matters that a statute specifically exempts from disclosure by terms that permit no discretion on the issue, or in accordance with criteria established by that statute for withholding or referring to particular types of matters to be withheld. Examples of statutes are:

a. National Security Agency Information Exemption, P.L. 86-36, Section 6 (reference (c)).

b. Patent Secrecy, 35 U.S.C. 181-188 (reference (h)). Any records containing information relating to inventions that are the subject of patent applications on which Patent Secrecy Orders have been issued.

c. Restricted Data and Formerly Restricted Data, 42 U.S.C. 2162 (reference (i)).

d. Communication Intelligence, 18 U.S.C. 798 (reference (j)).

Number 4. Those containing trade secrets or commercial or financial information that a DoD Component receives from a person or organization outside the government with the understanding that the information or record will be retained on a privileged or confidential basis in accordance with the customary handling of such records. Records within the exemption must contain trade secrets, or commercial or financial records the disclosure of which is likely to cause substantial harm to the competitive position of the source providing the information; impair the government's ability to obtain necessary information in the future; or impair some other legitimate government interest. Examples include records that contain:

a. Commercial or financial information received in confidence in connection with loans, bids, contracts, or proposals, as well as other information received in confidence or privileged, such as trade secrets, inventions, discoveries, or other proprietary data.

b. Statistical data and commercial or financial information concerning contract performance, income, profits, losses, and expenditures, if offered and received in confidence from a contractor or potential contractor.

c. Personal statements given in the course of inspections, investigations, or audits, when such statements are received in confidence from the individual and retained in confidence because they reveal trade secrets or commercial or financial information normally considered confidential or privileged.

d. Financial data provided in confidence by private employers in connection with locality wage surveys that are used to fix and adjust pay schedules applicable to the prevailing wage rate employees within the Department of Defense.

e. Scientific and manufacturing processes or developments concerning technical or scientific data or other information submitted with an application for a research grant, or with a report while research is in progress.

Number 5. Except as provided in subsections b. through e., below, internal advice, recommendations, and subjective evaluations, as contrasted with factual matters, that are reflected in records pertaining to the decision-making process of an agency, whether within or among agencies (as defined in 5 U.S.C. 552(e) (reference (a)) or within or among DoD Components.

a. Examples include:

1. The nonfactual portions of staff papers, to include after-action reports and situation reports containing staff evaluations, advice, opinions or suggestions.

2. Advice, suggestions, or evaluations prepared on behalf of the Department of Defense by individual consultants or by boards, committees, councils, groups, panels, conferences, commissions, task forces, or other similar groups that are formed for the purpose of obtaining advice and recommendations.

3. Those nonfactual portions of evaluations by DoD Component personnel of contractors and their products.

4. Information of a speculative, tentative, or evaluative nature or such matters as proposed plans to procure, lease or otherwise acquire and dispose of materials, real estate, facilities or functions, when such information would provide undue or unfair competitive advantage to private personal interests or would impede legitimate government functions.

5. Trade secret or other confidential research development, or commerical information owned by the Government, where premature release is likely to affect the government's negotiating position or other commercial interests.

6. Records that are exchanged among agency personnel and within and among DoD Components or agencies as part of the preparation for anticipated administrative proceeding by an agency or litigation before any federal, state, or military court, as well as records that qualify for the attorney - client privilege.

7. Those portions of official reports of inspection, reports of the Inspector Generals, audits, investigations, or surveys pertaining to safety, security, or the internal management, administration, or operation of one or more DoD Components, when these records have traditionally been treated by the courts as privileged against disclosure in litigation.

b. If any such intra or interagency record or reasonably segregable portion of such record hypothetically would be made available routinely through the "discovery process" in the course of litigation with the agency, i.e., the process by which litigants obtain information from each other that is relevant to the issues in a trial or hearing, then it should not be withheld

from the general public even though discovery has not been sought in actual litigation. If, however, the information hypothetically would only be made available through the discovery process by special order of the court based on the particular needs of a litigant, balanced against the interests of the agency in maintaining its confidentiality, then the record or document need not be made available under this Regulation.

c. Intra or interagency memoranda or letters that are factual, or those reasonably segregable portions that are factual, are routinely made available through "discovery," and shall be made available to a requester, unless the factual material is otherwise exempt from release, inextricably intertwined with the exempt information, so fragmented as to be uninformative, or so redundant of information already available to the requester as to provide no new substantive information.

d. A direction or order from a superior to a subordinate, though contained in an internal communication, generally cannot be withheld from a requester if it constitutes policy guidance or a decision, as distinguished from a discussion of preliminary matters or a request for information or advice that would compromise the decision-making process.

e. An internal communication concerning a decision that subsequently has been made a matter of public record must be made available to a requester when the rationale for the decision is expressly adopted or incorporated by reference in the record containing the decision.

Number 6. Information in personnel and medical files, as well as similar personal information in other files, that, if disclosed to the requester would result in a clearly unwarranted invasion of personal privacy.

a. Examples of other files containing personal information similar to that contained in personnel and medical files include:

1. Those compiled to evaluate or adjudicate the suitability of candidates for civilian employment or membership in the Armed Forces, and the eligibility of individuals (civilian, military, or contractor employees) for security clearances, or for access to particularly sensitive classified information.

2. Files containing reports, records, and other material pertaining to personnel matters in which administrative action, including disciplinary action, may be taken.

b. In determining whether the release of information would result in a "clearly unwarranted invasion of personal privacy," consideration shall be given to the stated or ascertained purpose of the request. When determining whether a release is "clearly unwarranted," the public interest in satisfying this purpose must be balanced against the sensitivity of the privacy interest being threatened. This exemption shall not be exercised in an attempt to protect the privacy of a deceased person, but it may be used to protect the privacy of the deceased person's family.

c. Individuals' personnel, medical, or similar file may be withheld from them or their designated legal representative only to the extent consistent with DoD Directive 5400.11 (reference (d)).

d. A clearly unwarranted invasion of the privacy of the persons identified in a personnel, medical or similar record may constitute a basis for deleting those reasonably segregable portions of that record, even when providing it to the subject of the record.

Number 7. Those investigative records compiled for the purpose of enforcing civil, criminal, or military law, including the implementation of executive orders or regulations issued pursuant to law.

a. This exemption applies, however, only to the extent that release of a record or portion of a record would:

1. Interfere with enforcement proceedings.

2. Deprive a person of the right to a fair trial or to an impartial adjudication.

3. Constitute an unwarranted invasion of personal privacy of a living person, including surviving family members of an individual identified in such a record.

4. Disclose the identity of a confidential source.

5. Disclose confidential information furnished only from a confidential source and obtained by a criminal law enforcement authority in a criminal investigation or by an agency conducting a lawful national security intelligence investigation.

6. Disclose investigative techniques and procedures not already in the public domain and requiring protection against public disclosure to ensure their continued effectiveness.

7. Endanger the life, physical safety, or well-being of law enforcement personnel or their families.

b. Examples include:

1. Statements of witnesses and other material developed during the course of the investigation and all materials prepared in connection with related government litigation or adjudicative proceedings.

2. The identity of firms or individuals being investigated for alleged irregularities involving contracting with Department of Defense when no indictment has been obtained nor any civil action filed against them by the United States.

3. Information obtained in confidence, expressed or implied, in the course of a criminal investigation by a criminal law enforcement agency or office within a DoD Component, or a lawful national security intelligence

investigation conducted by an authorized agency or office within a DoD Component. National security intelligence investigations include background security investigations and those investigations conducted for the purpose of obtaining affirmative or counterintelligence information.

c. The right of individual litigants to investigative records currently available by law (such as, the Jencks Act, 18 U.S.C. 3500, reference k)) is not diminished.

d. When the subject of an investigative record is the requester of the record, it may be withheld only as authorized by DoD Directive 5400.11 (reference (d)).

Number 8. Those contained in or related to examination, operation or condition reports prepared by, on behalf of, or for the use of any agency responsible for the regulation or supervision of financial instructions.

Number 9. Those containing geological and geophysical information and data (including maps) concerning wells.

CHAPTER IV

FOR OFFICIAL USE ONLY

Section 1

GENERAL PROVISIONS

4-100 General

Information that has not been given a security classification pursuant to the criteria of an Executive Order, but which may be withheld from the public for one or more of the reasons cited in FOIA Exemptions 2 through 9 shall be considered as being for official use only. No other material shall be considered or marked "For Official Use Only" (FOUO), and FOUO is not authorized as an anemic form of classification to protect national security interests.

4-101 Prior FOUO Application

The prior application of FOUO markings is not a conclusive basis for withholding a record that is requested under the FOIA. When such a record is requested, the information in it shall be evaluated to determine whether, under current circumstances, FOIA exemptions apply and whether a significant and legitimate government purpose is served by withholding the record or portions of it.

4-102 Historical Papers

Records such as notes, working papers, and drafts retained as historical evidence of DoD Component actions enjoy no special status apart from the exemptions under the FOIA (reference (a)).

4-103 Time to Mark Records

The marking of records at the time of their creation provides notice of FOUO content and facilitates review when a record is requested under the FOIA. Records requested under the FOIA that do not bear such markings, shall not be assumed to be releasable without examination for the presence of information that requires continued protection and qualifies as exempt from public release.

4-104 Distribution Statement

Information in a technical document that requires a distribution statement pursuant to DoD Directive 5200.20 (reference 1)) shall bear that statement and shall not be marked FOUO.

Section 2

MARKINGS

4-200 Location of Markings

a. An unclassified document containing FOUO information shall be marked "For Official Use Only" at the bottom on the outside of the front cover (if any), on the first page, on the back page, and on the outside of the back cover (if any).

b. Within a classified document, an individual page that contains both FOUO and classified information shall be marked at the top and bottom with the highest security classification of information appearing on the page.

c. Within a classified or unclassified document, an individual page that contains FOUO information but no classified information shall be marked "For Official Use Only" at the bottom of the page.

d. Other records, such as, photographs, films, tapes, or slides, shall be marked "For Official Use Only" or "FOUO" in a manner that ensures that a recipient or viewer is aware of the status of the information therein.

e. FOUO material transmitted outside the Department of Defense requires application of an expanded marking to explain the significance of the FOUO marking. This may be accomplished by typing or stamping the following statement on the record prior to transfer:

This document contains information
EXEMPT FROM MANDATORY DISCLOSURE
under the FOIA. Exemptions ..... apply.

Section 3

DISSEMINATION AND TRANSMISSION

4-300 Release and Transmission Procedures

Until FOUO status is terminated, the release and transmission instructions that follow apply:

a. FOUO information may be disseminated within DoD Components and between officials of DoD Components and DoD contractors, consultants, and grantees to conduct official business for the Department of Defense. Recipients shall be made aware of the status of such information, and transmission shall be by means that preclude unauthorized public disclosure. Transmittal documents shall call attention to the presence of FOUO attachments.

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b. DoD holders of FOUO information are authorized to convey such information to officials in other departments and agencies of the executive and judicial branches to fulfill a government function, except to the extent prohibited by the Privacy Act. Records thus transmitted shall be marked "For Official Use Only", and the recipient shall be advised that the information has been exempted from public disclosure, pursuant to the FOIA, and that special handling instructions do or do not apply.

c. Release of FOUO information to Members of Congress is governed by DoD Directive 5400.4 (reference (m)). Release to the General Accounting Office (GAO) is governed by DoD Directive 7650.1 (reference (n)). Records released to the Congress or GAO should be reviewed to determine whether the information warrants FOUO status. If not, prior FOUO markings shall be removed or effaced. If withholding criteria are met, the records shall be marked FOUO and the recipient provided an explanation for such exemption and marking. Alternatively, the recipient may be requested, without marking the record, to protect against its public disclosure for reasons that are explained.

4-301 Transporting FOUO Information

Records containing FOUO information shall be transported in a manner that precludes disclosure of the contents. When not commingled with classified information, FOUO information may be sent via first-class mail or parcel post. Bulky shipments, such as distributions of FOUO Directives or testing materials, that otherwise qualify under postal regulations may be sent by fourth-class mail.

4-302 Electrically Transmitted Messages

Each part of electrically transmitted messages containing FOUO information shall be marked appropriately. Unclassified messages containing FOUO information shall contain the abbreviation "FOUO" before the beginning of the text. Such messages shall be transmitted in accordance with communications security procedures in ACP-121 (US Supp 1) (reference (o)) for FOUO information.

Section 4

SAFEGUARDING FOUO INFORMATION

4-400 During Duty Hours

During normal working hours, records determined to be FOUO shall be placed in an out-of-sight location if the work area is accessible to non-governmental personnel.

4-401 During Nonduty Hours

At the close of business, FOUO records shall be stored so as to preclude unauthorized access. Filing such material with other unclassified records in unlocked files or desks, etc., is adequate when normal U.S. Government or government-contractor internal building security is provided during nonduty

hours. When such internal security control is not exercised, locked buildings or rooms normally provide adequate after-hours protection. If such protection is not considered adequate, FOUO material shall be stored in locked receptacles such as file cabinets, desks, or bookcases. FOUO records that are subject to the provisions of P.L. 86-36 (reference (c)) shall meet the safeguards outlined in any system notice for that group of records.

Section 5

TERMINATION, DISPOSAL AND UNAUTHORIZED DISCLOSURES

4-500 Termination

The originator or other competent authority, e.g., initial denial and appellate authorities, shall terminate "For Official Use Only" markings or status when circumstances indicate that the information no longer requires protection from public disclosure. When FOUO status is terminated, all known holders shall be notified, to the extent practical. Upon notification, holders shall efface or remove the "For Official Use Only" markings, but records in file or storage need not be retrieved solely for that purpose.

4-501 Disposal

a. Nonrecord copies of FOUO materials may be destroyed by tearing each copy into pieces to preclude reconstructing, and placing them in regular trash containers. When local circumstances or experience indicates that this destruction method is not sufficiently protective of FOUO information, local authorities may direct other methods but must give due consideration to the additional expense balanced against the degree of sensitivity of the type of FOUO information contained in the records.

b. Record copies of FOUO documents shall be disposed of in accordance with the disposal standards established under 44 U.S.C. CH 33 (reference (p)), as implemented by DoD Component instructions concerning records disposal.

4-502 Unauthorized Disclosure

The unauthorized disclosure of FOUO records does not constitute an unauthorized disclosure of DoD information classified for security purposes. Appropriate administrative action shall be taken, however, to fix responsibility for unauthorized disclosure whenever feasible, and appropriate disciplinary action shall be taken against those responsible. Unauthorized disclosure of FOUO information that is protected by the Privacy Act may also result in criminal sanctions against responsible persons. The DoD Component that originated the FOUO information shall be informed of its unauthorized disclosure.

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CHAPTER V

RELEASE AND PROCESSING PROCEDURES

Section 1

GENERAL PROVISIONS

5-100 Public Information

a. Since the policy of the Department of Defense is to make the maximum amount of information available to the public consistent with its other responsibilities, written requests for a DoD record made under the FOIA may be denied only when:

1. The record is subject to one or more of the exemptions in Chapter III of this Regulation, and a significant and legitimate government purpose is served by withholding it.

2. The record has not been described well enough to enable the DoD Component to locate it with a reasonable amount of effort by an employee familiar with the files.

3. The requester has failed to comply with the procedural requirements, including the written agreement to pay or payment of any required fee imposed by the instructions of the DoD Component concerned. When personally identifiable information in a record is requested by the subject of the record or his attorney, notarization of the request may be required.

b. Individuals seeking DoD information should address their FOI requests to one of the addresses listed in Appendix B.

5-101 Requests from Private Citizens

The provisions of the FOIA are reserved for persons with private interests as opposed to governments seeking information. Foreign governments seeking information from DoD Components should use established official channels for obtaining information. Release of records to individuals under the FOIA is considered public release of information, except as provided for in paragraph 1-505.

5-102 Requests from Government Officials

Requests from officials of federal, state, or local governments for DoD Component records shall be honored on an expeditious basis whenever possible. For purposes of determining whether the record or records shall be provided, such officials acting in an individual capacity shall be considered the same as any other requester.

5-103 Privileged Release to Officials

a. Subject to the provisions of DoD Regulation 5200.1-R (reference (g)), applicable to classified information, DoD Directive 5400.11 (reference (d)), applicable to personal privacy, or other applicable law, records exempt from release under Chapter III of this Regulation may be authenticated and released, in accordance with DoD Component regulations, to officials requesting them on behalf of local, state or federal governmental bodies, whether legislative, executive, administrative, or judicial, as follows:

1. To Congress, in accordance with DoD Directive 5400.4 (reference (m)).

2. To the federal courts, whenever ordered by officers of the court as necessary for the proper administration of justice.

3. To other federal agencies, both executive and administrative, as determined by the head of a DoD Component or designee.

4. To state and local officials, as determined by the head of a DoD Component or designee.

b. DoD Components shall inform officials receiving records under the provisions of paragraph 5-103a that those records are exempt from public release under the FOIA and are privileged. DoD Components shall also advise officials of any special handling instructions.

Section 2

INITIAL DETERMINATIONS

5-200 Initial Denial Authority

a. Components shall limit the number of IDAs appointed. In designating its IDAs, a DoD Component shall balance the goals of centralization of authority to promote uniform decisions and decentralization to facilitate responding to each request within the time limitations of the FOIA.

b. The initial determination of whether to make a record available upon request may be made by any suitable official designated by the DoD Component in published regulations. The presence of the marking "For Official Use Only" does not relieve the designated official of the responsibilty to review the requested record for the purpose of determining whether an exemption under this Regulation is applicable and should be invoked.

c. The officials designated by DoD Components to make initial determinations should consult with public affairs officers (PAOs) to become familiar with subject matter that is considered to be newsworthy, and advise PAOs of all requests from news media representatives. In addition, the officials should inform PAOs in advance when they intend to withhold or partially withhold a record, if it appears that the withholding action may be challenged in the media.

5-201 Reasons for Not Releasing a Record

There are six reasons provided by the FOIA for not complying with a request for a record. They are:

a. The information requested is not a record within the meaning of the FOIA and this Regulation.

b. A record has not been described with sufficient particularity to enable the DoD Component to locate it by conducting a reasonable search.

c. The requester has failed unreasonably to comply with procedural requirements, including payment of fees, imposed by this Regulation or DoD Component supplementing regulations.

d. The DoD Component determines through knowledge of its files and reasonable search efforts that it does not hold the requested record. (A "no record" determination is not considered a denial; therefore, an appeal is not appropriate.)

e. The DoD Component determines that the request should be handled under the provisions of the Privacy Act.

f. The record is denied in accordance with procedures set forth in the FOIA and this Regulation.

5-202 Denial Tests

To deny a requested record that has been located, a DoD Component must determine that the denial meets the following tests:

a. The record is included in one or more of the nine categories of records exempt from mandatory disclosure as provided by the FOIA and outlined in Chapter III of this Regulation.

b. A significant and legitimate government purpose is served by withholding the record.

5-203 Reasonably Segregable Portions

Although portions of some records may be denied, the remaining reasonably segregable portions must be released to the requester when the meaning of these portions is not distorted by deletion of the denied portions and when it reasonably can be assumed that a skillful and knowledgeable person could not reconstruct the excised information. When a record is denied in whole, the response advising the requester of that determination will specifically state that it is not possible to reasonably segregate meaningful portions of the record for release.

5-204 Response to Requester

a. Initial determinations to release or deny a record normally shall be made and the decision reported to the requester within 10 workings days after receipt of the request by the official designated to respond.

b. When a decision is made to release a record, a copy should be made available promptly to the requester once he has complied with preliminary procedural requirements.

c. When a request for a record is denied in whole or in part, the official designated to respond shall inform the requester in writing of the name and title or position of the official who made the determination, and shall explain to the requester the basis for the determination in sufficient detail to permit the requester to make a decision concerning appeal. The requester specifically shall be informed of the exemptions on which the denial is based and the significant and legitimate government purpose served by withholding the record. When the initial denial is based in whole or in part on a security classification, the explanation should include a summary of the applicable criteria for classification, as well as an explanation, to the extent reasonably feasible, of how those criteria apply to the particular record in question. The requester shall also be advised of the opportunity and procedures for appealing an unfavorable determination to a higher final authority within the DoD Component.

d. The response to the requester should contain information concerning the fee status of the request. Generally, the information shall reflect one or more of the following conditions:

1. All fees due have been received.

2. Fees have been waived because they fall below the automatic fee waiver threshold.

3. A request for waiver has been denied.

4. Fees have been waived or reduced from a specified amount to another specified amount because the rationale provided in support of a request for waiver has been accepted.

5. Fees due in a specified amount have not been received.

e. The explanation of the substantive basis for a denial shall include both specific citation of the statutory exemption applied under provisions of this Regulation and a discussion of the significant and legitimate government purpose served by invoking an exemption. Merely referring to a classification or, to a "For Official Use Only" marking on the requested record does not constitute a proper citation or explanation of the basis for invoking an exemption.

f. When the time for response becomes an issue, the official responsible for replying shall acknowledge to the requester the date of the receipt of the request.

5-205 Extension of Time

a. In unusual circumstances, when additional time is needed to respond, the DoD Component shall acknowledge the request in writing within the 10-day

period, describe the circumstances requiring the delay, and indicate the anticipated date for substantive response that may not exceed 10 additional working days. Unusual circumstances that may justify delay are:

1. The requested record is located in whole or in part at places other than the office processing the request.

2. The request requires the collection and evaluation of a substantial number of records.

3. Consultation is required with other DoD Components or agencies having substantial interest in the subject matter to determine whether the records requested are exempt from disclosure in whole or in part under provisions of this Regulation or should be released as a matter of discretion.

b. The statutory extension of time for responding to an initial request must be approved on a case-by-case basis by the final appellate authority for the DoD Component or in accordance with regulations of the DoD Component or in accordance with regulations of the DoD Component that establish guidance governing the circumstances in which such extensions may be granted.

c. In these unusual cases where the statutory time limits cannot be met, and no informal extension of time has been agreed to, the inability to process any part of the request within the specified time should be explained to the requester, with notification that he may treat the delay as an initial denial with a right to appeal, or that the requester may agree to await a substantive response by an anticipated date. It should be made clear that any such agreement does not prejudice the right of the requester to appeal the initial decision after it is made.

d. As an alternative to the taking of formal extensions of time as described in subsections a, b and c above, the negotiation by the cognizant, FOIA coordinating office of informal extensions in time with requesters is encouraged where appropriate.

5-206 Misdirected Requests

Misdirected requests shall be forwarded promptly to the DoD Component with the responsibility for the records requested. The period allowed for responding to the request misdirected by the requester shall not begin until the request is received by the DoD Component that manages the records requested.

5-207 Records of Non-U.S. Government Source

When a request is received for a record that was obtained from a non-U.S. Government source, or for a record containing information, clearly identified as having been provided by a non-U.S. Government source, the source of the record or information normally shall be notified promptly of that request and afforded reasonable time to present any objections concerning the release unless it is clear that there can be no valid bases for objection. If for example, the record or information was provided with actual or presumptive knowledge of the non-U.S. Government source and that it would be made available

to the public upon request, there is no obligation to notify the source. Any objections shall be evaluated. When a substantial issue has been raised, the DoD Component may seek additional information from the source of the information and afford the source and requester reasonable opportunities to present their arguments on the legal issues involved prior to making an agency determination. When the source advises it will seek a restraining order or take court action to prevent release of the record or information, the requester shall be notified, and action on the request normally shall not be taken until after the outcome of that court action is known.

5-208 File of Initial Denials

Copies of all initial denials shall be maintained by each DoD Component in a form suitable for rapid retrieval, periodic statistical compilation, and management evaluation.

5-209 Special Mail Services

DoD Components are authorized to use registered mail, certified mail, certificates of mailing and return receipts. However, their use should be limited to instances where it appears advisable to establish proof of dispatch or receipt of FOIA correspondence.

5-210 Receipt Accounts

The Treasurer of the United States has established two accounts for FOIA receipts. These accounts, which are described below, shall be used for depositing all FOIA receipts except receipts for industrially funded activities. Industrially funded activity FOIA receipts shall be deposited to the applicable industrial fund.

a. Receipt Account 2252, Sale of Publications and Reproductions, Freedom of Information Act. This account shall be used when depositing funds received from providing existing publications and forms, that meet the Receipt Account Series 2250 description found in Federal Account Symbols and Titles.

b. Receipt Account 2419.3, Fees and Other Charges for Services, Freedom of Information Act. This account is used to deposit search fees and fees for duplicating records to satisfy requests that could not be filled with existing publications or forms.

Section 3

APPEALS

5-300 General

If the official designated by the DoD Component to make initial determinations on requests for records declines to provide a record because the official considers it exempt and its withholding justified for a significant

and legitimate government purpose, that decision may be appealed by the requester in writing to a designated appellate authority. The appeal should be accompanied by a copy of the letter denying the initial request. Such appeals should contain the basis for disagreement with the initial refusal. In addition, the DoD Component may impose a reasonable time limit, which may not be more than 45 days, for the requester to file an appeal. Appeal procedures also apply to the disapproval of a request for waiver or reduction of fees. A "no record" finding may not be appealed, although the requester may ask the agency to search other files or provide more detailed identification to facilitate another search of the files.

5-301 Time of Receipt

FOI appeal has been received by a DoD Component when it reaches the office of the appellate authority having jurisdiction. Misdirected appeals should be referred expeditiously to the proper appellate authority.

5-302 Time Limits

a. The requester must file an appeal so that it reaches the appellate authority no later than 45 working days after the requester receives notification of an initial denial. At the conclusion of this period, the case may be considered closed. In cases where the requester is provided several incremental determinations for a single request, the time for the appeal shall not begin until the requester receives the last such notification. Records which are denied shall be retained during the time permitted for appeal.

b. Final determinations on appeals normally shall be made within 20 working days after receipt.

5-303 Delay in Responding to an Appeal

a. If additional time is needed due to the unusual circumstances described in paragraph 5-205, the final decision may be delayed for the number of working days (not to exceed 10), that were not utilized as additional time for responding to the initial request.

b. If a determination cannot be made and the requester notified within 20 working days, the appellate authority shall acknowledge to the requester in writing the date of receipt of the appeal, the circumstances surrounding the delay, and the anticipated date for substantive response. Requesters shall be advised that, if the delay exceeds the statutory extension provision or is for reasons other than the unusual circumstances identified in paragraph 5-205, they may consider their administrative remedies exhausted. They may, however, without prejudicing their right of judicial remedy, await a substantive response. The DoD Component shall continue to process the case expeditiously whether or not the requester seeks a court order for release of the records, but a copy of any response provided subsequent to filling of a complaint shall be forwarded to the Department of Justice.

5-304 Response to the Requester

a. When an appellate authority makes a determination to release all or a portion of records withheld by an IDA, a copy of the records so released should be forwarded promptly to the requester after compliance with any preliminary procedural requirements, such as payment of fees.

b. Final refusal to provide a requested record or to approve a request for waiver or reduction of fees must be made in writing by the head of the DoD Component or by a designated representative. The response, as a minimum, shall include the following:

1. The basis for the refusal shall be explained to the requester, in writing, both with regard to the applicable statutory exemption invoked under provisions of this Regulation and the significant and legitimate government purpose served by its withholding.

2. When the final refusal is based in whole or in part on a security classification, the explanation shall include a determination that the record meets the cited criteria and rationale of the governing executive order and that this determination is based on a declassification review, with the explanation of how that review confirmed the continuing validity of the security classification.

3. The final denial shall include the name and title or position of the official responsible for the denial.

4. The response shall advise the requester that the material being denied does not contain meaningful portions that are reasonably segregable.

5. The response shall advise the requester of the right to judicial review.

5-305 Consultation

a. Final refusal involving issues not previously resolved or that the DoD Component knows to be inconsistent with rulings of other DoD Components ordinarily should not be made before consultation with the Office of the General Counsel of the Department of Defense.

b. Tentative decisions to deny records that raise new or significant legal issues of potential significance to other agencies of the government shall be brought to the attention of the Freedom of Information Committee of the Department of Justice through the Office of Information Law and Policy.

Section 4

JUDICIAL ACTIONS

5-400 General

a. This section states current legal and procedural rules for the convenience of the reader. The statements of rules do not create rights or remedies not otherwise available, nor do they bind DoD to particular judicial interpretations or procedures.

b. A requester may seek an order from a United States District court to compel release of a record after administrative remedies have been exhausted; i.e., when refused a record by the head of a Component or an appellate designee or when the DoD Component has failed to respond within the time limits prescribed by the FOIA and set forth in this Regulation.

5-401 Jurisdiction

The requester may bring suit in the United States District Court in the district in which the requester resides or is the requester's place of business, in the district in which the record is located, or in the District of Columbia.

5-402 Burden of Proof

The burden of proof is on the DoD Component to justify its refusal to provide a record. The court shall evaluate the case de novo (anew) and may elect to examine any requested record in camera (in private) to determine whether the denial was justified.

5-403 Actions by the Court

a. When a DoD Component has failed to make a determination within the statutory time limits but can demonstrate due diligence in exceptional circumstances, the court may retain jurisdiction and allow the Component additional time to complete its review of the records.

b. If the court determines that the requester's complaint is substantially correct, it may require the United States to pay reasonable attorney fees and other litigation costs.

c. When the court orders the release of denied records, it may also issue a written finding that the circumstances surrounding the withholding raise questions whether DoD Component personnel acted arbitrarily and capriciously. In these cases, the special counsel of the Merit System Protection Board will conduct an investigation to determine whether or not disciplinary action is warranted. The DoD Component is obligated to take the action recommended by the special counsel.

d. The court may punish the responsible official for contempt when a DoD Component fails to comply with the court order to produce records that it determines have been withheld improperly.

5-404 Non-United States Government Source Information

A requester may bring suit in a U.S. District Court to compel the release of records obtained from a nongovernment source or records based on information obtained from a nongovernment source. Such source shall be notified promptly of the court action. When the source advises that it is seeking court action to prevent release, the DoD Component shall defer answering or otherwise pleading to the complainant as long as permitted by the Court or until a decision is rendered in the court action of the source, whichever is sooner.

5-405 Litigation Status Sheet

Freedom of Information managers at DoD Component level shall be aware of litigation under the FOIA. Such information will provide management insights into the use of the nine exemptions by Component personnel. The Litigation Status Sheet at Appendix C provides a standard format for recording information concerning FOIA litigation and forwarding that information to the Office of the Secretary of Defense. Whenever a complaint under the FOIA is filed in a U.S. District Court, the DoD Component named in the complaint shall forward a Litigation Status Sheet, with items 1 through 6 completed, and a copy of the complaint to the Director for Freedom of Information and Security Review, Office of the Assistant Secretary of Defense (Public Affairs). A revised Litigation Status Sheet shall be provided at each stage of the litigation.

CHAPTER VI

FEE SCHEDULE

Section 1

GENERAL PROVISIONS

6-100 Application

The fees described in this chapter apply to FOIA requests. They reflect direct search and duplication costs, collection of which are permitted by the FOIA. They are neither intended to imply that fees must be charged in connection with providing information to the public in the routine course of business nor are they meant as a substitute for any other schedule of fees, such as DoD Instruction 7230.7 (reference (q)).

6-101 Fee Assessment

a. Minimum fees shall not be charged.

b. When direct search and duplication costs for a single FOIA request total less than $30.00, fees should be waived automatically. The DoD Components, however, may set aside the automatic waiver provision when, on the basis of good evidence, the Component can demonstrate that waiver of fees is not in the public interest.

c. Decisions to waive or reduce fees that exceed the automatic waiver threshold shall be made on a case-by-case basis. The following circumstances, however, describe the most common circumstances in which waiver or reduction of fees are most likely to be warranted.

1. No record is located or all records are denied. However, fee charges are appropriate if the requester insists upon a search and agrees to such fees after being informed that the search is likely to be nonproductive or that the records are all likely to be exempt from release.

2. A record is voluntarily created to preclude an otherwise burdensome effort to provide voluminous amounts of available records including additional information not requested.

3. The records are to be made available in response to a news media requester whose requests under this regulation are reasonable in * scope and frequency. Fee charges are appropriate for news media requesters * * and may be assessed when: *

* (a) The fee charges exceed the fee waiver threshold of * * $30.00; and *

* (b) Either the requested record does not contain information * * that can be considered as primarily benefiting the general public, or *

#First amendment (Ch 1, 2/24/81)

* the search for the requested record requires an inordinate amount of DoD * * Component personnel time, and impacts adversely on the DoD Component con- * * cerned in accomplishing its primary functional missions. *

* 4. When news media requests are broad in scope and are considered un- * * reasonable by the Head of the Component, a specificity letter, as outlined in * * paragraph 5-107a of this regulation, should be dispatched. An estimate of fee * * charges may be included in the specificity letter, if practicable, or provided * * after receiving a reframed request. *

5. The record is for a nonprofit public interest group and the subject of the requested record is known to be of wide public interest, and furnishing the information can be considered as primarily benefiting the general public.

6. A previous denial is reversed in whole or in part and the search and reproduction costs involved are not substantial.

6-102 Computation of Fees

The fee schedule contained in this chapter is used to compute the search and duplication costs associated with processing a given FOIA request. Search fees shall be computed based on time actually spent. Neither time-based nor dollar-based minimum charges for search and duplication are authorized.

Section 2

COLLECTION OF FEES AND FEE RATES

6-200 Collection of Fees

Collection of charges and fees need not be made in advance of rendering the service unless the costs are expected to exceed the fee waiver threshold and the requester has not indicated a willingness in writing to pay. It frequently is more practical to collect charges and fees at the time of providing the service or property to the recipient when the requester specifically states that the cost involved shall be acceptable or acceptable up to a specified limit that covers anticipated costs. Collection of fees in advance is an appropriate requirement only when the requester has not agreed in writing to pay the anticipated fee or has not honored previous commitments to pay fees that were owed an agency or component.

6-201 Search Fees

a. Manual Search

Type	Grade	Hourly Rate ($)
Clerical	E9/GS8 and below	8
Professional	01-06/GS9-GS-15	16
Executive	07/GS16/ES1 and above	26

#First amendment (Ch 1, 2/24/81)

b. Computer search is based on direct cost of the central processing unit, input-output devices, and memory capacity of the actual computer configuration.

c. Actual cost of transporting records or personnel to the search site may be included.

6-202 Duplication Fees

Type	Cost per Page (¢)
Printed Material	01
Office Copy	10
Microfiche	25

6-203 Audiovisual Documentary Materials

Search costs are computed as for any other record. Duplication cost is the actual direct cost of reproducing the material, including the wage of the person doing the work. Audiovisual materials provided to a requester need not be in reproducible format or quality.

6-204 Other Records

Direct search and duplication cost for any record not described above shall be computed in the manner described for audiovisual documentary material.

CHAPTER VII

REPORTS

Section 1

REPORTS CONTROL

7-100 General

The reporting requirement outlined in this chapter is assigned Report Control Symbol DD-PA(TRA&A) 1365.

Section 2

ANNUAL REPORT

7-200 Reporting Time

Each DoD Component shall prepare statistics and accumulate paperwork for the preceding calendar year on those items prescribed for the annual report and submit them in duplicate to the ASD(PA) on or before each February 1. Existing DoD standards and registered data elements are to be used for all data requirements to the greatest extent possible in accordance with the provisions of DoD Directive 5000.11 (reference (r)). The standard data elements are contained in DoD 5000.12-M (reference (s)).

7-201 Annual Report Content

a. The annual report shall contain the following:

1. Item 1. Report the number of public requests (a single FOIA request) completed. Report the number of reportable requests, the number in which a statutory exemption was invoked, and the number in which some other authority resulted in the denial of the request.

Note: A reportable request is that portion of an FOIA request resulting in a single record or group of records pertaining to one general subject area being acted upon by one IDA who concludes that a single type of determination applies. Example: A single public request that requires the action of three IDAs in determining if a record under their jurisdiction is to be released would be counted as three reportable requests, but one public request. Records released by two IDAs in response to one public request would be counted as two reportable requests.

2. Item 2. Provide statistics on the specific authorities--statutory exemptions, statutes, and categories of other reasons used in the totals above.

(a) Item 2(a). Show the number of times each of the nine statutory exemptions was invoked (the total may not agree with Item 1 because of situations where two or more exemptions were cited for one record).

(b) Item 2(b). List the statutes cited when invoking Exemption 3 and the number of times each was cited.

(c) Item 2(c). Show the number of times each category of other reasons was cited in response to the public. Five such reportable categories have been established in Appendix E to this Regulation (the total will equal the number reported in Item 1).

3. Item 3. Provide the number of IDAs authorized. Then list the names and titles or positions of persons cited as IDAs, followed thereafter in two subcolumns by the number of times each person cited exemptions or other authority categories (the vertical columnar totals must match Item 1).

4. Item 4. Provide the number of appeals that, upon review, were granted in part, or denied, followed by a total of those three numbers.

5. Item 5. Repeat the three statistical requirements of Item 2 for the appeals that were granted in part or denied.

6. Item 6. Repeat item 3 for appellate authorities including both subcolumnar statistics.

7. Item 7. When a court determines that DoD Component records were improperly withheld and issues a finding raising questions on the actions of DoD Component personnel, provide a copy of each such court opinion or order; a copy of the Office of Personnel Management finding and recommendation on each such proceeding; and a report of any disciplinary action taken against the person who was primarily responsible for improperly withholding records or an explanation of why disciplinary action was not taken.

8. Item 8. List changes or revisions of DoD Component rules or regulations affecting the implementation of FOIA followed by the Federal Register reference (number, date, and page) that announced the change or revision to the public. Append a copy of each such change or revised rule or regulation.

9. Item 9. The amount of fees collected from the public will be reported triannually to OASD(PA); thus, duplicate annual reporting by DoD Components is not required.

10. Item 10. The following subitems have been established by Congressional request as indicative of DoD Component efforts to administer FOIA.

(a) Item 10(a). List all new categories of records now being released in whole or in part under FOIA.

(b) Item 10(b). The costs of administering the FOIA Program shall be reported triannually to OASD(PA); thus, duplicate annual reporting by Components is not required. The triannual reports shall be used by the OASD(PA) to portray annual DoD Component and DoD-wide totals.

(c) Item 10(c). Report the number of times unusual circumstances required an extension of normal processing time limits, and break down that total by circumstances and by court action. Append a copy of each court opinion or order involving the question of time limits for processing.

(d) Item 10(d). Append a copy of all unpublished (not announced in the Federal Register) instructions to DoD Component personnel, memoranda, or other issuances that address procedures, definitions, or interpretations of the FOIA promulgated during the year at Major Command level of the DoD Component. Report the number of documents published and whether or not they are publicly available, together with the legal basis for nondisclosure, should that be the case.

(e) Item 10(e). Any other information, opinion, or recommendations considered pertinent by the DoD Component.

11. Item 11. Report descriptions of FOI instructional and educational efforts undertaken by the DoD Component directed toward DoD Component personnel or the public.

12. Statistical data required by the items listed above shall be prepared in the format shown in Appendix D.

Section 3

TRIANNUAL REPORT

7-300 General

A portion of the annual reporting requirements has been selected for more frequent reporting to provide management data at intermediate DoD Components and DoD levels. The data selected fall into three areas: (1) costs attendant to administration of the FOIA program, (2) the amount collected from the public, and (3) the number of reportable requests and appeals.

7-301 Time of Report

Each DoD Component shall prepare statistics triannually (Jan-Apr, May-Aug, Sep-Dec) and, using the outline provided below, report these data to the ASD(PA) on or before 30 days after the close of each 4-month period. The use of DD Form 2086, "Record of Freedom of Information (FOI) Processing Cost," to maintain a record of the cost of each FOIA case shall provide the data needed for compiling the data in this report.

7-302 Triannual Report Outline

a. The Triannual Report shall include the following:
Reporting Activity:
Period of Report:

1. Cost of Routine Requests Processed:
No. of reportable requests x (cost factor per request)--$____

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2. Personnel Costs (Civilian and Military):

(a) Direct costs of personnel assigned FOI duties based upon estimated payroll manyears by grade:
_____ Cost: $___

(b) Direct costs for other personnel involved in processing requests not included above based upon accumulation of total hourly data:

(1) Search Time Costs: ____

(2) Review and Excising: ____

(3) Coordination and Approval/Denial Decision Costs: ____

(4) Correspondence and Form Preparation: ____

(5) Other Activity Costs: ____
Total Manhour Costs: $____

(c) Application of Overhead:
(Subtotal a) + (Subtotal b) x (overhead rate): $____
Total of Direct Personnel Costs and Overhead: $____

3. Other Case Related Costs:

(a) Computer----------$____

(b) Office Copy Reproduction----$____

(c) Microfiche Reproduction-----$____

(d) Cost of Printed Records-----$____
Total of Other Costs: $____

4. Other Operating Costs:

(a) Reporting Costs[1]

(1) Operational ____

(2) User ____

(3) Overhead ____

((1) + (2) x (overhead rate)) ____
$____

(b) Other costs as directed or as can be reasonably ascertained. Itemize each expense category and cost. $____
(Subtotal a) + (Subtotal b) $____

5. Summary:
(a) Total Costs of Sections 1 through 4, above $____

(b) Amount Collected from Requesters this Reporting Period:

Search____Copy____Total: $____

(c) No. of Requests Processed During this Reporting Period:
Reportable Requests____Appeals____Total:____

b. A copy of DD Form 2086, "Record of Freedom of Information (FOI) Processing Costs," is at Appendix F.

c. Format and instructions for the Triannual report are at Appendix G.

[1] See DoD Instruction 5000.22 (reference (t)). In the report for the last 4-month period (Sep-Dec) of each year, include the costs attributable to the Annual Report.

CHAPTER VIII

EDUCATION AND TRAINING

Section 1

RESPONSIBILITY AND PURPOSE

8-100 Responsibility

The head of each DoD Component is responsible for the establishment of educational and training programs on the provisions and requirements of this Regulation. The educational programs should be targeted toward all members of the DoD Component, developing a general understanding and appreciation of the DoD FOIA Program; whereas, the training programs should be focused toward those personnel who are involved in the day-to-day processing of FOI requests, developing a thorough understanding of the procedures outlined in this Regulation.

8-101 Purpose

The purpose of the educational and training programs is to promote a positive attitude among DoD personnel and raise the level of understanding and appreciation of the DoD FOIA Program, thereby improving the interaction with members of the public and improving the public trust in the Department of Defense.

8-102 Scope and Principles

Each Component shall design its FOIA educational and training programs to fit the particular requirements of personnel dependent upon their degree of involvement in the implementation of this Regulation. The program should be designed to accomplish the following objectives:

a. Familiarize personnel with the requirements of the FOIA and its implementation by this Regulation.

b. Instruct personnel, who act in FOI matters, concerning the provisions of this Regulation, advising them of the legal hazards involved and the strict prohibition against arbitrary and capricious withholding of information.

c. Provide for the procedural and legal guidance and instruction, as may be required, in the discharge of the responsibilities of initial denial and appellate authorities.

d. Advise personnel of the penalties for noncompliance with the FOIA.

8-103 Implementation

To ensure uniformity of interpretation, all major educational and training programs concerning the implementation of this Regulation should be coordinated with the Director, Freedom of Information and Security Review, OASD (Public Affairs).

8-104 Uniformity of Legal Interpretation

In accordance with DoD Directive 5400.7 (reference (b)) the General Counsel of the Department of Defense shall ensure uniformity in the legal position and interpretation of the DoD FOIA Program.

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APPENDIX A

UNIFIED COMMANDS - PROCESSING PROCEDURES FOR FOI APPEALS

1. General

a. In accordance with DoD Directive 5400.7 (reference (b)) and this Regulation, the Unified Commands are placed under the jurisdiction of the Office of the Secretary of Defense, instead of the administering Military Department, only for the purpose of administering the Freedom of Information (FOI) Program. This policy represents an exception to the policies in DoD Directive 5100.3 (reference (e)).

b. The policy change above authorizes and requires the Unified Commands to process FOI requests in accordance with DoD Directive 5400.7 (reference (b)) and to forward directly to the Office of the Assistant Secretary of Defense (Public Affairs) all correspondence associated with the appeal of an initial denial for information under the provisions of the Freedom of Information Act (FOIA).

2. Processing Procedures

A request for a record under the FOIA may be denied only upon determination that:

(a) The record is subject to one or more of the exemptions set forth in Chapter III of this Regulation and a significant and legitimate government purpose is served by the withholding.

(b) The record cannot be found because it has not been described with sufficient particularity to enable a responsible authority to locate it with a reasonable amount of effort.

(c) The requester has unreasonably failed to comply with the procedural requirements imposed by this regulation.

3. Responsibilities of Commands

Unified Commanders in Chief shall:

(a) Designate the officials authorized to deny initial FOI requests for records.

(b) Designate an office as the point-of-contact for FOI matters.

(c) Refer FOI cases to the ASD(PA) for review and evaluation when the issues raised are of unusual significance, precedent setting, or otherwise require special attention or guidance.

(d) Consult with other OSD and DoD Components that may have a significant interest in the requested record prior to a final determination. Coordination with agencies outside of Department of Defense, if required, is authorized.

(e) Coordinate proposed denials of records with the appropriate Unified Command's Office of the Staff Judge Advocate.

(f) Answer any request for a record within 10 working days of receipt. The requester shall be notified that his request has been granted or denied. In unusual circumstances, such notification may state that additional time, not to exceed 10 working days, is required to make a determination.

(g) Provide to the ASD(PA) when the request for a record is denied in whole or in part, a copy of the response to the requester or his representative, and any internal memoranda that provide background information or rationale for the denial.

(h) State in the response that the decision to deny the release of the requested information, in whole or in part, may be appealed to the ASD(PA) the Pentagon, Washington, D.C. 20301.

(i) Upon request, submit to ASD(PA) a copy of the records that were denied. ASD(PA) shall make such requests when adjudicating appeals.

4. Fees for FOI Requests

The fees charged for requested records shall be in accordance with Chapter VI of this Regulation.

5. Communications

Excellent communication capabilities currently exist between the Office of the ASD(PA) and the Public Affairs Offices of the Unified Commands. This communication capability shall be used for FOI cases that are time sensitive.

6. Reporting Requirements

a. The Unified Commands shall submit to the ASD(PA) triannual reports and an annual report. The instructions for these two reports are outlined in Chapter VII of this Regulation.

b. The annual report shall be submitted in duplicate to the ASD(PA) not later than each February 1. This reporting requirement is assigned Report Control Symbol DD-PA(TRA&A) 1365.

c. The triannual reports for the periods January-April, May-August, September-December are required within 30 days after the close of the reporting period. The first report is due for the period May-August 1980, arriving at the Office of the ASD(PA) not later than September 30, 1980. This reporting requirement is assigned Report Control Symbol DD-PA (TRA&A) 1365.

APPENDIX B

ADDRESSING FOIA REQUESTS

1. General

a. The Department of Defense includes the Office of the Secretary of Defense and the Organization of the Joint Chiefs of Staff, the Military Departments, the Unified and Specified Commands, and such other agencies as the Secretary of Defense establishes to meet specific requirements.

b. The Department of Defense does not have a central repository for DoD records. FOI requests, therefore, should be addressed to the DoD Component that has custody of the record desired. In answering inquiries regarding FOI requests, DoD personnel shall assist requesters in determining the correct DoD Component to address their requests. If there is uncertainty as to the ownership of the record desired, the requester shall be referred to the DoD Component that is most likely to have the record.

2. Listing of DoD Component Addresses for FOI Requests

a. Office of the Secretary of Defense/Organization of the Joint Chiefs of Staff. This Component includes the Office of the Secretary of Defense, Office of the Deputy Secretary of Defense, Organization of the Joint Chiefs of Staff, Under Secretary of Defense for Policy, Under Secretary of Defense for Research and Engineering, Assistant Secretaries of Defense, General Counsel of the Department of Defense, Deputy Under Secretary of Defense (Policy Planning), Deputy Under Secretary of Defense (Policy Review), Assistant to the Secretary of Defense (Atomic Energy), Assistant to the Secretary of Defense (Legal Affairs), Director of Defense Advanced Research Projects Agency, Director of Defense Audit Service, Director of Defense Audiovisual Agency, Director of Defense Security Assistance Agency, Director of Net Assessment, Director of Office of Civilian Health and Medical Program of the Uniformed Services, Director of Office of Dependents Schools (including Overseas Schools), Deputy Advisor on NATO Affairs, Inspector General for Defense Intelligence, President of the Uniformed Services University of the Health Sciences, President of National Defense University (including the National War College and the Industrial College of the Armed Forces), Commandant of the Defense Systems Management College, Commandant of Armed Forces Staff College. All Freedom of Information requests concerning records of these activities should be sent to:

Director
Freedom of Information and Security Review
Office of the Assistant Secretary of Defense (Public Affairs)
Room 2C757, Pentagon
Washington, D. C. 20301

b. Department of the Army. Army records may be requested from those Army officials who are listed in 32 CFR 518.17. Send requests to HQDA (DAAG-AMR-S), Forrestal Building, 1000 Independence Avenue, S.W., Washington, D. C. 20314, for records of the Headquarters, U.S. Army, or if there is uncertainty as to which Army activity may have the records desired.

c. Department of the Navy. Navy and Marine Corps records may be requested from any Navy or Marine Corps activity by addressing a letter to the commanding officer and clearly indicating that it is a FOI request. Send requests to Chief of Naval Records Management Division (OP-09B1), Room 5E-613, Pentagon, Washington, D. C. 20350, for records of the Headquarters, Department of the Navy, or if there is uncertainty as to which Navy or Marine Corps activity may have records sought.

d. Department of the Air Force. Air Force records may be requested from the Commander (ATTENTION: DADF) of any Air Force installation, major command, or separate operating agency, or from the Headquarters, United States Air Force. Requesters should send FOI requests to HQ USAF/DADF, Washington, D. C. 20330, for Air Force records of Headquarters, United States Air Force, or if there is uncertainty as to which Air Force activity may have the records desired.

e. Defense Communications Agency (DCA). DCA records may be requested from any DCA field activity or from its headquarters. FOI requests may be addressed to Headquarters, Defense Communications Agency (Code 105), Washington, D. C. 20305.

f. Defense Contract Audit Agency (DCAA). DCAA records may be requested from any of its regional offices or from its headquarters. Requesters should send FOI requests to the Defense Contract Audit Agency, Cameron Station, Alexandria, Va. 22314, for records of its headquarters or if there is uncertainty as to which DCAA region may have the records sought.

g. Defense Intelligence Agency (DIA). FOI requests for DIA records may be addressed to Defense Intelligence Agency (RTS-2A), Washington, D.C. 20301.

h. Defense Investigative Service (DIS). All FOI requests for DIS records should be sent to the Office of Information and Legal Affairs Defense Investigative Service (DO020), 1900 Half St., S.W., Washington, D.C. 20314.

i. Defense Logistics Agency (DLA). DLA records may be requested from its headquarters or from any of its field activities. Requesters should send FOI requests to Defense Logistics Agency (DLA-XA), Cameron Station, Alexandria, Virginia 22314, for records of its headquarters or DLA field activities if the record is known to be at the field location.

j. Defense Mapping Agency (DMA). FOI requests for DMA records may be sent to the Defense Mapping Agency, Naval Observatory, Building 56, 34 Massachusetts Avenue, N.W., Washington, D. C. 20305.

k. Defense Nuclear Agency (DNA). FOI requests for DNA records may be sent to Defense Nuclear Agency, Public Affairs Office, Washington, D.C. 20305.

l. National Security Agency (NSA). FOI requests for NSA records may be sent to the National Security Agency, ATTN: Freedom of Information Office, Fort George G. Meade, MD 20755.

3. Other Addresses

a. Office of Civilian Health and Medical Program of the Uniformed Services (CHAMPUS). FOI requests for CHAMPUS records may be sent to the Director, OCHAMPUS, Denver, Colorado 80240.

b. National Guard Bureau. FOI requests for National Guard Federal records may be sent to any State Guard unit or to the National Guard Bureau (NGS-DA), Room 2C-362, Pentagon, Washington, D. C. 20301.

c. Miscellaneous. If there is uncertainty as to which DoD Component may have the DoD record sought, the requester may address a Freedom of Information request to the Director, Freedom of Information and Security Review, Office of the Assistant Secretary of Defense (Public Affairs), Room 2C757, Pentagon, Washington, D. C. 20301.

APPENDIX C

LITIGATION STATUS SHEET

1. Case Number*
2. Requester
3. Document Title or Description
4. Litigation
   a. Date Complaint Filed
   b. Court
   c. Case File Number*
5. Defendants (agency and individual)
6. Remarks: (brief explanation of what the case is about)
7. Court Action
   a. Court's Finding
   b. Disciplinary Action (as appropriate)
8. Appeal (as appropriate)
   a. Date Complaint Filed
   b. Court
   c. Case File Number*
   d. Court's Finding
   e. Disciplinary Action (as appropriate)

*Number used by component for reference purposes.

APPENDIX D

ANNUAL REPORT FORMAT

Item 1

Initial Determinations Resulting in not Providing all or a Portion of Record Requested

	Total Demands		Reasons	
Reporting* Activity	Completed Public Requests	Completed Reportable Requests	Statutory Exemption	+ Other = Total

Item 2(a)

Exemptions Invoked on Initial Determinations

Exemption by Number (552(b))

Reporting* Activity	1	2	3	4	5	6	7	8	9	Total

Item 2(b)

Statutes Invoked on Initial Determinations

Reporting* Activity	Statute	Number of Times

Item 2(c)

Other Reasons

Reporting* Activity	Category*					Total
	1	2	3	4	5	

Item 3

Initial Denial Officials by Participation

A. Total IDAs authorized: _____
B. IDAs involved in adverse determinations

Name*	Title	No. of Instances of Participation	
		Exemptions	Other

Item 4

Number of Appeals and Results

Reporting* Activity	Number of Appeals			
	Granted	Granted in Part	Denied	Total

Item 5(a)

Exemptions Invoked on Appeal Determinations

Exemptions by Number (522(b))

Reporting* Activity	1	2	3	4	5	6	7	8	9	Total

Item 5(b)

Statutes Invoked on Appeal Determinations

Reporting* Activity	Statute	Number of Times

Item 5(c)

Other Reasons Cited on Appeal Determinations

Reporting* Activity	Category*					Total
	1	2	3	4	5	

Item 6

Participation of Appellate Authorities
(those responsible for denials in whole or in part)

Name*	Title	No. of Instances of Participation	
		Exemptions	Other

Item 7

Court Opinions and Action Taken

Item 8

FOIA Implementation Rules or Regulations

Reporting* Activity	Document Identification	Fed. Reg. Ref.

Item 10A

Availability of Records
(New categories of segregable portions of records now being released)

Item 10C

Time Limit Extensions by Activity

Reporting* Activity	Location	I Unusual Circumstances Volume	I Unusual Circumstances Consultation	II & III Court Involvement	Total

Item 10D

Internal Memoranda
(Including Directives not Published in Federal Register)

Reporting* Activity	No. of Memoranda	No. Available to Public

Item 10E (Optional)

Other information (opinions) or recommendations on administering FOIA

Item 11

FOIA Instructional and Educational Efforts

NOTE: Items marked with an asterisk (*) have been registered in the DoD data element program.

APPENDIX E

OTHER REASON CATEGORIES

1. Transferred Requests

This category applies when responsibiltiy for making a determination or a decision on categories 2, 3, or 4 below is shifted from one DoD Component to another.

2. Lack of Records

This category covers those situations wherein the requester is advised the DoD Component has no record or has no statutory obligation to create a record.

3. Failure of Requester to Reasonably Describe Record

This category is specifically based on Section 552(a) (3)(a) of the FOIA (reference (a)).

4. Other Failures by Requesters to Comply with Published Rules or Directives

This category is based on Section 552(a)(3)(b) of the FOIA (reference (a)) and includes instances of failure to follow published rules concerning time, place, fees, and procedures.

5. Request Withdrawn by Requester

This category covers those situations wherein the requester asks an agency to disregard the request (or appeal) or pursues the request outside FOIA channels.

APPENDIX F

RECORD OF FREEDOM OF INFORMATION (FOI) PROCESSING COST

1. REQUEST NO.	2. TYPE OF REQUEST ☐ INITIAL ☐ APPEAL	3. DATE COMPLETED (yr., mo., day)	SEE INSTRUCTIONS ON BACK OF PAGE

4. CLERICAL HOURS (E-9/GS-8 AND BELOW)	TOTAL HOURS		HOURLY RATE		COST
SEARCH					*
REVIEW/EXCISING					
CORRESPONDENCE AND FORMS PREPARATION		X	$ 8.00	=	
OTHER ACTIVITY					

5. PROFESSIONAL HOURS	TOTAL HOURS		HOURLY RATE		COST
SEARCH					*
REVIEW/EXCISING					
COORDINATION/APPROVAL/DENIAL		X	$ 16.00	=	
OTHER ACTIVITY					

6. EXECUTIVE HOURS (O-7/GS-16 AND ABOVE)	TOTAL HOURS		HOURLY RATE		COST
REVIEW/EXCISING					
COORDINATION/APPROVAL/DENIAL		X	$ 26.00	=	

7. COMPUTER SEARCH	TOTAL HOURS		HOURLY RATE		COST
MACHINE HOURS		X		=	*

8. OFFICE COPY REPRODUCTION	NUMBER		RATE		COST
PAGES REPRODUCED		X	.10	=	*

9. MICROFICHE REPRODUCTION	NUMBER		RATE		COST
MICROFICHE REPRODUCED		X	.25	=	*

10. PRINTED RECORDS	TOTAL PAGES		RATE		COST
FORMS					*
PUBLICATIONS		X	.01	=	*
REPORTS					*

11. *For FOI Office Use Only*

a. SEARCH FEES PAID		e. TOTAL COLLECTABLE COSTS	*
b. COPY FEES PAID		f. TOTAL PROCESSING COSTS	
c. TOTAL PAID		g. TOTAL CHARGED	
d. DATE PAID (yr., mo., day)		h. FEES WAIVED/REDUCED	Y / N

* *Chargeable to the Requester.*

DD FORM 1 JAN 80 2086

INSTRUCTIONS

PURPOSE: This form is used to record costs associated with the processing of a Freedom of Information request.

1. Request Number – First two digits will express CY followed by dash (-) and Component's request number, i.e., 79-001.

*2. Type of Request – Check the appropriate block to indicate initial request or appeal of a denial.

*3. Date Completed – Enter year, month and day, i.e., 79/06/21.

*4. Clerical Hours – For each applicable activity category, enter time expended to the nearest 15 minutes in the total hours column. The activity categories are:

Search – Time spent in locating from the files the requested information.
Review/Excising – Time spent reviewing the document content and determining if the entire document must retain its classification or segments could be excised thereby permitting the remainder of the document to be declassified. In reviews for other than classification, FOI exemptions 2 through 9 should be considered.
Correspondence & Forms Preparation – Time spent in preparing the necessary correspondence and forms to answer the request.
Other Activity – Time spent in activity other than above, such as, duplicating documents, hand carrying documents to other locations, restoring files, etc.

– Multiply the time in the total hours column of each category by the hourly rate and enter the cost figures for each category. Only search cost may be charged to the requester. Further discussion of chargeable fees is found in Enclosure 6, DoD Directive 5400.7.

*5. Professional Hours – For each applicable activity category, enter time expended to the nearest 15 minutes in the total hours column. The activity categories are:

Review/Excising, and Other Activity – See explanation above.
Coordination/Approval/Denial – Time spent coordinating the staff action with interested offices or agencies and obtaining the approval for the release or denial of the requested information.

–Multiply the time in the total hours column of each category by the hourly rate and enter the cost figures for each category Only search cost may be charged to the requester.

*6. Executive Hours – For each applicable activity category, enter the time expended to the nearest 15 minutes in the total hours column. The activity categories are:

Review/Excising and Coordination/Approval/Denial – See explanation above.

– Multiply the time in the total hours column in each category by the hourly rate and enter the cost figures for each category.

*7. Computer Search – Enter the time to the nearest 15 minutes in the total hours column.

– Multiply the total hours by the computer hourly rate and enter the cost figures. Computer search will be based on direct cost only of the Central Processing Unit, input/output devices, and memory capacity of the actual computer configuration used. This amount is fully chargeable to the requester.

*8. Office Copy Reproduction – Enter the number of pages reproduced.

– Multiply by the rate per copy and enter cost figures. The entire cost is chargeable to the requester.

*9. Microfiche Reproduction – Enter the number of microfiche copies reproduced.

– Multiply by the rate per copy and enter cost figures. The entire cost is chargeable to the requester.

*10. Printed Records – Enter total pages in each category. The categories are:

Forms *(Include any type of printed forms)*
Publications *(Include any type of bound document, such as directives, regulations, studies, etc.)*
Reports *(Include any type of memorandum, staff action paper, etc.)*

– Multiply the total number of pages in each category by the rate per page and enter cost figures. The entire cost of each category is chargeable to the requester.

11. For FOI Office Use Only –

a. Search Fees Paid – Enter total search fees paid by the requester.

b. Copy Fees Paid – Enter the total of copy fees paid by the requester.

c. Total Paid – Add search fees paid and copy fees paid. Enter total in the total paid block.

*d. Date Paid – Enter year, month and day, i.e., 79/10/24, the fee payment was received.

e. Total Collectable Costs – Add the blocks in the cost column marked with an asterisk and enter total in the total collectable cost block. Only search, reproduction and printed records are chargeable to the requester.

f. Total Processing Costs – Add all blocks in the cost column and enter total in the total processing cost block. The total processing cost in most cases will exceed the total collectable cost.

g. Total Charged – Enter the total amount that the requester was charged, taking into account the fee waiver threshold and fee waiver policy.

*h. Fees Waived/Reduced – Indicate if the cost of processing the request was waived or reduced by placing an "X" in the "Y" block for Yes or an "X" in the "N" block for No.

NOTE: All items marked with an asterisk (*) have been registered in the DoD Data Element Standardization Program (DoD Manual 5000.12M). Items 4, 5 and 6 were registered under data element "Type of FOI Manpower Category". The entries Search Review/Excising, Correspondence & Forms Preparation, Coordination/Approval/Denial, and Other Activity have been registered under the data element "FOI Manpower Activity Category."

APPENDIX G

FORMAT FOR TRIANNUAL REPORT

Reporting Activity:*

Period of Report:

A. Cost of Routine Requests Processed:
No. of Reportable Requests x (cost factor per request)---$____

B. Personnel Costs (Civilian and Military):

(1) Direct costs of personnel assigned FOI duties based upon estimated payroll manyears by grade:

_____ Cost: $_____

(2) Direct costs for other personnel involved in processing requests not included above based upon accumulation of total hourly data:

(a) Search Time Costs: ____
(b) Review and Excising: ____
(c) Coordination and Approval/Denial Decision Costs: ____
(d) Correspondence and Form Preparation Costs: ____
(e) Other Activity Costs: ____

Total Manhour Costs: $____

(3) Application of Overhead:
(Sub-total A) + (Sub-total B) x (overhead rate): $____
Total of Direct Personnel Costs and Overhead: $____

C. Other Case Related Costs:

(1) Computer*----------$____
(2) Office Copy Reproduction*----------$____

(3) Microfiche Reproduction*----------$_____
(4) Cost of Printed Records*----------$_____

Total of Other Costs: $_____

D. Other Operating Costs:

(1) Reporting Costs[1]

(a) Operational _____
(b) User _____
(c) Overhead _____
((a) + (b) x (overhead rate)) _____

$_____

(2) Other costs as directed or as can be reasonably ascertained. Itemize each expense category and cost. $_____

(Sub-total (1)) + (Sub-total (2)) $_____

E. Summary

(1) Total Costs of Sections A through D above $_____
(2) Amount Collected from Requesters this Reporting Period:
Search _____ Copy _____ Total: $ _____
(3) No. of Requests Processed During this Reporting Period:
Reportable Requests _____Appeals _____Total: _____

[1] See DoD Instruction 5000.22 (reference (t)). In the report for the last four-month period (Sept-Dec) of each year, include the costs attributable to the Annual Report.

NOTE: Items marked with an asterisk (*) have been registered in the DoD Data Element Program.

INSTRUCTIONS FOR TRIANNUAL FOI REPORT

1. General

a. To accomplish FOI cost reporting, each reporting activity must, first, determine whether sufficient repetitive requests are available to develop an average cost factor for these requests; second, establish which employees devote a sufficient percentage of their time to FOI duties to calculate their involvement in manyears; third, accumulate data on time (manhours) and costs involved in each case processed; and fourth, keep track of operating costs of the FOI Program. DD Form 2086 (Appendix F) should be used to accumulate case data.

b. Only those requests processed under the FOI Act shall be costed and reported. The provision to the public of unclassified information, documents, and forms as part of normal service, in accordance with previously established criteria or the Privacy Act, is excluded from this reporting requirement.

2. Section A

Some reporting activities will find it economical to develop an average cost factor for processing repetitive routine requests rather than tracking costs on each request as it is processed. This section provides for that economy, but care must be exercised that costs are comprehensive, to include overhead, yet not duplicated elsewhere in the report.

3. Section B

a. Personnel costs are reported in two ways. Section B. (1) uses a manyear/wage type of costing by grade that relieves individuals primarily those involved in planning, program management, or administrative handling from accounting for their time by manhours.

Sample Computation[1]
(Air Force)

Grade/ Step	No.		1/3 Annual Wage		% of Time		Cost
0-4	1	X	$7697	X	25	=	$1924
0-3	1	X	6459	X	50	=	3230
GS-9(5)	1	X	4844	X	100	=	4844
GS-4(3)	1	X	2701	X	25(2)	=	1350
					225		$11,348

MANYEARS = 225 - 100 - 3 = .75

[1] (a) Military Grades - use DoD Accounting Guidance Handbook (DoD 7220.9-H, Sec. 252 (reference (u))
(b) Civilian Grades - use Office of Personnel Management Salary Table

b. Use of one-third the annual wage and dividing manyears by three is required in this triannual report. Delete the computation.

c. Section B.(2) accounts for all other personnel involvement by manhours in particular activities associated in request processing as captured on DD Form 2086 (Appendix F). At the end of the reporting period, determine the total hourly data for each activity from all forms for the 4-month period and add totals into the five areas. It is suggested that hours and fractions thereof be added rather than dollar amounts. The use of standard fee schedule rates for each activity simplifies mathematical calculations and also allows these data to be compared to amounts collected. Executive manhours will likely be restricted to (2)(b) and (c) of Section B. (2)

Example Computation:

Clerical Search hours	2071.75 x $ 8.00	= $16,574.00
Professional Search hours	910.20 x $16.00	= $14,563.20
(1) Search time costs ----------		= $31,137.20

d. Section B.(3) applies overhead to the direct manyear/manhour costs previously totaled above. The overhead rate includes the costs of supervision, space, and administrative support. Some reporting activities may have their own overhead rate (or will choose to develop one) based on cost experience. In the event that no such rate is available, an overhead rate of 25 percent may be used to produce an estimate of overhead costs. Include the rate used in the report.

4. Section C

Add the dollar amounts for each type of cost as recorded on DD Form 2086 (Appendix F) for the period and enter the total for each of these costs.

5. Section D

Use of this section recognizes reporting costs as part of total costs. It also provides for those other costs that are easily identifiable by each reporting activity. This section allows each DoD Component, as well as other levels of command, to amplify reporting requirements for subordinate levels. Use can vary, but items such as per diem, operation of courier vehicles, training courses, printing (indexes and forms), and use of indicia apply.

6. Section E

The summary data provide a total best estimate cost figure for administering the FOI Program during the reporting period, a recap of fees collected, and the workload that generated these costs and collections.

REFERENCES

(e) DoD Directive 5100.3, "Support of the Headquarters of Unified, Specified and Subordinate Joint Commands," March 17, 1980
(f) Title 5, United States Code, Section 551, "Administrative Procedures Act"
(g) DoD 5200.1-R, "DoD Information Security Program Regulation," October 1980, authorized by DoD Directive 5200.1, November 29, 1978
(h) Title 35, United States Code, Section 181-188, "Patent Secrecy"
(i) Title 43, United States Code, Section 2162, "Restricted Data and Formerly Restricted Data"
(j) Title 18, United States Code, Section 798, "Communication Intelligence"
(k) Title 18, United States Code, Section 3500, "The Jencks Act"
(l) DoD Directive 5200.20, "Distribution Statements on Technical Documents," September 24, 1970
(m) DoD Directive 5400.4, "Provision of Information to Congress," January 30, 1978
(n) DoD Directive 7650.1, "General Accounting Office Comprehensive Audits," July 9, 1958
(o) ACP-121 (United States Supplement 1)
(p) Title 44, United States Code, Chapter 33, "Disposal of Records"
(q) DoD Instruction 7230.7, "User Charges," June 12, 1979
(r) DoD Directive 5000.11, "Data Elements and Data Codes Standardization Program," December 7, 1964
(s) DoD 5000.12-M, "DoD Manual for Standard Data Elements," December 1979, authorized By DoD Directive 5000.12, April 27, 1965
(t) DoD Instruction 5000.22, "Guide to Estimating Costs of Information Requirements," October 17, 1974
(u) DoD Handbook 7220.9-H, "DoD Accounting Guidance Handbook," February 1, 1978, authorized by DoD Instruction 7220.9, July 12, 1971

DoD FREEDOM OF INFORMATION ACT PROGRAM COMPONENTS

Office of the Secretary of Defense/Organization of the Joint Chiefs of Staff/Unified Commands and Other Agencies Assigned to OSD for Administrative Support

Department of the Army

Department of the Navy

Department of the Air Force

Defense Communications Agency

Defense Contract Audit Agency

Defense Intelligence Agency

Defense Investigative Service

Defense Logistics Agency

Defense Mapping Agency

Defense Nuclear Agency

National Security Agency

ARMED SERVICES PROCUREMENT REGULATION

[FR Doc. 82-23217 Filed 8-25-82: 8:45 am]
BILLING CODE 3810-01-M

32 CFR Parts 1-39

[DAC 76-36]

Defense Acquisition Regulation

AGENCY: Defense Department.

ACTION: Final rule.

SUMMARY: This document publishes changes to the Defense Acquisition Regulation contained in the Code of Federal Regulations. The changes are the same as those in Defense Acquisition Circular 76-36. Some of the changes include subcontracting plans; utilization of Standard Forms 294 and 295; debarment and suspension; overseas distribution of defense subcontracts; prompt payment discounts; providing facilities; deferred payments; and editorial corrections.

EFFECTIVE DATE: June 30, 1982.

FOR FURTHER INFORMATION CONTACT: J. Brannan, Director, Defense Acquisition Regulatory Council, Room 3C257, Pentagon, Washington, D.C. 20301, Telephone (202) 697-7266.

SUPPLEMENTARY INFORMATION:

Background

The Defense Acquisition Regulation (DAR) is codified in Title 32, Parts 1-39, Volumes I, II, and III, of the Code of Federal Regulations (CFR). The August 1, 1981 revision of the CFR is the most recent edition of that title. It reflects amendments to the 1976 edition of the DAR made by Defense Acquisition Circulars 76-1 through 76-27.

The Department of Defense announced the promulgation of the 1979 CFR edition in the **Federal Register** of December 31, 1979 (44 FR 77158), and also announced at that time that subsequent amendments to the DAR would be published in the **Federal Register.**

Defense Acquisition Circular 76-36

This document contains amendments to the Defense Acquisition Regulation in the form of replacement pages which were included in DAC 76-36, issued June 30, 1982. The following is a summary of the amendments:

Subcontracting Plans. DAR 1-406, 1-707, and 7-104.14 are revised to simplify subcontracting plan preparation, review, evaluation, approval, and administration by recognizing "master plans" covering all required elements except goals, on a plant or division-wide basis.

Utilization of Standard Forms 294 and 295. The coverage in DAR Section I, Part 7, the clauses in Section VII, Part 1, and the forms listing in Appendix F are revised to incorporate Standard Forms 294 (Subcontracting Report for Individual Contracts) and Standard Form 295 (Summary Subcontract Report), and to delete DD Form 1140-1 (Defense Subcontracting Program, Quarterly Report of Commitments to Small, Large, and Minority Business Concerns) as a required report.

Debarment and Suspension. DAR Section I, Part 6, has been revised (interim basis) to implement Section 914, Pub. L. 97-86. Essentially, Section 914 prohibits a Military Department from soliciting offers from, awarding contracts to, extending an existing contract with, or approving a subcontract award under the consent to subcontract provisions of a prime contract for, any business concern known to have been debarred or suspended by another Federal agency, unless a compelling reason exists for such an action. Further additions/revisions to this coverage are under consideration, to fully implement provisions of Pub. L. 97-86, Section 914.

Overseas Distribution of Defense Subcontracts. The Department of Defense, in monitoring arms cooperation agreements between the United States and other countries, must obtain certain information related to the distribution of Defense subcontracts placed overseas. Accordingly, DAR 1-340 is incorporated to provide guidance for reporting of subcontracts. Also, a contract provision, Overseas Distribution of Defense Subcontracts, is included at 7-104.78. This change is related to but different from the domestic Geographical Reporting of Subcontracts (DD Form 2139) which was deleted from the DAR by DAC 76-30 (Item III).

Prompt Payment Discounts. DAR 2-407.3 has been revised to reflect the elimination of a long-standing policy of using prompt payment discounts in the evaluation of offers. This action was taken in conjunction with similar GSA coverage which will eventually result in revision to the appropriate clause on Standard Form 33-A. Until such time as the revised SF 33-A is available, contracting officers shall use the revised solicitation notice at 7-2003.35 to delete the Discounts provision on the SF 33-A and substitute the revised provision. It should be noted that the revision does not eliminate nor discourage the use of prompt payment discounts for obtaining consideration of invoices for earlier payment; it simply means that discounts will not be used during the bid evaluation process.

Providing Facilities. DAR Sections XIII and XXIV, Appendices B and C, and Supplement No. 3 have been revised to increase the thresholds for providing facilities to contractors and for maintaining records on plant equipment. The threshold below which the Government will provide facilities only in limited circumstances is raised to $10,000. Contractors will not be required to maintain records on equipment which has a unit acquisition cost of less than $5,000. Additionally, contracting officers are required to screen existing Government production and research equipment only if the acquisition cost of any item or component to be furnished is $10,000 or more. Also, 19 Federal Supply Classifications have been deleted from the scope of IPE, consistent with DoD's objective to retain in the General Reserve general purpose equipment which can support the production and maintenance of a wide range of weapons systems and materials. The classes being deleted are those which have a low potential for use during mobilization, exhibit rapid technological obsolescence, have an unfavorable history of reutilization, and/or do not appear economically feasible to retain.

Deferred Payments. DAR Appendix E, Part 6, is revised to provide necessary debt administration procedures required as a result of the Contract Disputes Act of 1978. Also, changes are made to provide clarification of procedures in processing installment payment agreements.

Editorial Corrections. In 1-109.2(b)(i), the word "revisions" erroneously entered in DAC #76-34, is changed to "provisions." Other editorial changes are included to correct typographical errors or administrative oversight.

Because the Defense Acquisition Regulation concerns agency management, public property, and contracts, it is not necessary to issue proposed rules for public comment. Neither is it necessary to delay the effective date until 30 days after the date of publication of these rules, 5 U.S.C. 533 (a) and (d). The amendments became effective on June 30, 1982.

How To Use Replacement Pages

Reproduced at the end of this document are replacement pages from DAC 76-36. The number at the top of each page (for example, 1:7) identifies the page from the Regulation which is being replaced. The number at the bottom of the page is a reference to the last appearing numbered paragraph on that page, or if none shows, on a preceding page. The vertical line in the right margin indicates where the amendment is located.

List of Subjects in 32 CFR Parts 1–39

Government procurement.

Adoption of Amendments

Therefore, the Defense Acquisition Regulation contained in the August 1, 1981 edition of 32 CFR Parts 1–39, Volumes I, II, and III, is amended in the DAR paragraphs indicated by substitution of the replacement pages listed in the table.

DAR paragraph	Replacement pages
VOLUME I	
1-109.2	1:8.
1-340	1:77-A.
1-406	1:82.
1-601.1	1:90.
1-603.1	1:91.
1-603.2	1:91.
1-603.3	1:91.
1-603.4	1:91-A, 1:93.
1-607	1:98.
1-609.6	1:100.
1-702	1:116.
1-707.1	1:146.
1-707.2	1:146-B, 1:147, 1:148.
1-905.3	1:162.
1-906	1:165.
2-201	2:7, 2:17.
2-407.3	2:36, 2:37.
2-407.5	2:38
2-407.6	2:38
Section III, Table of Contents	4 through 8.
3-501	3:62, 3:70
Section IV, Table of Contents	1through 5.
VOLUME II	
7-104.14	7:52-B, 7:53, 7:53-A, 7:53-B, 7:54-B.
7-104.78	7:123, 123-A.
7-204.66	7:205.
7-303.68	7:241.
7-403.64	7:266.
7-603.61	7:314-D.
7-608.21 (deleted) Reserved	7:332.
7-606.32	7:332.
7-705.33	7:369.
7-705.34	7:369.
7-902.45	7:391.
7-2003.35	7:512.
8-101.15	8:3.
13-301	13:7, 13:8.
3-306.5	13:13.
13-312 (Index of IPE Handbooks)	13:17 through 13:19 (next page is 13:21).
VOLUME III	
24-101.10	24:2.
24-205.3	24:16, 24:17.
Appendix B, Table of Contents	1, 2.
B-102.11	B:3.
B-306	B:14, B:15.
B-316	B:19.
B-402	B:21.
B-403	B:21.
Appendix C, Table of Contents	2.
C-102.11	C:3.
C-306	C:11, C:12.
E-603.3	E:68.
E-611	E:74.
E-613	E:74
E-614	E:74, E:75
E-615	E:75.
E-616	E:75.
E-617	E:75.
E-617.1	E:76.
E-617.4	E:76.
E-617.5	E:76-A.
E-623	E:79.
Appendix F, Table of Contents	2, 5 and 6
F-100.294	F64-K, F64-L.
F-100.295	F64-M, F64-N.
F-200.1131	F202 (next page is F204-A).
F-200.1140-1 (deleted)	F203 (page removed).
F-200.1140-1 (reverse) (deleted)	F204 (page removed).

Changes to DAR Supplement No. 3—not in CFR: S3-402.3—Pages S3:9 and S3:10.

M. S. Healy,

OSD Federal Register Liaison Officer, Washington Headquarters Services, Department of Defense.

August 20, 1982.

BILLING CODE 3810-01-M

zant unified Commander advised of significant deviations effected under this subparagraph (i));

(ii) when a contract clause is set forth in ASPR but not for use verbatim, use of a contract clause covering the same subject matter which is inconsistent with the intent, principle and substance of the ASPR clause or related coverage of the subject matter;

(iii) omission of any mandatory contract clause constitutes a deviation;

(iv) when a Standard, DD, or other form is prescribed by ASPR or a Department of Defense Directive, use of any other form for the same purpose constitutes a deviation;

(v) alteration of a Standard, DD, or other form (other than Departmental forms), except as authorized by ASPR or a Department of Defense Directive constitutes a deviation;

(vi) when limitations are imposed in ASPR or a Department of Defense Directive upon the use of a contract clause, form, procedure, type of contract, or any other procurement action, including but not limited to the making or amendment of a contract, or actions taken in connection with the solicitation of bids or proposals, award, administration or settlement of contracts, the imposition of lesser or greater limitations constitutes a deviation;

(vii) when a policy, procedure, method or practice of conducting procurement actions of any kind at any stage of the procurement process is covered by ASPR, any policy, procedure, method, or practice which is inconsistent with that set forth constitutes a deviation; or

(viii) issuance of any instructions described in 1-108(a) (including an instruction for any additional contract clause, form, or type, or additional procurement policy, procedure, method or practice, not covered in ASPR or in Department of Defense Directives) constitutes a deviation unless permitted under 1-108(a)(i)-(vii).

1-109.2 *Deviations Affecting One Contract or Transaction.*

(a) Deviations from this Regulation or a Department of Defense Directive which affect only one contract or procurement may be made or authorized in accordance with Departmental procedures *provided* (i) such circumstances justify a deviation; and (ii) written notice of such deviation, describing its nature and the basis for its justification, is furnished to each of the following:

The Deputy Under Secretary (Acquisition Management), OUSD(R&E)
Attention: DAR Council — The Pentagon — Washington, D.C. 20301

The Assistant Secretary of the Army (RDA)
Attn: DAR Council Policy Member — The Pentagon — Washington, D.C. 20310

The Assistant Secretary of the Navy (S&L)
Attn: DARS Staff
Crystal Plaza, Bldg. 5 — Washington, D.C. 20360

The Director of Contracting and Manufacturing Policy
Attn: AF/RDC(DAR) — The Pentagon — Washington, D.C. 20330

Executive Directorate, Contract Management
Defense Logistics Agency
Attn: DLA-AA — Cameron Station — Alexandria, Virginia 22314

The Director
National Security Agency
Fort George G. Meade, Maryland 20755

The Director
Defense Communications Agency
Washington, D.C. 20305

The Deputy Director, Operations and Administration
Defense Nuclear Agency
Washington, D.C. 20305

The Director, Logistics Office
Defense Mapping Agency
Bldg. 56, Naval Observatory — Washington, D.C. 20390

Such written notice shall be given in advance of the effective date of such deviations unless exigency of the situation requires immediate action.

(b) Deviations from certain DAR provisions, although affecting only one contract or transaction, are not permitted under (a) above. For example:

(i) provisions required by statute or executive order;

(ii) Section IX, Part 2, except as noted (see 9-202.3(a));

(iii) Section XV, Part 1 (see 15-107(b));

(iv) Section XV, Part 2 (see 15-204(a)); and

(v) Appendix E (see E-218).

1-109.3 *Deviations Affecting More Than One Contract or Contractor.* Except as authorized in 1-109.2, deviations from this Regulation or a Department of Defense Directive will not be effected unless approved in advance by the Deputy Under Secretary of Defense Research and Engineering (Acquisition Management) (DUSD(AM)); *provided*, however that unanimous approval by the members of the DAR Council will constitute approval of the DUSD(AM) of all matters except those involving major policy. Written requests for such approval will be submitted to the DUSD(AM) through the DAR Council as far in advance as exigencies of the situation will permit.

1-109.4 *Deviations Required by Government-to-Government Agreements.* Notwithstanding 1-109.2 and 1-109.3, any deviation from this Regulation that is required in order to comply with a treaty or executive agreement to which the United States is a party is authorized unless the deviation would substantively affect a provision of this Regulation that is based on the requirements of a law enacted after execution of the treaty or executive agreement. In the latter event, the deviation shall, in accordance with Departmental procedures, be referred to the DAR Council for consideration, and the cognizant unified Commander shall be advised of such action. Any procurement action which constitutes a

perty. The rule stated in 1-336.3 also applies to the use of underlying air carriers by international air freight forwarders engaged in such foreign air transportation.

(b) In order that bills submitted by international air freight forwarders engaged in international air transportation may be paid upon presentation, such carriers shall submit with their bills a copy of the airway bill or manifest showing the underlying air carriers utilized with such justification certifications as they may have for the use of underlying non-certificated air carriers. Use of the prescribed certification satisfies the justification requirement.

1-337 Should Cost. Should cost is a concept of contract pricing that employs an integrated team of Government procurement, contract administration, audit and engineering representatives to conduct a coordinated, indepth cost analysis at the contractor's plant. The purpose is (i) to identify uneconomical or inefficient practices in the contractor's management and operations and to quantify the findings in terms of their impact on cost, and (ii) to develop a realistic price objective which reflects reasonably achievable economies and efficiencies. A should cost review will be made in connection with the procurement of a system or item which will require a DSARC approval, unless the contracting officer makes written determination that the potential savings to be realized do not justify the expense of such a should cost review. Such determination shall be included in the Procurement Plan (see 1-2100). Should cost reviews should also be considered in procurements when: there are future year production requirements for substantial quantities of like items; there has already been some initial production; the competitive forces are insufficient to ensure economical and efficient performance (*e.g.*, sole source); the specification is comparatively definitive and not likely to be changed; and the present and potential value of the work to be performed is substantial.

1-338 Design to Cost.

(a) Cost is a contract parameter equal in importance with technical, delivery and performance requirements throughout the design, development, production and operation of defense systems, subsystems, components and equipments. Design to cost is a concept which recognizes this principle by requiring the establishment of cost elements as management goals to achieve the best balance between life cycle cost, acceptable performance, and schedule. Cost, under this concept, is a design parameter during design and development, and a management discipline throughout the acquisition and operation of the system or equipment. Policies and procedures for the application of design to cost are contained in DODD 5000.28.

(b) The principles of design to cost shall be applied in all procurements for Major Defense Systems (DODD 5000.1) unless exempted by the Secretary of Defense. Design to cost principles shall also be applied to the acquisition of systems, subsystems, and components below the thresholds for Major Defense Systems, to the extent prescribed in DODD 5000.28, and in accordance with Departmental procedures.

(c) Design to cost considerations are essential elements of sound procurement planning under 1-2100. Such planning shall include the establishment of design to cost objectives and goals and determinations of how they are to be applied, tracked, and enforced. To be effective, the design to cost approach should

be planned at the inception of the program, should encompass all phases of the program, and should be kept current by regular reviews both at appropriate intervals and at program milestones.

(d) In solicitations and contracts including design to cost principles, consideration should be given to prescribing and tailoring the required cost, technical and schedule parameters to the particular program, and to providing the contractor with flexibility to identify unnecessary or marginally cost effective technical and schedule features susceptible to trade-offs (see DODD 4105.62). This is to facilitate product development at the lowest life cycle cost consistent with mandatory schedule and performance requirements.

(e) For the relationship of design to cost to value engineering, see 1-1707.

1-339 Energy Conservation.

(a) The Energy Policy and Conservation Act requires that Federal procurement policies governing requirements determinations and source selection decisions provide for consideration of (i) conservation of energy and (ii) the relative energy efficiency of alternative goods or services capable of satisfying the Government's needs.

(b) The energy conservation and energy efficiency criteria shall be applied in the determination of requirements and source selection decisions whenever the application of such criteria would be meaningful, practical, and consistent with agency programs and operational needs. Under this policy, energy conservation and efficiency criteria shall be considered for application along with price and other relevant factors in the preparation of solicitations, the evaluation of offers, and the selection of bids and proposals for award.

(c) With respect to the procurement of consumer products, executive agencies shall take cognizance of energy use / efficiency labels and prescribed energy efficiency standards as they become available.

1-340 Distribution of Defense Subcontracts Placed Overseas. To assist DoD monitoring of arms cooperation agreements with friendly governments, the clause in 7-104.78 shall be inserted in any contract for other than commercial items to be awarded which is expected to exceed $500,000, or when any modification increases the amount of a contract to more than $500,000. In the latter case, the reporting requirement will not be retroactive so as to require the reporting of subcontracts awarded prior to such a modification. This clause shall not be inserted in contracts for ores, natural gas, utilities, petroleum products and crudes, timber (logs) and subsistence.

1-341 Reserved.

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(xiv) monitor contractor's financial condition and advise the procuring contracting officer when contract performance is jeopardized thereby;

(xv) when authorized by the purchasing office, negotiate prices and execute priced exhibits for unpriced orders issued by the procuring contracting officer under basic ordering agreements;

(xvi) issue tax exemption certificates;

(xvii) conduct post-award orientation conferences;

(xviii) issue work requests under maintenance, overhaul and modification contracts;

(xix) negotiate and execute contractual documents for settlement of partial and complete contract terminations for convenience, except as otherwise prescribed by Section VIII;

(xx) perform necessary screening, redistribution and disposal of contractor inventory;

(xxi) perform property administration;

(xxii) prepare findings of fact and issue decisions under the Disputes clause on matters on which the contract administration office has the authority to take definitive action;

(xxiii) assure processing and execution of duty-free entry certificates;

(xxiv) in facilities contracts—

(A) evaluate contractor's requests for facilities and changes to existing facilities, and provide the procuring contracting officer with appropriate recommendations thereon;

(B) assure required screening of facility items before acquisition by contractor;

(C) approve use of facilities on a noninterference basis in accordance with paragraph (b) of the clause in 7-702.12;

(D) assure payment of any rental due; and

(E) assure reporting of items no longer needed for defense production;

(xxv) perform production support, surveillance, and status reporting, including timely reporting of potential and actual slippages in contract schedules;

(xxvi) perform pre-award surveys;

(xxvii) perform industrial readiness and mobilization production planning field surveys and schedule negotiations;

(xxviii) monitor contractor industrial labor relations matters under the contract; apprise the procuring contracting officer and cognizant departmental labor relations advisor of actual or potential labor disputes; and coordinate the removal of urgently required material from the strikebound contractor's plants upon instructions from, and authorizations of, the procuring contracting officer and the cognizant departmental labor relations advisor;

(xxix) perform traffic management services including issuance and control of Government bills of lading and other transportation documentation;

(xxx) review the adequacy of the contractor's traffic operations;

(xxxi) review and evaluate preservation, packaging, and packing;

(xxxii) perform engineering surveillance to assess compliance with contractual terms for schedule, cost and technical performance in the areas of design, development and production;

(xxxiii) evaluate for adequacy and perform surveillance of contractor engineering efforts and management systems in respect to: design, development, production, engineering changes, subcontractors, tests, management of engineering resources, reliability and maintainability, data control systems, configuration management and independent research and development;

(xxxiv) review and evaluate for technical adequacy the logistics support, maintenance, and modification programs accomplished by the contractor;

(xxxv) review and analyze contractor proposed engineering and design studies and make comments and recommendations to the contracting activity, as required;

(xxxvi) review Class I Engineering Change Proposals for need, technical adequacy of design, producibility, impact on quality, reliability, schedule and cost, and submit comments to contracting activity;

(xxxvii) review Class II Engineering Change Proposals for proper classification;

(xxxviii) assist in evaluation and make recommendations for acceptance or rejection of waivers and/or deviations;

(xxxix) monitor contractor Value Engineering Program;

(xl) perform engineering analyses of contractor cost proposals;

(xli) report inadequacies noted in specifications to contracting office;

(xlii) *Reserved;*

(xliii) review, evaluate, and approve plant or division-wide small and small disadvantaged business master subcontracting plans;

(xliv) obtain previously approved plan or, if none exists, assist the PCO in evaluating the contractor's company or division-wide small and small disadvantaged business subcontracting plans for its commercial products;

(xlv) assist and advise the PCO, upon request, on the evaluation of proposed small business and small disadvantaged business subcontracting plans, including documentation of compliance and performance with subcontracting plans under previous contracts;

(xlvi) insure contractor's compliance with small business and small disadvantaged business plans, and labor area concern contractual provisions; conduct periodic surveillance of compliance with small business and small disadvantaged business plans and labor surplus area provisions; maintain documentation of contractor's performance and compliance with such plans and provisions; and provide advice, counsel, and assistance to such firms;

propriety, the Chief of the Purchasing Office shall take one or more of the following actions, or other action, as may be appropriate:

(i) if an award has not been made or bid or offer has not been accepted, determine whether the bid or offer should be rejected;

(ii) if an award has been made or bid or offer has been accepted, take action to enforce the covenant in accordance with its terms; i.e., as the best interest of the Government may appear, annul the contract without liability or recover the amount of the fee involved;

(iii) consider the bidder's or offeror's future eligibility as a contractor; or

(iv) consider referring the case to the Department of Justice.

1–508.4 *Reports.* A report shall be made in accordance with 1–608 when the Chief of the Purchasing Office recommends referral to the Department of Justice under 1–508.3(iv).

1–509 Preservation of Records.

(a) Each Department shall preserve as a permanent record for enforcement or report purposes the original executed copy of any representation and completed Standard Form 119, or statement in lieu of form, together with a record of any other pertinent data, including data as to action taken. There shall be no regular retirement of any Standard Form 119 maintained in this record by any procuring activity. However, in any case where the receipt of a new Standard Form 119 makes previously received information obsolete, the obsolete information may be destroyed.

(b) The second copy of Standard Form 119, or statement in lieu of form, shall be filed with and shall remain a part of the contract file.

Part 6—Debarment, Ineligibility, and Suspension

1–600 Scope of Part.

(a) This Part prescribes policies and procedures relating to the debarment and suspension of bidders, offerors, contractors, subcontractors, and other firms and individuals, and to ineligibility of bidders and offerors under section 1(a) of the Walsh-Healey Public Contracts Act (41 U.S.C. 35(a)).

(b) For the purpose of this Part, the authorized representatives of the Secretaries are:

(i) in the Army, an Assistant Judge Advocate General;

(ii) in the Navy, the Chief of Naval Material;

(iii) in the Air Force, the Deputy Chief of Staff, Research, Development and Acquisition;

(iv) in the Defense Logistics Agency, the Counsel;

(v) in the National Security Agency, The Director;

(vi) in the Defense Communications Agency, the Counsel;

(vii) in the Defense Nuclear Agency, the Director; and

(viii) in the Defense Mapping Agency, the Counsel.

1–601 Establishment and Maintenance of Records and Lists of Firms or Individuals Debarred, Ineligible or Suspended.

1–601.1 *General.* Each Department shall maintain a record of firms and individuals which it has debarred or suspended. Except as provided in this Part, contract awards of any character, including sales, will not be made to and bids or proposals will not be solicited from, existing contracts will not be extended with, and subcontracts will not be approved or consented to for listed firms and individuals.

1–601.2 *Information Contained in Departmental Records.* Each Departmental record shall show as a minimum the following information:

(i) names and addresses of those firms or individuals debarred, ineligible, or suspended (names will be set forth in alphabetical order with appropriate cross reference where more than one name is involved in a single action);

(ii) basis of authority for each action and a brief description of the violation charged;

(iii) extent of restrictions imposed; and

(iv) termination date for each debarred listing.

1–601.3 *Joint Consolidated List.* The Department of the Army is responsible for the issuance of a Joint Consolidated List (DA Circular 715–1; NAVMAT P–4386; AFR 70–23; MCO 4386.2J; DLA Regulation 4105.3; DCAI 260–145–3; DNAI 4105.1 of firms and individuals debarred, declared ineligible, or suspended under 1–603. The authorized representative for the Army (see 1–600(b)) shall be furnished by the authorized representative of each of the other Departments, not later than the third day of each month, the information set forth in 1–601.2, including additions, deletions, or modifications of information previously furnished, necessary for issuance of the Joint Consolidated List which shall be a composite of the information provided by the Departments. Each Department shall be responsible for determining the number of copies of the Joint Consolidated List required and for distributing the list within the Department. The Department of the Army will furnish copies to the Deputy Under Secretary of Defense for Research and Engineering (Acquisition Management).

1-601.4 *Protection of Records.* Records relating to debarment and suspension shall be protected to prevent inspection of the contents by personnel who are not required to have access to such information. The reports made pursuant to 1-608 and all related internal correspondence shall be marked "For Official Use Only" unless the information warrants a security classification. The Joint Consolidated List shall not be considered part of the records relating to debarment and suspension which require protective markings.

1-601.5 *Limitation.* No firm or individual will be listed on a consolidated list for causes or under conditions other than those set forth in this Part.

1-601.6 *Inquiries from Debarred, Ineligible, or Suspended Individuals and Firms.*

(a) *Debarred and Suspended Firms and Individuals.* All inquiries relating to debarred or suspended firms and individuals shall be referred or forwarded to the authorized representative of the Secretary concerned.

(b) *Ineligible or Disqualified Firms or Individuals.* Inquiries from contractors or individuals listed as ineligible or disqualified by the Comptroller General and the Department of Labor under the Walsh-Healey or Davis-Bacon Acts shall be answered by indicating the nature of the prohibition, as shown on the consolidated list, and requesting that the inquirer communicate with the Wage and Hour Division, Department of Labor, 14th Street and Constitution Avenue, N.W., Washington, D.C. 20210.

1-602 Reserved.

1-603 Grounds for Listing and Treatment To Be Accorded Listed Concerns.

1-603.1 *General.* Section 2393 of Title 10, U.S. Code, prohibits a Department from soliciting offers from, awarding contracts to, extending an existing contract with, or approving a subcontract award, when such approval is required, for any business concern or individual known to have been debarred or suspended by any other Federal agency, unless a compelling reason exists for taking such action. For the purpose of this Part, knowledge of the debarment or suspension of a concern or individual exists if there is actual knowledge of such status, as for example when such status is ascertained from the GSA Consolidated List of Current Administrative Debarments by Executive Agencies (GSA List) (see 1-607). Departments shall arrange for the distribution of sufficient copies of the current GSA List to personnel performing preaward surveys or the foregoing procurement functions to ensure compliance with section 2393.

1-603.2 *Review Procedures.* Prior to beginning a preaward survey or any of the procurement actions listed in 1-603.1, the GSA List and the Joint Consolidated List shall be reviewed to ascertain whether the business concern or individual involved is listed in a debarred, suspended or ineligible status. If a concern or individual appears only on the GSA List, or on the GSA List and the Joint Consolidated List, the applicable procurement action will not be taken unless a written determination is made by the Secretary concerned or his authorized representative that a compelling reason exists for the action. If the concern or individual appears only on the Joint Consolidated List, the exemption standards of 1-603.4 and 1-605 apply.

1-603.3 *Requests for Compelling Reason Determinations.* Requests for compelling reason determinations shall be forwarded for processing in accordance with Departmental procedures for implementing 1-603.4 and 1-605. When a Department makes such a determination, a notice describing the determination shall be forwarded to the GSA Office of Acquisition Policy. Some examples of circumstances that may constitute a compelling reason include (i) the supplies or services to be acquired are available only from the listed concern or individual; (ii) the urgency of the requirement dictates that the procurement action be taken; (iii) the concern or individual and a Department have entered an agreement covering the same events which resulted in the GSA listing that includes a decision by the Department not to debar or suspend the concern or individual; and (iv) for such other reasons related to the national defense which require continued business dealings with the listed concern or individual.

1-603.4 *Inclusion on the Joint Consolidated List.*

(a) A firm or individual may be listed for any of several reasons. The particular reason for listing determines the consequences thereof. The various types of listing and the treatment to be accorded each type are set forth below:

Type A includes debarments in any of the following categories:

(i) those listed by the Comptroller General pursuant to section 3 of the Walsh-Healey Public Contracts Act (41 U.S.C. 37) for violating the requirements of that Act;

(ii) those listed by the Comptroller General pursuant to section 3 of the Davis-Bacon Act (40 U.S.C. 276a-2(a)) for violating the requirements of that Act; and

(iii) those which the Secretary concerned or his authorized representatives has determined to debar for any of the causes and under all of the conditions set forth in 1-604.

Contracts shall not be awarded to, nor bids or proposals solicited from, nor invitations for bids or requests for proposals furnished to, concerns which are listed as Type A and which are debarred because of Walsh-Healey or Davis-Bacon violations (categories (i) and (ii) above). Contracts shall not be awarded to, nor bids or proposals solicited from nor invitation for bids or requests for proposals furnished to, nor subcontracts be approved for, concerns which are listed as Type A within category (iii) above, unless the Secretary concerned or his authorized representative determines it to be in the interest of the Government to make an exception for a particular procurement action, or unless the listing in-

dicates that the debarment is not to apply to sales contracts or to procurement contracts (see 1-606).

Type B includes concerns which the Secretary of Labor has determined to be ineligible because they do not qualify as "manufacturers" or "regular dealers" within the meaning of section 1(a) of the Walsh-Healey Public Contracts Act (41 U.S.C. 35(a)). Under that Act, procurement contracts in excess of $10,000 shall not be awarded the concerns under Type B listings for those materials, articles, or equipment with respect to which the concern has been found to be ineligible. However, contracts in any amount may be awarded, and bids or proposals may be solicited, for commodities with respect to which the concern has not been declared ineligible. In connection with ineligibility under the Walsh-Healey Act (Type B listing only), the name of an individual may be listed as affiliated with an ineligible firm. This listing is intended only to prevent such individuals from evading ineligibility merely by changing their business names and addresses. It does not prohibit other firms in which such individuals have an interest, and which are qualified manufacturers or regular dealers from receiving contracts subject to the Walsh-Healey Public Contracts Act.

Type C includes concerns which the appropriate Secretary, pursuant to section 3(b) of the Buy American Act (41 U.S.C. 10b(b)), has found to have failed to comply with the "Buy American Act" clause required for construction contracts (see 18-510). Contracts for the construction, alteration, or repair of public buildings or public works in the United States or elsewhere shall not be awarded to concerns under Type C listings nor shall bids or proposals for such work be solicited from such concerns. However, concerns under Type C listings may be awarded contracts and may be solicited for bids or proposals for other than the construction, alteration, or repair of public buildings or public works, unless listed under Type A.

Type D includes concerns which have been suspended under the conditions set forth in 1-605. Concerns under Type D listings shall not be awarded contracts or solicited for bids or proposals, or be approved for subcontracts subject to 1-603(c), except when the Secretary concerned or his authorized representative determines it to be in the best interest of the Government to make an exception for a particular procurement or where the listing indicates that the suspension does not apply to sales contracts or to procurement contracts (see 1-606).

Type E includes concerns which have been reported by the Secretary of Labor to have violated labor standards provisions of any of the following statutes: Anti-Kickback Act (48 Stat. 948) as amended (40 U.S.C. 276c); Contract Work Hours Standards Act (76 Stat. 357-360); National Housing Act (53 Stat. 804) as amended (12 U.S.C. 1703); Hospital Survey and Construction Act (60 Stat. 1040); Federal Airport Act (60 Stat. 170) as amended (49 U.S.C. 1101); Housing Act of 1949 (63 Stat. 413) (42 U.S.C. 1441); School Survey and Construction Act of 1950 (64 Stat. 967) (20 U.S.C. 251); Federal Civil Defense Act of 1950 (64 Stat. 1245) as amended; Defense Housing and Community Facilities and Services Act of 1951 (65 Stat. 293) as amended (42 U.S.C. 1591); and Area Redevelopment Act of 1961 (75 Stat. 47). Concerns under Type E listings shall not be awarded contracts which are subject to any of the foregoing statutes.

Type F includes concerns which have been debarred by the appropriate Secretary or the Executive Vice Chairman of the President's Committee on Equal Employment Opportunity for noncompliance with the Equal Opportunity clause. Concerns under Type F listings may not be awarded contracts or be solicited for bids.

(b) Administration of current contracts in all phases may be continued, notwithstanding the listing of a contractor, unless otherwise directed by the Secretary concerned or his authorized representative. However, payment of all or part of funds due or to become due may be withheld when such action is determined to be in the best interest of the Government by the Secretary concerned or his authorized representative.

(c) When a listed concern is proposed as subcontractor, the contracting officer should decline to consent to or approve subcontracting with such concern in any instance in which consent or approval is required of the Government before the subcontract is placed (see 7-104.23 and 7-203.8), unless the Secretary or his authorized representative determines such placement to be in the best interest of the Government (see 1-603.2 and 1-603.3).

1-604 Administrative Debarment of Firms or Individuals (Type A). The Secretary of each Department, or his authorized representative (see 1-600(b)), except as limited below, is authorized to debar in the public interest a firm or an individual for any of the causes and under all of the conditions set forth below. Debarment of a firm or individual shall operate to debar such firm or individual throughout the Department of Defense. Placing the name of an individual or firm on the consolidated list will be for the purpose of protecting the interest of the Government and not for punishment.

1-604.1 *Causes for Debarment.* The following are causes for debarment:

(i) conviction by or a judgment obtained in a court of competent jurisdiction for—

(A) commission of fraud or a criminal offense as an incident to obtaining, attempting to obtain, or in the performance of a public contract, or any subcontract thereunder;

(B) violation of the Federal antitrust statutes arising out of submission of bids or proposals to the Government; or

(C) commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, receiving stolen property, or any other offense indicating a lack of business integrity or business honesty which seriously and directly affects the question of present responsibility as a Government contractor or subcontractor.

If the conviction or judgment is reversed on appeal, the debarment shall be removed upon receipt of notification thereof. The foregoing does not necessarily require that a firm or individual be debarred. The decision to debar is discretionary; the seriousness of the offense and all mitigating factors should be considered in making the decision to debar.

(ii) clear and convincing evidence of violation of contract provisions of a contract with the Government as set forth below, when the violation is of a character so serious as to justify debarment action—

(A) willful failure to perform in accordance with the specifications or delivery requirements in a contract (including violation of the Buy American Act with respect to other than construction contracts);

(B) a history of failure to perform, or of unsatisfactory performance, in accordance with the terms of one or more contracts; *provided*, that such failure or unsatisfactory performance is within a reasonable period of time preceding the determination to debar. (Failure to perform or unsatisfactory performance caused by acts beyond the control of the contractor shall not be considered as a basis for debarment.);

(C) violation of the contractual provision against contingent fees; or

(D) violation of the Gratuities clause, as determined by the Secretary in accordance with the provisions of the clause.

(iii) for other cause of such serious and compelling nature, affecting responsibility as a Government contractor, or subcontractor, as may be determined by the Secretary of the Department concerned to justify debarment; or

(iv) debarment for any of the above causes by some other executive agency of the Government. (Such debarment may be based entirely upon the record of facts obtained by the original debarring agency, or upon a combination of additional facts with the record of facts obtained by the original debarring agency.)

1–604.2 *Period and Scope of Debarment.*

(a) *Period of Debarment.* All debarments shall be for a reasonable specified period of time, commensurate with the seriousness of the cause therefor. As a general rule, a period of debarment shall not exceed three years. In the event debarment is preceded by suspension, consideration shall be given to such period of suspension in determining the period of debarment. Prior to the expiration of the debarment period, the Department or Agency which imposed the debarment should review all the facts and circumstances relating to the debarment. The debarment shall be removed at the expiration of the specified period unless it is determined that debarment for an additional period is required in order to protect the Government's interest. However, a debarment shall not be extended for an additional period solely on the basis of the facts and circumstances on which the initial debarment action was based. When debarment for an additional period is considered necessary, notice of the proposed debarment shall be furnished to the individual or firm concerned in accordance with 1–604.3. The debarment of an individual or firm may be modified by reducing the period thereof when the circumstances justify such action. With respect to debarment for violation of the Equal Opportunity clause (Type F), the debarment shall be removed prior to the expiration of the debarment period by the Secretary who imposed the debarment upon receipt of satisfactory evidence that corrective action has been taken.

(b) *Scope of Debarment.*

(1) Debarment may include all known affiliates of a concern or individual. Business concerns are considered affiliates of each other when either directly or indirectly one concern or individual controls or has the power to control another, or a third controls or has the power to control both.

(b) *Exceptions:*

(1) When the basis for suspension is an outstanding indictment against the firm or individual the granting of a hearing is not required and it is unnecessary to consult the Department of Justice.

(2) When the basis for suspension does not involve possible civil or criminal prosecution against the firm or individual, it is unnecessary to consult the Department of Justice and a hearing shall be granted if requested.

(c) *Period of Suspension.* All suspensions shall be for a temporary period pending the completion of investigation and such legal proceedings as may ensue. In the event prosecutive action is not initiated by the Department of Justice within 12 months from the date of the notice of suspension, the suspension shall be terminated unless an Assistant Attorney General requests continuance of the suspension. If such a request is received, the suspension may be continued for an additional six months. Notice of the proposed removal of the suspension shall be given to the Department of Justice 30 days prior to the expiration of the 12 month period. In no event will a suspension continue beyond 18 months unless prosecutive action has been initiated within that period. When prosecutive action is initiated, the suspension may continue until the legal proceedings are completed. Upon removal of a suspension, consideration may be given to debarment in accordance with 1–604.

(d) *Scope of Suspension.* The scope of suspension shall be the same as that for debarment (see 1–604.2(b)).

1–605.3 *Notice of Suspension.* Upon suspension, the firm or individual concerned shall immediately be furnished a written notice of the suspension by the Secretary concerned or his authorized representative. The notice of suspension shall be sent by certified mail return receipt requested and state that:

(i) the suspension is based on adequate evidence that the firm or individual has committed irregularities of a serious nature in business dealings with the Government, or that the suspension is based on irregularities which seriously reflect on the propriety of further dealings of the firm or individual with the Government, together with a description of the nature of those irregularities, in general terms, without disclosing the Government's evidence;

(ii) the suspension is for a temporary period pending the completion of an investigation and such legal proceedings as may ensue;

(iii) bids and proposals will not be solicited from the firm or individual and if received will not be considered, and awards of contracts may not be made unless it is determined to be in the best interest of the Government by the Secretary or his authorized representative to do so; and

(iv) the suspension is effective throughout the Department of Defense; and

(v) a request for a hearing will be considered or a reference will be made to an indictment, as appropriate.

1–606 Limited Debarment or Suspension. When it is determined to debar or suspend a concern pursuant to 1–604.1 or 1–605.1, the Secretary or his authorized representative shall decide whether the debarment or suspension should extend to procurement contracts or to sales contracts, or both. If the

debarment or suspension is limited to procurement contracts or to sales contracts, the listing should so indicate. Likewise, a decision may be made to except from an administrative debarment or suspension a particular commodity or commodities or a particular division or subsidiary or other appropriate organizational element of the contractor when such action is considered to be in the best interests of the Government.

1–607 Interchange of Debarment Information.

(a) The General Services Administration (see FPR 1–1.6) compiles a combined list of debarments, including the basis therefor, from the notifications of debarments furnished by the Departments and executive agencies. A copy of the list is distributed to all executive agencies, including the Military Departments.

(b) Each Department shall notify the General Services Administration of the name and address of its central office where debarment information should be sent.

(c) Each Department shall check the list of debarred bidders furnished by the General Services Administration, in accordance with the provisions of 1–603.

(d) The General Services Administration has agreed to furnish to the Departments upon specific request, a copy of the notice reflecting the basis for debarment action taken by another agency for causes contained in 1–604.1 (subsection 207.05a of GSA Regulation 1–II) or under the Buy American Act. If desired, direct inquiry concerning any debarment case may be made to the agency which originated the action.

1–608 Reporting.

1–608.1 *Situations Where Reports Are Required.* A report incorporating the information required by 1–608.2 shall be prepared when:

(i) a contractor has committed, or is suspected of having committed, any of the acts described in 1–604.1 and 1–605.1;

(ii) a report is required by 1–111.1 (this does not concern reports required to be submitted to the Department of Justice on identical bids under Executive Order 10936, dated 24 April 1961 (see 1–114));

(iii) a report is required by 1–508.4 (contingent fees);

(iv) a report is required by 8–207 (termination settlements);

(v) Buy American Act violations are suspected (see 18–510); or

(vi) an individual or firm is suspected of attempting to evade the prohibitions or debarments or suspensions imposed under this Regulation by changes of address, multiple addresses, formation of new companies, or by other devices.

1–608.2 *Contents of Reports.* Each report prepared pursuant to 1–608 shall include substantially the following information, where available:

(i) name and address of the bidder or offeror, contractor, or subcontractor;

(ii) names of the principal officers, partners, owners, or managers;

(iii) all known affiliates, subsidiaries, or parent firms, and the nature of the affiliation;

(iv) description of the contract or contracts concerned, including the contract number, and all office identifying numbers or symbols, the amount of each contract, the degree of completion, the amount paid the contractor and the amount still due, and the percentage of work to be completed;

(v) the status of vouchers;

(vi) whether the contract has been assigned pursuant to the Assignment of Claims Act, and if so assigned, the name and address of the assignee and a copy of the assignment;

(vii) whether any other contracts are outstanding with the contractor or any of his affiliates, and if so, the amount of such contracts, whether they are assigned pursuant to the Assignment of Claims Act, and the amounts paid or due on such contracts;

(viii) a complete summary of all pertinent evidence;

(ix) a recommendation as to the administration of all current contracts with a full explanation of the reason for such recommendation, or if no recommendation is made, the reason therefor;

(x) an estimate of damages, if any, sustained by the Government as a result of the action of the contractor, including an explanation of the method used in making the estimate;

(xi) the comments and recommendations of the contracting officer and of each successive echelon as to (A) whether the contractor should be suspended or debarred, (B) whether any limitations should be applied to such action, and (C) the period of any debarment; and

(xii) as an inclosure, a copy of the contract (or contracts) or pertinent excerpts therefrom, appropriate exhibits, testimony or statements of witnesses, copies of assignments, and other relevant documentation.

1–608.3 *Addresses and Copies of Reports.* Reports shall be submitted in three complete copies, including inclosures, to the authorized representatives of the Secretaries concerned (see 1–600(b)). Additional copies without inclosures may be required by Departmental procedures for other addressees.

1–609 Procurement Outside United States.

1–609.1 *General.* The foregoing provisions of this Part shall be applied by overseas commanders to procurement outside the United States and its possessions, whenever possible, and as modified by the following provisions, with due consideration to laws or customs of the foreign countries concerned.

1–609.2 *Responsibilities and Area Coverage.* The Commander in Chief, United States European Command (CINCEUR), the Commander in Chief, Pacific (CINCPAC) and the Commander in Chief, Southern Command (USCINCSO), or the Commanders of a component command which each of these unified commanders may designate, shall establish and maintain a consolidated list of offshore suppliers to whom contracts will not be awarded and from whom bids or proposals will not be solicited. The CINCEUR consolidated list will include names in the North Atlantic and Mediterranean areas, including all of Europe, North Africa, and the Middle East. The CINCPAC consolidated list

will include names in the Far East and Pacific Ocean areas, excluding the United States and its possessions. The USCINCSO consolidated list will include names in Central and South America, excluding possessions. All other overseas commanders shall utilize and contribute to such lists as appropriate to their geographical location or areas in which they award contracts. Lists shall not be established or maintained except as provided above.

1-609.3 *Information Contained on Overseas Lists.* The list shall show as a minimum the following information:

(i) names and addresses of those firms or individuals to whom contracts shall not be awarded and from whom bids or proposals shall not be solicited (Names will be set forth alphabetically with appropriate cross reference where more than one name is involved in a single action or where a parent firm or individual in one country is known to control subsidiaries, branches, or agencies in the same or other countries.);

(ii) basis or authority for each action;

(iii) extent of restrictions imposed;

(iv) termination date for each debarred listing; and

(v) originating activity, component, or agency.

1-609.4 *Protection of Overseas Lists and Records.* See 1-601.4.

1-609.5 *Maintenance and Distribution of Lists.* The lists shall be kept current by issuance of notices of additions or deletions and by periodic reprinting. Copies of the lists shall be distributed to contracting officers as the unified commanders and their component commanders direct. CINCEUR, CINCPAC, and CINCSOUTH shall exchange lists directly. Copies shall also be furnished the Assistant Secretary of Defense (Installations and Logistics), the Assistant Secretary of Defense (International Security Affairs), and the authorized representative of the Secretaries (see 1-600(b)).

1-609.6 *Basis of Addition of Firms and Individuals to Lists.* In addition to the names of offshore firms or individuals which may be included on the lists as falling into the categories outlined in 1-603.4, the names of firms or individuals abroad shall be included on the list in the following additional categories:

(i) those who are "designated nationals" under the Foreign Assets Control Regulations;

(ii) those found by the Assistant Secretary of Defense (International Security Affairs) or his authorized representative to have engaged in improper East-West trade activity;

(iii) those found by the Assistant Secretary of Defense (International Security Affairs) or his authorized representative to be ineligible because they do not meet the political or security criteria;

(iv) those found by the United States Diplomatic Mission or a Country Team (consisting of members of the United States Diplomatic Mission in the country or countries in which the firms or individuals are located) to be ineligible because they do not meet the labor-political criteria; and

(v) those who for other causes of a serious and compelling nature are so designated by the unified commander.

1-702. General Policy.

(a) It is the policy of the Department of Defense to place a fair proportion of its total purchases and contracts for supplies, research and development, and services (including contracts for maintenance, repairs, and construction) with small business concerns. Every effort should be made to encourage participation by such concerns in the acquisition of supplies and services that are within their capabilities. Heads of contracting activities and heads of field contracting and contract administration activities are responsible for the effective implementation of the Small Business and Small Disadvantaged Business Utilization Program(s) within their respective activities and for the accomplishment of assigned program goals. Heads of contracting activities and heads of field contracting and contract administration activities will assure that contracting and technical personnel attached to their activities are informed of the benefits that accrue to the Nation and to the Department of Defense through the proper use of the capabilities of small business concerns in the acquisition of military requirements and that these individuals take all reasonable action to increase the level of participation by small business firms in the awards for products and services by their activities.

(b) Small business concerns, both established and potential suppliers (1-701.3 and 1-701.4), shall be afforded an equitable opportunity to compete for all contracts that they can perform. Therefore, the Departments, to the extent consistent with the best interests of the Government and in order to broaden the industrial base, shall:

(i) attempt to locate additional qualified small business suppliers by all appropriate methods, including use of the assistance of SBA, particularly where only a limited number of small business concerns are on bidders' mailing lists;

(ii) give wide publicity to contracting methods and practices;

(iii) publicize proposed acquisitions by use of advance notices or other appropriate methods (see 1-1003);

(iv) include all established and qualified potential small business suppliers on the bidders' mailing lists (see 2-205);

(v) send solicitations to all firms on the appropriate list, except that where less than a complete list is to be used pursuant to 2-205.4, at least a pro rata number of small business concerns shall be solicited;

(vi) divide proposed acquisition of supplies and services, except construction, into quantities not less than economic production runs, so as to permit bidding on quantities less than the total requirements; allow the maximum time practicable for preparation and submission of bids, proposals, or quotations; where feasible, establish delivery schedules which will encourage small business participation;

(vii) examine each major acquisition to determine the extent to which small business subcontracting should be encouraged or required;

(viii) use small business concerns to the maximum extent feasible as planned producers in the Industrial Readiness Planning Program; and

(ix) maintain liaison with Federal, State (including Governor's Commissions), and local agencies and other organizations for the purpose of providing information and assistance to small business concerns.

(c) Except as approved in 3-603.1(g), all proposed acquisitions of supplies or services with an anticipated dollar value of $10,000 or less, which are subject to small purchase procedures, are small business-small purchase set-asides. Each solicitation shall contain the clause in 7-2003.32. In the event the solicitation is oral, information substantially identical to that in 7-2003.32 shall be given to potential quoters.

(d) The extent of participation by small business concerns in defense acquisition shall be accurately measured, reported, and publicized. All solicitations shall require each prospective supplier to represent whether it is a small business or small disadvantaged business concern for purposes of the specific acquisition (see 1-701 and 1-703). Records of the total value of contracts and subcontracts placed with small business concerns during each fiscal year shall be maintained by the use of DD Form 350 (Individual Procurement Action Report), DD Form 1057 (Monthly Procurement Summary by Purchasing Office), Standard Form 294 (Subcontracting Report for Individual Contracts), and Standard Form 295 (Summary Subcontract Report) (see 1-707.2(f)).

(e) The Military Departments shall assign small business technical advisors to assist each resident SBA Procurement Center Representative in the performance of his duties. (See 1-704.4.)

in the clause. An offeror entitled to receive the award for quantities of an item under the non LSA set-aside portion and who accepts the award of additional quantities under the LSA set-aside portion shall not be requested to accept a lower price because of the increased quantities of the award, nor shall negotiation be conducted with a view to obtaining such a lower price based solely upon receipt of award of both portions of the acquisition. This does not prevent acceptance by the contracting officer of voluntary reductions in price from the low eligible offeror prior to award, acceptance of voluntary refunds (see 1-312), or the changes of prices after award by negotiation of a contract modification.

(2) Offers obtained under the provisions of the set-aside clause from firms eligible for the set-aside portion of the requirement shall be in writing and shall include (i) agreement as to the established set-aside price for the available set-aside quantity, (ii) agreement as to the required delivery, (iii) agreement that all other terms and conditions of the solicitation will apply to the set-aside award, and (iv) agreement to inclusion of the clauses "*Examination of Records by the Comptroller General*" in 7-104.15 and "*Audit by Department of Defense*" in 7-104.41(a).

(3) When the award of the non-set-aside portion has been made to a small business concern and the same small business concern is entitled to receive the set-aside portion of the solicitation, the LSA set-aside portion may be added to the basic contract by supplemental agreement utilizing Standard Form 30. The supplemental agreement shall (i) include a reference to the contractor's letter offering on the set-aside quantity, (ii) state the price and delivery schedule applicable to the set-aside quantity, and (iii) include the clauses "*Examination of Records by the Comptroller General*" in 7-104.15 and "*Audit by Department of Defense*" in 7-104.41(a), applicable to the LSA set-aside portion only. Copies of all pertinent documents, including the signed offer, shall be attached. The supplemental agreement shall be signed by the contracting officer but need not be signed by the contractor since his signature on the attached offer will be deemed sufficient.

(4) When the award for the non-set-aside portion has been made to a firm other than the concern entitled to receive the set-aside portion of the solicitation, award of the set-aside portion will be made utilizing Standard Form 26. The offers obtained and the award utilized shall reference and include the same data indicated in paragraphs (2) and (3) above. Also, the award shall reference in Block 26 of Standard Form 26, the applicable solicitation and the contractor's written offer, and copies of the solicitation and offer shall be attached. The Standard Form 26 shall be signed by the contracting officer but need not be signed by the contractor. The contractor's signature on the attached offer will be deemed sufficient.

For purposes of 21-102 and 21-201, the non-LSA-set-aside portion shall be reported separately.

1-706.8 *Automatic Dissolution of Set-Asides.* If the entire set-aside portion is not procured by the method(s) set forth in 1-706.5, 1-706.6, or 1-706.7, the determination referred to in 1-706.1 is automatically dissolved as to the unawarded portion of the set-aside, and such unawarded portion may be procured by advertising or negotiation as appropriate in accordance with existing regulations (see 3-201.2(b)(ii) and 3-210.3 as to negotiation). Since a considerable

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time may have elapsed since the initiation of the requirement, contracting officers, prior to issuing a new solicitation, shall review the required delivery schedule (see 1-305.2) to insure that it is realistic in the light of all relevant factors including the capabilities of small business concerns.

1-707 Subcontracting With Small Business and Small Disadvantaged Business Concerns.

1-707.1 *General.*

(a) Pursuant to Section 8(d) of the Small Business Act (15 U.S.C. 637(d)), it is the policy of the United States that small business concerns, and small business concerns owned and controlled by socially and economically disadvantaged individuals, shall have the maximum practicable opportunity to participate in the performance of contracts let by any Federal agency. For purposes of this part, the term "subcontract" means any agreement (other than one involving an employer-employee relationship) to be entered into by a Federal Government prime contractor or subcontractor calling for supplies or services required for the performance of the original contract or subcontract.

(b) Contract modifications (1-201.2) to contracts which do not contain the clause in 7-104.14(a) and which are within the scope of the contract do not require subcontracting plans. However, a modification which reflects the addition of work beyond the scope of the contract and which is made for administrative convenience when a separate contract would otherwise have been appropriate shall require a subcontracting plan if the criteria of 1-707.3(a) and (b) are met.

(c) The value of options and similar provisions shall be included in determining whether the contract may exceed the dollar threshold for subcontract plans. Such options shall be included in the subcontracting plan.

(d) Letter contracts and similar undefinitized instruments, which would otherwise meet the requirements of 1-707.3(a) and (b), shall contain at least a preliminary basic plan addressing the requirements of 7-104.14(b) and in such cases require the negotiation of the final plan within 90 days after award or before definitization, whichever occurs first.

(e) Contractors may establish, on a plant or division-wide basis, a master subcontracting plan which contains all the elements required by the clause in 7-104.14(b) or (c), except goals. Master plans shall be effective for a one-year period after approval; however, a master plan when incorporated in an individual plan shall apply to that contract throughout the life of the contract.

(f) Due to their unique circumstances, major weapons system acquisition programs, as well as other complex or sensitive acquisitions involving formal source selection procedures, may necessitate the negotiation of subcontracting plans with all firms in a competitive range in order to afford the maximum practicable opportunity for small business and small disadvantaged business concerns participation and

preserve the integrity of the competitive process. When the simultaneous negotiation of such plans is necessary, the solicitation (i) may require offerors to include proposed subcontracting plans in their initial proposals and (ii) may indicate that subcontracting plans will be negotiated concurrently with cost, technical, and management proposals.

1-707.2 *Review Responsibilities.*

(a) *General.* The clause specified in 1-707.3(a) requires the contractor to afford small business concerns the maximum practicable opportunity to participate in contracts consistent with their efficient performance. The clauses specified in 1-707.3(b) and (c) require the submission of subcontracting plans regarding the contractor's obligation to award subcontracts to small business concerns.

(b) *PCO Responsibilities.*

(1) The PCO shall:

(i) assure that a subcontracting plan is submitted when required.

(ii) determine the adequacy of the subcontracting plan.

(iii) consider the contractor's past compliance with the clause specified in 1-707.3(a) and with subcontracting plans as a factor in determining the contractor responsibility.

(iv) determine any fee payable when an incentive is used in conjunction with the subcontracting plan.

(v) notify the SBA's resident Procurement Center Representative (PCR) of and provide him an opportunity to review solicitations for contracts which will include the clause at 7-104.14(a) and which may exceed $1 million in the case of contracts for construction and $500,000 in the case of all other contracts. The notice shall be issued in sufficient time to provide the resident PCR a reasonable time to review the solicitation prior to its public release.

(vi) notify the resident PCR of and provide him the opportunity to review all proposed subcontracting plans under negotiated contracts, including proposed contract modifications, prior to their acceptance by the PCO. Additionally, the apparent successful offeror's proposal and its supporting documentation, if any, which has been furnished to the Government in the course of the negotiations, shall also be made available to the resident PCR upon request. The notice shall be issued in sufficient time to provide the resident PCR

a reasonable time to review the subcontracting plan proposal and related documents and to submit advisory recommendations to the PCO. Failure of the PCR to respond to the PCO in a reasonable time shall not delay award of the contract.

(vii) upon award of a contract or other contractual action containing a subcontracting plan, provide a copy of the award document (a copy of the DD 350 will suffice) to the Assistant Regional Administrator for Regional Programs in the SBA region where the principal contract performance is to take place and a copy of the plan to the resident PCR.

(viii) negotiate appropriate revisions to previously approved subcontracting percentage and dollar goals if subsequent modifications will have a major impact on the original planned volume or type of subcontracting effort.

(2) Subcontracting plans shall be reviewed by the PCO for adequacy. All plans must include the six elements required by the clause. The PCO shall accept a plan incorporating an approved master subcontracting plan without further review of the five elements covered by the master plan unless the PCO determines that the master plan does not afford small business and small disadvantaged business maximum practicable opportunity to participate in the performance of the contract. The final plan must be acceptable to the PCO before the award can be made. If, under a formally advertised solicitation, a bidder submits a plan which does not cover each of the six elements, the contracting officer should advise him of the deficiency and request submission of a new plan by a specific date. If, after such notification, the bidder does not submit a complete and responsive plan within the time allotted, the bid should be rejected as nonresponsive. If the plan, although responsive, evidences the bidder's intention not to comply with its obligations under the clause at 7-104.14(a), the contracting officer may find the bidder nonresponsible in accordance with 1-903.

(3) The ACO shall monitor contractor compliance in accordance with 1-406(c)(xlvi) and apprise the PCO. Upon contract completion, if the contractor did not comply in good faith with the subcontracting plan and/or the clause specified in 1-707.3(a), the PCO, based on recommendations from the ACO, shall document the noncompliance in writing and include the reasons. A copy of this documentation shall be provided to the ACO.

(c) *ACO Responsibilities.* The ACO is responsible for assisting in the evaluation of subcontracting plans, and for monitoring, evaluating, and documenting contractor performance under the clause specified in 1-707.3(a) and any subcontracting plan included in a contract. The CAO is responsible for reviewing, evaluating, and approving master subcontracting plans. The SADBUS assigned to the contract administration office shall provide the PCO advice and assistance for use

in determining the acceptability of a plan and, through the ACO, shall provide the necessary information and advice to support the PCO, as appropriate, by furnishing:

(i) documentation on a contractor's performance and compliance with subcontract plans under previous contracts;

(ii) information on the extent to which the contractor's goals for small business and small disadvantaged business participation are being met;

(iii) information on whether the contractor's efforts to insure such participation are in accordance with the efforts described in the subcontracting plan;

(iv) information on whether the contractor is requiring its subcontractors to adopt similar subcontracting plans; and

(v) immediate notice if, during performance, the contractor is failing to meet his commitments under the clause at 1-707.3(a) or the subcontracting plan.

(d) *Evaluation of Plans and Performance.* The clauses specified in 1-707.3(b) and (c) require the minimum information goals and assurances that each subcontracting plan shall include. There are no detailed standards which apply to every situation. The PCO's consideration of a plan must reflect the circumstances of the particular acquisition. Factors to consider include—

(i) previous involvement of small business concerns as prime or subcontractors in similar acquisitions;

(ii) methods of involving small business concerns as subcontractors in such acquisitions; and

(iii) the type of records which contractors have maintained to demonstrate the methods by which they intend to meet the goals and requirements of the plan.

(e) *Involvement of the Small Business Administration.* The Small Business Administration is authorized to:

(i) assist both departments and contractors in complying with their responsibilities with regard to subcontracting plans;

(ii) review any solicitation for any contract which is to include the clause required by 1-707.3(b) or (c) to determine whether maximum practicable opportunity has been afforded small and small disadvantaged businesses to participate as subcontractors in the performance of any contract resulting from any solicitation and to submit its findings, which shall be advisory in nature, to the contracting activity; and

(iii) evaluate compliance with subcontracting plans, either on a contract-by-contract basis or, in the case of contractors having multiple contracts, on an aggregate basis.

The SBA is not authorized to prescribe the extent to which any contractor or subcontractor shall subcontract; specify concerns to which subcontracts shall be granted; or exercise any

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authority regarding the administration of individual prime contracts or subcontracts. The Office of Minority Small Business and Capital Ownership Development, Small Business Administration, has final authority to determine the eligibility of a concern to be designated as a small disadvantaged business. The SBA Size Appeals Board has final authority to determine the eligibility of a concern to be designated as a small business. The contracting officer, in connection with small business subcontracting requirements, may question the prime contractor concerning a written representation of small business status, or the refusal to accept such written representation by either the prime contractor or a subcontractor, of a concern offering as a subcontractor on a particular acquisition. Other interested parties may also question such representation or refusal. If the matter(s) cannot be resolved, the contractor (prime or sub) is responsible for referring it for a size determination to the SBA Regional Office in which region the concern submitting the written representation has its principal office.

(f) *Evaluation of Subcontract Reports.* The SADBU Specialist shall support the ACO in evaluating a contractor's performance and compliance with its subcontract plans. The original of the Standard Form 294, Subcontracting Report for Individual Contracts, and a copy of the Standard Form 295, Summary Subcontract Report, and reports of periodic reviews of contractor performance shall be retained by the cognizant SADBU Specialist. These reports together with other pertinent information shall be used as a basis for advising the ACO as to contractor's compliance with subcontracting plans.

1-707.3 *Required Clauses.* In compliance with the requirements of the Small Business Act, the following clauses, as appropriate, shall be included in prime contracts.

(a) The Utilization of Small Business and Small Disadvantaged Business Concerns clause in 7-104.14(a) shall be included in all contracts exceeding $10,000 except those which, including all subcontracts, will be performed entirely outside any State, territory, or possession of the United States, the District of Columbia, or the Commonwealth of Puerto Rico or those which are for services personal in nature.

(b) The Subcontracting Plan for Small Business and Small Disadvantaged Business Concerns (Negotiated) clause in 7-104.14(b) shall be included in all solicitations for negotiated contracts or modifications (including contracts and modifications placed on a sole source basis) which (i) offer subcontracting possibilities; (ii) are expected to exceed $500,000 or, in the case of contracts for the construction of any public facility, $1 million; and (iii) are required to include the clause in 7-104.14(a). However, the clause at 7-104.14(b) shall not be included in any solicitation which

1-903.4 *Ability to Meet Certain Minimum Standards.* Except to the extent that a prospective contractor proposes to perform the contract by subcontracting (see 1-906), acceptable evidence of his "ability to obtain" such things as resources, equipment, facilities, and personnel (see 1-903.1(i) and 1-903.2) shall normally be a commitment or explicit arrangement, which will be in existence at the time the contract is to be awarded, for the rental, purchase or other acquisition of such resources, equipment, facilities, or personnel.

1-904 Determinations of Responsibility and Nonresponsibility.

1-904.1 *Requirement.* No purchase shall be made from, and no contract shall be awarded to, any person or firm unless the contracting officer first makes an affirmative determination that the prospective contractor is responsible within the meaning of 1-902. The signing of the contract by the contracting officer constitutes such a determination; therefore, he must assure himself that the applicable requirements of 1-903 are met before signing the contract or order. When a certificate of competency has been issued, the factors covered by the certificate of competency may be accepted by the contracting officer without further inquiry. When a bid or offer on which an award would otherwise be made is rejected because the prospective contractor is found to be nonresponsible, a determination of nonresponsibility shall be made, signed, and placed in the file. The determination of nonresponsibility shall set forth the basis of the determination. In making a determination of responsibility or nonresponsibility for purchase or contract awards of $100,000 and over, performance data should be acquired and considered when the contracting officer deems it necessary. Supporting documents or reports, including any pre-award survey reports (see 1-905.4) and SBA certificate of competency (see 1-705.4), shall be included in the contract file.

1-904.2 *Affiliated Concerns.*

(a) Affiliated concerns (see 2-201(a)B(ii) and (b)(xvii) shall be considered as separate entities in determining whether the one of them which is to perform the contract meets the applicable standards for a responsible prospective contractor (but see 1-701.1 with respect to status as a small business concern).

(b) Notwithstanding the above, the record of performance and integrity of affiliated concern which may adversely affect the responsibility of the prospective contractor shall be considered by the contracting officer when making a determination of responsibility.

1-904.3 *Acquisitions From Concerns in Qualifying Countries.* Awards to concerns in qualifying countries are subject to this Part 9 (see 6-1403.1(b)). A Canadian firm proposed by the Canadian Commercial Corporation (CCC) as its subcontractor generally shall be accepted by the contracting officer under the provisions of 1-906 as the basis for his determination under 1-904.1. In cases where the firm proposed by CCC is so accepted, pre-award survey forms need not be completed. When the CCC proposal is not consistent with other information which may be available to the contracting officer, he shall request from CCC and any other sources whatever additional information or plant surveys he may deem necessary to make the determination of responsibility of sources proposed by CCC. Such additional data may be requested on the pre-award survey forms or on any other forms. Upon request, CCC shall be furnished an explanation of the reasons for rejection of its proposed firm.

1-905 Procedures for Determining Responsibility of Prospective Contractors.

1-905.1 *General.*

(a) Before making a determination of responsibility (see 1-904), the contracting officer shall have in his possession or obtain information sufficient to satisfy himself that a prospective contractor currently meets the minimum standards set forth in 1-903, to the extent that such standards are applicable to a specific procurement.

(b) Maximum practicable use shall be made of currently valid information on file or within the knowledge of personnel in the Department of Defense. Each Department, shall at such level and manner as it deems appropriate, maintain useful records and experience data for the guidance of contracting officers in the placement of new procurement, and shall inform its contracting officers and the other Departments of the means of access thereto. Notwithstanding this direction contract administration offices shall maintain files of information reflecting upon the ability of contractors to perform Government contracts successfully.

(c) Any purchasing office becoming aware of circumstances which, for any reason, casts doubt upon the ability of a contractor to perform contracts successfully, shall immediately advise the cognizant contract administration office. A contract administration office, upon being notified by a purchasing office of unfavorable information affecting a contractor under its cognizance, or upon developing unfavorable information during the course of contract administration activities, shall advise the purchasing offices of the other Departments. When a contract administration office is requested to perform a pre-award survey and it has been notified of the existence of unfavorable information relative to the contractor, it shall obtain the details including full supporting information. Careful and full consideration shall be given such information. If a contract administration office becomes aware of a prospective contract award to a contractor about whom unfavorable information exists and no pre-award survey has been requested, it shall (i) immediately notify the purchasing office concerned, and (ii) secure the details of such unfavorable information as if it were performing a pre-award survey and advise the purchasing office concerned. The purchasing office shall give full consideration to such advice in determining whether an award should be made.

(d) Generally, information necessary to make determinations of responsibility shall be obtained only concerning prospective contractors within range for an award.

1-905.2 *When Information Will Be Obtained.* Generally, information regarding the responsibility of a prospective contractor (including pre-award surveys (see 1-905.4) when deemed necessary) shall be obtained promptly after bid opening or receipt of proposals. However, in negotiated procurements, especially those involving research and development, such information may be obtained before the issuance of requests for proposals. Notwithstanding the foregoing, information regarding financial resources (see 1-903.1(i)) and performance capability (see 1-903.1 (ii)) shall be obtained on as current a basis as feasible with relation to the date of contract award.

1-905.3 *Sources of Information.* Information regarding the responsibility of prospective contractors shall be sought among the following sources:

(i) The Joint Consolidated List of Debarred, Ineligible, and Suspended Contractors (see 1-601), and the GSA Consolidated List of Administrative Debarments by Executive Agencies (see 1-603.2).

1-906 Subcontractor Responsibility.

(a) To the extent that a prospective contractor proposes to perform the contract by subcontracting, determinations of prospective subcontractors' responsibility may be necessary in order to determine the responsibility of the prospective prime contractor. Determinations concerning prospective subcontractor's responsibility shall generally be a function performed by the prospective prime contractor. (But see 1-603.4(c).) A prospective prime contractor may be required to (i) indicate, in writing, the responsibility of proposed subcontractors, or (ii) show evidence of an acceptable and effective purchasing and subcontracting system which encompasses a method for determining subcontractor capability.

(b) Notwithstanding the general responsibility of a prospective contractor to demonstrate the responsibility of his prospective subcontractors, it may be in the Government's best interest to make a direct determination of the responsibility of one or more prospective subcontractors prior to award of the prime contract. Examples of when this may be particularly suitable are the procurements of (i) medical items, (ii) supplies or services which are so urgently needed that it is necessary for the Government to go beyond the normal process in determining contractor responsibility, and (iii) supplies or services, a substantial portion of which will be subcontracted. The determination of responsibility of a proposed subcontractor by the Government shall be based on the same factors as are applicable in a determination of responsibility of a prospective prime contractor.

1-907 Disclosure of Pre-Award Data. Except as provided in 1-329, data including information obtained from a pre-award survey, accumulated for purposes of determining the responsibility of a prospective contractor shall not be released outside the Government and shall not be made available for inspection by individuals, firms, or trade organizations (see 1-329.3(c)(5)). Such data may be disclosed to, or summarized for, other elements within the Government on their request, and shall be made available to Department of Defense procurement personnel upon request in accordance with 1-905.1. Prior to making a determination of responsibility, such data may be discussed with the prospective contractor as determined necessary by the purchasing office. After an award, the findings of the pre-award survey may be discussed by the contracting officer with the company surveyed as provided in 2-408 and 3-508, or if appropriate, by the head of the contract administration office or his designee.

GENERAL PROVISIONS

Part 10—Publicizing Procurement Actions

1-1001 General Policy. It is Department of Defense policy to increase competition by publicizing procurements which offer competitive opportunities for prospective prime contractors or subcontractors, thus assisting small business and labor surplus area concerns and broadening industry participation in Defense procurement programs.

1-1002 Dissemination of Information Relating to Invitations for Bids and Requests for Proposals.

1-1002.1 *Availability of Invitations for Bids and Requests for Proposals at the Contracting Office.* A reasonable number of copies of invitations for bids and requests for proposals, which are required to be publicized in the *Commerce Business Daily*, including specifications and other pertinent information, shall be maintained at the contracting office. Upon request, prospective contractors not initially solicited may be mailed or otherwise provided copies of such invitations for bids or requests for proposals to the extent they are available. However, for any contract to be let by any department, it shall provide to any small business concern upon its request: (i) a copy of bid sets and specifications with respect to such contract; (ii) the name and telephone number of an employee of such department to answer questions with respect to such contract; and (iii) adequate citations to each major Federal law or departmental rule with which such business concern must comply in performing such contract. When a solicitation for proposals has been limited as a result of a determination that only a specified firm or firms possess the capability to meet the requirements of an acquisition, requests for proposals shall be mailed or otherwise provided upon request for firms not solicited, but only after advice has been given to the firm making the request as to the reasons for the limited solicitation and the unlikelihood of any other firm being able to qualify for a contract award under the circumstances; but see 4-106.2. In addition, to the extent that invitations for bids or requests for proposals are available, they shall be provided on a "first-come-first-served" basis, for pick up at the contracting office, to publishers, trade associations, contracting information services, and other members of the public having a legitimate interest therein (for construction, see 18-205(c)); otherwise the contracting office will make copies available to members of the public pursuant to Appendix L. In determining the "reasonable number" of copies to be maintained, the contracting officer shall consider, among other things, the extent of initial solicitation, reproduction costs, the nature of the acquisition, whether access to classified matter is involved, the anticipated requests for copies based upon responses to synopses and other means of publication in previous similar situations, and the fact that publishers and others who disseminate information regarding proposed acquisitions normally

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(xviii) if the contract is expected to exceed $500,000, include the clause in 7-104.78 (Overseas Distribution of Defense Subcontracts) when required by 1-340.

(xix) when the provisions of the Buy American Act or the Balance of Payments Program apply, include the clauses in 7-103.10, 7-104.3, 7-104.32, and 7-104.106, as prescribed by 6-104.5 and 6-803.1(e).

Part II—General Provisions

SECTION I - General Provisions.

(i) such general contract provisions (contract clauses) as required by law and by this Regulation;

(ii) such additional general provisions as may be applicable to the acquisition; and

(iii) such alterations to contract provisions as are appropriate.

Part III—List of Documents, Exhibits, and Other Attachments

SECTION J - List of Documents, Exhibits, and Other Attachments.

(i) Here list all of the documents, exhibits, and other attachments that make up the invitation-for-bids package; give form number, name, date, and number of pages for each document; give type and identifier (for example, "Exhibit A"), name, and number of pages for each exhibit, appendix, or other attachment (for example, work frequency schedules, work statements, specifications, special requirements, or other documents too lengthy to be conveniently written into the invitation proper).

Part IV—General Instructions

SECTION K - Representations, Certifications, and Other Statements of Bidder.

(i) Standard Form 33, Part 2 (Representations and Certifications);

(ii) when considered necessary by the contracting officer to prevent practices prejudicial to fair and open competition, such as improper kinds of multiple bidding, a requirement that each bidder submit with his bid the provision in 7-2003.12 concerning his affiliation with other concerns shall be included in this Section K. Failure to furnish the affidavit with the bid shall be treated as a minor informality or irregularity (see 2-405);

(iii) the clause in 7-2003.13 that provides for a preference for labor surplus area concerns shall be

included in invitations for bids that do not involve set-asides for labor surplus area concerns;

(iv) when needed for the purpose of bid evaluation, preaward surveys, or inspection, a requirement that all bidders state the place (including the street address) from which the supplies will be furnished or where the services will be performed. When it is reasonably anticipated that producing facilities will be used in the performance of the contracts, or when Government requires the information, bidders will be required to state (A) the full address of principal producing facilities (if designation of address is not feasible, a full explanation will be required), and (B) names and addresses of owner and operator if other than bidder;

(v) if the contract is for the Military Assistance Program, include the certificate in 7-2003.50;

(vi) unless the contract is exempt from the Buy American Act and the Balance of Payments Program, include the certificate in 7-2003.47;

(vii) unless exempted by 12-805 from inclusion of the Equal Opportunity clause, include the provisions in 7-2003.14(b)(1) and (2);

(viii) any requirement for prior testing and qualification of a product, when the item to be acquired is on a qualified products list (see Section 1, Part 11);

(ix) when the contract is for the acquisition of a patented item for which the Government is a licensee (1-304.3), include the provision in 7-2003.15;

(x) when shipping weights and dimensions are required to evaluate offers as to transportation costs (see 19-210), a provision substantially as in 7-2003.16 shall be included in the solicitation, except that the paragraph relating to the Government's estimated weights and dimensions may be omitted when such estimates cannot reasonably be developed and the file is documented accordingly, prior to the issuance of the solicitation. Solicitations omitting the paragraph relating to the Government's estimated weights and dimensions shall state that the failure to furnish guaranteed shipping weights and dimensions will render offers nonresponsive, unless the contracting offer determines that the shipping weights and dimensions would clearly not affect the standing of the bids. To aid in computing a reduction when the contractor exceeds the guaranteed maximum(s), the award document will show the weight(s) and dimensions used in the evaluation;

(lvii) if the contract is expected to exceed $500,000, include the clause in 7-104.78 (Overseas Distribution of Defense Subcontracts) when required by 1-340;

(lviii) insert the Women-Owned Business representation in 7-2003.80;

(lix) insert the Percent Foreign Content representation in 7-2003.81;

(lx) when Government specifications are incorporated requiring utilization of recovered materials, insert the certification in 7-2003.82;

(lxi) for solicitations involving FMS requirements, insert the clause in 7-104.107 concerning special limitations with respect to sales commissions and fees, when required by 6-1305.6;

(lxii) when the solicitation is subject to an in-house versus contract cost comparison (Section IV, Part 12), include the clause in 7-2003.89(a);

(lxiii) insert the solicitation provision at 7-2003.90 requesting the offeror to supply his Data Universal Numbering System (DUNS) Number with his offer;

(lxiv) when the solicitation imposes partial or total small business set-aside procedures pursuant to 1-706.5 and 1-706.6, or is for a combined small business-labor surplus area set-aside procurement pursuant to 1-706.7 and is expected to result in award of a contract during fiscal year 1981, 1982, or 1983, insert the Certification of Handicapped Organizations representation in 7-2003.91. The contracting officer may rely on an offeror's self-certification that it qualifies as an eligible organization as defined in 7-2003.91. Questions concerning the eligibility of offerors shall be processed in accordance with procedures in 1-703.

(c) *Master Solicitation.* A master solicitation is a document containing the text of special provisions which have been identified as being essential for carrying out the peculiar needs of a specific commodity assignment to a single contracting activity within DoD. The document is pre-positioned with potential sources who are requested to retain them for continued and repetitive use. The purpose of this technique is to simplify solicitation and award documents, to reduce the size of solicitations and awards, and concurrently to achieve time and dollar savings for both the Government and industry. The master solicitation technique involves two separate phases, the issuance of the master solicitation and the issuance of the individual solicitation/award. In addition, use of this technique to meet such peculiar requirements shall be subject to the following criteria:

(1) The master solicitation shall not be used unless repetitive purchases are anticipated.

(2) When the bidder fails or refuses to furnish evidence in support of a suspected or alleged mistake, the contracting officer shall consider the bid as submitted unless the amount of the bid is so far out of line with the amounts of other bids received or with the amount estimated by the agency or determined by the contracting officer to be reasonable, or there are other indications of error so clear, as reasonably to justify the conclusion that acceptance of the bid would be unfair to the bidder or to other bona fide bidders. The attempts made to obtain the information required and the action taken with respect to the bid shall be fully documented.

(3) When the bidder furnishes evidence in support of an alleged mistake, the contracting officer shall refer the case to the appropriate authority, together with the following data:

(i) a signed copy of the bid involved;

(ii) a copy of the invitation for bids and any specifications or drawings relevant to the alleged mistake;

(iii) an abstract or record of the bids received;

(iv) a written request by the bidder to withdraw, or modify the bid, together with the bidder's written statement and supporting evidence (such as work sheets, or other data used in preparing the bid) of the existence of the mistake and manner in which it occurred, and supporting evidence of the bid actually intended;

(v) a written statement by the contracting officer setting forth (A) a description of the supplies or services involved, (B) the expiration date of the bid in question and of the other bids submitted, (C) specific information as to how and when the mistake was alleged, (D) a summary of the evidence submitted by the bidder, (E) in the event only one bid was received, a quotation of the most recent contract price for the supplies involved, or, in the absence of a recent contract for the item, the contracting officer's estimate of a fair price for the item, and (F) any additional evidence considered pertinent. The statement shall recommend that either the bid be considered for award in the form submitted, or the bidder be authorized to withdraw the bid, or the bidder be authorized to modify the bid.

When time is of the essence because of the expiration of bids or otherwise, the contracting officer may refer the case by telegraph or telephone to the designated authority. Ordinarily, contracting officers will not refer mistake in bid cases by telegraph or telephone to the designated authority, when the determinations set forth in (a)(2) and (3) above are applicable, since actual examination is generally necessary to determine whether the evidence presented is clear and convincing.

(f) Nothing contained in this paragraph 2–406.3 prevents a Department from submitting doubtful cases to the Comptroller General for advance decision.

(g) A signed copy of the administrative determination authorizing withdrawal or modification of the bid made in accordance with (a) above shall accompany the appropriate finance center copy of the contract awarded. Each Department shall maintain records of all administrative determinations made in accordance with (a) above, together with a complete statement of the facts involved and the action taken in each case. Copies of all administrative determinations will be included in the contract file.

2–406.4 *Reserved.*

(next page is 2:36)

2–407 Award.

2–407.1 *General.* Unless all bids are rejected, award shall be made by the contracting officer, within the time for acceptance specified in the bid or extension thereof, to that responsible bidder whose bid, conforming to the invitation for bids, will be most advantageous to the Government, price and other factors considered. If a proposed award requires approval of higher authority, such award shall not be made until approval has been obtained. Awards shall be made by mailing or otherwise furnishing to the bidder a properly executed award document (see Section XVI, Parts 1 and 4) or notice of award on such form as may be prescribed by the procuring activity. When a notice of award is issued, it shall be followed as soon as possible by the formal award. When more than one award results from any single invitation for bids, separate award documents shall be executed, each suitably numbered. When an award is made to a bidder for less than all the items which may be awarded to that bidder and additional items are being withheld for subsequent award, the first award to that bidder shall state that the Government may make subsequent awards on such additional items within the bidder's bid acceptance period. When two or more awards are made to a single bidder on an invitation, the copy of the successful bid marked "original" will be attached to the appropriate finance center copy and a copy marked "duplicate" will be attached to the retained office copy of the first award issued, and succeeding awards will be inscribed to indicate the number of the award to which the original and duplicate bids are attached. This is necessary for legal review and auditing by the General Accounting Office. All provisions of the invitation for bids, including any acceptable additions or changes made by a bidder in the bid, shall be clearly and accurately set forth (either expressly or by reference) in the award document, since the award is an acceptance of the bid, and the bid and the award constitute the contract.

2–407.2 *Responsible Bidder.* Before awarding the contract, the contracting officer shall determine that a prospective contractor is responsible (see Section I, Part 9).

2–407.3 *Prompt Payment Discounts.*

(a) Prompt payment discounts shall not be considered in the evaluation of offers. However, any discount offered will form a part of the award, and will be taken by the payment center if payment is made within the discount period specified by the offeror. As an alternative to indicating a discount in conjunction with the offer, offerors may prefer to offer discounts on individual invoices.

(b) Pending the issuance of a revised edition of Standard Form 33-A, *Solicitation Instructions and Conditions*, the provision at 7-2003.35 shall be included in all solicitations to which this form is applicable.

(c) If Standard Form 33-A is not used in the solicitation, but the procurement is one regarding which offerors may offer prompt payment discounts, the provision in 7-2003.35 shall be used, except that the words in the first sentence beginning with "Paragraph 9(a)" and ending with "is deleted, and" shall be omitted.

2–407.4 *Economic Price Adjustment.*

(a) When an invitation for bids does not contain an economic price adjustment clause, bids received, which quote a price and contain an economic price adjustment provision with a ceiling which the price will not exceed, will be evaluated on the maximum possible economic price adjustment of the quoted base price. If the bid is eligible for award, the contracting officer shall request the bidder to agree to the inclusion in the award of an approved economic price adjustment clause subject to the same ceiling. If the bidder will not agree to such approved clause, the award may be made on the basis of the bid as originally submitted. Bids which contain economic price adjustment with no ceiling shall be rejected unless a clear basis for evaluation exists.

(b) When an invitation for bids contains an economic price adjustment clause and no bidder takes exception to the economic price adjustment provi-

sions, bids shall be evaluated on the basis of the quoted prices without the allowable economic price adjustment being added. When a bidder increases the maximum percentage of economic price adjustment stipulated in the invitation for bids or limits the downward economic price adjustment provisions of the invitation, the bid will be rejected as nonresponsive. When a bidder deletes the economic price adjustment clause from his bid, the bid will be rejected as nonresponsive since the downward economic price adjustment provisions are thereby limited. When a bidder decreases the maximum percentage of economic price adjustment stipulated in the invitation for bids, the bid shall be evaluated at the base price on an equal basis with bids that do not reduce the stipulated ceiling. However, if after evaluation, the bidder offering the lower ceiling is in a position to receive the award, the award shall reflect the lower ceiling.

2–407.5 *Other Factors To Be Considered.* The factors set forth in (i) through (vi) below, among others, may be considered in evaluating bids.

(i) Foreseeable costs or delays to the Government resulting from differences in inspection, location of supplies, transportation, etc. If, pursuant to 19–301.1, bids are on an f.o.b. origin basis, transportation costs to the designated destination points shall be considered in determining the lowest cost to the Government.

(ii) Changes made or requested in any of the provisions of the solicitation to the extent that any such change does not constitute ground for rejection of the bid under the provisions of 2–404.

(iii) Advantages or disadvantages to the Government that might result from making multiple awards (see 2–201(a)Sec.M(iii)).

(iv) Qualified products (see Section I, Part 11).

(v) Federal, State, and local taxes (see Section XI).

(vi) Origin of supplies, whether domestic or foreign, and if foreign, the application of the Buy American Act or any other prohibition on foreign purchases (see Section VI).

2–407.6 *Equal Low Bids.*

(a)(1) When two or more low bids are equal in all respects, considering all factors except the priorities set forth in (2) below, award shall be made in accordance with the order of priorities therein. Only priority (ii) is applicable to construction contracts. When two or more low bids are equal in all respects, considering all factors including the priorities set forth in (2) below, award shall be made by a drawing by lot which shall be witnessed by at least three persons and which may be attended by the bidders or their representatives.

(2) For the purposes of (1) above, preference shall be given in the following order of priority:

(i) concerns which qualify as labor surplus area concerns and which are also small business concerns;

(ii) other small business concerns;

(iii) other labor surplus area concerns.

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(i) accounting and appropriation data (Note: where SF 33 is used, include only data not set forth on that form);

(ii) instructions to paying offices and administrative contracting offices, including name, organization code, and telephone area code, number, and extension of contracting office representative.

(iii) for contracts requiring payment in Canadian currency, the contract price shall be quoted in terms of Canadian dollars and shall be identified by the initials CN; e.g., $1,647.23CN. The contract shall clearly indicate on its face the US/Canadian conversion rate in effect at the time of award and the US dollar equivalent of the Canadian dollar contract amount.

SECTION H - Special Provisions.

(i) if the contract is to include option provisions, a clear statement of the provisions (see 1-1506);

(ii) if the contract is to include design-to-cost requirements, provisions in accordance with 1-338;

(iii) if 1-1503(d) applies, a conspicuous notice cautioning offerors that an offer containing an option price higher than the base price may be accepted only if the acceptance does not prejudice any other offeror (this may be placed elsewhere as long as the notice is adjacent to the limitation as to option price);

(iv) if the price negotiated is not predicated on allowability of the cost of money for facilities capital employed, the contract shall include a statement that: the cost of money for facilities capital (15-205.50) is unallowable.

(v) if the contract is to be conditioned on the availability of funds, include one of the clauses in 7-104.91;

(vi) if the contract is multiyear, the provisions required by 1-322.2(a), (b), or (f);

(vii) any progress payments provisions (see Appendix E);

(viii) any applicable Service Contract Act wage determinations of the Secretary of Labor (see Section XII, Part 10);

(ix) any special provisions relating to the Government's providing Government production and research property (see Section XIII, Part 3);

(x) when the clause in 7-104.62 is included in the contract and Appendix I, Table 2, does not list addresses of the required special distribution recipients, the applicable names and addresses shall be included in this Section H. The contracting office issuing the contract shall reference the line item as necessary, the addresses of the status control activity/inventory manager, and, if applicable, the processing contracting office cited in the Military Interdepartmental Purchase Request (MIPR);

(xi) in accordance with 1-1208, the clause in 7-104.48 and the clause in 7-104.49;

(xii) if the contract is to contain the Safety Precautions for Ammunition and Explosives clause in 7-104.79, a specific list of any of the mandatory requirements of DoD Manual 4145.26-M that are being waived;

(xiii) when the contract is expected to contain requirements for provisioned items, include the information prescribed in 4-302.1;

(xiv) for acquisitions involving Military Assistance Program (MAP)(Grant Aid), include the MAP Record Control/Program/Directive Number identifier and special markings, if appropriate. For Foreign Military Sales (FMS) acquisitions, include the special markings, if appropriate, and specify the FMS case identifier code by line/subline item number, e.g., FMS Case Identifier GY-D-DCA. These identification entries are required to permit the contractor to comply with Appendix I-301, Block 16(12), and to facilitate collection of contract administration charges from foreign governments on FMS acquisitions.

(xv) if the contract is for supplies acquired for resale, include the clause in 7-104.88;

(xvi) if international air transportation of personnel and cargo is possible during performance of the contract, include the clause in 7-104.95;

(xvii) in accordance with 9-603(b), insert the Identification of Restricted Rights Computer Software provision in 7-2003.76;

(xviii) if the contract is to involve materials of a hazardous nature, include the clause in 7-104.98 as prescribed by 1-323.2;

(xix) when the proposed contract is to require the contractor to prepare production progress reporting in accordance with the clause in 7-104.51, the contract schedule shall contain instructions as prescribed in 25-202; and

(xx) if the contract is expected to exceed $500,000, include the clause in 7-104.78 (Overseas Distribution of Defense Subcontracts) when required by 1-340.

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(xli) if pursuant to 1-1504, options are to be evaluated for award, the applicable *Evaluation of Options* provision shall be inserted;

(xlii) if 1-1503(d) applies, a conspicuous notice cautioning offerors that an offer containing an option price higher than the base price may be accepted only if such acceptance does not prejudice any other offeror; (This may be placed elsewhere so long as the notice is adjacent to the limitation as to option price.)

(xliii) any requirement for royalty information to be furnished with the offer, proposal or quotation (see 9-110(a));

(xliv) when the contract is for the purchase of a patented item for which the Government is a licensee (1-304.3), include the provision in 7-2003.15;

(xlv) a statement on the first sheet or on a cover sheet of the Request for Proposals that:

PROPOSALS MUST SET FORTH FULL, ACCURATE, AND COMPLETE INFORMATION AS REQUIRED BY THIS REQUEST FOR PROPOSAL (INCLUDING ATTACHMENTS). THE PENALTY FOR MAKING FALSE STATEMENTS IN PROPOSALS IS PRESCRIBED IN 18 U.S.C. 1001.

(xlvi) a statement of arangements to be made for inspecting the site, including designation of the person or persons, if any, with whom such arrangements may be made and who will answer questions or furnish information;

(xlvii) information which may affect performance of the work such as boring samples, original boring logs, etc.;

(xlviii) information as to what utilities the Government will furnish during construction, when the contracting officer determines that any new utilities are adequate for the needs of both the Government and the contractor (see 7-603.30);

(xlix) Reserved;

(l) Reserved;

(li) (A) in accordance with 3-1203(a), insert the provision in 7-2003.67(a);

(B) in accordance with 3-1204, insert the provision in 7-2003.67(b);

(C) in accordance with 3-1213(a), insert the provision in 7-2003.67(c);

(lii) the *Late Technical Proposals* provision in 7-2002.3, or the Late Proposals provision in 7-2002.4, (these replace paragraphs 7 and 8 of SF 22);

(liii) if international air transportation of personnel and cargo is possible during performance of the contract, the clause in 7-104.95;

(liv) the *Contingent Fee* provision in 7-2002.1 shall be substituted for paragraph 3 of SF 19-B;

(lv) the *Clean Air and Water Certification* in 7-2003.71;

(lvi) Reserved;

(lvii) when the statement of work requires the design, development or operation of a system of records on individuals for an agency function, insert the provision in 7-2003.72;

(lviii) if the contract is for the acquisition of goods or services for MAP, IMET, or FMS, include the clause in 7-104.97;

(lix) if the contract includes FMS requirements, identify the contract by clearly stamping or otherwise indicating "*FMS Requirement*" on the cover sheet of the contract;

(lx) if the contract is expected to exceed $500,000, include the clause in 7-104.78 (Overseas Distribution of Defense Subcontracts) when required by 1-340;

(lxi) when Government specifications are incorporated requiring utilization of recovered materials, insert the certification in 7-2003.82.

(lxii) when the provisions of the Buy American Act or the Balance of Payments Program apply, include the clauses in 7-104.3, 7-104.32, 7-2003.47, and 7-104.106 as prescribed in 6-104.5, 6-803.1(e).

(lxiii) for solicitations involving FMS requirements, insert the clause in 7-104.107 concerning special limitations with respect to sales commissions and fees, when required by 6-1305.6.

(lxiv) when the solicitation is subject to an in-house versus contract cost comparison (Section IV, Part 12), include the clause in 7-2003.89(b).

(lxv) insert the solicitation provision at 7-2003.90 requesting the offeror to supply his Data Universal Numbering System (DUNS) Number with his offer.

(lxvi) when the solicitation imposes partial or total small business set-aside procedures pursuant to 1-706.5 and 1-706.6, or is for a combined small business-labor surplus area set-aside procurement pursuant to 1-706.7 and is expected to result in award of a contract during fiscal year 1981, 1982, or 1983, insert the Certification of Handicapped Organizations representation in 7-2003.91. The contracting officer may rely on an offeror's self-certification that it qualifies as an eligible organization as defined in 7-2003.91. Questions concerning the eligibility of offerors shall be processed in accordance with procedures in 1-703.

(lxvii) for contracts requiring payment in Canadian currency, the contract price shall be quoted in terms of Canadian dollars and shall be identified by the initials CN; e.g., $1,647.23CN. The contract shall clearly indicate on its face the US/Canadian conversion rate in effect at the time of award and the US dollar equivalent of the Canadian dollar contract amount.

(d) *Oral Solicitations.*

(1) Oral solicitations are authorized for small purchases (see Section III, Part 6) and for the acquisition of perishable subsistence.

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CONTRACT CLAUSES AND SOLICITATION PROVISIONS

UTILIZATION OF SMALL BUSINESS AND SMALL DISADVANTAGED BUSINESS CONCERNS (1980 AUG)

(a) It is the policy of the United States that small business and small business concerns owned and controlled by socially and economically disadvantaged individuals shall have the maximum practicable opportunity to participate in the performance of contracts let by any Federal agency.

(b) The Contractor hereby agrees to carry out this policy in the awarding of subcontracts to the fullest extent consistent with the efficient performance of this contract. The term "subcontract" means any agreement (other than one involving an employer-employee relationship) to be entered into by a Federal Government prime contractor or subcontractor calling for supplies or services required for the performance of the original contract or subcontract. The Contractor further agrees to cooperate in any studies or surveys as may be conducted by the United States Small Business Administration or the awarding agency of the United States as may be necessary to determine the extent of the Contractor's compliance with this clause.

(c) As used in this contract, the term "small business concern" shall mean a small business as defined pursuant to Section 3 of the Small Business Act and relevant regulations promulgated pursuant thereto. The term "small business concern owned and controlled by socially and economically disadvantaged individuals," hereafter referred to as disadvantaged business, shall mean a small business concern -

(1) which is at least 51 per centum owned by one or more socially and economically disadvantaged individuals; or, in the case of any publicly owned business, at least 51 per centum of the stock of which is owned by one or more socially and economically disadvantaged individuals; and

(2) whose management and daily business operations are controlled by one or more of such individuals. The Contractor shall presume that socially and economically disadvantaged individuals include Black Americans, Hispanic Americans, Native Americans (i.e., American Indians, Eskimos, Aleuts and Native Hawaiians), Asian-Pacific Americans (i.e., U.S. citizens whose origins are from Japan, China, the Philippines, Vietnam, Korea, Samoa, Guam, the U.S. Trust Territories of the Pacific, Northern Marianas, Laos,

Cambodia, and Taiwan, and other minorities, or any individuals found to be disadvantaged by the Administration pursuant to Section 8(a) of the Small Business Act.

(d) Contractors acting in good faith may rely on written representations by their subcontractors regarding their status as either a small business concern or a small business concern owned and controlled by socially and economically disadvantaged individuals.

(End of clause)

(b) In accordance with 1-707.3(b), insert the following clause in negotiated contracts.

SUBCONTRACTING PLAN FOR SMALL BUSINESS AND SMALL DISADVANTAGED BUSINESS CONCERNS (NEGOTIATED) (1982 JUN)

(a) This provision does not apply to small business concerns.

(b) The apparent successful offeror, upon request by the Contracting Officer, shall submit and negotiate a subcontracting plan which addresses separately subcontracting with small business concerns and small disadvantaged business concerns and which shall be included in and made a part of the resultant contract. The subcontracting plan shall be negotiated within the time specified by the contracting officer. Failure to submit and negotiate the subcontracting plan shall make the offeror ineligible for award of a contract. As a minimum, the subcontracting plan shall include—

(1) Separate percentage goals (expressed in terms of percentage of total planned subcontracting dollars) for the utilization as subcontractors of small business concerns and small business concerns owned and controlled by socially and economically disadvantaged individuals. For the purposes of the subcontracting plan, the Contractor shall include all subcontracts to be awarded for the specific purpose of performing this contract and may include a proportionate share of supplies and services whose costs are normally allocated as indirect or overhead costs when reasonably determined to be attributable to this contract.

a. A statement of: (i) total dollars planned to be subcontracted; (ii) total dollars planned to be subcontracted to small business; and (iii) total dollars planned to be subcontracted to small disadvantaged business.

(2) Demonstrate continuing management interest and involvement in support of this effort through such actions as regular reviews of progress and establishment of overall corporate and divisional goals and objectives.

(3) Train and motivate contractor personnel regarding the support of small and small disadvantaged business firms.

(4) Assist small business and small disadvantaged business concerns by arranging solicitations, time for the preparation of bids, quantities, specifications, and delivery schedules so as to facilitate the participation by such concerns. Where the Contractor's lists of potential small business and small disadvantaged subcontractors are excessively long, reasonable effort shall be made to give all such small business concerns an opportunity to compete over a period of time.

(5) Provide adequate and timely consideration of the potentialities of small business and small disadvantaged business concerns in all "make-or-buy" decisions.

(6) Counsel and discuss subcontracting opportunities with representatives of small and small disadvantaged business firms as are referred by the Small and Disadvantaged Business Utilization Specialist responsible for monitoring performance under this program and representatives of the SBA.

(d) The Contractor shall submit Standard Form 294, Subcontracting Report for Individual Contracts, and Standard Form 295, Summary Subcontract Report, in accordance with instructions provided on the forms.

(e) The offeror understands that:

(1) An acceptable plan must, in the determination of the Contracting Officer, provide the maximum practicable opportunity for small business and small disadvantaged business concerns to participate in the performance of the contract.

(2) The Contracting Officer shall notify the Contractor in writing of his reasons for determining a subcontracting plan to be unacceptable. Such notice shall be given early enough in the negotiation process to allow the Contractor sufficient time to modify the plan within the time limits prescribed.

(3) Prior compliance of the offeror with other such subcontracting plans under previous contracts will be considered by the Contracting Officer in determining the responsibility of the offeror for award of the contract.

(4) The failure of any contractor or subcontractor to comply in good faith with (i) the clause entitled Utilization of Small Business and Small Disadvantaged Business Concerns or (ii) an approved plan required by this Small Business and Small Disadvantaged Business Subcontracting Plan (Negotiated) provision, will be a material breach of such contract or subcontract.

(5) A master subcontracting plan on a plant or division-wide basis which contains all the elements required by (b) above, except goals, may be incorporated by reference as a part of the subcontracting plan required of the offeror by

this clause, *Provided*: (i) the master plan has been approved by the Contractor's cognizant Contract Administration Office; (ii) the offeror provides copies of the approved master plan and evidence of its approval to the Contracting Officer; and (iii) goals and any deviations from the master plan deemed necessary by the Contracting Officer to satisfy the requirements of this contract are set forth in the individual subcontracting plan.

(f) In the acquisition of commercial products, the offeror further understands that:

(1) If a commercial product (defined below) is offered, the required subcontracting plan may cover the company's commercial production generally, both for Government contracts and for regular commercial sales, rather than just this acquisition. In such cases, the Contractor may request approval from the Contracting Officer to submit one company-wide, or division-wide, annual plan. If such request is deemed appropriate, the offeror shall submit a proposed company-wide, or division-wide, annual plan for acceptance.

(2) Upon approval by the Contracting Officer, the plan will remain in effect for the company's entire fiscal year. During this period, Government contracts for commercial products of the affected company or division will not be required to contain individual subcontracting plans relating only to the supply or services being acquired, unless the Contracting Officer determines for a particular contract that there are unforeseen possibilities for small business and small disadvantaged business subcontracting.

(3) At least 60 days before the scheduled termination of the company or division-wide plan, the Contractor may submit to the Contracting Officer a proposed company or division-wide subcontracting plan for its commercial products for the succeeding fiscal year. If the plan would otherwise terminate prior to approval of the succeeding fiscal year's plan, it will remain in effect until the succeeding plan is accepted or rejected, but no longer than 60 days after the end of the company's fiscal year.

(4) For the purpose of this program, the term "commercial product" means a product in regular production sold in substantial quantities to the general public and/or industry at established catalog or market prices. A product which, in the opinion of the Contracting Officer, differs only insignificantly from the Contractor's commercial product may be regarded for the purpose of this clause as a commercial product.

(End of clause)

(c) In accordance with 1-707.3(c), insert the following clause in formally advertised contracts.

SUBCONTRACTING PLAN FOR SMALL BUSINESS AND SMALL DISADVANTAGED BUSINESS CONCERNS (FORMALLY ADVERTISED) (1982 JUN)

(a) This provision does not apply to small business concerns.

(b) The apparent low bidder, upon request by the Contracting Officer, shall submit a subcontracting plan which addresses separately subcontracting with small business concerns and small disadvantaged business concerns, and which shall be included in and made a material part of the resultant contract. The subcontracting plan shall be submitted within the time specified by the Contracting Officer. Failure to submit the subcontracting plan shall make the bidder ineligible for the award of a contract. As a minimum, the subcontracting plan shall include:

(1) Separate percentage goals (expressed in terms of percentage of total planned subcontracting dollars) for the utilization as subcontractors of small business concerns and small business concerns owned and controlled by socially and economically disadvantaged individuals; for the purposes of the subcontracting plan, the Contractor shall include all subcontracts to be awarded for the specific purpose of performing this contract and may include a proportionate share of supplies and services whose costs are normally allocated as indirect or overhead costs when reasonably determined to be attributable to this contract.

a. A statement of: (i) total dollars planned to be subcontracted; (ii) total dollars planned to be subcontracted to small business; and (iii) total dollars planned to be subcontracted to small disadvantaged business.

b. A description of the principal supply and service areas to be subcontracted and an identification of those areas where it is planned to use (i) small business subcontractors, and (ii) small disadvantaged business subcontractors.

c. A statement of the method used in developing proposed subcontracting goals for small business and small disadvantaged business concerns.

d. If the offeror includes indirect and overhead costs as an element in establishing the goals in the subcontracting plan, the method used in determining the proportionate share of indirect and overhead costs incurred

with (i) small business, and (ii) small disadvantaged business subcontractors shall be explained.

e. A statement of the method used for solicitation purposes (e.g., did the offeror use company source lists, the small business and disadvantaged small business source identification system provided by the Small Business Administration's Procurement Automated Source System, the National Minority Purchasing Council Vendor Information Service, or the services provided by the U.S. Department of Commerce Minority Business Development Agency's Research and Information Division, and the facilities of small business and disadvantaged business trade associations?).

(2) The name of an individual within the employ of the bidder who will administer the subcontracting plan of the bidder and a description of the duties of such individual;

(3) A description of the efforts the bidder will make to assure that small business and small disadvantaged business concerns will have an equitable opportunity to compete for subcontracts;

(4) Assurances that the bidder will include the clause entitled Utilization of Small Business and Small Disadvantaged Business Concerns in all subcontracts which offer further subcontracting possibilities in the United States, and that the bidder will require all subcontractors (except small business concerns) who receive subcontracts in excess of $1 million in the case of a contract for the construction of any public facility, or in excess of $500,000 in the case of all other contracts, to adopt a plan in consonance with this clause;

(5) Assurances that the bidder will submit such periodic reports and cooperate in any studies or surveys as may be required by the contracting agency or the Small Business Administration in order to determine the extent of compliance by the bidder with the subcontracting plan; and

(6) A recitation of the types of records the successful bidder will maintain to demonstrate procedures which have been adopted to comply with the requirements and goals set forth in the plan, including the establishment of source lists of small business concerns and small disadvantaged business concerns; and efforts to identify and award subcontracts to such small business concerns. The records shall include at least the following (these records may be maintained on a plant-wide or company-wide basis unless otherwise indicated):

a. Small and small disadvantaged business source lists, guides, and other data identifying small and small disadvantaged business vendors.

b. Organizations contacted for small and small disadvantaged business sources.

c. On a contract-by-contract basis, records on all subcontract solicitations over $100,000, indicating on each solicitation (i) whether small business was solicited and if not, why not; (ii) whether small disadvantaged business was solicited and if not, why not; and (iii) reasons for the failure of responding small businesses or small disadvantaged businesses to receive the subcontract award.

d. Records to support such efforts as:

(i) contacts with disadvantaged and small business trade associations;

(ii) contacts with business development organizations; and

(iii) attendance at small and small disadvantaged business procurement conferences and trade fairs.

e. Records to support internal activities to guide and encourage buyers such as:

(i) workshops, seminars, training programs, etc., and

(ii) monitoring activities to evaluate compliance.

f. On a contract-by-contract basis, records to support award data submitted to the Government to include name, address, and size status of subcontractor.

(c) In order to effectively implement this plan, the Contractor shall:

(1) Issue and promulgate company-wide policy statements in support of this effort, develop written procedures and work instructions, and assign specific responsibilities regarding the requirements of this clause.

(2) Demonstrate continuing management interest and involvement in support of these programs through such actions as regular reviews of progress and establishment of overall corporate and divisional goals and objectives.

(3) Train and motivate contractor personnel in support of these programs.

(4) Assist small business and small disadvantaged business concerns by arranging solicitations, time for the preparation of bids, quantities, specifications, and delivery schedules so as to facilitate the participation by such concerns. Where the Contractor's lists of potential small business and small disadvantaged subcontractors are excessively long, reasonable effort shall be made to give all such small business concerns an opportunity to compete over a period of time.

(5) Provide adequate and timely consideration of the potentialities of small business and small disadvantaged business concerns in all "make-or-buy" decisions.

(6) Counsel and discuss subcontracting opportunities with representatives of small and small disadvantaged business firms as are referred by the Small and Disadvantaged Business Utilization Specialist responsible for monitoring performance under this program and representatives of the SBA.

(d) The Contractor shall submit Standard Form 294, Subcontracting Report for Individual Contracts, and Standard Form 295, Summary Subcontract Report, in accordance with instructions provided on the forms.

(e) The bidder understands that:

(1) Prior compliance of the bidder with other such subcontracting plans under previous contracts will be considered by the Contracting Officer in determining the responsibility of the bidder for award of the contract.

(2) The failure of any contractor or subcontractor to comply in good faith with (i) the clause entitled Utilization of Small Business Concerns and Small Disadvantaged Business Concerns, or (ii) the terms of any subcontracting plan required by this Small Business and Small Disadvantaged Business Subcontracting Plan (Advertised) provision, will be a material breach of the contract or subcontract.

(3) A master subcontracting plan on a plant or division-wide basis which contains all the elements required by (b) above, except goals, may be incorporated by reference as part of the subcontracting plan required of the offeror by this clause, *Provided*: (i) the master plan was approved by the Contractor's cognizant Contract Administration Office prior to bid opening; (ii) the offeror provides copies of the approved master plan and evidence of its approval to the Contracting Officer; and (iii) goals and any deviations from the master plan deemed necessary by the Contracting Officer to satisfy the requirements of this contract are set forth in the individual subcontracting plan.

(f) In the acquisition of commercial products, the bidder further understands that:

(1) If a commercial product (defined below) is offered, the required subcontracting plan may cover the company's production generally, both for Government contracts and for regular commercial sales, rather than just this acquisition. In such cases, the Contractor may request approval from the Contracting Officer to submit one company-wide, or division-wide, annual plan. If such request is deemed appropriate, the offeror shall submit a proposed company-wide, or division-wide, annual plan for acceptance.

(2) Upon approval by the Contracting Officer, the plan will remain in effect for the company's entire fiscal year. During this period, Government contracts for commercial products of the affected company or division will not be required to contain individual subcontracting plans relating only to the supply or services being acquired, unless the Contracting Officer determines for a particular contract that there are unforeseen possibilities for small business and small disadvantaged business subcontracting.

(f) The clause:

GOVERNMENT DELAY OF WORK (1968 SEP)

(a) If the performance of all or any part of the work is delayed or interrupted by an act of the Contracting Officer in the administration of this contract, which act is not expressly or impliedly authorized by this contract, or by his failure to act within the time specified in this contract (or within a reasonable time if no time is specified), an adjustment (excluding profit) shall be made for any increase in the cost of performance of this contract caused by such delay or interruption and the contract modified in writing accordingly. Adjustment shall be made also in the delivery or performance dates and any other contractual provision affected by such delay or interruption. However, no adjustment shall be made under this clause for any delay or interruption (i) to the extent that performance would have been delayed or interrupted by any other cause, including the fault or negligence of the Contractor; or (ii) for which an adjustment is provided or excluded under any other provision of this contract.

(b) No claim under this clause shall be allowed (i) for any costs incurred more than twenty (20) days before the Contractor shall have notified the Contracting Officer in writing of the act or failure to act involved; and (ii) unless the claim, in an amount stated, is asserted in writing as soon as practicable after the termination of such delay or interruption, but not later than the date of final payment under the contract.

(End of clause)

7-104.78 *Distribution of Defense Subcontracts Placed Overseas.* In accordance with 1-340, insert the following clause.

OVERSEAS DISTRIBUTION OF DEFENSE SUBCONTRACTS (1982 JUN)

(a) For each subcontract or modification thereof which exceeds $10,000, where the principal place of performance is outside the United States or its territories and possessions, the Contractor agrees to furnish the information listed below on a quarterly basis to Director for Information, Operations and Reports, Washington Headquarters Services, Department of Defense, Washington, DC 20301.

(i) Name and address of prime contractor (or subcontractor required to report).
(ii) Prime contract number.
(iii) Name and address of overseas subcontractor. (This item is important for discussion of trade balances with other countries, but submission of this information is not mandatory.)
(iv) Subcontract number (including modification number) being reported.
(v) Dollar amount of this action (enclose decommitments in parentheses).
(vi) Principal place of subcontract performance.
(vii) Type of supply or service.

(b) The required information, if any, shall be as of the last day of the calendar year quarter and submitted within ten (10) days of the end of each quarter.

(c) The prime Contractor agrees to insert a provision substantially similar to this in all first-tier subcontracts over $100,000 except subcontracts for ores, natural gas, utilities, petroleum products and crudes, timber (logs), and subsistence. The prime Contractor shall also identify the applicable prime contract number to the subcontractor for reporting purposes.

(End of clause)

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7-104.79 *Safety Precautions for Ammunition and Explosives.*

(a) The following clause shall be inserted in all contracts which may involve the development, testing, storage, manufacture, modification, renovation, demilitarization, packaging, transportation, handling, disposal, inspection, repair or any other use of ammunition and explosives. The terms "ammunition" and "explosives" exclude inert components containing no explosives, active chemicals or pyrotechnics. (See 1-323).

SAFETY PRECAUTIONS FOR AMMUNITION AND EXPLOSIVES (1970 SEP)

(a) As used in this clause:

(i) "ammunition" and "explosives" shall have the meaning set forth in DoD Contractors' Safety Manual for Ammunition, Explosives, and Related Dangerous Material, DoD 4145.26M;

(ii) "accident" means an event causing damage or injury involving ammunition or explosives which results in one or more of the following:

(1) one or more fatalities,*

(2) one or more disabling injuries,*

(3) ten or more non-disabling injuries,*

(4) damage to Government property exceeding $10,000,

(5) production interruption exceeding twenty-four (24) hours.

(b) The Contractor shall comply with the DoD Contractor's Safety Manual for Ammunition, Explosives and Related Dangerous Materials (DoD Manual 4145.26M), in effect on the date of the solicitation for this contract, as it relates to ammunition and explosives, and any other additional or more stringent requirements included in the schedule of this contract.** If the Contracting Officer notifies the Contractor of any noncompliance with such Manual, or schedule provisions, the Contractor shall immediately take corrective action. If the Contractor fails or refuses to take corrective action within the time specified by the Contracting Officer, the Contracting Officer may direct the Contractor to cease performance on all or part of this contract, or until satisfactory corrective action has been taken. Any notification or direction under this paragraph should be in writing or confirmed in writing by the Contracting Officer. The Contracting Officer may at any time remove Government personnel whenever the Contractor is in noncompliance with the safety requirements of this clause. Either action by the Contracting Officer shall not entitle the Contractor to an adjustment of the contract price or other reimbursement for resulting increased costs, or to an adjustment of the delivery or performance schedule. However, should direction to cease performance be issued or Government personnel be removed and it is later determined that the Contractor had, in fact, complied with the Manual, or schedule provisions, the Contractor shall be entitled to an equitable adjustment in delivery schedule, in contract price, or both, in accordance with the procedures provided for in the clause of this contract entitled "Changes."

(c) The Contractor shall immediately notify the Contracting Officer after an accident involving ammunition or explosives. The Contractor shall also, in accordance with this contract or as required by the Contracting Officer, conduct an investigation and submit a written report of the accident to the Contracting Officer.

(d) Neither the requirements of this clause nor any act or failure to act by the Government in surveillance or enforcement thereof shall affect or relieve the Contractor of responsibility for the safety of his personnel and his property and for the safety of the general public in connection with the performance of this contract, or impose or add to any liability of the Government for such safety. The Contractor is not entitled to rely on the requirements of this clause or on any Government surveillance or enforcement thereof, or lack thereof, or granting of any waiver or exemption in accordance with DoD 4145.26M in discharging the Contractor's responsibility.

(e) The Contractor shall insert the substance of this clause, including this paragraph (e), with appropriate changes in the designation of the parties, in every subcontract hereunder which involves ammunition and explosives as defined in (a) above.

(f) Nothing contained herein shall relieve the Contractor from complying with applicable federal, state and local laws, codes, ordinances and regulations (including the obtaining of licenses and permits) in connection with the performance of this contract.

(End of clause)

* As defined in American National Standards Institute, Safety Standard, entitled "USA Standard Method of Recording and Measuring Work Injury Experience, Z16.1," in effect on the date of the solicitation.

** The Contracting Officers shall not reference in the schedule of the contract ammunition and explosive safety publications of DoD components in their entirety. Contracting Officers shall select and identify in the schedule of the contract applicable paragraphs or portions of such publications. Where contract performance will occur on a military installation, Contracting Officers may also include necessary regulations of the installation covering ammunition and explosives applicable to performance on the installation

(b) In contracts involving shipments of ammunition and explosives by military aircraft or to an aerial port of embarkation, insert the following paragraph:

(g) The Contractor shall comply with the requirements for a shipper's certificate set forth in the manual entitled "Packaging and Handling of Dangerous Materials for Transportation by Military Aircraft" (U.S. Government Printing Office Catalog Number D 301.7:71 / 4 / 2, also identified as AFM 71-4 / TM-38-250 / NAVAIR 15-03-500 / MCO P4030.19 / DSAM 4145.3).

7-104.80 *Notice of Radioactive Materials.* Insert the following clause in all contracts for items, components thereof, and materials which are radioactive in which the radioactivity per gram is greater than 0.002 microcuries. Such contracts include, but are not limited to, contracts for aircraft, ammunition, missiles, vehicles, electronic tubes, instrument panel gauges, compasses and identification markers.

7-204.55 *Cost/Schedule Control Systems.* In accordance with 1-331(h) and 3-501(b) Section C (xlv), insert the clause in 7-104.87.

7-204.56 *Engineering Change Proposals (ECP's).* In accordance with 26-205, insert the clause in 7-104.89.

7-204.57 *Change Order Accounting.* In accordance with 26-205, insert the clause in 7-104.90.

7-204.58 *Time of Delivery.* Insert a clause in accordance with 7-104.92.

7-204.59 *Capture and Detention.* In accordance with 10-406, insert the clause in 7-104.94.

7-204.60 *Preference For United States Flag Air Carriers.* In accordance with 1-336.1(b), insert the clause in 7-104.95.

7-204.61 *Submission of Commercial Freight Bills to the General Services Administration for Audit.* In accordance with 19-403.2(c), insert the following clause

SUBMISSION OF COMMERCIAL FREIGHT BILLS TO THE GENERAL SERVICES ADMINISTRATION FOR AUDIT (1976 FEB)

When transportation costs are reimbursed to the Contractor, the Contractor is required to furnish to the

General Services Administration — FZATR
Chester A. Arthur Building
Washington, D. C. 20406

(or to the ACO if specified) individual commercial freight bills (or equivalent shipment data and evidence of payment) for transportation charges in excess of $500.00.

(End of clause)

7-204.62 *Privacy Act.* In accordance with 1-327.1, insert the clause in 7-104.96.

7-204.63 *Preference for Domestic Specialty Metals.* In accordance with 7-104.93, insert the applicable clause therein.

7-204.64 *Exclusionary Policies and Practices of Foreign Governments.* In accordance with 6-1312, insert the clause in 7-104.97.

7-204.65 *Hazardous Material Identification and Material Safety Data.* In accordance with 1-323.2(b), insert the clause in 7-104.98.

7-204.66 *Overseas Distribution of Defense Subcontracts.* In accordance with 1-340, insert the clause in 7-104.78.

7-204.67 *Reserved.*

7-204.68 *Offset Arrangement.* In accordance with 6-1310.3(d), insert the clause in 7-104.105.

7-204.69 *Qualifying Country Sources as Subcontractors.* In accordance with 6-1403.4, insert the clause at 7-104.106.

7-205 Additional Clauses. The following clauses shall be inserted in cost-reimbursement type supply contracts in accordance with Departmental procedures when it is desired to cover the subject matter thereof in such contracts.

7-205.1 *Alterations in Contract.* The clause in 7-105.1(a) may be inserted.

7-205.2 *Approval of Contract.* The clause in 7-105.2 may be inserted.

7-205.3 *Title and Risk of Loss.* Insert the clause in 7-103.6.

7-205.4 *Bill of Materials.* In accordance with 7-105.6, insert the clause therein.

7-205.5 *Reserved.*

7-205.6 *Stop Work Orders.* The clause in 7-105.3, if modified by changing (i) the words "the 'Termination for Convenience' clause of this contract" to "the 'Termination' clause of the contract" and (ii) the words "an equitable adjustment shall be made in the delivery schedule or contract price, or both" to "an equitable adjustment shall be made in the delivery schedule, the estimated cost, the fee, or a combination thereof, and in any other provisions of the contract that may be affected," is authorized for use in any cost-reimbursement type contract under the criteria and in accordance with the instructions in 7-105.3.

7-205.7 *Warranty of Technical Data.* In accordance with 1-324.6, insert the clause in 7-104.9(o).

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Secretary and approved by the Contracting Officer, (or in contracts with the Department of the Navy, *The Department*). When the Government has assumed liability for subcontracts, the term "*Contractor*" in this paragraph (b) shall include subcontractors.

(c) No payment shall be made by the Government under this clause unless the amount thereof shall first have been certified to be just and reasonable by the Secretary or his representative designated for such purpose. The rights and obligations of the parties under this clause shall survive the termination, expiration, or completion of this contract. The Government may discharge its liability under this paragraph by making payments to the Contractor or directly to parties to whom the Contractor may be liable.

(d) With the prior written approval of the Contracting Officer, the Contractor may include in any subcontract under this contract, the same provisions as those in this clause, whereby the Contractor shall indemnify the subcontractor against any risk defined in this contract to be unusually hazardous or nuclear in nature. Such a subcontract shall provide the same rights and duties, and the same provisions for notice, furnishing of evidence or proof, and the like, between the Contractor and the subcontractor as are established by this clause. The Contracting Officer may also approve similar indemnification of subcontractors at any tier upon the same terms and conditions. Subcontracts providing for indemnification within the purview of this clause shall provide for the prompt notification to the Contracting Officer of any claim or action against, or of any loss by, the subcontractor which is covered by this clause, and shall entitle the Government at its election, to control or assist in the settlement or defense of any such claim or action. The Government shall indemnify the Contractor with respect to his obligations to subcontractors under subcontract provisions thus approved by the Contracting Officer. The Government may discharge its obligations under this paragraph by making payments directly to subcontractors or to parties to whom the subcontractor may be liable.

(e) If insurance coverage or other financial protection program approved by the Secretary is reduced, the liability of the Government under this clause shall not be increased by reason of such reduction.

(f) The Contractor shall (i) promptly notify the Contracting Officer of any claim or action against, or of any loss by, the Contractor or any subcontractor which reasonably may be expected to involve indemnification under this clause, (ii) furnish evidence or proof of any claim, loss or damage covered by this clause in the manner and form required by the Government, and (iii) immediately furnish to the Government copies of all pertinent papers received by the Contractor. The Government may direct, control or assist in the settlement or defense of any such claim or action. The Contractor shall comply with the Government's directions, and execute any authorizations required in regard to such settlement or defense.

(End of clause)

7-303.63 *Preference for United States Flag Air Carriers.* In accordance with 1-336.1(b), insert the clause in 7-104.95.

7-303.64 *Privacy Act.* In accordance with 1-327.1, insert the clause in 7-104.96.

7-303.65 *Preference for Domestic Specialty Metals.* In accordance with 7-104.93, insert the applicable clause therein.

7-303.66 *Exclusionary Policies and Practices of Foreign Governments.* In accordance with 6-1312, insert the clause in 7-104.97.

7-303.67 *Hazardous Material Identification and Material Safety Data.* In accordance with 1-323.2(b), insert the clause in 7-104.98.

7-303.68 *Overseas Distribution of Defense Subcontracts.* In accordance with 1-340, insert the clause in 7-104.78.

7-303.69 *Reserved.*

7-303.70 *Limitation on Sales Commissions and Fees for Foreign Governments.* In accordance with 6-1305.6, insert the clause in 7-104.107.

7-304 Additional Clauses. The following clauses shall be inserted in fixed-price research and development contracts in accordance with Departmental procedures when it is desired to cover the subject matter thereof.

7-304.1 *Changes.*

CHANGES (1965 JUN)

The Contracting Officer may at any time, by a written order, and without notice to the sureties, if any, make changes, within the general scope of this contract, in any one or more of the following: (i) drawings, designs, or specifications; (ii) method of shipment or packing; and (iii) place of inspection, delivery, or acceptance. If any such change causes an increase or decrease in the cost of, or the time required for performance of, this contract, or otherwise affects any other provisions of this contract, whether changed or not changed by any such order, an equitable adjustment shall be made (i) in the contract price or time of performance, or both, and (ii) in such other provisions of the contract as may be so affected, and the contract shall be modified in writing accordingly. Any claim by the Contractor for adjustment under this clause must be asserted within thirty (30) days from the date of receipt by the Contractor of the notification of change; *provided*, however, that the Contracting Officer, if he decides that the facts justify such action, may receive and act upon any such claim asserted at any time prior to final payment under this contract. Failure to agree to any adjustment shall be a dispute concerning a question of fact within the meaning of the clause of this contract entitled "Disputes". However, nothing in this clause shall excuse the Contractor from proceeding with the contract as changed.

(End of clause)

In the foregoing clause, the period of "thirty (30) days" within which any claim for adjustment must be asserted, may be varied in accordance with Departmental procedures. In accordance with 10 U.S.C. 2306(f), prior to the pricing of any change order that is expected to exceed $100,000, except where the price is based on adequate price competition, established catalog or market prices of commercial items sold in substantial quantities to the general public, or prices set by law or regulation, the contracting officer shall require the contractor to furnish a Certificate of Current Cost or Pricing Data (see 3-807.6) and shall assure the contract includes or is modified to include a defective pricing data clause (see 7-104.29).

7-304.2 *Alterations in Contract.* The clause in 7-105.1(a) may be inserted.

7-304.3 *Approval of Contract.* The clause in 7-105.2 may be inserted.

7-304.4 *Bill of Materials.* In accordance with 7-105.6, the clause set forth therein may be inserted.

7-304.5 *Notice of Shipments.* The clause in 7-105.4 may be inserted.

7-304.6 *Reports of Work.* In accordance with 7-404.6, the clause set forth therein may be inserted.

7-304.7 *Liquidated Damages.* In accordance with 1-310, the clause in 7-105.5 may be inserted.

7-304.8 *Reserved.*

7-304.9 *Reserved.*

7-304.10 *Warranties.* In accordance with 1-324, an appropriate warranty may be inserted.

7-304.11 *Stop Work Orders.* In accordance with 7-105.3, the clause set forth therein may be inserted.

7-304.12 *Term of Performance or Delivery Date.* Insert a clause in accordance with 1-305.5. Clauses in 7-104.92 shall be used as a guide.

INDEMNIFICATION UNDER PUBLIC LAW 85-804 — COST-REIMBURSEMENT TYPE CONTRACTS (1974 APR)

(a) Pursuant to Public Law 85-804 (50 U.S.C. 1431 - 1435) and Executive Order 10789, as amended, and notwithstanding any other provision of this contract, but subject to the following paragraphs of this clause, the Government shall hold harmless and indemnify the Contractor against:

(i) claims (including reasonable expenses of litigation or settlement) by third persons (including employees of the Contractor) for death, personal injury, or loss of, damage to, or loss of use of property;

(ii) loss of or damage to property of the Contractor, and loss of use of such property but excluding loss of profit; and

(iii) loss of, damage to, or loss of use of property of the Government but excluding loss of profit;

to the extent that such a claim, loss or damage (A) arises out of or results from a risk defined in this contract to be unusually hazardous or nuclear in nature and (B) is not compensated by insurance or otherwise. Any such claim, loss or damage within deductible amounts of Contractor's insurance shall not be covered under this clause.

(b) The Government shall not be liable for:

(i) claims by the United States (other than those arising through subrogation) against the Contractor; or

(ii) losses affecting the property of such Contractor;

when the claim, loss or damage was caused by the willful misconduct or lack of good faith on the part of any of the Contractor's directors or officers, or principal officials. For purposes of this clause, the term "*principal officials*" means any of the Contractor's managers, superintendents, or other equivalent representatives who have supervision or direction of:

(A) all or substantially all of the Contractor's business, or

(B) all or substantially all of the Contractor's operations at any one plant or separate location in which this contract is being performed, or

(C) a separate and complete major industrial operation in connection with the performance of this contract.

The Contractor shall not be indemnified under this clause for liability assumed under any contract or agreement unless such assumption of liability has been specifically authorized by the Secretary and approved by the Contracting Officer (or in contracts with the Department of the Navy, *The Department*). When the Government has assumed liability for subcontracts, the term "*Contractor*" in this paragraph (b) shall include subcontractors.

(c) No payment shall be made by the Government under this clause unless the amount thereof shall first have been certified to be just and reasonable by the Secretary or his representative designated for such purpose. The rights and obligations of the parties under this clause shall survive the termination, expiration, or completion of this contract. The Government may discharge its liability under this paragraph by making payments to the Contractor or directly to parties to whom the Contractor may be liable.

(d) With the prior written approval of the Contracting Officer, the Contractor may include in any subcontract under this contract, the same provisions as those in this clause, whereby the Contractor shall indemnify the subcontractor against any risk defined in this contract to be unusually hazardous or nuclear in nature. Such a subcontract shall provide the same rights and duties, and the same provisions for notice, furnishing of evidence or proof, and the like, between the Contractor and the subcontractor as are established by this clause. The Contracting Officer may also approve similar indemnification of subcontractors at any tier upon the same terms and conditions. Subcontracts providing for indemnification within the purview of this clause shall provide for the prompt notification to the Contracting Officer of any claim or action against, or of any loss by, the subcontractor which is covered by this clause, and shall entitle the Government at its election, to control or assist in the settlement or defense of any such claim or action. The Government shall indemnify the Contractor with respect to his obligations to subcontractors under subcontract provisions thus approved by the Contracting Officer. The Government may discharge its obligations under this paragraph by making payments directly to subcontractors or to parties to whom the subcontractor may be liable.

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(e) If insurance coverage or other financial protection program approved by the Secretary is reduced, the liability of the Government under this clause shall not be increased by reason of such reduction.

(f) In addition to the Contractor's responsibilities under the "Insurance — Liability to Third Persons" clause of this contract, which are hereby made applicable to claims under this clause, the Contractor shall (i) promptly notify the Contracting Officer of any claim or action against, or of any loss by, the Contractor or any subcontractor which reasonably may be expected to involve indemnification under this clause, (ii) furnish evidence or proof of any claim, loss or damage covered by this clause in the manner and form required by the Government, and (iii) to the extent required by the Government, permit and authorize the Government to direct, control or assist in the settlement or defense of any such claim or action. The cost of insurance (including self insurance), covering a risk defined in this contract as unusually hazardous or nuclear in nature shall not be reimbursed either as a direct or indirect cost except to the extent that such insurance has been required or approved under the "Insurance—Liability to Third Persons" clause hereof.

(g) "Limitation of Cost" / "Limitation of Funds" clauses of this contract do not apply to the Government's obligations under this clause. Such obligations shall be excepted from the release required under the "Allowable Cost" clause of this contract.

(End of clause)

7-403.58 *Preference for United States Flag Air Carriers.* In accordance with 1-336.1(b), insert the clause in 7-104.95.

7-403.59 *Submission of Commercial Freight Bills to the General Services Administration for Audit.* In accordance with 19-403.2(c), insert the clause in 7-204.61.

7-403.60 *Privacy Act.* In accordance with 1-327.1, insert the clause in 7-104.96.

7-403.61 *Preference for Domestic Specialty Metals.* In accordance with 7-104.93, insert the applicable clause therein.

7-403.62 *Exclusionary Policies and Practices of Foreign Governments.* In accordance with 6-1312, insert the clause in 7-104.97.

7-403.63 *Hazardous Material Identification and Material Safety Data.* In accordance with 1-323.2(b), insert the clause in 7-104.98.

7-403.64 *Overseas Distribution of Defense Subcontracts.* In accordance with 1-340, insert the clause in 7-104.78.

7-403.65 *Reserved.*

7-403.66 *Limitation on Sales Commissions and Fees for Foreign Governments.* In accordance with 6-1305.6, insert the clause in 7-104.107.

7-404 Additional Clauses. The following clauses shall be inserted in accordance with Departmental procedures when it is desired to cover the subject matter thereof in such contracts.

7-404.1 *Changes.*

CHANGES (1967 APR)

(a) The Contracting Officer may at any time, by a written order, and without notice to the sureties, if any, make changes, within the general scope of this contract, in any one or more of the following:

(i) drawings, designs, or specifications;

(ii) method of shipment or packing; and

(iii) place of inspection, delivery, or acceptance.

(b) If any such change causes an increase or decrease in the estimated cost of, or the time required for the performance of any part of the work under this contract, whether changed or not changed by any such order, or otherwise affects any other provision of this contract, an equitable adjustment shall be made:

(i) in the estimated cost or delivery schedule, or both;

(ii) in the amount of any fixed fee to be paid to the Contractor; and

(iii) in such other provisions of the contract as may be affected, contract shall be modified in writing accordingly

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(14) Ensure that all facilities and company activities are nonsegregated except that separate or single-user toilet and necessary changing facilities shall be provided to assure privacy between the sexes.

(15) Document and maintain a record of all solicitations of offers for subcontracts from minority and female construction contractors and suppliers, including circulation of solicitations to minority and female contractor associations and other business associations.

(16) Conduct a review, at least annually, of all supervisors' adherence to and performance under the Contractor's EEO policies and affirmative action obligations.

(h) Contractors are encouraged to participate in voluntary associations which assist in fulfilling one or more of their affirmative action obligations ((g)(1) through (16)). The efforts of a contractor association, joint contractor-union, contractor-community, or other similar group of which the contractor is a member and participant, may be asserted as fulfilling any one or more of its obligations under (g)(1) through (16) of this clause provided that the contractor actively participates in the group, makes every effort to assure that the group has a positive impact on the employment of minorities and women in the industry, ensures that the concrete benefits of the program are reflected in the Contractor's minority and female workforce participation, makes a good faith effort to meet its individual goals, and can provide access to documentation which demonstrates the effectiveness of actions taken on behalf of the Contractor. The obligation to comply, however, is the Contractor's and failure of such a group to fulfill an obligation shall not be a defense for the Contractors noncompliance.

(i) A single goal for minorities and a separate single goal for women have been established. The Contractor, however, is required to provide equal employment opportunity and to take affirmative action for all minority groups, both male and female, and all women, both minority and nonminority. Consequently, the Contractor may be in violation of the Executive Order if a particular group is employed in a substantially disparate manner (for example, even though the Contractor has achieved its goals for women generally, the Contractor may be in violation of the Executive Order if a specific minority group of women is underutilized).

(j) The Contractor shall not use the goals or affirmative action standards to discriminate against any person because of race, color, religion, sex, or national origin.

(k) The Contractor shall not enter into any subcontract with any person or firm debarred from Government contracts pursuant to Executive Order 11246.

(l) The Contractor shall carry out such sanctions and penalties for violation of this clause and of the Equal Opportunity clause, including suspension, termination and cancellation of existing subcontracts as may be imposed or ordered pursuant to Executive Order 11246, as amended, and its implementing regulations, by the Office of Federal Contract Compliance Programs. Any Contractor who fails to carry out such sanctions and penalties shall be in violation of this clause and Executive Order 11246, as amended.

(m) The Contractor, in fulfilling its obligations under this clause shall implement specific affirmative action steps, at least as extensive as those standards prescribed in paragraph (g) of this clause, so as to achieve maximum results from its efforts to ensure equal employment opportunity. If the Contractor fails to comply with the requirements of the Executive Order, the implementing regulations, or this clause, the Director shall proceed in accordance with 41 CFR 60-4.8.

(n) The Contractor shall designate a responsible official to monitor all employment related activity to ensure that the company EEO policy is being carried out, to submit reports relating to the provisions hereof as may be required by the Government and to keep records. Records shall at least include for each employee the name, address, telephone numbers, construction trade, union affiliation if any, employee identification number when assigned, social security number, race, sex, status (*e.g.*, mechanic, apprentice, trainee, helper, or laborer), dates of changes in status, hours worked per week in the indicated trade, rate of pay, and locations at which the work was performed. Records shall be maintained in an easily understandable and retrievable form; however, to the degree that existing records satisfy this requirement, contractors shall not be required to maintain separate records.

(o) Nothing herein provided shall be construed as a limitation upon the application of other laws which establish different standards of compliance or upon the application of requirements for the hiring of local or other area residents (*e.g.*, those under the Public Works Employment Act of 1977 and the Community Development Block Grant Program).

(End of clause)

7-603.61 *Overseas Distribution of Defense Subcontracts.* In accordance with 1-340, insert the clause in 7-104.78.

7-604 Additional Clauses. The following clauses shall be inserted in contracts when it is desired to cover the subject matter thereof in such contracts.

7-604.1 *Alterations in Contract.* (See 16-501.1(viii).) The following clause may be used if applicable, in negotiated contracts when Standard Form 23 is not used:

ALTERATIONS (1961 JAN)

The following alterations were made in this contract before it was signed by the parties hereto.

(End of clause)

7-604.2 *Approval of Contract.* The contract clause in 7-105.2 may be inserted.

7-604.3 *Layout of Work.* The following clause is authorized for use in construction contracts when appropriate.

LAYOUT OF WORK (1965 JAN)

The Contractor shall lay out his work from Government established base lines and bench marks indicated on the drawings and shall be responsible for all measurements in connection therewith. The Contractor shall furnish, at his own expense, all stakes, templates, platforms, equipment, tools, and materials and labor as may be required in laying out any part of the work from the base lines and bench marks established by the Government. The Contractor will be held responsible for the execution of the work to such lines and grades as may be established or indicated by the Contracting Officer. It shall be the responsibility of the contractor to maintain and preserve all stakes and other marks established by the Contracting Officer until authorized to remove them. If such marks are destroyed, by the Contractor or through his negligence, prior to their authorized removal, they may be replaced by the Contracting Officer at his discretion. The expense of replacement will be deducted from any amounts due or to become due the Contractor.

(End of clause)

(2) "*Safety precaution areas*" means those portions of approach-departure clearance zones and transitional zones where placement of objects incident to contract performance might result in vertical projections at or above the approach-departure clearance surface or the transitional surface.

(A) The "approach-departure clearance surface" is an extension of the primary surface and the clear zone at each end of each runway, for a distance of 50,000 feet, first along an inclined plane (glide angle) and then along a horizontal plane, both flaring symmetrically about the runway centerline extended. The inclined plane (glide angle) begins in the clear zone 200 feet past the end of the runway (and primary surface) at the same elevation as the end of the runway, and continues upward at a slope of 50:1 (one foot vertically for each 50 feet horizontally) to an elevation of 500 feet above the established airfield elevation; at that point the plane becomes horizontal, continuing at that same uniform elevation to a point 50,000 feet longitudinally from the beginning of the inclined plane (glide angle) and ending there. The width of the surface at the beginning of the inclined plane (glide angle) is the same as the width of the clear zone; thence it flares uniformly, reaching the maximum width of 16,000 feet at the end.

(B) The "approach-departure clearance zone" is the ground area under the approach-departure clearance surface.

(C) The "transitional surface" is a sideways extension of all primary surfaces, clear zones, and approach-departure clearance surfaces along inclined planes. The inclined plane in each case begins at the edge of the surface. The slope of the inclined plane is 7:1 (one foot vertically for each 7 feet horizontally), and it continues to the point of intersection with the inner horizontal surface (which is the horizontal plane 150 feet above the established airfield elevation) or the outer horizontal surface (which is the horizontal plane 500 feet above the established airfield elevation), whichever is applicable.

(D) The "transitional zone" is the ground area under the transitional surface. (It adjoins the primary surface, clear zone and approach-departure clearance zone.)

(c) The Contractor shall report to the Contracting Officer before initiating any work and shall notify him of proposed changes of locations and operations.

(d) Neither equipment nor personnel shall use any runway for purposes other than aircraft operation without permission of the Contracting Officer unless the runway is closed by order of the Contracting Officer and marked as provided in (e)(2) below.

(e)(1) The Contractor shall place nothing upon the landing areas without authorization of the Contracting Officer.

(2) Unless otherwise authorized by the Contracting Officer, the Contractor shall outline those landing areas hazardous to aircraft, with red flags by day, and with electric, battery-operated, low-intensity red flasher lights by night.

(3) Before entering any landing area at an airfield where flying is controlled, additional permission must be obtained every time from the control tower operator, unless the landing area is marked as hazardous to aircraft in accordance with (2) above.

(4) All vehicles which the Contractor operates in landing areas shall be identified by means of a flag on a staff attached to and flying above the vehicle. The flag shall be three feet square and shall consist of a checkered pattern of international orange and white squares of one foot on each side (except that the flag may vary up to 10 percent from each of these dimensions).

(5) Unless otherwise authorized by the Contracting Officer, all other equipment and materials in the landing areas shall be marked with red flags by day, and with electric, battery-operated, low-intensity red flasher lights by night.

(6) Work shall be carried on so as to leave that portion of the landing area which is available to aircraft free from hazards, holes, piles of material, and projecting shoulders that might damage an airplane tire.

(f)(1) The Contractor shall place nothing upon the safety precaution areas without authorization of the Contracting Officer.

(2) Unless otherwise authorized by the Contracting Officer, all equipment and materials in safety precaution areas shall be marked with red flags by day, and with electric, battery-operated, low-intensity red flasher lights by night.

(3) All objects, placed in safety precaution areas, which project above the approach-departure clearance surface or above the transitional surface must be provided at night with a red light or red lantern.

(g) The Contractor shall keep all paved surfaces, such as runways, taxiways, and hardstands, clean at all times and, specifically, free from small stones which might damage aircraft propellers or jet aircraft.

(h) While work is actually being performed on the airfield by the Contractor, the operation of mobile equipment shall be governed by the safety provisions above. At all other times all mobile equipment shall be removed to locations approved by the Contracting Officer at a distance of at least 750 feet from the runway centerline plus any additional distance necessary to insure compliance with the other provisions of this clause.

(i) Only those trenches may be opened for which material is on hand and ready for placing therein. As soon as practicable after material has been placed and work approved, trenches shall be backfilled and compacted as required by the contract. Meanwhile all hazardous conditions shall be marked and lighted in accordance with the other provisions of this clause.

(End of clause)

* At some airfields the width of the primary surfaces is 1500 feet (750 feet on each side of the runway centerline). In such instances substitute the proper width in the clause.

7-606.19 *Limitation on Sales Commissions and Fees for Foreign Governments.* In accordance with 6-1305.6, insert the clause in 7-104.107.

7-606.20 *Reserved.*

7-606.21 *Reserved.*

7-606.22 *Cost Accounting Standards.* In accordance with 3-1204, insert the clauses in 7-104.83.

7-606.23 *Capture and Detention.* In accordance with 10-406, insert the clause in 7-104.94.

7-606.24 *Value Engineering.* A VE Incentive or Program Requirement clause may be included in Cost-Reimbursement Type construction contracts at the discretion of the Contracting Officer. Use 7-602.50 or 7-104.44 (as modified by 7-204.32(b) or (c)) to suit the procurement.

7-606.25 *Patent Rights.* In accordance with 9-701 and 18-908, insert the appropriate clause in 7-302.23.

7-606.26 *Filing of Patent Applications.* In accordance with 9-106, insert the clause in 7-104.6.

7-606.27 *Reporting of Royalties.* In accordance with 9-110(d), insert the clause in 7-104.8(a).

7-606.28 *Privacy Act.* In accordance with 1-327.1, insert the clause in 7-104.96.

7-606.29 *Preference for Domestic Specialty Metals.* In accordance with 7-104.93, insert the applicable clause therein.

7-606.30 *Exclusionary Policies and Practices of Foreign Governments.* In accordance with 6-1312, insert the clause in 7-104.97.

7-606.31 *Hazardous Material Identification and Material Safety Data.* In accordance with 1-323.2(b), insert the clause in 7-104.98.

7-606.32 *Overseas Distribution of Defense Subcontracts.* In accordance with 1-340, insert the clause in 7-104.78.

(i) credits to, or adjustment of the prices of, the related contracts, subcontracts, or purchase orders benefiting from the use of the modernized or replacement equipment; or
(ii) payment to the Government through the Contracting Officer having cognizance of the Government production and research property; or
(iii) such other means as may be mutually agreed to.

(End of clause)

7-705.23 *Aircraft, Missile, and Space Vehicle Accident Reporting and Investigation.* In accordance with 7-104.81, insert the clause therein.

7-705.24 *Safety Precautions for Ammunition and Explosives.* In accordance with 7-104.79, insert the clause therein.

7-705.25 *Notice of Radioactive Materials.* In accordance with 7-104.80, insert the clause therein.

7-705.26 *Procurement of Miniature and Instrument Ball Bearings.* In accordance with 1-2207.3, insert the clause in 7-104.38.

7-705.27 *Reserved.*

7-705.28 *Cost Accounting Standards.* In accordance with 3-1204, insert the clauses in 7-104.83.

7-705.29 *Term of Performance or Delivery Date.* When applicable, a clause in accordance with 7-104.92 may be used.

7-705.30 *Preference for United States Flag Air Carriers.* In accordance with 1-336.1(b), insert the clause in 7-104.95.

7-705.31 *Privacy Act.* In accordance with 1-327.1, insert the clause in 7-104.96.

7-705.32 *Preference for Domestic Specialty Metals.* In accordance with 7-104.93, insert the applicable clause therein.

7-705.33 *Reserved.*

7-705.34 *Overseas Distribution of Defense Subcontracts.* In accordance with 1-340, insert the clause in 7-104.78.

7-902.35 *Cost Accounting Standards.* In accordance with 3-1204, insert the clauses in 7-104.83.

7-902.36 *Term of Performance or Delivery Date.* When applicable, a clause in accordance with 7-104.92 may be used.

7-902.37 *Availability of Funds.* In accordance with 1-318, insert one of the clauses in 7-104.91.

7-902.38 *Capture and Detention.* In accordance with 10-406, insert the clause in 7-104.94.

7-902.39 *Warranty of Technical Data.* In accordance with 1-324.6, insert the clause in 7-104.9(o).

7-902.40 *Preference for United States Flag Air Carriers.* In accordance with 1-336.1(b), insert the clause in 7-104.95.

7-902.41 *Privacy Act.* In accordance with 1-327.1, insert the clause in 7-104.96.

7-902.42 *Preference for Domestic Specialty Metals.* In accordance with 7-104.93, insert the applicable clause therein.

7-902.43 *Exclusionary Policies and Practices of Foreign Governments.* In accordance with 6-1312, insert the clause in 7-104.97.

7-902.44 *Hazardous Material Identification and Material Safety Data.* In accordance with 1-323.2(b), insert the clause in 7-104.98.

7-902.45 *Overseas Distribution of Defense Subcontracts.* In accordance with 1-340, insert the clause in 7-104.78.

7-902.46 *Reserved.*

7-902.47 *Limitations on Sales Commissions and Fees for Foreign Governments.* In accordance with 6-1305.6, insert the clause in 7-104.107.

Part 10—Stevedoring Contracts

7–1000 Scope of Part. This Part sets forth uniform contract clauses for use in stevedoring contracts as defined in 22–401. These clauses are to be used in addition to other required or applicable clauses set forth in Part 19 of this Section.

7–1001 Technical Provisions. The following clauses or appropriate revisions in accordance with 22–404 shall normally be included in all stevedoring contracts.

7–1001.1 *Scope of Contract.*

SCOPE OF CONTRACT (1964 AUG)

(a) *General.* The Contractor shall load and discharge cargoes and in connection therewith shall perform all the duties of a stevedore on any vessel which the Contracting Officer may designate at ..... upon the terms and conditions hereinafter set forth for the term of this contract, beginning ..... and ending.....; *provided*, however, that any work started before and not completed by the expiration of this contract shall be governed by the terms of this contract unless otherwise directed by the Contracting Officer.

(b) *Contractor's Duties.*

(1) *Loading.* In loading vessel, the Contractor shall remove and handle cargo from place of rest on pier or in pier shed or within the cargo assembly area; also from open-top railroad cars, trucks and trailers alongside ship; also from barges, lighters, scows, car floats and open-top railroad cars on car floats alongside ship. The Contractor shall stow said cargo in any space in the vessel, including bunker space, holds, 'tween decks, on deck, and deep tanks, in the order directed by and in a manner satisfactory to the Contracting Officer.

(2) *Discharging.* In discharging vessel, the Contractor shall remove and handle cargo from any space in the vessel, including bunker space, holds, 'tween decks, on deck, and deep tanks. The Contractor shall land said cargo at place of rest on pier or in pier shed or within the cargo assembly area; also on open-top railroad cars, trucks and trailers alongside ship; also on barges, lighters, scows, car floats and open-top railroad cars on car floats alongside ship. The Contractor shall perform such discharging in the order directed by and in a manner satisfactory to the Contracting Officer.

(3) *Handling Explosives.* In addition to (1) and (2) above, the following provisions are applicable to the loading and discharging of explosives:

(*a*) In loading explosives the Contractor shall perform all the stevedoring services necessary for the breaking-out and discharging from railroad cars, trucks and/or lighters alongside ship or from place of rest on pier, transporting to the vessel, and properly loading, stowing and normal securing and chocking in the vessel in a manner directed by applicable U.S. Coast Guard, Army, or Navy regulations.

(*b*) In discharging explosives the Contractor shall perform all stevedoring services necessary for discharging cargo from the vessel to place of rest on pier or the transporting to and loading into railroad cars, trucks and/or lighters. The Contractor shall also prepare and line the cars for handling the cargo (except the laying of new flooring) and shall brace, secure, cut bands, and lash the cargo in the cars in accordance with applicable regulations and shall place "explosive" placards on the cars prior to release, and shall close and seal all doors.

(*c*) The furnishing and preparation of gates, studs, new flooring, etc., for blocking railroad cars, as well as prefabrication of blocking in the vessel's hold, will be at the expense of the Government.

(*d*) The Contractor shall not be compensated for standby time when caused by slow-up or delay of one of his operations, which delay directly affects the other operations, such as delay in loading railroad cars, or in discharging from ship's hatches, unless such slow-up or delay was beyond the control and without the fault or negligence of the Contractor. This does not include the time required for shifting railroad cars. No standby time will be allowed unless previously approved by the Contracting Officer.

7–2003.30 *Bid Samples.*

(a) In accordance with 2–202.4(e), insert the following provision.

BID SAMPLES (1974 APR)

(a) Bid samples, in the quantities, sizes, etc., required for the items so indicated in this Invitation for Bids, must be furnished as a part of the bid and must be received before the time set for opening bids. Samples will be tested or evaluated to determine compliance with all characteristics listed for such test or evaluation in this Invitation for Bids.

(b) Failure of samples to conform to all such characteristics will require rejection of the bid. Failure to furnish samples by the time specified in the Invitation for Bids will require rejection of the bid, except that a late sample transmitted by mail may be considered under the provision for considering late bids, as set forth elsewhere in this Invitation for Bids.

(c) Products delivered under any resulting contract shall conform to the approved sample as to the characteristics listed for test or evaluation and shall conform to the specifications as to all other characteristics.

(End of provision)

(b) When bid samples are to be waived in accordance with 2–202.4(f), insert the following provision.

WAIVER OF BID SAMPLES (1974 APR)

The requirement for furnishing samples may be waived as to a bidder if (i) the bidder states in his bid that the product he is offering to furnish is the same as a product he has offered to the purchasing office on a previous procurement and (ii) the Contracting Officer determines that such product was previously procured or tested by the purchasing office and found to comply with specification requirements conforming in every material respect to those in this Invitation for Bids.

(End of provision)

The contracting officer may designate in lieu of purchasing office, an alternate activity or office. When considered necessary because of the nature of the products, the provision above may be limited to provide for waiving the requirement only if the product offered is produced at the same plant at which the product previously procured or tested was produced.

7–2003.31 *Requirement for Descriptive Literature.*

(a) In accordance with 2–202.5(d)(2), insert the following provision.

REQUIREMENT FOR DESCRIPTIVE LITERATURE

(a) Descriptive literature as specified in this Invitation for Bids must be furnished as a part of the bid and must be received before the time set for opening bids. The literature furnished must be identified to show the item in the bid to which it pertains. The descriptive literature is required to establish, for the purposes of bid evaluation and award, details of the products the bidder proposes to furnish as to (*).

(b) Failure of descriptive literature to show that the product offered conforms to the specifications and other requirements of this Invitation for Bids will require rejection of the bid. Failure to furnish the descriptive literature by the time specified in the Invitation for Bids will require rejection of the bid, except that if the material is transmitted by mail and is received late, it may be considered under the provisions for considering late bids, as set forth elsewhere in this Invitation for Bids.

(End of provision)

(*See footnotes on following page*)

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CONTRACT CLAUSES AND SOLICITATION PROVISIONS

*The contracting officer shall insert significant elements such as design, materials, components, or performance characteristics; or methods of manufacture, construction, assembly, or operation, as appropriate.

(b) When requirements for descriptive literature are to be waived in accordance with 2-202.5(e), the provision in (a) above shall be modified by adding the following at the end of the clause paragraph (b):

The requirements for furnishing descriptive literature may be waived as to a bidder if (i) the bidder states in his bid that the product he is offering to furnish is the same as a product he has previously furnished to the purchasing office under a prior contract and the bidder identifies the contract, and (ii) the Contracting Officer determines that such product meets the requirements of this Invitation for Bids. (1974 APR)

The contracting officer may designate in lieu of purchasing office, an alternate activity or office. A bidder may submit his bid either on the basis of the descriptive literature to be furnished or on the basis of a previously procured product. If he elects to submit his bid on one basis, he is precluded from having his bid considered on the alternative basis after bids are opened.

7-2003.32 *Notice of Small Business-Small Purchase Set-Aside.* In accordance with 1-702(c), insert the following clause.

NOTICE OF SMALL BUSINESS-SMALL PURCHASE SET-ASIDE (1980 AUG)

Quotes under this acquisition are solicited from small business concerns only, and this acquisition is to be made only from a small business concern. This action is based on Section 221(j) of Public Law 95-507. Quotes received from firms that are not small business concerns shall not be considered and shall be rejected.

(End of clause)

7-2003.33 *Reserved.*

7-2003.34 *Reserved.*

7-2003.35 *Discounts.* In accordance with 2-407.3, insert the following clause.

DISCOUNTS (1982 JUN)

Paragraph 9(a) of Standard Form 33-A, "Solicitation Instructions and Conditions," is deleted, and prompt payment discounts will not be considered in the evaluation of offers. However, any offered discount will form a part of the award, and will be taken if payment is made within the discount period indicated in the offer by the offeror. As an alternative to offering a prompt payment discount in conjunction with the offer, offerors awarded contracts may include prompt payment discounts on individual invoices.

(End of clause)

TERMINATION OF CONTRACTS

8-101.10 *Other work* means any current or scheduled work of the contractor, whether Government or commercial, other than work related to the terminated contract.

8-101.11 *Partial termination* means the termination of a part, but not all, of the work which has not been completed and accepted under a contract.

8-101.12 *Plant clearance period* means a period beginning with the effective date of the termination for convenience and ending, for each particular property classification (such as raw materials, purchased parts, and work in process) at any one plant or location, 90 days after receipt by the termination contracting officer (TCO) of acceptable inventory schedules covering all items of that particular property classification in the termination inventory at that plant or location, or ending on such later date as may be agreed to by the TCO and the contractor. Final phase of a plant clearance period means that part of a plant clearance period after the receipt of acceptable inventory scheduled covering all items of the particular property classification at the plant or location.

8-101.13 *Plant equipment* means personal property of a capital nature (consisting of equipment, machine tools, test equipment, furniture, vehicles, and accessory and auxiliary items, but excluding special tooling and special test equipment) used or capable of use in the manufacture of supplies or in the performance of services or for any administrative or general plant purpose.

8-101.14 *Prime contract* means any contract as defined in 1-201.4 entered into by any Department or procuring activity.

8-101.15 *Industrial plant equipment* means that part of plant equipment with an acquisition cost of $5,000 or more which is listed in 13-312 and is reportable to the Defense Supply Agency for screening in accordance with 24-205.3.

8-101.16 *Salvage* means property which, because of its worn, damaged, deteriorated, or incomplete condition, or specialized nature, has no reasonable prospect of sale or use as serviceable property without major repairs or alterations but which has some value in excess of its scrap value.

8-101.17 *Scrap* means property that has no reasonable prospect of being sold except for the recovery value of its basic material content.

8-101.18 *Serviceable or usable property* means property that has reasonable prospect of sale or use either in its existing form or after minor repairs or alterations.

8-101.19 *Settlement agreement* means a written agreement in the form of an amendment to the contract, between the contractor and the Government settling all or a severable portion of a settlement proposal.

8-101.20 *Settlement proposal* means a termination claim submitted by a contractor or subcontractor in the form, and supported by the data, required by this Section.

8-101.21 *Special machinery and equipment* means that part of plant equipment which was acquired or constructed solely for the performance of the terminated contract or the terminated contract and other Government contracts, and as to which the contractor claims loss of useful value.

8-101.22 *Special tooling* shall have the meaning given in 13-101.5.

8-101.23 *Special test equipment* shall have the meaning given in 13-101.6.

TERMINATION OF CONTRACTS

8–101.24 *Subcontract* means any contract as defined in 1–201.4 other than a prime contract, entered into by a prime contractor or a subcontractor, calling for supplies or services required for the performance of any one or more prime contracts.

8–101.25 *Termination claim* means any claim by a contractor or subcontractor, permitted by the terms of a prime contract, for compensation for the termination, in whole or in part, of the prime contract or a subcontract thereunder, and any other claim which this Section authorizes to be asserted and settled in connection with a termination settlement.

8–101.26 *Termination inventory* means any items of physical property purchased, supplied, manufactured, furnished, or otherwise acquired for performance of the terminated contract and properly allocable to the terminated portion of the contract. The term does not include any facilities, special test equipment, material, or special tooling, which are subject to a separate contract or a special contract provision governing the use or disposition thereof. Termination inventory may include contractor-acquired property and Government-furnished property as defined in 8–101.4 and 8–101.8.

8–101.27 *Terminated portion of the contract* means that portion of a terminated contract which relates to work or end items not already completed and accepted prior to the effective date of termination and which the contractor is not to continue to perform.

8–101.28 *Unadjusted contract changes* are any contract changes or contract provisions as to which a definitive modification is required but has not been executed.

GOVERNMENT PROPERTY

Part 3—Providing Government Property to Contractors

13–301 Providing Facilities.

(a) It is the policy of the Department of Defense that contractors will furnish all facilities required for the performance of Government contracts. Facilities will not be provided to contractors for restoration, replacement, modernization or other purpose except as follows:

(i) for use in a Government owned contractor operated plant operated on a cost-plus-fixed-fee basis;

(ii) for support of industrial preparedness programs;

(iii) when—

(A) the Secretary of the Department or his designee, in the case of new facilities, or an authorized official of the Department in the case of existing Government owned facilities, determines that: (1) the Defense contract cannot be fulfilled by any other practical means, or (2) it is in the public interest; and

(B) the contractor, represented by an executive corporate official, or his equivalent in non-corporate entities, either expresses in writing his unwillingness or financial inability to acquire the necessary facilities with his resources, or explains in writing that time will not permit him to make the necessary arrangements to obtain timely delivery of such facilities to meet defense requirements even though he is willing and financially able to acquire the facilities. In this latter case, existing Government-owned facilities (not new purchases) may be provided until the contractor purchased facilities are delivered and installed;

or

(iv) as components of special tooling (see 13–101.5) or special test equipment acquired or fabricated at Government expense (see 13–101.6).

New facilities shall not be furnished unless existing Government-owned facilities are either inadequate or cannot be economically furnished. In all cases the approval required by 13-302 will be obtained.

(b) In any case, competitive solicitations shall not include an offer by the Government to provide new facilities, nor shall solicitations offer to furnish existing Government facilities that must be moved into plants of contractors unless adequate price competition cannot be otherwise obtained. In the latter case, the contractor statement under (a)(iii)(B) above shall not be required, but contractors shall be required to identify the Government-owned facilities desired to be moved into their plants.

(c) New facilities shall not be provided by the Government where an economical, practical and appropriate alternative exists. Examples include:

(i) procuring from sources not requiring Government-owned facilities;

(ii) requiring the contractors to make full utilization of subcontractors possessing adequate and available capacity;

(iii) having the contractor rent facilities from commercial sources; and

(iv) using existing Government-owned facilities.

(d) New construction or improvements having general utility shall not be provided with appropriations for research or development unless authorized by law.

(e) Facilities shall not be provided by the Government to contractors under this Section solely for non-government use.

(f) Facilities having a unit cost of less than $10,000 shall not be provided to contractors except:

(i) nonprofit institutions of higher education or other nonprofit organizations whose primary purpose is the conduct of scientific research (see 4-116.3);

(ii) contractors operating a Government-owned plant on a fee basis;

(iii) contractors performing on-site at Government installations;

(iv) in contracts which specifically authorize, subject to the contracting officer's approval, the contractor to either acquire or fabricate special tooling or special test equipment and components thereof; or

(v) unavailable from other than Government sources.

(g) Prior to acquiring new facilities listed in the joint DoD handbooks referenced in 13-312 and having an item acquisition cost of $10,000 or more, DoD Industrial Plant Equipment Requisition (DD Form 1419) shall be submitted to the Defense Industrial Plant Equipment Center, Memphis, Tenn. 38114, to ascertain whether existing reallocable Government-owned facilities can be utilized. If the requested facilities are numerically controlled, DD Form 1342, Section VI (page 2)(see F-200.1342), shall be prepared and submitted with the DD Form 1419. No acquisition of any listed item shall be made until a certificate of nonavailability is received from the Defense Industrial Plant Equipment Center (DIPEC). However, prior to issuing a certificate of nonavailability, DIPEC shall determine if technical data (e.g., parts listings, maintenance, overhaul and repair manuals, wiring diagrams, etc.) are available. If it is determined that such data is not available at the time of issuance of the nonavailability certificate for equipment, DIPEC may request, by an appropriate instruction in block 51 of DD Form 1419, that an additional set of the technical (maintenance) data be acquired with the new facilities when they are obtained. This additional set of data shall be delivered to the repository address specified by DIPEC in block 51 of DD Form 1419. In addition to acquiring technical (maintenance) data for new facilities, a description of the features of numerically controlled facilities on DD Form 1342, Section VI (page 2), shall also be acquired (see B-306.1, C-306.1, and F-200.1342). Acquisition of new numerically controlled facilities shall include the requirement for the builder to complete Section VI of DD Form 1342 in triplicate, affix one copy to inside of numerical control cabinet door in a manner to preclude removal or destruction, place two copies in an envelope, and tape to door near the first copy. When warranted by the urgency of the situation, requests for screening may be submitted to

13-306 Providing Special Test Equipment.

13-306.1 *Furnishing Existing Special Test Equipment.* It is the policy of the Department of Defense to offer existing Government-owned special test equipment to contractors when advantageous to the Government in the light of the factors set forth in 13-304. Government-owned components to be incorporated into special test equipment may also be offered in accordance with this policy. These components may be facilities, special test equipment, or cannibalized components of other special test equipment for which there is no further need.

13-306.2 *Acquisition of New Special Test Equipment.* New special test equipment may be acquired by a contractor for the Government when:

(i) advantageous to the Government in the light of the criteria set forth in 13-305.2(b) for special tooling in fixed-price contract, and

(ii) existing Government-owned special test equipment or components thereof cannot be made available.

13-306.3 *Contract Provisions for Acquiring Special Test Equipment.*

(a) In formally advertised procurements, each item or category, if individual items are low in value, of special test equipment to be furnished by the Government or to be acquired or fabricated by the contractor, shall be clearly identified in the invitation for bids.

(b) In negotiated procurements, if the special test equipment or components are known, the contract shall identify each item indicating whether it is to be (i) Government-furnished or (ii) acquired or fabricated by the contractor. Items costing less than $1,000 each may be shown in the aggregate by each category.

(c) In negotiated procurements, if the exact identification of special test equipment to be acquired or fabricated is unknown the contract shall contain the clause in 7-104.26.

13-306.4 *Review and Approval Procedures for Contractor Acquired Special Test Equipment.* Paragraph 7-104.26 requires the contractor to prepare and submit to the contracting officer a 'notice of intent to acquire or fabricate' items of special test equipment. Within thirty days from the date of receipt of the contractor's notice, the ACO shall:

(i) review proposed special test equipment items as to their necessity and classification as "Special;"

(ii) screen requirements other than electronic equipment with DIPEC in accordance with 13-306.5;

(iii) resolve any funding problems with the PCO; and

(iv) notify the contractor of the Government's approval or disapproval of the proposed acquisition or fabrication, or that the equipment will be furnished by the Government.

13-306.5 *Screening Existing Government-owned Special Test Equipment.* To minimize the acquisition of new special test equipment or components thereof, the contracting officer shall, if the acquisition cost of any item or component is $10,000 or more, screen existing Government production and research property to ascertain whether any Government-owned property can be furnished in accordance with the policy set forth in 13-306.1. To accomplish such screening for any property listed in 13-312, DoD Industrial Plant Equipment Requisition (DD

Form 1419) shall be submitted to the Defense Industrial Plant Equipment Center, Memphis, Tenn., 38102. However, DIPEC screening for equipment in FSC 6625 (*Electrical and Electronic Properties Measuring and Testing Instruments*) is not required. When special test equipment is to be acquired in the manner described in 13–306.3(b), the screening shall be accomplished before contract award. When special test equipment is to be acquired in the manner described in 13–306.3(c), the contracting officer shall normally accomplish the screening and notify the contractor of the Government's election within the notice period provided in the Special Test Equipment clause in 7–104.26. Thereafter, the Government-owned items to be furnished shall be promptly shipped to the contractor and the contract shall be equitably adjusted pursuant to the Special Test Equipment clause. However, if the contracting officer determines that the savings anticipated from furnishing Government-owned items would be exceeded by costs that might be incurred as a result of delays or administrative actions, he may, except as to items listed in 13–312, waive the screening and shall immediately advise the contractor that the Government will not furnish the equipment. For items listed in 13–312, when warranted by the urgency of the situation, requests for screening may be submitted to the Defense Industrial Plant Equipment Center by whatever means deemed expedient. When submitting urgent screening requirements other than on a DD Form 1419, the following elements of information must be furnished for each item of equipment:

(i) case number;
(ii) PEC/SCC/NSN;
(iii) description data sufficient to enable DIPEC to make an urgency determination of availability;
(iv) date item required;
(v) name and address of requiring agency;
(vi) contract, appendix, item number and program;
(vii) statement as to whether item is for production or mobilization, replacement or modernization, whether item will be procured if not available from DIPEC, and the date of availability from procurement; and
(viii) assigned urgency rating.

Upon notification of availability by DIPEC, a DD Form 1419 will be submitted to DIPEC for each item accepted by the requestor. However, if DIPEC does not have the item available, or cannot furnish the item within the time specified by the requestor, DIPEC will furnish a statement of nonavailability including a certificate number. This statement will be the official Certificate of Nonavailability and will confirm that the plant equipment item has been screened against the idle inventory.

13–307 Providing Government Production and Research Property When Disposal Is Limited.

(a) *Nonseverable Property.* Government production and research property, other than foundations and similar improvements necessary for the installation of special tooling, special test equipment, and plant equipment (see B–102.10), shall not be installed or constructed on land not owned by the Government in such fashion as to be nonseverable, unless the Head of a Procuring Activity determines that such location is necessary, and:

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(NOTE—Handbooks are for sale by the Superintendent of Documents, U.S. Government Printing Office, Washington, D.C. 20402)

FSC	TITLE	ARMY	NAVY	AIR FORCE	DLA	MARINE CORPS
3424, 4430	Industrial Furnaces and Ovens Volume 1 and 2	SB 708–4430–1	NAVSUP Pub 5502	AFM 78–8	DLAH 4215.4	MCO P4870.8B
6635	Physical Properties Testing Equipment	SB 708–6635–1	NAVSUP Pub 5504	AFM 78–10	DLAH 4215.6	MCO P4870.10C
6636	Environmental Chambers	SB 708–6636–1	NAVSUP Pub 5508	AFM 78–14	DLAH 4215.10	MCO P4870.14C
3422, 3426	Rolling Mills, Drawing Machines and Metal Finishing Equipment	SB 708–3400–2	NAVSUP Pub 5510	AFM 78–15	DLAH 4215.12	MCO P4870.16C
3450, 3460	Portable Machine Tools and Metalworking Machinery Accessories	SB 708–3400–3	NAVSUP Pub 5511	AFM 78–16	DLAH 4215.13	MCO P4870.17B
6650, 6670	Scales, Balances and Optical Instruments	SB 708–6600–2	NAVSUP Pub 5516	AFM 78–25	DLAH 4215.18	MCO P4870.22B
3680	Foundry Equipment	SB 708–3680–1	NAVSUP Pub 5517	AFM 78–23	DLAH 4215.19	MCO P4870.23A
6630, 6640	Chemical Analysis and Laboratory Instruments	SB 708–6600–3	NAVSUP Pub 5529	AFM 78–38	DLAH 4215.30	MCO P4870.35B

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FSC	TITLE	ARMY	NAVY	AIR FORCE	DLA	MARINE CORPS
3620	Rubber and Plastics Working Machinery	SB 708-3620-1	NAVSUP Pub 5534	AFM 78-28	DLAH 4215.35	MCO P4870.40B
3611, 3693, 3695	Marking, Assembly, and Miscellaneous Industry Machinery	SB 708-3600-2	NAVSUP Pub 5535	AFM 78-26	DLAH 4215.36	MCO P4870.41B
3650	Chemical and Pharmaceutical Products Manufacturing Machinery	SB 708-3650-1	NAVSUP Pub 5536	AFM 78-45	DLAH 4215.37	MCO P4870.42A
4940	Miscellaneous Maintenance and Repair Shop Specialized Equipment	SB 708-4940-1	NAVSUP Pub 5537	AFM 78-48	DLAH 4215.38	MCO P4870.43A
3690, 4925	Specialized Ammunition and Ordnance Machinery	SB 708-4900-1	NAVSUP Pub 5538	AFM 78-49	DLAH 4215.39	MCO P4870.44A
3405	Metalworking Saws and Filing Machines	SB 708-3405-1	NAVSUP Pub 5539	AFM 78-34	DLAH 4215.40	MCO P4870.47B
3418	Planers and Shapers (Includes Shapers, formerly Part of FSC 3419)	SB 708-3418-1	NAVSUP Pub 5540	AFM 78-37	DLAH 4215.41	MCO P4870.48A
3431, 3432, 3433, 3436, 3438	Welding, Heat Cutting, and Metalizing Equipment	SB 708-3400-4	NAVSUP Pub 5541	AFM 78-39	DLAH 4215.42	MCO P4870.49A
3408, 3410	Machining Centers, Way Type Machines, Electrical and Ultrasonic Erosion Machines	SB 708-3400-5	NAVSUP Pub 5542	AFM 78-41	DLAH 4215.43	MCO P4870.50B
3419	Miscellaneous Machine Tools	SB 708-3400-6	NAVSUP Pub 5547	AFM 78-46	DLAH 4215.44	MCO P4870.51A
3413	Drilling and Tapping Machines	SB 708-3413-1	NAVSUP Pub 5548	AFM 78-50	DLAH 4215.45	MCO P4870.53B

FSC	TITLE	ARMY	NAVY	AIR FORCE	DLA	MARINE CORPS
3411, 3412, 3414	Boring Machines, Broaching Machines, Gear Cutting and Finishing Machines	SB 708-3400-7	NAVSUP Pub 5549	AFM 78-51	DLAH 4215.46	MCO P4870.55A
3441, 3442, 3443, 3445, 3446, 3447, 3448, 3449	Secondary Metal Forming and Cutting Machines	SB 708-3400-81	NAVSUP Pub 5551	AFM 78-53	DLAH 4215.48	MCO P4870.56A
3416	Metalworking Lathes	SB 708-3416-1	NAVSUP Pub 5552	AFM 78-54	DLAH 4215.49	MCO P4870.57A
5860	Stimulated Coherent Radiation Devices (Lasers)	SB 708-5860-1	NAVSUP Pub 5553	AFM 78-55	DLAH 4215.50	MCO P4870.58B
3415	Grinding Machines	SB 708-3415-1	NAVSUP Pub 5554	AFM 78-56	DLAH 4215.51	MCO P4870.59
3417	Milling Machines	SB 708-3417-1	NAVSUP Pub 5555	AFM 78-57	DLAH 4215.52	MCO P4870.60A
3670	Specialized Semiconductor, Microelectronic Circuit Board Manufacturing Machinery	SB 708-3670-1	NAVSUP Pub 5557	AFM 78-58	DLAH 4215.53	MCO P4870.61

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SECTION XXIV

PERSONAL PROPERTY IN POSSESSION OF CONTRACTORS

24–000 Scope and Applicability of Section. This Section establishes uniform policies and procedures relating to the reporting, redistribution, and disposal of property which forms the basis of a claim against the Government, and other excess property when title is vested in the Government (see 24–101.5). This Section is not applicable to the disposal of real property or to property where the Government has a lien or title solely as a result of advance or progress payments when such payments have been liquidated.

24–001 Policy. It is the policy of the Department of Defense, notwithstanding the absence of any contractual provision relating to a plant clearance period, to effect plant clearance of property to which this Section applies as quickly as possible, consistent with efficient operation. Disposition shall be effected with the view of achieving maximum economic reutilization of excess property or of obtaining the greatest possible return on the sale of surplus property.

PERSONAL PROPERTY IN POSSESSION OF CONTRACTORS

Part 1—General

24–101 Definitions. As used in this Section, the following terms have the meaning stated below.

24–101.1 *Automatic Release Date (ARD)* means the date on which screening for Federal utilization is completed and the property is determined not to be needed for any Federal use. The date signifies the transition from excess to surplus, but does not include the donation screening period.

24–101.2 *Common item* means material which is common in nature to the applicable Government contract and the contractor's other work.

24–101.3 *Contract auditor* means the Defense Contract Audit Agency (DCAA) auditor assigned the responsibility for performing financial reviews and analyses requiring access to the contractor's records supporting cost data.

24–101.4 *Contractor-acquired property* means property procured or otherwise provided by the contractor for the performance of a contract, whether or not the Government has title by the terms of the contract, or exercises its contractual right to take title.

24–101.5 *Contractor inventory* means:

(i) any property acquired by and in the possession of a contractor or subcontractor (including Government-furnished property) under a contract pursuant to the terms of which title is vested in the Government, and in excess of the amounts needed to complete full performance under the entire contract; and

(ii) any property which the Government is obligated to or has an option to take over under any type of contract as a result either of any changes in the specifications or plans thereunder or of the termination of such contract (or subcontract thereunder), prior to completion of the work, for the convenience or at the option of the Government.

24–101.6 *Demilitarization* means the act of destroying the military offensive or defensive characteristics inherent in certain types of equipment or material so as to prevent their further military or lethal use.

24–101.7 *Departmental excess property* means contractor inventory which has been determined to be excess to the procuring Department (and requiring Department, if that Department is not the procuring Department).

24–101.8 *Disbursing officer* means the officer or agent of the office designated as the paying office under the contract.

24–101.9 *Government-furnished property* is property in the possession of, or acquired directly by, the Government and subsequently delivered or otherwise made available to the contractor.

24–101.10 *Industrial plant equipment* means that part of plant equipment with an acquisition cost of $5,000 or more (see 13–312).

24–101.11 *Inventory control point* means an organizational unit within the supply system of a Department which is assigned the primary responsibility for the management of a group of items, either within a particular Department or for the Department of Defense.

complete and specific reasons for screening items normally exempt from screening; and

(v) perishables, property bearing a military security classification, and property dangerous to public health or safety.

(g) Upon completion of screening in accordance with 24-205.2(a), property cited in (f) above, with the exception of (f) (v), will be subject to the provisions of (e) above.

(h) Automatic data processing equipment, including that on lease in which the Government is entitled to rental benefits, shall be screened in accordance with 24-205.8.

(i) Contractor inventory located in foreign countries does not require screening with General Services Administration (GSA) in accordance with 24-205.2 and 24-205.3.

24-205.2 *Procedure.*

(a) *First Through 30th Day.* Promptly upon receipt of acceptable inventory schedules from the contractor, serviceable or usable property shall be screened within the procuring Department (see 5-1101.4) and the requiring Department (see 5-1101.3) if such Department is not the procuring Department. The requiring Department shall have first priority for retention of listed items. Such screening shall be completed within 30 days or less. The schedules shall be transmitted with Standard Form 120, Report of Excess Personal Property, reflecting the ARD and SCD and appropriately identified as contractor inventory.

(b) *31st Through the 75th Day.* Four copies of the inventory schedules reflecting deletions of all retained items shall be mailed or otherwise delivered by the plant clearance officer to the General Services Administration regional office serving the region in which the property is located, not later than the 31st day from and including the day the acceptable schedules were received by the plant clearance officer. The schedules shall be transmitted with Standard Form 120, Report of Excess Personal Property, reflecting the ARD and SCD and appropriately identified as contractor inventory. At the time of transmittal to the General Services Administration, information copies of the revised inventory schedules shall be forwarded to the other Departments whenever aeronautical or electronic material and equipment is involved. When requests for transfers are received from the procuring or requiring Department after the 31st day and prior to receipt of General Services Administration transfer order, the plant clearance officer shall immediately notify the General Services Administration Regional Office that the items have been withdrawn and are no longer available for General Services Administration screening. Notification shall include identification of the applicable Standard Form 120, the contractor's name, location, and contract number. The General Services Administration will prepare and issue circulars and catalogs to all agencies of the Government within the region. Property selected as a result of reviewing the General Services Administration circulars or catalogs will be requested from the General Services Administration Regional Office that issued the circular or catalog. Department of Defense activities requesting listed property will have priority on a "first come-first served" basis for such property through the 60th day. Thereafter, the General Services Administration will honor requests for any agency of the Government for transfer of property on a "first come-first served" basis. The General Services Administration will transmit approved orders and shipping instructions for property to be transferred to the Department of Defense activities from which it received the inventory schedules. Such orders and instructions shall be promptly honored and delivery authorized.

(c) *76th Through 90th Day.* During this period the General Services Administration will provide for the screening of all remaining property by eligible donees for possible donation (see 24-207).

24-205.3 *Procedures for Industrial Plant Equipment.*

(a) *Reporting Idle Industrial Plant Equipment.* Industrial plant equipment, identified in 13-312 and having an acquisition cost of $5,000 or more, shall be listed on DD Form 1342, DoD Property Record (see B-306.1, C-306.1 and F-200.1342). The DD Form 1342 shall be prepared by the contractor and submitted to the assigned Government property administrator for appropriate review and transmittal to the plant clearance officer. If the industrial plant equipment has numerically controlled features, the contractor shall prepare and submit DD Form 1342, Section VI (page 2), Numerically Controlled Machine Data (see F-200.1342). Upon receipt of acceptable DD Form 1342, the plant clearance officer will designate the 75th day from that date as the ARD, with the 90th day from that date as the SCD. The ARD will be entered in block 24 of the DD Form 1342 and shall not be extended, except as provided in (e) below. The plant clearance officer will forward two copies of the DD Form 1342 to the Defense Industrial Plant Equipment Center, Memphis, Tennessee 38114, for all industrial plant equipment in condition codes other than "X." Condition code "X" industrial plant equipment shall be processed in accordance with 24-205.1(e). The DD Form 1342 shall be forwarded to DIPEC within 15 working days after becoming idle. No other distribution of this form will be made by the plant clearance officer.

(b) *Screening—First Through 30th Day.* DIPEC shall screen excess industrial plant equipment against all requirements submitted by Department of Defense activities, including Department of Defense reserve requirements, with priority being given to requirements of the owning Department through the 30th day. DIPEC will issue a shipping instruction containing appropriate accounting, funding, transportation, routing recommendations, and preservation instructions for items selected to the appropriate contract administration office.

(c) *Screening—31st Through 75th Day.* On the 31st day, DIPEC will forward excess data to the applicable General Services Administration regional office for Federal utilization screening through the 75th day. During the period from the 31st through the 75th day, the General Services Administration will approve requests from any agency of the Government on a "first come-first served" basis and will approve and forward transfer orders containing appropriate accounting, funding, transportation, routing recommendations, and preservation instructions to the appropriate contract administration office. The General Services Administration will forward copies of the approved transfer orders to DIPEC.

(d) *Screening—76th Through 90th Day.* During this period the General Services Administration will provide for the screening of all remaining industrial plant equipment for possible donation. The General Services Administration will receive and approve donation applications for industrial plant equipment and will forward approved donation applications, containing appropriate accounting, funding, transportation, routing recommendations, and preservation instructions to the appropriate contract administration office. The General Services Administration will forward copies of the approved donation applications to DIPEC .

(e) If a Department of Defense requirement develops after the 90th day and the item is still available the item will be shipped against such requirement, unless the plant clearance officer has justified and compelling reasons for not making the shipment.

(f) Items of plant equipment with an acquisition cost of less than $5,000, and items of plant equipment with an acquisition cost of more than $5,000 not identified in 13–312, shall not be reported to DIPEC but shall be reported and screened in accordance with 24–205.

(g) The plant clearance officer shall, when IPE has been transferred, donated, sold, destroyed, abandoned, or other disposition taken, assure that the contractor prepares a DD Form 1342 for submission to DIPEC through the Property Administrator within 15 working days. In the case of a transfer of the IPE, assure that the Shipment Status Card or a copy of the completed shipping document is sent to DIPEC.

24–205.4 *Special Screening Procedures.*

(a) *General.* For the special categories of property identified below, standard screening requirements in 24–205 are superseded or modified by the procedure set forth for each category.

(b) *Standard Components of Special Test Equipment.*

(1) Contractors reporting special test equipment for disposal which contain standard, general or multipurpose components will adequately describe the composite unit to clearly reflect its capability and will further list and describe, in sufficient detail to permit screening all such standard components which can be economically removed and reused.

(2) In the event the contractor has a continuing requirement for the standard components to meet other approved special test equipment or facilities requirements, he shall annotate the DD Form 545 to indicate his requirement for such standard components. Screening shall be accomplished in accordance with 24–205.2(a) and the screening activity shall be requested to advise whether they have a requirement for the composite unit or any of the standard components which have not been annotated as being required by the contractor. If the composite unit is not required by the procuring or requiring department (see 24–205.2(a)), the contractor shall have first priority for those standard components which have been approved for transfer by the administrative contracting officer.

(3) Standard components, not categorized as industrial plant equipment, which have not been selected by the contractor or the procuring or requiring departments shall be screened in accordance with 24–205.2(b). If the standard components are categorized as industrial plant equipment and they can be economically removed and reused, and have not been annotated for retention by the contractor, DD Form 545 shall be submitted to DIPEC for screening as industrial plant equipment in accordance with 24–205.3(b), (c) and (d).

(4) Standard components shall not be removed from the composite unit until the requirements for the items have been established. If no requirements exist, the composite units shall be disposed of in accordance with 24–206 and 24–207.

(5) Those items categorized as industrial plant equipment approved for transfer by the administrative contracting officer to fill continuing facilities requirement, will be reported to DIPEC on DD Form 1342 under the procedures prescribed on the facilities reporting.

(c) *Nuclear Materials.*

(1) The possession, use, and transfer of certain nuclear materials are subject to the controls of the United States Nuclear Regulatory Commission (NRC) pursuant to the Atomic Energy Act of 1954, as amended. The materials are:

(i) *by-product material*—meaning any radioactive material (except special nuclear material) yielded in or made radioactive by exposure to the radiation incident to the process of producing or utilizing special nuclear material (see NRC Regulation 10 CFR, Part 30);

(ii) *source material* meaning—

(A) uranium, thorium, or any other material which is determined by NRC pursuant to the provisions of the Atomic Energy Act of 1954, as amended, to be source material, or

(B) ores containing one or more of the foregoing materials, in such concentration as the NRC may, by regulation, determine from time to time (see NRC Regulation 10 CFR, Part 40); and

(iii) *special nuclear material* meaning—

(A) plutonium, uranium enriched in the isotope 233 or in the isotope 235, and any other material which the NRC, pursuant to the provisions of the Atomic Energy Act of 1954, as amended, determines to be special nuclear material, or

(B) any material artificially enriched by any of the foregoing (see NRC Regulation 10 CFR, Part 70).

(2) Excess nuclear material in the categories described above shall be screened with the procuring activity. If there are no requirements, the ultimate method of disposal shall be dependent upon the license issued by the U.S. Nuclear Regulatory Commission or the respective States and pertinent Federal and Service Regulations. Assistance may be solicited on an as needed basis from the following activities having overall knowledge and responsibility for disposal of radioactive material within their respective services:

(i) Army: Commanding General
U. S. Army Materiel Command
ATTN: AMCSF
Washington, D. C. 20315

(ii) Navy: Primary support bureau, command or office.

(iii) Air Force: San Antonio Air Logistics Center
ATTN: SANUTE
Kelly Air Force Base, Texas 78241

(iv) Marine Corps: Commandant of the Marine Corps
Code: CSY
Headquarters, USMC
Washington, D. C. 20380

APPENDIX B—GOVERNMENT PROPERTY IN POSSESSION OF CONTRACTORS

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B–102.6 *Special Test Equipment* means either single or multipurpose integrated test units engineered, designed, fabricated, or modified to accomplish special purpose testing in the performance of the contract. Such testing units comprise electrical, electronic, hydraulic, pneumatic, mechanical, or other items or assemblies of equipment, that are mechanically, electrically, or electronically interconnected so as to become a new functional entity, causing the individual item or items to become interdependent and essential in the performance of special purpose testing in the development or production of particular supplies or services. The term "*special test equipment*" does not include:

(i) material;

(ii) special tooling;

(iii) buildings and nonseverable structures (except foundations and similar improvements necessary for the installation of special test equipment); and

(iv) plant equipment items used for general plant testing purposes.

B–102.7 *Facilities* means industrial property (other than material, special tooling, military property, and special test equipment) for production, maintenance, research, development, or test, including real property and rights therein, buildings, structures, improvements, and plant equipment.

B–102.8 *Real Property*, for purposes of accounting classification, means (i) land and rights therein, (ii) ground improvements, (iii) utility distribution systems, (iv) buildings, and (v) structures. It excludes foundations and other work necessary for the installation of special tooling, special test equipment and plant equipment.

B–102.9 *Utility Distribution System* means a system (including distribution and transmission lines, substations, and installed equipment forming an integral part of the system) by which gas, water, steam, electricity, sewerage, or other utility services are transmitted between (i) the outside of the building or structure in which the services are used, and (ii) the point of origin or disposal, or the connection with some other system. For the purpose of this Appendix, it does not include communication services.

B–102.10 *Plant Equipment* means personal property of a capital nature (consisting of equipment, machine tools, test equipment, furniture, vehicles, and accessory and auxiliary items, but excluding special tooling and special test equipment) used or capable of use in the manufacture of supplies or in the performance of services or for any administrative or general plant purpose.

B–102.11 *Industrial Plant Equipment* (*IPE*) is that part of plant equipment with an acquisition cost of $5,000 or more; used for the purpose of cutting, abrading, grinding, shaping, forming, joining, testing, measuring, heating, treating, or otherwise altering the physical, electrical or chemical properties of materials, components or end items entailed in manufacturing, maintenance, supply, processing, assembly, or research and development operations; and IPE is further identified by noun name in Joint DoD Handbooks

B–102.12 *Other Plant Equipment* (*OPE*) is that part of plant equipment, regardless of dollar value, which is used in or in conjunction with the manufacture of components or end items relative to maintenance, supply, processing, assembly or research and development operations; but excluding items categorized as IPE.

B–102.13 *Accessory Item* means an item which facilitates or enhances the operation of plant equipment but which is not essential for its operation, such as remote control devices.

B–102.14 *Auxiliary Item* means an item without which the basic unit of plant equipment cannot operate, such as motors for pumps and machine tools.

B–102.15 *Salvage* means property which, because of its worn, damaged, deteriorated, or incomplete condition, or specialized nature, has no reasonable prospect of sale or use as serviceable property without major repairs or alterations, but which has some value in excess of its scrap value.

B–102.16 *Scrap* means property that has no reasonable prospect of being sold except for the recovery value of its basic material content.

B–102.17 *Custodial Records* means written memoranda or identifying checks of any description or type used to control items issued from tool cribs, tool rooms, stockrooms, etc., such as requisitions, issue hand receipts, tool checks, stock record books, etc.

B–102.18 *Individual Item Record* means a separate card form, or document utilized to account for one item of property.

B–102.19 *Stock Record* means a perpetual inventory form of record which shows, by nomenclature, the quantities received and issued and the balances on hand.

B–102.20 *Discrepancies Incident to Shipment* means all deficiencies incident to the shipment of Government property to or from a contractor's facility whereby differences exist between the property purported to have been shipped and the property actually received. Such deficiencies include, but are not limited to loss, damage, destruction, improper status and condition coding, error in identity or classification, and improper consignment.

B–102.21 *Military Property* means Government-owned personal property designed for military operations. It includes end-items and integral components of military weapons systems, along with the related peculiar support equipment which is not readily available as a commercial item. It does not include Government material, special test equipment, special tooling or facilities.

B–102.22 *Work-in-Process* for the purpose of financial reporting means material (See B–102.4) which has been released to the production element.

B–103 Segregation or Commingling of Government Property and Contractor's Property. Government property will be segregated and kept physically separate from contractor-owned property. However, when advantageous to the Government and consistent with the contractor's authority to use such property, the property may be commingled:

(a) when the Government property is special tooling, special test equipment or plant equipment which is clearly identified and recorded as Government property;

(b) when approved by the property administrator in connection with research and development contracts;

(c) when material is included in a multicontract cost and material control system approved in accordance with B–303(e)(ii);

(d) when (i) scrap of a uniform nature is produced from both Government-owned and contractor-owned material and physical segregation is impracticable,

(ii) nomenclature or description of item (including identification number and item on which used);
(iii) quantity received or fabricated;
(iv) posting reference and date of transaction;
(v) location;
(vi) disposition;
(vii) unit or group price; and
(viii) retention category (when required by the contract).

(a) In the event group pricing of special tooling is utilized by the contractor, as recognized in B–302.1, unit prices may be computed as and when required.

(b) Retention category, item (viii) above (when applicable), shall be established by the contractor at time of acquisition or fabrication of the item of special tooling. Retention categories as defined below shall be used:

(i) *Assembly tooling*—required for manufacture of the end product but not required for production of spare parts. Those items having no post production need except for potential modification or resumed production programs.
(ii) *Critical Tooling*—those tools within a family of tools absolutely essential to fabricate spare parts and assemblies even at a minimum production rate. This would include basic forming tools and tooling for special processes. Tools within this category are to be further identified as:
(A) *Spares tooling*—required to produce a provisioned spare part or assembly.
(B) *Judgment (insurance) tooling*—fabrication tools for parts that are not provisioned spares but which in the judgment of the contractor will be required at some time for logistic support of the end item.
(C) *Support tooling*—of secondary importance, necessary to economically produce at increased rates but not essential for parts fabrication at low production rates.

This information will be utilized to expedite screening when the special tooling becomes excess to contract requirements. After a major system has gone out of production, this information need not be required for those items of special tooling which have been retained for spares production, overhaul, or repair work.

B–305 Records of Special Test Equipment. The contractor's property control system shall be such as to provide the following minimum information regarding each item of Government-owned special test equipment:

(i) contract number or equivalent code designation;
(ii) nomenclature or description of item (including identification number and item on which used);
(iii) identity of any general purpose test equipment incorporated as components in such a manner that removal and reutilization may be feasible and economical;
(iv) quantity received or fabricated;
(v) posting reference and date of transaction;
(vi) location;
(vii) disposition;

(viii) unit or group price; and
(ix) retention category (when required by the contract).

(a) In event group pricing of special test equipment is utilized by the contractor, as recognized in B–302.1, unit prices may be computed as and when required.

(b) Retention category, item (ix) above (when applicable), shall be established by the contractor at time of acquisition or fabrication of the item of special test equipment. Retention categories defined in B–304(b) will be used for special test equipment. This information will be utilized to expedite screening when the special test equipment becomes excess to contract requirements. After a major system has gone out of production, this information need not be required for those items of special test equipment which have been retained for spare production, overhaul or repair work.

B–306 Records of Plant Equipment.

(a) *Plant Equipment Costing $5,000 or More.* The contractor shall maintain individual item records (manual or mechanized) of each item of Government-owned plant equipment having a unit cost of $5,000 or more which will provide the following minimum information:

(i) Federal Supply Code for Manufacturer (Cataloging Handbooks H4–1, H4–2) and, at the option of the contractor, the name and address of the equipment manufacturer;
(ii) manufacturer's model/part number;
(iii) serial number and year built (when available);
(iv) U.S. Government identification/tag number;
(v) noun name of the item and Federal Supply Classification (Cataloging Handbooks H2–1, H2–2, and H2–3);
(vi) acquisition document reference and date;
(vii) location;
(viii) disposition document reference and date;
(ix) contract number or equivalent code designation;
(x) unit price when equipment is Government-furnished or cost (f.o.b. manufacturer) when contractor acquired. (Unit price will be reduced when accessory and auxiliary items are permanently separated from the basic item of plant equipment.)

DD Form 1342 may be used as a source document for setting up accounting records as prescribed herein.

(b) *Record of Accessory and Auxiliary Equipment.* Accessory and auxiliary equipment which is attached to or otherwise a part of an item of plant equipment or has been acquired for use in connection with a specific item, shall be recorded on the record of the item of plant equipment. In the event the accessory or auxiliary item is not attached to, a part of, or acquired for use with a specific item of plant equipment, it shall be recorded as indicated in B–306(d).

(c) *Record of Manufacturing Systems.* Where plant equipment (including accessory or auxiliary type items is assembled and interconnected to form a single operating unit to perform continuously the same manufacturing process, such equipment may, for property and inventory control purposes, be grouped and recorded as a single item of plant equipment on one plant equipment record in

lieu of an individual item record for each component comprising the item of plant equipment. This does not obviate the requirement for adequately describing the component items on the plant equipment record nor does it preclude the use of more than one plant equipment record form when additional space is required.

(d) *Plant Equipment Costing Less Than $5,000.* Except where individual item records are necessary for effective control, calibration, or maintenance, summary stock records may be maintained for plant equipment costing less than $5,000 per unit. The contractor's property control system shall be such as to provide the following minimum information:

(i) contract number or equivalent code designation;
(ii) noun name, Federal Supply Classification in Cataloging Handbooks H2-1, H2-2 and H2-3;
(iii) manufacturer or Federal Supply Code for the manufacturer and model/part number;
(iv) quantity received;
(v) balance on hand;
(vi) posting reference and date of transaction;
(vii) unit price;
(viii) location (see B-301(g)); and
(ix) disposition.

In addition, where appropriate as determined by the property administrator the serial number and/or Government identification number for each item shall be recorded in a permanent manner in the property records and, upon disposition, lined out or otherwise deleted from the record. DD Form 1342 may be used for individual record cards for items costing less than $5,000.

B-306.1 *Centrally Reportable Industrial Plant Equipment.*

(a) The contractor shall prepare a DD Form 1342 (Appendix F, F-200.1342) for each item of equipment identified as Industrial Plant Equipment (IPE), including items which, though part of a manufacturing system, would otherwise qualify as industrial plant equipment. Section VI (page 2) of the DD Form 1342 will be prepared for each item of IPE with numerically controlled features. General purpose components of special test equipment, which would otherwise qualify as IPE, should not be reported until there is no longer a requirement for the test equipment. The DD Form 1342, including Section VI, as appropriate, will be prepared in accordance with instructions contained in AR 700-43/NAV-SUP PUB 5009/AFM 78-9/DLAM 4215.1, Management of Defense-Owned Industrial Plant Equipment (IPE), at the time (1) of receipt and acceptance of accountability by the contractor; (2) major changes as specified by DLAM 4215.1 occur in the data initially submitted to DIPEC; (3) IPE is no longer required for the purpose authorized or provided; or (4) disposal is completed. The DD Form 1342 prepared at the time IPE is no longer required for the purpose authorized or provided shall reflect all changes in data not previously reported to the Defense Industrial Plant Equipment Center (DIPEC). The contractor shall retain the original of each DD Form 1342 which may be used as the official property record. Copies of the DD Form 1342, including Section VI, as appropriate, shall be forwarded directly to DIPEC through the property administrator. Each DD Form 1342 will be prepared and forwarded within 15 working days after the event which created the need for its

preparation and forwarding. AR 700-43/NAVSUP PUB 5009/AFM 78-9/DLAM 4215.1 is available from the Superintendent of Documents, U.S. Government Printing Office, Washington, D.C. 20402.

(b) IPE is identified by noun name in Joint DoD IPE Handbooks as listed in 13-312. Additional handbooks and page changes to existing handbooks, with asterisks denoting additions to the IPE scope, shall be published as required. Reporting of newly listed items which are in the possession of the contractor shall be accomplished within 180 days following the date of the new handbook or the page change.

B-307 Records of Real Property.

(a) Records of real property shall consist of maps, drawings, plans, and specifications supplemented, where necessary to reflect building installations such as heating, electrical, sanitary, ventilating, drainage, sprinkler systems, etc. Appropriate changes will be made to the records to reflect alterations, additions, or extensions to real property. Where the maps, drawings, plans, and specifications do not adequately reflect descriptive data as to buildings installations, supplemental records will be maintained. The foregoing records will: (i) be complete, (ii) show the original cost of the property and improvements and the cost of changes and additions thereto, and (iii) be appropriately indexed.

(b) Costs incurred by the contractor or the Government for new construction, including erection, installation or assembly, of Government real property in possession of the contractor, shall be capitalized in the real property records and financial accounts maintained by the contractor for the Government.

(c) Costs incurred for additions, expansions, extensions, conversions, alterations, and improvements including applicable portions of capital maintenance to Government real property which increase the value, life, utility, capability and/or serviceability, shall be capitalized.

(d) Costs incurred in the following circumstances shall not be capitalized in the Government real property records or financial accounts:

(i) A facility is specifically constructed for test purposes which include destruction of the facility.
(ii) The building is designed to be portable.

(e) Costs incurred for maintenance, repair and/or rearrangement of Government real property which maintain the property in good physical condition, utility, capacity, and/or serviceability, shall be charged to expense, and the real property records shall not be affected. See (c) above for costs which shall be capitalized.

(f) When Government-owned real property is sold, transferred, donated, destroyed by fire or other cause, abandoned-in-place or condemned, the financial accounts shall be reduced by the presently recorded cost and the real property records annotated with a supporting statement including pertinent facts.

B-308 Records of Scrap and Salvage. Except as provided in B-103(d), the contractor shall maintain records of all scrap or salvage generated. These records shall be in accordance with the contractor's established system of scrap and salvage control, if approved by the property administrator, who shall take into consideration the need for protecting the Government's interest in the proration, disposition, and allocation of proceeds resulting therefrom.

B-308.1 *Records of Scrap.* The contractor's property control system shall be such as to provide the following minimum information:

B–315 Records of Property Sent to Contractors for Processing and Return. The contractor shall maintain quantitative records of such items to assure control from time of receipt, during processing and return of the items to the DoD component. Such item records will be established by the contractor in accordance with his property control system but will include at least the following:

(i) contract number or equivalent code designation;
(ii) nomenclature or description of item including the National Stock Number;
(iii) quantity received;
(iv) unit price;
(v) location;
(vi) quantity returned to DoD component;
(vii) quantity disposed of otherwise pursuant to proper authority;
(viii) balance on hand; and
(ix) posting reference and date of transaction.

B–316 Records of Transportation and Installation Costs of Plant Equipment for Rental Purposes. The contractor shall record within the property control system the transportation and installation costs directly borne by the Government for each item of Government-owned plant equipment with an acquisition cost of over $5,000. When required, such recorded costs shall be provided to the administrative contracting officer for use in computing rental charges pursuant to 7–702.12.

(a) *Transportation Costs.*

(1) Transportation costs (other than included in purchase price) shall include costs of shipment of equipment to present location from the last prior location. These costs shall include line haul charges, add-on charges such as switching, diversion, pickup and delivery, over-dimensional, state permits, local permits, unloading, drayage, ocean, port handling, and other charges as shown on the applicable Government bill of lading or other transportation document to the receiving contractor location. When transportation costs are included in price of equipment delivered to using location, the property records should be so annotated.

(2) If transportation costs are not included in the price of equipment delivered to the using location, and are not otherwise available, the contractor shall prepare DD Form 1093, Freight Rate Request and Response, in triplicate. Item 4 of DD Form 1093 shall be modified to indicate the date or approximate date the shipment was received. The original and one copy of DD Form 1093 shall be forwarded through the property administrator to the transportation officer who will arrange for the estimated freight charges to be placed on the original. The original shall then be returned through the property administrator to the contractor for recording. In submitting freight data requests for a large number of items of plant equipment, special arrangements may be made to use machine listings *provided* such listings contain all essential information.

(b) *Installation Costs.*

(1) When installation is performed by the contractor, the cost shall be computed in accordance with the contractor's accounting system if acceptable for other contract cost determination purposes and recorded in the property record.

(2) When installation is subcontracted, the cost paid to the subcontractor shall be recorded in the property record.

(3) When installation costs are included in price of equipment delivered to the using location, the property records should be so annotated.

Part 4—Identification

B–400 Scope of Part. This Part establishes minimum requirements for the identification and marking of Government property in the possession or control of the contractor.

B–401 General. The contractor shall identify, mark, and record all Government property promptly upon receipt except as may be exempted by this Part; and it shall remain so identified so long as it remains in the custody, possession, or control of the contractor. Assigned Government property identification numbers will be recorded on all applicable receiving documents, shipping documents, disposal documents, and any other documents pertaining to the property control system. Such markings shall be removed or obliterated from the property involved when the disposal is by sale, scrap or through donation.

B–402 Material and Plant Equipment Costing Less Than $5,000 Per Unit. All Government material and plant equipment having an acquisition cost less than $5,000 shall be identified as Government property except in those cases where:

(a) no material or plant equipment costing less than $5,000 of the same type at the same location is owned by the contractor, his employees, or other contracting agencies;

(b) adequate physical control is maintained over tool crib items, guard force items, protective clothing, and other items issued for use by individuals in the performance of their work under the contract;

(c) property is of bulk type or by its general nature of packing or handling precludes adequate marking, as may be determined by the property administrator; and

(d) property is commingled, as authorized by B–103.

B–403 Special Tooling and Special Test Equipment. Government-owned special tooling and special test equipment shall be marked in accordance with the procedure established by the contractor and approved by the property administrator, unless it is determined by the contractor in an individual case that marking will damage the special tooling or special test equipment or is otherwise impracticable. The contractor shall advise the property administrator, in writing, of any such determination. Identification shall consist of a serial number (identification number) and the designation of the Department responsible for funding and control of the property as follows: Army—"USA," Navy—"USN", Air Force—"USAF," Defense Supply Agency—"USD," Defense Communications Agency—"DCA," Defense Nuclear Agency—"DNA," and Defense Mapping Agency—"DMA." If an item is already identified as U.S. property, the marking shall not be changed solely to conform to the provisions of this paragraph. Components of special test equipment, having an acquisition cost of $5,000 or more and incorporated in such a manner that removal and reutilization is feasible and economical, shall be marked in a manner similar to plant equipment as required by B–404. Components of special test equipment having an acquisition cost less than $5,000 may be identified in the same manner, when required for effective control, in accordance with a contractor's approved property control system.

B–404 Plant Equipment. Unless already marked in compliance with prior instructions, government-owned plant equipment excluding plant equipment ex-

cepted in B–402 shall be marked by the contractor with a government identification number, except when the size or nature of the equipment makes it impracticable, or the equipment is accessory or auxiliary and attached to or otherwise a part of an item of plant equipment and is required for its normal operation. In such case, the item shall be entered and described on the record of equipment to which it is attached or of which it is otherwise a part. Identification shall be effected by affixing a decal, metal, fiber, plastic or other plate directly to the equipment or by using indelible ink, acid or electric etch, steel dies, or other legible, permanent, conspicuous and tamper proof method. Identification by the contractor shall be in accordance with procedures established by the contractor and approved by the property administrator and shall consist of the following:

(i) a serial number and an indication of Department of Defense ownership; however, if the item is already identified as government property, the marking shall not be changed solely to conform to the provisions of this paragraph; and

(ii) in the case of items included within a standard departmental registration system (for example, automotive, construction, or material-handling equipment) application for a proper registration number will be made to the cognizant Department, which number may be used in lieu of any other identification number.

Accessory or auxiliary equipment associated with a specific item of plant equipment and recorded on the official records for that item need not be marked with an identification number unless circumstances necessitate marking to assure that the item of accessory and/or auxiliary equipment will be returned to the Government with the basic item with which associated. Identification numbers assigned and markings affixed shall be permanent and will not be changed as long as the equipment remains under the control of the Department of Defense, unless a change is necessary to eliminate duplicate numbers in which case the contractor will reidentify the item(s) in accordance with the approved system.

APPENDIX C—GOVERNMENT PROPERTY — NONPROFIT CONTRACTORS

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(i) consumable property;
(ii) special test equipment; or
(iii) buildings, nonseverable structures (except foundations and similar improvements necessary for the installation of special tooling), general or special machine tools, or similar capital items.

C–102.6 *Special Test Equipment* means either single or multipurpose integrated test units engineered, designed, fabricated, or modified to accomplish special purpose testing in the performance of the contract. Such testing units comprise electrical, electronic, hydraulic, pneumatic, mechanical, or other items or assemblies of equipment, that are mechanically, electrically, or electronically interconnected so as to become a new functional entity, causing the individual item or items to become interdependent and essential in the performance of special purpose testing in the development or production of particular supplies or services. The term "*special test equipment*" does not include:

(i) material;
(ii) special tooling;
(iii) buildings and nonseverable structures (except foundations and similar improvements necessary for the installation of special test equipment);
and
(iv) plant equipment items used for general plant testing purposes.

C–102.7 *Facilities* means industrial property (other than material, special tooling, military property, and special test equipment) for production, maintenance, research, development, or test, including real property and rights therein, buildings, structures, improvements and plant equipment.

C–102.8 *Real Property*, for purposes of accounting classification, means (i) land and rights therein; (ii) ground improvements; (iii) utility distribution systems; (iv) buildings; and (v) structures. It excludes foundations and other work necessary for the installation of special tooling, special test equipment, and plant equipment.

C–102.9 *Utility Distribution System* means a system (including distribution and transmission lines, substations, and installed equipment forming an integral part of the system), by which gas, water, steam, electricity, sewerage, or other utility services are transmitted between:

(i) outside of the building or structure in which the services are used, and
(ii) the point of origin or disposal, or the connection with some other system.

For the purpose of this Appendix, it does not include communication services.

C–102.10 *Plant Equipment* means personal property of a capital nature (consisting of equipment, machine tools, test equipment, furniture, vehicles, and accessory and auxiliary items, but excluding special tooling and special test equipment) use or capable of use in the manufacture of supplies or in the performance of services or for any administrative or general plant purpose.

C–102.11 *Industrial Plant Equipment* (*IPE*) is that part of plant equipment with an acquisition of cost of $5,000 or more; used for the purpose of cutting, abrading, grinding, shaping, forming, joining, testing, measuring, heating, treating,

or otherwise altering the physical, electrical or chemical properties of materials, components or end items, entailed in manufacturing, maintenance, supply, processing, assembly or research and development operations; and IPE is further identified by noun name in Joint DoD Handbooks as listed in 13–312.

C–102.12 *Other Plant Equipment* (*OPE*) is that part of plant equipment, regardless of dollar value, which is used in or in conjunction with the manufacture of components or end items relative to maintenance, supply, processing, assembly or research and development operations; but excluding items categorized as IPE.

C–102.13 *Accessory Item* means an item which facilitates or enhances the operation of plant equipment but which is not essential for its operation, such as remote control devices.

C–102.14 *Auxiliary Item* means an item without which the basic unit of plant equipment cannot operate, such as motors for pumps and machine tools.

C–102.15 *Salvage* means property which because of its worn, damaged, deteriorated, or incomplete condition, or specialized nature, has no reasonable prospect of sale or use as serviceable property without major repairs or alterations, but which has some value in excess of its scrap value.

C–102.16 *Scrap* means property that has no reasonable prospect of being sold except for the recovery value of its basic material content.

C–102.17 *Custodial Records* means written memorandum or identifying checks of any description or type used to control items issued from tool cribs, tool rooms, stockrooms, etc., such as requisitions, issue hand receipts, tool checks, stock record books, etc.

C–102.18 *Individual Item Record* means a separate card form, or document utilized to account for one item of property.

C–102.19 *Stock Record* means a perpetual inventory form of record which shows, by nomenclature, the quantities received and issued and the balances on hand.

C–102.20 *Discrepancies Incident to Shipment* means all deficiences incident to the shipment of Government property to or from a contractor's facility whereby differences exist between the property purported to have been shipped and the property actually received. Such deficiencies include, but are not limited to, loss, damage, destruction, improper status and condition coding, error in identity of classification, and improper consignment.

C–102.21 *Military Property* means Government-owned personal property designed for military operations. It includes end-items and integral components of military weapons systems, along with the related peculiar support equipment which is not readily available as a commercial item. It does not include Government material, special test equipment, special tooling or facilities.

C–102.22 *Property Account* means the official records of the Government property provided to a contractor by a Department, which are established and maintained under the provisions of this Appendix. Separate property accounts will be maintained either on an individual contract basis or contractor basis.

C–102.23 *Educational or Other Nonprofit Organization* means any corporation, foundation, trust, or other institution operated for scientific or educational purposes, not organized for profit, no part of the net earnings of which inures to the profit of any private shareholder or individual.

(b) *Material Maintained in Stocks.* For material maintained by the contractor in stocks or stores, the contractor's property control system shall be such as to provide the following information:

(i) contract number or equivalent code designation,
(ii) nomenclature or description of item,
(iii) quantity received,
(iv) quantity issued,
(v) balance on hand,
(vi) posting reference,
(vii) date received or issued,
(viii) price, and
(ix) disposition action taken.

(c) *Consolidated Stock Record.* When a contractor has more than one Government contract under which Government material is provided, a consolidated record for material may be authorized by the property administrator; *provided*, the total quantity of any item is allocated to each contract by contract number and each requisition of material from contractor-owned stores is charged to the contract on which the material is to be used. The supporting document or issue slip shall show the contract number or equivalent code designation to which the issue is charged.

(d) *Custodial Records.* Custodial records shall be maintained for tool crib items, guard force items, protective clothing and other items for the use of individuals in the performance of their work under the contract.

C–304 Records of Special Tooling. In the case of special tooling acquired or fabricated by the contractor or furnished by the Government, for research and development purposes, the Government invoices, contractor's purchase document or other documental evidence of acquisition and issue, will be accepted as adequate property control records.

C–305 Records of Special Test Equipment. The contractor's property control system shall be such as to provide the following minimum information regarding each item of Government-owned special test equipment:

(i) contract number or equivalent code designation,
(ii) nomenclature or description of item (including indentification number and item on which used),
(iii) identity of any general purpose test equipment incorporated as components in such a manner that removal and reutilization may be feasible and economical,
(iv) quantity received or fabricated,
(v) posting reference and date of transaction,
(vi) location,
(vii) disposition, and
(viii) unit or group price.

In event group pricing of special test equipment is utilized by the contractor, as recognized in C–302.1, unit prices may be computed as and when required.

C–306 Records of Plant Equipment.

(a) *Plant Equipment Costing $5,000 or More.* The contractor shall maintain individual item records (manual or mechanized) of each item of Government-owned plant equipment having a unit cost of $5,000 or more which will provide the following minimum information:

(i) Federal Supply Code for Manufacturer (Cataloging Handbooks H4–1, H4–2) and, at the option of the contractor, the name and address of the equipment manufacturer;
(ii) manufacturer's model/part number;
(iii) serial number and year built (when available);
(iv) U.S. Government identification/tag number;
(v) noun name of the item and Federal Supply Classification (Cataloging Handbook H2–1, H2–2, and H2–3);
(vi) acquisition document reference and date;
(vii) location;
(viii) disposition document reference and date;
(ix) contract number or equivalent code designation; and
(x) unit price when equipment is Government furnished or cost (f.o.b. manufacturer) when contractor acquired (Unit price will be reduced when accessory and auxiliary items are permanently separated from the basic item of plant equipment.).

DD Form 1342 may be used as a source document for setting up accounting records as prescribed herein.

(b) *Plant Equipment Costing Less Than $5,000.* Except where individual item records are necessary for effective control, calibration, or maintenance, summary stock records may be maintained for plant equipment costing less than $5,000 per unit. The contractor's property control system shall be such as to provide the following minimum information:

(i) contract number or equivalent code designation;
(ii) noun name, Federal Supply Classification in Cataloging Handbooks H2–1, H2–2, and H2–3;
(iii) manufacturer or Federal Supply Code for the manufacturer and model/part number;
(iv) quantity received;
(v) balance on hand;
(vi) posting reference and date of transaction;
(vii) unit price;
(viii) location (see C–301(g)); and
(ix) disposition.

In addition, where appropriate as determined by the property administrator, the serial number and/or Government identification number for each item shall be recorded in a permanent manner in the property records and upon disposition, lined out or otherwise deleted from the record. DD Form 1342 may be used for individual record cards for items costing less than $5,000.

(c) *Record of Accessory and Auxiliary Equipment.* Accessory and auxiliary equipment, which is attached to or otherwise a part of an item of plant equipment or has been acquired for use in connection with a specific item, shall be recorded on the record of the item of plant equipment. In the event the accessory or auxiliary item is not attached to, a part of, or acquired for use with a specific item of plant equipment, it shall be recorded as indicated in C–306(b).

1–201.3), except in those instances in which a disbursing officer has this primary responsibility. A disbursing officer has such primary responsibility whenever erroneous payments or overpayments have been made by the disbursing officer, in excess of the amounts to which the contractor was entitled under the terms of the contract at the time of such payment. The disbursing officer also has such primary responsibility when the amounts due and dates for payment are fixed by the terms of the contract itself, and copy of such contract has been furnished to the disbursing officer with notice to collect as amounts become due.

For the purposes of this Part 6, disbursing officers are those officers or officials designated to make payments under a contract, or to receive payments of amounts due under the contract, including finance and accounting officers at installations where integrated accounting is in effect.

E–602.1 *Cooperation and Assistance.* The utmost cooperation is required among auditing, contracting and disbursing officers, and by all of them with the contract financing offices (E–212), in order to protect the public interest by the proper and effective use of all available means for the timely discovery and ascertainment, and full and prompt collection of indebtedness.

E–602.2 *Assistance to Contract Financing Office.* It is necessary that audit personnel, disbursing officers and contracting officers, including contract administration personnel, comply promptly and effectively with requests of the contract financing office (E–212) for information pertaining to debts, for local collection assistance, and for assistance in the establishment and administration of debt deferment agreements.

E–602.3 *Requests for Withholding.* Before a debt is placed on the Hold-up List (E–623) or before distribution of a new listing, it is expected that the office undertaking to effect collection may sometimes request other offices having dealings with the contractor on other contracts, whether contracting officers or disbursing officers, to withhold payments on contracts, for application on the debt. Government personnel are expected to cooperate and assist in the fulfillment of such requests, giving due regard, however, to the effect of abrupt cessation of payments on the operations of the contractor, performance of the contracts, and the interest of the United States in such contracts. In the making of these requests to other offices, and in complying with such requests, care will be taken at all times to avoid overcollection or duplicate collection. Each check to liquidate indebtedness pursuant to such requests will be drawn payable to "(contractor's name) or office designated for contract administration", and transmitted to the disbursing officer on the contract under which the indebtedness arose, and will be accompanied by a statement sufficient to identify the indebtedness to which it is to be applied. Appropriate notice of the deduction will be given to the contractor concerned, by the agency making the deduction.

E–603 Prompt Ascertainment and Collection—Controls—Records. Delays in determining definitely the amounts payable by contractors to the Government, or delays in collection may result in losses to appropriations, or difficulty in effecting later repayment, or loss to the Government from later inability to collect. Delays in determining amounts due, or in obtaining timely payment, are in effect extensions of credit to contractors.

The amount of all indebtedness to the Government must be ascertained promptly and collected expeditiously. Responsible personnel shall utilize vigorously all proper means available to them for collection of indebtedness as rapidly as possible. Practices for ascertainment and collection of debts shall be comprehensive, dynamic, and as uniform as practicable. Collection practices will give full recognition to the need for internal coordination and cooperation, and the need for timely, aggressive and persistent demand processes, including personal contacts and telephone calls, all giving consideration to such factors as (a) utilization of all collection resources available to the agencies, (b) the tone, frequency and number of demands, (c) points of diminishing return, and (d) determination of uncollectibility and action pursuant thereto. In the absence of deferment agreement made by the contract financing office (E–611), report of indebtedness will be made to the General Accounting Office upon failure to effect collection within a reasonable period, generally not to exceed 180 days from the date the debt is established.

On the need for prompt ascertainment and payment of amounts payable to contractors, see E–201 and E–202.

E–603.1 *Accounting Controls.* Adequate accounting controls must be maintained.

E–603.2 *Debt Records.* At the time a debt is established or determined, the office with primary responsibility (E–602) shall establish an appropriate control record for each debt, to insure that the debt is collected within not more than 45 days or appropriately transferred to the contract financing office. (See also E–611.)

E–603.3 *Outline of Records.* The minimum information to be shown by the contract debt record should be:

(a) Name and address of contractor.
(b) Contract number, if any.
(c) Description of debt.
(d) Amount of debt, and appropriation to be credited.
(e) Date debt determined.
(f) Date of demands for payment.
(g) Amounts and dates of payments.
(h) Date appeal filed or action brought in the Court of Claims under the Disputes clause if filed prior to transfer.
(i) Status of collection, such as:
  (i) Reported to disbursing officer (name, location, and date).
  (ii) Request made to disbursing officer for withholding (or for temporary non-withholding).
  (iii) Withholding requested of other offices (date and office).
  (iv) Deferral or installment payment arrangement requested.
  (v) Deferral or installment request reviewed.
  (vi) Supplemental information requested to support deferral request.
  (vii) Transferred to contract financing office.

E–603.4 *Records After Transfer.* Upon transfer of a case to the contract financing office (E–611), the debt record maintained by a contracting officer shall be closed by appropriate reference to the date of transfer.

E–610.7 *Assignments — Provision Against Set-Off — Limitations.* When a contract contains a clause permitting assignment, with provision against reduction or set-off as set out in the last sentence of paragraph (a) of the clause in 7–103.8, and the contractor's claims under the contract have been assigned to a financing institution under the Assignment of Claims Act of 1940, as amended, and the assignment has not been released by the assignee, the effect to the statute mentioned is ordinarily to prevent application of payments due under the assigned contract to liquidate or reduce indebtedness of the contractor to the Government arising independently of the assigned contract. However, it is sometimes proper to effect collection despite such an assignment, as for example, when there is no loan outstanding in connection with the assignment and the arrangements between the contractor and the assignee are such that no loan is contemplated, or when there is no firm commitment for financing or when the amount of the loan secured and expected to be secured by the assignment pursuant to a firm commitment of the financing institution is less than the amount due and payable on the contract. Diligent effort should be made to ascertain the pertinent facts, from the assignee, the debtor, or otherwise. When appropriate, there should be withholding and application in reduction of the debt, to the extent that the assigned payments are not necessary to cover the loans or advances secured by the assignment, or to be secured incident to projected need for borrowings, and pursuant to a firm commitment of the financing institution. In doubtful cases the question as to the amount, if any, to be withheld should be referred to higher authority, or to the General Accounting Office when appropriate.

E–610.8 *Assignments — Absence of Provision Against Set-Off.* In some cases the contractor's claims have been assigned to a financing institution under the Assignment of Claims Act of 1940, as amended, but without the contract provision against reduction or setoff set out in paragraph (a) of the clause in 7–103.8, or equivalent provision. In such cases despite the assignment, net amounts due under the assigned contract should be withheld and applied to liquidate indebtedness of the contractor to the Government even though arising independently of the assigned contract, to the extent that such other indebtedness existed at the time written notice of the assignment was received by the Government, even though such debt was not matured so as to be due and payable at the time of such notice.

E–611 Transfer to Contract Financing Office. Transfer of the debt case will be made to the contract financing office (i) upon receipt of a contractor's deferment request or (ii) upon the expiration of 45 days without full collection after the date of initial demand whether or not postponement has been requested. Debt cases under contracts terminated for default shall be transferred to the contract financing office of the Procuring Department (E–212). Debt cases transferred to the contract financing office of the Procuring Department under contracts terminated for default shall not include that portion of a debt related to actions where a disbursing officer has primary responsibility (E–602). All debt cases where the disbursing officer has primary responsibility shall be transferred to the contract financing office of the disbursing office's Department. Other types of debt cases shall be transferred to the contract financing office or other office of the Department which first determines an amount to be due in accordance with the regulations of that Department.

Deferment requests will be forwarded as soon as possible to the contract financing office of the Department concerned. Such requests shall be supported by adequate identifying and explanatory information, including relevant

memoranda and correspondence, accounting data, amounts and dates of any collections, name and location of disbursing office and if applicable the assignee, date of filing of appeal or of action with the Court of Claims, information on hand concerning financial condition of the contractor, and recommendations for action on the deferment request. For those debt cases transferred upon expiration of 45 days without full collection action, minimum supporting information and documentation will be provided in accordance with E-603.3.

E–611.1 *Small Amounts.* The transfers required by E–611 above, will not be made for amounts less than $200.00. However, it is incumbent on contracting officers and disbursing officers to effect collection whenever and by such means as are practicable. (See E–603.)

E–612 Deferment Request Data — Appeal Pending. The information to support a request for deferment of payment when the debt is disputed and timely appeal has been filed pursuant to the "Disputes" clause may be confined to material sufficient to provide understanding of the contractor's financial condition.

E–613 Deferment/Installment Payment Data — No Appeal Pending or Action Filed. The information to support a request for deferment/installment payments when there is no appeal pending or action filed in the Court of Claims pursuant to the Disputes clause should be sufficient to provide understanding of the contractor's financial condition, and should also cover the contractor's contract backlog, projected cash receipts and requirements, the feasibility of immediate payment, and the probable effect of enforcement of full immediate payment on the contractor's operations.

E–614 Deferment Standards.

(a) *Appeals.* Appeals by contractors will not suspend or delay collection action. However, pending the resolution of appeals, deferments will be governed exclusively by the special standards set out in this paragraph E–614. In order to minimize the possibility of overcollections, requested deferments pending the outcome of appeals may be granted by the contract financing office (E–212), when the contractor enters into agreement acceptable to the contract financing office as reasonably assuring diligent prosecution of the appeal and full payment of any amount determined due upon decision of the appeal or upon further negotiations without such decision, with interest on such amount at the rate and for the period mentioned in E–608(2) above. Agreement on interest may include the adjustment provisions authorized by E–618, below. Collateral security, or other provisions to assure payment, shall be consistent with the circumstances of each case. To avoid possible undue hardship to small business concerns or those contractors who are financially weak, deferments pending the outcome of appeals may be granted on such terms and conditions as may be deemed reasonable by the contract financing office, notwithstanding financial weakness of the contractor and notwithstanding its inability to furnish good collateral security. These deferments shall provide for termination of the deferment by the contract financing office upon violation of the agreement or upon failure of the contractor diligently to pursue its appeal.

(b) *Actions.* Actions filed by contractors with the Court of Claims pursuant to the Disputes clause shall not suspend or delay collection. Pending a decision by the Court, deferments shall only be granted if within 30 days after the filing of such action the contractor presents to the appropriate contract finance office (E-212) a good and sufficient bond, or other collateral acceptable to the contract finance office, in the amount of the claim, and approved by such office. Any amount collected by the office in excess of the amount found to be due by the Court shall be refunded to the contractor with interest thereon from the date of collection by the office at the per annum rate established by the Secretary of the Treasury, pursuant to Public Law 92-41. Simple interest shall be calculated throughout the period of indebtedness to reflect each 6-month period change in the rates established by the Secretary.

E-615 Deferment/Installment Payment Standards — No Appeal Pending or Action Filed. When an appeal or action in the Court of Claims is not pending, or has been resolved, the contract financing office (E-212) may make arrangements for deferral/installment payments when the contractor cannot pay at once in full, or when full immediate collection would seriously impair the contractor's ability to continue operations or to perform contracts or subcontracts for the national defense. Such agreements shall include such covenants and security as may be prudent and feasible under the circumstances, shall be limited to the shortest practicable maturities, and shall require the payment of interest at the rate and for the period mentioned in E-608(2) above, subject only to the adjustment specifically authorized by E-618 below.

E-616 Deferment/Installment Approval Authority. There shall be no arrangement or agreement for deferral of payment or no acquiescence to an installment arrangement without prior approval of the contract financing office.

E-616.1 *Inconsistent Contract Provisions.* Except for the deferral arrangements contemplated by this Part 6, no contract may provide and no arrangement may be made to the effect that a claim of the Government under a contract will not become due and payable until there has been mutual agreement on that amount, or until decision on appeal, or in litigation, in matters of dispute.

E-617 Processing of Deferment or Installment Requests - Information - Agreements. When a deferment or installment request is made to the disbursing officer or contracting officer (E-602), the recipient office should make prompt review of the request and any supporting information. If

the supporting information appears deficient. (E-612, E-613), the contractor should be asked immediately to supply any needed additional relevant information and explanations. For guidance as to financial information and analysis, see E-213 and E-214.

E-617.1 *Proposed Agreement—Review.* In the light of available information, the contractor's letter request or other proposed agreement for deferral or installment should also be reviewed by the recipient office, and the contractor should be informed as to such changes as may be regarded as desirable. Contractor failure to make suggested changes, and related contractor comments, should be noted in the recommendations included with the transfer of the case (E-611) to the contract financing office.

E-617.2 *Minimum Agreement—Appeal Pending.* When appeal is pending, the contractor's proposed deferment agreement should at least include provisions for the following:

(a) Description of the claim;
(b) Date of first demand for payment;
(c) Diligent prosecution of appeal;
(d) Full payment upon decision on appeal, or upon agreement on amount;
(e) Interest charge, in conformity with E-608(2), E-609, and E-618;
(f) Payments to contract financing office (identified);
(g) Submission of periodic financial statements by contractor (as appropriate), submission of such other pertinent reports and information as may be required by the Government, and reasonable access by the Government to the records and property of the contractor;
(h) Termination by Government, and acceleration of maturity upon default by the contractor or institution of insolvency proceedings by or against the contractor.

E-617.3 *Additional Provisions—Appeal Pending.* If desired by the contractor, these deferment proposals may also include provision for partial payment(s) on account and without prejudice, for refund of overpayments, and for interest adjustment as authorized by E-618.

Other terms and conditions for consideration and establishment in these deferral agreements when consistent with the circumstances of the case include provision for collateral security and the other protective provisions mentioned in E-511.6 and outlined in E-414.2.

E-617.4 *Installment Agreement — No Appeal Pending.* When no appeal is pending or no action is filed with the Court of Claims, the installment agreement, conforming to the standards of E-615, should include:

(a) The provisions outlined in E-617.2 (except E-617.2(d));
(b) A definite schedule or plan for payments, with unrestricted rights of prepayment;
(c) Additional security and protective covenants as may be prudent and feasible (E-617.3); and
(d) In furtherance of attainment of the shortest practicable maturities, whenever feasible (i) provision for periodic review of the contractor's financial condition by the Government, and discretionary right of the Government to require

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prepayments deemed within the improved ability of the contractor to pay, and (ii) provision requiring stated or measurable prepayments on the occurrence of specified events or contingencies involving improvement in the contractor's ability to pay.

E–617.5 *Final Action.* Incident to its review and action of a deferment or installation proposal, the contract financing office (E-611) may request additional information, as well as other assistance needed from the transmitting office (E-611). Such requested information and assistance will be furnished promptly so that final action on the proposed deferment or installment may be taken by the contract financing office without unnecessary delay. Whenever deemed appropriate by it, the contract financing office may deal directly with the contractor concerning collection or deferment of the debt.

E–618 Adjustment of Interest. When the contract under which the debt was established does not provide for interest and for adjustment of interest, and payment is not made within 30 days after demand conforming to E–608 or E–608.2, interest accrued before the making of a deferment agreement shall not be released or reduced. Deferment agreements may provide for adjustments for overcollections, to the effect that in addition to refund and release of overcollections, the contractor shall receive, from amounts collected or withheld for the amount of indebtedness and accrued interest thereon, a sum computed at the rate established by the Secretary of the Treasury pursuant to Public Law 92–41; 85 STAT 97 for the Renegotiation Board, on the amount of overcollection and excess withholding for the approximate periods thereof as deemed fair and reasonable by the contract financing office (E–212). The total refund and release to the contractor shall in no event exceed the total amount that has been collected or that has been withheld for the purpose of collection of the asserted indebtedness.

E–618.1 *Guidelines for Overcollection Adjustments.* In determining the approximate day of the beginning of a period of overcollection or excess withholding, as authorized pursuant to E–618, the date of receipt of a check by the contract financing office, or by the appropriate disbursing office, if earlier, will ordinarily be regarded as the day on which the amount of that check was collected or withheld for the purpose of collection. For tax credits, see E–604.1.

current rate may also be obtained from the Departmental Contract Finance Office representative.

E–621 Exceptions to Interest Clause Requirement. Contract provision for interest need not be included in (1) small purchases (see Section III, Part 6); (2) purchases described in 16–303, 16–501, 16–504, or in Section V; (3) purchases under indefinite delivery type contracts existing before the effective date of this Part 6; (4) amendments of contracts existing before the effective date of this Part 6; or (5) contracts with agencies of the United States Government, foreign governments or agencies thereof, State or local governments or agencies thereof, or nonprofit contracts with nonprofit educational or research institutions. Further exceptions may be established by the Contract Finance Committee (E–107.3), with the approval of the Assistant Secretary of Defense (Installations and Logistics) or his representative.

E–621.1 *Further Exceptions.* The following further exceptions have been established pursuant to the second sentence of E–621:

(i) contracts for instructions of military personnel, or ROTC personnel, at civilian schools, colleges, and universities;

(ii) basic agreements with telephone companies, under which communications services and facilities will be ordered, and purchases under such agreements; and

(iii) transportation contracts with common carriers for common carrier services, *e.g.*, common carrier transportation services procured by transportation requests, transportation warrants, bills of lading, and similar transportation forms (1–102).

E–622 Exemptions from Administrative Interest Charge. Contractors and contracts mentioned in E–621 (5) above, and other contractors in exceptional circumstances, may be exempted from the administrative interest charges required by this Part 6 when so agreed by the Contract Finance Committee (E–107.3) with the approval of the Assistant Secretary of Defense (Installations and Logistics) or his representative.

E–623 Responsibilities. The contract financing office (E–212) of each military department, will take appropriate actions to effect collection of debts referred to it, including administration of deferment agreements, to cause debts to be listed on the consolidated list of contractors indebted to the United States, commonly known as the "Hold-up List," to remove names from the "Hold-up List," to determine administrative uncollectibility, and to refer debts to the General Accounting Office or the Department of Justice as appropriate. Within each Department, no arrangement for installment or deferral of payments may be made without the approval of the contract financing office. Acting in conformity to the standards stated in this Part 6 those offices may approve or deny deferment proposals transmitted to them or made directly to them by contractors, or approve such proposals on prescribed conditions.

Responsibility for assuring effective administration in accordance with this Part 6 shall be in the Assistant Secretary of Defense (Installations and Logistics). Responsibility for effective administration under this Part 6 in each Department shall be in the Under or Assistant Secretary, or other designated official, responsible for the comptroller function. The Contract Finance Committee (E–107.3)

shall advise and assist the Assistant Secretary of Defense (Installations and Logistics) in assuring proper application of policies and the development of procedures hereunder, and in the formulation of such further instructions on this subject as may appear desirable. That Committee is responsible for this Appendix E and will develop and promulgate herein supplemental instructions on this subject.

Reports will be made by each Department in connection with the subject matter of this Part 6 at such times and in such form as may be prescribed or approved by the Assistant Secretary of Defense (Comptroller) and the Assistant Secretary of Defense (Installations and Logistics).

E–624 Delays or Failures of Notice or Demand. It is expected that (1) demands (E–608, E–608.2, E–609, and paragraph (ii) of the clause in 7–104.39) and notices (paragraph (iv) of the clause in 7–104.39) will bear a date closely approximating the date of transmittal; (2) such demands and notices, and the supplemental agreements mentioned in paragraph (iii) of the clause in 7–104.39, will be delivered in due course to contractors. It could happen occasionally (1) that there is undue delay after the stated date of a demand or notice, before its dispatch, or (2) that there is undue delay in the mails or other selected means of communication after transmittal of a demand, notice or supplemental agreement, or (3) that a demand, notice, or supplemental agreement is not in fact received by the contractor, and that the non-receipt is not the result of any act or omission on the part of the contractor. In such cases, the due date of the debt and the starting time for accrual of interest thereon will be extended to such time as is fair and reasonable under the particular circumstances. For example, if there is substantial delay between the date of a demand or notice, and the actual date of its dispatch or transmittal, the actual date of dispatch or transmittal would apply instead of the date stated on the demand or notice. Such delay should not be allowed to happen. Also, for example, (1) if there is unusual delay in the mails or other selected form of communication, after dispatch or transmittal of a demand, notice, or supplemental agreement, the date of receipt by the contractor would apply instead of the earlier date otherwise applicable, and (2) if the demand, notice, or supplemental agreement, as the case may be, is not received by the contractor, the date of transmittal of a second demand, notice, or supplemental agreement would apply instead of the earlier date otherwise applicable.

E–625 Compromise. The Federal Claims Collections Act of 1966 (P.L. 89–508, 80 Stat. 308), July 19, 1966, authorizes the compromise of certain claims that do not exceed $20,000. This statute also authorizes termination or suspension of collection action on such claims. Actions under this statute must conform to standards prescribed jointly by the Attorney General of the United States and the Comptroller General of the United States. These controlling standards have been established by joint regulations published in the Federal Register of October 15, 1966, pages 13381–13385, Title 4, Chapter 11, entitled, "Joint Regulations Prescribing Standards for Administrative Collection, Compromise, Termination of Agency Collection Action, and Referral to General Accounting Office, and to Department of Justice for Litigation, of Civil Claims by Government for Money or Property."

APPENDIX F

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STANDARD FORMS

F-100.294 *Standard Form 294: Subcontracting Report for Individual Contracts*

SUBCONTRACTING REPORT FOR INDIVIDUAL CONTRACTS
(Report to be submitted semi-annually. See back of form for instructions)

FORM APPROVED OMB NO. 3090-0052

1. REPORTING PERIOD FROM (Date)	TO (Date)	2. REPORT NO.	3. TYPE OF CONTRACT ☐ PRIME CONTRACT ☐ SUBCONTRACT	4. DATE SUBMITTED

GENERAL INFORMATION

5. AGENCY/CONTRACTOR AWARDING CONTRACT (Name & Address)	7. REPORTING CONTRACTOR (Name and Address)

6. PRIME CONTRACT NO. (And Subcontract No., if applicable)	8. BUSINESS CLASS. CODE	9. DUNS NO. (If applicable)

10. ADMINISTERING AGENCY	11. DATE OF LAST GOVERNMENT REVIEW	12. REVIEWING AGENCY

13. DOLLAR VALUE OF PRIME OR SUBCONTRACT.	14. ESTIMATED DOLLAR VALUE OF COMMITMENTS AS IN PLAN.	15. GOALS	DOLLARS	PERCENT
		a. SMALL BUSINESS CONCERNS		
		b. SMALL DISAD. BUSINESS CONCERNS		

SUBCONTRACT AND PURCHASE COMMITMENTS

COMMITMENTS	THIS REPORTING PERIOD DOLLARS	THIS REPORTING PERIOD PERCENT	CUMULATIVE DOLLARS	CUMULATIVE PERCENT
16. TOTAL DIRECT SUBCONTRACT COMMITMENTS (Sum of a & b)		100		100
a. TOTAL SMALL BUSINESS CONCERNS				
(1) SMALL DISADVATAGED BUSINESS CONCERNS (% of 16)				
(2) OTHER SMALL BUSINESS CONCERNS (% of 16)				
b. LARGE BUSINESS CONCERNS (% of 16)				
17. TOTAL INDIRECT COMMITMENTS (Sum of a & b)				
a. TOTAL SMALL BUSINESS CONCERNS				
(1) SMALL DISADVANTAGED BUSINESS CONCERNS (% of 17)				
(2) OTHER SMALL BUSINESS CONCERNS (% of 17)				
b. LARGE BUSINESS CONCERNS (% of 17)				

18. REMARKS:

19. TYPE THE NAME AND TITLE OF THE INDIVIDUAL ADMINISTERING CONTRACT	SIGNATURE	TELEPHONE NO. (and Area Code)
20. TYPE THE NAME AND TITLE OF THE APPROVING OFFICER	SIGNATURE	

STANDARD FORM 294 (4-81)
Prescribed by GSA (FPR Temporary Regulation 59)

F-100.294

F-100.294 *Standard Form 294: Subcontracting Report for Individual Contracts—Continued*

INSTRUCTIONS

GENERAL INSTRUCTIONS

1. This reporting form is prescribed for use in the collection of subcontract data from all Federal contractors and subcontractors which, pursuant to the Small Business Act of 1958, as amended by Public Law 95-507, are required to establish plans for subcontracting with small and small disadvantaged business concerns. Reports shall be submitted to the contracting officer semiannually as of March 31 and September 30, as well as at contract completion. This report is due by the 25th day of the month following the close of the reporting periods, in accordance with instructions contained in the contract or subcontract, or as directed by the contracting officer.

2. This report is not required to be submitted by small business concerns.

3. This report is not required for commercial products for which a company-wide annual plan has been approved. The Summary Subcontract Report is required for commercial products in accordance with the instructions on that form.

4. Only subcontract and purchase commitments involving performance within the U.S. its possessions, Puerto Rico, and the Trust Territory of the Pacific Islands will be included in this report.

SPECIFIC INSTRUCTIONS

ITEM 1 – Specify the period covered by this report (e.g., April 1, 1981 September 30, 1981).

ITEM 2 – Specify the sequential report covering this contract. The initial report shall be identified as Report Number 1. Add "Final Report" for the last report being made.

ITEM 3 – Specify whether this report covers either a Prime Contract awarded by a Federal Department or Agency or a Subcontract awarded by a Federal prime contractor or subcontractor.

ITEM 5 – Enter the name and address of the Federal Department or Agency or Prime Contractor awarding the Prime or Subcontract.

ITEM 6 – Enter the prime contract number. If this report covers a subcontract, enter both the prime contract and subcontract numbers.

ITEM 7 – Enter the name and address of the Prime Contractor or Subcontractor submitting the report.

ITEM 8 – Enter the Business Classification Code as follows:

Code	Definition
LB	Large Business
NP	Non-Profit Organization (including Educational Institutions).

ITEM 9 – Enter Dun and Bradstreet Universal Numbering System (DUNS) number (if available).

ITEM 10 – Identify Federal agency administering the contract. For Department of Defense, identify appropriate military department, i.e., Army, Navy, Air Force, or Defense Logistics Agency. Civilian agencies should be identified as noted in the contract award document, i.e., NASA, DOE, GSA, HHS, SBA, etc.

ITEM 11 & 12 – Enter the date of the last formal surveillance review conducted by the cognizant Department or Agency Small and Disadvantaged Business Specialist or other review personnel. For DOD, also identify the military department or Defense Contract Administration Service as appropriate, that conducted the review. In those cases where the Small Business Administration conducts its own review, show the date and "SBA".

ITEM 13 – Specify the face value of the Prime or Subcontract covered by this report. If the value changes, the face value shall be adjusted accordingly.

ITEM 14 – Enter the estimated dollar value of subcontract and purchase commitments as set forth in the Subcontract Plan.

ITEM 15 – Specify in the appropriate blocks the dollar amount and percent of the reporting contractor's total subcontract awards contractually agreed upon as goals for subcontracting with Small Business and Small Disadvantaged Business concerns. NOTE: Should the original goals agreed upon at contract awards be either increased or decreased as a result of a contract modification, the amount of the revised goals shall be indicated.

ITEM 16 – Specify in the appropriate block the total amount of all direct subcontract commitments and the dollar amount and percentage of the total placed with the subcontractor classification indicated in a and b, both for this period and cumulative. Do not include in this report purchase commitments made in support of commercial business being performed by reporting contractor.

ITEM 17 – Complete item 17 only if indirect contract commitments were included in establishing the small and small disadvantaged business goals for the contract being reported. Specify in the appropriate block the total allocable dollar amount of indirect commitments and the dollar amount and percentage of the total placed with the subcontractor classifications indicated in a(1), a(2), and b, both for this period and cumulative.

ITEM 18 – Enter any remarks. If the goals were not met, explain why on the final report.

ITEM 19 – Enter name and title of company individual responsible for administering contract.

ITEM 20 – The approving officer shall be the senior official of the company division, or subdivision (plant or profit center) responsible for contract performance.

DEFINITIONS

1. A Small Business Concern is a concern that meets the pertinent criteria established by the Small Business Administration.

2. (a) A Small Disadvantaged Business means any small business concern

(1) which is at least 51 per centum owned by one or more socially and economically disadvantaged individuals, or, in the case of any publicly-owned business, at least 51 per centum of the stock of which is owned by one or more socially and economically disadvantaged individuals, and

(2) whose management and daily business operations are controlled by one or more of such individuals.

(b) The contractor shall presume that socially and economically disadvantaged individuals include Black Americans, Hispanic Americans, Native Americans, Asian-Pacific Americans, and other minorities, or any other individual found to be disadvantaged by the Small Business Administration pursuant to Section 8(a) of the Small Business Act. "Native Americans" include American Indians, Eskimos, Aleuts, and native Hawaiians. "Asian-Pacific Americans" include U.S. citizens whose origins are from Japan, China, the Philippines, Vietnam, Korea, Samoa, Guam, the Trust Territory of the Pacific Islands, Northern Marianas, Laos, Cambodia, and Taiwan.

(c) Contractors acting in good faith may rely on written representations by their subcontractors certifying their status as either a small business concern or a small business concern owned and controlled by socially and economically disadvantaged individuals.

(d) The Office of Minority Small Business and Capital Ownership Development in the Small Business Administration will answer inquiries from prime contractors and others relative to the class of eligibles and has final authority to determine the eligibility of a concern to be designated as a small disadvantaged business.

3. Commercial Products means products sold in substantial quantities to the general public and/or industry at established catalog or market prices.

4. Commitments as used herein is defined as a contract, purchase order, amendment, or other legal obligation executed by the reporting corporation, company, or subdivision for goods and services to be received by the reporting corporation, company or subdivision.

5. Direct Commitments are those which are identified with the performance of a specific government contract, including allocable parts of awards for material which is to be incorporated into products under more than one Government contract.

6. Indirect Commitments are those which, because of incurrence for common or joint purposes, are not identified with specific Government contracts, these awards are related to Government contract performance but remain for allocation after direct awards have been determined and identified to specific Government contracts.

STANDARD FORM 294 BACK (4-81)

F-100.295 *Standard Form 295: Summary Subcontract Report*

SUMMARY SUBCONTRACT REPORT
(Report to be submitted quarterly. See instructions on reverse) (Type or Print)

FORM APPROVED OMB NO. 3090-0063

1. CONTRACTING AGENCY
2. ADMINISTERING AGENCY
3. DATE OF LAST GOVERNMENT REVIEW
4. REVIEWING AGENCY
5. DUNS NO.
6. REPORT SUBMITTED AS: ☐ PRIME CONTRACTOR ☐ SUBCONTRACTOR ☐ BOTH
7. CORPORATION, COMPANY, OR SUBDIVISION COVERED *(Name, Address, ZIP Code)*
8. MAJOR PRODUCTS OR SERVICE LINES:
   a.
   b.
   c.

CUMULATIVE COMMITMENTS

Subcontract and Purchase Commitments for the Period October 1, 19____ through _____, 19____

COMMITMENTS	CURRENT FISCAL YEAR *(To date)*		SAME PERIOD LAST YEAR	
	DOLLARS	PERCENT	DOLLARS	PERCENT
9. TOTAL *(Sum of a and b)*		100		100
a. SMALL BUSINESS CONCERNS				
b. LARGE BUSINESS CONCERNS				
10. SMALL DISADVANTAGED BUSINESS CONCERNS *(8 a % of 9)*				
11. LABOR SURPLUS AREA CONCERNS *(8 a % of 9)*				

SUBCONTRACT GOAL ACHIEVEMENT

GOALS	NO. OF CONTRACTS	$ VALUE OF SUBCONTRACTS (000)	$ VALUE OF SUBCONTRACT GOALS	ACTUAL GOAL ACHIEVEMENT	
				DOLLARS	%
12. CONTRACTS WITH SMALL BUSINESS SUBCONTRACT GOALS					
a. ACTIVE CONTRACTS					
b. CONTRACTS COMPLETED THIS QUARTER WHICH MET GOALS					
c. CONTRACTS COMPLETED THIS QUARTER NOT MEETING GOALS					
13. CONTRACTS WITH SMALL DISADVANT. BUS SUBCONTRACT GOALS					
a. ACTIVE CONTRACTS					
b. CONTRACTS COMPLETED THIS QUARTER WHICH MET GOALS					
c. CONTRACTS COMPLETED THIS QUARTER NOT MEETING GOALS					

14. REMARKS *(Enter a short narrative explanation if: (a) Zero is entered in Blocks 9a or 10 for current fiscal year, (b) the percent entry in Block 9a for current fiscal year is more than 5 percentage points below the percent reported for same period last year, or (c) the percent entry in Block 10 for current fiscal year is lower than the percent reported for same period last year.)*

15. NAME AND TITLE OF LIAISON OFFICER	SIGNATURE	DATE	TELEPHONE NO. *(and Area Code)*
16. NAME AND TITLE OF APPROVING OFFICIAL	SIGNATURE	DATE	

STANDARD FORM 295 (4-81)
Prescribed by GSA (FPR Temporary Regulation 59)

F-100.295 *Standard Form 295: Summary Subcontract Report—Continued*

INSTRUCTIONS

GENERAL INSTRUCTIONS

1. This reporting form is prescribed for use in the collection of subcontract data from Federal contractors and subcontractors which hold one or more contracts over $500,000 ($1 million for construction) and are required to subcontract with small and small disadvantaged business concerns under a subcontract plan as required by the Small Business Act of 1958, as amended by Public Law 95-507. (See items 9 and 10 of Specific Instructions).

2. The report may be submitted on a corporate, company, or subdivision (e.g., plan or division operating as a separate profit center) basis unless otherwise directed. After submission of the first report on this form, succeeding reports shall be submitted on the same basis.

3. Reports shall be submitted by the 25th day of the month following the close of the reporting period, as follows: (a) quarterly, in accordance with instructions below, or as directed by the contracting activity, or (b) annually for subcontracts covered by an approved company-wide annual subcontracting plan for commercial products. The annual report should summarize all Federal contracts for commercial products performed during the year and should be submitted in addition to required quarterly reports, for other than commercial products, if any. Show in item 14 or in an attachment to the report, the share of this total attributable to each agency from which contracts for such commercial products were received. Send a copy of this report to each listed agency.

4. If a contractor is performing work for more than one Federal agency, a separate report shall be submitted to each agency covering its contracts. However, for DOD contracts, see paragraph 5, below.

5. (a) For reports covering contracts awarded by the military departments or agencies of the Department of Defense (DOD) or subcontracts awarded by DOD prime contracts, each reporting corporation, company, or subdivision (except contractors involved in maintenance, repair, and construction) shall report its total DOD business on one report (i.e., it shall not segregate subcontracts arising from work for the Army, Navy, Air Force, or Defense Agencies). All contractors shall submit:

(I) The original of each report directly to the Office of the Deputy Secretary of Defense, Attention: Director of Small and Disadvantaged Business Utilization, The Pentagon, Washington, DC 20301.

(II) A copy of the report to the office listed below whose military activity is responsible for contract administration of the contractor:

ARMY — Director of Small and Disadvantaged Business Utilization, Office of the Secretary of the Army, Washington, DC 20360

NAVY — Director of Small and Disadvantaged Business Utilization, Office of the Secretary of the Navy, Washington, DC 20360

AIR FORCE — Director of Small and Disadvantaged Business Utilization, Office of the Secretary of the Air Force, Washington, DC 20330

DLA — Staff Director of Small and Disadvantaged Business Utilization, HQ Defense Logistics Agency (Attention U) Cameron Station, Alexandria, VA 22314

(III) A copy of the report, in accordance with instructions contained in the contract or subcontract, to the Federal agency or military department or defense agency, which is administering the prime or subcontract.

(b) Contractors involved in maintenance, repair and construction shall also submit this report, similarly on a quarterly basis, to the appropriate construction contract administration activity. If a construction contractor is involved with more than one contract administration activity, this report should be submitted to each activity reflecting the contract awards under the supervision of the particular contract administration activity.

6. For NASA contracts forward reports to NASA - Office of Procurement (NHS-1) Washington, DC 20546. For Department of Energy, forward reports to DOE - Small Business Division, Washington, DC 20585. For reports covering contracts awarded by other Federal Departments or Agencies and subcontracts placed by prime contractors of such departments or agencies, the original copy shall be sent to the Department or Agency Director of Small and Disadvantaged Business Utilization or as otherwise provided for in instructions issued by the Department or Agency.

7. Only subcontract or purchase commitments involving performance within the U.S., its possessions, Puerto Rico, and the Trust Territory of the Pacific Islands will be included in this report.

8. This report is not required to be submitted by small business concerns.

SPECIFIC INSTRUCTIONS

ITEM 1. Enter the agency which awarded the prime contract (e.g., DOD, HUD, GSA, etc.)

ITEM 2. Enter the department or agency administering the contracts (if different from item 1). For DOD contracts enter the military department or agency which has responsibility for the subcontracting program of the corporation or plant (i.e., Army, Navy, Air Force, or Defense Logistics Agency), not the "Office of the Deputy Secretary of Defense."

ITEMS 3 & 4. Enter the date of the last formal surveillance review conducted by the cognizant department or agency Small and Disadvantaged Business Specialist or other review personnel. For DOD, also identify the military department or Defense Contract Administration Service, as appropriate, that conducted the review. In those cases where the Small Business Administration conducts its own review, show "SBA" and the date.

ITEM 5. Enter Dun and Bradstreet Universal Numbering System (DUNS) number (if available).

ITEM 6. Check whether reporting business is performing as a prime or subcontractor or both.

ITEM 7. Enter the name and address of the reporting corporation, company, or subdivision thereof (e.g., division or plant) which is covered by the data submitted.

ITEM 8. Identify the major product or service lines of the reporting corporation, company, or subdivision.

ITEMS 9 & 10. Report all commitments and purchase orders, regardless of dollar value, made by the reporting organization under all Federal prime contracts and subcontracts (whether or not prime contracts are over $500,000 ($1 million for construction) and small and small disadvantaged business subcontracting plans and goals are required). Report on a quarterly cumulative basis until the end of the fiscal year on September 30 after which a new quarterly reporting cycle is to be initiated commencing with the first quarter from October 1 through December 31. Dollar amounts reported should include direct awards and the appropriate prorated portion of the prime contractor's indirect awards (see definition below) contracted with small and small disadvantaged business concerns and other than small business concerns. The indirect award portion should be based on the percentages of the Federal department or agency work being performed by the reporting contractor in relation to other work performed for other departments or agencies. Particular care should be taken not to include in quarterly reports purchase commitments made in support of commercial business being performed by the contractor.

ITEM 11. Show dollar amount of commitments valued over $10,000 placed with labor surplus area (LSA) concerns (i.e., those that will perform substantially in labor surplus areas). Prime contractors are also encouraged to include awards valued less than $10,000 if such additional reporting does not impose a burden upon the contractor. LSA's are identified in the Department of Labor (DOL) publication "Labor Surplus Area Listings" which can be obtained from the Federal Agency contracting officer or by writing to Employment and Training Administration, (Attention: TPPL), Department of Labor, 601 "D" Street, NW, Washington, DC 20213.

ITEMS 12 & 13. Enter the information as indicated regarding contracts with small and small disadvantaged business goals. For each item (as applicable), enter the number of contracts, the dollar value of subcontracts, the dollar value of subcontract goals (as expressed in the subcontract plans) and actual goal achievement expressed in dollars and percent of goal. This item does not apply to reports covering commercial products.

ITEM 16. The approving official shall be the chief executive officer or, in the case of a separate division or plant, the senior individual responsible for overall division or plant operations.

DEFINITIONS

1. A Small Business Concern is a concern that meets the pertinent criteria established by the Small Business Administration.

2. (a) A Small Disadvantaged Business means any small business concern—(I) which is at least 51 per centum owned by one or more socially and economically disadvantaged individuals; or, in the case of any publicly-owned business, at least 51 per centum of the stock of which is owned by one or more socially and economically disadvantaged individuals; and (II) whose management and daily business operations are controlled by one or more of such individuals.

(b) The contractor shall presume that socially and economically disadvantaged individuals include Black Americans, Hispanic Americans, Native Americans, Asian-Pacific Americans, and other minorities, or any other individuals found to be disadvantaged by the Small Business Administration pursuant to Section 8(a) of the Small Business Act. "Native Americans" include American Indians, Eskimos, Aleuts, and native Hawaiians. "Asian-Pacific Americans" include U.S. citizens whose origins are from Japan, China, the Philippines, Vietnam, Korea, Samoa, Guam, Trust Territory of the Pacific Islands, Northern Marianas, Laos, Cambodia, and Taiwan.

(c) Contractors acting in good faith may rely on written representations by their subcontractors certifying their status as either a small business concern or a small business concern owned and controlled by socially and economically disadvantaged individuals.

(d) The Office of Minority Small Business and Capital Ownership Development in the Small Business Administration will answer inquiries from prime contractors and others relative to the class of eligibles and has final authority to determine the eligibility of a concern to be designated as a small disadvantaged business.

3. Commercial Products means products sold in substantial quantities to the general public and/or industry at established catalog or market prices.

4. Commitments as used herein is defined as a contract, purchase order, amendment, or other legal obligation executed by the Reporting corporation, company, or subdivision for goods and services to be received by the reporting corporation, company, or subdivision.

5. Direct Commitments are those which are identified with the performance of a specific government contract, including allocable parts of awards for material which is to be incorporated into products under more than one Government contract.

6. Indirect Commitments are those which, because of incurrence for common or joint purposes, are not identified with specific Government contracts; these awards are related to Government contract performance but remain for allocation after direct awards have been determined and identified to specific Government contracts.

7. A contract is considered to be completed when the supplies or services which are required to be delivered under the contract have been provided to the Government.

STANDARD FORM 295 BACK (4-81)

F-200.1115 *DD ASPR Form 1115: Instructions in Preparing Inventory Schedules of Contractor Inventory*—Continued

Condition Code	Brief Description	Expanded Definition
B-4	Used-Repairs Required-Poor	Used property in poor condition and requiring major repairs. Badly worn and would still be in doubtful condition of dependability and uneconomical in use if repaired. Estimated repair costs between 41% and 65% of standard price.
X	No further value for use as originally intended but of possible value other than as scrap	Personal property that has some value in excess of its basic material content but which is in such condition that it has no reasonable prospect of use for any purpose as a unit (*either by the holding or any other Federal agency*) and its repair or rehabilitation for use as a unit (*either by the holding or any other Federal agency*) is clearly impracticable. Repairs or rehabilitation estimated to cost in excess of 65% of standard price would be considered "clearly impracticable" for purpose of this definition.
S	Scrap	Means property that has no reasonable prospect of being sold except for the recovery value of its basic material content.

— COST. *(Columns e and f).* Entries will reflect standard or invoiced cost of the material being reported. In the event such price data is not available, estimated price will be entered and so identified by the symbol *(e).*

— COMMON ITEMS. Any items of inventory reasonably usable, without loss to the contractor or its other work because they are materials, parts, or components common in nature to both the contract generating the inventory and other work of the contractor, are not to be listed, except for items the delivery of which has been required by the Government and except for Government-furnished property. *(See Inventory Schedule C instructions).*

— PROCEEDS OF AUTHORIZED SALE *(Column g).* Insert the letter "A" after the amount if the sale *(or credit for acquisition)* has been authorized or approved by the plant clearance officer. Insert the letter "C" if the amount represents your offer to acquire or sell. In either case, quantity should also be shown *(on a second line)* if less than the full quantity shown in column d.

— GOVERNMENT-OWNED PROPERTY. *(a)* Government-furnished property should be listed on separate sheets, marked to show that the items are Government-furnished. *(b)* Where title to materials purchased by the contractor is vested in the Government, such materials should be listed and cost data supplied.

— DD FORM 542 - INVENTORY SCHEDULE A - METALS IN MILL PRODUCT FORM.

(a) Classification

(1) List metals in raw or primary form, as furnished by the mill, and on which there has been no subsequent fabricating operation. Do not include castings and forgings, which are to be listed on DD Form 543. Use a new form, with continuation sheets if necessary, for each type of metal and write the name of the metal or alloy in the "Property Classification" block provided in the upper right-hand corner of the form. Examples are:

Alloy Steel	Copper	Aluminum
Carbon Steel	Free Cutting Brass	Silver
Stainless Steel	Manganese Bronze	Tin

(2) In addition, on the sheets for any such metal, list like forms of the metal or alloy together in sequence. For example, on the sheet or sheets used to list Carbon Steel, group together all the strip, then follow with the sheets, then the bar stock, etc.

(3) Schedule A shall also be used to list nonmetallic materials (e.g., plastics, rubber, glass, lumber, etc.) in mill product form identified in terms of length, width, and thickness. The raw or primary of such materials shall be listed on Schedule B.

(4) Description. *(Column b).* Full commercial description and weight is required for all items. The specification shown under Column *(b.2)* shall be identified as pertaining to the Government, or to a particular industrial society or manufacturer, identified by name. Column *(b.2)* shall also include any other applicable identifying code.

— DD FORM 543 - INVENTORY SCHEDULE B.

(a) Classification

(1) The term "Raw Materials" is here used to include materials in primary form. Examples of the many different general classifications of raw materials *(other than metals)* include:

Chemical	Rubber	Shoe cut stock
Pulp and paper	Textiles	Cement
Paper board	Kapok	Cork
Plastics	Hair	Cotton
Oils, fats, and waxes	Lumber	Wool
Hides and skins	Glass	Leather

(2) Examples of some of the large number of general classifications of parts, components, finished products, or miscellaneous include:

Engines & turbines	Conveyors	Surgical Instruments
Compressors & pumps	Fans & blowers	Electric Motors
Insulated wire & cable	Bearings	Drugs
Nuts & bolts	Valves	Ignition Equipment

(3) Items having no commercial value may be placed in a single classification designated "No Commercial Value." For items deemed to have commercial value, use a new form for each classification. Insert the name of the classification in the designated block at the upper right-hand corner of the inventory form and arrange the items, falling under that classification, in sequence under separate subheadings. For example, on the sheet or sheets used to list Chemicals, group separately all Acids, all Alkalis, all Resins, etc. Under the general classification of insulated Wire and Cable, group separately all Asbestos-Insulated Copper Wire, all Rubber-Insulated Copper Wire, all Magnet-Wire, etc. On the sheets for Drugs, group separately all Antitoxins, all Vaccines, all Strychnine Derivatives, all Morphine Derivatives, etc.

(b) Description *(Column b).* A full commercial description is required for all items which have commercial value. For other items, furnish only such description as is sufficient to enable the plant clearance officer or the customer to determine the appropriate disposition. When three or doubt as to the extent of the description required, consult the plant clearance officer or the customer. Inventory descriptions of plant equipment costing more than $200 and less than $1000 will include as a minimum: Nomenclature or description of the item and Federal Supply Classification (*Cataloging Handbooks H2-1, H2-2, and H2-3*); Federal Supply Code for Manufacturers (*Cataloging Handbooks H4-1, H4-2*) and, at the option of the contractor, the name and address of the equipment manufacturer; and Model/Part Number as prescribed by B-306(*d*) and C-306(*b*). Inventory descriptions of plant equipment costing more than $1000 or more reportable to *DIPEC or IPE* (*see 13-312*) will include as a minimum nomenclature or description of the item and Federal Supply Classification (*Cataloging Handbooks H2-1, H2-2, and H2-3*); Federal Supply Code for Manufacturers (*Cataloging Handbooks H4-1, H4-2*) and at the option of the contractor the name and address of the equipment manufacturer; and Model/Part Number, as prescribed by B-306(*a*) and C-306(*a*).

(1) Commercial purchased parts shall be listed by item name, manufacturer's name and part number. The Federal Stock Number shall be listed in column *(b.1).* When the Federal Stock Number is not available, full descriptive data shall be furnished in accordance with Federal Standard No. 4 when required by the contract.

(2) Military items identified by AF, AN, MS, NAF, NAS, JAN, or JETDS *(formerly JCES)* numbers shall be listed in sequence by such numbers and shall include the item name.

(3) Other military items and assemblies shall be identified by the design agency's or design contractor's name and part or drawing number. The Federal Stock Number shall be listed in column *(b.1).* When the Federal Stock Number is not available, full descriptive data shall be furnished in accordance with Federal Standard No. 4 when required by the contract.

— DD FORM 544 - INVENTORY SCHEDULE C - WORK IN PROCESS.

(a) Classification. No classification of items is required. Finished components are not to be listed on this form but on DD Form 543. Other items which have not lost their identity through whole or partial assembly and which are deemed to have further commercial use are also to be listed on DD Form 543.

(b) Description *(Column b).* Furnish such description as is sufficient to enable the plant clearance officer or the customer to determine the appropriate disposition. Estimated percentage of completion shall be indicated for each line item.

(c) Condition *(Column c).* Generally, condition codes "X" *(salvage)* or "S" *(scrap)* are applicable to work in process.

— DD FORM 545 - INVENTORY SCHEDULE D *(DIES, JIGS, FIXTURES, ETC., AND SPECIAL TOOLS)*

(a) Classification

(1) Items having no commercial value may be placed in a single classification designated "No Commercial Value." For items deemed to have commercial value, general classifications may be limited to the following:

Dies	Fixtures
Jigs	Special Tools
Gauges	Special Test Equipment

(2) Use a new form for each such general classification. Insert the name of the classification in the designated block in the upper right-hand corner of the form and list items falling under that classification in sequence. For example, on the sheet used to list Dies, group separately all Extruding Dies, all Forging Dies, all Forming Dies, etc. On the sheet used for Gauges, group separately all Thread Gauges, all Radius Gauges, all Depth Gauges, etc.

(b) Description *(Column b).* An adequate commercial description is required for all items which have commercial value. For other items, furnish descriptions sufficient to enable the plant clearance officer or the customer to determine the appropriate disposition. Also indicate weight and type of material content for each item. Include tool nomenclature, tool number, related product part number or service which the tool produces or acts upon. Each classification of special tooling shall be further segregated by product, part of service to which it applies. Special tooling, usable for maintenance purposes, shall be designated as such by placing letter "M" in the left-hand column titled "For Use of Contracting Agency Only".

— DD FORM 552 - INVENTORY SCHEDULE E *(SHORT FORM FOR USE WITH DD 57)*

(a) Classification. No specific classification required but similar items should be grouped together. Several classifications may be listed on one form.

(b) Description *(Column b).* A full commercial description is required for all items which have commercial value. For other items, furnish only such description as is sufficient to enable the plant clearance officer or the customer to determine the appropriate disposition.

DEPARTMENT OF DEFENSE FORMS

F-200.1131 *DD Form 1131: Cash Collection Voucher*

CASH COLLECTION VOUCHER		DISBURSING OFFICE COLLECTION VOUCHER NUMBER	
		RECEIVING OFFICE COLLECTION VOUCHER NUMBER	
RECEIVING OFFICE	ACTIVITY (Name and location)		
	RECEIVED AND FORWARDED BY (Printed name, title and signature)		DATE
DISBURSING OFFICE	ACTIVITY (Name and location)		
	DISBURSING OFFICER (Printed name, title and signature)	DISBURSING STATION SYMBOL NUMBER	DATE RECEIVED SUBJECT TO COLLECTION

PERIOD: From To

DATE RECEIVED	NAME OF REMITTER DESCRIPTION OF REMITTANCE	DETAILED DESCRIPTION OF PURPOSE FOR WHICH COLLECTIONS WERE RECEIVED	AMOUNT	ACCOUNTING CLASSIFICATION
		TOTAL		

DD FORM APR 87 1131 PREVIOUS EDITION MAY BE USED

Forms approved by Comptroller General, U. S. 24 January 1956

[The next page is F204-A.]

PROPERTY ADMINISTRATION

(i) identification and listing of the categories, functional areas and characteristics to be evaluated (See Annex I). For systems designated for limited surveillance, describe the degree of surveillance which will be performed;

(ii) evaluation of approved property control procedures applicable to the categories to be examined, and noting of any portions thereof that should be reviewed with operating personnel for possible updating; and

(iii) preparation of work papers necessary to document the file.

S3-402.3 *Testing the System.*

(a) *General.* In conducting tests of the contractor's property control system, the following factors should be considered to assure adequate coverage of requirements peculiar to particular classes of property and functional areas.

(b) *Materials.* Materials should be considered as bulk quantities, as contrasted to individual items. Examinations should be directed to:

(i) tracing inbound transportation units from (A) bills of lading or other transportation documents to receiving reports, in order to determine that the receiving reports are accurately prepared and that proper action is taken on shortages, damages, or other discrepancies, and (B) stock records to assure that the receipts were accurately posted (see B-303 or C-303 as applicable);

(ii) abstracting nomenclature and balance data from stock records and making physical counts to determine accuracy of the stock records;

(iii) tracing posting of credits to (A) stock records (by date, reference number, and quantity) and (B) issue documents, in order to assure accuracy of the postings and validity of the documents (signature by authorized individual and indication of reasons for issue or point of delivery, or both, to indicate proper contract use); and

(iv) determining to the extent practicable at the point of receipt and use, whether undue quantities are issued, charged to cost, and held on plant floor rather than being held under better security in stores.

(c) *Custodial Items.* Issues shall be traced from store's records to tool cribs, office stock rooms, uniform rooms, and the like, to determine that they are taken into account as part of a sound control system. It should be determined that issues to contractor personnel are covered by tool chits, uniform slips, or other mechanisms designed to assure return, or ability to locate items which are to be returned, assuring that new items are not issued without return of wornout items or that suitable explanation is provided.

(d) *End Items.* General techniques for survey of materials are applicable to end items placed in storage pending shipment. Examination shall include tracing from Government acceptance records of the contractor's claims for reimbursement to physical quantities on hand and quantities on validated shipping documents.

(e) *Plant Equipment Costing Less than $5,000.* In the event summary record accounting is utilized for this class of property, as authorized by ASPR B-306(d), examination using the "bulk quantities" approach in (b) above is applicable but shall also cover:

(i) identification as required by B–402 and B–404, respectively; for other than minor plant equipment, the identification number shall be physically verified; and

(ii) location as prescribed in B–306(d)(viii), creating need for physical verification of presence or absence of the property in the location shown by the record.

(f) *Plant Equipment Costing $5,000 or More.* Testing on an item-by-item basis is usually required to achieve desired results. Determinations demanding special attention include whether:

(i) Government screening and approval requirements are observed;

(ii) classification of property is accurate, both at time of requisition or purchase and at time of receipt through the use of the DSAH–4215 series of IPE Handbooks and Cataloging Handbooks H2–1, H2–2, and H2–3;

(iii) an item is actually applied to the requirement for which acquired, and, if deviation is made, that necessary notice and Government approval (when applicable) have been obtained;

(iv) receiving documentation is complete and accurate, indicating assignment of identification number, treatment of accessory and auxiliary equipment as required by B–306(b), and that DD Form 1342 (DoD Property Record) is prepared and processed when required by B–306.1;

(v) from physical inspection of the property, the equipment records are accurate, including location and classification as to use (examination shall be conducted from property to records and from records to property); and

(vi) disposition action is initiated as required when a piece of equipment is no longer required at the plant (examination shall include adequacy of procedure for the preparation and submission of DD Form 1342 (DoD Property Record) where specified, propriety of authority for shipment, and proper accounting for accessory and auxiliary equipment).

(g) *Special Test Equipment.* The examination of special test equipment shall be essentially the same as for plant equipment costing $5,000 or more except for recognizing the greater complexity of assemblies classified as single items and the possible need for assistance and advice of engineering personnel. Examinations shall include tracing of individual components into the assembly to assure a clear trail, particularly with respect to general purpose test equipment components, and propriety of disposition of components upon disassembly.

(h) *Special Tooling.* Testing for plant equipment, as in (e) and (f) above, may be used as a guide to establishment of the method and sampling to be utilized for special tooling. When option as to title to special tooling is involved under terms of the contract (see ASPR 7–104.25), examination need only be sufficient to comply with the request of the administrative contracting officer.

(i) *Real Property.* After initial turnover of real property to a contractor, tests and examinations normally shall be directed to work orders of the contractor and documentation from Government sources as to additions and other capital improvements or disposals or capital decreases.

S3–402.3

ARMED SERVICES PROCUREMENT REGULATION

[FR Doc. 82–23218 Filed 8–25–82, 8:45 am]
BILLING CODE 3810–01–C

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 100

[CGD 13-82-10]

Tacoma Regatta

AGENCY: Coast Guard, DOT.

ACTION: Final rule.

SUMMARY: This regulation establishes an area of controlled navigation in Commencement Bay, Tacoma, Washington, on August 29, 1982. This is required because of the limited and unlimited hydroplane races scheduled for this day as part of the Tacoma Regatta. The Coast Guard through this action intends to ensure the safety of spectators and participants in this event.

EFFECTIVE DATE: This regulation is effective on August 29, 1982.

FOR FURTHER INFORMATION CONTACT: LCDR B. W. MILLS, Chief, Boating Affairs Branch, Thirteenth Coast Guard District, 915 Second Avenue, Seattle, Washington 98174. Telephone: (206) 442-7355.

SUPPLEMENTARY INFORMATION:

Discussion

This is the first regatta sponsored by the Tacoma Unlimited Racing Association on Commencement Bay, Tacoma, Washington. The event is expected to draw a large number of spectators to the beaches and waters surrounding the race course. A sizable portion of the spectators are expected to watch the event from a significant number of pleasure craft moored to a log boom surrounding the race course. To ensure the safety of both the spectators and the participants, a special navigational regulation providing Coast Guard personnel with additional authority to control and coordinate general navigation in the waters surrounding the race course during the event is hereby established.

Procedure

This regulation has been promulgated as an emergency Final Rule without any prior announcement or Notice of Proposed Rulemaking. This event has already received wide advertising throughout the Seattle-Tacoma area and the surrounding communities. The event is scheduled to occur in less than 30 days. Over the past month representatives of the major Commencement Bay user groups have participated with the sponsor in planning this event in order to minimize interference with the commercial and pleasure craft users of the bay. Therefore, the provisions of the Administrative Procedure Act (5 U.S.C. 553) requiring notice of proposed rulemaking, and opportunity for public participation, are considered unnecessary. Nevertheless, interested persons wishing to comment may do so by submitting written comments to the office listed under "FOR FURTHER INFORMATION CONTACT" in this preamble. Commenters should include their names and addresses, identify the docket number for the rulemaking, and give reasons for their comments. Based on comments received, the regulation may be changed.

Drafting Information

The principal persons involved in the drafting of this proposal are LCDR B. W. MILLS, USCG, Project Officer, Thirteenth Coast Guard District, Boating Safety Office, and LCDR R. R. CLARK, USCG, Project Attorney, Thirteenth Coast Guard District, Legal Office.

Discussion and Evaluation

This final regulation has been reviewed under the provisions of Executive Order 12291 and has been determined not to be a major rule. It is considered to be nonsignificant in accordance with guidelines set out in the Policies and Procedures for Simplification, Analysis and Review of Regulations (DOT Order 2100.00 of 5-22-80). An economic evaluation has not been conducted since its impact is expected to be minimal. This regulation will be in effect for only one day, Sunday, August 29, 1982 and only on Commencement Bay where scheduling of commercial traffic has been coordinated with the affected users. Also, commercial and pleasure craft traffic will be able to move in and out of Commencement Bay around the regatta site restricted only by speed. In accordance with § 605(b) of the Regulatory Flexibility Act (94 Stat. 1164), it is also certified that these rules will not have a significant economic impact on a substantial number of small entities. This is clear from the limited, if any, impact on commercial marine traffic that will occur as a result of this final rule.

List of Subjects in 33 CFR Part 100

Marine safety, Navigation (water).

PART 100—SAFETY OF LIFE ON NAVIGABLE WATERS

In consideration of the foregoing, the Coast Guard is amending Part 100 of Title 33, Code of Federal Regulations, by adding new § 100.35–1312 to read as follows:

§ 100.35–1312 Commencement Bay/ Tacoma Regatta.

(a) On August 29, 1982, this regulation will be in effect from 0900 until one hour after the conclusion of the last race.

(b) The area where the Coast Guard will restrict general navigation by this regulation during the hours it is in effect is:

(1) The waters of Commencement Bay, Tacoma, Washington, south of an east-west line drawn from the Browns Point light house to the Tacoma ferry terminal north of the Tacoma Yacht Club.

(c) The area described in paragraph (b) of this section has been divided into two zones:

(1) Zone I is the area within the log boom which will be located on the south-east side of Commencement Bay from the shoreline near the Old Town Dock, to ⅝ mile offshore, to parallel the shoreline 1.3 miles Northwest, then to the shoreline west of the Lobster Shop Reef.

(2) Zone II is the remainder of Commencement Bay.

(d) The Coast Guard patrol of the area described in paragraph (b) of this section is under the direction of the Coast Guard Patrol Commander. He is empowered to control the movement of vessels on the race course and in the adjoining waters during the periods this regulation is in effect.

(e) Only authorized vessels will be allowed to enter Zone I during the hours this regulation is in effect. Vessels within Zone II shall maneuver as directed by Coast Guard Officers or Petty Officers.

(f) During the times in which this regulation is in effect, swimming, wading, or otherwise entering the water in Zone I by any person is prohibited.

(g) Vessels proceeding in Zone II during the hours this regulation is in effect shall do so only at speeds which will create minimum wake, seven (7) miles per hour or less. This maximum speed may be reduced at the discretion of the Patrol Commander.

(h) Upon completion of the last race of the day, all vessels in Zone II shall proceed at speeds of seven (7) miles per hour or less. This maximum speed may be reduced at the discretion of the Patrol Commander.

(i) A succession of sharp, short signals by whistle or horn from vessels patrolling the areas under the direction of the U.S. Coast Guard Patrol Commander shall serve as a signal to stop. Vessels signalled shall stop and shall comply with the orders of the patrol vessel; failure to do so may result in expulsion from the area, citation for failure to comply, or both.

(46 U.S.C. 454; 33 CFR 100.35)

Dated: August 13, 1982.

C. F. DeWolf,

Rear Admiral, U.S. Coast Guard, Commander, 13th Coast Guard District.

[FR Doc. 82–23390 Filed 8–25–82; 8:45 am]

BILLING CODE 4910–14–M

GENERAL SERVICES ADMINISTRATION

Transportation and Public Utilities Service

41 CFR Part 101–7

[GSA Bulletin FPMR A–40, Supp. 3]

Federal Travel Regulations

AGENCY: Transportation and Public Utilities Service, General Services Administration (GSA).

ACTION: Final rule.

SUMMARY: GSA has issued GSA Bulletin FPMR A–40, Supplement 3, transmitting changed pages to amend the Federal Travel Regulations (FTR), FPMR 101–7, to revise the listing of high rate geographical areas (HRGA's).

GSA is required by statute (5 U.S.C. 5707) to conduct periodic investigations of the cost of travel. Under this authority, GSA recently conducted an interim investigation of travel costs in selected high cost cities. Based on the results, the HRGA listing in the FTR is revised to (1) delete certain previously designated HRGA's which no longer qualify because of more current subsistence cost data, (2) designate additional HRGA's, and (3) increase the maximum actual subistence expenses rate and/for redefine the boundaries of certain existing HRGA's. In addition, footnotes (1) and (2) to the HRGA listing are revised and to the footnote (3) is added for clarity.

DATE: Effective date: August 29, 1982.

FOR FURTHER INFORMATION CONTACT: Ms. Doris Jones, Travel Regulations Branch, (202) 275–0651.

SUPPLEMENTARY INFORMATION: 1. The General Services Administration has determined that this rule is not a major rule for the purposes of Executive Order 12291 of February 17, 1981, because it is not likely to result in an annual effect on the economy of $100 million or more; a major increase in costs to consumers or others; or significant adverse effects. The General Services Administration has based all administrative decisions underlying this rule on adequate information concerning the need for and consequences of, this rule; has determined that the potential benefits to society from this rule outweigh the potential costs and has maximized the net benefits; and has chosen the alternative approach involving the least net cost to society.

Lists of Subjects in 41 CFR Part 101–7

Government employees, Government property management, Motor vehicles, Travel, Travel allowances, Travel and transportation expenses.

2. Accordingly, the Federal Travel Regulations, which are incorporated in Part 101–7, are amended as follows:

PART 101–7—FEDERAL TRAVEL REGULATIONS

The HRGA listing found in appendix 1–A is revised to read:

Appendix 1–A [Amended]

Designated High Rate Geographical Areas (HRGA's)

The areas listed below are designated as HRGA's. The rate prescribed for each area is the maximum amount of daily reimbursement that may be allowed for travel authorized on an actual subsistence expense basis under the provisions of 1–8.6. These prescribed rates are not to be construed as per diem rates. Allowable subsistence expenses must be itemized.

Note.—See end of listing for footnote explanations.

High rate geographical areas [1] [2] [3]	Prescribed maximum daily rates (in dollars)
ALABAMA	
**Birmingham (all locations within Jefferson County)	64
**Huntsville (all locations within Madison County)	61
*Mobile (all locations within Mobile County)	57

High rate geographical areas [1][3]	Prescribed maximum daily rates (in dollars)
ARIZONA	
**Phoenix/Scottsdale (all locations within Maricopa County)	65
**Tucson (all locations within Pima County, including Davis Monthan AFB)	71
ARKANSAS	
**Little Rock (all locations within Pulaski County)	60
CALIFORNIA	
**Fresno (all locations within Fresno County)	70
**Los Angles (all locations within the counties of Los Angeles, Kern, Orange, and Ventura, including Edwards AFB and Naval Weapons Center and Ordnance Test Station, China Lake)	75
*Monterey (all locations within Monterey County)	75
**Palm Springs (all locations within Riverside County)	75
**Sacramento (all locations within Sacramento County)	75
San Diego (all locations within San Diego County)	75
San Francisco/Oakland (all locations within the counties of San Francisco, Alameda, Contra Costa, and Marin)	75
San Jose (all locations within Santa Clara County)	75
**San Luis Obispo (all locations within San Luis Obispo County)	64
*San Mateo (all locations within San Mateo County)	67
Santa Barbara (all locations within Santa Barbara County)	75
**Santa Cruz (all locations within Santa Cruz County)	68
*Vallejo (all locations within Solano County)	63
COLORADO	
Aspen (all locations within Pitkin County)	75
*Boulder (all locations within Boulder County)	70
Denver (all locations within the counties of Denver, Adams, Arapahoe, and Jefferson)	75
*Durango (all locations within La Plata County)	60
*Glenwood Springs (all locations within Garfield County)	64
*Grand Junction (all locations within Mesa County)	58
Vail (all locations within Eagle County)	75
CONNECTICUT	
**Bridgeport (all locations within Fairfield County)	65
**Hartford (all locations within the counties of Harford and Middlesex)	75
**New Haven (all locations within New Haven County)	75
**New London/Groton (all locations within New London County)	61
DELAWARE	
Wilmington (all locations within New Castle County)	75
DISTRICT OF COLUMBIA	
Washington, D.C. (all locations within the corporate limits of the District of Columbia; the cities of Alexandria, Falls Church, and Fairfax, and the counties of Arlington, Loudoun, and Fairfax in Virginia; and the counties of Montgomery and Prince Georges in Maryland) (see also Maryland and Virginia)	75
FLORIDA	
*Cocoa Beach (all locations within Brevard County)	65
*Ft. Lauderdale (all locations within Broward County)	70
**Ft. Walton Beach (all locations within Okaloosa County)	55
**Jacksonville (all locations within Duval County, including Naval Station Mayport)	62
**Miami (all locations within the counties of Dade and Monroe)	75
**Orlando (all locations within Orange County)	65
*Sarasota (all locations within Sarasota County)	57
**Tampa/St. Petersburg (all locations within the counties of Hillsborough and Pinellas)	75
*West Palm Beach (all locations within Palm Beach County)	59
GEORGIA	
Atlanta (all locations within the counties of De Kalb, Fulton, and Cobb)	75
*Savannah (all locations within Chatham County)	56

High rate geographical areas [1][3]	Prescribed maximum daily rates (in dollars)
IDAHO	
**Boise (all locations within Ada County)	62
ILLINOIS	
Chicago (all locations within the counties of Du Page, Cook, and Lake)	75
*Rockford (all locations within Winnebago County)	55
**Springfield (all locations within Sangamon County)	59
INDIANA	
Indiana Army Ammunition Plant, Charlestown (see also Louisville, KY)	73
Ft. Wayne (all locations within Allen County)	65
*Gary (all locations within Lake County)	62
**Indianapolis (all locations within Marion County, including Fort Benjamin Harrison)	74
*South Bend (all locations within St. Joseph County)	62
IOWA	
**Des Moines (all locations within Polk County)	60
KANSAS	
**Kansas City (all locations within the counties of Johnson and Wyandotte) (see also Kansas City, MO)	75
**Wichita (all locations within Sedgwick County)	71
KENTUCKY	
Covington (all locations within Kenton County)	59
**Lexington (all locations within Fayette County)	70
**Louisville (all locations within Jefferson County, and the Indiana Army Ammunition Plant, Charlestown, Indiana) (see also Indiana)	73
LOUISIANA	
**Baton Rouge (all locations within East Baton Rouge Parish)	72
*Lake Charles (all locations within Calcasieu Parish)	61
New Orleans (all locations within the parishes of Jefferson, Orleans, Plaquemines, and St. Bernard)	75
MAINE	
**Portland (all locations within Cumberland County)	71
MARYLAND	
**Annapolis (all locations within Anne Arundel County)	62
Baltimore (all locations within Baltimore City and the counties of Baltimore and Harford)	75
*Ocean City (all locations within Worcester County)	75
*Salisbury (all locations within Wicomico County)	63
Montgomery County (see also District of Columbia)	75
Prince Georges County (see also District of Columbia)	75
MASSACHUSETTS	
Boston (all locations within the counties of Middlesex, Norfolk, and Suffolk)	75
*Hyannis (all locations within Barnstable County)	56
*Martha's Vineyard/Nantucket (all locations within the counties of Dukes and Nantucket)	68
*New Bedford (all locations within Bristol County)	68
MICHIGAN	
**Ann Arbor (all locations within Washtenaw County)	64
Detroit (all locations within Wayne County)	75
**Grand Rapids (all locations within Kent County)	66
**Kalamazoo (all locations within Kalamazoo County)	60
*Pontiac (all locations within Oakland County)	65
*Saginaw (all locations within Saginaw County)	60
*Warren (all locations within Macomb County)	66
MINNESOTA	
*Duluth (all locations within St. Louis County)	62
Minneapolis/St. Paul (all locations within the counties of Anoka, Hennepin, and Ramsey, including the Fort Snelling Military Reservation)	75
MISSISSIPPI	
**Jackson (all locations within Hinds County)	62
MISSOURI	
**Kansas City (all locations within the counties of Clay, Jackson and Platte) (see also Kansas City KS)	75

High rate geographical areas [1][3]	Prescribed maximum daily rates (in dollars)
St. Louis (all locations within the counties of St. Charles and St. Louis)	75
NEBRASKA	
**Omaha (all locations within Douglas County)	64
NEVADA	
Las Vegas (all locations within Clark County, including Nellis AFB)	75
NEW HAMPSHIRE	
**Manchester (all locations within Hillsborough County)	67
NEW JERSEY	
Atlantic City (all locations within Atlantic County)	75
**Camden (all locations within Camden County)	64
**Dover (all locations within Morris County, including Picatinny Arsenal)	68
**Eatontown (all locations within Monmouth County, including Ft. Monmouth)	75
**Edison (all locations within Middlesex County)	75
Newark (all locations within the counties of Bergen, Essex, Hudson, Passaic, and Union)	75
*Princeton/Trenton (all locations within Mercer County)	75
*Tom's River (all locations within Ocean County)	68
NEW MEXICO	
**Albuquerque (all locations within Bernalillo County)	67
*Santa Fe (all locations within Santa Fe County)	71
NEW YORK	
**Albany (all locations within Albany County)	70
**Buffalo/Niagara Falls (all locations within the counties of Erie and Niagara)	66
**Lake Placid (all locations within Essex County)	73
New York (all locations within the Boroughs of the Bronx, Brooklyn, Manhattan, Queens, and Staten Island, and the counties of Nassau and Suffolk)	75
**Rochester (all locations within Monroe County)	75
**Syracuse (all locations within Onondaga County)	75
*West Point (all locations within Orange County)	61
NORTH CAROLINA	
**Asheville (all locations within Buncombe County)	60
**Charlotte (all locations within Mecklenburg County)	62
**Raleigh (all locations within Wake County)	65
NORTH DAKOTA	
*Bismarck (all locations within Burleigh County)	60
OHIO	
**Akron (all locations within Summit County)	59
**Cincinnati/Evendale (all locations within Hamilton County)	72
Cleveland (all locations within Cuyahoga County)	75
**Columbus (all locations within Franklin County)	66
**Dayton (all locations within Montgomery County, including Wright-Patterson AFB)	67
**Toledo (all locations within Lucas County)	67
OKLAHOMA	
**Oklahoma City (all locations within Oklahoma County)	64
*Tulsa (all locations within the counties of Tulsa and Osage)	75
OREGON	
**Portland (all locations within Multnomah County)	71
PENNSYLVANIA	
*Chester (all locations within Delaware County)	55
**Coatesville/Valley Forge (all locations within Chester County)	75
**Harrisburg (all locations within Dauphin County)	75
**King of Prussia/Ft. Washington (all locations within Montgomery County, except Bala Cynwyd) (see also Philadelphia, PA)	75
Philadelphia/Bala Cynwyd (all locations within Philadelphia County and the city of Bala Cynwyd in Montgomery County)	75

High rate geographical areas [1] [2]	Prescribed maximum daily rates (in dollars)
Pittsburgh/Monroeville (all locations within Allegheny County)	75
*Reading (all locations within Berks County)	56
**York (all locations within York County)	59
RHODE ISLAND	
**Newport (all locations within Newport County)	71
**Providence (all locations within Providence County)	75
SOUTH CAROLINA	
**Charleston (all locations within the counties of Charleston and Berkeley)	64
*Columbia (all locations within Richland County)	63
*Hilton Head (all locations within Beaufort County)	75
TENNESSEE	
*Knoxville/Oak Ridge (all locations within Knox County and the city of Oak Ridge) (This rate applies on and after 11/1/82)	58
(This rate applies only thru 10/31/82)	75
**Memphis (all locations within Shelby County)	70
**Nashville (all locations within Davidson County)	68
TEXAS	
*Amarillo (all locations within Potter County)	56
**Austin (all locations within Travis County)	75
*Brownsville (all locations within Cameron County)	58
**Beaumont (all locations within Jefferson County)	55
*Corpus Christi (all locations within Nueces County)	69
Dallas/Ft. Worth (all locations within the counties of Dallas and Tarrant)	75
**El Paso (all locations within El Paso County)	72
*Galveston (all locations within Galveston County)	68
Houston (all locations within Harris County, including the L. B. Johnson Space Center and Ellington AFB)	75
*Lubbock (all locations within Lubbock County)	57
**San Antonio (all locations within Bexar County)	75
UTAH	
**Salt Lake City (all locations within Salt Lake County, including Dugway Proving Ground and Tooele Army Depot)	75
VERMONT	
**Burlington (all locations within Chittenden County)	61
VIRGINIA	
Alexandria (see also District of Columbia)	75
Fairfax (see also District of Columbia)	75
Falls Church (see also District of Columbia)	75
*Manassas (all locations within Prince William County)	56
**Norfolk (all locations within the cities of Norfolk, Virginia Beach, Portsmouth, Hampton, Newport News, and Chesapeake, and the county of York, including the Naval Weapons Station, Yorktown)	70
**Richmond (all locations within the city of Richmond and the counties of Chesterfield and Henrico, including the Defense General Supply Center)	62
*Roanoke (all locations within Roanoke City and the County of Roanoke)	58
**Williamsburg	65
Arlington County (see also District of Columbia)	75
Fairfax County (see also District of Columbia)	75
Loudoun County (see also District of Columbia)	75
WASHINGTON	
Seattle (all locations within King County)	75
**Spokane (all locations within Spokane County)	66
*Tacoma (all locations within Pierce County)	57
WEST VIRGINIA	
Charleston (all locations within Kanawha County)	63
WISCONSIN	
**Madison (all locations within Dane County)	67
**Milwaukee (all locations within Milwaukee County)	75
WYOMING	
*Casper (all locations within Natrona County)	63
**Cheyenne (all locations within Laramie County)	62

[1] Unless otherwise specified, HRGA's are defined as "all locations within, or entirely surrounded by, the corporate limits of the key city, including independent entities located within those boundaries."

[2] HRGA's with county definitions shall include "all locations within, or entirely surrounded by, the corporate limits of the key city as well as the boundaries of the listed counties, including independent entities located within the boundaries of the key city and the listed counties."

[3] Military installations or Government-related facilities (whether or not specifically named in the HRGA definition) that are partially located within the HRGA boundary shall include "all locations that are geographically part of the military installation or Government-related facility, even though part(s) of such activities may be located in an area that is not specifically listed in the HRGA definition."

*Newly designated HRGA.

**Increased maximum rate or redefined boundary for previously designated HRGA.

(5 U.S.C. 5707)

Dated: August 7, 1982.

Ray Kline,

Acting Administrator.

[FR Doc. 82-23348 Filed 8-25-82; 8:45 am]

BILLING CODE 6820-AM-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Care Financing Administration

42 CFR Part 433

Medicaid Program; Collection of Third Party Payments

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

ACTION: Notice of the Office of Management and Budget's Clearance of Reporting Requirements.

SUMMARY: This notice announces the Office of Management and Budget's clearance of the reporting requirements contained in 42 CFR Part 433 regarding the collection of third party payments.

EFFECTIVE DATE: December 31, 1981.

FOR FURTHER INFORMATION CONTACT: Michelle French, 301-594-5610.

SUPPLEMENTARY INFORMATION: On October 1, 1981, a final rule with comment period was published in the **Federal Register** (46 FR 48556) entitled Medicaid Program; Miscellaneous Medicaid Provisions—Increased State Flexibility, which amended several parts of the Medicaid regulations to implement a few provisions of the Omnibus Budget Reconciliation Act of 1981 (Pub. L. 97-35). One of the subjects included in these amendments provided for the removal of the requirement for collection of third party payments when the amount of reimbursement a that State expects to recover exceeds the cost of recovery (§ 433.139).

The preamble to the final rule included a statement that the reporting requirements contained in section 433.139 would not be effective until the Office of Management and Budget (OMB) approved the reporting. OMB has completed its review of the reporting requirements contained in section 433.139 and approved the requirements on October 25, 1981. The OMB approval number is 0938-0193. The expiration date of OMB's approval of the reporting requirements is September 30, 1983. Action Transmittal 81-39 was forwarded to the States in November, and provided instructions for complying with the State plan reporting requirements by December 31, 1981.

The action transmittal requested that the States submit changed page 69 of the State plan text and Attachment 4.22-A. Attachment 4.22-A should specify the threshold amount or other guideline used in determining whether to seek reimbursement from a liable third party; or describe the process by which the agency determines that seeking reimbursement would not be cost effective. It also should specify the dollar amount or time period the State uses to accumulate billings from a particular liable third party for this purpose.

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

Dated: August 20, 1982.

Carolyne K. Davis,

Administrator, Health Care Financing Administration.

[FR Doc. 82-23400 Filed 8-25-82; 8:45 am]

BILLING CODE 4120-03-M

42 CFR Part 442

Expanded Phase Out Provisions of Intermediate Care Facilities for the Mentally Retarded (ICFs/MR) Correction Plans

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

ACTION: Final Rule.

SUMMARY: This regulation authorizes Intermediate Care Facilities For the Mentally Retarded (ICFs/MR) to negotiate revisions to their 1977 correction plans for Life Safety Code, living, dining, and therapy area deficiencies under certain circumstances. Under this regulation, HCFA is authorized to approve revised correction plans when facilities have completed at least 25 percent of their

original plans and agree to phase out an increased number of beds in previously certified units not already scheduled for phase out under existing correction plans. The timetable for the phase out and the actual number of beds to be phased out will be negotiated with target figures established for each six-month period of the plan. The total time for the plan cannot exceed five years from the effective date of this rule. Facilities are still required to meet the July 18, 1982 deadline for those items in existing plans which include construction or renovation of units that will remain in use after the phase out is completed. The intent of this regulation is to stimulate an overall reduction in the number of certified beds in large residential facilities. We hope that it will forestall further expenditures of capital funds for renovation of existing facilities or construction of new units where an expanded phase out of units is feasible.

EFFECTIVE DATE: August 26, 1982.

FOR FURTHER INFORMATION CONTACT: Wayne Smith, Ph.D., Health Care Financing Administration, Health Standards and Quality Bureau, 1849 Gwynn Oak Avenue, Baltimore, Maryland 21207, (301) 594–7651.

SUPPLEMENTARY INFORMATION:

Background

The ICF/MR program was established in its current form when the intermediate care facility (ICF) program was transferred from Title XI to Title XIX in 1972 by Pub. L. 92–223. That legislation enacted Section 1905(d) of the Social Security Act (42 U.S.C. 1936d(d)). Regulations to implement the program were promulgated in January 1974 (now 42 CFR Part 442, Subpart G) and have remained essentially unchanged. However, the deadlines for meeting various Life Safety Code, living, dining, and therapy area requirements have been extended several times. For a comprehensive review of the legislative and regulatory history of the ICF/MR program, refer to the August 24, 1981 Notice of Proposed Rulemaking (NPRM) that appeared in the **Federal Register** (46 FR 42698).

The latest extension to the prior compliance deadlines (42 CFR 442.115(e) and (f) was published as a final rule on January 6, 1981 (42 FR 1268). That rule enabled facilities which had failed to ask for an extension to 1982, could not meet the July 18, 1980 deadlines, and had completed at least 25 percent of their original correction plans, to receive an extension for the completion of their plans to July 18, 1982. We considered, at that time, an option which would have also enabled a facility to renegotiate its plan (even if they were already extended to 1982) if the facility would commit itself to a new expanded phase out plan or the introduction of a phase out plan where none had existed before, allowing greater time for the phase out to occur. This option was rejected at that time because there was concern that it could lead to the inappropriate placement of persons with mental retardation in nursing homes, boarding homes and other settings not suitable to the needs of these people.

Several States continued to urge the Department to provide them with the flexibility inherent in the expanded phase out plan. Thus, we developed the NPRM, published August 24, 1981, upon which this final rule is based.

Provision Of The Regulation

The changes to 42 CFR 442.115 give facilities the option of obtaining additional time for completing the existing phase out portion of the correction plan if an expanded phase out also occurs. The requirements under this option are as follows:

(1) The facility must agree to increase its phase out goals; i.e., add beds in certified units to those already scheduled for phase out.

(2) The facility must provide documentation that it has already met at least 25 percent of its original correction plan under sections § 442.115(c) and (d).

(3) The facility must provide acceptable assurances that no new residents who are not currently classified for the ICF/MR level of care are admitted to those units scheduled for phase out; and that the health and safety of the current residents are not endangered.

(4) Phase out targets are set at six-month intervals. This time frame gives the facility sufficient opportunity to achieve targeted goals and thereby avoid the loss of Federal Financial Participation (FFP).

(5) The total time allowed for the completion of a plan cannot exceed five years from the effective date of the final rule. The time allowed for a particular facility is determined through negotiation with the HCFA Regional Office and is based on the facility's size, the extend of the phase out, the facility's prior phase out performance, and the degree of severity of the clients' conditions.

(6) Beds in non-certified units cannot be added to the revised correction plan. This provision prevents the inclusion of beds in previously uncertified units in order to gain FFP while phasing them out.

Analysis of Comments

We received 31 public comments in response to this NPRM. Individual parents, and organizations representing parents, of persons with mental retardation who reside in ICFs/MR which might be slated for increased phase out accounted for 12 comments. We received 8 comments from national organizations representing persons with mental retardation, mental retardation agencies, etc., and we received 11 comments from government agencies at the State and Federal level. Even though we asked a number of questions in the NPRM seeking information about the effects of the regulation, we received so few responses directly related to the questions that no useable data emerged. Aside from the comments supporting the provisions of the regulation, the public comments centered around two issues. The comments from the parents and parent groups comprised one issue, namely their concern that the regulation would result in the inappropriate placement of clients in the community. The comments from the National Association of State Mental Retardation Program Directors summarized the second issue, namely the status of units under the provisions of this regulation which have not been phased out according to original correction plans.

Comment: The parents of residents of ICFs/MR principally in California wrote with deeply felt concern that their children may be forced into inadequate community residences in uncaring and unprepared communities as a result of this regulation. They feel that the expanded phase out option will create such a strong incentive for California to place persons in community settings rather than complete the renovations built into the original correction plan, that the interests of individual residents could be lost. They also expressed the view that communities are not prepared to serve the more severely handicapped persons who would be included in expanded phase out plans.

Response: We stated in the Preamble of the NPRM that the intention of this regulation was to provide facilities which still have construction and renovation to complete in their correction plans with the opportunity to choose to phase out the units instead, if they feel the change would be more beneficial than retaining the use of the units involved. If we were not to publish this regulation, units in ICFs/MR with both construction/renovation and phase out correction plans that would not be finished by the July 18, 1982 deadline could face decertification actions and

the facilities could lose Medicaid reimbursement. This regulation provides a mechanism for the facility to retain Medicaid reimbursement while it implements a reasonable, timely depopulation of those units which were to have been renovated.

While we appreciate the commenters' belief that the public residential facilities in question are viewed as the most appropriate places for their children, these regulations will not determine where particular clients are placed. Each State's agency that operates public institutions and provides a typical array of services to its citizens with developmental disabilities has the authority and responsibility to determine what the mix of residential services will be, the number of clients who will be served, and the number of beds for which it will request Medicaid certification. Each facility determines how many persons it will serve and how many persons will be admitted or discharged. State actions to place increasing numbers of individuals in community settings have taken place in the past and are continuing. These State actions are not controlled or even highly influenced by Medicaid rules. In light of this trend, we do not believe that these regulations will markedly change State incentives to utilize community settings where States find them appropriate.

Comment: The National Association of State Mental Retardation Program Directors, representing the State agencies that administer public institutions for persons with mental retardation, summarized the concern of some States that it is not clear how beds in certified units slated for phase out in the original correction plan, but not yet in fact phased out would be treated in terms of negotiating an expanded phase out plan under the terms of this regulation.

Response: We want to make it clear that if the facility will have completed by July 18, 1982 at least 25 percent of the correction plan that was extended to that date, the facility is eligible to negotiate an expanded phase out plan. The number of beds slated for phase-out in an existing correction plan may not be decreased—only increased—in an expanded phase out plan. Also, a facility that has no phase out plan, can create one instead of completing a construction/renovation program, if at least 25 percent of the original construction/renovation plan is completed.

Related to this issue is how HCFA will negotiate new goals which must include an even larger number of beds to be phased out than originally planned. The Regional Offices of the Health Care Financing Administration will be provided guidelines to assist them in negotiating new plans of correction. The following principles will be applied:

1. The extent to which the facility has achieved its original goals in relationship to the total population of the facility, the size of the original goals, and the larger number of additional beds to be slated for phase out, will be factors in deciding the amount of additional time which will be provided to the facility. The extent of disability of the clients affected by a proposed phase out plan will also be considered.

2. The greater the distance the facility is from its original goals and the less the facility is willing to add to its phase out targets, the less flexibility in additional time will be provided.

Impact Analysis

Regulatory Flexibility Act

The Secretary certifies, pursuant to the Regulatory Flexibility Act (5 USC 605(b)), that this regulation will not have a significant impact on a substantial number of small entities. The reason for the Secretary's certification is that the regulation will affect only large public institutions for mentally retarded persons. Small business entities are likely to benefit from this regulation to the extent that it stimulates the growth of small community-based facilities as large institutions scale down in size.

Executive Order 11291

The Secretary has also determined, in accordance with Executive Order 11291, that the proposed rule does not constitute a "major rule" because it will not have an annual effect on the economy of $100 million or more; result in a major increase in costs or prices for consumers, any industries, any Government agencies or any geographic regions; or have significant 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 regulation would provide an incentive for reducing the population of a facility at the facility's option. It provides no new requirements. As the number of beds is reduced, FFP would go down. We anticipate that cost savings would be used to develop more community-based residential settings some of which may qualify as ICFs/MR which may have the net effect of increasing costs overall. We believe that the potential impact of this regulation will not meet the criteria for a "major rule" and therefore a regulatory impact analysis is not required.

Waiver of Delayed Effective Date

We have decided not to delay the effective date of this final rule for the usual 30 day period. Since the current deadline for correction of deficiencies expires July 18, 1982, some States may lose FFP unless the option made available to them in this rule takes effect as soon as possible. For this reason and because residents of certain ICFs/MR would be adversely affected by a break in program participation, we find good cause to make this rule effective on the date of publication.

Approval of Recordkeeping/Reporting Requirements

The Office of Management and Budget has approved the correction plan requirements which HCFA imposes on health care facilities which participate in Medicare and Medicaid. The OMB number under which this approval was granted is 0938–0043.

List of Subjects in 32 CFR Part 442[1]

Certification of intermediate care facilities (ICFs), Certification of skilled nursing facilities (SNFs), Contracts (Agreements), Disabled, Grant-in-Aid program—health, Health facilities, Health professions, Health records, Information (Disclosure), Medicaid, Mental health centers, Nursing homes, Nutrition, Privacy, Safety.

PART 442—STANDARDS FOR PAYMENT FOR SKILLED NURSING AND INTERMEDIATE CARE FACILITY SERVICES

42 CFR Part 442 is amended as follows:

(Secs. 1102, 1905(c) and 1905(d) of the Social Security Act (42 U.S.C. 1302, 1396d(c), 1396d(d))

42 CFR 442.115 is revised as follows:

§ 442.115 Correction plans.

(a) The ICF/MR's plan required by § 442.113 must provide for completion of corrections by:

(1) July 18, 1980; or

(2) July 18, 1982, if authorized by HCFA under paragraph (b) or (e) of this section; or

(3) the date approved by HCFA, if authorized by HCFA under paragraph (f) of this section; or

[1] HCFA is providing this list of subjects in compliance with 1 CFR 18.20. That regulation requires agencies to include a list of index terms for each CFR Part published in the **Federal Register** beginning April 1, 1982.

(4) the date approved by HCFA, if authorized by HCFA under paragraph (g) of this section, when corrections of deficiencies in units to be retained are completed within the appropriate time period as set forth in paragraph (g) of this section.

(b) If, at the time of the first survey of the ICF/MR after July 17, 1977, it is unable to develop a plan to complete corrections by July 18, 1980, the survey agency may request HCFA to authorize approval of a plan to complete them by July 18, 1982. HCFA will authorize this approval for each deficiency if it is determined that time beyond July 18, 1977, is needed—

(1) As a practical matter to complete the corrections;

(2) To prevent unreasonable hardship to the ICF/MR; and

(3) To insure continued care for recipients served by the ICF/MR.

(c) If the plan provides for correction through structural change or renovation, it must—

(1) Contain a timetable showing the corrective steps and their completion dates;

(2) Specify the structural change or renovation; and

(3) Document that sufficient financial resources are available to complete the change or renovation on schedule.

(d) If the plan provides for correction by phasing out part or all of the ICF/MR, it must—

(1) Contain a timetable showing the buildings or units to be closed and describing the steps for phasing them out;

(2) Describe the methods that insure the recipients' health and safety until the building or unit is closed; and

(3) Provide that no new recipients will be admitted to the building or unit after the plan has been approved.

(e) If an ICF/MR is unable to complete corrections required by the plan of correction by July 18, 1980 and it did not request an extension beyond that date under paragraph (b) of this section, the survey agency may request HCFA to authorize approval for an extension of the facility's plan of correction to July 18, 1982 if—

(1) For corrections under paragraph (c) of this section, the facility provides documentation from the renovation project's supervising architect or contractor that required construction work was at least 25 percent completed by July 18, 1980 and will be completed by July 18, 1982;

(2) For corrections under paragraph (d) of this section, the facility provides documentation that the phase out program was at least 25 percent completed on July 18, 1980 and will be completed by July 18, 1982; and

(3) The survey agency finds that all continuing deficiencies covered by the plan of correction will be resolved by completion of the construction, renovation, or phase out of beds.

(f) If an ICF/MR is unable to complete corrections required by the plan of correction by July 18, 1980 or July 18, 1982, as authorized in paragraphs (a), (b) and (e) of this section, the survey agency may request HCFA to authorize a plan of correction for an additional period of time if the delay was caused by litigation, provided that—

(1) The United States, or any agency or Department thereof, was party to the litigation, or was an intervenor in it, or participated as an *amicus curiae;* and

(2) The United States advocated a position which caused or contributed, in whole or in part, to the delay; and

(3) The request for an additional period of time to complete corrections under this provision does not exceed the amount of the delay resulting from the litigation, as determined by HCFA.

(g) The survey agency may request HCFA by November 24, 1982 to approve a revision to the existing correction plan of an ICF/MR under this section if the facility chooses to engage in a partial or complete phase out of beds in certified units of the facility already contained in the present correction plan as follows:

(1) The extended phase out period to be approved by HCFA may be 1 to 5 years from August 26, 1982 if the facility:

(i) Provides documentation that it has completed at least 25 percent of the items in the original correction plans under paragraphs (c) and (d) of this section;

(ii) Increases the total number of beds being phased out within certified units;

(iii) Agrees to a rate of decline in resident population, and establishes, in the revised correction plan submitted under this paragraph, targets at six-month intervals for the phasing out of a specific number of beds;

(iv) Assures the health and safety of the residents until the buildings or units are phased out; and

(v) Ensures that only residents who are classified for the ICF/MR level of care when the revised correction plan submitted under this paragraph is approved, will be admitted thereafter to the buildings or units being phased out.

(2) The survey agency must ensure that the facility has met all the facility standards for ICFs/MR (Subpart G of this part), or has an approved plan of correction for those certified buildings and units in use and to be retained after the phase out plan is completed; and

(3) The facility may not seek certification of units not currently certified in order to add the beds in those units to an expanded phase out plan as a means of taking advantage of this regulation.

(4) FFP will not be available for costs attributable to any beds which remain above the targeted phase out goals after each 6-month target date is passed.

(Sections 1102, 1905(c) and 1905(d) of the Social Security Act (42 U.S.C. 1302, 1396d(c), 1396(d))

(Catalog of Federal Domestic Assistance Program No. 13.744 Medical Assistance Program)

Dated: July 8, 1982

Carolyne K. Davis,

Administrator, Health Care Financing Administrator.

Approved: August 9, 1982.

Richard S. Schweiker,

Secretary.

[FR Doc. 82-23451 Filed 8-25-82; 8:45 am]

BILLING CODE 4120-03-M

DEPARTMENT OF THE INTERIOR

Office of the Secretary

43 CFR Part 17

Nondiscrimination In Federally-Assisted Programs of the Department of the Interior; Correction

AGENCY: Office of the Secretary—Interior.

ACTION: Final rule; correction.

SUMMARY: This document corrects the retitled CFR designations contained in final regulations entitled *Nondiscrimination on the Basis of Handicap* that appear at page 29546 in the Federal Register of Wednesday, July 7, 1982 (47 FR 29542).

FOR FURTHER INFORMATION CONTACT: Melvin C. Fowler, Office of the Secretary, Office for Equal Opportunity, U.S. Department of the Interior, Washington, D.C. 20240 (202) 343-4331.

Date approved: August 19, 1982.

Richard R. Hite,

Deputy Assistant Secretary for Policy, Budget, and Administration.

PART 17—NONDISCRIMINATION IN FEDERALLY-ASSISTED PROGRAMS OF THE DEPARTMENT OF THE INTERIOR

Accordingly, the Department of the Interior is correcting the amendatory language of the final rule which appeared in the July 7, 1982 Federal Register (47 FR 29546) amending 43 CFR

Part 17 to read as follows: "Accordingly, 43 CFR Part 17 is retitled *Nondiscrimination in Federally-Assisted Programs of the Department of the Interior;* 43 CFR 17.1 through 17.12 are redesignated as a new Subpart A and retitled *Nondiscrimination on the Basis of Race, Color, or National Origin;* new §§ 17.13 through 17.199 are added to Subpart A and reserved; and a new Subpart B is added."

[FR Doc. 82-23364 Filed 8-25-82; 8:45 am]
BILLING CODE 4310-10-M

DEPARTMENT OF TRANSPORTATION

Coast Guard

46 CFR Parts 56, 73, and 74

[CGD 76-053]

Passenger Vessel Subdivision and Damage Stability; Alternative Regulations

AGENCY: Coast Guard, DOT.

ACTION: Final rule.

SUMMARY: The Coast Guard is amending the regulations for watertight subdivision and damage stability of passenger vessels by adopting parts of the Inter-Governmental Maritime Consultative Organization (IMCO) Resolution A.265 (VIII) as an alternative to the existing regulations. IMCO Resolution A.265 (VIII) contains a method of assessing damage stability based on the principles of probability, using actual damage statistics as a data base. This new method allows more flexible subdivision design without diminishing the level of safety provided by the previously existing regulations, which are based on a floodable length criteria. These alternative regulations permit passenger vessel designers to use either the new or the existing method to evaluate the damage stability of their ships.

EFFECTIVE DATES: These alternative regulations become effective on: September 27, 1982.

FOR FURTHER INFORMATION CONTACT: Mr. Frank Perrini, Ship Characteristics Branch (G-MTH-5/13), Room 1206, U.S. Coast Guard Headquarters, 2100 Second Street, SW., Washington, D.C. 20593. Telephone: (202) 426-2187. Normal office hours: 7 am to 5 pm, Monday through Friday.

SUPPLEMENTARY INFORMATION: A Notice of Proposed Rulemaking was published in the **Federal Register** of August 20, 1981 (46 FR 42300). The public was invited to submit comments on the proposed alternative regulations until October 15, 1981. No comments were received. The alternative regulations are therefore adopted as proposed.

IMCO Resolution A.265 (VIII), "Regulations on Subdivision and Stability of Passenger Ships as Equivalent to Part B of Chapter II of the International Convention for the Safety of Life at Sea, 1960" and explanatory notes to the regulations are reproduced in Volume IV of the U.S. Coast Guard's "Commandant's International Technical Series", (USCG CITS-74-1-1). The interested reader desiring a more complete discussion of the IMCO Resolution is directed to "The New Equivalent International Regulations on Subdivision and Stability of Passenger Ships", which appears at page 344 of the 1974 "Transactions of the Society of Naval Architects and Marine Engineers." The "Transactions" can usually be found in the reference sections of technical libraries.

Drafting Information

The principal persons involved in drafting this final rule are: Mr. Frank Perrini, Project Manager, and Mr. Frank K. Thompson, Regulations Specialist, Office of Merchant Marine Safety, and LCDR William B. Short, Office of the Chief Counsel, Project Counsel.

Discussion of Alternative Regulation

The Coast Guard regulations concerning passenger vessel subdivision and damage stability (46 CFR Part 73, Watertight Subdivision and Part 74, Stability) previously in effect are based on practical experience. The basic data was collected approximately forty years ago. Thus the empirical approach taken by these regulations does not fully evaluate the effects of some aspects of current design practice on passenger vessel damage stability. There are four particular factors which are not completely evaluated by the previous regulations:

(1) Consideration is not given to the effect of the extent of damage on the probable extent of flooding;

(2) No consideration is given to how the ship's freeboard affects the probability of surviving damage;

(3) Inadequate consideration is given to possible variations in cargo space permeability; and

(4) Stability in the damaged condition (the probability of surviving damage in a seaway) is not given adequate consideration.

Since these important variables are not given full consideration under the previous regulations, it is possible for two vessels having the same Factor of Subdivision to have widely differing probabilities of survival in the event of equivalent damage.

In recognition of a similar problem regarding its own regulations, the Subcommittee on Subdivision, Stability and Loadlines of the Inter-governmental Maritime Consultative Organization (IMCO) proposed alternative regulations for passenger vessel subdivision and stability in 1971. The United States delegation supported this proposal and contributed to its development. The resulting Resolution, A.265 (VIII) "Regulations on Subdivision and Stability of Passenger Vessels as Equivalent to Part B of Chapter II of the International Convention for the Safety of Life at Sea, 1960", was adopted by IMCO on November 20, 1973.

The Coast Guard is adopting those portions of the IMCO Resolution which address the four factors mentioned above, as an alternative to the previously existing standard of subdivision and damage stability. Consequently, Regulations 1 through 8 and 19 of IMCO Resolution A.265 (VIII) are incorporated into the Coast Guard regulations as an alternative to 46 CFR 73.10 and 74.10-15. Regulations 1 through 7 of the IMCO Resolution contain the subdivision and damage stability requirements, regulation 8 concerns stability information, and regulation 19 addresses bilge pumping arrangements. These provisions are incorporated in SS 56.50-57, 73.12-5, and 74.12-5. The remaining regulations in the IMCO Resolution are not part of this final rule because they repeat existing Coast Guard regulations.

These final rules require that the alternative regulations be used as a whole. If a designer elects to follow the alternative subdivision requirements (§ 73.12-5), he must also use the alternative damage stability standards (§ 74.12-5) and bilge piping and pumping requirements (§ 56.50-57). He could not, for example, use the previously existing subdivision regulations with the new alternative damage stability standards, because the calculation methods employed are completely different. The designer must continue, however, to observe all other applicable existing subdivision and stability regulations for which no alternative regulation is prescribed.

Incorporation by Reference

On November 2, 1981, the Director of the Federal Register approved for incorporation by reference into the **Federal Register** the publication "Regulations on Subdivision and Stability of Passenger Ships as Equivalent to Part B of Chapter II of the

International Convention for the Safety of Life at Sea, 1960". A copy of this publication is on file at the Office of the Federal Register, Washington, DC 20408. This publication is also available from the National Technical Information Service, Springfield, VA 22151 as Volume IV of the U.S. Coast Guard's "Commandant's International Technical Series" (USCG CITS–74–1–1). The information concerning this incorporation by reference will be listed in the "Finding Aids" section of each affected volume of Title 46, CFR.

Basis of the Alternative Regulations

The alternative regulations use the mathematical techniques of statistical inference to assess the relative probability that a vessel will survive damage. This relative probability of survival, called the Attained Subdivision Index (A), is calculated by assuming that each outboard compartment and each group of two or more contiguous compartments is damaged to a depth of one-fifth the maximum beam. For each such damage condition, an individual probability of survival can be calculated considering three factors: (a) The probability of damage as related to longitudinal location, (b) the effect of longitudinal extent of damage, and (c) the effects of freeboard, stability, and heel. The product of these three factors yields the individual probability of survival for each damage case, and the sum of all the positive individual probabilities is the vessel's overall probability of surviving damage. An individual damage case probability will be positive if the vessel has sufficient stability in the damaged condition, thus positive individual probability indicates that the vessel will "survive" that damage condition. Unfortunately, two of the three factors which control individual damage case probability of survival cannot be determined precisely, so we must rely on damage statistics to provide the relative probabilities of both longitudinal location and the extent of longitudinal damage. Certain simplifications and approximations were necessary to make this method useful in a practical sense. Consequently, the individual damage case probabilities of survival, and their sum, the Attained Subdivision Index (A), cannot be considered to be the actual probability of survival. Rather, the Attained Subdivision Index (A), and its component parts, the individual damage case probabilities of survival, are measures of the assessable factors which affect the probability of survival, and (A) is proportional to the probability of survival.

The subdivision of the vessel under consideration must be such that the value of (A) exceeds the value of the Required Subdivision Index (R). The value of (R) represents the minimum acceptable value of (A) and is a function of the number of passengers carried and the length of the vessel. The philosophy used to determine the equation for (R) is similar to that which governs the relationships for the Factor of Safety and the Criterion of Service used in the previously existing regulations: the higher the number of lives at stake and the greater the value of the vessel, the greater the degree of subdivision required. The stability calculation methods of the previously existing regulations and of these alternative regulations were made equivalent by adjusting the coefficients of the equation for (R) so that it produced values equal to the mean (A) value attained by passenger vessels complying with the previously existing regulations.

These alternative regulations require a minimum level of subdivision (i.e. one or two compartment subdivision depending on the number of lives at risk) throughout the vessel. This prevents the possibility that a vessel could be designed with an acceptable (A) but still be particularly vulnerable in certain locations.

The specific regulations of IMCO Resolution A.265 (VIII) which the Coast Guard has adopted as an acceptable alternative to current Coast Guard regulations are described below:

Regulation 1—Definition; provides definitions of terms and symbols unique to the alternative regulations.

Regulation 2—Subdivision Index; sets the requirements for subdivision and the Attained Subdivision Index (A) and defines the Required Subdivision Index (R).

Regulation 3—Special Rules Concerning Subdivision; places limits on the location of forepeak and adjacent bulkheads to assure a two compartment subdivision standard. It also describes the difference between a bulkhead recess and a bulkhead step, which are treated differently in the calculation of (A).

Regulation 4—Permeability; gives the values of permeability to be assumed for passenger accommodation, machinery, stores, and consumable liquid spaces and defines the relationship between cargo space permeability and draft.

Regulation 5—Subdivision and Damage Stability; is the heart of the regulation. It defines the assumed extent of damage longitudinally and vertically as well as the depth of penetration, the required compartmentation standard, and the required metacentric height. It sets limits on the angle of heel and the time of equalization.

Regulation 6—Attained Subdivision Index (A); defines the Attained Subdivision Index and gives the detailed procedure for calculating each of the individual damage case probability components a, p, and s; where;

a is a measure of the probability of damage as related to the position of the damage in the ship's length.

p is a measure of the effect of the variation in longitudinal extent of damage on the probability that only the compartment or group of compartments under consideration may be flooded.

s is a measure of the effect of freeboard, stability, and heel in the final flooded condition for the compartment or group of compartments under consideration.

Regulation 7—Combined Longitudinal and Transverse Subdivision; defines longitudinal bulkheads and decks which contribute to the value of the Attained Subdivision Index and provides the detailed procedure for including these bulkheads in the calculation of (A).

Regulation 8—Stability Information; contains a description of the information to be supplied to the Master of the vessel.

Regulation 19—Bilge Pumping Arrangements; delineates the specific requirements for bilge pumps and pipings, and places some restrictions on tank arrangements. Compliance with these restrictions is necessary to assure consistency with the assumptions inherent in Regulations 1 through 7.

Comparison—Existing and Alternative Regulations

There are many differences between the previously existing Coast Guard regulations and those of IMCO Resolution A.265 (VIII). The major differences are summarized below.

1. Unlike the previously existing regulations which are based on floodable length calculations, the new alternative regulation establish a measure of minimum acceptable damage survival probability and evaluate the safety of the vessel on the basis of this probability.

2. The margin line (an arbitrary line normally located three inches below the bulkhead deck at the side), used to define the limits of sinkage and heel in previously existing regulations, is eliminated by the alternative regulations. The sinkage and heel limitations in the alternative regulations are based on the attainment of satisfactory damage stability (metacentric height, GM), taking into

account effective freeboard, provided the undamaged portion of the bulkhead deck is not immersed. Therefore, damage stability parameters are accounted for without imposing an artificial freeboard limit.

3. The previously existing Coast Guard regulations require the use of a uniform average permeability throughout all spaces forward and aft of the machinery space. The new alternative regulations, however, specify independent permeabilities to be used for passenger accommodation, machinery, stores, and liquid consumable spaces, thus producing a more accurate representation of the actual permeability distribution. This concept of realistically modeling the actual conditions is also carried over to cargo space permeability values by defining them as an inverse function of draft, as developed from operational data.

4. The previously existing damage stability calculation requirements in 46 CFR 74.10–15(c), permit a minimum freeboard after flooding of 3 inches (75 mm) and a metacentric height (GM) of 2 inches (50 mm), a combination which, while unlikely to occur in practice, is undesirable. IMCO Regulation 5(c)(i)(1) also permits a minimum GM of 2 inches. However, it prescribes higher and more realistic values of minimum GM for vessels which have low values of freeboard in the damaged condition.

5. The damage stability requirements in IMCO Regulations 5(c)(i)(2), 5(c)(i)(3), 5(c)(ii) through 5(c)(iv) are equivalent to the damage stability standards in 46 CFR 74.10–15(c)(5), (c)(6), and (c)(7), with two exceptions. The maximum acceptable heel in the final stage of flooding is reduced from 15 to 12 degrees, and the assessment of effective freeboard replaces the arbitrary concept of margin line thus permitting sinkage and heel to the bulkhead deck at the side in the undamaged portion of the vessel. The first exception is a modest improvement, the second replaces one method of assessing freeboard with another while ensuring that the waterplane area in the undamaged portion of the vessel is not reduced.

The new alternative regulations permit greater flexibility of bulkhead arrangement because they do not tie subdivision to floodable length calculations, and longitudinal bulkheads and decks are considered effective in contributing to the vessel's ability to survive damage. In certain cases, it should be possible for the designer to reduce the number of bulkheads and use longer compartments, which means that vessels can be built at a lower cost without a reduction in their ability to survive damage. Additionally, the designer will have a more flexible method of evaluating the ability to survive damage of unusual designs or novel hull forms.

Regulatory Evaluation

The Coast Guard has evaluated this final rule under Executive Order 12291 and the Department of Transportation's "Policies and Procedures for Simplification, Analysis, and Review of Regulations. (DOT Order 2100.5 dated 22 May 1980)" and has determined that it is neither a major nor a significant rule making. This final rule amends the regulations for watertight subdivision and damage stability of passenger vessels by adopting parts of the Inter-Governmental Maritime Consultation Organization (IMCO) Resolution A.265 (VIII) as an alternative to the previously existing regulations. This new method will allow more flexible subdivision design without lowering the level of safety provided by the previously existing regulations. There would be no additional cost, and use of the alternative regulations may in fact reduce cost, but this choice would be with the ship designers. The previously existing regulations will remain after the new alternative regulations come into effect also for the purpose of allowing more ship design flexibility. Considering the complexity of ship subdivision and damage stability, there may be many cases where it would be more advantageous to design a vessel to the previously existing regulations. For these reasons and because this final rule is an alternative to previously existing regulations, which are retained, the expected impact of this final rule is so minimal that no final evaluation has been prepared. For the same reasons, it is certified that these rules have no impact on small entities as defined by the Regulatory Flexibility Act, Pub. L. 96–354, 19 September, 1980 (5 U.S.C. 603). An Environmental Assessment has been prepared and a Finding of No Significant Impact has been placed in the public file.

List of Subjects

46 CFR Part 56

Marine safety, Vessels.

46 CFR Parts 73 and 74

Marine safety, Passenger vessels.

In consideration of the foregoing, Parts 56, 73, and 74 of Title 46, Code of Federal Regulations are amended to read as follows:

PART 56—PIPING SYSTEMS AND APPURTENANCES

1. The authority note for Part 56 is revised to read as follows:

Authority: R.S. 4405, as amended (46 U.S.C. 375); R.S. 4462, as amended (46 U.S.C. 416); 41 Stat. 305, as amended (46 U.S.C. 363); sec. 14, 29 Stat. 690, as amended (46 U.S.C. 366); secs. 1, 2, 49 Stat. 1544, 1545, as amended (46 U.S.C. 367); sec. 3, 70 Stat. 152 (46 U.S.C. 390b); R.S. 4417, as amended (46 U.S.C. 391); R.S. 4417a, as amended (46 U.S.C. 391a); R.S. 4418, as amended (46 U.S.C. 392); sec. 10, 35 Stat. 428, as amended (46 U.S.C. 395); R.S. 4426–4431, as amended (46 U.S.C. 404–409); R.S. 4433, as amended (46 U.S.C. 411); R.S. 4434, as amended (46 U.S.C. 412); R.S. 4488, as amended (46 U.S.C. 481); R.S. 4491, as amended (46 U.S.C. 489); sec. 17, 54 Stat. 166 (46 U.S.C. 526p); sec. 3, 54 Stat. 347, as amended (46 U.S.C. 1333); sec. 6(b)(1), 80 Stat. 958 (49 U.S.C. 1655(b)); sec. 3, 68 Stat. 675 (50 U.S.C. 198); 49 CFR 1.4 (a)(2), (f); E.O. 12234, Sept. 3, 1980 (45 FR 58801) unless otherwise noted.

2. A new § 56.50–57 is added to read as follows:

§ 56.50–57 Bilge piping and pumps, alternative requirements.

(a) If a passenger vessel complies with Subparts 73.12 and 74.12 of this chapter, its bilge pumping and piping systems must meet §§ 56.50–50 and 56.50–55 except as follows:

(1) Each bilge pumping system must comply with—

(i) Regulation 19(b) of the Annex to IMCO Resolution A.265 (VIII) in place of §§ 56.50–55(a)(1), 56.50–55(a)(3), and 56.50–55(f);

(ii) Regulation 19(d) of the Annex to IMCO Resolution A.265 (VIII) in place of § 56.50–55(a)(2).

(2) Each bilge main must comply with Regulation 19(i) of the Annex to IMCO Resolution A.265 (VIII) in place of § 56.50–50(d) except—

(i) The nearest commercial pipe size may be used if it is not more than one-fourth inch under the required diameter; and

(ii) Each branch pipe must comply with § 56.50–50(d)(2).

(b) The standards referred to in this section, which are contained in the Inter-governmental Maritime Consultative Organization (IMCO) Resolution A.265 (VIII), dated December 10, 1973, are incorporated by reference. This document is available from the National Technical Information Service, Springfield, Virginia, 22151, under the title "Regulations on Subdivision and Stability of Passenger Ships as Equivalent to Part B of Chapter II of the International Convention for the Safety of Life at Sea, 1960" (Volume IV of the U.S. Coast Guard's "Commandant's

International Technical Series", USCG CITS–74–1–1.)

PART 73—WATERTIGHT SUBDIVISION

3. The authority note for Part 73 is amended to read as follows:

Authority: R.S. 4405, as amended (46 U.S.C. 375); R.S. 4462, as amended (46 U.S.C. 416); sec. (6)(b)(1), 80 Stat. 938 (49 U.S.C. 1655(b)); 49 CFR 1.46(b) (35 FR 4959). Interpret or apply sec. 2, 87 Stat. 418 (46 U.S.C. 86); sec. 2, 49 Stat. U.S.C. 888, as amended (46 U.S.C. 88a); 41 Stat. 305, as amended (46 U.S.C. 363); secs. 1, 2, 49 Stat. 1544, 1545, as amended (46 U.S.C. 367); sec. 5, 49 Stat. 1384, as amended (46 U.S.C. 369); sec. 3, 70 Stat. 152 (46 U.S.C. 390b); R.S. 4417, as amended (46 U.S.C. 392); sec. 10, 35 Stat. 428, as amended (46 U.S.C. 395); R.S. 4426, as amended (46 U.S.C. 404); R.S. 4488, as amended (46 U.S.C. 481); R.S. 4490, as amended (46 U.S.C. 482); sec. 3, 24 Stat. 129, as amended (46 U.S.C. 483); sec. 3, 54 Stat. 347, as amended (46 U.S.C. 1333); sec. 3, 68 Stat. 675 (50 U.S.C. 198); E.O. 12234, Sept. 3, 1980 (45 FR 58801) unless otherwise noted.

4. A new § 73.10–2 is added to read as follows:

§ 73.10–2 Alternative method.

Subpart 73.12 of this part may be used to determine the subdivision requirements of a passenger vessel in place of this subpart.

5. A new Subpart 73.12 is added to read as follows:

Subpart 73.12—Rules for Subdivision; Alternative Method

Sec.
73.12–1 Application.
73.12–3 Definition.
73.12–5 Alternative subdivision requirements.
73.12–7 Incorporation by reference.
73.12–9 Additional requirements.

Subpart 73.12—Rules for Subdivision; Alternative Method

§ 73.12–1 Application.

This subpart applies to each vessel on an international voyage and each vessel of 150 gross tons and over in ocean or coastwise service, except a vessel on a short international voyage that is permitted under § 75.10–10(a)(6) to carry a number of persons on board in excess of the lifeboat capacity of the vessel, provided that the alternative subdivision requirements of § 73.12–5 are applied.

§ 73.12–3 Definition.

As used in the IMCO regulations, "Administration" means the Commandant, U.S. Coast Guard.

§ 73.12–5 Alternative subdivision requirements.

Regulations 1, 2, 3, 4, 6, and 7 of the Annex to Resolution A.265 (VIII) of the Inter-governmental Maritime Consultative Organization (IMCO) may be used as an alternative method of determining the subdivision requirements for a passenger vessel in place of Subpart 73.10.

§ 73.12–7 Incorporation by reference.

The standards referred to in this subpart, which are contained in the Inter-governmental Maritime Consultative Organization (IMCO) Resolution A.265 (VIII), dated December 10, 1973, are incorporated by reference. This document is available from the National Technical Information Service, Springfield, Virginia, 22151, under the title "Regulations on Subdivision and Stability of Passenger Ships as Equivalent to Part B of Chapter II of the International Convention for the Safety of Life at Sea, 1960" (Volume IV of the U.S. Coast Guard's "Commandant's International Technical Series", USCG CITS–74–1–1.)

§ 73.12–9 Additional requirements.

If this subpart is used to determine the subdivision requirements of a passenger vessel, Subpart 74.12 and § 56.50–57 of this chapter must also be used.

PART 74—STABILITY

6. The authority note for Part 74 is amended to read as follows:

Authority: R.S. 4405, as amended (46 U.S.C. 375); R.S. 4462, as amended (46 U.S.C. 416); sec. (6)(b)(1), 80 Stat. 938 (49 U.S.C. 1655(b)); 49 CFR 1.46(b) (35 FR 4959). Interpret or apply sec. 2, 87 Stat. 418 (46 U.S.C. 86); sec. 2, 49 U.S.C. 888, as amended (46 U.S.C. 88a); 41 Stat. 305, as amended (46 U.S.C. 363); secs. 1, 2, 49 Stat. 1544, 1545, as amended (46 U.S.C. 367); sec. 5, 49 Stat. 1384, as amended (46 U.S.C. 369); sec. 3, 70 Stat. 152 (46 U.S.C. 390b); R.S. 4417, as amended (46 U.S.C. 392); sec. 10, 35 Stat. 428, as amended (46 U.S.C. 395); R.S. 4426, as amended (46 U.S.C. 404); R.S. 4488, as amended (46 U.S.C. 481); R.S. 4490, as amended (46 U.S.C. 482); sec. 3, 24 Stat. 129, as amended (46 U.S.C. 483); sec. 3, 54 Stat. 347, as amended (46 U.S.C. 1333); sec. 3, 68 Stat. 675 (50 U.S.C. 198); E.O. 12234, Sept. 3, 1980 (45 FR 58801) unless otherwise noted.

7. A new § 74.10–2 is added to read as follows:

§ 74.10–2 Alternative damage stability standard.

(a) Subpart 74.12 of this part may be used as the damage stability standard for a passenger vessel in place of § 74.10–15.

8. A new Subpart 74.12 is added to read as follows:

Subpart 74.12—Damage Stability Standards; Alternative Method

Sec.
74.12–1 Application.
74.12–3 Definition.
74.12–5 Alternative damage stability standards.
74.12–7 Incorporation by reference.
74.12–9 Additional requirements.
74.12–11 Stability information.

Subpart 74.12—Damage Stability Standards; Alternative Methods

§ 74.12–1 Application.

This subpart applies to each vessel on an international voyage and each vessel of 150 gross tons and over in ocean or coastwise service except a vessel on a short international voyage that is permitted under § 75.10–10(a)(6) to carry a number of persons on board in excess of the lifeboat capacity of the vessel, provided that the alternative subdivision requirements of § 74.12–5 are applied.

§ 74.12–3 Definition.

As used in the IMCO regulations, "Administration" means the Commandant, U.S. Coast Guard.

§ 74.12–5 Alternative damage stability standards.

Regulations 1 and 5 of the Annex to Resolution A.265 (VIII) of the Inter-governmental Maritime Consultative Organization (IMCO) may be used as an alternative method of determining requirements for the damage stability of a passenger vessel in place of § 74.10–15.

§ 74.12–7 Incorporation by reference.

The standards referred to in this subpart, which are contained in the Inter-governmental Maritime Consultative Organization (IMCO) Resolution A.265 (VIII), dated December 10, 1973, are incorporated by reference. This document is available from the National Technical Information Service, Springfield, Virginia, 22151, under the title "Regulations on Subdivision and Stability of Passenger Ships as Equivalent to Part B of Chapter II of the International Convention for the Safety of Life at Sea, 1960" (Volume IV of the U.S. Coast Guard's "Commandant's International Technical Series", USCG CITS–74–1–1.)

§ 74.12–9 Additional requirements.

If this subpart is used, Subpart 73.12 and § 56.50–57 of this chapter must also be used.

§ 74.12–11 Stability information.

If this subpart is used, the master of the vessel must have the stability information of Regulation 8(b) of the Annex to IMCO Resolution A.265 (VIII) in addition to the information required under Subpart 74.20 of this part.

Dated: August 19, 1982.

Clyde T. Lusk, Jr.,

Rear Admiral, U.S. Coast Guard Chief, Office of Merchant Marine Safety.

[FR Doc. 82-23393 Filed 8-25-82; 8:45 am]

BILLING CODE 4910-14-M

National Highway Traffic Safety Administration

49 CFR Part 571

[Docket No. 75-03; Notice 8]

Motor Vehicle Safety Standards; Bus Window Retention and Release; Correction

AGENCY: National Highway Traffic Safety Administration (NHTSA), DOT.

ACTION: Final rule; correction.

SUMMARY: On February 18, 1982 (47 FR 7255), the agency published a final rule amending section S5.3.3 of 49 CFR 571.217, *Bus Window Retention and Release,* altering the emergency exit requirements for small school buses. In that notice the agency used the phrase "GVWR less than 10,000 pounds" two times in amending S5.3.3 and S5.3.3(b). This phrase was incorrect. All of the agency's regulations, including other portions of Standard No. 217, use the phrase "GVWR of 10,000 pounds or less". For consistency and accuracy, the NHTSA corrects the improper phrase twice used in the February amendment to read "GVWR of 10,000 pounds or less".

FOR FURTHER INFORMATION CONTACT: Mr. Roger Tilton, Office of Chief Counsel, National Highway Traffic Safety Administration, 400 Seventh Street SW., Washington, D.C. 20590 (202-426-9511).

(Secs. 103, 119, Pub. L. 89-563, 80 Stat. 718 (15 U.S.C. 1392, 1407); Sec. 202, Pub. L. 93-492, 88 Stat. 1470 (15 U.S.C. 1392); delegations of authority at 49 CFR 1.50 and 501.8)

Issued on August 19, 1982.

George L. Parker,

Acting Associate Administrator for Rulemaking.

[FR Doc. 82-23342 Filed 8-25-82; 8:45 am]

BILLING CODE 4910-59-M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[Docket No. 2802-147]

50 CFR Part 611

Foreign Fishing—Northwest Atlantic Ocean Fishery; Correction

AGENCY: National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Final rule; correction.

SUMMARY: This document corrects a regulation for foreign fishing in the Northwest Atlantic Ocean fishery that designates the time and locations of U.S. Coast Guard broadcasts to conform to current practice. The broadcasts specify the location of U.S. fixed gear. A telephone number is also corrected.

EFFECTIVE DATE: August 26, 1982.

FOR FURTHER INFORMATION CONTACT: Shirley Whitted, 202-634-7432.

List of Subjects in 50 CFR Part 611

Fish, Fisheries, Foreign relations, Reporting requirements.

Dated: August 20, 1982.

William G. Gordon,

Assistant Administrator for Fisheries, National Marine Fisheries Service.

PART 611—FOREIGN FISHING

1. Accordingly, NOAA amends 50 CFR 611.50 by correcting paragraph (d)(2) to read as follows:

§ 611.50 Northwest Atlantic Ocean fishery.

* * * * *

(d) * * *

(2) The locations (latitude and longitude) of fixed-gear areas are broadcast at 1350 G.m.t. on the first day of each month by Coast Guard Communications Station Boston (NMF) on 472 kHz radiotelegraphy. The list of areas is updated each day at 1350 G.m.t. All broadcasts are numbered sequentially by month, day and year. A printed monthly summary of fixed-gear information is available from commander (Aol), Coast Guard Atlantic Area, Governors Island, New York, N.Y. 10004 (Telephone 212-668-7877), Telex 126831.

* * * * *

(16 U.S.C. 1801 *et seq.*, unless otherwise noted)

[FR Doc. 82-23450 Filed 8-25-82; 8:45 am]

BILLING CODE 3510-22-M

Proposed Rules

Federal Register
Vol. 47, No. 166
Thursday, August 26, 1982

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 JUSTICE

Immigration and Naturalization Service

8 CFR Parts 3 and 103

Board of Immigration Appeals; Transcripts of Proceedings; and Powers and Duties of Service Officers; Availability of Service Records; Revisions to Service Fee Schedule

AGENCY: Immigration and Naturalization Service, Justice.

ACTION: Proposed rule.

SUMMARY: This notice of proposed rule making proposes amendments to the fee schedule of the Immigration and Naturalization Service and provides a means for appealing parties to obtain transcripts of hearings commercially. These changes are necessary to place the financial burden of providing special services and benefits, which do not accrue to the public at large, on the recipients. Charges have been adjusted to more nearly reflect the current recovery cost of providing the benefits and services, taking into account public policy and other pertinent facts.

DATES: Comments must be received on or before September 27, 1982.

ADDRESS: Please submit written comments, in duplicate, to the Commissioner, Immigration and Naturalization Service, Room 7100, 425 Eye Street, NW., Washington, DC 20536.

FOR FURTHER INFORMATION CONTRACT:

For general information: Stanley J. Kieszkiel, Acting Instructions Officer, Immigration and Naturalization Service, 425 I Street NW., Wahington, DC 20536. Telephone: (202) 633–3048

For specific information on fees: R. Homan, Director, Finance Staff, Immigration and Naturalization Service, 425 I Street NW., Washington, DC 20536. Telephone: (202) 633–3027.

For specific information on obtaining transcripts of hearings: Michael J. Heilman, Assistant General Counsel, Immigration and Naturalization Service, 425 I Street NW., Washington, DC 20536. Telephone: (202) 633–2620.

SUPPLEMENTARY INFORMATION:

Presently, the Service prepares the transcripts for all appeals, and provides them to the alien free of charge. Given the fiscal constraints imposed upon the Service, this practice has become extremely burdensome both from the point of view of the financial costs, and from the point of view of delay in the adjudication process. The Service does not possess an adequate trained secretarial staff to prepare the transcripts, and is not authorized to hire additional staff. As a result, there is a large backlog of untranscribed cases. This backlog greatly delays the appeal process. Backlogs and delays in transcription have an adverse impact on both the aliens who have appealed, and on the ability of the Service to enforce the immigration laws. An appeal to the Board of Immigration Appeals (BIA) serves to stay enforcement of an order of deportation or exclusion. If the appeal time is prolonged because transcripts are unavailable, aliens with bona fide claims suffer because their cases remain unresolved, while those aliens who are deportable and who file frivolous appeals gain time in the United States.

The proposed rule allows the appealing party to arrange for transcription with companies approved by the Service, and requires the party to furnish a transcript within 30 days. The delays in transcription should be abolished, and the financial burden on the Service reduced under this proposal. In instances where the Service provides a reporter at the hearing, the Service would provide the transcript at no charge. The costs of transcription could be waived if the alien is indigent. A successful appealing party may apply to the Board for reimbursement of transcription costs, and the Board may order the payment of such costs in its discretion.

In January of 1982, the Service undertook a review study of its fee schedule as required under 31 U.S.C. 483a and OMB Circular A–25. Under that law, and the OMB Circular, it is required that a benefit or service provided to or for any person by a Federal agency be self-sustaining to the fullest extent possible. Charges are to be fair and equitable, taking into consideration direct and indirect cost to the Government, value to the recipient, public policy or interest served, and other pertinent facts. All services provided to the public by the Service were reviewed as to the applicability of user charges and the costs which should be recovered in order to be fair and equitable to the taxpayers and the recipients.

The following proposed fee changes are based upon a study by the Service of its policies and practices for user charges, a review of the costs and fees, and on the principle of user charges prescribed by the Congress in 31 U.S.C. 483a and the implementing guidelines of the Office of Management and Budget in OMB Circular A–25:

(1) In order to improve readability, it is proposed to rearrange the fee descriptions according to the sequence of the form or application alpha-numeric identifier and to have identifier precede each description where one is applicable.

(2) Remove the fee for filing an application for a waiver of the 30-day waiting period required under the former section 366(c) of the Immigration and Nationality Act. This application was discontinued on December 29, 1981, upon the enactment of section 15(d) of Pub. L. 97–116 (95 Stat. 1619) which removed the 30-day waiting period.

(3) Remove the fee for filing a request for telegraphic communication service. Due to the nature of this action, over-the-counter fee collection is not usually feasible. The administrative cost of preparing and mailing bills and maintaining accounts receivable for these fees exceeds the cost of the service itself. It is proposed to eliminate this fee because the incremental cost of the collection activity is an unduly large part of the receipts.

(4) Add a new fee to cover the costs of processing an application for extension of stay, employment authorization, and transfer of school by a non-immigrant student. Currently there is no charge for filing this application (Form I–538). The proposed fee is $15.

(5) Add a new fee for filing an appeal from a bond determination. Under this proposal, a bond appeal to the Board of Immigration Appeals would require a $50 filing fee. This fee is appropriate and reasonable because bond appeals generally are based on one issue, and the records are usually much less extensive than in other types of appeals for which a $110 fee is proposed.

Athough the unit processing costs are $166.51, it is proposed that the Government absorb the costs in excess of $50 in order to avoid discouraging the right of appeal from a bond determination.

(6) Increase the fee from $5 to $15 for filing Form I–102, Application for Arrival-Departure Record (Form I–94) or Crewman's Landing Permit (Form I–94), in lieu of one lost, mutilated, or destroyed.

(7) Increase the fee form $5 to $15 for filing Form I–196, Application for U.S. Citizen Identification Card.

(8) Increase the fee from $20 to $35 for filing Form I–212, Application for Permission To Reapply for Admission Into the United States After Deportation or Removal.

(9) Increase the fee from $5 to $15 for filing Form I–193, Application for Waiver of Passport and/or Visa.

(10) Increase the fee from $50 to $110 for filing Form I–290B, Notice of Appeal to Regional Commissioner.

(11) Increase the fee from $15 to $35 for filing Form I–129B, Petition to Classify non-Immigrant as Temporary Worker for Trainee.

(12) Increase the fee from $15 to $35 for filing Form I–129F, Petition to Classify Status of Alien Fiance or Fiancee for Issuance of non-Immigrant Visa.

(13) Increase the fee from $10 to $35 for filing Form I–130, Petition to Classify Status of Alien Relative for Issuance of Immigrant Visa.

(14) Increase the fee from $5 to $15 for filing Form I–131, Application for Issuance of Permit to Reenter the United States.

(15) Increase the fee from $5 to $15 for filing Form I–570, Application for Issuance or Extensions of Refugee Travel Document.

(16) Increase the fee from $5 to $15 for filing Form I–539, Application to Extend Time of Temporary Stay.

(17) Increase the fee from $25 to $50 for filing Form I–140, Petition to Classify Preference Status of Alien on Basis of Profession or Occupation.

(18) Increase the fee from $35 to $50 for filing Form I–600, Petition to Classify Orphan as an Immediate Relative.

(19) Increase the fee from $20 to $50 for filing Form I–17, Petition for Approval of School for Attendance by non-immigrant Students.

(20) Increase the fee from $35 to $50 for filing Form I–191, Application for Advance Permission to Return to unrelinquished Domicile.

(21) Increase the fee from $15 to $35 for filing Form I–192, Application for Advance Permission to Enter as Non-immigrant.

(22) Increase the fee from $35 to $50 for filing Form I–612, Application for Waiver of the Foreign Residence Requirement.

(23) Increase the fee from $30 to $50 for filing Form I–485, Application for Status as Permanent Resident.

(24) Increase the fee from $10 to $15 for filing Form I–506, Application for Change on non-immigrant Status.

(25) Increase the fee from $15 to $35 for filing Form N–600, Application for Certificate of Citizenship and for filing Form N–400, Application to File Petition for Naturalization, when this application is for a child and is accompanied by Form N–604, Child's Personal Description Form.

(26) Increase the fee from $25 to $50 for filing Form N–405, Petition for Naturalization, and for filing Form N–407, Petition for Naturalization (in behalf of a child).

(27) Increase the fee charged for filing certain infrequently applied for benefits concerning nationality cases. These applications are filed on the following forms and currently carry the fee shown:

Form N–300/315, Application and Declaration of Intention, $5;
Form N–410, Motion to Amend Petition for Naturalization, $5;
Form N–455, Application for Transfer of Petition for Naturalization, $10;
Form N–470, Application to Preserve Residence for Naturalization Purposes, $10
Form N–565, Application for a new Naturalization or Citizenship Paper, $10;
Form N–577, Application for a Special Certificate of Naturalization to Obtain Recognition as a Citizen of the United States by a Foreign State, $10 and,
Form N–580, Application for a Certificate of Naturalization or Repatriation, $5.

While each application is important in its own right, the number of these miscellaneous nationality applications received is not significant in relation to the total receipts of all naturalization applications. It is proposed that the fee for each application be $15. A uniform fee will increase the efficiency of administration by simplifying the fee schedule and still be reasonable.

(28) Increase the fee from $70 to $110 for filing Form I–246, Application for Stay of Deportation.

(29) Increase the fee from $50 to $110 for filing Form I–290A, Notice of Appeal to Board of Immigration Appeals. The unit cost of processing Form I–290A is $691.59. If this fee were set to recover the Government's costs, it would likely chill the right of appeal in some meritorious cases. The fee should not be so low as to encourage frivolous appeals, but not so high as to discourage legitimate ones. Therefore, it is proposed that this fee and the fee for Form I–290B, Notice of Appeal to Regional Commissioner (paragraph (10)), be uniform.

(30) Increase the fee from $50 to $110 for filing a motion to reopen or reconsider any decision under the immigration laws (except applications filed by students on Form I–538, exchange visitors on Form IAP–66, Cuban refugees on Form I–485A (filed under the Act of November 2, 1966), A–1 or A–2, or G–4 nonimmigrants on Form I–566, for which no fee is chargeable). When the moton to reopen or reconsider is made with any application under the immigration laws, the application is considered an integral part of the motion and only the fee for filing the moton or the fee for filing the application, whichever is greater, is payable. (The fee of $110 shall be charged whenever a motion is filed by or on behlaf of two to more aliens, and the aliens are covered by one decision).

(31) Increase the fee from $50 to $110 for filing application for temporary withholding of deportation under section 243(h) of the Act.

(32) Increase the fee from $75 to $110 for filing Form I–256A, Application for Suspension of Deportation. The unit processing costs for the I–256A are $409.37, but as hardship must be shown to obtain a suspension of deportation, which for some applicants includes financial difficulties, setting a fee in excess of $110 may deter some applicants with meritorious cases from seeking suspension. Therefore, it is proposed that the Government absorb the costs in excess of $110.

(33) Increase the fee from $5 to $15 for filing Form G–641, Application for Verification of Information From Immigrantion and Naturalization Service Records.

(34) Subscriptions to "Passenger Travel Reports via Sea and Air" statistical tabulations are no longer available from Immigration and Naturalization Service. They may be obtained from: U.S. Department of Transportation, Transportation Systems Center, Kendall Square, Cambridge, MA. 02142.

In accordance with 5 U.S.C. 605(b), the Commissioner of Immigration and Naturalization certifies that the rule will not have a significant economic impact on a substantial number of small entities.

This rule is not a major rule within the meaning of section 1(b) of E.O. 12291.

List of Subjects

8 CFR Part 3

Administrative practice and procedure, Authority delegation, Immigration, and Organization and functions.

8 CFR Part 103

Administrative practice and procedures, Archives and records, Authority delegation, Fees, Forms, Freedom of Information Act, and Organization and functions.

Accordingly, the following amendments are proposed in Chapter I of Title 8, of the Code of Federal Regulations:

PART 3—BOARD OF IMMIGRATION APPEALS

1. A new § 3.9 is to be added to read as follows:

§ 3.9 Obtaining transcript of hearing.

(a) The cost of obtaining a transcript of proceedings before an immigration judge shall be borne by the party taking the appeal from the decision of the immigration judge. The party appealing shall be responsible for arranging for transcription of the proceedings and shall provide the immigration judge and opposing party with a copy of the transcript within 30 days of the end of the hearing. Transcripts shall be prepared only by transcribers or transcribing companies which have been approved by the Service to provide transcription services. The Service shall provide the appealing party with the names of the such transcribers or transcribing companies. Where the proceedings are recorded by a reporter provided by the Service, transcripts shall be provided by the Service at no expense to the appealing party. Any alien who is unable to pay the costs of transcription of the hearing may file an affidavit with the immigration judge stating that a transcript is necessary for purposes of appeal and the reasons for the inability to pay the costs of transcription. The immigration judge may waive payment of the transcription costs and direct the Service to provide a transcription at no expense to the alien.

(b) Upon application by the appealing party, the Board may direct the opposing party to pay the costs of transcription if the Board finds that the appealing party has prevailed on appeal.

(Secs. 103, 236, 242 of the I & N Act; 8 U.S.C. 1103, 1226, 1252)

PART 103—POWERS AND DUTIES OF SERVICE OFFICERS; AVAILABILITY OF SERVICE RECORDS

2. It is proposed to revise paragraph (b) of § 103.7 to read as follows:

§ 103.7 Fees.

* * * * *

(b) *Amounts of fees*—(1) The following fees and charges are prescribed:

Form G-641. For filing application for verification of information contained in Service records	$15.00
For certification of true copies, each	2.00
For attestation under seal	2.00
Form I-17. For filing application for school approval, except in the case of a school or school system owned or operated as a public educational institution or system by the United States or a state or political subdivision thereof	50.00
Form I-90. For filing application for Alien Registration Receipt Card (Form I-551) in lieu of an obsolete card or in lieu of one lost, mutilated or destroyed, or in a changed name	15.00
Form I-102. For filing application (Form I-102) for Arrival-Departure Record (Form I-94) or Crewman's Landing Permit (Form I-95), in lieu of one lost, mutilated, or destroyed	15.00
Form I-129B. For filing petition to classify nonimmigrant as temporary worker or trainee under section 214(c) of the Act	35.00
Form I-129F. For filing petition to classify nonimmigrant as fiancee or fiance under section 214(d) of the Act	35.00
Form I-130. For filing petition to classify status of alien relative for issuance of immigrant visa under section 204(a) of the Act	35.00
Form I-131. For filing application for issuance of reentry permit	15.00
Form I-140. For filing petition to classify preference status of an alien on basis of profession or occupation under section 204(a) of the Act	50.00
Form I-191. For filing application for discretionary relief under section 212(c) of the Act	50.00
Form I-192. For filing application for discretionary relief under section 212(d)(3) of the Act, except, in an emergency case, or where the approval of the application is in the interest of the United States Government	35.00
Form I-193. For filing application for waiver of passport and/or visa	15.00
Form I-196. For filing application for a United States Citizen Identification Card	15.00
Form I-212. For filing application for permission to reapply for an excluded or deported alien, an alien who has fallen into distress and has been removed as an alien enemy, or an alien who has been removed at Government expense in lieu of deportation	35.00
Form I-246. For filing application for stay of deportation under Part 243 of this chapter	110.00
Form I-256A. For filing application for suspension of deportation under section 244 of the Act	110.00
Form I-290A. For filing an appeal from any decision under the immigration laws in any type of proceedings (except a bond decision) over which the Board of Immigration Appeals has appellate jurisdiction in accordance with section 3.1(b) of this Chapter. (The fee of $140 shall be charged whenever an appeal is filed by or on behalf of two or more aliens and the aliens are covered by one decision)	110.00
For filing an appeal to the Board of Immigration Appeals from a bond decision of an immigration judge	50.00
Form I-290B. For filing an appeal from any decision under the immigration laws in any type of proceeding over which the Board of Immigration Appeals does not have appellate jurisdiction. (The fee of $140 shall be charged whenever an appeal is filed by or on behalf of two or more aliens and the aliens are covered by one decision)	110.00
Form I-485. For filing application on Form I-485 for permanent residence status or for creation of a record of lawful permanent residence	50.00
Form I-506. For filing application for change of nonimmigrant classification under section 248 of the Act	15.00
Form I-538. For filing application by a nonimmigrant student (F-1) for an extension of stay, a school transfer or permission to accept or continue employment or practical training	15.00
Form I-539. For filing application for extension of stay of a nonimmigrant, other than one described in section 101(a)(15)(F) or 101(a)(15)(J) of the Act, and, upon a basis of reciprocity, a nonimmigrant described in section 101(a)(15)(A)(iii) or 101(a)(15)(G)(v) of the Act	15.00
Form I-570. For filing application for issuance or extension of refugee travel document	15.00
Form I-600. For filing petition to classify orphan as an immediate relative for issuance of immigrant visa under section 204(a) of the Act. (When more than one petition is submitted by the same petitioner on behalf of orphans who are brothers or sisters, only one fee will be required)	50.00
Form I-601. For filing application for waiver of ground of excludability under section 212 (h) or (i) of the Act. (Only a single application and fee shall be required when the alien is applying simultaneously for a waiver under both those sub-sections)	35.00
Form I-612. For filing application for waiver of the foreign-resident requirement under section 212(e) of the Act	50.00
Form N-400. For filing application for certificate of citizenship on Form N-400 by a parent, and the issuance thereof, under section 341 of the Act	35.00
Form N-410. For filing motion for amendment of petition for naturalization when motion is for the convenience of the petitioner	15.00
Form N-455. For filing application for transfer of petition for naturalization under section 335(i) of the Act, except when transfer is of a petition for naturalization filed under the Act of October 24, 1968, P.L. 90-633	15.00
Form N-470. For filing application for section 316(b) or 317 of the Act benefits	15.00
Form N-565. For filing application for a certificate of naturalization or declaration of intention in lieu of a certificate or declaration alleged to have been lost, mutilated, or destroyed; or for a certificate of citizenship in a changed name under section 343 (b) or (d) of the Act	15.00
Form N-577. For filing application for a special certificate of naturalization to obtain recognition as a citizen of the United States by a foreign state under section 343(c) of the Act	15.00
Form N-580. For filing application for a certificate of naturalization or repatriation under section 343(a) of the Immigration and Nationality Act or the 12th subdivision of section 4 of the Act of June 29, 1906	15.00
Form N-600. For filing application for certificate of citizenship under section 309(c) or section 341 of the Act	35.00
Motion. For filing a motion to reopen or reconsider any decision under the immigration laws (except on applications filed by students on Form I-538, exchange visitors on Form IAP-66, Cuban refugees on Form I-485A filed under the Act of November 2, 1966, or A-1, A-2 or G-4 nonimigrants on Form I-566 for which no fee is chargeable). When the motion to reopen or reconsider is made concurrently with any application under the immigration laws, such application will be considered an integral part of the motion and only the fee for filing the motion or the fee for filing the application, whichever is greater, is payable. (The fee of $110 shall be charged whenever a motion is filed by or on behalf of two or more aliens and the aliens are covered by one decision)	110.00
Request. For filing application for temporary withholding of deportation under section 243(h) of the Act	110.00
Request. For special statistical tabulations a charge will be made to cover the cost of the work involved	Cost
Request. For set of monthly, semi-annual, or annual tables entitled "Passenger Travel Reports via Sea and Air" [1]	7.00

[1] Available from Immigration & Naturalization Service for years 1975 and before. Later editions are available from the United States Department of Transportation; contact: United States Department of Transportation, Transportation Systems Center, Kendall Square, Cambridge, MA. 02142.

(2) Fees for production or disclosure of records under 5 U.S.C. 552 shall be charged in accordance with the

regulations of the Department of Justice, 28 CFR 16.9.

(3) Except as otherwise provided in paragraph (c) of this section, for services performed under section 344(a) of the Act of the clerk of the court shall charge, collect, and account for the following fees:

Form N-300/315. For receiving and filing a declaration intention	$15.00
Form N-405/407. For making, filing, and docketing a petition for naturalization	50.00

* * * * *

(Sec. 103, 66 Stat. 173, 31 U.S.C. 483a; 8 U.S.C. 1103, OMB Cir. A-25)

Dated: August 17, 1982.

Alan C. Nelson,

Commissioner, Immigration and Naturalization Service.

[FR Doc. 82-23453 Filed 8-25-82; 8:45 am]

BILLING CODE 4410-10-M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 21

[AC No. 21-BB]

Advisory Circular—Direct Shipment of Replacement or Modification Parts From Suppliers to Users

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Draft Advisory Circular (AC) and request for comments.

SUMMARY: This proposed Advisory Circular is to provide guidance and information to the aviation industry with respect to the definition of "standard parts" as used in the Federal Aviation Regulations, and to set forth the responsibilities for quality and airworthiness of replacement or modification parts.

DATES: Comments must identify the AC No. 21-BB and be received on or before November 19, 1982.

ADDRESSES: Send all comments on the draft AC to: Federal Aviation Administration, Attention: Aircraft Manufacturing Division (AWS-200), 800 Independence Avenue, SW., Washington, D.C. 20591.

Comments received on the draft AC may be inspected in Room 301, FAA Headquarters Building (FOB-10A), 800 Independence Avenue, SW., Washington, D.C. 20591, between the hours of 8:30 a.m. and 5:00 p.m., Monday thru Friday.

FOR FURTHER INFORMATION CONTACT: George J. Pour, Chief, Aircraft Manufacturing Division, Office of Airworthiness, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, D.C. 20591, Telephone (202) 426-8361.

SUPPLEMENTARY INFORMATION:

Comments Invited

Comments are invited from all interested persons on the changes proposed in this AC.

Background

In August of 1981 the Federal Aviation Administration (FAA) issued a General Notice (GENOT) for the purpose of setting forth guidance material for FAA field personnel concerning quality and airworthiness of replacement or modification parts shipped directly to users by suppliers of FAA production approval holders. This notice in essence concluded that the holder of a production approval has, in effect, accepted responsibility for quality and airworthiness of supplier parts that are shipped by the supplier directly to the user when the supplier is specified by name as the procurement source in documents such as letters, parts manuals, service bulletins, or other material made available to the aviation community.

After further study it has been determined that, since many of the parts covered by the GENOT provisions may be in the standard part category, many of the problems related to the subject covered by the GENOT could be alleviated with a more comprehensive definition for the term "standard parts." The AC is, therefore, intended to clarify the meaning of "standard part" as used in FAR 21.303(b)(4) (Parts Manufacturers Approval (PMA) rules), and to set forth the responsibility of the production approval holder, the supplier/parts manufacturer, and the installer of replacement or modification parts, with respect to the quality and airworthiness of such parts.

List of Subjects in 14 CFR Part 21

Aircraft, Aviation safety, Exports, Reporting and recordkeeping requirements.

Comments

Comments are invited from all interested persons. A copy of proposed AC No. 21-BB may be obtained from, and comments thereon submitted to: George J. Pour, Chief, Aircraft Manufacturing Division, Office of Airworthiness, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, D.C. 20591, Telephone (202) 426-8361.

Issued in Washington, D.C., on August 19, 1982.

M. C. Beard,

Director of Airworthiness.

Advisory Circular

Subject: Direct Shipment of Replacement of Modification Parts from Suppliers to Users.

Date: ————.

Initiated by: AWS-200

AC No. ————.

Change: ————.

1. *Purpose.* This advisory circular (AC) provides information on government and industry specifications that may be utilized in determining whether a part is a standard part within the scope of Federal Aviation Regulations (FAR) 21.303(b)(4), and sets forth the responsibilities related to the quality and airworthiness of replacement or modification parts shipped direct from suppliers (parts manufacturers) to users.

2. *Reference.*

a. FAR 21.303.

b. FAR Part 43.

3. *Background.*

a. In August of 1981 the Federal Aviation Administration (FAA) issued a General Notice (GENOT) setting forth guidance material for FAA field personnel concerning quality and airworthiness of replacement or modification parts shipped directly to users by suppliers of FAA production approval holders. Such approval holders are hereafter referred to as original equipment manufacturers (OEM). This notice in essence concluded that an OEM has, in effect, accepted responsibility for quality and airworthiness of supplier parts that are shipped by the supplier directly to the user when the supplier is specified by name as the procurement source in documents such as letters, parts manuals, service bulletins, or other material made available to the aviation community.

b. After further study, it has been determined that, since many of the parts covered by the GENOT provisions may be in the standard part category, many of the problems related to the subject covered by the GENOT could be alleviated with a more comprehensive definition for the term "standard parts." This AC is, therefore, intended to clarify the meaning of "standard part" as used in FAR 21.303(b)(4), and to set forth the responsibility of the OEM, the supplier/parts manufacturer (SPM), and the installer of replacement or modification parts, with respect to the quality and airworthiness of such parts.

4. *Standard Parts—Meaning.* For the purpose of compliance with FAR 21.303(b)(4), a standard part is considered to be a part intended for aircraft use and conforming to established industry or U.S. specifications such as the following: (See Appendix A for addresses).

a. Department of Defense Index of Specifications and Standards.

b. Society of Automotive Engineers, Inc.

c. National Aerospace Standards.

d. Electronic Industries Association Standards.

e. American National Standards Institute.

5. *Responsibility for Quality and Airworthiness.*

a. *The OEM* is responsible for all parts, regardless of source, that are used in the production of its end product, and for replacement or modification parts shipped from OEM production facilities. In addition, when the SPM does not have a Parts Manufacturer Approval (PMA) under FAR 21.303, the OEM is responsible for quality and airworthiness of replacement or modification parts:

(1) Shipped direct from a SPM at the specific request of the OEM in individual cases (drop-shipped);

(2) Shipped from a SPM directly to a user under a blanket authorization for direct shipment issued to the SPM by the OEM; and,

(3) Procured by a user from a SPM who is specifically listed by the OEM as the procurement source, in parts catalogs, service bulletins, or other documents available to the industry; except that the SPM is responsible when:

(a) The SPM name is listed only to satisfy a contractual requirement imposed by an OEM customer (such as an air carrier) that a procurement source must be shown for all parts, or,

(b) The OEM includes a disclaimer of responsibility for quality control and airworthiness of parts procured directly from a SPM even though the SPM is listed in the aforementioned documents.

b. *The SPM* of parts that DO NOT MEET the criteria for standard parts:

(1) Must obtain a PMA under FAR 21.303 and is responsible for parts shipped:

(a) To persons other than an OEM, and,

(b) Directly to a user when the exceptions in paragraphs 5.a.(3)(a) or (b) of this AC apply.

(2) Does not need a PMA when the conditions described in section 5.a. of this AC apply to the parts being shipped, for which the OEM is responsible.

c. *For Standard parts,* the FAA authorized person or agency that returns to service an aircraft, engine, or propeller is responsible for quality and airworthiness of such parts used in maintenance, preventive maintenance, repair, alteration, overhaul or rebuild.

M. C. Beard,

Director of Airworthiness.

Appendix 1

1. Department of Defense Index of Specifications and Standards:
   Hard Copy: Superintendent of Documents, U.S. Government Printing Office, Washington, D.C. 20402.
   Microfiche: Director, Naval Publications and Printing Services, Office 4ND; 700 Robbins Avenue, Philadelphia, PA 19111.

2. Society of Automotive Engineers, Inc., Indexes: Society of Automotive Engineers, Inc., 400 Commonwealth Drive, Warrendale, PA 15096.

3. National Aerospace Standards Committee, Information: National Aerospace Standards Committee, 1725 DeSales Street, NW., Washington, D.C. 20036.

4. Electronic Industries Association Standards, Catalog: Electronic Industries Association, 2001 Eye Street, NW., Washington, D.C. 20006.

5. American National Standards Institute, Catalog: American National Standards Institute, 1430 Broadway, New York, NY. 10018.

[FR Doc. 82-23385 Filed 8-25-82; 8:45 am]

BILLING CODE 4910-13-M

14 CFR Part 71

[Airspace Docket No. 82-AWA-3]

Proposed Alteration and Designation of VOR Federal Airways

Correction

In FR Doc. 82-21880, appearing at page 35002, in the issue of Thursday August 12, 1982, make the following change:

On page 35003, in the third column, in V-510[New], the last sentence should read

"From Buffalo, NY, INT Buffalo 045°T(053°M) and Rochester, NY, 273°T(282°M); Rochester.".

BILLING CODE 1505-01-M

SECURITIES AND EXCHANGE COMMISSION

17 CFR Parts 240 and 249

[Release No. 34-18983 File No. S7-941]

Amendments Relating to Reports of Stabilizing Transactions

AGENCY: Securities and Exchange Commission.

ACTION: Proposed rulemaking.

SUMMARY: The Commission is proposing to amend Rules 17a-2 and 10b-7 under the Securities Exchange Act of 1934 and to rescind related Form X-17A-1. The proposed amendment to Rule 17a-2 will eliminate the requirement that participants in an offering that is stabilized file with the Commission reports of their transactions, including stabilizing transactions, in those securities. The proposed amendment would require instead that information concerning stabilizing transactions be retained by the manager of the underwriting syndicate. The filing of reports concerning stabilization appears to impose burdens that exceed any benefits relating to the protection of investors. The proposed amendment to Rule 10b-7 will make certain technical changes to that Rule.

DATE: Comments should be submitted on or before October 19, 1982.

ADDRESSES: Interested persons should submit six copies of their written data, views and arguments to George A. Fitzsimmons, Secretary, Securities and Exchange Commission, Room 6184, 450 Fifth Street, NW., Washington, D.C. 20549, and should refer to File No. S7-941. All submissions will be available for public inspection at the Commission's Public Reference Section, Room 1024, 450 Fifth Street, NW., Washington, D.C.

FOR FURTHER INFORMATION CONTACT: Kenneth B. Orenbach at (202) 272-7391; or Allyn C. Shepard at (202) 272-2828; Office of Legal Policy and Trading Practices, Division of Market Regulation, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, D.C. 20549.

SUPPLEMENTARY INFORMATION: .

I. Background and Proposed Amendment

Rule 17a-2 under the Securities Exchange Act of 1934 and its related Form X-17A-1 were adopted on February 9, 1939.[1] The rule requires "any person who effects any purchase of a security for the purpose of pegging, fixing or stabilizing" the price of a security during an offering to report to the Commission all stabilizing transactions made during the offering, as well as all purchases and sales of the stabilized security made during the nine business days prior to the commencement of the offering and all purchases made to cover a short position. Purchases and sales of the stabilized security made by persons other than the manager are also required to be reported. The purpose of Form X-17A-1 is to inform the Commission (1) whether stabilizing transactions on behalf of the syndicate or group have been effected in conformity with the restrictions and limitations Rule 10b-7, the Commission's stabilizing, rule, and therefore properly come within exception (8) of Rule 10b-6, which permits "stabilizing transactions not in violation of Rule 10b-7" and (2) whether any other activity by any member of the syndicate has violated the prohibitions of Rule 10b-6 against the purchase of securities of the same class and series as those being distributed.[2] The form is intended to permit monitoring of stabilizing transactions and to facilitate enforcement of Rule 10b-7, which contains the substantive regulations governing stabilizing transactions, and of Rule 10b-6. It no longer appears necessary to monitor stabilization practices by means of reports required to be filed with the Commission. In light of this fact, the reporting provisions of

[1] Securities Exchange Act Release No. 2008 (February 9, 1939).

[2] *See* Securities Exchange Act Release No. 9717 (August 15, 1972).

Rule 17a–2 appear to impose burdens on participants in a distribution of securities that exceed the benefits of the rule.

The Commission therefore is proposing that Form X–17A–1 be rescinded and that Rule 17a–2 be amended to require only that the managing underwriter of a distribution of securities retain, in a separate file, records of all stabilizing transactions engaged in by participants in that distribution. The proposed amendment to the rule will require the retention of records of stabilizing purchases only. Distribution participants, other than the managing underwriter, consequently will be relieved of the requirement that each compile the other market information now required to be included in the reports filed with the Commission.

The Rule presently applies to registered public offerings and Regulation A offerings. The rule also presently requires stabilizing reports and records to be maintained in connection with any other offering exceeding $300,000. The Commission believed that there was little incentive to stabilize smaller offerings of that type. The Commission continues to believe that the Regulation A ceiling represents an appropriate benchmark in this area. Accordingly, the Commission proposes to raise the minimum level at which nonregistered, non-Regulation A offerings would be subject to the requirements of the Rule to $1,500,000.

Finally, the Commission proposes to adopt certain technical changes to Rule 10b–7 (which regulates the manner in which stabilizing transactions can be effected) to conform certain cross-references therein to Rule 17a–2.

II. Regulatory Flexibility Act Considerations

The Regulatory Flexibility Act, which became effective on January 1, 1981, imposes new procedural steps applicable to agency rulemaking which has a "significant economic impact on a substantial number of small entities." [3] The Chairman of the Commission has certified pursuant to the Regulatory Flexibility Act that the proposed amendment to Rules 17a–2 and 10b–7, if adopted, will not have a significant economic impact on a substantial number of small entities because small broker-dealers within the meaning of this act generally file Form X–17A–1 infrequently, since they do not participate in syndicates regularly.

Moreover, on the basis of information compiled by the Commission, the cost of filing Form X–17A–1 for each transaction is minimal. Finally, the amendment does not impose additional recordkeeping requirements upon managers of an underwriting that are not already a part of standard business practice. The amendment to Rule 10b–7 is merely technical and has no impact on small broker-dealers.

List of Subjects in 17 CFR Parts 240 and 249

Reporting requirements, Securities.

III. Statutory Basis And Text Of Proposed Rule Amendments

Pursuant to Sections 9(a)(6), 10(b), 17(a) and 23(a) of the Act, 15 U.S.C., 78i(a), 78j(b), 78(q) and 78w(a), the Commission proposes to amend § 240.17(a)(2) in Chapter II of Title 17 of the Code of Federal Regulations by revising paragraphs (a), (b) and (c) of § 240.17a–2, deleting current paragraphs (d), (e) and (f), and adding a new paragraph (d), and to amend § 240.10b–7 in said chapter by revising paragraph (1).

Chapter II, Title 17 of the Code of Federal Regulations is proposed to be amended as follows:

PART 240—GENERAL RULES AND REGULATIONS, SECURITIES EXCHANGE ACT OF 1934

1.) By revising paragraphs (a), (b) and (c) of § 240.17a–2, removing current paragraphs (d), (e) and (f), and adding a new paragraph (d) to read as follows:

§ 240.17a–2 Recordkeeping requirements relating to stabilizing activities.

(a) *Scope of section.* This section shall apply to any person who effects any purchase of a security for the purpose of, or who participates in a syndicate or group which engages in, pegging, fixing or stabilizing (hereinafter called "stabilizing") the price of any security to facilitate an offering of any security (other than an "exempted security" as hereinafter defined) (1) with respect to which a registration statement has been, or is to be, filed pursuant to the Securities Act of 1933 as amended or (2) which is being, or is to be, offered pursuant to an exemption from registration under Regulation A adopted under the Securities Act of 1933 or (3) which is being, or is to be, otherwise offered, if the aggregate offering price of the securities being offered exceeds $1,500,000.

(b) *Definitions.* Unless the context clearly indicates otherwise, for the purposes of this rule, the following terms shall have the meanings indicated:

(1) The term "manager" shall mean the person stabilizing for his sole account or for the account of a syndicate or group in which he is a participant, and who, by contract or otherwise, deals with the issuer, organizes the selling effort, receives some benefit from the underwriting which is not shared by other underwriters, or represents any other underwriters in such matters as maintaining the records of the distribution and arranging for allotments of securities offered.

(2) The term "exempted security" means an exempted security as defined in Section 3(a)(12) of the Act, including securities issued, or guaranteed both as to principal and interest, by the International Bank for Reconstruction and Development.

(c) *Records required to be maintained by manager.* Any person subject to this rule who acts as manager shall:

(1) Promptly record on a current basis and maintain in a separate file, for a period of not less than 12 months, the following information:

(i) The name and class of any security being stabilized, (ii) the price, the date, and the time at which the first stabilizing purchase and each succeeding stabilizing purchase was effected by the manager or by any participant in the syndicate or group, (iii) the names and addresses of the members of the syndicate or group, and (iv) their respective commitments, or in the case of a standby or contingent underwriting the percentage participation of each member of the syndicate or group therein, except that in the case of a best-efforts underwriting only the total amount to be offered need be stated to meet the requirement of clause (iv); and

(2) Promptly furnish to each of the members of the syndicate or group the information (other than price) called for by clauses (i) and (ii) of paragraph (1) of this section; and

(3) Promptly notify each of the members of such syndicate or group of the date and time when stabilizing was terminated.

(d) *Notification of manager.* Any person who has a participation in a syndicate account but who is not a manager of such account, and who effects one or more stabilizing purchases for his sole account or for the account of

[3] Although Section 601(b) of the Regulatory Flexibility Act defines the term "small entity," the statute permits agencies to formulate their own definitions. The Commission has adopted definitions of the term small entity for purposes of Commission rulemaking in accordance with the Regulatory Flexibility Act. Those definitions, as relevant to this proposed rulemaking, are set forth in Rule 0–10, 17 CFR 240.0–10. *See* Securities Exchange Act Release No. 18452 (Jan. 28, 1982). A broker or dealer is a "small business" or "small organization" under Rule 0–10 if, among other things, it had total capital of less than $500,000 during the preceding fiscal year.

a syndicate or group, shall within three business days following such purchase notify the manager of the price, the date and the time at which such stabilizing purchase was effected, and shall in addition notify the manager of the date and time when stabilizing was terminated.

2. By revising paragraph (l) of §240.10b-7 as follows:

§ 240.10b-7 Stabilization to Facilitate a Distribution.

* * * * *

(l) *Record-Keeping Requirements.* A person subject to this rule shall keep the information and make the notification required by, §240.17a-2 even though he is not subject to that rule as a broker, dealer or member of a national securities exchange.

* * * * *

PART 249—FORMS, SECURITIES EXCHANGE ACT OF 1934

3. § 249.717 [Removed]

By removing §249.717.

IV. Solicitation Of Comments

All interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons desiring to make submissions should submit six copies thereof to George A. Fitzsimmons, Secretary, Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, D.C. 20549, not later than October 19, 1982. Reference should be made to File No. S7-941. All submissions will be made available for public inspection at the Commission's Public Reference Section, room 1024, 450 Fifth Street, NW., Washington, D.C. 20549.

By the Commission.

Dated: August 19, 1982.

George A. Fitzsimmons,

Secretary.

Regulatory Flexibility Act Certification

I, John S.R. Shad, Chairman of the Securities and Exchange Commission, hereby certify pursuant to 5 U.S.C. 605 (b) that the proposed amendments to Rules 17a-2 and 10b-7 set forth in Securities Exchange Act Release No. 34-18983, if promugated, will not have a significant economic impact on a substantial number of small entities because small broker-dealers within the meaning of The Regulatory Flexibility Act generally file Form X-17A-1 infrequently, since they do not participate in syndicates regularly. Moreover, on the basis of information compiled by the Commission, the cost of filing Form X-17A-1 for each transaction is minimal. Finally, the amendment to Rule 17a-2 does not impose additional recordkeeping requirements upon managers of an underwriting that are not already a part of standard business practice. The amendment to Rule 10b-7 is merely technical in nature and will have no impact upon small broker-dealers.

Dated: August 19, 1982.

John S. R. Shad,

Chairman.

[FR Doc. 82-23327 Filed 8-25-82; 8:45 am]

BILLING CODE 8010-01-M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

18 CFR Part 271

[Docket No. RM79-76-132 (Colorado-1 Addition II)]

High-Cost Gas Produced From Tight Formations; Colorado

Issued: August 23, 1982.

AGENCY: Federal Energy Regulatory Commission, DOE.

ACTION: Notice of Proposed Rulemaking.

SUMMARY: The Federal Energy Regulatory Commission is authorized by section 107(c)(5) of the Natural Gas Policy Act of 1978 to designate certain types of natural gas as high-cost gas where the Commission determines that the gas is produced under conditions which present extraordinary risks or costs. Under section 107(c)(5), the Commission issued a final regulation designating natural gas produced from tight formations as high-cost gas which may receive an incentive price (18 CFR 271.703). This rule established procedures for jurisdictional agencies to submit to the Commission recommendations of areas for designation as tight formations. This Notice of Proposed Rulemaking by the Director of the Office of Pipeline and Producer Regulation contains the recommendation of the State of Colorado that an additional area of the J Sand Formation be designated as a tight formation under § 271.703(d).

DATES: Comments on the proposed rule are due on October 7, 1982.

Public hearing: No public hearing is scheduled in this docket as yet. Written requests for a public hearing are due on September 7, 1982.

ADDRESS: Comments and requests for hearing must be filed with the Office of the Secretary, 825 North Capitol Street NE., Washington, D.C. 20426.

FOR FURTHER INFORMATION CONTACT: Leslie Lawner, (202) 357-8511, or Victor Zabel, (202) 357-8616.

SUPPLEMENTARY INFORMATION:

I. Background

On August 2, 1982, the State of Colorado Oil and Gas Conservation Commission (Colorado) submitted to the Commission a recommendation, in accordance with § 271.703 of the Commission's regulations (45 FR 56034, August 22 1980), that an additional areas of the Wattenberg J Sand Formation Called the J sand Formation, located in Adams County, Colorado, be designated as a tight formation. The Commission previously adopted a recommendation that portions of the Wattenberg J Sand Formation in Larimer, Weld, Adams, and Boulder Counties, Colorado, be designated as a tight formation [Order No. 124 issued January 23, 1981, in Docket No. RM79-76 (Colorado-1)]. On June 18 1982, the Commission issued a Notice of Proposed Rulemaking for additional areas of the Wattenberg J Sand Formation located in Weld, Jefferson, Boulder, and Larimer Counties, Colorado, which were recommended by Colorado for designation as a tight formation [Docket No. RM79-76-121 (Colorado-1 Addidtion)]. Pursuant to § 271.703(c)(4) of the regulations, this Notice of Proposed Rulemaking is hereby issued to determine whether Colorado's recommendation that an additional area of the J Sand Formation be designated a tight formation should be adopted. Colorado's recommendation and supporting date are on file with the Commission and are available for public inspection.

II. Description of Recommendation

Colorado recommends that an additional area of the J Sand Formation on the southeast side of that acreage previously granted tight formation designation in Order No. 124 be designated as a tight formation. Colorado wishes to add portions of Township 1 South, Range 63 West, and Township 2 South, Ranges 63 and 64 West, which are located to the southeast and contiguous to the previously designated area of the Wattenberg J Sand Formation. The recommended area does not include any of the areas which the Commission specifically excluded from its designation of the Wattenberg J Sand Formation in Order No. 124 (see appendix to Order No. 124 for a description of the excluded acreage). Reduced spacing or infill drilling has not been authorized in the recommended area. The average depth to the top of the J Sand Formation in the recommended area is approximately 8,000 feet.

III. Discussion of Recommendation

Colorado claims in its submission that evidence gathered through information and testimony presented at a public hearing in Cause No. NG–3, Order No. NG–3–3 convened by Colorado on this matter demonstrates that:

(1) The average *in situ* gas permeability throughout the pay section of the proposed area is not expected to exceed 0.1 millidarcy;

(2) The stabilized production rate, against atmospheric pressure, of wells completed for production from the recommended formation, without stimulation, is not expected to exceed the maximum allowable production rate set out in § 271.703(c)(2)(i)(B); and

(3) No well drilled into the recommended formation is expected to produce more than five (5) barrels of oil per day.

Colorado further asserts that existing State and Federal Regulations assure that development of this formation will not adversely affect any fresh water aquifers.

Accordingly, pursuant to the authority delegated to the Director of the Office of Pipeline and Producer Regulation by Commission Order No. 97, issued in Docket No. RM80–68 (45 *FR* 53456, August 12, 1980), notice is hereby given of the propopsal submitted by Colorado that an additional area of the J Sand Formation, as described and delineated in Colorado's recommendation as filed with the Commission, be designated as a tight formation pursuant to § 271.703.

IV. Public Comment Procedures

Interested persons may comment on this proposed rulemaking by submitting written data, views or arguments to the Office of the Secretary, Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, D.C. 20426, on or before October 7, 1982. Each person submitting a comment should indicate that the comment is being submitted in Docket No. RM79–76–132 (Colorado-1 Addition II), and should give reasons including supporting data for any recommendations. Comments should include the name, title, mailing address, and telephone number of one person to whom communications concerning the proposal may be addressed. An original and 14 conformed copies should be filed with the Secretary of the Commission. Written comments will be available for public inspection at the Commission's Division of Public Information, Room 1000, 825 North Capitol Street NE., Washington, D.C., during business hours.

Any person wishing to present testimony, views, data, or otherwise participate at a public hearing should notify the Commission in writing that they wish to make an oral presentation and therefore request a public hearing. Such request shall specify the amount of time requested at the hearing. Requests should be filed with the Secretary of the Commission no later than September 7, 1982.

List of Subjects in 18 CFR Part 271

Natural gas, Incentive price, Tight formations.

(Natural Gas Policy Act of 1978, 15 U.S.C. 3301–3432)

Accordingly, the Commission proposes to amend the regulations in Part 271, Subchapter H, Chapter I, Title 18, Code of Federal Regulations, as set forth below, in the event Colorado's recommendation is adopted.

Kenneth A. Williams,

Director, Office of Pipeline and Producer Regulation.

PART 271—CEILING PRICES

Section 271.703(d) is revised by amending subparagraph (11) to read as follows:

§ 271.703 Tight formations.

* * * * *

(d) *Designated tight formations.*

* * * * *

(11) *Wattenberg J Sand Formation in Colorado.* RM79–76 (Colorado-1).

(i) *Wattenberg J Sand Formation.*

(A) *Delineation of formation.* The Wattenberg J Sand Formation is located north and east of Denver, Colorado, on the westeron flank of the Denver-Julesberg Basin, underlying approximately 702,000 acres of land in Boulder, Adams, Larimer, and Weld Counties, Colorado. This formation underlies portions of Township 1 South, Ranges 64 through 68 West; Township 2 South, Ranges 64 and 65 West; Townships 1 and 2 North, Ranges 63 through 69 West; Townships 3 and 4 North, Ranges 63 through 68 West; Township 5 North, Ranges 63 through 69 West, 6th P.M.

(B) *Depth.* The Wattenberg J Sand Formation ranges in depth from 7,600 feet to 8,400 feet. The average depth is 8,000 feet.

(ii) *The J Sand Formation.* RM79–76 (Colorado–1 Addition).

(A) *Delineation of formation.* This formation underlies all or portions of Townships 1 and 2 South, Ranges 69 and 70 West; Townships 1 and 2 North, Range 70 West; Townships 3 and 4 North, Ranges 69 and 70 West; Township 5 North, Range 63 West; Township 6 North, Ranges 63 through 69 West, 6th P.M., in Boulder, Larimer, Jefferson and Weld Counties, Colorado.

(B) *Depth.* The J Sand Formation ranges from a depth of 7,600 feet to 8,400 feet. The average depth is approximately 8,000 feet.

(iii) *The J Sand Formation.* RM79–76 (Colorado-1 -Addition II).

(A) *Delineation of formation.* The formation underlies all or portions of Township 1 South, Range 63 West, 6th P.M., and Township 2 South, Ranges 63 and 64 West, 6th P.M., in Adams County, Colorado.

(B) *Depth.* The J Sand Formation ranges from a depth of 7,600 feet to 8,400 feet. The average depth is approximately 8,000 feet.

[FR Doc. 82–23388 Filed 8–25–82; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF THE TREASURY

Customs Service

19 CFR Parts 7, 10, 22, 113, 145, 158, and 191

Drawback; Proposed Specialized and General Provisions

AGENCY: Customs Service, Treasury.

ACTION: Proposed revision.

SUMMARY: As a part of the general revisions of the Customs Regulations, the Customs Service is proposing to revise its rules which govern drawbacks. Drawback is a refund or remission, in whole or in part of a customs duty, internal-revenue tax, or fee lawfully assessed or collected because of a particular use made of the merchandise on which the duty or tax was assessed or collected. The rationale for drawbacks has always been to encourage American commerce or manufacturing, or both. This proposed revision sets forth the general provisions applicable to all drawback claims and specialized provisions applicable to specific types of drawback claims. This proposed revision also follows a new format, and includes changes or additions in language to clarify the current provisions. Substantive changes have been made in proposed Part 191. Some of the changes are new and some are based upon interpretative rulings.

DATE: Comments must be received on or before November 24, 1982.

ADDRESS: Written comments may be addressed to the Commissioner of Customs, Attention: Regulations Control Branch, U.S. Customs Service, 1301 Constitution Avenue, NW., Room 2426, Washington, D.C. 20229.

FOR FURTHER INFORMATION CONTACT:
George Steuart, Carriers, Drawback and Bonds Division, U.S. Customs Service, 1301 Constitution Avenue, NW., Washington, D.C. 20229 (202–566–5856).

SUPPLEMENTARY INFORMATION:

Background

Drawback is a refund or remission, in whole or in part of a customs duty, internal-revenue tax, or fee lawfully assessed or collected because of a particular use made of the merchandise on which the duty or tax was assessed or collected.

The rationale for drawback has always been to encourage American commerce or manufacturing, or both. It permits the American manufacturer to compete in foreign markets without the handicap of including in his costs, and consequently in his sales price, the duty paid on imported merchandise.

Two examples of drawback follow:

1. "A" imports Australian grease wool, and produces from it wool top which is sold in the United States. At a a later date, "A" uses domestic grease wool of the same kind and quality to produce wool top and the wool top is exported. "A" can claim and receive drawback on the duty he paid on the Australian grease wool.

2. "B" imports semiconductors which he uses in manufacturing television sets. If the television sets are exported, "B" may claim and receive drawback on the duty paid on the semiconductors.

This proposed revision is part of the general revision of the Customs Regulations and would amend Chapter I, title 19, Code of Federal Regulations (19 CFR Chapter I), by removing present Part 22 and adding a new Part 191.

Proposed Part 191 would set forth the general provisions applicable to all drawback claims and specialized provisions applicable to specific types of drawback claims. Part 191 would follow a new format, and contain changes or additions in language to clarify the current provisions. Substantive changes have been made in proposed Part 191.

Revised Part 191 would be divided into sixteen subparts. Following is a discussion of the major changes in each of these subparts.

Subpart A—General Provisions

1. Proposed § 191.1 is new and would set forth the general authority of the Commissioner of Customs to administer the drawback law and regulations.

2. Proposed § 191.2 is new and would set forth the definitions of the primary terms used throughout the revision. The defined terms are:

a. Drawback.
b. Designated merchandise.
c. Drawback proposal.
d. Drawback acceptance.
e. Specific drawback contract.
f. General drawback contract.
g. Drawback product.
h. Drawback entry.
i. Drawback claim.
j. Direct identification drawback.
k. Substitution drawback.
l. Fungible merchandise.
m. Same kind and quality merchandise.
n. Schedule.
o. Verification.
p. Abstract of manufacturing records.

3. Proposed § 191.4 would follow § 22.1 but present an expanded discussion of section 313, Tariff Act of 1930, as amended (19 U.S.C. 1313), in general language including "same condition drawback."

4. Proposed § 191.6(a) would clarify who are the proper parties authorized to sign drawback documents presently set forth in § 22.45.

5. Proposed § 191.6(b) would incorporate a change in terminology by introducing the term "proposal" in place of the term "statement" and by adding to the list of documents letters of intention to adhere to general drawback contracts and applications relating to same condition drawback.

6. Proposed § 191.8 is new. Paragraph (a) would incorporate the 5-year statutory requirement for exporting merchandise for which drawback is claimed prusuant to section 313(i), Tariff Act of 1930, as amended (19 U.S.C. 1313(i)). Paragraph (b) would incorporate the 3-year statutory requirement for exporting or destroying same condition drawback merchandise pursuant to section 313(j), Tariff Act of 1930, as amended (19 U.S.C. 1313(j)). Paragraph (c) would incorporate the 5-year statutory requirement for exporting merchandise in continuous Customs custody pursuant to section 557(a), 46 Stat. 744, as amended (19 U.S.C. 1557(a)).

7. Proposed section 191.9 would incorporate the substance of footnote 17 of Part 22 setting forth the criminal liability for falsifying a drawback claim.

8. Proposed § 191.10 would revise the substance of § 22.43 to provide for the liquidation of first claims under drawback entries and subsequent claims without the performance of first claim verifications of the drawback entry. In place of mandatory first claim verifications, drawback claimants would be subject to audit verifications. Also, the term "drawback contract" would be introduced in place of the term "drawback rate". A new § 191.10(e) would be added to set forth the procedures applicable when verification discloses an error in a drawback proposal accepted by Customs Headquarters or a regional commissioner.

9. Proposed § 191.12 would set forth the requirement of section 313(1), Tariff Act 1930, as amended (19 U.S.C. 1313(1)), presently located in footnote 1, letter "j" of § 22.1.

Subpart B—Specific Drawback Contracts

General Statement

The entire application procedure in Part 22 which preceded the filing of the drawback proposal would be removed from Part 191. Under the revision, the drawback party would file the drawback proposal as the initial step, thus eliminating the need for Customs Form 4477. Therefore, section 22.3 would be removed in its entirety.

1. Proposed § 191.21(a) is new and would set forth the proper parties who may apply for a specific drawback contract. The phrase in that section "whether or not the owner of the merchandise" would take into consideration proposed § 191.34 relating to agents.

The phrase "exportation with the benefit of drawback" used here and throughout the revision would be changed to read "exportation with drawback." The words "the benefit of" would be removed as surplusage. The proposed section would provide a cross-reference to Subpart D relating to general drawback contracts.

2. Proposed § 191.21(a)(2) is new and would set forth the current Customs practices concerning the use of subcontractors whose work on drawback merchandise does not constitute a manufacture or production, but does make it difficult to identify the merchandise.

3. Proposed § 191.21 (b) and (d) would set forth the substance of § 22.4(h) but in a clear format. The last sentence of § 22.4(h) relating to applications would be removed from the revision. A provision has been added to proposed § 191.21(d) to provide for the submission of a proposal to Headquarters relating to section 313(h), Tariff Act of 1930, as amended (19 U.S.C. 1313(h)).

4. Proposed § 191.21(c) is new and would state that except for direct identification drawback, the Drawback and Bonds Branch, Office of Regulations and Rulings, Customs Headquarters would provide a sample drawback proposal to a prospective drawback applicant upon request. Sample proposals for direct identification

drawback shall be provided by the regional commissioners upon request.

5. Proposed § 191.22(a) would set forth the general record requirements for direct identification and other non-substitution manufacturing drawback primarily located in § 22.4(a). However, proposed § 191.22(a)(5)(ii) is new and would set forth the existing practice for identifying the time of separation as the entire period covered by a claim when the operation results in two or more products and a claim covers a manufacturing period rather than a manufacturing lot. Manufacturing periods in excess of one month could not be used without specific approval of Customs.

6. Proposed § 191.22(b) would revise § 22.4 (b) and (c) to indicate that records shall be stored in a manner which would enable Customs to verify drawback documentation.

7. Proposed § 191.22(c) would revise § 22.4(f). The present section provides an accounting technique for identifying commingled fungible merchandise and products. However, this provision is difficult to administer and is inconsistent with commercial accounting techniques. The revised section would introduce the first-in-first-out (FIFO) accounting principal for identifying these products.

8. Section 22.4(g), relating to a builder of a vessel or aircraft, would be removed on the basis that the substance is unnecessary to be included in the revision.

9. Proposed § 191.23(a) would provide that a drawback contract shall be approved by Customs Headquarters or the regional commissioner, as appropriate, for a period of 15 years from the date of approval.

10. Proposed § 191.23 (c) and (d) would revise § 22.4 (l) and (m) to reflect the discontinuance of the application procedure. Under the revision, drawback entries may be filed and the merchandise exported before the contract has been approved. However, no payment shall be made until the contract has been approved. This change is necessitated by the accelerated drawback procedure which permits payment of drawback before liquidation.

The revision would not continue the distinction between "issuing" a contract and "approving" a contract. Accordingly, only the term "approval" of a contract would be used throughout the revision.

The language in § 22.4(m) that drawback may be paid on articles "exported on or after the effective date" would be removed from the revision. Under the revision, although merchandise can be exported before the contract has been approved, no payment would be made until the contract has been approved. There would be no "effective date."

11. Although proposed § 191.24 relating to schedules and supplemental schedules would follow the substance of § 22.4(p), the revision would remove § 22.4(q) because "supplemental advisory schedules" are no longer required.

12. Proposed § 191.25 would revise § 22.4(o). Under the revision, a supplemental proposal to modify an existing contract may be prepared. If approved, the new drawback contract would be effective for a period of 15 years from the date of its approval and supersede the contract it modifies.

13. Proposed § 191.26 would revise § 22.4(r) to provide that a contract shall terminate 15 years after the date of approval unless renewed by the manufacturer or producer. A manufacturer or producer may terminate its contract at any time.

Subpart C—Use of Substituted Merchandise

1. Proposed § 191.32(a) would amend § 22.5(a) to reflect the current practice for maintaining records for substitution drawback.

2. Proposed § 191.32(c) would incorporate the substance of § 22.5(e).

3. Proposed § 191.33 is new and would discuss the existing practice in those cases where multiple products result from the manufacturing operation requiring distribution of drawback in accordance with their relative values.

4. Revised § 191.34 is new and would provide for the practice set forth in T.D. 55027(2) and T.D. 55207(1), relating to agency.

Subpart D—General Drawback Contracts

This subpart is new and would incorporate into the Customs Regulations the practice of using general drawback contracts. A general drawback contract is designed to simplify drawback procedures for certain common manufacturing operations but does not preclude or limit the use of drawback proposals and specific drawback contracts.

Customs Headquarters would prepare and publish in the Customs Bulletin approved general drawback contracts in situations where numerous manufacturers or producers have similar operations and wish to claim drawback. Any manufacturer or producer who can comply with the conditions of the published general drawback contract may adhere to it by notifying a regional commissioner in writing of the intention to do so and providing specified information. The regional commissioner shall acknowledge in writing receipt of the letter of adherence. The general drawback contract shall be for a period of 15 years, may be renewed, and may be terminated by the manufacturer or producer at any time. An example of an approved general drawback contract appears as T.D. 80-267 (Vol. 14 Customs Bulletin No. 47, November 19, 1980).

Subpart E—Evidence of Exportation

1. Proposed § 191.51 would retain the uncertified notice of exportation procedure and exporter's summary procedure for establishing a drawback claim in § 22.7(a) but would remove the certified notice of exportation procedure except for mail shipments. Additionally, two new paragraphs would be added to the revision relating to the Notice of Lading for supplies on certain vessels or aircraft and the Notice of Transfer for articles manufactured or produced in the United States and transferred to a foreign trade zone.

2. Proposed § 191.52(c) is similar in substance to § 22.7(c)(1) except that U.S. Customs documentation evidencing exportation may be submitted to support a notice of exportation. Also, evidence to support a notice of exporation would indicate the identity of the exporter in addition to the evidence presently required.

3. Proposed § 191.52(d) would follow the substance of § 22.7(c)(2) except that the word "consecutively" is used in the last sentence of the revision in place of the word "separately" in the last sentence of § 22.7(c)(2). No change in substance is intended.

4. Proposed § 191.53(b) provides that the exporter-claimant shall make the request to use the exporter's summary procedure to the regional commissioner unless in cases of merchandise the subject of same condition drawback, the regional commissioner has delegated authority to approve requests to a district director. In that circumstance, the request is made to the district director.

5. Proposed § 191.53(c) would provide for use of an exporter's summary by an exporter-claimant if the regional commissioner, or the district director if applicable in the case of merchandise the subject of same condition drawback, concludes that its use would contribute to administrative efficiency and the exporter-claimant is not delinquent or otherwise remiss in his transactions with Customs.

6. Proposed § 191.53(d) would revise the bond requirement of § 22.7(d)(2)(ii)

by requiring the amount of the bond to equal 25 percent of the drawback to be claimed by the exporter-claimant on entries filed by him during the term of the bond rather than on a figure determined to be necessary to protect the revenue. The revision also would specify that Customs Form 7613, or rider "K" to General Term Bond, Customs Form 7595, would serve as the bond.

7. Proposed § 191.53(e)(2) would require the exporter-claiment to submit additional evidence to establish the identity of the exported articles and the fact of exportation. Under § 22.7(d)(1), additional evidence is needed only to establish the fact of exportation. In the case where the exporter-claimant uses this procedure for merchandise the subject of same condition drawback, he shall also furnish evidence that the merchandise was exported in the same condition as when imported.

8. Proposed § 191.55, relating to evidence of exportation of Government shipments would remove references to the certified notice of exportation procedure.

9. Proposed § 191.56 would remove the reference to certified notice of exportation in section 22.11, and use the term "request" in place of the term "application."

10. Proposed § 191.57 would provide that the district director may examine any merchandise to be exported with drawback for any reason deemed appropriate. Under § 22.12, he may examine any merchandise being exported with drawback if he is not satisfied as to the bona fides of the shipment.

Subpart F—Completion of Drawback Claims

1. Proposed § 191.62(c) is new and would set forth the existing practice for completing drawback claims in cases where more than one party has a drawback claim in the exported merchandise. Proposed paragraph (c)(1) would provide for the procedure under a notice of exportation, and paragraph (c)(2) would provide for the procedure under the exporter's summary procedure.

2. Proposed § 191.62(d) would revise section 22.13(f) by removing the reference that no certificate of clearance need be filed at a port where the drawback entry is filed. Because liquidation under the revision would be conducted at regional headquarters, it is necessary to remove this reference.

3. Proposed § 191.63 would follow the substance of § 22.13(b) except that the term "summary" is used in place of the term "statement" to avoid confusion because the term "proposal" also is used in the revision in place of the term "statement."

4. Proposed § 191.66(b) is new and would set forth the requirement that a subcontractor shall complete a certificate of manufacture and delivery if he performs work which, although not constituting a manufacture or production, does make the identification of the merchandise difficult.

5. Proposed § 191.66(c) would revise § 22.16(b) by removing the "except" provision because that provision is no longer necessary.

6. Proposed § 191.66(f) is new and would provide for the special requirements incident to agency transactions.

7. Proposed § 191.67(c) would follow the substance of § 22.17(b) except that the term "carrier" is used in place of the term "vessels," to update transportation terminology.

8. Proposed § 191.67(e)(1) would follow § 22.17(e) except that the term "evidence of clearance" is used in place of the term "evidence of exportation" to be more precise about the type of evidence required.

9. Proposed § 191.67(e)(2) would clarify § 22.17(d) to show that a district director may accept other satisfactory evidence of foreign landing in place of the landing certificate.

Subpart G—Payment and Liquidation of Drawback Claims

1. Proposed § 191.71(b)(1) would follow the substance of the first sentence of § 22.20(b) except that the waiver provision has been expanded to encompass "other provisions of law" rather than "provisions of this section."

2. Proposed § 191.71(d) would revise § 22.20(d) by omitting reference to the "notice of exportation" because exportation can be established by other documents such as a bill of lading. The reference to "landing certificate" in § 22.20(d) would be removed because that document would be incorporated within the meaning of "other necessary documents" of proposed § 191.71(d). Also, the change in the manner of establishing exportation from that provided in § 22.20(d) would be necessary because under the revision, drawback entries would be liquidated at regional headquarters.

3. Proposed § 191.71(e)(1) would incorporate the substance of footnote 8 of § 22.20(e).

4. Proposed § 191.71(e)(2) would follow the substance of 22.20(e) except that under the revision, the values shall be the market values "unless the drawback contract provides otherwise" rather than "unless the special regulations under which drawback is claimed provide otherwise."

5. Proposed § 191.71(f), relating to payment, would revise § 22.20(f) by referring the reader to proposed § 191.73 rather than state to whom payment is to be made.

Subpart H—Internal Revenue Tax on Flavoring Extracts and Medicinal or Toilet Preparations (Including Perfumery) Manufactured From Domestic Tax-Paid Alcohol

1. Proposed § 191.82(d)(1) would revised § 22.23(f) to require the manufacturer to apply for a new drawback contract pursuant to § 191.25 if there were a variance of alcohol greater than 5 percent in a previously approved proposal and to file a new schedule rather than use the amendment procedure of § 22.4(o).

2. Proposed § 191.82(d)(2) also would revise § 22.23(f) by requiring the variance of alcohol to be reported to the regional commissioner rather than the district director.

3. Proposed § 191.82(g) would remove the first sentence of § 22.23(c), relating to filing the notice of exportation on Customs Form 7511, because that sentence appears to be superfluous.

4. Proposed § 191.83(b)(3), relating to verification of a statement, would revise § 22.23(e) by requiring the statement to be forwarded to the Customs region rather than the port as in the present section. The last sentence of § 22.23(e) would be deleted from the revision.

Subpart I—Supplies for Certain Vessels and Aircraft

1. Proposed § 191.93(b), relating to time of filing the drawback notice of lading, would revise § 22.18(c) by removing the reference to showing the date of clearance or departure of a vessel or aircraft.

2. Proposed § 191.93(c) would revise section 22.18(c) by requiring the notice of lading to show the Customs region where the drawback is to be filed rather than the name of the port as in the present section.

3. Proposed § 191.93(e)(1) would revise § 22.18(c) by requiring the master or other officer to complete that part of the drawback notice entitled "Declaration of Master or Other Officer." The present section does not specify where on the Customs form the declaration is to be completed. The reference to "certification" in the present section is being removed from the revision.

4. Proposed § 191.93(f) would revise § 22.18(h) by removing the format for showing the required information

regarding class of business or trade of vessels or aircraft because the information already is contained on Customs Form 7514.

5. Section 22.18(e) would be removed since proposed § 191.93(f) would be made applicable to aircraft as well as vessels.

6. Proposed § 191.93(g) would revise § 22.18(d) by making that section applicable to aircraft as well as vessels and specifying the parts of the drawback notice the district is to complete.

7. Proposed § 191.93(j)(1) would follow § 22.18(j). However, the revised section would not state the specific part on the reverse side of Customs Form 7514 to be filled out because of a technical problem. Although the revision would be applicable to both vessels and aircraft, the title on the form is "Blanket Certificate of Lading for Fuel on Aircraft." Corrective action will be undertaken after approval of the final rule.

8. Proposed § 191.93(j)(3) would revise § 22.18(j) by setting forth the title of the part on Customs Form 7514, "Declaration of Master or Other Officer," to be completed.

9. The last sentence of § 22.18(j) would be removed from the revision because the declaration is set forth on Customs Form 7514.

10. Proposed § 191.93(k) would revise § 22.18(g) by making that section applicable to aircraft as well as vessels.

Subpart J—Meats Cured With Imported Salt

1. Proposed § 191.101 is new and would set forth the statutory provision for drawback under 19 U.S.C. 1313(f) in general terms.

2. Proposed § 191.102(a) would follow the substance of § 22.19(a) except that the reference to application for a rate of drawback has been deleted from the revision.

Also, the last sentence of § 22.19(a) would be removed since claims generally amount to more than $100.

Subpart K—Materials for Construction and Equipment of Vessels and Aircraft Built for Foreign Account and Ownership

This is a new subpart.

1. Proposed § 191.111 would discuss the statutory provision for drawback under 19 U.S.C. 1313(g).

2. Proposed §191.112 would state that the other provisions of this Part relating to direct identification drawback apply to claims for drawback insofar as applicable to and not inconsistent with the provisions of this subpart.

3. Proposed § 191.113 would provide an explanation of the terms used in 19 U.S.C. 1313(g) which presently appear as footnote 2 under § 22.1. The phase "or to materials not required for safe operation of the vessel of aircraft" has been added to explain the term "materials."

Subpart L—Foreign-Built Jet Aircraft Engines Processed In the United States

1. Proposed § 191.121 is new and would state that the other provisions of this part apply to claims for drawback insofar as applicable to and not inconsistent with the provisions of this subpart.

Subpart M—Merchandise Exported From Continuous Customs Custody

1. Proposed 191.132 would set forth the statutory language of 19 U.S.C. 1558 contained in § 22.28(a) and footnotes 14. Subsection(c) of the statute would appear under revised § 191.132(c) although it does not presently appear in footnote 14. Subsection (b) of the statute, presently appearing in footnote 14, would be removed from the revision.

2. Proposed § 191.133(a) would follow the substance of § 22.28(b) except that the term "public stores" is used in the revision in place of "appraiser's stores."

3. Proposed § 191.134(a) would follow the substance of §22.29(a) except that the proper form is Customs Form 7512. Customs Form 7541 has been discontinued.

4. Proposed § 191.136(a) would follow the substance of § 22.29(d) except that the bill of lading must be filed within 6 months after the merchandise is exported, rather than 2 years.

5. The last sentence of § 22.29(d), and section 22.29(e) would be removed because they are superfluous.

6. Proposed § 191.136(e) would provide that the regional commissioner, rather than the district director, may issue extracts from bills of lading filed with drawback entries as presently stated in §22.29(f). Also, the reference to Customs Form 4475 would be removed.

7. Proposed § 191.138 would follow the substance of § 22.30(a) and (b) except that the regional commissioner shall determine drawback rather than the district director.

Subpart N—Same Condition Drawback

This subpart is new and would incorporate into the Customs Regulations provisions relating to same condition drawback. Public Law 96–609 amended section 313 of the Tariff Act of 1930, as amended (19 U.S.C. 1313) by redesignating subsections (j) and (k) as subsections (k) and (l), respectively, and by inserting immediately after subsection (i) new subsection (j) relating to same condition drawback.

1. Proposed § 191.141 would discuss the statutory provisions for same condition drawback. Drawback is provided for on imported merchandise exported in the same condition as when imported, or destroyed under Customs supervision and not used within the United States before such exportation and destruction. The imported merchandise must be exported or destroyed before the close of the 3-year period beginning on the date of importation.

2. Proposed § 191.142 would provide the filing requirements for an exporter-claimant who desires to export merchandise and claim drawback under 19 U.S.C. 1313(j). The times for filing Customs Form 75–39, examination, and exportation of the merchandise are discussed.

3. Proposed § 191.143 would provide that within 3 months after exportation, an exporter-claimant shall complete the drawback entry by filing (with the same district director who received Customs Form 7539) evidence of exportation under the uncertified notice of exportation procedure or certified notice of exportation by mail procedure.

4. Proposed § 191.144 would provide that an exporter-claimant may apply with the regional commissioner, or the district director if authority has been delegated to that official, for permission to use the exporter's summary procedure in place of the uncertified notice of exportation procedure and the certificate notice of exportation by mail procedure.

5. Proposed § 191.146 would provide the procedure for an exporter-claimant who desires to destroy merchandise and claim drawback under 19 U.S.C. 1313(j).

6. Proposed § 191.147(a) would provide that entries shall be liquidated or reliquidated in the region or districts as determined by the regional commissioner.

7. Proposed § 191.148 would provide the procedure for obtaining drawback upon the exportation of imported merchandise not conforming to sample or specification or shipped without the consent of the consignee. Customs considers this to be a limited form of same condition drawback as it relates to the exportation of merchandise (but not destruction of merchandise), and thus the revision would simplify the existing procedures.

Subpart O—Distilled Spirits, Wines, or Beer Which Are Unmerchantable or do not Conform to Sample or Specifications

This subpart is new and would incorporate into the Customs Regulations the current procedures used to implement the refund of internal-revenue taxes in compliance with 26 U.S.C. 5062(c).

Customs Form 7539, appropriately modified, would be used to claim drawback under this subpart. If the owner claims the merchandise to be unmerchantable, that party would provide a certificate forth in detail the facts which caused the merchandise to be unmerchantable. If the drawback claimant proposes to destroy, rather than export the merchandise, he shall so state that fact on Customs Form 7539. Merchandise under this subpart could not be exported by mail.

Under this subpart, there would be no time limit for the return to Customs custody of distilled spirits, wine, or beer subject to the refund of taxes. However, merchandise not exported or destroyed within 90 days from the date of notification of acceptance of the drawback entry shall be considered unclaimed unless extended by the district director for an additional 90-day period.

No deduction of 1 percent of the internal-revenue taxes paid or determined shall be made in allowing claims under 26 U.S.C. 5062(c) Internal Revenue Code, as amended.

Subpart P—Merchandise Transferred to a Foreign Trade Zone from Customs Territory

1. Proposed § 191.163(a) would follow the substance of § 22.37(a) except that the reference to "application for a rate of drawback" has been removed from the revision.

2. Proposed § 191.163(c)(1) would clarify a provision in § 22.37(d) that the Customs officer at the foreign trade zone would receive a copy of Customs Form 7514.

3. Proposed § 191.164(b) would revise section 22.38(a) by indicating that the proper form is Customs Form 7512, and that the district director shall forward a copy of that form to the Customs officer in charge at the zone.

4. Proposed § 191.164(d) would revise section 22.38(b) by providing that Customs Form 7512 shall be used rather than Customs Form 7541, and by changing the title of the certification form signed by the foreign trade zone operator to "Certification of Foreign Trade Zone Operator" in paragraph (d)(2) of the revision.

5. Proposed § 191.165 (b) and (c) would revise § 22.39(a) by providing for the procedure to be followed relating to Customs Form 7539 rather than merely referring to the provision governing the transfer of merchandise to a foreign trade zone.

6. Proposed § 191.165(d) would revise § 22.39(b) by providing for a "certification of Foreign Trade Zone Operator" on Customs Form 7539.

Removal From Regulations

1. Sections 22.6(a), (b), (c), and (d), relating to general drawback rates, would be removed from the revision.

2. The following sections also would be removed from the revision:

a. Section 22.6(e), relating to bags and meat wrappers;

b. Section 22.6(f), relating to sugars and sirups;

c. Section 22.6(g), relating to linseed oil;

d. Section 22.6(g–1), relating to crude petroleum and petroleum derivatives;

e. Section 22.6(h), relating to piece goods;

f. Section 22.6(i), relating to fur skins and fur skin articles.

These sections are not of sufficient general applicability to be included in the revision. By removing these sections from the revision, however, no member of the public would be forfeiting any rights and benefits. Questions concerning these substantive areas, which may arise in the future, may be addressed by a request for a ruling pursuant to Part 177, Customs Regulations (19 CFR Part 177). A drawback proposal may be submitted pursuant to Subpart B. Also, Customs Headquarters will publish as Treasury Decisions, as it has already done so in some cases, general drawback contracts under Subpart D on the above sections.

Editorial Changes

Throughout the revision, numerous editorial changes have been made to clarify and simplify the language contained in the drawback regulations.

Other Changes

Various parts of title 19, Code of Federal Regulations, have sections which contain cross-references to Part 22. This document proposes to amend those sections of the Customs Regulations by conforming the cross-references found therein to new Part 191.

Comments

Before adopting this proposal, consideration will be given to any written comments, preferably in triplicate, submitted timely to the Commissioner of Customs. Comments submitted will be available for public inspection in accordance with § 103.8(b), Customs Regulations (19 CFR 103.8(b)), on normal business days between the hours of 9:00 a.m. and 4:30 p.m. at the Regulations Control Branch, Headquarters, U.S. Customs Service, 1301 Constitution Avenue, NW., Room 2426, Washington, D.C. 20229.

Applicability of E.O. 12291

The Customs Office of Economic Analysis has determined that a preliminary regulatory impact analysis will not be prepared at this time because there is no data available to indicate that the proposed revision is a "major rule" as defined in the Executive Order. Customs requests the public to submit comments on the economic impact of the proposed revision. Following the period of public comment, the Office of Economic Analysis will reassess the applicability of the Executive Order and the necessity of preparing a final regulatory impact analysis.

Applicability of Regulatory Flexibility Act

The Customs Office of Economic Analysis has determined that an initial regulatory flexibility analysis under the Regulatory Flexibility Act will not be prepared at this time. There is no data available which would indicate that there will be a significant economic impact on a substantial number of small entities. To attempt to obtain economic impact data prior to the publication of the notice of proposed rulemaking on this matter would impose an unnecessary burden on small entities as well as large entities, who receive drawback. It appears, however, that any impact on small entities that will result from the proposed revision of Part 22 is likely to be a net beneficial impact, and is likely to ease the burden on both the public and Customs. Customs requests the public, especially small entities, to submit comments on the economic impact of the proposed revision. Following the period of public comment, the Office of Economic Analysis will reassess the applicability of the Regulatory Flexibility Act and the necessity of preparing a final regulatory flexibility analysis.

Paperwork Reduction Act

Pursuant to section 3504(h) of the Paperwork Reduction Act of 1980 (Pub. L. 96–511), applicable sections of this document are subject to clearance by the Office of Management and Budget.

Drafting Information

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

List of Subjects in 19 CFR Part 191

Claims, Exports, Foreign-trade zone, Guantanamo Bay Naval Station, and Puerto Rico.

Proposed Revision to the Customs Regulations

Under the authority of 5 U.S.C. 301, R.S. 251, as amended (19 U.S.C. 66), sections 313, 624, 46 Stat. 693, as amended, 759, (19 U.S.C. 1313, 1624), 77A Stat. 14 (19 U.S.C. 1202, General Headnote 11), it is proposed to amend the Customs Regulations as set forth below:

PART 22—DRAWBACK [REMOVED]

It is proposed to amend Chapter I of title 19, Code of Federal Regulations, by removing Part 22.

It is proposed to further amend Chapter I of title 19, Code of Federal Regulations, by adding a new part, Part 191, to read as follows:

PART 191—DRAWBACK

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191.3 Duties subject to drawback.
191.4 Types of drawback.
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191.101 Drawback allowance.
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191.111 Drawback allowance.
191.112 Procedure.
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Subpart L—Foreign-Built Jet Aircraft Engines Processed in the United States

191.121 Drawback allowance.
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Subpart M—Merchandise Exported From Continuous Customs Custody

191.131 Drawback allowance.

Sec.
191.132 Merchandise released From Customs custody.
191.133 Continuous Customs custody.
191.134 Filing the entry.
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191.151 Refund of taxes.
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191.161 Drawback allowance.
191.162 Zone-restricted merchandise.
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191.165 Same condition merchandise and merchandise not conforming to sample or specifications or shipped without the consent of the consignee.
191.166 Person entitled to receive drawback.

Authority: R.S. 251, as amended, secs. 313, 624, 46 Stat. 693, as amended, 759, 77A Stat. 14; 5 U.S.C. 301, 19 U.S.C. 66, 1202 (General Headnote 11), 1313, 1624. Additional authority and statutes interpreted or applied are cited in the text or following the section affected.

§ 191.0 Scope.

This part sets forth general provisions applicable to all drawback claims and specialized provisions applicable to specific types of drawback claims.

Subpart A—General Provisions

§ 191.1 Authority of the Commissioner of Customs.

Pursuant to Treasury Department Order No. 165, Revised (T.D. 53654, 19 FR 7241), as amended, the Commissioner

of Customs, with the approval of the Secretary of the Treasury, shall prescribe rules and regulations regarding drawback.

§ 191.2 Definitions.

(a) *Drawback.* "Drawback" means a refund or remission, in whole or in part, of a customs duty, internal revenue tax, or fee lawfully assessed or collected because of a particular use made of the merchandise on which the duty or tax was assessed or collected.

(b) *Designated merchandise.* "Designated merchandise" means duty-paid merchandise or drawback products identified by a drawback claimant as the basis for a drawback claim.

(c) *Drawback proposal.* A "drawback proposal" means a written document executed by a manufacturer or producer which contains an offer to operate under the drawback law and regulations.

(d) *Drawback acceptance.* "Drawback acceptance" means a letter from Customs to the manufacturer or producer accepting the proposal. Regional commissioners of Customs accept proposals filed pursuant to 19 U.S.C. 1313(a). U.S. Customs Headquarters accepts proposals in all other cases.

(e) *Specific drawback contract.* A "specific drawback contract" means the drawback proposal and the drawback acceptance. Synopses of contracts are published in the weekly "Customs Bulletin," where each contract is assigned an identifying Treasury Decision (T.D.) number.

(f) *General drawback contract.* A "general drawback contract" means a contract offer prepared by Customs and published in the "Customs Bulletin", and a letter of acceptance by anyone able to comply with its terms and conditions. Letters of acceptance to adhere to the terms shall be filed with a regional commissioner.

(g) *Drawback product.* A "drawback product" means a finished or partially finished product manufactured in the United States under a drawback contract. A drawback product may be exported with a claim for drawback, or it may be used in the further manufacture of other drawback products by manufacturers who have appropriate drawback contracts, in which case drawback is claimed upon exportation of the ultimate product. For purposes of 19 U.S.C. 1313(b), drawback products may be designated as the basis for drawback or deemed to be domestic merchandise.

(h) *Drawback entry.* A "drawback entry" means a document containing a description of, and other required information concerning, exported or destroyed articles on which drawback is claimed. Depending on the type of drawback applied for, entries are filed on Customs Form 7512, 7539, 7573, 7575, 7579, or 7583.

(i) *Drawback claim.* A "drawback claim" means the drawback entry and related documents required by these regulations which together constitute the request for drawback payment.

(j) *Direct identification drawback.* "Direct identification drawback" means drawback authorized under section 313(a), Tariff Act of 1930, as amended (19 U.S.C. 1313(a)). See section 191.4(a)(1) of this part.

(k) *Substitution drawback.* "Substitution drawback" means drawback authorized under section 313(b), Tariff Act of 1930, as amended (19 U.S.C. 1313(b)). See section 191.4(a)(2) of this part.

(l) *Fungible merchandise.* "Fungible merchandise" means merchandise which for commercial purposes is identical and interchangeable in all situations.

(m) *Same kind and quality merchandise.* "Same kind and quality merchandise" means merchandise which may be substituted under substitution drawback. Fungible merchandise is always same kind and quality merchandise; however, same kind and quality merchandise is not always fungible merchandise.

(n) *Schedule.* A "schedule" means a document filed by a drawback claimant showing the quantity of imported material used or appearing in each unit of product exported with drawback or showing the different styles or the capacities of containers for the products.

(o) *Verification.* "Verification" means the examination of any and all records, books, documents, and papers maintained by the claimant, whether or not specifically described in the claimant's proposal, which are required by the regulatory auditor to render a meaningful recommendation concerning the drawback claimant's conformity to the law and regulations and the determination of supportability, correctness, and validity of the specific claim or groups of claims being verified. "Verification" also means the determination that the exported product was produced in conformity with the drawback manufacturing process, described and approved in the claimant's proposal.

(p) *Abstract of manufacturing records.* "Abstract of manufacturing records" means a summary or original documents. A Drawback Entry and Certificate of Manufacture for Exported Articles, Customs Form 7575, or Certificate of Manufacture and Delivery Customs Form 7577, when properly completed, may serve as abstracts of manufacturer's records.

§ 191.3 Duties subject to drawback.

The duties subject to drawback include:

(a) All ordinary Customs duties;

(b) Dumping duties assessed under title VII, Tariff Act of 1930, as amended (19 U.S.C. 1673);

(c) Countervailing duties assessed under sections 303 and 701, Tariff Act of 1930, as amended (19 U.S.C. 1303, 1671); and

(d) Marking duties assessed under section 304(c), Tariff Act of 1930, as amended (19 U.S.C. 1304(c)).

§ 191.4 Types of drawback.

(a) *Drawback of duties and taxes.* Drawback of duties and taxes ordinarily are authorized in the following instances:

(1) *Direct identification drawback.* Drawback of duties is provided for in section 313(a), Tariff Act of 1930, as amended (19 U.S.C. 1313(a)), upon the exportation of articles manufactured or produced in the United States wholly or in part with the use of imported merchandise.

(2) *Substitution drawback.* If imported duty-paid merchandise and duty-free or domestic merchandise of the same kind and quality are used in the manufacture or production of articles within a period not to exceed 3 years from the receipt of the imported merchandise by the manufacturer or producer of the articles, drawback is provided for in section 313(b), Tariff Act of 1930, as amended (19 U.S.C. 1313(b)), upon the exportation of any of the articles, even though none of the imported merchandise may actually have been used in the manufacture or production of the exported articles. The amount of drawback is the same as that which would have been allowed had the merchandise used therein been imported.

(3) *Merchandise not conforming to sample or specifications or shipped without consent of consignee.* Drawback is provided for in section 313(c), Tariff Act of 1930, as amended (19 U.S.C. 1313(c)), upon the exportation of imported merchandise not conforming to sample or specifications or shipped without consent of the consignee.

(4) *Drawback of internal-revenue taxes.* Drawback of internal-revenue taxes is provided for in section 313(d), Tariff Act of 1930, as amended (19 U.S.C. 1313(d)), upon the exportation of flavoring extracts and medicinal or toilet preparations (including perfumery)

manufactured or produced in the United States in part from domestic tax-paid alcohol.

(5) *Imported salt for curing fish.* Drawback of duties is provided for in section 313(e), Tariff Act of 1930, as amended (19 U.S.C. 1313(e)), on salt imported in bond and used in curing fish. (See section 10.80 of this chapter.)

(6) *Exportation of meats cured with imported salt.* Drawback of duties is provided for in section 313(f), Tariff Act of 1930, as amended (19 U.S.C. 1313(f)), in amounts of not less than $100, upon the exportation of packed or smoked meats cured in the United States with imported salt.

(7) *Material for construction and equipment of vessels and aircraft built for foreigners.* Drawback of duties is provided for in section 313(g), Tariff Act of 1930, as amended (19 U.S.C. 1313(g)), on materials imported and used in constructing and equipping vessels and aircraft built for foreign account and ownership or for the government of any foreign country, even though these vessels and aircraft may not be exported within the strict meaning of the term.

(8) *Foreign-built jet aircraft engines processed in the United States.* Drawback of duties is provided for in section 313(h), Tariff Act of 1930, as amended (19 U.S.C. 1313(h)), in amounts of not less than $100, upon the exportation of jet aircraft engines manufactured or produced abroad that have been overhauled, repaired, rebuilt, or reconditioned in the United States with the use of imported merchandise, including parts.

(9) *Same condition drawback.* Drawback of duties is provided for in section 313(j), Tariff Act of 1930, as amended (19 U.S.C. 1313(j)), on imported merchandise exported in the same condition as when imported, or destroyed under Customs supervision and not used within the United States before such exportation and destruction.

(10) *Supplies for certain vessels and aircraft.* Drawback of duties and taxes is provided for in section 309(b), Tariff Act of 1930, as amended (19 U.S.C. 1309(b)), on articles withdrawn from bonded warehouses, bonded manufacturing warehouses, continuous Customs custody elsewhere than a bonded warehouse, or foreign trade zones, which are laden as supplies upon certain vessels or aircraft of the United States or as supplies including equipment upon or used in the maintenance or repair of certain foreign vessels or aircraft.

(11) *Merchandise exported from continuous Customs custody.* Drawback of duties is provided for in accordance with section 557(a), Tariff Act of 1930, as amended (19 U.S.C. 1557(a)), upon the exportation to a foreign country, or the shipment to the Virgin Islands, American Samoa, Wake Island, Midway Islands, Kingman Reef, Johnston Island, or Guam, of duty-paid merchandise which has remained continously in bonded warehouse or otherwise in Customs custody since importation, provided it was exported or shipped within 5 years after the date of its importation.

(12) *Merchandise transferred to a foreign trade zone from Customs territory.* Drawback of duties and taxes is provided for in accordance with the fourth proviso of section 3 of the Foreign Trade Zones Act of June 18, 1934, as amended (19 U.S.C. 81c), on merchandise transferred to a foreign trade zone from Customs terrritory for the sole purpose of exportation, destruction (except destruction of distilled spirits, wines, and fermented malt liquors), or storage.

(b) *Refund of internal revenue taxes on imported distilled spirits, wines, or beer.* Refund, remission, abatement, or credit of internal revenue taxes paid or determined incident to importation on imported distilled spirits, wines, and beer is provided for in accordance with section 5062(c), Internal Revenue Code, as amended (26 U.S.C. 5062(c)), upon the exportation, or destruction under Customs supervision,of these articles found after entry to be unmerchantable or not to conform to sample or specifications and which are returned to Customs custody.

§ 191.5 Retention of records.

All records required to be kept by manufacturer or producer under this part with respect to drawback claims, and records kept by others to complement the records of the manufacturer or producer (see sections 191.21(a)(1) and 191.22 (d) of this part), shall be retained for at least 3 years after payment of such claims.

§ 191.6 Authority to sign drawback documents.

(a) *Who shall sign.* Documents listed in paragraph (b) of this section shall be signed by one of the following:

(1) The president, a vice president, secretary, or treasurer of a corporation;

(2) A full partner of a partnership;

(3) The owner of a sole proprietorship; or

(4) Any person other than those described in paragraphs (a)(1) through (a)(3) of this section with a power of attorney. (See subpart C of Part 141 of this chapter.)

(b) *List of documents.* The following documents require execution in accordance with paragraph (a) of this section:

(1) Drawback entries.

(2) Certificates of delivery.

(3) Certificates of manufacture.

(4) Abstracts of manufacturing records.

(5) Proposals of manufacturers or producers, schedules, and supplement schedules.

(6) Proposals of subcontractors.

(7) Letter of intention to adhere to general drawback contracts.

(8) Endorsements of exporters on bills of lading or notices or exportation.

(9) Authorizations by manufacturers, producers, exporters, or agents to pay drawback to other persons.

(10) Applications of importers to export merchandise in the same condition as when imported, or destroy merchandise under Customs supervision and not used within the United States before such exportation or destruction; and to export merchandise not conforming to sample or specifications.

(11) Importer's acceptances of liquidations of import entries as final.

(12) Protests

§ 191.7 Protests.

The decision of a regional commisioner of Customs refusing to pay a drawback claim is final and conclusive upon all persons unless the person filing the claim or his agent, within 90 days after but not before such decision, shall file a protest in writing with the district director. The protest shall be prepared in the manner prescribed in Part 174 of these regulations.

(Sec. 514, 46 Stat. 734, as amended; 19 U.S.C. 1514).

§ 191.8 Time limitations.

(a) *General time limit.* Drawback shall be allowed only if the completed article is exported within 5 years after importation of the merchandise identified or designated to support the claim.

(19 U.S.C. 1313(i))

(b) *Same condition drawback.* Drawback shall be allowed on imported merchandise if, before the close of the 3-year period beginning on the date of importation, the merchandise is exported in the same condition as when imported, or destroyed under Customs supervision, and is not used within the United States before such exportation or destruction.

(19 U.S.C. 1313(j)).

(c) *Merchandise in continuous Customs custody.* Drawback shall be allowed on imported merchandise which is exported, or shipped from continuous Customs custody to the Virgin Islands, American Samoa, Wake Island, Midway Islands, Kingman Reef, Johnston Island, or Guam, only if exported or shipped within 5 years after the date of its importation.

(Sec. 557(a), 46 Stat. 744, as amended; 19 U.S.C. 1557(a)).

§191.9 Falsification of drawback claims.

Any person who knowingly and willfully files any false or fraudulent entry or claim for the payment of drawback upon the exportation of merchandise or knowingly or willfully makes or files any false document for the purpose of securing the payment to himself or others of any drawback on the exportation of merchandise greater than that legally due, shall be fined not more than $5,000 or imprisoned no more than 2 years, or both, and the merchandise or its value shall be forfeited.

(Sec. 550, 62 Stat. 718; 18 U.S.C. 550).

§ 191.10 Verification of drawback claims.

(a) *Claims.* A drawback claim filed under a drawback contract shall be subject to verification by the regional Regulatory Audit Division under the jurisdiction of the regional commissioner in whose region the claim is filed when the factory covered by the claim also is located in the same region.

(b) *Two or more factories.* If the claim selected for verification is filed in one region and one or more factories covered by the claim is located in another region, the regional commissioner selecting the claim for verification, in addition to taking the verification action required by paragraph (a) of this section, shall forward copies of the claim and the drawback contract, and request for verification to the regional commissioners in whose regions the other factories are located.

(c) *Method.* The verifying official shall verify the claim and material set forth in the related drawback contract. Verification shall include an examination of the manufacturing records and all the accounting and financial records relating to the transaction(s).

(d) *Liquidations.* When the claim has been selected for verification, the appropriate Customs official will be notified of the claimant's identity, and liquidation will be postponed on all claims of the claimant. Postponement will continue in effect until the verification has been completed and the appropriate Regional Director, Regulatory Audit Division, issues a report.

(e) *Errors in drawback proposals.*—(1) *Contracts accepted by Customs Headquarters.*—(i) *Action by regional commissioner.* If verification of a drawback claim filed under a drawback contract accepted by Headquarters reveals errors or deficiencies in the drawback proposal on which the contract was based, the regional commissioner shall furnish a copy of the audit report to Headquarters (Attention: Drawback and Bonds Branch, Office of Regulations and Rulings).

(ii) *Action by Headquarters.* A regional commissioner forwarding an audit report to Headquarters shall suspend liquidation of all drawback claims filed under the contract. Headquarters shall offer the claimant an opportunity to correct his proposal within a specified time.

(iii) *If claimant does not correct proposals.* If the claimant does not take corrective action within the prescribed time, the appropriate regional commissioner shall liquidate the claim(s) "no drawback."

(2) *Contracts accepted by regional commissioner.* The regional commissioner shall offer the claimant an opportunity within a specified time to amend proposals that are the basis of contracts which he has accepted. If the claimant does not take corrective action within the prescribed time, the regional commissioner shall liquidate the claim(s) "no drawback."

§ 191.11 Merchandise in which a United States Government interest exists.

(a) *Restricted meaning of Government.* A United States Government instrumentality operating with nonappropriated funds shall not be considered a Government entity within the meaning of this section.

(b) *Certificate.* With each drawback entry, except those filed pursuant to sections 313(c) and 313(j), Tariff Act of 1930, as amended (19 U.S.C. 1313(c), (j)), the drawback claimant shall certify whether or not the merchandise concerned was sold to the United States Government.

(c) *Allowance of drawback.* If the merchandise was sold to the United States Government, drawback shall be available only to the:

(1) Department, branch, or agency of the United States Government, which purchased it; or

(2) Supplier, provided the claim is supported by documentation signed by a proper officer of the department, branch, or agency concerned certifying that the right to drawback was reserved by the supplier with the knowledge and consent of the department, branch, or agency.

§ 191.12 Drawback on duties paid to Puerto Rico.

Any drawback of duties authorized under this part shall be paid from special fund 20X6587(A/R), Refunds, Transfers and Expenses of Operations, Puerto Rico, U.S. Customs Service, if the duties were originally paid into this fund (see 19 U.S.C. 1313(l)).

§ 191.13 Guantanamo Bay.

Guantanamo Bay Naval Station shall be considered foreign territory for drawback purposes. However, under 19 U.S.C. 1313, there is no authority of law for the allowance of drawback of Customs duty on articles manufactured or produced in the United States and shipped to Puerto Rico, the Virgin Islands, American Samoa, Wake Island, Midway Islands, Kingman Reef, Guam, Canton Island, Enderbury Island, Johnston Island, or Palmyra Island.

Subpart B—Specific Drawback Contracts

§ 191.21 Drawback proposal.

(a) *Proper applicant.* Each manufacturer or producer of articles intended for exportation with drawback, whether a primary, intermediate, or final manufacturer or producer of the articles and whether or not the owner of the merchandise used in the manufacture or production, shall apply for a specific drawback contract by submitting a drawback proposal. Procedures for adhering to a general drawback contract are provided in Subpart D.

(1) *Complementary recordkeeper.* Each person who keeps complementary records as provided for in section 191.22(d) of this part shall file a proposal describing these records in accordance with the procedure prescribed in this section.

(2) *Subcontractors.* If a manufacturer or producer having a drawback contract engages a subcontractor to perform work which for drawback purposes does not constitute a manufacture or production, with the use of material which the principal plans to make the subject of a drawback claim, the subcontractor shall prepare a drawback proposal to establish how he will maintain the identification of the merchandise. The proposal, which is subject to the provisions of this section, is required only if the work performed by the subcontractor results in a problem in identification of the

merchandise (for example, by changing its form or quantity).

(b) *Contents.* The proposal of each manufacturer or producer, complementary recordkeeper, and subcontractor shall:

(1) Describe his manufacturing operation fully and method of compliance with all requirements of the drawback law and regulations;

(2) State that the records of identification, manufacture or production, and storage prescribed in § 191.22 will be maintained; and

(3) Contain an agreement to follow the methods and keep records concerning drawback procedures.

(c) *Sample proposal.* Except for direct identification drawback, the Drawback and Bonds Branch, Office of Regulations and Rulings, Customs Headquarters, upon request, shall provide each prospective drawback applicant with a sample drawback proposal to assist the prospective applicant in preparing his submission. Sample proposals for direct identification drawback shall be provided by the regional commissioner upon request.

(d) *Submission.* Each manufacturer or producer who proposes to file for drawback exclusively under the provisions of sections 313(a), Tariff Act of 1930, as amended (19 U.S.C. 1313(a)), shall submit the proposal described in paragraph (b) of this section, in duplicate, to the regional commissioner where his drawback entries will be liquidated. Each manufacturer or producer who proposes to file for drawback under the provision of section 313 (b), (d), (g), or (h), Tariff Act of 1930, as amended (19 U.S.C. 1313 (b), (d), (g), (h)), or in any combination of section 313(a), Tariff Act of 1930, as amended (19 U.S.C. 1313(a)), with section 313 (b), (d), or (g), shall submit the proposal described in paragraph (b) of this section, in triplicate, to Customs Headquarters (Attention: Drawback and Bonds Branch, Office of Regulations and Rulings).

(e) *Two or more regions involved.* If drawback entries are to be liquidated at more than one regional office, the manufacturer or producer shall file two additional copies of the proposal for each additional office.

§ 191.22 Records, storage, identification.

(a) *Records for direct identification and other non-substitution manufacturing drawback. (1) General Rule.* Except for record requirements under section 313(b), Tariff Act of 1930, as amended (19 U.S.C. 1313(b)), set forth in § 191.32 of this part, each manufacturer or producer shall keep records to establish for all articles manufactured or produced for exportation with drawback:

(i) The date of inclusive dates of manufacture of production;

(ii) The quantity and identity of the imported duty-paid merchandise or drawback products used in, or, if claim for waste is waived, and there are no multiple products, the quantity and identity of the imported merchandise or drawback products appearing in the articles manufactured or produced;

(iii) The quantity and description of the articles manufactured or produced;

(iv) The quantity of waste incurred. If claim for waste is waived and the appearing in basis is used, waste records need not be kept unless required to etablish the quantity of imported duty-paid merchandise or drawback products appearing in the articles; and

(v) That the finished articles on which drawback is claimed were exported within 5 years after the importation of the duty-paid merchandise.

(2) *Valuable waste.* When waste has a value and the manufacturer or producer has not limited his claims to the quantity of imported duty-paid merchandise or drawback products appearing in the articles, he shall keep records to show the factory value of the imported duty-paid merchandise or drawback products used and the factory value of the waste. In liquidating the drawback entry, the quantity of imported duty-paid merchandise or drawback products used will be reduced by an amount equal to the quantity of merchandise the value of the waste would replace.

(3) *Duty-free or domestic merchandise.* The records of the manufacturer or producer shall show the quantity, if any, of duty-free or domestic merchandise used, when these records are necessary to determine the quantity of imported duty-paid merchandise or drawback products used in the manufacture or production of the articles or appearing in them.

(4) *Filing an abstract.* The drawback claimant shall file with the entry an abstract of the records of the manufacturer or producer.

(5) *Multiple products.*

(i) *General rule.* Where two or more products result from the use of merchandise, records shall show the value of each product at the time of separation.

(ii) *Claim covering a manufacturing period.* Where the operation results in two or more products and a claim covers a manufacturing period rather than a manufacturing lot, the time of separation of the products shall be considered the entire period covered by the claim, and the value per unit of product is its weighted average market value for the period. Manufacturing periods in excess of one month may not be used without specific approval of Customs.

(b) *Storage and identification.* The designated merchandise and articles to be exported shall be stored in a manner which will enable the manufacturer, producer, or claimant (1) to determine, and the Customs officials to verify, the applicable import entry, certificate of delivery, or certificate of manufacture and delivery number or numbers; and (2) to identify with respect to that import entry, certificate of delivery, or certificate of manufacture and delivery, the imported duty-paid merchandise or drawback products used in the manufacture or production.

(c) *Identification of two or more lots.* Manufacturers, producers, or claimants shall identify for drawback purposes commingled lots of fungible merchandise and commingled lots of fungible products by applying first-in-first-out (FIFO) accounting principles. Under section 313(b), Tariff Act of 1930, as amended (19 U.S.C. 1313(b)), a manufacturer or producer may designate for drawback any lot or lots of imported duty-paid merchandise or drawback products, the lots being identified according to FIFO and Subpart C of this part.

(d) *Complementary records.* When Customs Headquarters or the regional commissioner, in appropriate cases, determines that a manufacturer or producer is unable to record all the information required for drawback, complementary records covering the information not available to the manufacturer or producer may be kept by the person(s) in the United States for whose account the products are manufactured or produced; and abstracts of these records shall be filed with the drawback entry. (See § 191.21(a)(1)).

(e) *Records and storage of merchandise by persons required to certify its delivery.*—(1) *Storage and records.* Each person required by § 191.65 and 191.66(d) of this part to certify the delivery of imported merchandise or drawback products shall store this merchandise and products while in his possession and maintain records to show the:

(i) Quantity, identity, and description of the merchandise or products;

(ii) Date on which the merchandise or products were received by him;

(iii) Person from whom received;

(iv) Date delivered by him to other persons; and

(v) Persons to whom these deliveries were made.

(2) *Certificate or endorsements.* These records shall be the basis of the certificates or endorsements required by §§ 191.65 and 191.66(d) of this part.

§ 191.23 Approval.

(a) *General rule.* If the required proposal(s) comply with the law and regulations, the regional commissioner in a case under section 313(a), Tariff Act of 1930, as amended (19 U.S.C. 1313(a)), or Customs Headquarters in a case under section 313(b), (d), (g), or (h), Tariff Act of 1930, as amended (19 U.S.C. 1313 (b), (d), (g), or (h)), or in any combination of section 313(a) with section 313(b), (d), or (g), shall approve the drawback contract for a period of 15 years from the date of approval. (See § 191.26 of this part).

(b) *Two or more regions.* When a proposal under section 313(a), Tariff Act of 1930, as amended (19 U.S.C. 1313(a)), shows that entries are to be filed with more than one regional commissioner, the regional commissioner at the place first listed in the proposal has the authority to approve or disapprove the contract.

(c) *Drawback entries filed before contract issued.* Drawback entries may be filed before the drawback contract covering the claim is approved, but no drawback shall be paid until the contract is approved.

(d) *Payment of drawback.* After approval of the contract, drawback will be paid on articles manufactured or produced and exported in accordance with the law, regulations, and contract.

§ 191.24 Schedules and supplemental schedules.

When a drawback contract provides that drawback shall be based upon a schedule filed by the manufacturer or producer, the appropriate regional commissioner where the entry is filed or Customs Headquarters, in accordance with § 191.23 of this part, shall review, and if satisfactory, approve the drawback schedule. If the contract authorizes the filing of supplemental schedules, schedules may be revised as necessary by the holder of the drawback contract. These revised supplemental schedules, if approved by the appropriate regional commissioner, shall be used to liquidate drawback claims.

§ 191.25 Modification of contracts.

(a) *Supplemental proposals.* A manufacturer or producer desiring to modify an existing contract shall prepare a supplemental proposal in the form of the original proposal. The supplemental proposal shall contain all information necessary for a complete contract, as provided in § 191.21 of this part.

(b) *Approval.*—(1) *General.* Except as provided in paragraph (b)(2) of this section, the appropriate regional commissioner or Customs Headquarters shall approve a new drawback contract pursuant to § 191.23 of this part, for a period of 15 years from the date of its approval if the supplemental proposal complies with the law and regulations.

(2) *Limited modifications.* A supplemental proposal to modify an existing contract under section 313(b), (d), or (g), Tariff Act of 1930, as amended, which otherwise would be submitted to Customs Headquarters, shall be submitted to the appropriate regional commissioner for approval provided the changes covered by the modification are limited to:

(i) A change in location of the factory of the manufacturer or producer;

(ii) An additional factory at which the methods followed and the records maintained are the same as those at another factory operating under an existing drawback contract of the manufacturer or producer;

(iii) The succession of a sole proprietorship, partnership, or corporation to the operations of the manufacturer or producer; or

(iv) Any combination of the foregoing changes.

(c) *Effect.* The new drawback contract shall supersede the contract which it modifies, and the Customs official who approves the new contract shall revoke the pre-existing contract.

§ 191.26 Termination or renewal.

Drawback contracts shall terminate 15 years from the date of approval unless, prior to the expiration of each 15-year period, the manufacturer or producer in accordance with § 191.23 of this part requests the applicable regional commissioner or Customs Headquarters to renew the contract for another 15-year period. A contract issued under section 313(a), Tariff Act of 1930, as amended (19 U.S.C. 1313(a)), covering two or more regions, shall be renewed by the regional commissioner who approved the contract. A manufacturer or producer may terminate its contract at any time by writing to the appropriate regional commissioner or Customs Headquarters, as applicable.

Subpart C—Use of Substituted Merchandise

§ 191.31 Drawback substitution.

The procedures set forth in subparts A and B of this part are applicable to drawback under the substitution provision (19 U.S.C. 1313(b)), except as otherwise provided in this subpart.

§ 191.32 Records and general provisions.

(a) *Records for substitution drawback.* The records of the manufacturer or producer of articles manufactured or produced in accordance with section 313(b), Tariff Act of 1930, as amended (19 U.S.C. 1313(b)), shall establish:

(1) The identity and specifications of the merchandise designated;

(2) The quantity of merchandise of the same kind and quality as the designated merchandise used to produce (appearing in) the exported articles;

(3) That, within 3 years after receiving the designated merchandise at its factory, the manufacturer or producer used it in manufacturing or production and that during the same 3-year period, it manufactured or produced the exported articles; and

(4) That the completed articles were exported within 5 years after importation of the designated merchandise.

(b) *Valuable waste records.* When drawback claims are not limited to the quantity of merchandise appearing in the articles manufactured or produced for exportation with drawback, the records of the manufacturer or producer shall show the quantity and value of both the merchandise used in the manufacture or production of the articles and valuable waste incurred in order that the deduction provided for in § 191.22(a)(2) may be made in liquidation.

(c) *Exchanged petroleum.* To comply with paragraph (a)(3) of this section, the use of domestic crude petroleum exchanged for imported crude petroleum in conformity with Presidential Proclamation No. 3279 of March 10, 1959, as amended, and the Oil Import Regulations issued thereunder, shall constitute use of the imported crude petroleum provided no certificate of delivery on Customs Form 7543 is issued covering this imported crude petroleum.

(d) *Use by same manufacturer or producer at different plants.* Duty-paid merchandise or drawback products used at one plant of a manufacturer or producer within 3 years after the date on which the material was received may be designated as the basis for drawback on articles manufactured or produced in accordance with these regulations at other plants of the same manufacturer or producer.

§ 191.33 Multiple products.

When two or more products are produced concurrently in an operation

under section 313(b), Tariff Act of 1930, as amended (19 U.S.C. 1313(b)), drawback shall be distributed to each product in accordance with its relative value at the time of separation. Where the abstract covers a manufacturing period rather than a manufacturing lot, the entire period of the abstract is the time of separation of the products and the value per unit of product is the weighted average market value for the abstract period.

§ 191.34 Agency.

(a) *General rule.* If an owner of imported or domestic merchandise furnishes this merchandise to an agent in accordance with a contract between the two parties, and the agent manufactures from it articles for the owner's account, the owner shall be considered as the user of the merchandise.

(b) *Contracts required.*—(1) *Owner's contract.* An owner of merchandise who wishes to be considered a manufacturer pursuant to paragraph (a) of this section shall apply for a drawback contract under subpart B of this part. The proposal shall describe the agency arrangement and explain how the owner and agent together will comply with the drawback law and regulations.

(2) *Agent's contract.* Each agent operating under this section must have a drawback contract covering the articles manufactured.

Subpart D—General Drawback Contracts

191.41 Applicability.

A general drawback contract is designed to simplify drawback procedures for certain common manufacturing operations but does not preclude or limit the use of drawback proposals and specific drawback contracts.

§ 191.42 Procedures.

(a) Customs Headquarters shall from time to time prepare and publish in the "Customs Bulletin" approved general drawback contracts in situations where numerous manufacturers or producers have similar operations and wish to claim drawback.

(b) Any manufacturer or producer who can comply with the terms and conditions of the published general drawback contract may adhere to it by notifying a regional commissioner in writing of the intention to do so and providing him with the following information:

(1) Name and address of adherent:

(2) Factories which will operate under the contract;

(3) If a corporation, the names of officers or persons with power of attorney who will sign drawback documents on behalf of the adherent.

§ 191.43 Acknowledgement.

The regional commissioner shall acknowledge in writing the receipt of the letter of adherence of the manufacturer or producer to a general drawback contract. The general drawback contract for that manufacturer or producer shall be effective for a period of 15 years from the date of the letter of acknowledgement.

§ 191.44 Termination or renewal.

A general drawback contract shall terminate 15 years from the date of the letter of acknowledgement unless, prior to the expiration of the 15-year period, the manufacturer or producer requests the applicable regional commissioner to renew the contract for another 15-year period. Upon satisfactory review, the regional commissioner shall renew the contract. A manufacturer or producer may terminate its contract at any time.

§191.45 Payment.

Drawback will be paid on articles manufactured or produced and exported in accordance with the law, regulations, and general drawback contract.

Subpart E—Evidence of Exportation

191.51 Alternative procedures.

Exportation of articles for drawback purposes shall be established by complying with one of the following procedures:

(a) Uncertified Notice of Exportation, § 191.52;

(b) Exporter's Summary, § 191.53;

(c) Certified Notice of Exportation for mail shipments, § 191.54;

(d) Notice of Lading for supplies on certain vessels or aircraft, § 191.93, or

(e) Notice of Transfer for articles manufactured or produced in United States which are transferred to a foreign trade zone, § 191.163.

191.52 Uncertified notice of exportation.

(a) *Filing.* a drawback claimant may support the drawback claim with a notice of exportation on Customs Form 7511 for each shipment of merchandise covered by the claim.

(b) *Contents.* The notice of exportation shall show the:

(1) Name of exporting vessel or other carrier;

(2) Number of kinds of packages and their marks and numbers;

(3) Description of the merchandise, including its weight (gross and net), gauge, measure, or number;

(4) Name of the exporter; and

(5) Country of ultimate destination.

(c) *Documentary evidence of exportation.* A notice of exportation shall be supported by documentary evidence of exportation, such as the bill of lading, air waybill, freight waybill, Canadian Customs manifest, cargo manifest, or certified copies thereof, issued by the exporting carrier, or U.S. Customs documents evidencing exportation. Supporting documentary evidence shall establish fully the time and fact of exportation and the identity of the exporter.

(d) *Numbering.* Prior to filing a notice of exportation with the drawback entry, the claimant shall assign to the notice a number which shall be stamped or endorsed on the original and each copy of the notice. The number assigned shall correspond to that of the supporting document, such as the bill of lading, air waybill, or cargo manifest, filed with the notice of exportation. If the supporting document covers more than one notice of exportation, the claimant shall assign to each notice the same number; but, each notice shall be further identified by an alphabetic designation beginning with the letter "A". He shall give a different alphabetic designation to each notice having the same number. If the supporting document has no number, he shall number consecutively each notice of exportation.

§ 191.53 Exporter's summary.

(a) *Eligibility.* This procedure shall be available to improve administrative efficiency.

(b) *Application.* The exporter-claimant shall request permission to use this procedure with the regional commissioner where the drawback claim will be filed, unless in cases of merchandise the subject of same condition drawback, the regional commissioner has delegated authority to approve requests to a district director. In that circumstance, the request shall be made with the district director.

(c) *Approval.* The regional commissioner, or the district director, if applicable in the case of merchandise the subject of same condition drawback, may grant permission to use this procedure if he concludes that its use would contribute to administrative efficiency, and the exporter-claimant is not delinquent or otherwise remiss in his transactions with Customs.

(d) *Bond.* The exporter-claimant shall furnish a drawback export bond on Customs Form 7613, or shall designate rider "K" on General Term Bond, Customs Form 7595, in an amount equal to 25 percent of the drawback to be

claimed on entries filed by him during the term of the bond.

(e) *Documentary evidence.*—(1) *Records.* The exporter-claimant shall maintain complete and accurate records of exportation, including the identity and location of the ultimate consignee of the exported articles. The exporter shall retain these records for at least 3 years after payment of such claims.

(2) *Additional evidence.* The exporter-claimant shall support the drawback entry with a chronological summary of the exports and any additional evidence required by Customs officers to establish fully the identity of the exported articles and the fact of exportation. In the case where the exporter-claimant uses this procedure for merchandise the subject of same condition drawback, he shall show also that the merchandise was exported in the same condition as when imported.

(3) *Format of chronological summary.* The chronological summary of the exports shall be in a format acceptable to the regional commissioner with whom drawback claims are filed and shall contain the following data:

Chronological Summary of Exports

Drawback entry No. ————

Exporter/claimant ————————————.

Period from ———————— to ————————.

Date of export	Exporting carrier	Freight or air waybill, bill of lading, manifest No., etc.[1]	Marks and numbers	Description	Net quantity	Schedule B No.	Destination
(1)	(2)	(3)	(4)	(5)	(6)	(7)	(8)

[1] This number is to be used to associate the claim with exportation evidence retained by claimant.

§ 191.54 Certified notice for exportation by mail.

(a) *Procedure.* If the merchandise on which drawback is to be claimed is exported by mail or parcel post, the exporter or his agent shall complete a notice of exportation on Customs Form 7511 in triplicate and file it with the postmaster at the place of mailing. The merchandise shall be delivered to the postmaster at the same time and mailed under his supervision.

(b) *Waiver of withdrawal.* A waiver of the right to withdraw a package from the mail shall be stamped or written on each package for export, signed by the exporter.

(c) *Certification.* After the package is mailed, the postmaster shall certify one copy of the notice of exportation and return this copy and one uncertified copy to the exporter or his agent for subsequent filing with the drawback entry. The postmaster shall retain one copy as his record of the transaction.

§ 191.55 Exportation by the Government.

(a) *Claim by U.S. Government.* When a department, branch, or agency of the United States Government exports products with the intention of claiming drawback, it may establish the exportation in the manner provided in §§ 191.52 or 191.53. No bond shall be required when the United States Government claims drawback.

(b) *Claim by supplier.* When a supplier of merchandise to the Government claims drawback, exportation shall be established under § 191.52.

§ 191.56 Amendment of evidence of exportation.

At any time within the 3-year period prescribed for the completion of the drawback claim, the exporter or his agent may amend a notice of exportation or exporter's summary, provided the regional commissioner is satisfied that the amendment is complete and correct. A written request for amendment with suporting evidence shall be submitted to the regional commissioner where the drawback entry is filed.

§ 191.57 Examination of the merchandise.

The district director may examine any merchandise to be exported with drawback for any reason deemed appropriate.

Subpart F—Completion of Drawback Claims

§ 191.61 Time for filing.

A drawback entry and all documents necessary to complete a drawback claim, including those issued by one

Customs officer to another, shall be filed or applied for, as applicable, within 3 years after the date of exportation of the articles on which drawback is claimed, except that any landing certificate required under section 191.67(d) of this part shall be filed within the time limit prescribed therein. Claims not completed within the 3-year period shall be considered abandoned. No extension will be granted unless it is established that a Customs officer was responsible for the untimely filing.

§ 191.62 Filing procedure.

(a) *Entry and certificate of manufacture.*—(1) *Customs Form 7575.* Except as provided in paragraph (a)(2) of this section, the drawback claimant shall file with the appropriate district director the drawback entry and certificate of manufacture in duplicate on Customs Form 7575. The district director may require an additional copy for administrative use.

(2) *Customs Form 7573.* The drawback claimant shall file with the appropriate district director the original drawback entry on Customs Form 7573 in the two instances listed below. The district director may require an additional copy for administrative use.

(i) *Certificates of manufacture filed prior to entry.* When the drawback claimant files a certificate of manufacture prior to the filing of the entry, he shall file the entry on Customs Form 7573 and refer to the certificates of manufacture in the entry by the official number instead of describing the particulars of importation and manufacture.

(ii) *Purchase of manufactured articles for exportation.* A purchaser of a completely manufactured article who exports it and claims drawback shall file an entry on Customs Form 7573 accompanied by a certificate of manufacture and delivery on Customs Form 7577, if that certificate is not already on file.

(3) *Filing in two or more regions.* If the drawback entry if filed in a region other than where the certificate of manufacture is on file, the regional commissioner with whom the certificate is on file, after liquidation and at the request of the person filing the certificate or to whom such merchandise was delivered, shall transmit to the regional commissioner where the entry is filed an extract on Customs Form 4537. The extract shall be considered an original certificate for liquidation purposes.

(4) *Two or more shipments.* One entry may cover several shipments.

(b) *Evidence of exportation.*—(1) *Notice of exportation.* When the entry covers exports under § 191.52 of this part, the claimant shall file with the entry one copy of the notice of exportation and the original or a certified copy of the supporting document. For an entry under § 191.54, the claimant shall file with the entry one copy of the notice of exportation.

(2) *Evidence of right to drawback.* The notice of exportation shall show that the merchandise was shipped by the person filing the drawback entry, or shall be endorsed by the person in whose name the merchandise was shipped showing that the person filing the entry is authorized to claim drawback and receive payment.

(3) *Chronological summary of exports.* For exports under § 191.53 of this part, the claimant shall file with the entry one copy of the chronological summary of exports.

(c) *Multiple claimants.*—(1) *Notice of Exportation.* Where more than one party claims drawback (e.g., a chemical manufactured under drawback regulations is exported in a container also manufactured under drawback regulations), each drawback claimant shall file a separate notice of exportation describing the component product to which his claim will relate. Each notice shall show the name of the claimant and bear a statement that the claim shall be limited to his respective component product. The exporter shall endorse the notices, as required, to show the respective interests of the claimants. The notice of exportation shall be numbered in accordance with § 191.52(d) of this part.

(2) *Exporter's summary procedure.* Where more than one party claims the drawback (e.g., a chemical manufactured under drawback regulations is exported in a container also manufactured under drawback regulations), and the parties elect to use the exporter's summary procedure, each drawback claimant shall complete and file a chronological summary of exports for the respective component product to which his claim will relate. Each claimant shall identify in the chronological summary the name of the other claimant or claimants and the component product for which each will claim drawback independently.

(d) *Vessels or aircraft.* For drawback under section 313(g), Tariff Act of 1930, as amended (19 U.S.C. 1313(g)), the claimant shall file with the drawback entry a copy of the part of the construction contract showing that the vessel or aircraft was built for foreign account and ownership. In the case of a vessel, except a warship, the claimant also shall file a certificate of clearance

for a foreign port and a certified copy of the registry certificate or, in its place, a certificate of the consul of the foreign nation to which the vessel belongs, showing that the vessel has been documented under the flag of that country. No certificates of clearance or foreign documentation shall be required for a warship.

§ 191.63 Summary of papers filed.

The claimant may file with the drawback entry a summary, in duplicate, of the papers filed showing the date of application for official documents. When verified, one copy of the summary shall be receipted and returned to the claimant, and the other copy attached to the drawback entry.

§ 191.64 Supplemental filing.

With the permission of the regional commissioner, a claimant may amend or correct a drawback entry or file a timely supplemental entry. Corrections or amendments permitted shall be certified by the appropriate parties.

§ 191.65 Certificates of delivery.

(a) *When required.* If the merchandise used in the manufacture of the exported articles was not imported by the manufacturer of the articles, no drawback shall be allowed until the drawback claimant files with the regional commissioner where the claim is to be liquidated a certificate of delivery in duplicate on Customs Form 7543, or official evidence of the existence of the certificate filed at another place. The certificate of delivery must describe the merchandise delivered, tracing it from the custody of the importer to the custody of the manufacturer. If the certificate of delivery covers only one importation, the manufacturer may refer to it in his certificate of manufacture rather than describe the importation.

(b) *Intermediate transfer.* If the merchandise was not delivered directly from the importer to the manufacturer, each intermediate transfer shall be described on the certificate of delivery certified by the person through whose possession the merchandise passed.

(c) *Consignee as importer.* When the consignee named in an entry summary declares another person to be the actual owner, the consignee shall be considered the importer for drawback purposes, even though the consignee files an owner's declaration under section 485(d), Tariff Act of 1930, as amended (19 U.S.C. 1485(d)). The drawback claimant shall file a certificate of delivery showing the initial transfer from the consignee to the person to whom delivery was made.

(d) *Warehouse transfers and withdrawals.* The person in whose name merchandise is withdrawn from a bonded warehouse shall be considered the importer for drawback purposes. No certificate of delivery is required covering prior transfers of merchandise while in a bonded warehouse.

§ 191.66 Certificate of manufacture and delivery.

(a) *When required.* If the imported merchandise has undergone some process of manufacture before delivery, and the wholly or partially manufactured article thereafter is used in the manufacture of some other article for exportation, or when completely manufactured articles are purchased for exportation without further manipulation, the drawback claimant, whether the manufacturer or the exporter, shall file a certificate of manufacture and delivery on Customs Form 7577.

(b) *Subcontractors.* (1) If a subcontractor performs work, which for drawback purposes does not constitute a manufacture or production, with the use of merchandise the principal plans to make the subject of a drawback claim, and (2) if there is a problem in identifying the merchandise the subcontractor returns to the principal from the merchandise received from the principal, the subcontractor shall complete a certificate of manufacture and deliver. If there is no problem of identification, the subcontractor shall complete only a certificate of delivery.

(c) *Identifying certificates of manufacture and delivery.* Drawback claimants may identify the relevant certificates of manufacture and delivery on drawback entries covering the exported articles rather than describe the importation and manufacture.

(d) *Certification of intermediate transfer.* Any intermediate transfer of manufactured articles shall be certified on the certificate of manufacture and delivery.

(e) *Entry filed at place other than where certificate filed.* If the drawback entry is filed at a place other than where the certificate of manufacture and delivery is on file, the regional commissioner may transmit to the place where the drawback entry is filed an extract on Customs Form 4537.

(f) *Special requirements for agency transactions.*—(1) *Requirement of agent.* Each agent manufacturer who conducts operations under § 191.34 of this part shall furnish the principal for whom he processed merchandise a certificate of manufacture and delivery on Customs Form 7577–B completing only the portion applicable to the operation so conducted, relating to the substituted or designated merchandise, and identifying the owner of the articles for whom processing was conducted.

(2) *Requirement of principal.* The principal for whom processing was conducted under section 191.34 of this part shall complete and file a certificate of manufacture of drawback entry, as appropriate, and attach to it the certificates from his agent or agents.

§ 191.67 Landing certificates.

(a) *When required.* A landing certificate shall be required:

(1) Whenever the district director at the port of exporation or the port where the drawback entry is filed, or the regional commissioner for the region where the drawback claim is liquidated, has reason to believe that the shipment is not a bona fide exportation;

(2) When Customs Headquarters specifically directs that the landing certificate be produced;

(3) When law or regulation otherwise requires a landing certificate; or

(4) For every aircraft which departs from the United States under its own power if drawback is claimed on the aircraft or any part thereof. A landing certificate for aircraft shall show the exact time of landing in the foreign country and describe the aircraft or parts thereof on which drawback is claimed in sufficient detail to enable Customs officers to identify them with the documentation used to establish exportation, such as the notice of exportation, bill of lading, air waybill, or other approved documentation.

(b) *Time of filing.* Any required landing certificate shall be furnished prior to the liquidation of the entry.

(c) *Signature.* Any required landing certificate shall be signed by a revenue officer of the foreign country to which the merchandise is exported, unless it is shown that the country has no Customs administration, in which case the landing certificate may be signed by the consignee or the carrier's agent at the place of unlading.

(d) *Notice of requirement.* Customs shall provide notice in writing to an exporter or his agent required to supply a landing certificate pursuant to paragraphs (a)(1) or (a)(2) of this section. The exporter or his agent shall file the landing certificate within 1 year from the date of the notice unless Customs Headquarters grants an extension.

(e) *Inability to produce landing certificates.* (1) When a landing certificate is required and cannot be produced, an application for its waiver may be made to the regional

commissioner through the district director within the time required for filing the certificate, accompanied by such evidence of clearance and landing abroad as may be available. The application shall be granted if the regional commissioner is satisfied by the evidence submitted that the merchandise has been exported. If the regional commissioner is not so satisfied, he shall transmit the application and its accompanying evidence to Headquarters, U.S. Customs Service, for final determination.

(2) *Required by the district director.* When a landing certificate is required by a district director under paragraph (a)(1) of this section, he may accept other satisfactory evidence of foreign landing in place of the certificate.

Subpart G—Payment and Liquidation of Drawback Claims

§ 191.71 Liquidation.

(a) *Time of liquidation.* Drawback claims may be liquidated after:

(1) Final liquidation of the import entry; or

(2) Deposit of estimated duties on the imported merchandise and before liquidation of the import entry.

(b) *Claims based on estimated duties.*—(1) *Eligibility.* Drawback may be paid on estimated duties if the import entry has not been liquidated and the drawback claimant and any other party responsible for the payment of liquidated import duties each files a written request for payment of each drawback entry, waiving any right to payment or refund under other provisions of law.

(2) *Adjustment.*—(i) *Drawback entry.* A drawback claim, once liquidated on the basis of estimated duties, thereafter shall not be adjusted by reason of a subsequent liquidation of an import entry.

(ii) *Import entry.* However, if final liquidation of the import entry discloses that the total amount of import duty is different from the total estimated duties deposited, the party responsible for the payment of liquidated duties, as applicable, shall be liable for 1 percent of all increased duties found to be due on that portion of merchandise recorded on the drawback entry or shall be entitled to a refund of 1 percent of all excess duties found to be paid on that portion of the merchandise recorded on the drawback entry.

(c) *Claims based on liquidated duties.* Drawback shall be based on the final liquidated duties paid that have been made final by the importer's written acceptance of the liquidation or by operation of law.

(d) *Liquidation procedure.* When the drawback claim has been completed by the filing of the entry and other necessary documents, and exportation of the articles has been established, the regional commissioner shall determine drawback due on the basis of the complete drawback claim and the drawback contract.

(e) *Distribution and value of manipulated merchandise.*—(1) *Distribution.* Where two or more products result from the manipulation of imported merchandise, drawback shall be distributed to the several products in accordance with their values at the time of separation.

(2) *Value.* The values to be used in computing the distribution of drawback where two or more products result from the manipulation of the imported merchandise, pursuant to section 313(a), Tariff Act of 1930, as amended (19 U.S.C. 1313(a)), shall be the market values unless the drawback contract provides otherwise.

(f) *Payment.* The regional commissioner shall certify the amount of drawback due to the person making entry or other person authorized to receive payment under § 191.73 of this subpart.

§ 191.72 Accelerated payment.

(a) *Eligibility.* A drawback claimant not delinquent or otherwise remiss in transactions with Customs is eligible for accelerated payment of drawback on claims which are properly prepared and fully completed in accordance with Subpart F of this part.

(b) *Submission with request.* A claimant who requests accelerated payment of a claim shall file with the claim a computation of the amount due, and, for approval by the regional commissioner, a bond on either Customs Form 7609 or 7611, guaranteeing the refund of any excess payment. In place of filing Customs Form 7609 or 7611, a claimant may provide appropriate coverage by executing an approved rider on a General Term Bond for Entry of Merchandise, Customs Form 7595, at the time of filing Customs Form 7595. When a rider is to be designated on Customs Form 7595, the amount of the bond shall be increased by the estimated amount of accelerated drawback to be claimed during the term of the bond. If actual accelerated drawback claims exceed the estimated amount of accelerated drawback, the regional commissioner shall require additional bond coverage.

(c) *Approval.* A regional commissioner who approves the claim for accelerated payment shall certify it for payment within 3 weeks after filing. After liquidation, the regional commissioner shall certify payment of any amount due or demand a refund of any excess amount paid.

(d) *Repeated erroneous computation of drawback claims.* The righ to receive accelerated payment will be denied to claimants who repeatedly file claims in excess of the amount due.

§ 191.73 Person entitled to receive drawback.

(a) *Exporter; reservation by manufacturer or producer.* The person named as exporter on the notice of exportation or in bill of lading, air waybill, freight waybill, Canadian Customs manifest, cargo manifest, or certified copies of these documents, shall be deemed to be the exporter and entitled to drawback, unless at the time of sale or consignment of the articles, the manufacturer or producer shall reserve the right to claim drawback. The manufacturer or producer who reserves this right may claim drawback, and he shall receive payment upon production of satisfactory evidence that the reservation was made with the knowledge and consent of the exporter.

(b) *Agent or person designated to receive drawback.* Drawback may be paid to the agent of the manufacturer, producer, or exporter, or to the person the manufacturer, producer, exporter, or agent directs in writing to receive drawback payment.

Subpart H–Internal-Revenue Tax on Flavoring Extracts and Medicinal or Toilet Preparations (Including Perfumery) Manufactured From Domestic Tax Paid Alcohol

§ 191.81 Drawback allowance.

(a) *Drawback.* Section 313(d), Tariff Act of 1930, as amended (19 U.S.C. 1313(d)), provides for drawback of internal-revenue tax upon the exportation of flavoring extracts and medicinal or toilet preparations (including perfumery) manufactured or produced in the United States in part from the domestic tax-paid alcohol (see § 191.4(a)(4)).

(b) *Shipment to Puerto Rico, the Virgin Islands, Guam, and American Samoa.* Drawback of internal-revenue tax on articles manufactured or produced under this subpart and shipped to Puerto Rico, the Virgin Islands, Guam, or American Samoa shall be allowed in accordance with section 7653(c) of the Internal Revenue Code (26 U.S.C. 7653(c)). However, there is no authority of law for the allowance of drawback of internal-revenue tax on flavoring extracts or medicinal or toilet

preparations (including perfumery) manufactured or produced in the United States and shipped to Wake Island, Midway Islands, Kingman Reef, Canton Island, Enderbury Island, Johnston Island, or Palmyra Island.

§ 191.82 Procedure.

(a) *General.* Other provisions of this part relating to direct identification drawback shall apply to claims for drawback filed under this subpart insofar as applicable to and not inconsistent with the provisions of this subpart.

(b) *Manufacturing record.* The manufacturer of flavoring extracts or medicinal or toilet preparations on which drawback is claimed shall record the products manufactured, the quantity of waste, if any, and a full description of the alcohol. These records shall be available at all times for inspection by Customs officers.

(c) *Additional information required on the manufacturer's proposal.* The manufacturer's proposal shall state the quantity of domestic tax-paid alcohol contained in each product on which drawback is claimed.

(d) *Variance in alcohol content.*—(1) *Variance of more than 5 percent.* If the percentage of alcohol contained in a medicinal preparation, flavoring extract, or toilet preparation varies by more than 5 percent from the percentage of alcohol in the total volume of the exported product as stated in a previously approved proposal, the manufacturer shall apply for a new drawback contract pursuant to section 191.25 of this part. If the variation differs from a previously filed schedule, the manufacturer shall file a new schedule incorporating the change.

(2) *Variance of 5 percent or less.* Variances of 5 percent or less of the volume of the product shall be reported to the regional commissioner where the drawback entries are liquidated. The regional commissioner may allow drawback without specific authorization from Customs Headquarters.

(e) *Customs forms.* The following Customs forms shall be used in place of the corresponding forms used in the case of articles manufactured with the use of imported merchandise:

(1) Drawback Entry for Tax-Paid Alcohol, Customs Form 7579.

(2) Certificate of Manufacture and Delivery, Customs Form 7585.

(3) Certificate of Delivery of Alcohol Tax-Paid, Customs Form 7545.

(f) *Time period for completing claims.* The 3-year period for the completion of drawback claims prescribed in § 191.61 of this part shall be applicable to claims for drawback under this subpart.

(g) *Filing of drawback entries on duty-paid imported merchandise and tax-paid alcohol.* When the drawback entry covers duty-paid imported merchandise in addition to tax-paid alcohol, the claimant shall file one set of entries for drawback of Customs duty and another set for drawback of internal-revenue tax.

(h) *Description of the alcohol.* The description of the alcohol stated in the entry may be obtained from the description on the package containing the tax-paid alcohol.

§ 191.83 Additional requirements.

(a) *Manufacturer claims domestic drawback.* In the case of medicinal preparations and flavoring extracts, the claimant shall file with the drawback entry, or endorse on the entry or certificate of manufacture, a declaration of the manufacturer showing whether a claim has been or will be filed by the manufacturer with the regional regulatory administrator of the Bureau of Alcohol, Tobacco and Firearms for domestic drawback on alcohol under sections 5131,5132, 5133, and 5134, Internal Revenue Code, as amended (26 U.S.C. 5131, 5132, 5133, and 5134).

(b) *Manufacturer does not claim domestic drawback.*—(1) *Submission of statement.* If no claim has been or will be filed with the Bureau of Alcohol, Tobacco and Firearms for domestic drawback on medicinal preparations or flavoring extracts, the manufacturer shall submit a statement, in duplicate, setting forth that fact to the appropriate regional regulatory administrator of the Bureau of Alcohol, Tobacco and Firearms for the region in which the manufacturer's factory is located.

(2) *Contents of the statement.* The statement shall show the:

(i) Quantity and description of the exported products;

(ii) Identity of the alcohol used by serial number of package or tank car;

(iii) Name and registry number of the warehouse from which the alcohol was withdrawn;

(iv) Date of withdrawal;

(v) Serial number of the tax-paid stamp or certificate, if any; and

(vi) Customs region where the drawback claim will be filed.

(3) *Verification of the statement.* The regional regulatory administrator, Bureau of Alcohol, Tobacco and Firearms, shall verify receipt of this statement, forward the original of the document to the Customs region designated, and retain the copy.

§ 191.84 Alcohol, Tobacco and Firearms certificates.

(a) *Request.* The drawback claimant or manufacturer shall file a written request with the regional regulatory administrator, Bureau of Alcohol, Tobacco and Firearms, in whose region the alcohol used in the manufacture was withdrawn requesting him to provide the regional commissioner of Customs, with whom the drawback claim will be processed, a tax-paid certificate on Alcohol, Tobacco and Firearms Form 5100.4 (Certificate of Tax-Paid Alcohol).

(b) *Contents.* The request shall state the:

(1) Quantity of alcohol in taxable gallons;

(2) Serial number of each package;

(3) Serial number of the stamp, if any;

(4) Amount of tax paid on the alcohol;

(5) Name, registry number, and location of the warehouse;

(6) Date of withdrawal;

(7) Name of the manufacturer using the alcohol in producing the exported articles;

(8) Address of the manufacturer and his manufacturing plant; and

(9) Customs region where the drawback claim will be processed.

(c) *Request accompanied by Customs Form 7545.* If the request is accompanied by Customs Form 7545 showing any of the information required by paragraph (b) of this section, that information need not be repeated in the request.

(d) *Extracts of Alcohol, Tobacco and Firearms certificates.* If a certification of any portion of the alcohol described in the Bureau of Alcohol, Tobacco and Firearms Form 5100.4 is required for liquidation of drawback entries processed in another region, the regional commissioner of Customs, on written application of the person who requested its issuance, shall transmit a copy of the extract from the certificate for use at that regional office. The regional commissioner shall note that the copy of the extract was prepared and transmitted.

§ 191.85 Liquidation.

The regional commissioner shall determine the amount of drawback due by reference to the certificate of manufacture and the drawback contract under which the drawback claimed is allowable.

§ 191.86 Amount of drawback.

(a) *Claim filed with Bureau of Alcohol, Tobacco and Firearms.* If the declaration required by § 191.83 of this part shows that a claim has been or will be filed with the Bureau of Alcohol, Tobacco and Firearms for domestic

drawback, drawback under section 313(d), Tariff Act of 1930, as amended (19 U.S.C. 1313(d)), shall be limited to the difference between the amount of tax paid and the amount of domestic drawback claimed.

(b) *Claim not filed with Bureau of Alcohol, Tobacco and Firearms.* If the declaration and verified statement required by § 191.83 show that no claim has been or will be filed by the manufacturer with the Bureau of Alcohol, Tobacco and Firearms for domestic drawback, the drawback shall be the full amount of the tax on the alcohol used.

(c) *No deduction of 1 percent.* No deduction of 1 percent shall be made in drawback claims under section 313(d), Tariff Act of 1930, as amended (19 U.S.C. 1313(d)).

(d) *Payment.* The drawback due shall be paid in accordance with § 191.71(f) of this part.

Subpart I—Supplies for Certain Vessels and Aircraft

§ 191.91 Drawback allowance.

Section 309, Tariff Act of 1930, as amended (19 U.S.C. 1309), provides for drawback on articles laden as supplies on certain vessels or aircraft of the United States or as supplies including equipment upon, or used in the maintenance or repair of, certain foreign vessels or aircraft (see § 191.4(a)(10)).

§ 191.92 Procedure.

(a) *General.* Other provisions of this part apply to claims filed under this subpart insofar as applicable and not inconsistent with the provisions of this subpart.

(b) *Customs forms.* Drawback notices of lading on Customs Form 7514 shall be filed in place of notices of exportation on Customs Form 7511 or other evidence of exportation (see § 191.93).

§ 191.93 Drawback notice of lading.

(a) *Number of copies and place of filing.* The notice of lading on Customs Form 7514 shall be filed in quadruplicate with the district director at the port of lading.

(b) *Time of filing.* The drawback notice of lading may be filed either before or after lading of the articles. If filed after lading, the notice shall be filed within 3 years after exportation of the articles.

(c) *Contents of notice.* The notice of lading shall show:

(1) Name of the vessel or identity of the aircraft on which articles were or are to be laden;

(2) Number and kind of packages and their marks and numbers;

(3) Description of the articles and their weight (net), gauge, measure, or number;

(4) Name of the exporter; and

(5) Customs region where the drawback entry is to be filed.

(d) *Assignment of numbers and return of one copy.* The district director shall assign a number to each notice of lading and return one copy to the exporter for delivery to the master or authorized officer of the vessel or aircraft.

(e) *Declaration.*—(1) *Requirement.* The master or an authorized officer of the vessel or aircraft, or a representative of the owner or operator of the vessel or aircraft having knowledge of the facts and holding a Customs power of attorney shall complete the section of the drawback notice entitled "Declaration of Master or Other Officer," which was delivered by the exporter.

(2) *Procedure if notice filed before lading.* If the notice is filed before lading of the articles, the declaration must be completed on the copy of the numbered drawback notice that was filed with the district director and returned to the exporter for this purpose.

(3) *Procedure if notice filed after lading.* If the drawback notice is filed after lading of the articles, the drawback claimant may file a separate document containing the declaration required on the Drawback Notice, Customs Form 7514.

(4) *Filing.* The drawback claimant shall file with the district director both the drawback entry and the drawback notice or separate document containing the declaration of the master or other officer or representative.

(f) *Information concerning class or trade.* Information about the class of business or trade of a vessel or aircraft is required to be furnished in support of the drawback entry if the vessel or aircraft is American.

(g) *Vessel or aircraft required to clear or obtain a permit to proceed.* After the vessel or aircraft has cleared or obtained a permit to proceed, the district director at the port of lading shall complete the section entitled "Customs Certification" on one of the copies of the notice of lading. He shall return the completed copy and one other copy to the exporter or the person designated by the exporter for subsequent filing with the drawback entry.

(h) *Vessel or aircraft not required to clear or obtain a permit to proceed.* If the vessel or aircraft is not required to clear or obtain a permit to proceed to another port, the district director shall return to the exporter or the person designated by the exporter two copies of the notice with a statement of the facts in this case for subsequent filing with the drawback entry. The drawback claimant shall file with his claim an itinerary of the vessel or aircraft for the immediate voyage or flight showing that the vessel or aircraft is engaged in a class of business or trade which makes it eligible for drawback.

(i) *Articles laden or installed on aircraft as equipment or used in the maintenance or repair of aircraft.* The regional commissioner where the drawback claim is filed shall require a declaration or other evidence showing to his satisfaction that articles have been laden or installed on aircraft as equipment or used in the maintenance or repair of aircraft.

(j) *Fuel laden on vessels or aircraft as supplies.*—(1) *Composite notice of lading.* In the case of fuel laden on vessels or aircraft as supplies, the drawback claimant may file with the regional commissioner a composite notice of lading on the reverse of Customs Form 7514, for each calendar month describing all of the drawback claimant's deliveries of fuel supplies during the one calendar month at a single port or airport to all vessels or airplanes of one vessel owner or operator or airline.

(2) *Contents of composite notice.* The composite notice shall show for each voyage or flight, either on the reverse of Customs Form 7514 or on a continuation sheet:

(i) Identity of the vessel or aircraft;

(ii) Description of the fuel supplies laden;

(iii) Quantity laden; and

(iv) Date of lading.

(3) *Declaration of owner or operator.* A vessel or airline representative having knowledge of the facts and holding a Customs power of attorney shall complete the section "Declaration of Master or Other Officer" on Customs Form 7514.

(4) *District Director's certification.* The district director shall note the clearance of the vessel or aircraft at the end of each line relating to a voyage or flight.

(k) *Desire to land articles covered by notice of lading.* The master of the vessel or commander of the aircraft desiring to land in the United States articles covered by a notice of lading shall apply for a permit a to land those articles under Customs supervision. All articles landed, except those transferred under the original notice of lading to another vessel or aircraft entitled to drawback, shall be considered imported merchandise for the purpose of section 309(c), Tariff Act of 1930, as amended (19 U.S.C. 1309(c)).

§ 191.94 Drawback entry.

The drawback entry shall be filed on Customs Form 7573 or 7575, as applicable, modified to read "lade" (or "use"), "laden" (or "used"), or "lading" (or "using") instead of "export," "exported," or "exporting." The "Declaration of Exportation" shall be amended to read as follows:

Declaration of Lading or Use

I, (member of firm, officer representing corporation, agent, or attorney) of , declare that according to my knowledge and belief, the particulars of lading (or use) stated in this entry, the notices of lading, and receipts are correct, and that the merchandise is not to be relanded in the United States or any of its possessions, but is to be (has been) used on the vessels or aircraft so named for (state specifically, such as supplies, equipment, maintenance, or repair) , as specified in section 309, Traffic Act of 1930, as amended.

Date 19 .

(Shipper or agent)

(Sec. 309, 46 Stat. 690, as amended; 19 U.S.C. 1309)

Subpart J—Meats Cured With Imported Salt

§ 191.101 Drawback allowance.

Section 313(f), Tariff Act of 1930, as amended (19 U.S.C. 1313(f)), provides for the allowance of drawback upon the exportation of meats cured with imported salt (see § 191.4(a)(6)).

§ 191.102 Procedure.

(a) *General.* Other provisions of this part relating to direct identification drawback shall apply to claims for drawback under this subpart insofar as applicable to and not inconsistent with the provisions of this subpart.

(b) *Customs form.* The forms used for other drawback claims shall be used and modified to show that the claim is being made for refund of duties paid on salt used in curing meats.

§ 191.103 Refund of duties.

Drawback shall be refunded in aggregate amounts of not less than $100 and shall not be subject to the retention of 1 percent of duties paid.

Subpart K—Materials for Construction and Equipment of Vessels and Aircraft Built for Foreign Account and ownership

§ 191.111 Drawback allowance.

Section 313(g), Tariff Act of 1930, as amended (19 U.S.C. 1313(g)), provides for drawback on imported materials used in the construction and equipment of vessels and aircraft built for foreign account and ownership, or for the government of any foreign country, notwithstanding that these vessels or aircraft may not be exported within the strict meaning of the term (see § 191.4(a)(7)).

§ 191.112 Procedure.

Other provisions of this part relating to direct identification drawback shall apply to claims for drawback filed under this subpart insofar as applicable to and not inconsistent with the provisions of this subpart.

§ 191.113 Explanation of terms.

(a) *Materials.* Section 313(g), Tariff Act of 1930, as amended (19 U.S.C. 1313(g)), applies only to materials used in the original construction and equipment of vessels and aircraft and not to materials used for alteration or repair, or to materials not rquired for safe operation of the vessel or aircraft.

(b) *Foreign account and ownership.* Foreign account and ownership, as used in section 313(g), Tariff Act of 1930, as amended, means only vessels or aircraft built and equipped for the account of an owner or owners residing in a foreign country and having a bona fide intention that the vessel or aircraft, when completed, shall be owned and operated under the flag of a foreign country.

Subpart L—Foreign-Built Jet Aircraft Engines Processed in the United States

§ 191.121 Drawback allowance.

Section 313(h), Tariff Act of 1930, as amended (19 U.S.C. 1313(h)), provides for drawback on the exportation of jet aircraft engines manufactured or produced abroad that have been overhauled, repaired, rebuilt, or reconditioned in the United States with the use of imported merchandise, including parts (see § 191.4(a)(8)).

§ 191.122 Procedure.

Other provisions of this part shall apply to claims for drawback filed under this subpart insofar as applicable to and not inconsistent with the provisions of this subpart.

§ 191.123. Drawback entry.

(a) *Filing of entry.* Drawback entries covering these foreign-built jet aircraft engines shall be filed on Customs Form 7575-A, appropriately modified, to show that the entry covers jet aircraft engines processed under section 313(h), Tariff Act of 1930, as amended.

(b) *Contents of entry.* The entry shall show the country in which each engine was manufactured and describe the processing performed thereon in the United States.

§ 191.124 Refund of duties.

Drawback shall be refunded in aggregate amounts of not less than $100, and shall not be subject to the deduction of 1 percent of duties paid.

Subpart M—Merchandise Exported From Continuous Customs Custody

§ 191.131 Drawback allowance.

(a) *General.* Section 557(a), Tariff Act of 1930, as amended (19 U.S.C. 1557(a)), provides for drawback on the exportation, or the shipment to the Virgin Islands, American Samoa, Wake Island, Midway Islands, Kingman Reef, Johnston Island, or Guam, of duty-paid merchandise which has remained continuously in bonded warehouse or otherwise in Customs custody since importation (see § 191.4(a) (11)).

(Sec. 557, 46 Stat. 744, as amended; 19 U.S.C. 1557)

(b) *Guantanamo Bay.* Guantanamo Bay Naval Station shall be considered foreign territory for drawback purposes under this subpart. However, imported merchandise which has remained continuously in bonded warehouse or otherwise in Customs custody since importation is not entitled to drawback of duty when shipped to Puerto Rico, Canton Island, Enderbury Island, or Palmyra Island.

§ 191.132 Merchandise released from Customs custody.

No remission, refund, abatement, or drawback of duty shall be allowed because of the exportation of any merchandise after its release from Government custody, except in the following cases:

(a) When articles are exported on which drawback is expressly provided for by law;

(b) When prohibited articles have been regularly entered in good faith and are subsequently exported or destroyed pursuant to statute and regulations prescribed by the Secretary of the Treasury; or

(c) When articles entered under bond are destroyed within the bonded period, as provided in section 557(c), Tariff Act of 1930, as amended (19 U.S.C. 1557(c)), or destroyed within the bonded period by death, accidental fire, or other casualty, and proof of destruction is furnished to the satisfaction of the Secretary of the Treasury, in which case any accrued duties shall be remitted or refunded and any condition in the bond that the articles shall be exported shall be deemed to have been satisfied (see 19 U.S.C. 1558).

§ 191.133 Continuous Customs custody.

(a) *Merchandise released under an importer's bond and returned.* Merchandise released to an importer under a bond prescribed by § 142.4 of this chapter and later returned to the public stores upon requisition of the district director shall not be deemed to be in the continuous custody of Customs officers.

(b) *Merchandise released under a temporary importation bond.* Merchandise released under a temporary importation bond as provided for in Schedule 8, Part 5, Subpart C, Tariff Schedules of the United States (19 U.S.C. 1202), shall not be deemed to be in the continuous custody of Customs officers.

(c) *Merchandise released from warehouse.* Customs custody over merchandise entered for warehouse shall be deemed to cease when the Customs warehouse officer with whom a delivery permit has been lodge has released the merchandise to or upon the order of the proprietor of the warehouse as provided in §§ 19.6 and 144.38(e) of this chapter.

(d) *Merchandise not warehoused, examined elswhere than in public stores.*—(1) *General rule.* Except as stated in paragraph (d)(2) of this section, merchandise examined elsewhere than at the public stores, in accordance with the provisions of § 151.7 of this chapter, shall be considered released from Customs custody upon completion of final examination for appraisement.

(2) *Merchandise upon the wharf.* Merchandise which remains on the wharf by permission of the district director shall be considered to be in Customs custody, but this custody shall be deemed to cease when the Customs officer in charge accepts the permit and has no other duties to perform relating to the merchandise, such as measuring, weighing or gauging.

(Sec. 557, 46 Stat. 744, as amended, 19 U.S.C. 1557)

§ 191.134 Filing the entry.

(a) *Direct export.* At least 6 hours before lading the merchandise on which drawback is claimed, the importer or the agent designated by him in writing shall file with the district director a direct export entry on Customs Form 7512 in duplicate.

(b) *Merchandise transported to another port for exportation.* The importer of merchandise to be transported to another port for exportation shall file in triplicate with the district director an entry naming the transporting conveyance, route, and port of exit. The district director shall certify one copy and forward it to the district director at the port of exit. A bonded carrier shall transport the merchandise in accordance with the applicable regulations. Manifests shall be prepared and filed in the manner prescribed in § 144.37 of this chapter.

§ 191.135 Merchandise withdrawn from warehouse for exportation.

The regulations in Part 18 of this chapter concerning the supervision of lading and certification of exportation of merchandise withdrawn from warehouse for exportation without payment of duty shall be followed to the extent applicable.

§ 191.136 Bill of lading.

(a) *Filing.* In order to complete the claim, a bill of lading covering the merchandise described in the export entry shall be filed within 6 months after the merchandise is exported.

(b) *Contents.* The bill of lading shall show either that the merchandise was shipped by a the person making the claim or bear an endorsement of the person in whose name the merchandise was shipped showing that the person making claim is authorized to receive the drawback.

(c) *Limitation of the bill of lading.* The terms of the bill of lading may limit and define its use by stating that it is for Customs purposes only and not negotiable.

(d) *Inability to produce bill of lading.* When a required bill of lading cannot be produced, the person making the drawback entry may request the regional commissioner, through the district director, within the time required for the filing of the bill of lading, to accept a statement setting forth the cause of failure to produce the bill of lading and such evidence of exportation and of his right to make the drawback entry as may be available. The request shall be granted if the regional commissioner is satisfied by the evidence submitted that the failure to produce the bill of lading is justified, that the merchandise has been exported, and that the person making the drawback entry has the right to do so. If the regional commissioner is not so satisfied, he shall transmit the request and its accompanying evidence to Headquarters, U.S. Customs Service, for final determination.

(e) *Extracts of bills of lading.* Regional commissioners may issue extracts from bills of lading filed with drawback entries.

§ 191.137 Landing certificates.

When required, a landing certificate shall be filed within the time prescribed in § 191.67 of this part.

(Sec. 557, 46 Stat. 744, as amended, 19 U.S.C. 1557)

§ 191.138 Procedures.

When the drawback entry has been completed and the bill of lading filed, together with the landing certificate, if required, the reports of inspection and lading made, and the clearance of the exporting conveyance established by the record of clearance in the case of direct exportation or by certificate in the case of transportation and exportation, the regional commissioner shall verify the importation by referring to the import records to ascertain the amount of duty paid on the merchandise exported. To the extent appropriate and not inconsistent with the provisions of this subpart, drawback claims shall be liquidated in accordance with the provisions of § 191.61 of this part.

§ 191.139 Amount of drawback.

Drawback due under this subpart shall not be subject to the retention of 1 percent.

(Sec. 557, 46 Stat. 744, as amended; 19 U.S.C. 1557)

Subpart N—Same Condition Drawback

§ 191.141 Drawback.

(a) *Allowance.* Section 313(j), Tariff Act of 1930, as amended (19 U.S.C. 1313(j)), provides for drawback on imported merchandise exported in the same condition as when imported, or destroyed under Customs supervision and not used within the United States before such exportation or destruction (see § 191.4(a)(9)).

(b) *Time of exportation or destruction.* Drawback shall be allowed on imported merchandise if exported or destroyed under § 191.141 before the close of the 3-year period beginning on the date of importation.

(c) *Use.* The performing of incidental operations (including, but not limited to, testing, cleaning, repacking, and inspecting) on the imported merchandise itself, not amounting to manufacture or production for drawback purposes shall not be treated as a use of that merchandise for purposes of applying § 191.141.

§ 191.142 Filing and documentation prior to exportation.

(a) *Filing.* An exporter-claimant who desires to export merchandise with drawback under 19 U.S.C. 1313(j) shall file with any district director a completed Customs Form 7539. The exporter-claimant shall also furnish a copy of the import entry or identify the import entry, date or entry, and port of entry under which the merchandise was

imported into the United States. He shall certify that the merchandise is in the same condition as when imported and not used within the United States before such exportation. Transfers shall be documented by the use of certificates of delivery (see § 191.65).

(b) *Time of filing.* The completed Customs Form 7539 shall be filed with the district director at least 12 working days prior to exportation of the merchandise, unless the district director approves a shorter filing period.

(c) *Examination.*—(1) *Decision to examine.* Within 10 working days after Customs Form 7539 is filed, the district director shall notify the exporter-claimant whether or not he wishes to examine the merchandise prior to exportation.

(2) *Time and place of examination.* If the district director determines to examine the merchandise, he shall notify the exporter-claimant of the place of the examination. The district director shall complete the examination within 10 working days after the filing of Customs Form 7539, unless failure to examine is caused by the exporter-claimant.

(d) *Exportation.*—(1) *No examination required.* The exporter-claimant may export the merchandise without Customs supervision after being notified by the district director that no examination is necessary.

(2) *When examination is required.* If the district director determines to examine the merchandise, the exporter-claimant may export the merchandise after the examination is completed. In the discretion of the district director, merchandise to be exported after examination may be exported under Customs supervision.

§ 191.143 Completion of drawback entry for exported merchandise.

Within 3 months after exportation of merchandise under § 191.142, and exporter-claimant shall complete his drawback entry by filing with the same district director who received Customs Form 7539 evidence of exportation under the procedures described in § 191.52 (uncertified notice of exportation) or § 191.54 (certified notice of exportation by mail) of this part.

§ 191.144 Alternative procedure for exported merchandise.

In place of the procedures set forth in §§ 191.142 and 191.143, and exporter-claimant may apply with the regional commissioner, or the district director, if authority has been delegated to that official by the regional commissioner, for permission to use the exporter's summary procedure (see § 191.53). If the request is approved, the exporter-claimant shall file a completed drawback entry on Customs Form 7539 no later than 3 months after exportation. When this alternative procedure is used, no prior notice of exportation, examination or Customs supervision of the exportation is required.

§ 191.145 General.

The provisions relating to direct identification drawback shall apply to claims for drawback under this subpart insofar as applicable to and not inconsistent with the provisions of this subpart. Specifically, § 191.22 (b) and (c) are applicable to drawback under 19 U.S.C. 1313(j).

§ 191.146 Drawback on destroyed merchandise.

(a) *Procedure.* A claimant desiring to destroy merchandise to collect drawback under same condition drawback shall file with a district director a completed Customs Form 7539. The claimant also shall furnish a copy of the import entry or identify the import entry under which the merchandise was imported into the United States. He shall certify that the merchandise is in the same condition as when imported and not used within the United States before such destruction. The district director shall determine the time and place for destruction. Destruction shall be under Customs supervision.

(b) *Completion of drawback entry.* After destruction, the claimant and district director or his designee who witnessed destruction shall certify on Customs Form 7539 or an attachment thereto the time and place of destruction.

§ 191.147 Liquidation of the drawback claim.

(a) Entries shall be liquidated or reliquidated in the region or districts as determined by the regional commissioner.

(b) *Denial of drawback entry.* If the claim is denied, the claimant shall be notified in accordance with §§ 159.9 and 159.10 of this chapter.

§ 191.148 Merchandise not conforming to sample or specifications or shipped without the consent of the consignee.

(a) *General.* (1) Section 313(c), Tariff Act of 1930, as amended (19 U.S.C. 1313(c)), provides for drawback upon the exportation of imported merchandise not conforming to sample or specifications or shipped without the consent of the consignee. The merchandise must be returned to Customs custody for exportation within 90 days after release from Customs custody unless Customs authorizes a longer period (see § 191.4(a)(3)).

(2) Drawback under this section is considered to be a limited form of same condition drawback as it relates to the exportation of merchandise (but not destruction of merchandise).

(b) *Procedure.* (1) The exporter-claimant who desires to export merchandise claimed not to conform to sample or specifications, or to have been shipped to him without his consent, shall file with any district director a drawback entry on Customs Form 7539.

(2) The exporter-claimant shall also submit documentation to establish that the merchandise does not conform to sample or specifications or was shipped without the consent of the consignee.

(3) The district director shall approve the place of delivery of the merchandise if he is satisfied that the merchandise does not conform to sample or specifications or was shipped without the consent of the consignee.

(4) The exporter-claimant shall return the merchandise to Customs custody within 90 days after the date the merchandise was originally released from Customs custody unless an extension of time is specifically authorized in writing by the district director or other appropriate Customs official. Reasonable extensions of time will be granted if the failure to comply with the 90 day provision is beyond the control of the applicant. Drawback shall be denied on merchandise returned to Customs custody after the authorized time period, including any extension.

(5) The exporter-claimant shall export the merchandise under Customs supervision and establish this fact by filing with the same district director who received Customs Form 7539 evidence of exportation under the procedures described in § 191.52 (uncertified notice of exportation) or § 191.54 (certified notice of exportation by mail) of this part.

(6) Drawback under this section is payable to the exporter-claimant who is the importer of record or the actual owner named in the import entry. The procedures for liquidating a drawback claim shall be the same as under § 191.147.

Subpart O—Distilled Spirits, Wines, or Beers Which are Unmerchantable or do not Conform to Sample or Specifications

§ 191.151 Refund of taxes.

Section 5062(c), Internal Revenue Code, as amended (26 U.S.C. 5062(c)), provides for the refund, remission,

abatement or credit to the importer of internal-revenue taxes paid or determined incident to importation, upon the exportation, or destruction uder Customs supervision, of imported distilled spirits, wines, or beer found after entry to be unmerchantable or not to conform to sample or specifications and which are returned to Customs custody (see § 191.4(b)).

§ 191.152 Procedure.

The expert procedures shall be the same as that provided in section 191.148(b) except as othewise provided in this subpart.

§ 191.153 Documentation.

(a) *Entry.* Customs Form 7539, appropriately modified, shall be used to claim drawback under this subpart.

(b) *Documentation.* The drawback entry for unmerchantable merchandise shall be accompanied by a certificate of the owner setting forth in detail the facts which cause the merchandise to be unmerchantable and any additional proof that the district director requires to establish that the merchandise is unmerchantable.

§ 191.154 Return to Customs custody.

There is no time limit for the return to Customs custody of distilled spirits, wine, or beer subject to refund of taxes under the provisions of this subpart.

§ 191.155 No exportation by mail.

Merchandise covered by this subpart shall not be exported by mail.

§ 191.156 Destruction of merchandise.

(a) *Action by the importer.* A drawback claimant who proposes to destroy rather than export the distilled spirits, wine, or beer shall state that fact on Customs Form 7539.

(b) *Action by Customs.* Distilled spirits, wine, or beer returned to Customs custody at the place approved by the district director where the drawback entry was filed shall be destroyed under the supervision of the Customs officer who shall certify the destruction on Customs Form 3499.

§ 191.157 Liquidation.

No deduction of 1 percent of the internal revenue taxes paid or determined shall be made in allowing claims under section 5062(c), Internal Revenue Code, as amended (26 U.S.C. 5062(c)).

§ 191.158 Time limit for exportation or destruction.

Merchandise not exported or destroyed within 90 days from the date of notification of acceptance of the drawback entry shall be considered unclaimed, unless upon written request by the original applicant, the district director grants an extension of not more than 90 days.

Subpart P—Merchandise Transferred to a Foreign Trade Zone From Customs Territory

§ 191.161 Drawback allowance.

The fourth provision of section 3 of the Foreign Trade Zones Act of June 18, 1934, as amended (19 U.S.C. 81c) provides for drawback on merchandise transferred to a foreign trade zone from Customs territory for the sole purpose of exportation, destruction (except destruction of distilled spirits, wines, and fermented malt liquors), or storage, provided there is compliance with the regulations of this subpart (see § 191.4(a)(12)).

§ 191.162 Zone-restricted merchandise.

Merchandise in a foreign trade zone for the purposes specified in § 191.161 shall be given status as zone-restricted merchandise on proper application (see § 146.25 of this chapter).

(Sec. 3, 48 Stat. 999, as amended; 19 U.S.C. 81c)

§ 191.163 Articles manufactured or produced in the United States.

(a) *Procedure for filing documents.* Except for the evidence of exportation procedure, the drawback procedures prescribed in this part shall be followed as applicable to drawback under this subpart on articles manufactured or produced in the United States with the use of imported or substituted merchandise, and on flavoring extracts or medicinal or toilet preparations (including perfumery) manufactured or produced with the use of domestic tax-paid alcohol.

(b) *Notice of transfer.*—(1) *Proof of export.* The notice of zone transfer on Customs Form 7514 shall be in place of the documents under subpart E to establish the exportation.

(2) *Filing procedures.* The notice of transfer, in triplicate, shall be filed with the district director where the foreign trade zone is located prior to the transfer of the articles to the zone, or within 3 years after the transfer of the articles to the zone. A notice filed after the transfer shall state the foreign trade zone lot number.

(3) *Contents of notice.* Each notice of transfer shall show the:

(i) Number and location of the foreign trade zone;

(ii) Number and kind of packages and their marks and numbers;

(iii) Description of the articles, including weight (gross and net), gauge, measure, or number;

(iv) Name of the transferor; and

(v) Place where the drawback entry is to be filed.

(c) *Action of the district director on the notice of transfer.—(1) Assignment of number.* The district director shall assign a number to each notice of transfer, return one copy to the transferor and forward another copy to the Customs officer at the foreign trade zone.

(2) *Certification and forwarding notice to transferor.* After articles have been received in the zone, the Customs officer in charge at the zone shall certify on a copy of the notice of transfer the receipt of the articles and forward the notice to the transferor or the person designated by the transferor.

(d) *Foreign trade zone operator's certificate.* Before filing the certified copy of the notice of transfer with the drawback entry, the transferor shall obtain the foreign trade zone operator's certification of receipt of the articles in the zone (see § 191.164(d) (2)).

(e) *Drawback entries.* Drawback entries shall be filed on Customs Form 7573, 7575, 7579, or 7583, as applicable, appropriately modified, to indicate that the merchandise was transferred to a foreign trade zone. The "Declaration of Exportation" shall be modified as follows:

DECLARATION OF TRANSFER TO A FOREIGN TRADE ZONE

I, ———— (member of firm, officer representing corporation, agent, or attorney), of ————, declare that, to the best of my knowledge and belief the particulars of transfer stated in this entry, the notices of transfer, and receipts are correct, and that the merchandise was transferred to a foreign trade zone for the sole purpose of exportation, destruction, or storage, not to be returned to the customs territory of the United States for domestic consumption.

Dated: ————.

————,

Transferor or agent.

(Sec. 3, 48 Stat. 999, as amended, 19 U.S.C. 81c)

§ 191.164 Merchandise transferred from continuous Customs custody.

(a) *Procedure for filing claims.* The procedure described in Subpart M of this part shall be followed as applicable, to drawback on merchandise transferred to a foreign trade zone from continuous Customs custody.

(b) *Drawback entry.* Prior to the transfer of merchandise from continuous Customs custody to a foreign trade zone, the importer or a person designated in

writing by the importer for that purpose shall file with the district director a direct export entry on Customs Form 7512 in duplicte. The district director shall forward one copy of Customs Form 7512 to the Customs officer in charge at the zone.

(c) *Certification by Customs and zone operator.* After the merchandise has been received in the zone, the Customs officer in charge at the zone shall certify on the copy of Customs Form 7512 the receipt of the merchandise and forward the form to the transferor or the person designated by the transferor to obtain the foreign trade zone operator's certification. After obtaining and executing the certifications provided for in paragraph (d) of this section, the transferor shall resubmit Customs Form 7512 to the district director in place of the bill of lading required by § 191.136 of this part.

(d) *Modification of drawback entry.* (1) *Indication of transfer.* Customs Form 7512 shall be modified to indicate that the merchandise is to be transferred to a foreign trade zone.

(2) *Endorsement.* The transferor or person designated by the transferor shall endorse Customs Form 7512 as follows, for execution by the foreign trade zone operator:

Certification of Foreign Trade Zone Operator

The merchandise described in the entry was received from ———— on ————, 19——; in Foreign Trade Zone No. ——, ———— (City and State)
Exceptions: ————.————
(Name and title)
By ———— (Name of operator)

(3) *Transferor's declaration.* The transferor shall declare on Customs Form 7512 as follows:

Transferor's Declaration

I, ———— of the firm of ————, declare that the merchandise described in this entry was duly entered at the customhouse on arrival at this port; that the duties thereon have been paid as specified in this entry; and that it was transferred to Foreign Trade Zone No. ——, located at ————, (City and State) for the sole purpose of exportation, destruction, or storage, not to be returned to the customs territory of the United States for domestic consumption. I further declare that to the best of my knowledge and belief, this merchandise is the same in quantity, quality, value, and package, unavoidable wastage and damage excepted, as it was at the time of importation; that no allowance nor reduction of duties has been made for damage or other cause except as specified in this entry; and that no part of the duties paid has been refunded by drawback or otherwise.

Dated:

(Transferer)

(Sec. 3, Stat. 999, as amended; 19 U.S.C. 81c)

§ 191.165 Same condition drawback merchandise and merchandise not conforming to sample or specifications or shipped without the consent of the consignee.

(a) *Procedure for filing claims.* The procedures described in §§ 191.141–191.147, relating to same condition drawback merchandise, and § 191.148, relating to rejected merchandise, shall be followed as applicable to drawback under this subpart for same condition drawback merchandise and merchandise not conforming to sample ot specifications, or merchandise shipped without the consent of the consignee.

(b) *Drawback entry.* Before transfer of the merchandise to a foreign trade zone, the importer or a person designated in writing by the importer for the purpose shall file with the district director an entry on Customs Form 7539 in duplicate. The district director will forward one copy of Customs Form 7539 to the Customs officer in charge at the zone.

(c) *Certification by Customs and zone operator.* After the merchandise has been received in the zone their Customs officer in charge at the zone shall certify on the copy of Customs Form 7539 the receipt of the merchandise and forward the form to the transferor or the person designated by the transferor to obtain the foreign trade zone operator's certificate. After obtaining and executing the certifications provided for in paragraph (d) of this section, the transferor shall resubmit Customs Form 7539 to the district director, in place of the bill of lading required by § 191.136 of these regulations.

(d) *Modification of drawback entry.* (1) *Indication of transfer.* Customs Form 7539 shall be modified to indicate that the merchandise is to be transferred to a foreign trade zone.

(2) *Endorsement.* The transferor or person designated by the transferor shall endorse Customs Form 7539 as follows, for execution by the foreign trade zone operator:

Certification of Foreign Trade Zone Operator

The merchandise described in this entry was received from ———— on ————, 19—, in Foreign Trade Zone No. ——, ————(City and State).
Exceptions: ————.
———— (Name of operator)
By ———— (Name and title)

(3) *Transferor's declaration.* The transferor shall declare on Customs Form 7539 as follows:

Transferor's Declaration

I, ————, of the firm of ————, declare that the merchandise described in the within entry was duly entered at the customhouse on arrival at this port; that the duties thereon have been paid as specified in this entry; and that it was transfered to Foreign Trade Zone No. ————, located at ————, (City and State) for the sole purpose of exportation, destruction, or storage, not to be returned to the customs territory of the United States for domestic consumption. I further declare that to the best of my knowledge and belief, that said merchandise is the same in quantity, quality, value, and package as specified in this entry; that no allowance nor reduction in duties paid has been made; and that no part of the duties has been refunded by drawback or otherwise.

Dated: ————.

———— (Transferor)

(Sec. 3, 48 Stat. 999, as amended; 19 U.S.C. 81c)

§191.166 Person entitled to receive drawback.

The person named in the foreign trade zone operator's certification on the notice of transfer or the drawback entry, as applicable, shall be considered to be the transferor. Drawback shall be paid to the transferor or to the person to whom the transferor directs in writing to be paid.

(Sec. 3, 48 Stat. 999, as amended; 19 U.S.C. 81c)

Conforming Amendments

Parts 7, 10, 113, 145, and 158

To conform the Customs Regulations to the changes made by the proposed removal of Part 22, Customs Regulations and the addition of new Part 191, Customs Regulations, it is proposed to amend Parts 7, 10, 113, 145, and 158 in the following manner:

PART 7—CUSTOMS RELATIONS WITH INSULAR POSSESSIONS AND GUANTANAMO BAY NAVAL STATION

§ 7.1 [Amended]

1. It is proposed to amend § 7.1(a), Customs Regulations, by substituting "§§ 191.85 and 191.86" in place of "§ 22.26" appearing at the end of the paragraph.

§ 7.8 [Amended]

2. It is proposed to amend § 7.8(f), Customs Regulations, by substituting "§ 191.81" in place of "§ 22.22" at the end of the paragraph.

PART 10—ARTICLES CONDITIONALLY FREE, SUBJECT TO A REDUCED RATE, ETC.

§ 10.38 [Amended]

It is proposed to amend § 10.38(f), Customs Regulations, by substituting "§ 191.10" in place of "§ 22.43".

PART 113—CUSTOMS BONDS

§ 113.14 [Amended]

It is proposed to amend § 113.14(y), Customs Regulations, by substituting "§ 191.53" in place of "§ 22.7".

PART 145—MAIL IMPORTATIONS

§ 145.72 [Amended]

It is proposed to amend § 145.72(e), Customs Regulations, by substituting "§ 191.148" in place of "§ 22.33".

PART 158—RELIEF FROM DUTIES ON MERCHANDISE LOST, DAMAGED, ABANDONED, OR EXPORTED

§ 158.45 [Amended]

It is proposed to amend § 158.45(b) by substituting "Part 191" in place of "Part 22" at the end of the paragraph.

William von Raab,

Commissioner of Customs.

Approved: July 30, 1982.

John M. Walker, Jr.,

Assistant Secretary of the Treasury.

Appendix

PARALLEL REFERENCE TABLE

[This table shows the relation of sections in revised Part 191 to Part 22]

Revised section	Superseded section
191.0	New.
191.1	New.
191.2	New.
191.3	22.41.
191.4	22.1.
191.5	22.46.
191.6	22.45.
191.7	22.44.
191.8	New.
191.9	New.
191.10(a), (b), (c), and (d)	22.43.
191.10(e)	New.
191.11	22.42.
191.12	New.
191.13	22.2.
191.21(a)	New.
191.21(a)(1)	22.4(k).
191.21(a)(2)	New.
191.21(b)	22.4(h).
191.21(c)	New.
191.21(d)	22.4(h).
191.21(e)	22.4(i).
191.22(a)(1)(i)(ii)(iii)(iv)	22.4(a).
191.22(a)(1)(v)	22.4(b).
191.22(a)(2),(3), (4), and (5)(i)	22.4(a).
191.22(a)(5)(ii)	New.
191.22(b)	22.4(b) and (c)
191.22(c)	22.4(f).
191.22(d)	22.4(e).
191.22(e)	22.4(d).
191.23(a) and (b)	22.4(j).
191.23(c)	22.4(l).
191.23(d)	22.4(m).
191.24	22.4(p).
191.25	22.4(o).
191.26	22.4(r).
191.31	New.
191.32(a)(1), (2), (3)	22.5(a).
191.32(a)(4)	22.4(b).
191.32(b)	22.5(b).
191.32(c)	22.5(e).
191.32(d)	22.5(c)
191.33	New.
191.34	New.
191.41	New.
191.42	New.
191.43	New.

PARALLEL REFERENCE TABLE—Continued

[This table shows the relation of sections in revised Part 191 to Part 22]

Revised section	Superseded section
191.44	New.
191.45	New.
191.51(a), (b), and (c)	22.7(a).
191.51(d)	New.
191.51(e)	New.
191.52(a), (b), and (c)	22.7(c)(1).
191.52(d)	22.7(c)(2).
191.53(a)	22.7(d)(1).
191.53(b), (c), (d), and (e)(1)	22.7(d)(2).
191.53(e)(2)	22.7(d)(1).
191.53(e)(3)	22.7(d)(3).
191.54(a)	22.8(a).
191.54(b)	22.8(b).
191.54(c)	22.8(c).
191.55(a) and (b)	22.9(a).
191.56	22.11.
191.57	22.12.
191.61	22.13(a).
191.62(a)(1)	22.13(a).
191.62(a)(2)	22.13(a), (c), and (e).
191.62(a)(3)	22.13(d).
191.62(a)(4)	22.13(a).
191.62(b)	22.13(a).
191.62(c)	New.
191.62(d)	22.13(f).
191.63	22.13(b).
191.64	22.13(g).
191.65	22.15.
191.66(a)	22.16(a).
191.66(b)	New.
191.66(c)	22.16(b).
191.66(d)	22.16(c).
191.66(e)	22.16(d).
191.66(f)	New.
191.67(a)	22.17(a).
191.67(b)	22.13(b).
191.67(c)	22.17(b).
191.67(d)	22.17(c).
191.67(e)(1)	22.17(e).
191.67(e)(2)	22.17(d).
191.71(a)	22.20(a).
191.71(b)	22.20(b).
191.71(c)	22.20(c).
191.71(d)	22.20(d).
191.71(e)	22.20(e).
191.71(f)	22.20(f).
191.72	22.20a.
191.73(a)	22.21(a).
191.73(b)	22.21(b).
191.81(a)	22.22(a).
191.81(b)	22.22(b).
191.82(a)	22.23(a).
191.82(b)	22.24.
191.82(c)	22.23(b).
191.82(d)	22.23(f).
191.82(e)	22.23(d).
191.82(f)	22.23(a).
191.82(g)	22.23(c).
191.82(h)	22.24.
191.83	22.23(e).
191.84(a)	22.25(a).
191.84(b)	22.25(b).
191.84(c)	22.25(c).
191.84(d)	22.25(e).
191.85	22.26(a).
191.86(a) and (b)	22.26(b).
191.86(c)	22.26(d).
191.86(d)	22.26(c).
191.91	22.18(a).
191.92	22.18(b).
191.93(a), (b), (c), (d), and (e)	22.18(c).
191.93(f)	22.18(h).
191.93(g) and (h)	22.18(d).
191.93(i) and (j)	22.18(j).
191.93(k)	22.18(g).
191.94	22.18(k).
191.101	New.
191.102(a)	22.19(a).
191.102(b)	22.19(b).
191.103	22.19(a).
191.111	New.
191.112	New.
191.113	New.
191.121	22.26a(a).
191.122	New.
191.123(a) and (b)	22.26a(b).
191.124	22.26a(a) and a(c).

PARALLEL REFERENCE TABLE—Continued

[This table shows the relation of sections in revised Part 191 to Part 22]

Revised section	Superseded section
191.131	22.27(a) and 22.27(b).
191.132	22.28(a).
191.133(a) and (b)	22.28(b).
191.133(c)	22.28(d).
191.133(d)(1)	22.28(e).
191.133(d)(2)	22.28(c).
191.134(a)	22.29(a).
191.134(b)	22.29(b).
191.135	22.29(c).
191.136(a), (b), and (c)	22.29(d).
191.136(d)	22.29(g).
191.136(e)	22.29(f).
191.137	22.29(h).
191.138	22.30(a) and (b).
191.139	22.30(a).
191.141	New.
191.142	New.
191.143	New.
191.144	New.
191.145	New.
191.146	New.
191.147	New.
191.148	22.31 and 22.36.
191.151	New.
191.152	New.
191.153	New.
191.154	New.
191.155	New.
191.156	New.
191.157	New.
191.158	New.
191.161	22.36(a).
191.162	22.36(b).
191.163(a)	22.37(a).
191.163(b)(1)	22.37(a).
191.163(b)(2)	22.37(b) and (c).
191.163(b)(3)	22.37(b).
191.163(c) and (d)	22.37(d).
191.163(e)	22.37(e).
191.164(a), (b), and (c)	22.36(a).
191.164(d)	22.36(b).
191.165(a), (b), and (c)	22.36(a).
191.165(d)	22.36(b).
191.166	22.40.

PARALLEL REFERENCE TABLE

[This table shows the relationship of sections in Part 22 to revised Part 19]

Old section	New section
	191.0.
	191.1.
	191.2.
22.1	191.4.
22.2	191.13.
22.3	Deleted.
	191.21(a) and (a)(2).
22.4(a)	191.22(a)(1) (i)–(iv); 191.22(a)(2)–(5)(i).
	191.22(a) (5)–(ii).
22.4(b)	191.22(a)(1)(v); 191.22(b); 191.32(a)(4).
22.4(c)	191.22(b).
22.4(d)	191.22(e).
22.4(e)	191.22(d).
22.4(f)	191.22(c).
22.4(g)	Deleted.
22.4(h)	191.21(b), (d).
	191.21(c).
22.4(i)	191.21(e).
22.4(j)	191.23(a), (b).
22.4(k)	191.21(a)(1).
	191.21(a)(2).
22.4(l)	191.23(c).
22.4(m)	191.23(d).
22.4(n)	Deleted.
22.4(o)	191.25.
22.4(p)	191.24.
22.4(q)	Deleted.
22.4(r)	191.26.
	191.31.

PARALLEL REFERENCE TABLE—Continued

[This table shows the relationship of sections in Part 22 to revised Part 19]

Old section	New section
22.5(a)	191.32(a) (1)–(3).
22.5(b)	191.32(b).
22.5(c)	191.32(d).
22.5(d)	Deleted.
22.5(e)	191.32(c).
	191.33.
	191.34.
22.6(a)–(g)	Deleted.
22.6(g–1)	Deleted.
22.6(h) and (i)	Deleted.
22.7(a)	191.51(a)–(c).
	191.51(d) and (e).
22.7(b)	Deleted.
22.7(c)(1)	191.52(a)–(c).
22.7(c)(2)	191.52(d).
22.7(d)(1)	191.53(a), (e)(2).
22.7(d)(2)	191.53(b)–(d); (e)(1).
22.7(d)(3)	191.53(e)(3).
22.8(a)–(c)	191.54(a)–(c).
22.9(a)	191.55(a)–(b).
22.9(b)	Deleted.
22.10	Deleted.
22.11	191.56.
22.12	191.57.
22.13(a)	191.61, 191.62(a) (1) and (2) (4); 191.62(b).
22.13(b)	191.63, 191.67(b).
22.13(c) and (e)	191.62(a)(2).
22.13(d)	191.62(a)(3).
	191.62(c).
22.13(f)	191.62(d).
22.13(g)	191.64.
22.15	191.65.
22.16(a)	191.66(a).
	191.66(b).
22.16(b)	191.66(c).
22.16(c)	191.66(d).
22.16(d)	191.66(e).
	191.66(f).
22.17(a)	191.67(a).
22.17(b)	191.67(c).
22.17(c)	191.67(d).
22.17(d)	191.67(e)(2).
22.17(e)	191.67(e)(1).
22.18(a)	191.91.
22.18(b)	191.92.
22.18(c)	191.93(a)–(e).
22.18(d)	191.93(g) and (h).
22.18(e)	Deleted.
22.18(g)	191.93(k).
22.18(h)	191.93(f).
22.18(j)	191.93(j) and (j).
22.18(k)	191.94.
	191.101.
22.19(a)	191.102(a), 191.103.
22.19(b)	191.102(b).
	191.111.
	191.112.
	191.113.
22.20(a)–(d)	191.71(a)–(d).
22.20(e)	191.71(e).
22.20(f)	191.71(f).
22.20a	191.72.
22.21(a)–(b)	191.73(a)–(b).
22.22(a) and (b)	191.81(a) and (b).
22.23(a)	191.82(a), (f).
22.23(b)	191.82(c).
22.23(c)	191.82(g).
22.23(d)	191.82(e).
22.23(e)	191.83.
22.23(f)	191.82(d).
22.24	191.82(b) and (h).
22.25(a)–(c) and (e)	191.84(a)–(d).
22.25(d)	Deleted.
22.26(a)	191.85.
22.26(b)	191.86(a) and (b).
22.26(c)	191.86(d).
22.26(d)	191.86(c).
22.26a(a)	191.121.
	191.122.
22.26a(b)	191.123(a) and (b).
22.26a(a), (c)	191.124.
22.27(a) and (b)	191.131.
22.28(a)	191.132.
22.28(b)	191.133(a) and (b).

PARALLEL REFERENCE TABLE—Continued

[This table shows the relationship of sections in Part 22 to revised Part 19]

Old section	New section
22.28(c)	191.133(d)(2).
22.28(d)	191.133(c).
22.28(e)	191.133(d)(1).
22.29(a) and (b)	191.134(a) and (b).
22.29(c)	191.135.
22.29(d)	191.136(a)–(c).
22.29(e)	Deleted.
22.29(f)	191.136(e).
22.29(g)	191.136(d).
22.29(h)	191.137.
22.30(a) and (b)	191.138.
22.30(a)	191.139.
	191.141.
	191.142.
	191.143.
	191.144.
	191.145.
	191.146.
	191.147.
22.31–22.35	191.148.
	191.151–191.158.
22.36(a)	191.161.
22.36(b)	191.162.
22.37(a)	191.163(a).
22.37(a)	191.163(b)(1).
22.37(b), (c)	191.163(b)(2).
22.37(b)	191.163(b)(3).
22.37(d)	191.163(c) and (d).
22.37(e)	191.163(e).
22.38(a)	191.164(a)–(c).
22.38(b)	191.164(d).
22.39(a)	191.165(a)–(c).
22.39(b)	191.165(d).
22.40	191.166.
22.41	191.3.
22.42	191.11.
	191.12.
22.43	191.10(a)–(d).
	191.10(e).
22.44	191.7.
	191.8.
	191.9.
22.45	191.6.
22.46	191.5.
	191.41–191.45.

[FR Doc. 82-22974 Filed 8-25-82; 8:45 am]

BILLING CODE 4820-02-M

Bureau of Alcohol, Tobacco and Firearms

27 CFR Part 9

[Notice No. 420]

The Carmel Valley Viticultural Area

AGENCY: Bureau of Alcohol, Tobacco and Firearms, Treasury.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Bureau of Alcohol, Tobacco and Firearms (ATF) is considering the establishment of a viticultural area in California to be known as "Carmel Valley." This proposal is the result of a petition submitted by David Armanasco, General Manager of Durney Vineyard, located in Carmel, California. The establishment of viticultural areas and the subsequent use of viticultural area names as appellation of origin in wine labeling and advertising will help consumers better identify wines they purchase. The use of this viticultural area as an appellation of origin will also help winemakers distinguish their products from wines made in other areas.

DATE: Written comments must be received on or before September 24, 1982.

ADDRESS: Send written comments to: Chief, Regulations and Procedures Division, Bureau of Alcohol, Tobacco and Firearms, P.O. Box 385, Washington, DC 20044 (Attn: Notice No. 420).

Copies of the petition, the proposed regulations, the appropriate maps, and the written comments will be available for public inspection during normal business hours at: ATF Reading Room, Office of Public Affairs and Disclosure, Room 4405, Federal Building, 12th and Pennsylvania Avenue NW., Washington, DC.

FOR FURTHER INFORMATION CONTACT: John A. Linthicum, Research and Regulations Branch, Bureau of Alcohol, Tobacco and Firearms, 1200 Pennsylvania Avenue NW., Washington, DC 20226 (202–566–7602).

SUPPLEMENTARY INFORMATION:

Background

On August 23, 1978, ATF published Treasury Decision ATF–53 (43 FR 37672, 54624) revising regulations in 27 CFR Part 4. These regulations allow the establishment of definitive viticultural areas. The regulations also allow the name of an approved viticultural area to be used as an appellation of origin on wine labels and in wine advertisements.

On October 2, 1979, ATF published Treasury Decision ATF–60 (44 FR 56692) which added a new Part 9 to 27 CFR, providing for the listing of approved American viticultural areas, the names of which may be used as appellations of origin.

Section 4.25a(e)(1), Title 27, CFR, defines an American viticultural area as a delimited grape-growing region distinguishable by geographical features. Section 4.25a(e)(2) outlines the procedure for proposing an American viticultural area. Any interest person may petition ATF to establish a grape-growing region as a viticultural area. The petition should include—

(a) Evidence that the name of the proposed viticultural area is locally and/or nationally known as referring to the area specified in the petition;

(b) Historical or current evidence that the boundaries of the viticultural area are as specified in the petition;

(c) Evidence relating to the geographical features (climate, soil, elevation, physical features, etc.) which

distinguish the viticultural features of the proposed area from surrounding areas;

(d) A description of the specific boundaries of the viticultural area, based on the features which can be found on the United States Geological Survey (U.S.G.S.) maps of the largest applicable scale; and

(e) A copy of the appropriate U.S.G.S. map with the boundaries prominently marked.

Petition

ATF has received a petition proposing an area in Monterey County, California as a viticultural area to be known as "Carmel Valley." The area consists of approximately 19,200 acres.

There are 120 acres of grapevines growning in the proposed area, with other plantings of approximately 110 acres projected to begin within the next five years. There are two grape growners in the proposed area. One other landowner in the proposed area is planning to plant grapevines within the next five years. There is one winery in the proposed area owned by the petitioner.

The Carmel River was discovered in 1603 by Sebastian Vizcaino and the name "Carmel" has applied to the area since that time. The village of Carmel Valley is 91 years old. The proposed area is within the watershed of the Carmel River and within a larger area commonly known by the name Carmel Valley. Grapevines have been grown commercially by the pertitioner in Carmel Valley since 1968. The petition contains evidence that grapevines were successfully grown in Carmel Valley in the nineteenth century.

The proposed area runs from the village of Carmel Valley southeasterly along the Carmel River and Cachagua Creek for a distance of approximately ten miles. The northeastern boundary is Tularcitos Ridge, which readily distinguishes the proposed area from areas northeast of it by typography and the ridge's effect on the climate of the proposed area. Southwest of the proposed area is the Los Padres National Forest where agricultural land use is restricted by the U.S. Department of Agriculture. The smaller northwestern and southeastern boundaries are less well defined geographically.

The petitioner claims that the proposed viticultural area is distinguished from the sourrounding area by climate and soil types. The petitioner submitted heat summation data utilizing the *Amerine-Winkler* method. This data shows that Carmel Valley has different cumulative heat summation during the grape growing season than nearby areas, as follows: Carmel Valley 2317 degree-days (Region I), Salinas Valley 2148 degree-days (Region I), King City 3085 degree-days (Region III). The petitioner claims that, although Carmel Valley and nearby Salinas Valley are both Region I heat summation areas, the higher elevation in Carmel Valley curbs the marine fog incursion producing more sunny days in Carmel valley than in Salinas Valley. This phenomenon distinguishes the proposed area from the surrounding area, but not in quantitative terms.

The petitioner claims that Carmel Valley's normal annual precipitation ranges from 16.5 to 22.5 inches which readily distinguishes it from Monterey County's overall normal annual precipitation of 10 inches.

The petitioner claims that Carmel Valley has soils which are significantly different from the immediate surrounding area, and which are particularly well-suited to viticulture, as follows:

San Benito (SdF) clay loam, 30—50% slopes
San Benito (SdG) clay loam, 50—75% slopes
Junipero (JaF) Loamy sand, 30—50% slopes
Junipero (JbG) sandy loam, 30—75% slopes
Junipero-Sur (Jc) complex, 50—85% slopes
Santa Lucia (SfF) shaly clay loam, 30—50% slopes
Cieneba (CcG) fine gravelly sandy loam, 30—70% slopes
San Andreas (SgC) fine sandy loam, 30—75% slopes
Sheridan (SoG) course sandy loam, 30—75% slopes
Santa Lucia-Reliz Association (Sg) loamy and shallow loamy complex, 30—75% slopes

The boundary of the proposed viticultural area is described in the proposed § 9.58.

Regulatory Flexibility Act

The provisions of the Regulatory Flexibility Act relating to an initial and final regulatory flexibility analysis (5 U.S.C. 603, 604) are not applicable to this proposal because the notice of proposed rulemaking, if promulgated as a final rule, will not have a significant economic impact on a substantial number of small entities. The proposal is not expected to have significant secondary or incidental effects on a substantial number of small entities, or impose, or otherwise cause, a significant increase in the reporting, recordkeeping, or other compliance burdens on a substantial number of small entities.

ATF is not able to assign a realistic economic value to using "Carmel Valley" as an appellation of origin. An appellation of origin is primarily an advertising intangible. Moreover, changes in the values of grapes or wines may be caused by a myriad of factors unrelated to this proposal.

Any value derived from using the "Carmel Valley" appellation of origin would apply equally to all grape growers in the proposed area.

Therefore, ATF believes that this notice of propose rulemaking, if promulgated as a final rule, will not have a significant economic impact on a substantial number of small entities.

Compliance With E.O. 12291

In compliance with Executive Order 12291 the Bureau has determined that this proposal is not a major rule since it will not result in:

(a) An annual effect on the economy of $100 million or more;

(b) A major increase in costs or prices for consumers, individual industries, Federal, States, or local government agencies, or geographic regions; or

(c) Significant adverse effects on competition, employment, investment, productivity, or on the ability of United State-based enterprises to compete with foreign-based enterprises in domestic or export markets.

Public Participation—Written Comments

AFT requests comments concerning this proposed viticultural area from all interested persons. Furthermore, while this document proposes possible boundaries for the Carmel Valley viticultural area, comments concerning other possible boundaries for this viticultural area will be given consideration.

The proposed area of 19,200 acres contains only 120 acres of grapevines which are at opposite ends of the area. ATF requests comments on whether the petitioned area could be reduced in size.

Comments received before the closing date will be carefully considered. Comments received after the closing date and too late for consideration will be treated as possible suggestions for future ATF action.

ATF will not recognize any material or comments as confidential. Comments may be disclosed to the public. Any material which the commenter considers to be confidential or inappropriate for disclosure to the public should not be included in the comment. The name of the person submitting a comment is not exempt from disclosure.

Any person who desires an opportunity to comment orally at a

public hearing on these proposed regulations should submit his or her request, in writing, to the Director within the 30-day comment period. The request should include reasons why the commenter feels that a public hearing is necessary. The Director, however, reserves the right to determine, in light of all circumstances, whether a public hearing will be held.

List of Subjects in 27 CFR Part 9

Administrative practice and procedure, Consumer protection, Viticultural areas, and Wine.

Drafting Information

The principal author of this document is John A. Linthicum, Research and Regulations Branch, Bureau of Alcohol, Tobacco and Firearms. However, other personnel of the bureau and of the Treasury Department have participated in the preparation of this document, both in matters of substance and style.

Authority

Accordingly, under the authority in 27 U.S.C. 205, the Director proposes the amendment of 27 CFR Part 9 as follows:

PART 9—AMERICAN VITICULTURAL AREAS

Paragraph 1. The table of contents in 27 CFR Part 9, Subpart C, is amended to add the heading of § 9.58. As amended, the table of contents reads as follows:

Subpart C—Approved American Viticultural Areas

Sec.

* * * * *

9.58 Carmel Valley.

Paragraph 2. Subpart C is amended by adding § 9.58. As amended, Subpart C reads as follows:

Subpart C—Approved American Viticultural Areas

§ 9.58 Carmel Valley.

(a) *Name.* The name of the viticultural area described in this section is "Carmel Valley."

(b) *Approved maps.* The approved maps for determining the boundary of the Carmel Valley viticultural area are five U.S.G.S. topographic maps in the 7.5 minute series, as follows:

(1) Mt. Carmel, Calif., dated 1956;

(2) Carmel Valley, Calif., dated 1956;

(3) Ventana Cones, Calif., dated 1956;

(4) Chews Ridge, Calif., dated 1956; and

(5) Rana Creek, Calif., dated 1956.

(c) *Boundary.* The Carmel Valley viticultural area is located in Monterey County, California. The boundary is as follows:

(1) The beginning point is the northeast corner of Section 5 in Township 17 South, Range 2 East.

(2) The boundary follows the Los Laurelles Land Grant boundary south, then easterly, to the north-south section line dividing Section 9 from Section 10 in Township 17 South, Range 2 East.

(3) The boundary follows this section line south to the southwest corner of Section 22 in Township 17 South, Range 2 East.

(4) From this point, the boundary follows section lines in Township 17 South, Range 2 East—

(i) To the southeast corner of section 22,

(ii) To the southwest corner of section 26,

(iii) To the southeast corner of section 26,

(iv) To the southwest corner of section 36,

(5) From this point, the boundary follows the Los Padres National Forest boundary east, then south, then east to the southwest corner of Section 9 in Township 18 South, Range 3 East.

(6) The boundary follows the section line east to the southeast corner of the same section, where the section line rejoins the Los Padres National Forest boundary.

(7) The boundary follows the Los Padres National Forest boundary to the north-south section line dividing Section 11 from Section 12 in Township 18 South, Range 3 East.

(8) The boundary follows this section line north to the township line dividing Township 17 South from Township 18 South.

(9) The boundary follows this township line west to the north-south section line dividing Section 34 from Section 35 in Township 17 South, Range 3 East.

(10) The boundary follows this section line north to the Los Tularcitos Land Grant boundary.

(11) The boundary follows the Los Tularcitos Land Grant boundary northwesterly to the Carmel River.

(12) The boundary follows the Carmel River northerly to the Los Tularcitos Land Grant boundary.

(13) The boundary follows the Los Tularcitos Land Grant boundary northeasterly to the unsurveyed township line (approximate location denoted by a line of red dashes) dividing Township 16 South from Township 17 South.

(14) The boundary follows the unsurveyed township line west to the beginning point.

Signed: July 16, 1982.

Stephen E. Higgins,

Acting Director.

Approved: August 5, 1982.

J. M. Walker, Jr.,

Assistant Secretary (Enforcement and Operations).

[FR Doc 82-23343 Filed 8-25-82; 8:45 am]

BILLING CODE 4810-31-M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA Docket No. AW036PA; A-3-FRL 2184-2]

Commonwealth of Pennsylvania; Proposed Revision of the Pennsylvania State Implementation Plan

AGENCY: Environmental Protection Agency.

ACTION: Proposed rule.

SUMMARY: The Commonwealth of Pennsylvania has submitted a proposed revision to its State Implementation Plan (SIP) to incorporate an alternative emission reduction plan or "bubble." Pennsylvania has requested that the plan be approved by EPA for the Homestead and Edgar Thomson plants of the United States Steel Corporation (USSC) in Allegheny County, Pennsylvania. This plan consists of bubble regulations which apply to sulfur dioxide emissions from nine categories of miscellaneous Homestead sources, the Homestead Open Hearth Furnaces, the Carrie Furnaces boilers (Homestead), and the Edgar Thomson soaking pits and boilers. The proposed plan allows U.S Steel to increase on a temporary basis sulfur dioxide emissions from Carrie boilers Nos. 3 and 4 when the increases are offset by sulfur dioxide reductions at the remaining listed sources due to shutdown or use of natural gas. In support of this proposed bubble, an air quality analysis was conducted. EPA has reviewed this analysis and has concluded that no significant air quality impact will occur if this bubble is implemented.

DATE: Comments must be submitted on or before September 27, 1982.

ADDRESSES: Copies of the proposed SIP revision and the accompanying support documents are available for inspection during normal business hours at the following locations:

U.S Environmental Protection Agency, Air Programs & Energy Branch, 6th & Walnut Streets, Curtis Building,

Philadelphia, Pennsylvania 19106, ATTN: David L. Arnold
Pennsylvania Department of Environmental Resources, Bureau of Air Quality Control, 200 North 3rd Street, Harrisburg, PA 17120, ATTN: Mr. Gary L. Triplett
Allegheny County Health Department, Bureau of Air Pollution Control, 301 Thirty-ninth Street, Pittsburgh, Pennsylvania 15201, ATTN: Mr. Roger C. Westman

All comments on the proposed revision submitted on or before September 27, 1982 will be considered and should be sent to: Mr. Glenn Hanson, Chief, Pennsylvania Section (3AW11), Air and Waste Management Division, U.S. Environmental Protection Agency, Region III, Curtis Building, 6th & Walnut Streets, Philadelphia, Pennsylvania 19106

FOR FURTHER INFORMATION CONTACT: Mr. David L. Arnold at the above address, or at (215) 597-7936.

SUPPLEMENTARY INFORMATION: The proposed changes to the Pennsylvania State Implementation Plan (SIP) were submitted by the Allegheny County Health Department (ACHD) and the Pennsylvania Department of Environmental Resources (PA DER). The changes will allow the implementation of an alternative emission reduction plan (bubble) in accordance with EPA's Emissions Trading Policy of April 7, 1982 (47 FR 15076). EPA, DER, and the ACHD are processing this proposal concurrently. All comments received by the ACHD at the public hearing on August 17, 1982 in Pittsburgh, Pennsylvania, and any written comments received by EPA, will be considered by EPA in making a final determination on the approvability of the plan.

The bubble being proposed involves sulfur dioxide (SO_2) emissions sources at the Homestead and Edgar Thomson plants of the United States Steel Corporation (USSC). The primary purpose of this plan is to provide some cost savings during the current economic slowdown. The plan allows emissions from two Carrie boilers to increase when the increase is offset by a reduction in emissions from the use of natural gas and reduced operations. This alternative emission reduction plan is temporary and will apply only during the periods of time for which USSC requests and receives approval from the Director of the Allegheny County Health Department. The bubble plan would allow emissions of 2.5 pounds of SO_2 per million Btu of heat input, with a maximum allowable rate of 735 pounds per hour, from Carrie boilers Nos. 3 and 4 at the Homestead plant. This increase would be offset by SO_2 reductions from nine categories of miscellaneous Homestead sources, the Homestead Open Hearth Furnaces, and the soaking pits and boilers at the Edgar Thomson plant. The current Pennsylvania SIP (Article XX, Section 403, of the ACHD Rules and Regulations) requires control of the two Carrie boilers to a level of 0.8 pounds SO_2 per million Btu and the remaining sources in the bubble to a level of 500 ppm (vol) of SO_2. The proposed plan would require the Carrie boilers to meet an emission limit of 2.5 pounds per million Btu and 735 pounds per hour; the Open Hearth Furnaces to meet an emission limit of 120 pounds per hour but never to exceed 720 pounds in any 24 hour period; the remaining sources to meet an emission limit of 0 pounds per hour. Table 1 below lists the sources involved in the plan and summarizes the annual SO_2 emissions for each under the bubble plan and the average actual emissions for 1979 and 1980 calendar years.

TABLE 1.—SULFUR DIOXIDE EMISSIONS FROM USSC FACILITIES

[In tons per year]

	1979-1980 average actual	Bubble plan
Homestead:		
Open hearth	2,078	132
Soaking pits	634	0
36-inch mill	63	0
Blacksmith	18	0
100-inch reheat	425	0
Preheat hoods	135	0
160-inch mill	201	0
No. 2 forge	262	0
Harvey forge	98	0
48-inch mill	18	0
Package boilers	319	0
Boilers No. 3 and 4	2,826	3,210
	7,077	3,342
Edgar Thomson:		
Soaking pits	9	0
Boilers	528	0
	537	0
Grand total	7,614	3,342

As illustrated by Table 1, the proposed bubble plan will result in an overall net decrease in SO_2 emissions of 4272 tons per year. In addition, the company estimates its savings in operating costs to be approximately $10,000 per day.

With the proposed bubble plan, ACHD submitted an air quality modeling analysis conducted by USSC. In the subsequent review, EPA found that the modeling analysis was inadequate. Therefore, in accordance with EPA's modeling guidelines, EPA conducted a Level II air quality analysis to support the proposed plan. A Level II analysis is required when the proposed emissions trade will result in no net increase in baseline emissions and the relevant sources are *not* in the same immediate vicinity. Air dispersion modeling analyses were conducted using the proposed bubble emission rates and the base case emission rates. Results of the modeling predictions indicate that no significant increase in air quality impact will occur at the receptor of maximum predicted impact. (See 47 FR 15082; which pertains to ambient equivalence demonstrations for emissions trades).

The proposed regulation to implement and enforce this plan will become Section 903 of Article XX of the Allegheny County Health Department Rules and Regulations. Subsection (A) of the Section identifies the sources affected by this plan. Subsection (B) relieves USSC from compliance with Section 403 when in compliance with this Section. Subsection (C) prohibits sulfur dioxide emissions from each identified source in excess of specified emission rates. Subsection (D), (E) and (F) establishes periods of applicability, procedures for record keeping, and reporting requirements. Subsection (G) terminates the use of this plan by USSC at any time after December 31, 1985. Subsection (H) and (I) provide for enforcement remedies for failure to comply with this and any other Section of Article XX.

EPA is today proposing to approve this bubble plan as a SIP revision since it has met the requirements of the December 11, 1979 Bubble Policy (44 FR 71780).

The public is invited to submit, to the address stated above, comments on whether the proposed changes should be approved as a revision to the Pennsylvania SIP. The Administrator's decision to approve or disapprove the proposed revision will be based on the comments received and on a determination of whether the amendments meet the requirements of Section 110(a)(2) of the Clean Air Act and 40 CFR Part 51.

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

Under 5 U.S.C. Section 605(b), the Administrator has certified that SIP approvals do not have a significant economic impact on a substantial number of small entities. (See 46 FR 8709).

List of Subjects in 40 CFR Part 52

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

(42 U.S.C. 7401-7642)

Dated: July 27, 1982.

Stanley Laskowski,

Regional Administrator.

[Fr Doc. 82-23386 Filed 8-25-82; 8:45 am]

BILLING CODE 6560-50-M

40 CFR Part 171

[OPP 40010; FRL 2032-4]

Certification of Pesticide Applicators; Proposed Recordkeeping and Reporting Requirements

Correction

In FR Doc. 82-20227 appearing on page 32551 in the issue for Wednesday, July 28, 1982, the document regarding the subject set forth above was incorrectly labeled "42 CFR Part 171". The correct cite is "40 CFR Part 171".

BILLING CODE 1505-01-M

DEPARTMENT OF TRANSPORTATION

Research and Special Programs Administration

49 CFR Parts 173 and 178

[Docket No. HM-185; Notice No. 82-7]

Standards for Polyethylene Containers

AGENCY: Materials Transportation Bureau (MTB), Research and Special Programs Administration, DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: MTB is proposing a revision of standards for polyethylene containers used as packagings for hazardous materials. Specific proposals include the following:

1. A revision of Specification 34 for polyethylene drums in order to—

a. Authorize a maximum container capacity of 55 gallons instead of the existing 30 gallon limit;

b. Expand authorizations for use (in Part 173) to permit use of Specification 34 for certain materials which have been transported in Specification 34—type polyethylene drums under exemption.

c. Relax periodic design qualification test requirements; and

d. Increase emphasis on performance requirements as opposed to detailed specification requirements.

2. Deletion of Part 178 Appendix B and a revision of specifications for polyehtylene containers and liners (i.e., Specifications 2E, 2S, 2SL, 2T, 2TL, 2U, 34 and 35) in order to—

a. Eliminate detailed requirements pertaining to material characteristic specifications (e.g., melt index, density) for polyethylene resins used in manufacturing polyethylene containers; and

b. Clarify that each container manufactured in accordance with a specification must be capable of withstanding without failure the performance tests prescribed in that specification.

3. Permeation limits for hazardous materials packaged in polyethylene and test criteria for use in determining the compatibility of hazardous materials with polyethylene and for determining rates of permeation.

4. Restricted reuse provisions for polyethylene containers previously used for poisonous materials.

5. Deletion of obsolete provisions in § 173.23 (a) and (b).

DATE: Comments must be received by October 25, 1982. Additional time will be provided if requested.

ADDRESS: Comments should identify the docket and be addressed to the Dockets Branch, Materials Transportation Bureau, U.S. Department of Transportation, Washington, D.C. 20590. Five copies are requested. The Dockets Branch is located in Room 8426 of the Nassif Building, 400 Seventh Street SW., Washington, D.C. Public dockets may be reviewed between the hours 8:30 a.m. and 5:00 p.m., Monday through Friday.

FOR FURTHER INFORMATION CONTACT: Mario E. Gigliotti, Technical Division, (202-755-4906), or Edward T. Mazzullo, Standards Division (202-426-2075), Office of Hazardous Materials Regulation, Materials Transportation Bureau, Department of Transportation, 400 Seventh Street SW., Washington, D.C. 20590.

SUPPLEMENTARY INFORMATION: On June 21, 1979, MTB published a notice (44 FR 36211) in the **Federal Register** which announced a public meeting and solicited comments pertaining to the feasibility of establishing standards for polyethylene containers used as packagings for hazardous materials. A public meeting was held on July 24, 1979, and in response to substantial public interest a subsequent meeting was held on November 13, 1979 (announced in 44 FR 58767). Both meetings took place in Washington, D.C. These meetings were non-evidentiary and as such no transcripts of the proceedings were made. However, prepared statements of speakers and other written comments submitted in response to the notices are available for review in the docket file. Items discussed at the meetings included the following:

1. A presentation of the National Bureau of Standards' current views relative to stress cracking, permeation and compatibility of polyethylene packagings used for hazardous materials. Particular attention was focused on the development of methods by which these phenomena can be predicted without direct testing on a case by case basis or, alternatively, appropriate test criteria for determining compatibility of materials with polyethylene.

2. Reuse provisions for polyethylene packagings, particularly with regard to shipment of Poison B liquids and solids in polyethylene containers.

3. Use of polyethylene packagings for flammable liquids, with discussion of the tendency of polyethylene to pick up a static charge and associated risks.

4. Shipping experience of shippers using polyethylene containers for hazardous materials.

This notice of proposed rulemaking is based upon oral and written comments from the public in response to the two aforementioned notices, MTB's own rulemaking initiatives and four petitions for rulemaking submitted by representatives of the plastics industry. Subjects addressed in this notice are discussed in the following paragraphs.

I. Background

It is proposed to revise Specification 34 for polyethylene drums. Maximum authorized capacity, as specified in § 178.19-3, would be increased from 30 gallons to 55 gallons. A minimum container wall thickness of 0.125 inches would be required, with 0.090 inches thickness authorized in corners and undercuts. In § 178.19-7, a compression weight load of 2400 pounds would be prescribed for conduct of the static compression test. These changes are based on the terms of existing exemptions for 55 gallon polyethylene drums and on the merits of a petition for rulemaking submitted by the Society of the Plastics Industry (SPI). Authorizations for use of 30 gallon specification polyethylene drums are currently in the Hazardous Materials Regulations (HMR) in §§ 173.245, 173.263, 173.264, 173.265, 173.266, 173.272, 173.276, 173.277 and 173.288. These sections would be revised to permit use of a 55 gallon drum. In addition, based on successful shipping experience under the terms of exemptions, authorizations for use of Specification 34 would be added to §§ 173.125, 173.247, 173.256, 173.257, 173.269, 173.271, 173.287, 173.348, 173.349, 173.357, 173.361 and 173.362a.

In § 178.19-7, it is proposed to increase the time interval between periodic retests from four months to one year, in order to reduce the burden imposed by frequent retests. Conduct of drop tests (both at ambient temperature

and at 0° Fahrenheit) would be modified to require drops (of four feet in height) onto both the side and bottom of drums, in addition to the current requirement for dropping drums diagonally onto the top chime, in order to be compatible to those requirements currently contained in polyethylene drum exemptions. Specification 34 would be editorially revised in its entirety for clarity. One change would substitute the words "polyethylene drum" where the specification currently references "polyethylene container" or "polyethylene container for use without overpack."

Another proposal would apply not only to Specification 34, but also to all other specification polyethylene containers. It involves elimination of specification requirements relative to the physical composition and characteristics of polyethylene resins used in the molding of containers and increased reliance on performance requirements as opposed to detailed design and construction requirements for achieving a high level of container integrity. In Appendix B to Part 178 and in the various specifications for polyethylene containers in Part 178, tables which specify properties (i.e., melt index, density, tensile strength, etc.) for polyethylene resins would be deleted as would the requirement in § 178.16–4 pertaining to retention of data related to melt index and density. This change would provide manufacturers flexibility in making innovative changes to their manufacturing processes without the need for their applying for relief from specified properties and is responsive to two petitions for rulemaking and MTB's own rulemaking initiatives.

It is essential that a high level of packaging integrity for polyethylene containers be maintained in the absence of specified resin properties. The performance requirements found in the individual specifications are indicative of the ability of a container to withstand the rigors of the transportation environment without release of its contents, barring abnormal abuse. Performance requirements would be emphasized by editorially revising each polyethylene container specification in Part 178 in order to clarify that each container manufactured under provisions of a specification must be capable of withstanding without failure the performance tests prescribed in that specification. Also, it would be required that polyethylene resins used to mold containers be "not previously used" so as to prohibit the use of polyethylene resins made from reprocessed containers which were previously used for the shipment of any material. This prohibition is not intended to prohibit reprocessing of either excess from the molding process or unused containers.

MTB has permitted the use on certain polyethylene drums under its exemptions program for a number of years. Authorizations for packaging specific hazardous materials in these drums have been limited to materials which have been tested for permeation and compatibility with the polyethylene packaging. This approach has been necessary because of difficulties in predicting permeability and other effects on polyethylene when exposed to different ladings. Ordinarily, after sufficient experience with a new packaging has been accumulated through the exemptions program, a packaging is considered for inclusion in the HMR as an authorized container. It is proposed to amend Specification 34 to accommodate polyethylene drums of 55 gallon capacity which are presently authorized by exemptions. For the purpose of revising the specification, MTB believes it is necessary to rely on a continuation of the approach which is used in the exemptions program, i.e., the polyethylene packaging should be examined in connection with each specific material proposed to be transported therein. Further, it is proposed that this approach be made applicable to the packaging of hazardous materials in any polyethylene packaging, in order to alleviate an existing deficiency in the HMR. Therefore, new test criteria are proposed for use in determining chemical compatibility and rates of permeation. A generalized requirement in § 173.24(c)(9) stipulates that a polyethylene packaging must be compatible with its lading. Section 173.24 would be amended to prescribe maximum permissible rates of permeation. Proposed rates are 0.5% for extremely toxic poisonous materials, defined as those materials having an oral toxicity of less than 20 mg/kg (LD_{50}, oral rat) or dermal toxicity of less than 80 mg/kg (LD_{50}, dermal rabbit) and a maximum of 2.0% for all other hazardous materials.

A method to be used in determining chemical compatibility and rates of permeation would be added as Appendix B of Part 173. The test method prescribes testing of the specific hazardous material in the polyethylene packaging in which shipment is intended. The package, as prepared for shipment, is stored at elevated temperatures of 130° F. for 90 days or 140° F. for 14 days (at the tester's option) and examined for evidence of chemical incompatibility and rate of permeation. The proposed method is based on requirements in exemptions for polyethylene containers. It should be noted that the proposal establishes a standard and does not impose a specific requirement to test. It would not be necessary to test each combination of hazardous material and polyethylene packaging. Many conbinations have already been tested under the exemptions program or have successful shipping histories. Untried combinations of materials and packagings would require testing only if there were no basis for making a reasonable determination as to compatibility and permeation rates in the absence of such testing.

Under the current reuse provisions of § 173.28, polyethylene containers which have been used for shipment of Poison B liquids and solids may be emptied and reused for the shipment of other materials, both hazardous and nonhazardous. MTB has been petitioned by SPI to limit the reuse of such containers to Poison B liquids and solids, i.e., such containers would remain in "dedicated service" as packagings for Poison B materials. The petition requests that a skull and crossbones symbol and the warning "Contains Poison, Limit Reuse for Poison Only" be required as a permanent marking on polyethylene containers used as outside packagings, or as a stencilled marking on outside packagings other than polyethylene which hold inside polyethylene containers, in those instances where Poison B materials are to be packaged. The petition addresses the concern that the poison hazard may remain in empty polyethylene containers, even after cleaning. MTB agrees with the need to address this concern, but is of the opinion that imposition of the economic burden which would be associated with permanent embossment of warnings on polyethylene containers is not justifiable. As an alternative, MTB proposes to amend § 173.28(d) to require that polyethylene containers once used as packagings for Poison B materials be limited to Poison B materials for reuse. If poison labels appear on such containers, the labels would be maintained in a legible condition until the containers are disposed of or destroyed. Permanent embossment of the skull and crossbones symbol or warning statements could be performed on a voluntary basis. It is believed that the MTB's proposal addresses the safety issue without imposing substantial costs on shippers or container manufacturers.

It is proposed to eliminate paragraphs (a) and (b) of § 173.23 from Part 173. Paragraph (a) permits continued use of Specification 5B, 6J and 37A metal drums manufactured prior to March 18, 1964, having inside Specification 2S, 2SL, 2T or 2TL polyethylene liners. Paragraph (b) permits use of certain polyethylene containers for use without overpack manufactured prior to September 5, 1966, and marked ICC–34. It is believed that these containers are obsolete and, therefore, the provisions of § 173.23(a) and (b) are no longer needed. The remaining paragraph (c) would be redesignated paragraph (a).

MTB is aware that there are differences between changes proposed in this rulemaking for specification packagings and changes suggested in Docket HM–181; Advance Notice No. 82–3 (47 FR 16268) which envisions the deletion of specification packagings and adoption of international performance-oriented packaging standards. Commenters are reminded that this notice of proposed rulemaking is intended to authorize use of certain polyethylene packagings in a relatively short period of time whereas Docket HM–181 is an advance notice in which changes are set forth for demonstration purposes and, even if promulgated, would not become final in the near future.

II. Request for Comments

MTB Invites comments on all aspects of the proposed rule and the issues discussed in this preamble. Of Particular interest are comments addressed to the following issues.

1. MTB is proposing to add authorizations for use of Specification 34 based on shipping experience acquired under the exemptions program for the following materials: alcohol, n.o.s.; thionyl chloride; compound, cleaning, liquid (corrosive material); electrolyte (acid) and alkaline battery fluid; perchloric acid; phosphorous oxychloride; sulfuric acid of greater than 95 percent to not over 100.5 percent concentration; chromic acid solution; arsenic acid; carbolic acid, liquid; chloropicrin and chloropicrin mixtures; aldrin mixtures; and, dinitrophenol solutions. MTB requests comments concerning other materials or classes of material which may be suitable for shipment in Specification 34 based on established shipping experience, evidence of chemical compatibility, or their similarity to the aforementioned materials or to those materials for which Specification 34 is currently authorized.

2. MTB estimates that the recordkeeping requirement of § 178.19–7(d) will impose an annual burden of 4 hours on each of approximately 25 manufacturers, for a total annual burden of 100 hours. Comments are requested as to the validity of this estimate.

3. It is proposed to delete specifications for polyethylene resins used to mold containers. MTB believes that packaging integrity would be maintained by reliance on performance requirements and proposed requirements pertaining to permeation and chemical compatibility. Comments are requested concerning the need, if any, from the standpoint of safety for specifying the characteristics of polyethylene resins.

4. MTB believes that requirements proposed in this notice for determining chemical compatibility and rates of permeation (proposed § 173.24(d) and Appendix B to Part 173) for hazardous materials packaged in polyethylene containers, will correct an existing deficiency in the HMR and are necessary in order to achieve a high level of safety with regard to the transportation of hazardous materials in polyethylene packagings. If promulgated, the new requirements would have an impact on both shippers of hazardous materials and polyethylene container manufacturers, some of whom are small businesses. It is believed the regulation would not have a significant economic impact on a substantial number of small businesses under the criteria of the Regulatory Flexibility Act. MTB requests comments concerning estimates of degree of impact on small businesses, in terms of economic cost and numbers and types of businesses affected, proposals for practicable alternatives to supplement or replace the test method proposed as new Appendix B to Part 173 and estimates regarding the economic costs (or savings) attributable to such alternatives.

5. It is proposed (in proposed § 173.28(d)) to require "dedicated service" for polyethylene containers used to package Poison B materials. The proposal would impose a general requirement that polyethylene containers, once used to package Poison B materials, be reused only for poison B materials, be used only for Poison B materials and a specific requirement that Poison B labels remain on such containers, when so required. The proposal is based on the belief that residue remaining in such containers after initial use poses a hazard both to persons handling, cleaning or refilling the used, empty containers and, in subsequent use, to persons who come into contact with supposedly nonpoisonous materials which become contaminated with poisonous residues. MTB requests comments on practicable alternatives to its proposal, to include estimates of associated costs and benefits.

6. It is proposed to delete paragraphs (a) and (b) of § 173.23 because it is believed that the containers authorized therein are obsolete. The metal drums authorized in §173.23(a) are all at least 18 years old and the polyethylene drums authorized in § 173.23(b) are all at least 15 years old. If any shippers are still using these containers, comments are requested from them concerning numbers and types of containers used, shipping experience and period of time necessary ot deplete any existing stocks.

7. Exemptions potentially affected by this rulemaking are as follows: DOT–E 6637, E 6700, E 6726, E 6800, E 6883, E 6986, E 7035, E 7072, E 7082, E 7220, E 7502, E 7788, E 7888, E 7933, E 7940, E 8051. Comments and suggestions for eliminating any, or all, of these exemptions, or portions thereof, are requested.

III. Section-by-section summary of proposed changes.

Section 173.23. Paragraphs (a) and (b) would be deleted to eliminate obsolete provisions, paragraph (c) would be redesignated paragraph (a).

Section 173.24. Paragraph (c)(9) would be deleted, paragraph (d) would be redesignated paragraph (e) and a new paragraph (d) would be added specifying rates of permeation and chemical compatibility requirements.

Section 173.28. The section title would be revised for clarity and paragraph (d) would be revised to limit reuse of polyethylene containers used to package Poison B materials.

Section 173.125. Authorization for use of Specification 34 would be added as paragraph (a)(7).

Section 173.245. Paragraph (a)(26) would be revised to remove the 30 gallon limitation for Specification 34.

Section 173.247. Authorization for use of Specification 34, for thionly chloride only, would be added as paragraph (a)(20).

Section 173.256. Authorization for use of Specification 34 would be added as paragraph (a)(8).

Section 173.257. Authorization for use of Specification 34 would be added as paragraph (a)(13).

Section 173.263. Paragraph (a)(28) would be revised to remove the 30 gallon limit for Specification 34.

Section 173.264. Paragraph (a)(18) would be revised to remove the 30 gallon limit for Specification 34.

Section 173.265. Paragraph (d)(6) would be revised to remove the 30 gallon limit for Specification 34.

Section 173.266. Paragraph (b)(8) would be revised to remove the 30 gallon limit for Specification 34.

Section 173.269. Authorization for use of Specification 34 would be added as paragraph (a)(7).

Section 173.271. Authorization for use of Specification 34 would be added as paragraph (s)(20).

Section 173.272. Paragraph (g) would be revised to authorize use of Specification 34 for sulfuric acid in concentrations of 95 percent to 100.5 percent and paragraph (i)(9) would be revised to remove the 30 gallon limit for Specification 34.

Section 173.276. Paragraph (a)(10) would be revised to remove the 30 gallon limit for Specification 34.

Section 173.277. Paragraph (a)(6) would be revised to remove the 30 gallon limit for Specification 34.

Section 173.287. Authorization for use of Specification 34 would be added as paragraph (b)(9).

Section 173.288. Paragraph (e) would be revised to remove the 30 gallon limit for Specification 34.

Section 173.348. Authorization for use of Specification 34 would be added as paragraph (a)(5).

Section 173.349. Authorization for use of Specification 34 would be added as paragraph (a)(4).

Section 173.357. Authorization for use of Specification 34 would be added as paragraph (a)(4).

Section 173.361. Authorization for use of Specification 34 would be added as paragraph (a)(4).

Section 173.362a. Authorization for use of Specification 34 would be added as paragraph (a)(3).

Appendix B to Part 173. A test method for determining chemical compatibility and rates of permeation for hazardous materials in polyethylene containers would be added as Appendix B.

Section 178.16. In § 178.16–1, paragraph (c)(1) would be added to emphasize performance requirements and, in § 178.16–4, paragraph (a) would be revised to delete specifications for polyethylene resins and requirements for retaining data concerning melt index and density.

Section 178.19. The section would be revised in its entirety in order to clarify its language, increase authorized capacity to 55 gallons, delete specifications for polyethylene resins, revise test procedures and emphasize performance requirements.

Section 178.21. Paragraph (b) of § 178.21–1 would be added to emphasize performance requirements; paragraph (a) of § 178.21–3 would be revised to add a requirement that polyethylene resin may not have been used previously and Note 1 which follows this paragraph would be deleted to remove specifications for polyethylene resins.

Section 178.24. The specification title and the title and text of § 178.24–1 would be revised for clarity with a performance requirement added as § 178.24–1(c); a requirement that polyethylene resin may not have been used previously would be added and specifications for polyethylene resins would be deleted in § 178.24–2(a).

Section 178.24a. In § 178.24a–3, paragraph (c) would be deleted and paragraph (a) would be revised to add a requirement that polyethylene resin not be previously used and to delete specifications for polyethylene resins.

Section 178.27. In § 178.27–1, Note 1 would be deleted to remove specifications for polyethylene resins; paragraph (a) would be revised to add a requirement that polyethylene resin may not have been used previously and paragraph (b) would be added to emphasize performance requirements.

Section 178.35. The section title and § 178.35–1 would be revised for clarity; emphasis on performance requirements would be added as § 178.35–1(c); and in § 178.35–2, specifications for polyethylene resins would be deleted and a requirement that polyethylene resin may not have been used previously would be added.

Section 178.35a. The section title and § 178.35a–1 would be revised to delete specifications for polyethylene resins, require that resins may not have been used previously and emphasize performance requirements.

Appendix B to Part 178. Appendix B, entitled "Specifications for Plastics," would be deleted in its entirety.

List of Subjects

49 CFR Part 173

Hazardous materials transportation, Packaging and containers.

49 CFR Part 178

Hazardous materials transportation, Shipping container specifications.

In consideration of the foreging, 49 CFR Parts 173 and 178 would be amended as follows:

PART 173—SHIPPERS—GENERAL REQUIREMENTS FOR SHIPMENTS AND PACKAGINGS

§ 173.23 [Amended]

1. In § 173.23, paragraphs (a) and (b) would be removed and paragraph (c) would be redesignated paragraph (a).

2. In § 173.24, paragraph (c)(9) would be deleted, paragraph (d) would be redesignated paragraph (e), and a new paragraph (d) would be added as follows:

§ 173.24 Standard requirements for all packagings.

* * * * *

(d) Polyethylene used in packagings must be of a type compatible with the lading and may not be permeable to an extent that a hazardous condition could be caused during transportation or handling. The maximum rate of permeation may not exceed 2.0%, except for a hazardous material that has an oral toxicity of less than 20 mg/kg (LD50, rat) or dermal toxicity of less than 80 mg/kg (LD50, rabbit) in which case the maximum permeation rate may not exceed 0.5%. The procedure specified in Appendix B of this Part (entitled "Methods of Testing Chemical Compatibility and Rate of Permeation in Polyethylene Containers") shall be followed to determine compliance with this paragraph. Historical evidence of compatibility or alternative procedures may be used if approved by the Associate Director for HMR.

* * * * *

3. In § 173.28, the title and paragraph (d) would be revised to read as follows:

§ 173.28 Reuse of packagings and containers.

* * * * *

(d) Except for polyethylene containers previously used for the shipment of Poison B liquids or solids, containers previously used for the shipment of hazardous materials must have the old markings, including name of contents, addresses and labels, if any, thoroughly removed or obliterated before being used for the shipment of other articles. Polyethylene containers previously used for the shipment of Poison B liquids or solids may not be reused for the shipment of other articles and Poison labels appearing on these containers must be maintained in a legible condition until the containers are disposed of or destroyed.

* * * * *

4. In § 173.125, paragraph (a)(7) would be added to read as follows:

§ 173.125 Alcohol, n.o.s. (flammable liquid).

(a) * * *

(7) Specification 34 (§ 178.19 of this subchapter). Polyethylene drum.

* * * * *

5. In § 173.245, paragraph (a)(26) would be revised to read as follows:

§ 173.245 Corrosive liquids not specifically provided for.

(a) * * *

(26) Specification 34 (§ 178.19 of this subchapter). Polyethylene drum.

* * * * *

6. In § 173.247, paragraph (a)(20) would be added to read as follows:

§ 173.247 Acetyl bromide; acetyl chloride; acetyl iodide; antimony pentachloride; benzoyl chloride; boron trifluoride acetic acid complex; chromyl chloride; dichloroacetyl chloride; diphenylmethyl bromide solutions; pyrosulfuryl chloride; silicon chloride; sulfur chloride (mono and di); sulfuryl chloride, thionyl chloride; tin tetrachloride (anhydrous); titanium tetrachloride; trimethyl acetyl chloride.

(a) * * *

(20) Specification 34 (§ 178.19 of this subchapter). Polyethylene drum. Authorized for thionyl chloride only.

* * * * *

7. In § 173.256, paragraph (a)(8) would be added to read as follows:

§ 173.256 Compounds, cleaning, liquid.

(a) * * *

(8) Specification 34 (§ 178.19 of this subchapter). Polyethylene drum.

* * * * *

8. In § 173.257, paragraph (a)(13) would be added to read as follows:

§ 173.257 Electrolyte (acid) and alkaline corrosive battery fluid.

(a) * * *

(13) Specification 34 (§ 178.19 of this subchapter). Polyethylene drum.

* * * * *

9. In § 173.263, paragraph (a)(28) would be amended to read as follows:

§ 173.263 Hydrochloric (muriatic) acid; hydrochloric (muriatic) acid mixtures; hydrochloric (muriatic) acid solution, inhibited; sodium chlorite solution (not exceeding 42 percent sodium chlorite); and cleaning compounds, liquids, containing hydrochloric (muriatic) acid.

(a) * * *

(28) Specification 34 (§ 178.19 of this subchapter). Polyethylene drum.

* * * * *

10. In § 173.264, paragraph (a)(18) would be revised to read as follows:

§ 173.264 Hydrofluoric acid; white acid.

(a) * * *

(18) Specification 34 (§ 178.19 of this subchapter). Polyethylene drum. Authorized only for hydrofluoric acid not over 52% strength.

* * * * *

11. In § 173.265, paragraph (d)(6) would be revised to read as follows:

§ 173.265 Hydrofluorosilicic acid.

(a) * * *

(6) Specification 34 (§ 178.19 of this subchapter). Polyethylene drum.

* * * * *

12. In § 173.266, paragraph (b)(8) would be revised to read as follows:

§ 173.266 Hydrogen peroxide solution in water.

(b) * * *

(8) Specification 34 (§ 178.19 of this subchapter). Polyethylene drum. Each drum must have a vented closure to prevent accumulation of internal pressure and the head with the closure must be marked "KEEP THIS END UP."

* * * * *

13. In § 173.269, paragraph (a)(7) would be added to read as follows:

§ 173.269 Perchloric acid.

(a) * * *

(7) Specification 34 (§ 178.19 of this subchapter). Polyethylene drum. Authorized for perchloric acid not exceeding 50 percent strength only.

* * * * *

14. In § 173.271, paragraph (a)(20) would be added to read as follows:

§ 173.271 Phosphrous oxybromide, phosphorus oxychloride, phosphorus trichloride, and thiophosphoryl chloride.

(a) * * *

(2) Specification 34 (§ 178.19 of this subchapter). Polyethylene drum. Authorized for phosphorous oxychloride only.

* * * * *

15. In § 173.272, paragraphs (g) and (i)(9) would be revised to read as follows:

§ 173.272 Sulfuric acid.

* * * * *

(g) *Sulfuric acid concentration of greater than 95 percent to not over 100.5 percent:* Authorized packaging is described in paragraphs (i)(1)–(4), (6), (9) and (14)–(22) of this section.

* * * * *

(i) * * *

(9) Specification 34 (§ 178.19 of this subchapter). Polyethylene drum.

* * * * *

16. In § 173.276, paragraph (a)(10) would be revised to read as follows:

§ 173.276 Anhydrous hydrazine and hydrazine solution.

(a) * * *

(10) Specification 34 (§ 178.19 of this subchapter). Polyethylene drum. Authorized for hydrazine solution only.

* * * * *

17. In § 173.277, paragraph (a)(6) would be revised to read as follows:

§ 173.277 Hyochlorite solutions.

(a) * * *

(6) Specification 34 (§ 178.19 of this subchapter). Polyethylene drum. Authorized for not over 16 percent sodium hypochlorite solution only.

* * * * *

18. In § 173.287, paragraph (b)(9) would be added to read as follows:

§ 173.287 Chromic acid solution.

(b) * * *

(9) Specification 34 (§ 178.19 of this subchapter). Polyethylene drum.

* * * * *

19. In § 173.288, paragraph (e) would be revised to read as follows:

§ 173.288 Chloroformates.

* * * * *

(e) Specification 34 (§ 178.19 of this subchapter). Polyethylene drum.

* * * * *

20. In § 173.348, paragraph (a)(5) would be added to read as follows:

§ 173.348 Arsenic acid.

(a) * * *

(5) Specification 34 (§ 178.19 of this subchapter). Polyethylene drum.

* * * * *

21. In § 173.349, paragraph (a)(4) would be added to read as follows:

§ 173.349 Carbolic acid (phenol) liquid.

(a) * * *

(4) Specification 34 (§ 178.19 of this subchapter). Polyethylene drum.

* * * * *

22. In § 173.357, paragraph (a)(4) would be added to read as follows:

§ 173.357 Chloropicrin and chloropicrin mixtures containing no compressed gas or Poison A liquid.

(a)* * *

(4) Specification 34 (§ 178.19 of this subchapter). Polyethylene drum.

* * * * *

23. In § 173.361, paragraph (a)(4) would be added to read as follows:

§ 173.361 Aldrin mixtures, liquid, with more than 60 percent aldrin.

(a) * * *

(4) Specification 34 (§ 178.19 of this subchapter). Polyethylene drum.

* * * * *

24. In § 173.362a, paragraph (a)(3) would be added to read as follows:

§ 173.362a Dinitrophenol solutions.

(a)* * *

(3) Specification 34 (§ 178.19 of this subchapter). Polyethylene drum.

* * * * *

25. Appendix B to Part 173 would be added to read as follows:

Appendix B—Methods of Testing Chemical Compatibility and Rate of Permeation in Polyethylene Containers

1. Compatibility and permeation rate are determined by subjecting the polyethylene container, filled to rated capacity with the specific hazardous material, to a time-at-temperature test of 130°F for 90 days or 140°F. for 14 days.

2. The weight of the filled container is determined before and after exposure to the elevated temperature and then the permeation rate from product loss is determined.

3. If storage at elevated temperature of a full-size polyethylene container poses a safety hazard, the test may be conducted using a smaller container molded by the same process and made of identical resin. Typical characteristics which must be maintained in the fabrication of a smaller container are: method of molding (e.g., blow, rotational), identical pigments, additives and processing temperatures.

4. If the container shows evidence of stress cracking or crazing, oxidation, embriittlement, vapor pressure build-up, collapse of walls or seepage, the container is considered to have failed the compatibility requirement.

5. If the permeation rate as determined by loss of weight exceeds 0.5% for any hazardous material that has an oral toxicity of less than 20 mg/kg (LD50, rat) or dermal toxicity of less than 80 mg/kg (LD50, rabbit), or 2.0% for all other hazardous materials, the container is considered to have failed the permeation requirement.

6. After storage at elevated temperature, the container is drained, rinsed, filled to rated capacity and dropped from a height of 4 feet onto solid concrete. If there is leakage or rupture, the container is considered to have failed the compatibility requirement.

PART 178—SHIPPING CONTAINER SPECIFICATIONS

26. In § 178.16, paragraph (c) of § 178.16–1 would be added and paragraph (a) of § 178.16–4 would be revised, as follows:

§ 178.16–1 Compliance.

* * * * *

(c) Each drum shall be capable of withstanding the performance tests prescribed in §§ 178.16–13 and 178.16–16 without failure.

§ 178.16–4 Material.

(a) Drums shall be made of an injection molding grade of high density polyethylene resin which has been used previously.

* * * * *

27. § 178.19 would be revised to read as follows:

§ 178.19 Specification 34; reusable molded polyethylene drum for use without overpack. Removable head not authorized.

§ 178.19–1 Compliance.

(a) Required in all details.

(b) Each drum shall be capable of withstanding the performance tests prescribed in § 178.19–7 without failure.

§ 178.19–2 Material.

(a) Drums shall be made of a polyethylene resin which has not been used previously.

(b) Ultraviolet light protection shall be provided by impregnation of polyethylene with carbon black or other equally efficient pigments or inhibitors. These additives shall be compatible with lading and shall retain their effectiveness for the life of the drum.

(c) Other materials may be added provided they do not adversely affect the structural integrity of the drum.

§ 178.19–3 Construction and capacity.

(a) Drums must be constructed in accordance with the following table:

Gallons [1]	Inches [2]
2½ through 6½	0.045
15	0.075
55	[3]0.125

[1]Marked (rated) capacity not over (gallons).
[2]Minimum thickness (inches) measured on any point of container.
[3]A minimum thickness of 0.090 inch is authorized in corners and undercuts.

(b) Minimum actual capacity shall not be less than rated capacity plus 4 percent. Maximum actual capacity shall not be greater than rated capacity plus 15 percent for drums up to 15 gallons and shall not be greater than rated capacity plus 10 percent for drums 15 gallons and over.

§ 178.19–4 Closure.

(a) Openings may not exceed 2.7 inches in diameter.

(b) Closures shall be of material compatible with the lading and adequate to prevent leakage under tests prescribed in § 178.19–7 and under conditions normally incident to transportation.

(c) Vented closures where specified in Part 173 of this subchapter are authorized.

§ 178.19–5 Defective drums.

(a) Drums with repaired bodies are not authorized.

§ 178.19–6 Marking.

(a) Each drum shall be permanently marked by embossment in letters and figures at least ½ inch in size as follows:

(1) DOT–34**; stars to be replaced by the rated capacity of the drum (for example, DOT–34–5).

(2) Month and year of manufacture. For example, DOT–34–5–6/80 to indicate a drum of 5 gallons capacity made in June 1980.

(3) Name or symbol of person making the marks specified in paragraphs (a)(1) and (a)(2) of this section and located just above or below those marks. Symbol, if used, shall be registered with the Associate Director for HMR.

§ 178.19–7 Tests.

(a) Conduct of texts. Samples of each drum size and design, selected at random, filled and prepared as specified and closed as for use, shall withstand the following tests without failure. No single drum shall be expected to withstand more than one test or drop.

(1) *Drop test at ambient temperature.* At least three drums, filled to 98% actual capacity with water, shall be dropped from a height of four feet onto solid concrete under the following conditions of orientation:

(i) One drum dropped flat on bottom;

(ii) One drum dropped diagonally on top chime or edge; and

(iii) One drum dropped flat on side.

Immediately following the drop test, each drum shall be rotated on its side and observed for evidence of leakage.

(2) *Drop test at 0°F.* At least three drums, filled to 98% actual capacity with a solution compatible with polyethylene and which remains liquid at 0°F, shall be conditioned for at least four hours immediately prior to test so that test drums and contents are at 0°F, or lower at start of drop tests. Test drums shall be dropped from a height of four feet onto solid concrete under the following conditions of orientation:

(i) One drum dropped flat on bottom;

(ii) One drum dropped diagonally on top chime or edge; and

(iii) One drum dropped flat on side.

Immediately following the drop test, each drum shall be rotated on its side and observed for evidence of leakage.

(3) *Hydrostatic pressure test.* At least three drums shall be tested by retaining hydrostatic pressure of at least 15 pounds per square inch at equilibrium for five minutes without showing pressure drop or evidence of leakage.

(4) *Vibration test.* At least three drums, filled to 98 percent actual capacity and closed as for use, shall be subjected to a vibration test, as follows. Each drum shall be constrained horizontally on a vibration platform, but otherwise be left free to move vertically, bounce and rotate. The test shall be performed for one hour using a verticle double-amplitude (peak-to-peak displacement) of one inch, at a frequency that causes the drum to be raised from the vibrating platform to such a degree that a piece of material of approximately 1/16" thickness can be passed between the bottom of the drum and the table. Immediately following the period of vibration, each drum shall be

removed from the platform, rotated on its side, and observed for evidence of leakage.

(5) *Static compression test.* At least three drums, filled to 98 percent actual capacity and closed as for use shall be subjected to a static compression test, as follows. Compression shall be applied to the load bearing areas of the top of the drum for a period of not less than 48 hours, in the following amounts:

Gallons [1]	Pounds [2]
2½ thru 6½	600
15	1,200
30	1,800
55	2,400

[1] Marked (rated) capacity not over (gallons).
[2] Compression weight load (pounds).

At the conclusion of the test period, each drum shall be rotated on its side and observed for evidence of leakage.

(b) *Failure criteria.* If, for a specific test, failure occurs, the test shall be repeated with three additional samples. Failure of any of the additional drums disqualifies that size or design from this specification until the condition causing failure has been determined and corrected and the test has been successfully repeated. For purposes of this section, the following constitutes test failure:

(1) Leakage;

(2) Loss of product retention capability;

(3) With regard to the hydrostatic pressure test, loss of pressure; or

(4) With regard to the static compression test, a top-to-bottom deflection of more than one inch.

(c) *Frequency of tests.* Tests shall be performed at the start of initial production and at intervals not to exceed one year and be repeated on any change of design, size, material or process method. Also, the drop test of § 178.19–7(a)(2) shall be performed after each continuous production run of no more than 1000 containers, or at four month intervals, whichever occurs first.

(d) *Test records.* Records of test results shall be made and retained at each producing plant for the most recent series of tests performed.

* * * * *

28. In § 178.21, paragraph (b) of § 178.21–1 would be added and the introductory text of paragraph (a) of § 178.21–3 preceding subparagraph (a)(1) would be revised and Note 1 following paragraph (a) of § 178.21–3 would be deleted, as follows:

§ 178.21 Specification 2T; polyethylene containers.

§ 178.21–1 Compliance.

* * * * *

(b) Each container shall be capable of withstanding the performance tests prescribed in § 178.21–3 without failure.

* * * * *

§ 178.21–3 Material.

(a) Containers shall be made of a polyethylene resin which has not been used previously.

* * * * *

29. In § 178.24, the specification title, the title and text of § 178.24–1 and paragraph (a) of § 178.24–2 would be revised, Notes 1 and 2 following paragraph (a) of § 178.24–2 would be removed, and paragraph (c) of § 178.24–3 would be added, as follows:

§ 178.24 Specification 2U; molded or thermoformed polyethylene containers.

§ 178.24–1 General requirements.

(a) Compliance is required in all details.

(b) Removable head containers and containers fabricated from film are not authorized.

(c) Each container shall be capable of withstanding the performance tests prescribed in § 178.24–7 without failure.

§ 178.24–2 Material.

(a) Containers shall be made of a polyethylene resin which has not been used previously.

* * * * *

§ 178.24–3 Construction capacity.

* * * * *

(c) Minimum rated capacity is one gallon.

* * * * *

30. In § 178.24a, paragraph (c) of § 178.24a–3 would be deleted and paragraph (a) would revised to read as follows:

§ 178.24a Specification 2E; inside polyethylene bottle.

* * * * *

§ 178.24a–3 Materials of construction.

(a) Each bottle shall be made of a blow-molding grade of polyethylene resin which has not been used previously and shall be constructed so that it will maintain its shape when standing empty and open

* * * * *

31. In § 178.27–1, Note 1 would be deleted, paragraph (a) would be revised and paragraph (b) would be added, as follows:

§ 178.27–1a Material requirements.

(a) Containers shall be made of a polyethylene resin which has not been used previously.

(b) Each container shall be capable of withstanding the performance tests prescribed in §§ 178.27–3 and 178.27–4 without failure.

* * * * *

32. In § 178.35, the section title, §§ 178.35–1 and 178.35–2 would be revised to read as follows:

§ 178.35 Specification 2S; polyethylene container.

§ 178.35–1 General requirements.

(a) Compliance is required in all details.

(b) Removable head containers are not authorized.

(c) Each container shall be capable of withstanding the performance tests prescribed in § 178.35–5 without failure.

§ 178.35–2 Material requirements.

(a) Containers shall be made of a polyethylene resin which has not been used previously.

* * * * *

33. In § 178.35a, the section title and § 178.35a–1 would be revised as follows:

§ 178.35a Specification 2SL; molded or thermoformed polyethylene container.

§ 178.35a–1 General requirements.

(a) Compliance is required in all details.

(b) Removable head containers and containers fabricated from film are not authorized.

(c) Each container shall be capable of withstanding the performance tests prescribed in §§ 178.35a–3 and 178.35a–4 without failure.

(d) Containers shall be made of a polyethylene resin which has not been used previously.

* * * * *

Appendix B [Removed]

34. Appendix B to Part 178 would be deleted in its entirety.

Authority: (49 U.S.C. 1803, 1804, 1808; 49 CFR 1.53, App. A to Part 1 and para. (a)(4) of App. A. Part 106.)

Note.—The Materials Transportation Bureau has determined that this document will not result in a major rule under terms of Executive Order 12291 or a significant regulation under DOT's regulatory policy and procedures (44 FR 11034) or require an environmental impact statement under the National Environmental Policy Act (49 U.S.C. 4321, *et seq.*) Based on limited information available concerning size and nature of entities likely to be affected by this proposal, I certify that this proposal will not, if promulgated, have a significant economic impact on a substantial number of small entities because the overall economic impact of this proposal would be minimal. A regulatory evaluation and environmental assessment are available for review in the Docket.

Issued in Washington, D.C. on August 17, 1982.

Alan L. Roberts,

Associate Director for Hazardous Materials, Transportation Bureau.

[FR Doc 82-23023 Filed 8-25-82; 8:45 am]

BILLING CODE 4910-60-M

Urban Mass Transportation Administration

49 CFR Part 638

[Docket No. 80-N]

Maintenance Requirements; Withdrawal of Advance Notice of Proposed Rulemaking

AGENCY: Urban Mass Transportation Administration, DOT.

ACTION: Withdrawal of Advance Notice of Proposed Rulemaking.

SUMMARY: This notice withdraws the advance notice of proposed rulemaking (ANPRM) that the Urban Mass Transportation Administration (UMTA) published on "Maintenance Requirements." UMTA has reviewed the need for a regulation on this subject and determined that the material can be more effectively provided to UMTA's grantees in a non-regulatory document. UMTA expects to issue this material in the near future.

FOR FURTHER INFORMATION CONTACT: Ronald J. Fisher, Urban Mass Transportation Administration, 400 7th Street, SW., Washington, D.C. 20590; Telephone:(202) 426-4060.

SUPPLEMENTARY INFORMATION: On January 21, 1981, UMTA published an ANPRM on "Maintenance Requirements." (46FR 6334.) The purpose of the ANPRM was to propose a policy that would ensure that each mass transit operator maintains facilities and equipment purchased with UMTA funds consistent with practices necessary to provide adequately for safety, comfort, and preservation and expansion of transit service.

In the ANPRM, however, UMTA proposed several alternative maintenance requirements and discussed the advantages and disadvantages of each. Public comments were invited on the listed alternatives and also on various compliance and sanction mechanisms. The comment period closed on May 22, 1981.

Pursuant to President Reagan's Policy of reducing regulatory burdens and red tape, UMTA has reviewed this ANPRM to determine if we should proceed with this rulemaking. UMTA has determined that further rulemaking is not necessary in the area of maintenance. Instead, it is UMTA's opinion that the necessary program material can be more effectively provided to UMTA recipients in a non-regulatory document that will provide more flexibility and reduce Federal intrusion. UMTA is currently drafting this document and is taking the comments received on the ANPRM into consideration. When the policy is issued, UMTA will publish it in the "Notice" section of the **Federal Register** to provide notice to all interested parties.

Therefore, UMTA is providing notice that the following ANPRM is withdrawn: Maintenance Requirements, Docket No. 80-N. (46 FR 6334.)

Issued on August 19, 1982.

Arthur E. Teele, Jr.,

Urban Mass Transportation Administrator.

[FR Doc. 82-23396 Filed 8-25-82; 8:45 am]

BILLING CODE 4910-57-M

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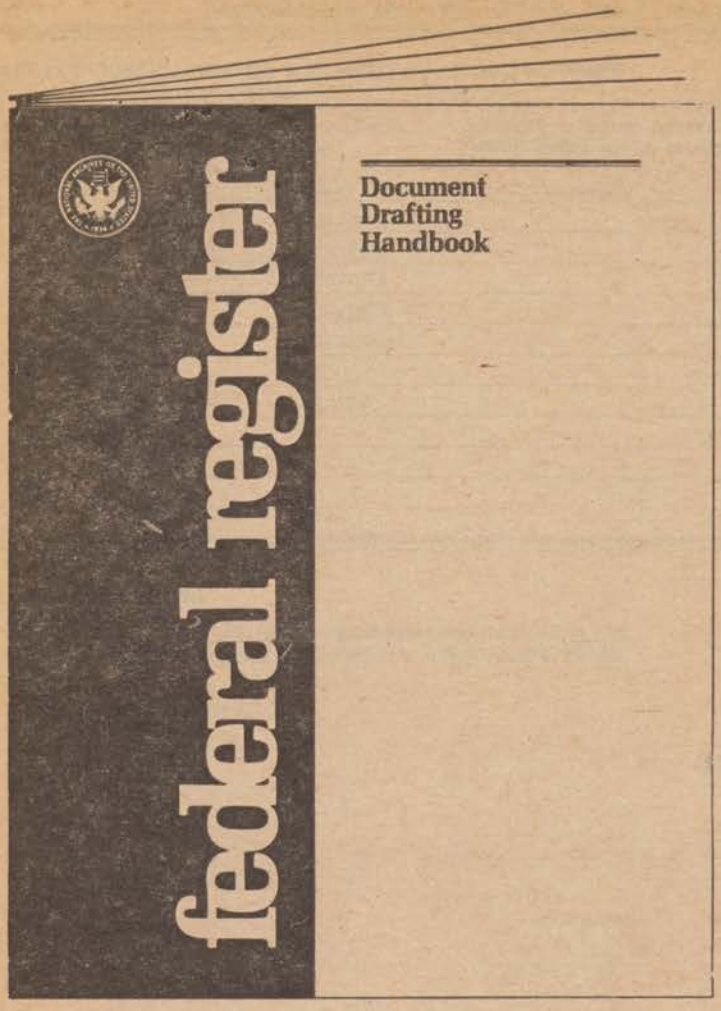
The following agencies have agreed to publish all documents on two assigned days of the week (Monday/Thursday or Tuesday/Friday). Documents normally scheduled for publication on a day that will be a Federal holiday will be published the next work day following the holiday. This is a voluntary program. (See OFR NOTICE 41 FR 32914, August 6, 1976.)

Monday	Tuesday	Wednesday	Thursday	Friday
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List of Public Laws

Note: No public bills which have become law were received by the Office of the Federal Register for inclusion in today's **List of Public Laws.**

Last Listing August 25, 1982



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Notices

Federal Register
Vol. 47, No. 166
Thursday, August 26, 1982

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Federal Grain Inspection Service

Interim Assignment of Geographic Area to Amarillo Grain Exchange, Inc. and Request for Comments on the Need for an Official Agency in Fort Worth, Texas (TX)

AGENCY: Federal Grain Inspection Service, USDA

ACTION: Notice.

SUMMARY: This notice announces that Amarillo Grain Exchange, Inc. (Amarillo), will provide official inspection services in the Fort Worth area on an interim basis. It also requests comments from the grain trade and other interested parties on the extent of need for official inspection services in the Fort Worth area.

EFFECTIVE DATE: September 1, 1982.

DATE: Comments to be postmarked on or before October 25, 1982.

ADDRESS: Comments must be submitted in writing, in duplicate, to Lewis Lebakken, Jr., Regulations and Directives Management Staff, Federal Grain Inspection Service, U.S. Department of Agriculture, Room 1642, South Building, 1400 Independence Avenue, SW., Washington, D.C. 20250. All comments received will be made available for public inspection at the above address during regular business hours (7 CFR 1.27(b)).

FOR FURTHER INFORMATION CONTACT: Lewis Lebakken, Jr., telephone (202) 382–0231.

SUPPLEMENTARY INFORMATION: This action has been reviewed and determined not to be a rule or regulation as defined in Executive Order 12291 and Secretary's Memorandum 1512–1; therefore the Executive Order and Secretary's Memorandum do not apply to this action.

The March 1, 1982, issue of the **Federal Register** (47 FR 8730) contained a notice from the Federal Grain Inspection Service (FGIS) announcing that the designation of the Fort Worth Grain Exchange Inspection Service, Inc. (Fort Worth), Fort Worth, Texas, would terminate on August 31, 1982, and requesting applications for designation as the agency to provide official inspection services within the specified assigned area. Applications were to be postmarked by March 31, 1982.

FGIS announced the name of the only qualified applicant for designation for the agency, Mr. Tom Jarvis (Mid-Texas Grain Inspection), and requested comments on same in the June 25, 1982, issue of the **Federal Register** (47 FR 27577). Comments were to be postmarked by July 26, 1982. No comments were received regarding the designation of Mr. Jarvis and Mid-Texas Grain Inspection as an official agency. Since March, the volume of official grain inspection requests has decreased substantially in the Fort Worth area. In view of this, Mr. Jarvis chose not to carry out plans to establish Mid-Texas Grain Inspection and therefore, is not continuing in the designation process.

Effective September 1, 1982, Amarillo, an official agency, will provide service to the geographic area as described in the March 1, 1982, issue of the **Federal Register** (47 FR 8730) (including Hunt County, Texas). Such service will be provided by Amarillo until a final determination is made as to the need for service in the Fort Worth area but shall terminate not later than November 30, 1983. Requests for service in the Fort Worth area should be directed to Amarillo at the following address: 1300 South Johnson Street, Amarillo, TX 79101; telephone (806) 372–8511.

At this time, FGIS requests comments from the grain trade and other interested parties on the extent of need for official inspection services in the Fort Worth area. Any comments supporting the need for an official agency should include the need for a separate agency based exclusively in the Fort Worth area and data substantiating that there will be an adequate volume of official inspection requests to sustain such an agency. All comments must be submitted to the Regulations and Directives Management Staff, specified in the address section of this notice, and postmarked not later than October 25, 1982.

(Sec. 8, Pub. L. 94–582, 90 Stat. 2873 (7 U.S.C. 79))

Dated: August 23, 1982.

J. T. Abshier,

Director, Compliance Division.

[FR Doc. 82–23394 Filed 8–25–82; 8:45 am]

BILLING CODE 3410–EN–M

Forest Service

San Juan National Forest Grazing Advisory Board; Meeting

The San Juan National Forest Grazing Advisory Board will meet on Thursday, September 23, 1982, at 1:00 p.m. at the San Juan National Forest Office, Conference Room, 701 Camino del Rio, Durango, Colorado. The Board was established in accordance with provisions of the Federal Land Policy and Management Act of 1976.

The Agenda for the meeting will include: (1) Recommendations for the utilization of range betterment funds; (2) recommendations for the development of allotment management plans; (3) discussion of effects of the Draft San Juan National Forest Land and Resource Plan on allotment management plans and utilization of range betterment funds.

The meeting will be open to the public. Persons who wish to attend and participate should notify H. E. Bond, San Juan National Forest (303–247–4874) prior to the meeting. The public may participate in discussions during the meeting or may file a written statement following the meeting.

Dated: August 18, 1982.

Robert M. Lillie,

Acting Forest Supervisor.

[FR Doc. 82–23491 Filed 8–25–82; 8:45 am]

BILLING CODE 3410–11–M

Office of the Secretary

Joint Committee on the Future of Cooperative Extension; Meeting

Notice is hereby given that the Joint Committee on the Future of Cooperative Extensions will meet September 21, 1982, from 6:00 p.m., to 8:00 p.m., September 22 from 8:30 a.m., to 5:00 p.m., and September 23, from 8:30 am., to 4:00 p.m., at 203 MRAK Building, University of California-Davis, Davis, California.

The Committee's purpose is to advise the Secretary of Agriculture on policies

and programs affecting the mission, future scope and priorities of Cooperative Extension nationally throughout the 1980's and beyond. The agenda for the meeting will consist of presentations by farm and other national user groups, discussion of draft sections of the Committee report, and plans for dissemination and implementation of report recommendations.

The meeting of the Joint Committee on the Future of Cooperative Extension is open to the public for observation on a space available basis.

For additional information contact Dr. Mary Nell Greenwood, Administrator, Extension Service, Room 340 Administration Building, 14th and Independence Avenue, SW., Washington, D.C. 20250. Telephone 202/447–3377. Written comments may also be addressed to Dr. Greenwood.

Mary Nell Greenwood,

Administrator, Extension Service.

[FR Doc. 82–23469 Filed 8–25–82; 8:45 am]

BILLING CODE 3410–01–M

COMMISSION ON CIVIL RIGHTS

Missouri Advisory Committee; Agenda and Notice of Open 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 Missouri Advisory Committee to the Commission will convene at 11:00 a.m. and will end at 3:00 p.m., on September 24, 1982, at the Hilton Inn, 2200 I–70 Drive, South West, in the Truman Room, Columbia, Missouri, 65201. The purpose of the meeting will be to review current projects and discuss program activities for Fiscal Year 1983.

Persons desiring additional information or planning a presentation to the Committee, should contact the Chairperson, Joanne M. Collins, 4030 Bellefontaine, Kansas City, Missouri, 64130, (816) 274–1312 or the Central States Regional Office, Old Federal Office Building, 911 Walnut Street, Room 3103, Kansas City, Missouri, 64106, (816) 374–5253.

The meeting will be conducted pursuant to the provisions of the Rules and Regulations of the Commission.

Dated at Washington, D.C., August 24, 1982.

John I. Binkley,

Advisory Committee Management Officer.

[FR Doc. 82–23475 Filed 8–25–82; 8:45 am]

BILLING CODE 6335–01–M

DEPARTMENT OF COMMERCE

Minority Business Development Agency

Indian Business Development Center, Financial Assistance Award

August 20, 1982.

AGENCY: Minority Business Development Agency, Commerce.

ACTION: Financial Assistance Award, Indian Business Development Center; States of South Dakota, Montana and Wyoming with a project office located in one of those three States.

ACTION: Notice.

SUMMARY: The Minority Business Development Agency (MBDA) announces that it is soliciting applications for a cooperative agreement under its Indian Business Development Center (IBDC) program to operate a pilot project for a twelve (12) month period.

Applicants will be required to contribute at least 10% to the total program costs through non-federal funds. Cost sharing contributions can be in the form of cash contributions, fees for services or in-kind contributions.

The estimated cost of this project includes the maximum federal participation and the minimum amount required for non-federal participation as included in the following description of this project.

CLOSING DATE: September 30, 1982—Closing date for submitting applications.

ADDRESS: Dallas Regional Office, Minority Business Development Agency, 1100 Commerce Street, Room 7B19, Dallas, Texas 75242.

FOR FURTHER INFORMATION CONTACT: Mr. Joe Williams at (214) 767–8001.

(1) A cooperative agreement for IBDC services to operate in the three Northern States of South Dakota, Montana and Wyoming. The total cost will not exceed $215,900 including a maximum of $198,900 in federal funds and a minimum non-federal participation of $17,000. The anticipated start date for the project is December 1, 1982 and the Project I.D. Number is 08–10–82025–01.

SUPPLEMENTARY INFORMATION:

A. Scope and Purpose of this Announcement

Executive Order 11625 authorizes MBDA to fund projects which will provide technical and management assistance to eligible Indian clients in areas related to the establishment and operation of businesses. This IBDC program is specifically designed to assist those Indian businesses that have the highest potential for success. In order to accomplish this, MBDA offers a Cooperative Agreement that can: coordinate and broker public and private sector resources on behalf of Indian individuals and firms; offer them a full range of management and technical assistance; and serve as a conduit—through which and from which information and assistance to and about Indian businesses are funneled. Legal services are excluded.

B. Eligible Applicants

Awards shall be be open to all Indian-owned firms, Indian Tribes, and Indian individuals, profit or non-profit.

C. Evaluation Process

All proposals received as a result of this announcement will be evaluated by an MBDA review panel.

D. Evaluation Criteria for Indian Business Development Center Application

The evaluation criteria is designed to facilitate an objective evaluation of competitive applications for the Indian Business Development Center program.

MBDA reserves the right to reject any or all applications, including the application receiving the highest evaluation, and will exercise this right when it is determined that it is in the best interest of the Government to do so (e.g., the apparent successful applicant has serious unresolved audit issues from current or previous grants, contracts or cooperative agreements with an agency of the Federal Government).

Evaluation of proposals will employ the following criteria:

I. *Capability and Experience of Firm/Staff*—Provide information that demonstrates the organization's capabilities and prior experience in addressing the needs of Indian business individuals and firms. Provide information that demonstrates the staff's capabilities and prior experience in providing management and technical assistance to Indian individuals and firms. Indicate previous experience in Indian MBB community to be served in terms of: inventorying resources and opportunities; the brokering thereof; and providing management and technical assistance.

The following are key factors to be considered in this section:

Firm

—The organization's receptivity in the Indian community to be served, i.e., business contacts in the public and private sector; leadership responsibilities; and experience in assisting Indian business persons and

firms. (References from clients assisted are pertinent).
—background credentials and references for the owners of the organization and a capability statement of what the organization can do.
—Knowledge of the geographic area to be served in terms of the needs of Indian businesses and past and ongoing relationships with local and public and private entities—that can possibly enhance the IBDC program effort—i.e., Chambers of Commerce, trade associations, venture capital organizations, banks, BIA, SBA, HUD, state, city and county government agencies, etc.

Staff

—List personnel to be used. Indicate their salaries, educational level and previous experiences. Provide résumés for all professional staff personnel.
—demonstrate competence among staff to effectuate mergers, acquisitions, spin-offs and joint ventures.
—provide organization chart, job descriptions and qualification standards involving all professional staff persons to be utilized on the project.
—If any contractors are to be utilized; identify and indicate areas and level of experience. *Primary consideration will be given to inhouse capability.*

Note.—All contracting proposed should be in accordance with procurement standards in Attachment O of OMB Circulars A–110 or A–102.

II. *Techniques and Methodology*—specify plans for achieving the goals and objectives of the project. This section should be developed by using the outline of the Work Requirements and the IBDC responsibilities as guides and will become part of the award document. Include start-up plan and example of work plan format. Fully explain the procedures for: Outreach, screening, assisting and monitoring clients; developing and maintaining the profile inventory of Indian business; and brokering of new business ownership, market and capital opportunities. In summary, address how, when and where work will be done and by whom. Include level of performance.

III. *Resources*—address technical and administrative resources, i.e., computer facilities, voluntary staff time and space; and financial resources in terms of meeting MBDA's 10% cost sharing requirement to include a fee for services for assistance provided clients. The fee for services will be 10% for firms with gross sales of $500,000 or less than 25% for firms with gross sales of over $500,000.

Cost sharing is that portion of project costs not borne by the Federal Government. The composition and amount of cost sharing are key factors that will be considered in determining the merit of this section. The cost sharing requirement can be met through the following order of priority: 1. cash contributions; 2. fee for services; and 3. in-kind contributions.

A. *Cash contribution*—means cash that is contributed or donated by the recipient, by other non-federal, public agencies and institutions, private organizations corporations and individuals.

B. *Fee for services*—are charges to the client for assistance provided by IBDC.

C. *In-Kind contribution*—represent the value of non-cash contributions provided by the recipient and non-federal parties. The order of priority for in-kind contributions are: high technology systems to be utilized to achieve program objectives; top level staff personnel and real and personal property donated by other public agencies, institutions and private organizations. Property purchased with Federal funds will not be considered as the recipient's in-kind contribution.

IV. *Costs*—demonstrate in narrative format that costs being proposed will give the Indian business client and the government the most effective program possible in terms of quality, quantity, timeliness and efficiency.

Include the principal costs involved for achieving work plan under Cooperative Agreement by completing Part III—the Budget Information Section of the Request for Application.

Provide cost sharing plan information in terms of methodology and format for billing the cost of management and technical assistance to clients.

Total project costs will be evaluated in terms of:

—Clear explanations of all expenditures proposed, and
—The extent to which the applicant can leverage federal program funds and operate with *economy* and *efficiency*.

In conclusion, the applicant's schedule for start of IBDC operation should be included in Part Two. Part Two will be known as the applicant's plan of operation and will be incorporated into the Cooperative Agreement award.

A detailed justification of all proposed costs is required for Part Four and each item must be fully explained.

The failure to supply information in any given category of the criteria will result in the application being considered nonresponsive and consequently, dropped from competition.

All information submitted is subject to verification by MBDA.

E. Disposition of Proposals

Notification of awards will be made by the Grant Officer. Organizations whose proposals are unsuccessful will be advised by the Regional Director.

F. Proposal Instructions and Forms.

Questions concerning the preceding information, copies of application forms, and applicable regulations can be obtained at the above address.

Nothing in the solicitation shall be construed as committing MBDA to divide available funds among all qualified applicants. The program is subject to OMB Circular A–95 requirements.

(Catalog of Federal Domestic Assistance, 11,800 Minority Business Development)

Ruben Porras,

Acting Regional Director.

[FR Doc. 82–23487 Filed 8–25–82; 8:45 am]

BILLING CODE 3510–21–M

National Oceanic and Atmospheric Administration

Issuance of Permit

On May 17, 1982, Notice was published in the **Federal Register** (47 FR 21117), that an application had been filed with the National Marine Fisheries Service by the Durov Zoo Animals World, Ulitza Durova No. 4, 129090 Moscow, U.S.S.R., for a permit to obtain two (2) rehabilitated beached/stranded California sea lions (*Zalophus californianus*) for the purpose of public display.

Notice is hereby given that on August 19, 1982, and as authorized by the provisions of the Marine Mammal Protection Act of 1972 (16 U.S.C. 1361–1407), the National Marine Fisheries Service issued a Public Display Permit for the above activity to the Durov Zoo Animals World subject to certain conditions set forth therein.

The Permit is available for review in the following offices:

Assistant Administrator for Fisheries, National Marine Fisheries Service, 3300 Whitehaven Street, NW., Washington, D.C.; and

Regional Director, National Marine Fisheries Service, Southwest Region, 300 South Ferry Street, Terminal Island, California 90731.

Dated: August 19, 1982.

Richard B. Roe,

Acting Director, Office of Marine Mammals and Endangered Species, National Marine Fisheries Service.

[FR Doc. 82–23398 Filed 8–25–82; 8:45 am]

BILLING CODE 3510–22–M

Issuance of Marine Mammal Permit

On July 2, 1982, Notice was published in the **Federal Register** (47 FR 28982) that an application had been filed with the National Marine Fisheries Service by South Carolina Wildlife and Marine Resources Department, P.O. Box 167, Columbia, South Carolina 29202, for a permit to take shortnose sturgeon (*Acipenser brevirostrum*) in the major lakes, river systems, and coastal areas of South Carolina.

Notice is hereby given that on August 19, 1982, and as authorized by the provisions of the Endangered Species Act of 1973 (16 U.S.C. 1531–1543), the National Marine Fisheries Service issued a Permit to Enhance the Propagation or Survival with regard to the above taking to the South Carolina Wildlife and Marine Resources Department, subject to certain conditions set forth therein.

Issuance of this Permit, as required by the Endangered Species Act of 1973, is based on the finding that such Permit: (1) Was applied for in good faith; (2) will not operate to the disadvantage of the endangered species which is the subject of the Permit; and (3) will be consistent with the purposes and policies set forth in Section 2 of the Act.

The Permit is available for review in the following offices:

Assistant Administrator for Fisheries, National Marine Fisheries Service, 3300 Whitehaven Street, NW., Washington, D.C.; and

Regional Director, National Marine Fisheries Service, 9450 Koger Boulevard, St. Petersburg, Florida 33702.

Dated: August 19, 1982.

Richard B. Roe,

Acting Director, Office of Marine Mammals & Endangered Species, National Marine Fisheries Service.

[FR Doc. 82-23399 Filed 8-25-82; 8:45 am]

BILLING CODE 3510-22-M

National Technical Information Service

Intent To Grant Exclusive Patent License

The National Technical Information Service (NTIS), U.S. Department of Commerce, intends to grant to Morgro Chemical Company, having a place of business at Salt Lake City, Utah 84115, an exclusive right in the United States to manufacture, use and sell products embodied in the invention, "Attractants for the Yellow Jacket Wasp," U.S. Patent 3,717,706 (dated February 20, 1973). The patent rights in this invention have been assigned to the United States of America, as represented by the Secretary of Commerce.

The proposed exclusive license will be royalty-bearing and will comply with the terms and conditions of 35 U.S.C. 209 and 41 CFR 101–4.1. The proposed license may be granted unless, within sixty days from the date of this Notice, NTIS receives written evidence and argument which establishes that the grant of the proposed license would not serve the public interest.

Inquiries, comments and other materials relating to the proposed license must be submitted to the Office of Government Inventions and Patents, P.O. Box 1423, Springfield, Virginia 22151. NTIS will maintain and make available for public inspection a file containing all inquiries, comments and other written materials received in response to this Notice and a record of all decisions made in this matter.

Dated: August 19, 1982.

Douglas J. Campion,

Program Coordinator, Office of Government Inventions and Patents, National Technical Information Service, U.S. Department of Commerce.

[FR Doc. 82-23316 filed 8-25-82; 8:45 am]

BILLING CODE 3510-04-M

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Import Controls on Certain Cotton and Man-Made Fiber Apparel Products from the People's Republic of China

August 23, 1982.

AGENCY: Committee for the Implementation of Textile Agreements.

ACTION: Establishing levels of restraint for cotton playsuits in Category 337, woven shirts of man-made fibers in Category 640, woven blouses of man-made fibers in Category 641 and women's, girls', and infants' trousers of man-made fibers in Category 648, produced or manufactured in the People's Republic of China and exported during the ninety-day period which began on May 1, 1982 and extended through July 29, 1982 and for the twelve-month period which began on July 30, 1982 and extends through July 29, 1983.

(A detailed description of the textile categories in terms of T.S.U.S.A. numbers was published in the **Federal Register** on February 28, 1980 (45 FR 13172), as amended on April 23, 1980 (45 FR 27463), August 12, 1980 (45 FR 53506), December 24, 1980 (45 FR 85142), May 5, 1981 (47 FR 25121), October 5, 1981 (46 FR 48963), October 27, 1981 (46 FR 52409), February 9, 1982 (47 FR 5926), and May 13, 1982 (47 FR 20654)).

SUMMARY: Pursuant to the terms of the Bilateral Cotton, Wool, and Man-Made Fiber Textile Agreement of September 17, 1980, as amended, between the Governments of the United States and the People's Republic of China, consultations have been held concerning imports into the United States of cotton and man-made fiber apparel products in Categories 337, 640, 641, and 648 from the People's Republic of China. Notice of the intention to hold these consultations was published in the **Federal Register** on May 5, 1982 (47 FR 19400). Under the terms of the bilateral agreement, the People's Republic of China is obligated to limit its exports to the United States of these products during the ninety-day and twelve-month periods to the following amounts:

90-DAY LEVEL OF RESTRAINT

[May 1, 1982–July 29, 1982]

Category	Dozens
337	222,904
640	297,905
641	227,285
648	344,362

12-MONTH LEVEL OF RESTRAINT

[July 30, 1982–July 29, 1983]

Category	Dozens
337	717,382
640	944,132
641	759,996
648	833,162

In the event the limits established for the ninety-day period have been exceeded, such excess amounts shall be charged to the levels defined in the agreement for the subsequent twelve-month period.

Inasmuch as a mutually satisfactory solution has not yet been reached between the two governments, the United States Government has decided, in carrying out the provisions of the agreement, to limit the entry of imports as set forth above. The United States remains committed to finding a mutually satisfactory solution concerning these categories. Should such a solution be reached in consultations with the Government of the People's Republic of China, further notice will be published in the **Federal Register.**

EFFECTIVE DATE: August 27, 1982.

FOR FURTHER INFORMATION CONTACT: Carl Ruths, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, Washington, D.C. 20230 (202/377–4212).

SUPPLEMENTARY INFORMATION: On December 17, 1981 there was published in the **Federal Register** (46 FR 61495) a

letter dated December 14, 1981 to the Commissioner of Customs from the Chairman of the Committee for the Implementation of Textile Agreements which established levels of restraint for certain categories of cotton, wool, and man-made fiber textile products, produced or manufactured in the People's Republic of China and exported during the twelve-month period which began on January 1, 1982. The notice document which preceded that letter referred to the consultation mechanism which applies to categories of textile products under the bilateral agreement, such as Categories 337, 640, 641, and 648, which are not subject to specific ceilings and for which levels may be established during the year. In the letter published below, pursuant to the bilateral agreement, the Chairman of the Committee for the Implementation of Textile Agreements directs the Commissioner of Customs to prohibit entry into the United States for consumption or withdrawal from warehouse for consumption, of cotton and man-made fiber textile products in Categories 337, 640, 641, and 648, produced or manufactured in the People's Republic of China and exported during the indicated ninety-day and twelve-month periods, in excess of the designated levels of restraint.

Walter C. Lenahan,

Acting Chairman, Committee for the Implementation of Textile Agreements.

Commissioner of Customs, Department of the Treasury, Washington, D.C. 20229.

Dear Mr. Commissioner: Under the terms of the Bilateral Cotton, Wool, and Man-Made Fiber Textile Agreement of September 17, 1980, as amended, between the Governments of the United States and the People's Republic of China, and in accordance with the provisions of Executive Order 11651 of March 3, 1972, as amended by Executive Order 11951 of January 6, 1977, you are directed to prohibit, effective on August 27, 1982 and for the ninety-day period which began on May 1, 1982 and extended through July 29, 1982, entry into the United States for consumption and withdrawal from warehouse for consumption of cotton and man-made fiber textile products in Categories 337, 640, 641, and 648, produced or manufactured in the People's Republic of China and exported on and after May 1, 1982, in excess of the following levels of restraint:

90-DAY LEVEL OF RESTRAINT [1]

Category	Dozens
337	222,904
640	297,905
641	227,285
648	344,362

[1] The levels of restraint have not been adjusted to reflect any imports after April 30, 1982.

Textile products in Categories 337, 640, 641, and 648 which have been exported to the United States prior to May 1, 1982 shall not be subject to this directive.

You are further directed to prohibit, effective on August 27, 1982 and for the twelve-month period beginning on July 30, 1982 and extending through July 29, 1983, entry into the United States for consumption and withdrawal from warehouse for consumption of cotton and man-made fiber textile products in Categories 337, 640, 641, and 648, produced or manufactured in the People's Republic of China and exported on and after July 30, 1982, in excess of the following levels of restraint:

12-MONTH LEVEL OF RESTRAINT [1]

Category	Dozens
337	717,382
640	944,132
641	759,996
648	833,162

[1] The levels of restraint have not been adjusted to reflect any imports after July 29, 1982.

In carrying out this directive, entries of textile products in Categories 337, 640, 641, and 648, produced or manufactured in the People's Republic of China, which have been exported to the United States during the period, May 1, 1982 through July 29, 1982, shall be charged against the levels of restraint established for such goods during that period. Goods in excess of the levels of restraint established for that period shall be charged to the levels of restraint established for the twelve-month period which began on July 30, 1982 and extends through July 29, 1983.

Textile products in Categories 337, 640, 641, and 648, which have been released from the custody of the U.S. Customs Service under the provisions of 19 U.S.C. 1448(b) or 1484(a)(1)(A) prior to the effective date of this directive shall not be denied entry under this directive.

A detailed description of the textile categories in terms of T.S.U.S.A. numbers was published in the **Federal Register** on February 28, 1980 (45 FR 13172), as amended on April 23, 1980 (45 FR 27463), August 12, 1980 (45 FR 53506, December 24, 1980 (45 FR 85142), May 5, 1981 (46 FR 25121), October 5, 1981, (46 FR 48963), October 27, 1981 (46 FR 52409), February 9, 1982 (47 FR 5926), and May 13, 1982 (47 FR 20654).

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 actions taken with respect to the Government of the People's Republic of China and with respect to imports of cotton and man-made fiber textile products from China have been determined by the Committee for the Implementation of Textile Agreements to involve foreign affairs functions of the United States. Therefore, these directions to the Commissioner of Customs, which are necessary for the implementation of such actions, fall within the foreign affairs exception to the rule-making provisions of 5 U.S.C. 553. This letter will be published in the **Federal Register.**

Sincerely,

Walter C. Lenahan,

Acting Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 82-23492 Filed 8-25-82; 8:45 am]

BILLING CODE 3510-25-M

DEPARTMENT OF DEFENSE

Department of The Army, Corps of Engineers

Cancellation of Intent to Prepare a Draft Environmental Impact Statement (DEIS) on a Proposal To Add a Small Hydroelectric Generating Facility at Cochiti Dam, New Mexico

AGENCY: Army Corps of Engineers, Albuquerque District, DOD.

ACTION: Cancellation of intent to prepare a draft environmental impact statement (DEIS).

SUMMARY: The U.S. Army Corps of Engineers, Albuquerque District, has cancelled its intent to prepare a draft environmental impact statement on a proposal to add a small hydroelectric generating facility at Cochiti Dam, New Mexico. An environmental assessment for the proposed action has revealed that, in light of the fact that alternatives considering alteration of permanent pool elevations are no longer being considered, the project will not result in significant adverse impacts to the human or natural environments, or in unresolved controversy. The Environmental Assessment and Finding of No Significant Impact will be included in the Feasibility Report and circulated for review and comment to agencies, groups, and members of the public who have expressed an interest in the project. This notice supercedes the previous Notice of Intent to Prepare a DEIS for this action which was published on 29 December 1981, Tuesday, 46 FR 62893.

Dated: August 18, 1982.

Julian E. Pylant,

Lieutenant Colonel, EN, District Engineer.

[FR Doc. 82-23466 Filed 8-25-82; 8:45 am]

BILLING CODE 3710-KK-M

Defense Communications Agency

Membership of the Defense Communications Agency SES Performance Review Board

AGENCY: Defense Communications Agency, DOD.

ACTION: Notice of membership of the Defense Communications Agency SES Performance Review Board.

SUMMARY: This notice announces the appointment of the members of the SES Performance Review Board (PRB) of the Defense Communications Agency. The publication of PRB membership is required by 5 U.S.C. 4314(c)(4).

The Performance Review Board provides fair and impartial review of Senior Executive Service performance appraisals and makes recommendations regarding performance and performance awards to the Director, Defense Communications Agency.

EFFECTIVE DATE: August 2, 1982.

FOR FURTHER INFORMATION CONTACT: Mr. Terry McCleary, Program Development and Evaluation Division, Assistant Deputy Director for Civilian Personnel, Personnel and Administration Directorate, Defense Communications Agency, (703) 692–2794.

SUPPLEMENTARY INFORMATION: In accordance with 5 U.S.C. 4314(c)(4), the following are names and titles of the executives who have been appointed to serve as members of the SES Performance Review Board. They will serve a one-year renewable term, effective August 2, 1982.

Layman, Lawrence, Rear Admiral, USN, Vice Director, Defense Communications Agency
Petty, Robert O., Brigadier General, USAF, Deputy Director, Defense Communications System.
Lee, Ray H. Brigadier General, USA, Director, Command and Control Technical Center
Levine, Robert H., Associate Deputy Director, Defense Communications System
Morriss, Benham E., Deputy Director, Command and Control Technical Center
Helms, Robert W., Comptroller
Israel, David R., Deputy Director for Planning and Systems Integration
Grimes, John G., Deputy Manager, National Communications System

Date: August 17, 1982.

Lawrence Layman,

Rear Admiral, USN, Vice Director.

[FR Doc. 82-23312 Filed 8-25-82; 8:45 am]

BILLING CODE 3610-05-M

Defense Contract Audit Agency

Membership of the Defense Contract Audit Agency (CDAA), Performance Review Board

AGENCY: Defense Contract Audit Agency, DOD.

ACTION: Notice of membership of the Defense Contract Audit Agency Performance Review Board.

SUMMARY: This notice announces the appointment of the members of the Performance Review Board (PRB) of the Defense Contract Audit Agency. The publication of PRB membership is required by 5 U.S.C. 4314(c)(4).

The Performance Review Board provides fair and impartial review of Senior Executive Service performance appraisals and makes recommendations regarding performance and performance awards to the Director, Defense Contract Audit Agency.

EFFECTIVE: August 26, 1982.

FOR FURTHER INFORMATION CONTACT: Mr. Roger D. Kriesch, Personnel Management Specialist, Office of the Director of Personnel, Defense Contract Audit Agency, Department of Defense, Cameron Station, Alexandria, VA, (202) 274–5798 or 274–5799.

SUPPLEMENTARY INFROMATION: In accordance with 5 U.S.C. 4314(c)(4), the following are names and titles of the executives who have been appointed to serve as members of the Performance Review Board. They will serve a one-year term, effective upon publication of this notice.

Mr. Robert G. Bordley Chief, Accounting and Finance Division, Office of the Comptroller, Defense Logistics Agency
Mr. John J. Quill General Counsel, Defense Legal Service
Mr. Raymond E. Schmidt Director, Audit Policy, Office of the Assistant Secretary (Comptroller), Office of the Secretary of Defense

John van Santen,

Assistant Director, Resources.

[FR Doc. 82-23316 Filed 8-25-82; 8:45 am]

BILLING CODE 3620-01-M

Department of the Navy

Chief of Naval Operations Executive Panel Advisory Committee; Closed Meeting

Pursuant to the provisions of the Federal Advisory Committee Act (5 U.S.C. App. 1), notice is hereby given that the Chief of Naval Operations (CNO) Executive Panel Advisory Committee will meet on September 15–16, 1982, from 9 a.m. to 5 p.m. each day, at 2000 North Beauregard Street, Alexandria, Virginia. All sessions will be closed to the public.

The entire agenda for the meeting will consist of discussions of key issues in naval warfare and related intelligence. These matters constitute classified information that is specifically authorized by Executive order to be kept secret in the interest of national defense and is, in fact, properly classified pursuant to such Executive order. Accordingly, the Secretary of the Navy has determined in writing that the public interest requires that all sessions of the meeting be closed to the public because they will be concerned with matters listed in section 552b(c)(1) of title 5, United States Code.

For futher information concerning this meeting, contact: Lieutenant Commander K. M. Cummings, Executive Secretary of the CNO Executive Panel Advisory Committee, 2000 North Beauregard Street, Room 392, Alexandria, Virginia 22311. Phone (703) 756–1205.

Date: August 23, 1982.

F. N. Ottie,

Lieutenant Commander, JAGC, U.S. Navy Alternate Federal Register Liaison Officer.

[FR Doc. 82-23297 Filed 8-25-82; 8:45 am]

BILLING CODE 3810-AE-M

DEPARTMENT OF EDUCATION

Office of Postsecondary Education

National Direct Student Loan, College Work-Study, and Supplemental Educational Opportunity Grant Programs

AGENCY: Education Department.

ACTION: Notice of Closing Date for Filing the Fiscal-Operations Report and Application to Participate in the National Direct Student Loan (NDSL), College Work-Study (CWS), and Supplemental Educational Opportunity Grant (SEOG) Programs.

The Secretary gives notice to institutions of higher education of the deadline for an institution of higher education to apply for fiscal year 1983 funds—for use in the 1983–84 award year—under the National Direct Student Loan (NDSL), College Work-Study (CWS), and Supplemental Educational Opportunity Grant (SEOG) Programs. Under these programs, the Secretary allocates funds to institutions for students who need financial aid to meet the cost of postsecondary education. Institutions of higher education do not have to be eligible to submit an application for funds. Institutions will be notified of the closing date for establishing institutional eligibility to participate in the NDSL, CWS and SEOG programs through the Federal Register.

The Secretary further gives notice that an institution that had a NDSL fund or

expended CWS or SEOG funds during the 1981–82 award year is required to report its program expenditures as of June 30, 1982 to the Secretary.

The NDSL, CWS, and SEOG programs are authorized by Parts E, C, and Subpart A–2, respectively, of title IV of the Higher Education Act of 1965.

(20 U.S.C. 1087aa–1087ii; 42 U.S.C. 2751–2756b; and 20 U.S.C. 1070b–1070b–3)

Closing Date for FISAP Forms: An institution must submit the Fiscal-Operations Report and Application to Participate in the National Direct Student Loan (NDSL), Supplemental Educational Opportunity Grant (SEOG), and College Work-Study (CWS) Programs (FISAP) form by October 15, 1982. Institutions that do not submit the FISAP form by the closing date will not be considered for 1983–84 funds.

FISAP Forms Delivered by Mail: A FISAP form sent by mail must be addressed to the Department of Education, Office of Student Financial Assistance, Division of Program Operations, Campus and State Grant Branch, 400 Maryland Avenue, SW., (Room 4621, Regional Office Building 3), Washington, D.C. 20202—3446.

An institution must show proof of mailing its FISAP form. Proof of mailing consists of one of the following: (1) A legible mail receipt with the date of mailing stamped by the U.S. Postal Service, (2) a legibly dated U.S. Postal Service postmark; or (3) any other proof of mailing acceptable to the Secretary of Education.

If a FISAP form is sent through the U.S. Postal Service, the Secretary does not accept either of the following as proof of mailing: (1) A private metered postmark, or (2) a mail receipt that is not dated by the U.S. Postal Service. An institution should note that the U.S. Postal Service does not uniformly provide a dated postmark. Before relying on this method, an institution should check with its local post office. An institution is encouraged to use certified or at least first-class mail.

FISAP Form Delivered by Hand: A FISAP form that is hand-delivered must be taken to the Department of Education, Office of Student Financial Assistance, Division of Program Operations, Campus and State Grant Branch, 7th and D Streets, S.W., Room 4621, Regional Office Building 3, Washington, D.C. The Campus and State Grant Branch will accept hand-delivered FISAP forms between 8:00 a.m. and 4:30 p.m. daily (Washington, D.C. time), except Saturdays, Sundays, and Federal holidays. A FISAP form that is hand-delivered will not be accepted after 4:30 p.m. on the closing date.

FISAP Forms and Information: The FISAP forms have been mailed by the program office. An institution shall prepare and submit its FISAP form in accordance with the instructions included in the package.

Applicable Regulations: The following regulations are applicable to these programs:

National Direct Student Loan—34 CFR Parts 674 and 668.

College Work-Study–34 CFR Parts 675 and 668.

Supplemental Educational Opportunity Grant—34 CFR Parts 676 and 668.

The final regulations governing the awarding of funds under each of the above campus-based programs were published in the **Federal Register** of August 2, 1982 (47 FR 33398). (Part 668 is the Student Assistance General Provisions).

FOR FURTHER INFORMATION CONTACT: Mr. Robert Coates, Chief, Campus and State Grant Branch, Division of Program Operations, Office of Student Financial Assistance, U.S. Department of Education, 400 Maryland Avenue, SW., (Room 4621, ROB–3), Washington, D.C. 20202–3446, Telephone (202) 245–2320.

(Catalog of Federal Domestic Assistance Nos. 84.038, National Direct Student Loan Program; 84.033, College Work-Study Program; and 84.007, Supplemental Educational Opportunity Grant Program)

Dated: August 23, 1982.

Margaret J. Seagears,

Acting Assistant Secretary for Postsecondary Education.

[FR Doc. 82–23391 Filed 8–25–82; 8:45 am]

BILLING CODE 4000–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 6297–000]

Alpine Power Co.; Application for Exemption for Small Hydroelectric Power Project Under 5 MW Capacity

August 20, 1982.

Take notice that on May 5, 1982, Alpine Power Company filed an application under Section 408 of the Energy Security Act of 1980 (Act) (16 U.S.C. 2705 and 2708 as amended), for exemption of a proposed hydroelectric project from licensing under Part I of the Federal Power Act. The proposed small hydroelectric Project No. 6297 would be located Carlton Creek, a tributary of the Cowlitz River, near Packwood in Lewis County, Washington. Correspondence with the Applicant should be directed to: Mr. William L. Devine, Alpine Power Company, P.O. Box 68, Maple Falls, Washington 98266.

Project Description—The proposed project would consist of: (1) A proposed 50-foot long, 5-foot high steel and concrete diversion structure on Carlton Creek of the Cowlitz River; (2) a proposed 15,000-foot long, 36-inch diameter steel pipeline/penstock; (3) a proposed powerhouse with a single generating unit having an estimated installed capacity of 5.0 MW and producing an average annual energy output of 25 GWh; (4) a proposed open channel tailrace; (5) a proposed 1.6 mile long, 115 KV primary transmission line; (6) ½ mile of proposed access roads; and, (7) appurtenant facilities. The project is proposed as a run-of-river operation on lands of the Gifford Pinchot National Forest of the U.S. Forest Service.

Purpose of Exemption—An exemption, if issued, gives the Exemptee priority of control, development, and operation of the project under the terms of the exemption from licensing, and protects the Exemptee from permit or license applicants that would seek to take or develop the project.

Agency Comments—The U.S. Fish and Wildlife Service, The National Marine Fisheries Service, and the Washington State Department of Game and the Washington State Department of Fisheries are requested, for the purposes set forth in Section 408 of the Act, to submit within 60 days from the date of issuance of this notice appropriate terms and conditions to protect any fish and wildlife resources or to otherwise carry out the provisions of the Fish and Wildlife Coordination Act. General comments concerning the project and its resources are requested; however, specific terms and conditions to be included as a condition of exemption must be clearly identified in the agency letter. If an agency does not file terms and conditions within this time period, that agency will be presumed to have none. Other Federal, State, and local agencies are requested to provide any comments they may have in accordance with their duties and responsibilities. No other formal requests for comments will be made. Comments should be confined to substantive issues relevant to the granting of an exemption. If an agency does not file comments within 60 days from the date of issuance of this notice, it will be presumed to have no comments. One copy of an agency's comments must also be sent to the Applicant's representatives.

Competing Application—Any qualified license applicant desiring to

file a competing application must submit to the Commission, on or before October 12, 1982 either the competing license application that proposes to develop at least 7.5 megawatts in that project, or notice of intent to file such a license application. Submission of a timely notice of intent allows an interested person to file the competing license application no later than 120 days from the date that comments, protests, etc. are due. Applications for preliminary permit will not be accepted.

A notice of intent must conform with the requirements of 18 CFR 4.33(b) and (c) (1980). A competing license application must conform with the requirements of 18 CFR 4.33(a) and (d) (1980).

Comments, Protests, or Petitions To Intervene—Anyone may submit comments, a protest, or a petition to intervene in accordance with the requirements of the rules of practice and procedure, 18 CFR 1.8 or 1.10 (1980). In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a petition to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or petitions to intervene must be received on or before October 12, 1982.

Filing and Service of Responsive Documents—Any filings must bear in all capital letters the title "COMMENTS", "NOTICE OF INTENT TO FILE COMPETING APPLICATION", "COMPETING APPLICATION", "PROTEST", or "PETITION TO INTERVENE", as applicable, and the Project Number of this notice. Any of the above named documents must be filed by providing the original and those copies required by the Commission's regulations to: Kenneth F. Plumb, Secretary, Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, D.C. 20426. An additional copy must be sent to: Fred E. Springer, Chief, Applications Branch, Division of Hydropower Licensing, Federal Energy Regulatory Commission, Room 208 RB at the above address. A copy of any notice of intent, competing application, or petition to intervene must also be served upon each representative of the Applicant specified in the first paragraph of this notice.

Kenneth F. Plumb,

Secretary.

[FR Doc. 82-23427 Filed 8-25-82; 8:45 am]

BILLING CODE 6717-01-M

[Project No. 6298-000]

Alpine Power Co.; Application for Exemption for Small Hydroelectric Power Project Under 5 MW Capacity

August 20, 1982.

Take notice that on May 5, 1982, Alpine Power Company filed an application under Section 408 of the Energy Security Act of 1980 (Act) (16 U.S.C. 2705 and 2708 *as amended*), for exemption of a proposed hydroelectric project from licensing under Part I of the Federal Power Act. The proposed small hydroelectric Project No. 6298 would be located on Summit Creek, a tributary of the Cowlitz River, near Packwood in Lewis County, Washington. Correspondence with the Applicant should be directed to: Mr. William L. Devine, Alpine Power Company, P.O. Box 68, Maple Falls, Washington 98266.

Project Description—The proposed project would consist of: (1) A proposed 50-foot long, 5-foot high steel and concrete diversion structure on Summit Creek of the Cowlitz River; (2) a proposed 12,000-foot long, 36-inch diameter steel pipeline/penstock; (3) a proposed powerhouse with a single generating unit having an estimated installed capacity of 5.0 MW and producing an average annual energy output of 25 GWh; (4) a proposed open channel tailrace; (5) a proposed 1.6 mile long, 115 kV primary transmission line; (6) ½ mile of proposed access roads; and, (7) appurtenant facilities. The project is proposed as a run-of-river operation on lands of the Gifford Pinchot National Forest of the U.S. Forest service.

Purpose of Exemption—An exemption, if issued, gives the Exemptee priority of control, development, and operation of the project under the terms of the exemption from licensing, and protects the Exemptee from permit or license applicants that would seek to take or develop the project.

Agency Comments—The U.S. Fish and Wildlife Service, The National Marine Fisheries Service, and the Washington State Department of Game and the Washington State Department of Fisheries are requested, for the purposes set forth in Section 408 of the Act, to submit within 60 days from the date of issuance of this notice appropriate terms and conditions to protect any fish and wildlife resources or to otherwise carry out the provisions of the Fish and Wildlife Coordination Act. General comments concerning the project and its resources are requested; however, specific terms and conditions to be included as a condition of exemption must be clearly identified in the agency letter. If an agency does not file terms and conditions within this time period, that agency will be presumed to have none. Other Federal, State, and local agencies are requested to provide any comments they may have in accordance with their duties and responsibilities. No other formal requests for comments will be made. Comments should be confined to substantive issues relevant to the granting of an exemption. If an agency does not file comments within 60 days from the date of issuance of this notice, it will be presumed to have no comments. One copy of an agency's comments must also be sent to the Applicant's representatives.

Competing Application—Any qualified license applicant desiring to file a competing application must submit to the Commission, on or before October 12, 1982 either the competing license application that proposes to develop at least 7.5 megawatts in that project, or notice of intent to file such a license application. Submission of a timely notice of intent allows an interested person to file the competing license application no later than 120 days from the date that comments, protests, etc, are due. Applications for preliminary permit will not be accepted.

A notice of intent must conform with the requirements of 18 CFR 4.33(b) and (c) (1980). A competing license application must conform with the requirements of 18 CRF 4.33(a) and (d) (1980).

Comments, Protests, or Petitions To Intervene—Anyone may submit comments, a protest, or a petition to intervene in accordance with the requirements of the Rules of Practice and Procedure, 18 CFR 1.8 or 1.10 (1980). In determining the appropriate action to take, the Commission will consider all protests of other comments filed, but only those who file a petition to intervene in accordance with the Commission's rules may become a party to the proceeding. Any comments, protests, or petitions to intervene must be received on or before October 12, 1982.

Filing and Service of Responsive Documents—Any filings must bear in all capital letters the title "COMMENTS", "NOTICE OF INTENT TO FILE COMPETING APPLICATION", "COMPETING APPLICATION", "PROTEST", or "PETITION TO INTERVENE", as applicable, and the Project Number of this notice. Any of the above named documents must be filed by providing the original and those copies required by the Commission's regulations to: Kenneth F. Plumb, Secretary, Federal Energy Regulatory

Commission, 825 North Capitol Street NE., Washington, D.C. 20426. An additional copy must be sent to: Fred E. Springer, Chief, Applications Branch, Division of Hydropower Licensing, Federal Energy Regulatory Commission, Room 208 RB at the above address. A copy of any notice of intent, competing application, or petition to intervene must also be served upon each representative of the Applicant specified in the first paragraph of this notice.

Kenneth F. Plumb,

Secretary.

[FR Doc. 82-23428 Filed 8-25-82; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. CP82-449-000]

Colorado Interstate Gas Co.; Application

August 20, 1982.

Take notice that on July 30, 1982, Colorado Interstate Gas Company (Applicant), P.O. Box 1087, Colorado Springs, Colorado 30944, filed in Docket No. CP82-449-000 an application pursuant to Section 7(c) of the Natural Gas Act for a certificate of public convenience and necessity authorizing the transportation of natural gas for Cody Gas Company (Cody), all as more fully set forth in the application which is on file with the Commission and open to public inspection.

It is stated that Montana-Dakota Utilities Co. (MDU) has agreed to provide firm gas service to Cody to augment gas supplies for service in its existing market area. Since there is no interconnection between MDU's and Cody's pipeline systems, Applicant, pursuant to an agreement with Cody dated August 19, 1981, proposes to accept for Cody's account up to 10,000 Mcf of natural gas per day from MDU at Applicant's existing Elk Basin facilities located in Park County, Wyoming. Applicant would then redeliver thermally equivalent volumes, less fuel and lost or unaccounted-for gas, to Cody at an existing Oregon Basin interconnection between the two companies also located in Park County, Wyoming. Applicant indicates that an existing Cody-owned metering facility would be used to measure the gas deliveries proposed by Applicant.

For such service, Cody would pay Applicant a monthly rate which would reflect Applicant's transmission system cost of service, including a reasonable return on investment, but exclusive of the cost of service attributable to its gathering and storage system, and exclusive of the cost of service attributable to gas used in the operation and maintenance of said transmission system. Applicant states that the rate is currently 22.24 cents per Mcf at 14.73 psia.

Any person desiring to be heard or to make any protest with reference to said application should on or before September 10, 1982, file with the Federal Energy Regulatory Commission, Washington, D.C. 20426, a petition to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 1.8 or 1.10) and the Regulations under the Natural Gas Act (13 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 petition 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 petition 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 petition 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 Applicant to appear or be represented at the hearing.

Kenneth F. Plumb,

Secretary.

[FR Doc. 82-23412 Filed 8-25-82; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. TA83-1-32-000 (PGA83-1)]

Colorado Interstate Gas Co.; Proposed Change in Rates Under Purchased Gas Adjustment Clause Provisions

August 20, 1982.

Take notice that Colorado Interstate Gas Company (CIG), on August 13, 1982, tendered for filing proposed changes in its FERC Gas Tariff, Original Volume No. 1, to be effective October 1, 1982. The increased jurisdictional cost to CIG of purchased gas proposed to be recovered by the filing amounts to approximately $126.9 million above the rates proposed to become effective on September 29, 1982, in Docket No. RP82-54. Due to the absence of any projected maximum surcharge absorption capability on CIG's system, no reduction in CIG's Estimated Actual Cost of Purchased Gas for incremental pricing purposes is reflected in the filing.

Copies of the filing have been served upon the Company's jurisdictional customers and other interested persons, including public bodies.

Any person desiring to be heard or to protest said filing should file a petition to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, N.E., Washington, D.C. 20426, in accordance with §§ 1.8 and 1.10 of the Commission's rules of practice and procedure (18 CFR 1.8, 1.10). All such petitions or protests should be filed on or before September 7, 1982. Protests will be considered by the Commission in determining the appropriate action to be taken but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a petition to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 82-23435 Filed 8-25-82; 8:45 am]

BILLING CODE 6717-01-M

[Project No. 3848-001]

Continental Hydro Corp.; Surrender of Preliminary Permit

(August 20, 1982)

Take notice that Continental Hydro Corporation, Permittee for the proposed Sugar Loaf Project No. 3848, requested by letter dated July 21, 1982, that its preliminary permit be surrendered. The preliminary permit was issued on July 15, 1982, and would have expired on January 1, 1983. The project would have been located on the Lake Fork River near the Town of Malta in Lake County, Colorado. Continental Hydro Corporation has determined that hydroelectric development will not be economically feasible at this time.

The surrender of the preliminary permit for Project No. 3848 is accepted as of the date of this notice.

Kenneth F. Plumb,

Secretary.

[FR Doc. 82-23401 Filed 8-25-82; 8:45 am]

BILLING CODE 6717-01-M

[Project No. 6345-000]

Delta Canal Co., et al.; Application for Exemption for Small Hydroelectric Power Project Under 5 MW Capacity

August 20, 1982.

Take notice that on May 19, 1982, Delta Canal Company et al (Applicant) filed an application, under Section 408 of the Energy Security Act of 1980 (Act) (16 U.S.C. 2705, and 2708 *as amended*), for exemption of a proposed hydroelectric project from licensing under Part I of the Federal Power Act. The proposed small hydroelectric project, Project No. 6345, would be located on the Sevier River in Juab County, Utah. Correspondence with the Applicant should be directed to: Mr. Jay Bingham, Water Power Co., P.O. Box 22208, Salt Lake City, Utah 84122.

Project Description—The proposed project would consist of the following: (1) A 1400-foot-long, 90-foot-high, existing earthfill dam, owned by the United States and administered by the Bureau of Land Management; (2) an existing 10,905 acre reservoir with a storage capacity of 236,145 acre-feet at 5014 feet M.S.L.; (3) renovation of existing outlet works; (4) a proposed 330-foot-long 6-foot diameter steel penstock; (5) a proposed powerhouse containing 2 turbine/generator units, each with a rated capacity of 900 kW, operating under a head of 77 feet; (6) a proposed 600-foot-long, 12.5-kV transmission line; and (7) appurtenant facilities. The estimated annual generation of 8,590 MWh would offset power used by the Applicant in pumping irrigation wells, and surplus power would be sold to the Utah Power and Light Company.

Purpose of Exemption—An exemption, if issued, gives the Exemptee priority of control, development, and operation of the project under the terms of the exemption from licensing, and protects the Exemptee from permit or license applicants that would seek to take or develop the project.

Agency Comments—The U.S. Fish and Wildlife Service, The National Marine Fisheries Service, and the Utah Department of Natural Resources are requested, for the purposes set forth in Section 408 of the Act, to submit within 60 days from the date of issuance of this notice appropriate terms and conditions to protect any fish and wildlife resources or to otherwise carry out the provisions of the Fish and Wildlife Coordination Act. General comments concerning the project and its resources are requested; however, specific terms and conditions to be included as a condition of exemption must be clearly identified in the agency letter. If an agency does not file terms and conditions within this time period, that agency will be presumed to have none. Other Federal, State, and local agencies are requested to provide any comments they may have in accordance with their duties and responsibilities. No other formal requests for comments will be made. Comments should be confined to substantive issues relevant to the granting of an exemption. If an agency does not file comments within 60 days from the date of issuance of this notice, it will be presumed to have no comments. One copy of an agency's comments must also be sent to the Applicants's representatives.

Competing Applications—Any qualified license applicant desiring to file a competing application must submit to the Commission, on or before October 2, 1982 either the competing license application that proposes to develop at least 7.5 megawatts in that project, or a notice of intent to file such a license application. Submission of a timely notice of intent allows an interested person to file the competing license application no later than 120 days from the date that comments, protests, etc. are due. Applications for preliminary permit will not be accepted.

A notice of intent must conform with the requirements of 18 CFR 4.33(b) and (c) (1980). A competing license application must conform with the requirements of 18 CFR 4.33(a) and (d) (1980).

Comments, Protests, or Petitions To Intervene—Anyone may submit comments, a protest, or a petition to intervene in accordance with the requirements of the rules of practice and procedure, 18 CFR 1.8 or 1.10 (1980). In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a petition to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or petitions to intervene must be received on or before October 2, 1982.

Filing and Service of Responsive Documents—any filings must bear in all capital letters the title "COMMENTS", "NOTICE OF INTENT TO FILE COMPETING APPLICATION", "COMPETING APPLICATION", "PROTEST", or "PETITION TO INTERVENE", as applicable, and the Project Number of this notice. Any of the above named documents must be filed by providing the original and those copies required by the Commission's regulations to: Kenneth F. Plumb, Secretary, Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, D.C. 20426. An additional copy must be sent to: Fred E. Springer, Chief, Applications Branch, Division of Hydropower Licensing, Federal Energy Regulatory Commission, Room 208 RB at the above address. A copy of any notice of intent, competing application, or petition to intervene must also be served upon each representative of the Applicant specified in the first paragraph of this notice.

Kenneth F. Plumb,

Secretary.

[FR Doc. 82-23402 Filed 8-25-82; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. ER82-723-000]

Detroit Edison Co.; Filing

August 20, 1982.

The filing Company submits the following:

Take notice that The Detroit Edison Company (DEC), August 13, 1982 tendered for filing the following revised tariff sheets:

FERC Electric Tariff Original Volume No. 1

Fifth Revised Sheet No. 1
Sixth Revised Sheet No. 4
Sixth Revised Sheet No. 5
Fifth Revised Sheet No. 6
Seventh Revised Sheet No. 7
Fifth Revised Sheet No. 8
Seventh Revised Sheet No. 9
Fifth Revised Sheet No. 10
Fourth Revised Sheet No. 15
Third Revised Sheet No. 16a

The proposed changes would increase revenues from jurisdictional sales and service by $9,000,000 based on the 12 month period ending December 31, 1983 DEC requests that the proposed rates and tariffs be made effective no later than December 1, 1982.

DEC further states that it is essential that these increased revenues be made available to the company on the proposed effective date in order to offset rapidly increasing costs which are resulting in deteriorating earnings to the Company from this class of service. DEC last filed a rate increase applicable to its jurisdictional sales on January 12, 1981. Since that time all costs including capital costs incurred by the Company have been subjected to the continuous impact of inflation and other factors making it essential to adjust the rates to meet these increased costs.

DEC also states that copies of the filing were served upon the public utility's jurisdictional customers and the Michigan Public Service Commission.

Any person desiring to be heard or to protest said application should file a petition to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, D.C. 20426, in accordance with §§ 1.8 and 1.10 of the Commission's rules of practice and procedure (18 CFR 1.8, 1.10). All such petitions or protests should be filed on or before September 7, 1982. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a petition to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 82-23403 Filed 8-25-82; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. ER 81-550-000]

Duke Power Co.; Refund Report

August 20, 1982.

The filing company submits the following:

Take notice that on July 20, 1982, Duke Power Company filed a refund report pursuant to the Commission's order issued July 9, 1982.

Any person desiring to be heard or to protest this filing should file comments with the Federal Energy Regulatory Commission, 825 North Capitol Street, N.E., Washington, D.C. 20426, on or before September 8, 1982, Comments will be considered by the Commission in determining the appropriate action to be taken. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 82-23436 Filed 8-25-82; 8:45 am]

BILLING CODE 6717-13-M

[Docket No. TA82-2-23-000]

Eastern Shore Natural Gas Co.; Filing

August 19, 1982.

Take notice that Eastern Shore Natural Gas Company (Eastern Shore) on August 11, 1982 tendered for filing the following revised tariff sheets to Original Volume No. 1 of Eastern Shore's FERC Gas Tariff:

To Be Effective September 1, 1982

1. Proposed Tariff Sheets to Original Volume No. 1

Second Revised Sheet No. 245
Second Revised Sheet No. 248
Third Revised Sheet No. 252

2. Alternate Tariff Sheets to Original Volume No. 1

Twenty-First Revised Sheet No. 5
Twenty-First Revised Sheet No. 6
Sixth Revised Sheet No. 7
Twenty-first Revised Sheet No. 10
Twenty-First Revised Sheet No. 11
Twenty-First Revised Sheet No. 12

The "Proposed Tariff Sheets" reflect a proposed change in the effective dates of Eastern Shore's Purchased Gas Adjustment (PGA) and Demand Charge Adjustment (DCA) filings from the currently scheduled effective dates of March 1 and September 1 to the proposed dates of May 1 and November 1 of each year. This change is required as a result of Transcontinential Gas Pipe Line Corporation (Transco), Eastern Shore's supplier, making a similar filing on July 30, 1982.

In the event that the Commission does not waive Section 154.38(d)(4)(iv)(a) and accept the "Proposed Tariff Sheets", Eastern Shore has enclosed the "Alterntative Tariff Sheets", which constitute the semiannual PGA and DCA rate changes to be effective September 1, 1982 in accordance with Eastern Shore's current tariff. The purpose of these tariff sheets is to reflect various rate adjustments pursuant to the General Terms and Conditions of Eastern Shore's tariff and the transportation cost tracking provision of the Stipulation and Agreement approved by letter order issued March 27, 1981 in Docket No. RP80-84. Such adjustments, which are identified in the headings below by reference to the related section numbers, are described in detail as follows:

A. *Tracking Rate Changes from Transco under PGA Clause (Section 21).* Eastern Shore proposes to "track" Transco's rate adjustments to be effective September 1, 1982 as proposed in their tariff filing dated July 30, 1982 (Docket No. TA82-2-29-000).

B. *Changes in Rates to Reflect Deferred Gas Cost Adjustment (Section 21).* The determination of the (5.5) cents per dt commodity surcharge for amortizing the unrecovered Purchased Gas Account is shown in the filing on Schedule 2. The calculation is based on the balance in the account as of June 30, 1982.

C. *"PGA Reduction" Reflecting Incremental Pricing Regulations (Section 23).* As Eastern Shore is projecting a zero (0) MSAC for the upcoming PGA period, there can be no incremental pricing surcharges and therefore no "PGA Reduction".

D. *Changes in Rate to Reflect Curtailment Credits (Section 20).* The calculation of the Demand Charge Adjustment of .00 cent per dt pursuant to Section 20 is shown in the filing on Schedule 4.

Pursuant to Article VI of the Stipulation and Agreement in Eastern Shore's Docket No. RP80-84 costs paid to others for transportation may be reflected in Eastern Shore's jurisdictional rates. The determinaiton of the .3 cents per dt transportation surcharge adjustment for amortizing the Unrecovered Transportation Cost Account is shown in the filing on Schedule 5.

Also, pursuant to Article II of the Stipulation and Agreement in Eastern Shore's Docket No. RP80-84 a Sales Refund Obligation (SRO) as determined in accordance with Article II is to be passed through to Eastern Shore's jurisdictional customers by crediting the Unrecovered Purchased Gas Cost Account (Account 191) and given effect in Eastern Shore's PGA rate filing that becomes effective on September 1 following each 12 month period ending May 31 during the term of this Stipulation and Agreement.

Eastern Shore states that copies of the filing have been mailed to each of its jurisdictional customers and interested State Commissions.

Any person desiring to be heard or to protest said filing should file a petition to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, N.E., Washington, D.C. 20426, in accordance with §§ 1.8 and 1.10 of the Commission's Rules of Practice and Procedure (18 CFR 1.8, 1.10). All such petitions or protests should be filed on or before August 27, 1982. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a petition to intervene. Copies of this filing are on file with the Commission and available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 82-23429 Filed 8-25-82; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. CP82-15-001]

El Paso Natural Gas Co.; Motion To Vacate

August 20, 1982.

Take notice that on August 3, 1982, El Paso Natural Gas Company (Applicant), P.O. Box 1492, El Paso, Texas 79978, filed in Docket No. CP 82-15-001 a motion requesting that the Commission

vacate the order of March 4, 1982, issuing a certificate of public convenience and necessity pursuant to Section 7(c) of the Natural Gas Act in Docket No. CP82-15-000, all as more fully set forth in the motion which is on file with the Commission and open to public inspection.

It is submitted that by order issued March 4, 1982, in the instant docket, Applicant was authorized to construct and operate a 1-inch O.D. tap and valve facility to permit the delivery of natural gas to Southern Union Company (Southern Union) for resale to AMOCO Production Company (AMOCO) in Rio Arriba County, New Mexico. Applicant states that the natural gas proposed to be delivered by Applicant to Southern Union was to be used by AMOCO to serve the residential requirements of its mobile home field camp near Lindrith, New Mexico.

It is stated that AMOCO has dismantled the field camp, thus, gas service to the area is no longer needed. Therefore, Applicant no longer intends to construct the 1-inch O.D. tap and valve facility.

Any person desiring to be heard or to make any protest with reference to said motion should on or before September 10, 1982, file with the Federal Energy Regulatory Commission, Washington, D.C. 20426, a petition to intervene or a protest in accordance with the requirements of the Commission's rules of practice and procedure (18 CFR 1.8 or 1.10) 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 petition to intervene in accordance with the Commission's Rules.

Kenneth F. Plumb,

Secretary.

[FR Doc. 82-23430 Filed 8-25-82; 8:45 am]

BILLING CODE 6717-01-M

[Project No. 5823-001]

Grisdale Hill Co.; Surrender of Preliminary Permit

August 20, 1982.

Take notice that Grisdale Hill Company, Permittee for the proposed Boulder Creek Hydroelectric Project No. 5823, has requested that its preliminary permit be terminated. The preliminary permit was issued on July 1, 1982, and would have expired January 31, 1984. The project would have been located on Boulder Creek within Willamette National Forest in Lane County, Oregon. The Permittee stated that its initial study found the soil unsuitable for hydro development.

The Permittee filed its request on August 2, 1982, and the surrender of the preliminary permit for Project No. 5823 is deemed acceptable as of the date of this notice.

Kenneth F. Plumb,

Secretary.

[FR Doc. 82-23404 Filed 8-25-82; 8:45 am]

BILLING CODE 6717-01-M

[Project No. 6492-000]

Harden Manufacturing Co.; Application for Exemption for Small Hydroelectric Power Project Under 5 MW Capacity

August 20, 1982.

Take notice that on July 6, 1982, Harden Manufacturing Company (Applicant) filed an application, under Section 408 of the Energy Security Act of 1980 (Act) (16 U.S.C. 2705, and 2708 *as amended*), for exemption of a proposed hydroelectric project from licensing under Part I of the Federal Power Act. The proposed small hydroelectric Project No. 6492 would be located on the South Fork of the Catawba River, near Hardins in Gaston County, North Carolina Correspondence with the Applicant should be directed to: Mr. David R. LaFar III, Harden Manufacturing Company, 312 W. Third Ave., P.O. Box 459, Gastonia, North Carolina 28052.

Project Description—The proposed project would consist of: (1) an existing 267-foot-long, 13.6-foot high masonry dam; (2) an existing powerhouse with a single 200 kW General Electric generator with a 36-inch S. Leffel turbine producing an average annual energy output of 1.0 GWh; (3) an existing open channel tailrace; (4) a proposed primary transmission line to connect to an adjacent Duke Power Company line; and, (5) appurtenant facilities. The project is proposed as a run-of-river operation. Energy produced at the site would be sold to Duke Power Company.

Purpose of Exemption—An exemption, if issued, gives the Exemptee priority of control, development, and operation of the project under the terms of the exemption from licensing, and protects the Exemptee from permit or license applicants that would seek to take or develop the project.

Agency Comments—The U.S. Fish and Wildlife Service, The National Marine Fisheries Service, and the State of North Carolina Wildlife Resources Commission are requested, for the purposes set forth in Section 408 of the Act, to submit within 60 days from the date of issuance of this notice appropriate terms and conditions to protect any fish and wildlife resources or to otherwise carry out the provisions of the Fish and Wildlife Coordination Act. General comments concerning the project and its resources are requested; however, specific terms and conditions to be included as a condition of exemption must be clearly identified in the agency letter. If an agency does not file terms and conditions within this time period, that agency will be presumed to have none. Other Federal, State, and local agencies are requested to provide any comments they may have in accordance with their duties and responsibilities. No other formal requests for comments will be made. Comments should be confined to substantive issues relevant to the granting of an exemption. If an agency does not file comments within 60 days from the date of issuance of this notice, it will be presumed to have no comments. One copy of an agency's comments must also be sent to the Applicant's representatives.

Competing Applications—Any qualified license applicant desiring to file a competing application must submit to the Commission, on or before October 1, 1982 either the competing license application that proposes to develop at least 7.5 megawatts in that project, or a notice of intent to file such a license application. Submission of a timely notice of intent allows an interested person to file the competing license application no later than 120 days from the date that comments, protests, etc. are due. Applications for preliminary permit will not be accepted.

A notice of intent must conform with the requirements of 18 CFR 4.33 (b) and (c) (1980). A competing license application must conform with the requirements of 18 CFR 4.33 (a) and (d) (1980).

Comments, Protests, or Petitions To Intervene—Anyone may submit comments, a protest, or a petition to intervene in accordance with the requirements of the Rules of Practice and Procedure, 18 CFR 1.8 or 1.10 (1980). In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a petition to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or petitions to intervene must be received on or before October 1, 1982.

Filing and Service of Responsive Documents—Any filings must bear in all capital letters the title "COMMENTS", "NOTICE OF INTENT TO FILE COMPETING APPLICATION", "COMPETING APPLICATION", "PROTEST", or "PETITION TO INTERVENE", as applicable, and the Project Number of this notice. Any of the above named documents must be filed by providing the original and those copies required by the Commission's regulations to: Kenneth F. Plumb, Secretary, Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, D.C. 20426. An additional copy must be sent to: Fred E. Springer, Chief, Applications Branch, Division of Hydropower Licensing, Federal Energy Regulatory Commission, Room 208 RB at the above address. A copy of any notice of intent, competing application, or petition to intervene must also be served upon each representative of the Applicant specified in the first paragraph of this notice.

Kenneth F. Plumb,

Secretary.

[FR Doc. 82-23431 Filed 8-25-82; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. ER82-722-000]

Idaho Power Co.; Filing

August 20, 1982.

The filing Company submits the following:

Take notice that on August 12, 1982, the Idaho Power Company (Idaho) tendered for filing in compliance with the Federal Energy Regulatory Commission's Order of October 7, 1978, a summary of sales made under the Company's 1st Revised FERC Electric Tariff, Volume No. 1 (Supersedes Original Volume No. 1) during June 1982, along with cost justification for the rate charged. This filing includes the following supplements:

Utah Power & Light Company, Supplement 9
Montana Power Company, Supplement 9
Sierra Pacific Power Company, Supplement 7
Portland General Electric Company, Supplement 7
Pacific Power & Light Company, Supplement 7
Intermountain Consumer Power Association, Supplement 2

Any person desiring to be heard or to protest said filing should file a petition to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, N.E., Washington, D.C. 20426, in accordance with §§ 1.8 and 1.10 of the Commission's rules of practice and procedure (18 CFR 1.8, 1.10). All such petitions or protests should be filed on or before September 8, 1982. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a petition to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 82-23437 Filed 8-25-82; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. ER82-724-000]

Indianapolis Power & Light Co.; Cancellation

August 20, 1982.

The filing Company submits the following:

Take notice that on August 13, 1982, Indianapolis Power & Light Company (Indianapolis) tendered for filing a Notice of Cancellation of Rate Schedule FERC No. 16 between Indianapolis and Morgan County Rural Electric Membership Corporation.

Indianapolis requests an effective date of September 1, 1982, and therefore requests waiver of the Commission's notice requirements.

Copies of this filing have been served upon the Morgan County Rural Electric Membership Corporation and the Public Service Commission of Indiana.

Any person desiring to be heard or to protest said filing should file a petition to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, N.E., Washington, D.C. 20426, in accordance with § 1.8 and 1.10 of the Commission's rules of practice and procedure (18 CFR 1.8, 1.10). All such petitions or protests should be filed on or before September 7, 1982. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a petition to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 82-23438 Filed 8-25-82; 8:45 am]

BILLING CODE 6717-01-M

[Doc. No. 82-50-000, et al.]

Shell Oil Co., et al.; Petitions for Issuance of Declaratory Orders

August 19, 1982.

Indicated Producers—Shell Oil Company, et al., in the matter of the transportation of liquid and liquefiable hydrocarbons by Natural Gas Pipelines [RM81-32], Docket No. GP82-50-000; Associated Gas Distributors, transportation by Natural Gas Pipelines of producer-owned liquids and liquefiable hydrocarbons under Title I of the Natural Gas Policy Act of 1978 [RM81-39], Docket No. GP82-51-000; Texas Eastern Transmission Corporation, transportation by Natural Gas Pipelines of producer-owned liquids and liquefiable hydrocarbons [RM81-43], Docket No. GP82-52-000.

August 19, 1982.

Take notice that on June 1, 1981, Shell Oil Company, One Shell Plaza, P.O. Box 2463, Houston, Texas, on behalf of itself, Arco Oil and Gas Company, Conoco Inc., Gulf Oil Corporation, and Marathon Oil Company ("Indicated Producers") filed a petition [1] pursuant to §§ 1.7(b) and (c) and 1.43 of the Commission's rules of practice and procedure, section 16 of the Natural Gas Act ("NGA") and section 501 of the Natural Gas Policy Act of 1978 ("NGPA") for the Commission to (a) issue a declaratory order disclaiming the applicability of Title I of the NGPA to the transportation of liquid and liquefiable hydrocarbons by natural gas pipelines and (b) consider the establishment in a rulemaking of just and reasonable standards applicable to the transportation of liquid and liquefiable hydrocarbons by natural gas pipelines. Indicated Producers' request for a declaratory order regarding the applicability of Title I to the transportation of liquid and liquefiable hydrocarbons by pipelines is noticed at Docket No. GP82-50-000.[2] (Action on

[1] The Indicated Producers filed concurrently with this Petition a "Motion of Indicated Producers for Severance and Establishment of Generic Proceedings" applicable to Docket Nos. RP80-97, *et al.* In addition, on June 15, 1981, Union Oil Company of California; on June 16, 1981, Aminoil USA, Inc.; and on July 10, 1981, Mobil Oil Corporation, *et al.* ("Producer Petitioners") joined and/or supplemented the Indicated Producers' Petition. On July 27, 1981, Amerada Hess Co. filed comments supporting the Indicated Producers' position, and on June 30, 1981, the Public Service Commission of the State of New York filed comments doubting the need for a declaratory order on the Title I issue.

[2] This notice is intended to provide that the respective petitions for declaratory orders will be addressed in the respective GP-Dockets, while reserving action on the petitions for rulemaking and other motions.

Indicated Producers' petition for rulemaking is the subject of review in Docket No. RM81-32.)

Take notice that on July 22, 1981, Associated Gas Distributors ("AGD"), by its attorneys Crowell & Moring, 1100 Connecticut Avenue, N.W., Washington, D.C. 20036, filed a petition pursuant to §§1.7 and 1.42(i) of the Commission's rules of practice and procedure, and section 501(a) of the NGPA for a declaratory order and for a rulemaking and evidentiary hearing, requesting the Commission to (a) issue a declaratory order clarifying that, where the first sale price of natural gas plus the value of any liquids/liquefiables transportation service rendered by the pipeline purchasing the gas exceeds the applicable maximum lawful price under NGPA Title I, this violates NGPA section 504(a), and (b) initiate a rulemaking, to include an evidentiary hearing, for determination of the value of pipeline transportation of producer-owned liquids and liquefiables. AGD's request for a declaratory order regarding the applicability of Title I to the transporation of liquid and liquefiable hydrocarbons by pipelines is noticed at Docket No. GP82-51-000.[3] (Action on AGD's petition for rulemaking is the subject of review in Docket No. RM81-39.)

Take notice that on September 15, 1981, Texas Eastern Transmission Corporation ("Tetco"), P.O. Box 2521, Houston, Texas 77001, filed a petition pursuant to §§1.7, 1.42 and 1.43 of the Commission's Rules of Practice and Procedure, and section 501 of the NGPA requesting the Commission to (a) issue a declaratory order finding that where a pipeline-purchaser is transporting liquids or liquefiables for the producer-seller, the cost of such transportation service is consideration which, when added to the lawful price ceilings, in effect, circumvents Title I of the NGPA, and (b) initiate a formal rulemaking to establish rates applicable to pipeline transportation of producer-owned liquids and liquefiables. Tetco's request for a declaratory order regarding the applicability of Title I to the transportation of liquid and liquefiable hydrocarbons by pipelines is noticed at Docket No. GP82-52-000.[4] (Action on Tetco's petition for rulemaking is the subject of review in Docket No. RM81-43.)

The petitions of Indicated Producers, AGD, and Tetco have been noticed together because the respective petitions for declaratory orders raise almost identical issues. The Indicated Producers are of the view that it is error to involve Title I price ceilings with the value or cost of the transportation of liquids and liquefiables while AGD and Tetco essentially take the opposite position.

Any person desiring to be heard or to make any protest with reference to any or all of said petitions for declaratory orders should file, within 30 days, with the Federal Energy Regulatory Commission, 825 North Capitol Street, N.E., Washington, D.C. 20426, a petition to intervene or a protest in accordance with the requirements of the Commission's rules of practice and procedure (18 CFR 1.8 or 1.10, or, effective August 26, 1982, 18 CFR 385.211 or 385.214). All protests filed with the Commission will be considered but will not 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 must file a petition to intervene in accordance with the Commission's Rules.

Kenneth F. Plumb,

Secretary.

[FR Doc. 82-23449 Filed 8-25-82; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. ER82-726-000]

Interstate Power Co.; Filing

August 20, 1982.

The filing Company submits the following:

Take notice that Interstate Power Company (Interstate) on August 16, 1982, tendered for filing a contract supplement dated June 25, 1982, between Interstate and Cooperative Power Association. Said contract supplement extends the term of the Transmission Utilization Agreement—F.E.R.C. Rate Schedule No. 124—to December 31, 1982.

Any person desiring to be heard or to protest said filing should file a petition to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, D.C. 20426, in accordance with §§ 1.8 and 1.10 of the Commission's rules of practice and procedure (18 CFR 1.8, 1.10). All such petitions or protests should be filed on or before September 8, 1982. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a petition to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc 82-23439 Filed 8-25-82; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. ER82-728-000]

Iowa-Illinois Gas & Electric Co.; Filing

August 20, 1982.

The filing Company submits the following:

Take notice that Iowa-Illinois Gas and Electric Company (Iowa-Illinois) on August 16, 1982, tendered for filing Supplement No. 7, dated July 1, 1982, to the Twin Cities-Iowa-St. Louis 345 kV Interconnection Coordinating Agreement among Interstate Power Company, Iowa Electric Light and Power Company, Iowa-Illinois, Iowa Public Service Company, Iowa Southern Utilities Company, Northern States Power Company, and Union Electric Company.

Iowa-Illinois indicates the Supplement modifies Section 1.03 of the Agreement in respect of consideration for taps to the Interconnection, and extends the initial twenty year term of the Agreement to forty years, to July 8, 2007. Iowa-Illinois states that no change in rates are proposed in, and no new facilities are required to effectuate, the Supplement.

An effective date of November 1, 1982, or sixty days after filing, whichever is later, is proposed. Iowa-Illinois states a copy of the Supplement has been mailed to each party and to the appropriate State Public Utility Commissions.

Any person desiring to be heard or to protest said application should file a petition to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, N.E., Washington, D.C. 20426, in accordance with Sections 1.8 and 1.10 of the Commission's rules of practice and procedure (18 CFR 1.8, 1.10). All such petitions or protests should be filed on or before September 8, 1982. Protests will be considered by the Commission in determining the appropriate action to be taken but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a petition to intervene. Copies of this application are on file with the

[3] *Id.*
[4] *Id.*

Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 82-23440 Filed 8-25-82; 8:45 am]

BILLING CODE 6717-01-M

[Project No. 6577-000]

Kansas Electric Power Cooperative, Inc.; Application for Preliminary Permit

August 20, 1982.

Take notice that Kansas Electric Power Cooperative, Inc. (Applicant) filed on August 6, 1982, an application for preliminary permit [pursuant to the Federal Power Act, 16 U.S.C. 791(a) 825(r)] for Project No. 6577 to be known as the Glen Elder Waterpower Project located on the Solomon River near Glen Elder, in Mitchell County, Kansas. The application is on file with the Commission and is available for public inspection. Correspondence with the Applicant should be directed to: Mr. L. Joe Hamman, Director, Special Projects, KEPCO, 5315 SW. 21st Street, P.O. Box 4877, Gage Center Station, Topeka, Kansas 66604.

Project Description—The proposed project would utilize a U.S. Bureau of Reclamation dam and reservoir and would consist of: (1) A proposed powerhouse, located adjacent to and on the North side of an existing stilling basin, with an installed capacity of 3,500 kW; (2) a proposed steel penstock approximately 90 feet long; (3) a proposed transmission line approximately 2 miles long; and (4) appurtenant facilities. Applicant estimates the average annual energy to be 4,800 MWh. Energy produced would be utilized within Applicant's system to displace power which would be purchased from other member cooperatives.

Proposed Scope of Studies Under Permit—A preliminary permit, if issued, does not authorize construction. The Applicant seeks issuance of a preliminary permit for a term of 24 months. During this period, engineering, economic and environmental studies will be conducted to ascertain project feasibility and to support an application for a license to construct and operate the project. The estimated cost of those activities is $320,000.

Competing Applications—Anyone desiring to file a competing application for preliminary permit must submit to the Commission, on or before November 30, 1982, the competing application itself [see: 18 CFR 4.30 et seq. (1981)]. A notice of intent to file a competing application for preliminary permit will not be accepted for filing.

The Commission will accept applications for license or exemption from licensing, or a notice of intent to submit such an application in response to this notice. A notice of intent to file an application for license or exemption must be submitted to the Commission on or before November 1, 1982, and should specify the type of application forthcoming. Applications for licensing or exemption from licensing must be filed in accordance with the Commission's regulations [see: 18 CFR 4.30 et seq or 4.101 et. seq. (1981), as appropriate].

Agency Comments—Federal, State, and local agencies are invited to submit comments on the described application. (A copy of the application may be obtained by agencies directly from the Applicant.) If an agency does not file comments within the time set below, it will be presumed to have no comments.

Comments, Protests, or Petitions To Intervene—Anyone may submit comments, a protest, or a petition to intervene in accordance with the requirements of the Rules of Practice and Procedure, 18 CFR 1.8 or 1.10 (1980). In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a petition to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests or petitions to intervene must be received on or before November 1, 1982.

Filing and Service of Responsive Documents—Any filings must bear in all capital letters the title "COMMENTS", "NOTICE OF INTENT TO FILE COMPETING APPLICATION", "COMPETING APPLICATION", "PROTEST", or "PETITION TO INTERVENE", as applicable, and the Project Number of this notice. Any of the above named documents must be filed by providing the original and those copies required by the Commission's regulations to: Kenneth F. Plumb, Secretary, Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, D.C. 20426. An additional copy must be sent to: Fred E. Springer, Chief, Applications Branch, Division of Hydropower Licensing, Federal Energy Regulatory Commission, Room 208 RB at the above address. A copy of any notice of intent, competing application, or petition to intervene must also be served upon each representative of the Applicant specified in the first paragraph of this notice.

Kenneth F. Plumb,

Secretary.

[FR Doc. 82-23413 Filed 8-25-82; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. TC82-43-000]

Kansas-Nebraska Natural Gas Company, Inc.; Petition for Declaratory Order

August 20, 1982.

Take notice that on August 5, 1982, Kansas-Nebraska Natural Gas Company, Inc. (Kansas-Nebraska), 300 North St. Joseph Avenue, Hastings, Nebraska 68901, filed in Docket No. TC82-43-000 an application pursuant to § 1.7 of the Commission's Rules (18 CFR 1.7) for the issuance of a declaratory order addressed to issues involving the Commission's jurisdiction arising from judgments rendered against Kansas-Nebraska in a law suit for breach of contract brought by The Great Western Sugar Company (Great Western) against Kansas-Nebraska in the Colorado District Court in and for the County of Logan.[1]

Great Western has four sugar beet factories in the area served by Kansas-Nebraska. Two of the plants are supplied with gas on an interruptible basis directly by Kansas-Nebraska pursuant to certificates of public convenience and necessity issued by the Federal Power Commission.[2] One plant is served under an interruptible tariff by Kansas-Nebraska at Scottsbluff, Nebraska, from the local distribution system of Kansas-Nebraska which was acquired from North Central Gas Company with Commission approval.[3] The fourth plant, located at Goodland, Kansas, is served on an interruptible basis from a local distribution system of Peoples Natural Gas Company, Division of InterNorth, Inc. (formerly known as Peoples Natural Gas Division of Northern Natural Gas Company), which obtains its gas supply for that part of its system from Kansas-Nebraska under wholesale rate schedules regulated by this Commission.[4]

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[1] The Great Western Sugar Company v. Northern Natural Gas Co. and Kansas-Nebraska Natural Gas Co., Inc., Civil Action No. 13503, filed on January 6, 1978.

[2] The plants are at Ovid, Colorado (12 F.P.C. 510 (1953)), and Sterling, Colorado (41 F.P.C. 449 (1969)). The principal use of natural gas at these plants is boiler fuel.

[3] 28 F.P.C. 1079 (1969). The principal use of gas at Scottsbluff is as fuel in a pulp dryer.

[4] Kansas-Nebraska Natural Gas Company, Inc., *et al.*, 44 F.P.C. 218 (1970). The principal use of natural gas at Goodland is as boiler fuel.

The suit for breach of contract arises from interruptions in service to Great Western during the heating seasons 1973–74 through 1978–79. The Colorado District Court, acting on Great Western's motion for partial summary judgment, found that Kansas-Nebraska had breached its interruptible contracts with Great Western for Great Western's plants in Ovid, Sterling, and Scottsbluff "by interrupting service to Great Western, without considering whether Kansas-Nebraska could physically supply the needs of its customers from all sources of supply and facilities [including storage] on a short time frame basis as it had done for the first eighteen years of the parties' contractual relationship, and by interrupting service to Great Western at such times as Kansas-Nebraska was withdrawing natural gas from storage." [5]

In acting on a second motion for partial summary judgment, the District Court held that Kansas-Nebraska was in breach of its wholesale service agreement with Northern Natural Gas Company (now InterNorth, Inc.) through which the Goodland, Kansas, plant was served, leaving to the jury to determine whether Kansas-Nebraska and Northern Natural Gas Company intended to confer third-party benefits on Great Western under the service agreement. [6]

On July 12, 1979, the jury awarded Great Western $1,000,000 against Kansas-Nebraska on the breach of contract claim but found for Kansas-Nebraska on a claim of fraud. [7] The trial court awarded Great Western prejudgment interest and costs.

Both Great Western and Kansas-Nebraska appealed the District Court's decision. [8] On June 17, 1982, the Colorado Court of Appeals upheld the District Court's summary judgments as to Kansas-Nebraska's liability for breaches of contract. The appellate court overturned the lower court's failure to grant Great Western's motion for a directed verdict in instructing the jury to award damages for every day Kansas-Nebraska breached its contract and interrupted Great Western's gas service, without any reference to excuse for nonperformance. The damage portion of the judgment was, therefore, reversed and remanded for a new trial on the issues of Great Western's damages incurred on each day that Kansas-Nebraska interrupted service to Great Western during the subject period.

Kansas-Nebraska asserts that had it provided Great Western with firm service under its interruptible contracts, using its storage fields for the purpose, it would have been in violation of orders, rules, and regulations of the Commission. Kansas-Nebraska states that it did not experience a shortage of gas supply on its system during the winter seasons which are the subject of this petition; the reduction of deliveries to interruptible customers such as Great Western were the result of a lack of pipeline capacity and the husbandry of gas in storage fields.

Kansas-Nebraska asserts that the award of damages would violate Section 4 of the Natural Gas Act because it would constitute a surrogate for Kansas-Nebraska's failure to provide firm service to an interruptible customer at a time when other interruptible customers were interrupted and that the payment of damages relating to interruption of jurisdictional wholesale service to Northern Natural Gas Company would be contrary to the filed rate doctrine.

Therefore, Kansas-Nebraska requests that the Commission issue a declaratory order to the effect that

1. Had Kansas-Nebraska acceded, during the heating seasons 1973–74 through 1978–79, to the demands of Great Western that it meet all of the interruptible requirements of Great Western's sugar beet factories on days when it was withdrawing gas from storage to supply the requirements of high priority customers, Kansas-Nebraska would have violated its obligations under:

(a) The certificates of public convenience and necessity authorizing service to Great Western plants;

(b) The certificates of public convenience and necessity authorizing Kansas-Nebraska to develop and operate its storage fields;

(c) Federal Power Commission Order Nos. 431, 467–B, and/or 498; and

(d) Kansas-Nebraska's FPC/FERC Gas Tariff.

2. In the absence of fraud, negligence, imprudence, bad faith, or misconduct on the part of Kansas-Nebraska, the award of damages to Great Western for failure of Kansas-Nebraska to supply Great Western's interruptible requirements during the heating seasons 1973–1974 through 1978–1979 would constitute an undue preference or advantage under Section 4(b) of the Natural Gas Act or a violation of the filed rate doctrine where Kansas-Nebraska interrupted service to other interruptible customers during the same heating seasons and did not pay them damages.

Any person desiring to be heard or to protest said filing should file a petition to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, D.C. 20426, in accordance with § 1.8 or § 1.10 of the Commission's Rules of Practice and Procedure (18 CFR 1.8 or 1.10), on or before September 10, 1982. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a petition to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 82–23414 Filed 8–25–82; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. ER81–557–000]

Lake Superior District Power Co.; Refund Compliance Report

August 20, 1982.

The filing company submits the following:

Take notice that on August 10, 1982, Lake Superior District Power Company filed a refund compliance report pursuant to the Commission's letter order of July 9, 1982.

Any person desiring to be heard or to protest this filing should file comments with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, D.C. 20426, on or before September 8, 1982. Comments will be considered by the Commission in determining the appropriate action to be taken. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 82–23441 Filed 8–25–82; 8:45 am]

BILLING CODE 6717–01–M

[Project No. 6406–000]

Langell Valley Irrigation District; Application for Preliminary Permit

August 20, 1982.

Take notice that Langell Valley Irrigation District (Applicant) filed on June 4, 1982, an application for

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[5] District Court's order of January 31, 1979. Case citation at footnote 1.

[6] District Court's order of May 23, 1979. Case citation at footnote 1.

[7] The jury found for Northern Natural Gas Company on Great Western's contract claim against that pipeline company but found that Kansas-Nebraska and Northern Natural Gas Company intended to confer benefits on Great Western under their service agreement. This is the basis for that part of the jury judgment against Kansas-Nebraska relating to the Goodland plant.

[8] The Great Western Sugar Company v. Kansas-Nebraska Natural Gas Co. Inc., Colorado Court of Appeals, Nos. 80CA0081 and 80CA0236.

preliminary permit [pursuant to the Federal Power Act, 16 U.S.C. 791(a)–825(r)] for Project No. 6406 to be known as the Gerber Reservoir Power Project located on Upper Miller Creek, tributary of Lost and Klamath Rivers in Klamath County, Oregon. The application is on file with the Commission and is available for public inspection. Correspondence with the Applicant should be directed to: Mr. Walter Smith, Chairman of the Board, Langell Valley Irrigation District, Rt. 1, Box 43, Bonanza, Oregon 97623.

Project Description—The proposed project would be located at the base of the United States Bureau of Reclamation's (USBR) existing Gerber Dam and would consist of: (1) A 20-foot-long, 54-inch-diameter penstock; (2) a powerhouse to contain one generating unit with an installed capacity of 670 kW; and (3) a 0.25-mile-long, 12.5-kV transmission line. The Applicant estimates that the average annual energy production would be 1.65 million kWh. The project is located within the Fremont National Forest.

Proposed Scope of Studies Under Permit—A preliminary permit, if issued, does not authorize construction. The Applicant seeks issuance of a preliminary permit for a period of 36 months during which it would conduct the technical, environmental and economic studies; and also prepare an FERC license application. No new roads would be needed for conducting these studies. The Applicant estimates that the cost of undertaking these studies would be $42,000.

Competing Applications—Anyone desiring to file a competing application for preliminary permit must submit to the Commission, on or before December 3, 1982, the competing application itself [see: 18 CFR 4.30 et. seq. (1981)]. A notice of intent to file a competing application for preliminary permit will not be accepted for filing.

The Commission will accept applications for license or exemption from licensing, or a notice of intent to submit such an application in response to this notice. A notice of intent to file an application for license or exemption must be submitted to the Commission on or before November 3, 1982, and should specify the type of application forthcoming. Applications for licensing or exemption from licensing must be filed in accordance with the Commission's regulations [see: 18 CFR 4.30 et seq. or 4.101 et seq. (1981), as appropriate].

Agency Comments—Federal, State, and local agencies are invited to submit comments on the described application. (A copy of the application may be obtained by agencies directly from the Applicant.) If an agency does not file comments within the time set below, it will be presumed to have no comments.

Comments, Protests, or Petitions To Intervene—Anyone may submit comments, a protest, or a petition to intervene in accordance with the requirements of the Rules of Practice and Procedure, 18 CFR 1.8 or 1.10 (1980). In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a petition to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or petitions to intervene must be received on or before November 3, 1982.

Filing and Service of Responsive Documents—Any filings must bear in all capital letters the title "COMMENTS", "NOTICE OF INTENT TO FILE COMPETING APPLICATION", "COMPETING APPLICATION", "PROTEST", or "PETITION TO INTERVENE", as applicable, and the Project Number of this notice. Any of the above named documents must be filed by providing the original and those copies required by the Commission's regulations to: Kenneth F. Plumb, Secretary, Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, D.C. 20426. An additional copy must be sent to: Fred E. Springer, Chief, Applications Branch, Division of Hydropower Licensing, Federal Energy Regulatory Commission, Room 208 RB at the above address. A copy of any notice of intent, competing application, or petition to intervene must also be served upon each representative of the Applicant specified in the first paragraph of this notice.

Kenneth F. Plumb,

Secretary.

[FR Doc. 82-23405 Filed 8-25-82; 8:45 am]

BILLING CODE 6717-01-M

[Project No. 6576-000]

Mayo Power Development Co.; Application for Preliminary Permit

August 20, 1982.

Take notice that Mayo Power Development Company (Applicant) filed on August 6, 1982, an application for preliminary permit [pursuant to the Federal Power Act, 16 U.S.C. 791(a)–825(r)] for Project No. 6576 to be known as the Mayo Lock & Dam Project located on the Arkansas River in Sequoyah County, Oklahoma. The application is on file with the Commission and is available for public inspection. Correspondence with the Applicant should be directed to: Mr. David N. Raffel, President, P.O. Box 12608, El Paso, Texas 79912.

Project Description—The proposed project would utilize the existing Mayo Lock & Dam under jurisdication of the Corps of Engineers and would consist of: (1) A new 175 by 240-foot powerhouse containing either two or three turbine/generator units with a total capacity of 29 MW operating under a head of 20 feet; (2) a spillway tailrace extending 600 feet downstream; (3) a new 115-kV transmission line; and (4) appurtenant facilities.

The average annual generation 142 million kWh would be sold to a local utility.

Proposed Scope of Studies Under Permit—A preliminary permit, if issued, does not authorize construction. Applicant seeks issuance of a preliminary permit for a period of 30 months, during which time it would perform surveys and geological investigations, determine the economic feasibility of the project, reach final agreement on sale of project power, secure financing commitments, consult with Federal, State, and local government agencies concerning the potential environmental effects of the project, and prepare an application for FERC license, including an environmental report. Applicant estimates the cost of studies under the permit would be $100,000.

Competing Applications—Anyone desiring to file a competing application for preliminary permit must submit to the Commission, on or before November 29, 1982, the competing application itself [see: 18 CFR 4.30 et seq. (1981)]. A notice of intent to file a competing application for preliminary permit will not be accepted for filing.

The Commission will accept applications for license or exemption from licensing, or a notice of intent to submit such an application in response to this notice. A notice of intent to file an application for license or exemption must be submitted to the Commission on or before November 1, 1982, and should specify the type of application forthcoming. Applications for licensing or exemption from licensing must be filed in accordance with the Commission's regulations [see: 18 CFR 4.30 et seq. or 4.101 et. seq. (1981), as appropriate].

Agency Comments—Federal, State, and local agencies are invited to submit comments on the described application. (A copy of the application may be obtained by agencies directly from the Applicant.) If an agency does not file

comments within the time set below, it will be presumed to have no comments.

Comments, Protests, or Petitions To Intervene—Anyone may submit comments, a protest, or a petition to intervene in accordance with the requirements of the Rules of Practice and Procedure, 18 CFR 1.8 or 1.10 (1980). In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a petition to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or petitions to intervene must be received on or before November 1, 1982.

Filing and Service of Responsive Documents—Any filings must bear in all capital letters the title "COMMENTS," "NOTICE OF INTENT TO FILE COMPETING APPLICATION'S "COMPETING APPLICATION", "PROTEST," or "PETITION TO INTERVENE," as applicable, and the Project Number of this notice. Any of the above named documents must be filed by providing the original and those copies required by the Commission's regulations to: Kenneth F. Plumb, Secretary, Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, D.C. 20426. An additional copy must be sent to: Fred E. Springer, Chief, Applications Branch, Division of Hydropower Licensing, Federal Energy Regulatory Commission, Room 208 RB at the above address. A copy of any notice of intent, competing application, or petition to intervene must also be served upon each representative of the Applicant specified in the first paragraph of this notice.

Kenneth F. Plumb,

Secretary.

[FR Doc. 82-23406 Filed 8-25-82; 8:45 am]

BILLING CODE 6717-01-M

[Project No. 6443-000]

Thomas Leo and Rebecca Rose McCauley; Application for Exemption for Small Hydroelectric Power Project Under 5 MW Capacity

August 20, 1982.

Take notice that on June 17, 1982, Thomas Leo and Rebecca Rose McCauley, (Applicant) filed an application, under Section 408 of the Energy Security Act of 1980 (Act) (16 U.S.C. 2705, and 2708 *as amended*), for exemption of a proposed hydroelectric project from licensing under Part I of the Federal Power Act. The proposed small hydroelectric Project No. 6443 would be located on Cedar Draw Creek, in Twin Falls County, Idaho. Correspondence with the Applicant should be directed to: Thomas Leo and Rebecca Rose McCauley, Rt. 4, Box 139, Buhl, Idaho 83316.

Project Description—The proposed project would consist of: (1) A 3-foot-high diversion structure; (2) a 44-inch-diameter, 1,400-foot-long penstock; (3) a powerhouse containing five generating units with a combined rated capacity of 253 kW; and (4) appurtenant facilities. The Applicant estimates a 2,000,000 kWh average annual energy production.

Purpose of Exemption—An exemption, if issued, gives the Exemptee priority of control, development, and operation of the project under the terms of the exemption from licensing, and protects the Exemptee from permit or license applicants that would seek to take or develop the project. Power would be sold to Idaho Power Company.

Agency Comments—The U.S. Fish and Wildlife Service, The National Marine Fisheries Service, and the Idaho Department of Fish & Game are requested, for the purposes set forth in Section 408 of the Act, to submit within 60 days from the date of issuance of this notice appropriate terms and conditions to protect any fish and wildlife resources or to otherwise carry out the provisions of the Fish and Wildlife Coordination Act. General comments concerning the project and its resources are requested; however, specific terms and conditions to be included as a condition of exemption must be clearly identified in the agency letter. If an agency does not file terms and conditions within this time period, that agency will be presumed to have none. Other Federal, State, and local agencies are requested to provide any comments they may have in accordance with their duties and responsibilities. No other formal requests for comments will be made. Comments should be confined to substantive issues relevant to the granting of an exemption. If an agency does not file comments within 60 days from the date of issuance of this notice, it will be presumed to have no comments. One copy of an agency's comments must also be sent to the Applicant's representatives.

Competing Applications—Any qualified license applicant desiring to file a competing application must submit to the Commission, on or before October 12, 1982 either the competing license application that proposes to develop at least 7.5 megawatts in that project, or a notice of intent to file such a license application. Submission of a timely notice of intent allows an interested person to file the competing license application no later than 120 days from the date that comments, protests, etc. are due. Applications for preliminary permit will not be accepted.

A notice of intent must conform with the requirements of 18 CFR 4.33 (b) and (c) (1980). A competing license application must conform with the requirements of 18 CFR 4.33 (a) and (d) (1980).

Comments, Protests, or Petitions To Intervene—Anyone may submit comments, a protest, or a petition to intervene in accordance with the requirements of the Rules of Practice and Procedure, 18 CFR 1.8 or 1.10 (1980). In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a petition to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or petitions to intervene must be received on or before October 12, 1982.

Filing and Service of Responsive Documents—Any filings must bear in all capital letters the title "COMMENTS," "NOTICE OF INTENT TO FILE COMPETING APPLICATION," "COMPETING APPLICATION," "PROTEST," or "PETITION TO INTERVENE," as applicable, and the Project Number of this notice. Any of the above named documents must be filed by providing the original and those copies required by the Commission's regulations to: Kenneth F. Plumb, Secretary, Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, D.C. 20426. An additional copy must be sent to: Fred E. Springer, Chief, Applications Branch, Division of Hydropower Licensing, Federal Energy Regulatory Commission, Room 208 RB at the above address. A copy of any notice of intent, competing application, or petition to intervene must also be served upon each representative of the Applicant specified in the first paragraph of this notice.

Kenneth F. Plumb,

Secretary.

[FR 82-23415 Filed 8-25-82; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. ER82-721-000]

New England Power Pool; Filing

August 20, 1982.

The filing Company submits the following:

Take notice that the Secretary of the Management Committee of the New England Power Pool (NEPOOL) on August 11, 1982, tendered for filing a NEPOOL Agreement dated September 1,

1971, as amended, signed by the Merrimac Municipal Light Department. The Merrimac Municipal Light Department has its principal office in Merrimac, Massachusetts. NEPOOL indicates that the New England Power Pool Agreement has previously been filed with the Commission as a rate schedule (designated NEPOOL FPC No. 2).

The NEPOOL Management Committee states that the filing makes no change in the NEPOOL Agreement other than to make the Merrimac Municipal Light Department an additional pool participant.

NEPOOL requests an effective date of August 1, 1982, and therefore requests waiver of the Commission's notice requirements.

Any person desiring to be heard or to protest said filing should file a petition to intervene or protest with the Federal Energy Regualtory Commission, 825 North Capitol Street, NE., Washington, D.C. 20426, in accordance with §§ 1.8 and 1.10 of the Commission's Rules of Practice and Procedcure (18 CFR 1.8, 1.10). All such petitions or protests should be filed on or before September 7, 1982. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a petition to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 82-23442 Filed 8-25-82; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. EC82-15-000]

New England Power Co. and Massachusetts Electric Co.; Application

August 20, 1982.

The filing companies submit the following:

Take notice that on August 13, 1982 New England Power Company (NEP) and Massachusetts Electric Company (Mass. Electric), pursuant to Section 203 of the Federal Power Act, filed an application for the sale of certain electric facilities to to the Town of Holden, Massachusetts.

NEP, Mass. Electric, and Holden have signed an agreement under which NEP and Mass. Electric will sell Holden the Chaffins Substation and certain 13.8 kV distribution facilities. Lands in fee, existing easements, and licenses associated with the facilities will also be transferred. All the facilities to be sold are located within the Town of Holden. The transfer price is $375,000.

Any person desiring to be heard or to protest said filing should file a petition to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, D.C. 20426, in accordance with Sections 1.8 and 1.10 of the Commission's Rules of Practice and Procedure (18 CFR 1.9 and 1.10). All such petitions or protests should be filed on or before September 15, 1982. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a petition to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 82-23443 Filed 8-25-82; 8:45 am]

BILLING CODE 6717-01-M

[Project No. 2934-002]

New York State Electric & Gas Corp.; Application of Amendment of License

August 20, 1982.

Take notice that on June 7, 1982, the New York State Electric & Gas Corporation (Licensee) filed an application [pursuant to the Federal Power Act, 16 U.S.C. 791(a)-825(r)] for amendment of its license for its Upper Mechanicville Project No. 2934, located on the Hudson River in Saratoga County, New York. Correspondence with the Licensee should be directed to: Mr. Wells P. Allen, Jr., President, 4500 Vestal Parkway East, Binghamton, New York 13902.

The Licensee proposed to make the following changes in the project: (1) Resloping the intake channel to the powerhouse; (2) constructing two guide walls in the intake channel; (3) leaving permanently in place three of the upstream cofferdam cells; (4) lengthening the trailrace channel from 400 to 1,200 feet and narrowing it from 200 to 120 feet; (5) installing two vertical Kaplan turbines instead of bulb turbines; (6) relocating the ice sluice; (7) rerouting of the 1.1-mile long transmission line; (8) installing a larger powerhouse crane; and (9) using a new mobile intake gantry crane.

Anyone desiring to be heard or to make any protest about this application should file a petition to intervene or a protest with the Federal Energy Regulatory Commission, in accordance with the requirements of the Commission's Rules of Practice and Procedure, 18 CFR 1.8 or 1.10 (1979). Comments not in the nature of a protest may also be submitted by conforming to the procedures specified in § 1.10 for protests. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but a person who merely files a protest or comments does not become a party to the proceeding. To become a party, or to participate in any hearing, a person must file a petition to intervene in accordance with the Commission's Rules. Any comments, protest or petition to intervene must be filed on or before October 8, 1982. The Commission's address is: 825 North Capitol Street NE., Washington, D.C. 20426. The application is on file with the Commission and is available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 82-23444 Filed 8-25-82; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. CP82-232-001]

Northern Natural Gas Company, Division of InterNorth, Inc.; Amendment to Application

August 20, 1982.

Take notice that on August 4, 1982, Northern Natural Gas Company, Division of InterNorth, Inc. (Applicant), 2223 Dodge Street, Omaha, Nebraska 68102, filed in Docket No. CP82-232-001 an amendment to its application filed in Docket No. CP82-232-001 pursuant to Section 7(c) of the Natural Gas Act so as to reflect its intention to charge El Paso Natural Gas Company (El Paso) transportation rates based on Applicant's system-wide cost of service and allocation factors derived from the settlement agreement approved in Docket No. RP81-52, all as more fully set forth in the amendment which is on file with the Commission and open to public inspection.

Applicant submits that in its original application it proposed transportation rates based on Northern's transmission cost of service component of 3.9 cents per Mcf per 100 miles of haul, as approved by Commission order dated February 20, 1981, in Docket No. RP80-88, and that such rates were to be paid by El Paso in accordance with the terms of the gas transportation agreement dated January 21, 1982, between Applicant and El Paso.

Applicant explains, however, that the Commission in Docket No. RP81-52 approved Applicant's settlement agreement which includes a transportation agreement to reflect rates

based on Applicant's system-wide cost of service and allocation factors derived from the settlement agreement. El Paso initially would pay Northern a monthly demand rate of $1.70 per Mcf for all firm back-haul volumes that are redelivered at the primary delivery point in Winkler County, Texas. El Paso would also pay Northern and incremental amount for those volumes redelivered by Northern to El Paso at the secondary delivery points. Such secondary delivery points and the associated incremental rates are said to be 1.15¢ per Mcf for delivery at the Coyanosa point, 0.98¢ per Mcf for delivery at the Valero point and 1.41¢ per Mcf for delivery at the Oasis point.

Any person desiring to be heard or to make any protest with reference to said amendment should on or before September 13, 1982, file with the Federal Energy Regulatory Commission, Washington, D.C. 20426, a petition to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 1.8 or 1.10) 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 petition to intervene in accordance with the Commission's rules. All persons who have heretofore filed need not file again.

Kenneth F. Plumb,

Secretary.

[FR Doc. 82-23416 Filed 8-25-82; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. ER82-727-000]

Northern States Power Co.; Filing

August 20, 1982.

The filing Company submits the following:

Take notice that on August 16, 1982, Northern States Power Company (NSP) tendered for filing a Termination Agreement, dated July 29, 1982, with Heartland Consumers Power District.

NSP states that the Agreement terminates the Transmission and Interchange Service Agreement, dated August 15, 1978, between the Parties.

Any person desiring to be heard or to protest said filing should file a petition to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, N.E., Washington, D.C. 20426, in accordance with §§ 1.8 and 1.10 of the Commission's Rules of Practice and Procedure (18 CFR 1.8, 1.10). All such petitions or protests should be filed on or before September 8, 1982. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a petition to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 82-23445 Filed 8-25-82; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. CP81-522-002]

Northern States Power Co. (Minnesota); Amendment

August 20, 1982.

Take notice that on July 28, 1982, Northern States Power Company (Minnesota) (Applicant), 414 Nicollet Mall, Minneapolis, Minnesota 55401 filed in Docket No. CP81-522-002 an amendment to its application, as amended, filed pursuant to Section 7(c) of the Natural Gas Act in Docket No. CP81-522-000, so as to revise the arrangements originally proposed in order to conform to a new liquefied natural gas service agreement between Applicant and Northern States Power Company (Wisconsin) (NSP-Wis), all as more fully set forth in the amendment which is on file with the Commission and open to public inspection.

Applicant states that in its application it requested authority to render a liquefied natural gas service to its wholly-owned subsidiary, NSP-Wis. It is stated that the new agreement to liquefy 110,000 Mcf of natural gas per year would revise the previous agreement so that, in calculating fixed charges to be paid by NSP-Wis, Applicant would utilize the rate of return on equity and depreciation rates approved by the Commission in the most recent rate case involving the rates which apply to the LNG service agreement between Applicant and Northern Natural Gas Company (Northern) in Docket No. RP81-140-000. The new agreement to liquefy 110,000 Mcf/year revises the previous agreement so that in calculating fixed charges to be paid by NSP-Wis, Applicant would utilize the rate of return on equity and depreciation rates approved by this Commission in the most recent rate case involving the rates which apply to the LNG Service Agreement between Applicant and Northern. In other respects, the methods of determining the fixed charges and operation and maintenance charges to be paid by NSP-Wis remain as originally proposed. Future approved changes in the rate of return on equity and depreciation rates for the Applicant—Northern agreement would apply prospectively to the agreement between Applicant and NSP-Wis without further action by Applicant. Applicant states that if the arrangement between Aplicant and Northern is terminated, Applicant retains its right to file a rate increase under Section 4 of the Natural Gas Act to increase the rate of return on equity and depreciation rates applicable to the Applicant—NSP-Wis agreement.

Applicant asserts that the amended agreement provides that, Applicant would not be required to make any refunds of charges previously collected from NSP-Wis under the rates proposed in the original application.

Applicant indicates it has revised the original proposal in two other respects. First, the liquefaction service which was provided for in paragraph 2.2 of the agreement which accompanied the original application has been eliminated, because the service was included on an interim basis pending Commission approval of additional peak day supplies for NSP-Wis from Northern in Docket No. CP80-135. It is stated that the Commission granted this approval on September 25, 1981 and this service is no longer needed by NSP-Wis. Second, the liquefaction period has been changed to the period March 27, to and including November 26, in order to coincide with the period for which Northern received authorization to deliver NSP-Wis's gas to Applicant for liquefaction.

Any person desiring to be heard or to make any protests with reference to said amendment should on or before September 10, 1982, file with the Federal Energy Regulatory Commission, Washington, D.C. 20426, a petition to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 1.8 or 1.10) 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 wish to become a party to a proceeding or to participate as a party in any hearing therein must file a petition to intervene in accordance with the

Commission's Rules. All persons who have heretofore filed need not file again.

Kenneth F. Plumb,

Secretary.

[FR Doc. 82-23417 Filed 8-25-82; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. TA 83-1-37-000 (PGA 83-1, IPR 83-1)]

Northwest Pipeline Corp.; Change in Rates Pursuant To Purchased Gas Cost Adjustment

August 19, 1982.

Take notice that Northwest Pipeline Corporation (Northwest), on August 16, 1982, tendered for filing a proposed change in rates applicable to service rendered under rate schedules affected by and subject to Article 16, Purchased Gas Cost Adjustment Provision ("PGAC"), contained in its FERC Gas Tarifff, First Revised Volume No. 1. Such change in rates is for the purpose of (1) reflecting changes in Northwest's cost of purchased gas which will become effective during the period October 1, 1982 through March 31, 1983, applied to volumes purchased for the 12-month period ending June 30, 1982; (2) its change in unrecovered purchased gas costs since Northwest's prior PGAC filing dated February 12, 1982, (3) projecting incremental surcharges to be assessed Northwest's affected direct and sales for resale customer's pursuant to Order 49; and (4) modifying Northwest's PGAC provision in order to maintain separate subaccounts in its FERC Account No. 191. Northwest has included as part of this change in rates costs associated with its pre-1973 leasehold production valued at the applicable NGPA rates pursuant to the March 2, 1982 mandate of the United States Court of Appeals for the Fifth Circuit in *Mid-Louisiana Gas Company v. FERC* 664 F.2d 530 (1981).

The current PGAC adjustment, for which notice is given herein, aggregates to a decrease of 1.495¢ per therm in all rate schedules affected by and subject to the PGAC. The annualized change in Northwest's rates is a decrease of $48,119,488. Northwest proposes no surcharge for Account 191, as the balance of $1,206 in its current deferral subaccount of FERC Account No. 191, as of June 30, 1982 is less than .01¢ per therm. The proposed change in rates from the PGAC and the other changes proposed by Northwest would result in a net decrease in its annual revenues from jurisdictional sales and service of $111,366,843.

Northwest is concurrently filing a notice of change in rates applicable to Section 13.7, Changes in Rates to Reflect Curtailment Credits, contained in its First Revised Volume No. 1 Tariff. In accordance with Article 13.7 contained in the aforementioned tariff, the current rate adjustments under the Demand Charge Credit Adjustment provision is to become effective on Northwest's PGAC adjustment date. Accordingly, both rate adjustments are reflected on the tendered Substitute Seventh Revised Sheet No. 10 which is proposed to become effective on October 1, 1982. Northwest also tendered for filing and acceptance Fifth Revised Sheet No. 10-B. Fifth Revised Sheet No. 10-B sets forth revised projected incremental pricing surcharges to become effective October 1, 1982 as part of the instant filing. Second Revised Sheet Nos. 126, 127, and 128 and Original Sheet No. 127-A reflect the required revisions to Northwest's PGAC provision to implement the separate subaccount accounting procedure for Account 191.

A copy of this filing has been served on all parties on record in Docket No. RP72-154, upon all jurisdictional customers, and affected state regulatory commissions.

Any person desiring to be heard or to protest said filing should file a petition to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, N.E., Washington, D.C. 20426, in accordance with §§ 1.8 and 1.10 of the Commission's Rules of Practive and Procedure (18 CFR 1.8, 1.10). All such petitions or protests should be filed on or before September 3, 1982. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a petition to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 82-23432 Filed 8-25-82; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. ER82-729-000]

Pacific Gas and Electric Co.; Filing

August 20, 1982.

The filing Company submits the following:

Take notice that Pacific Gas and Electric Company (PG and E) on August 17, 1982, tendered for filing proposed changes in rates and charges of certain electric transmission services under its Original Volume No. 4. The proposed changes would increase revenues from transmission and distribution services in two phases by a total of approximately $6,744,000 based on the 12-month period ending December 31, 1982 (calendar year 1983). The proposed effective date for the Phase I portion of the increase, which will amount to $5,499,000, is October 18, 1982. The proposed effective date for the Phase II portion of the increase, which will amount to $6,744,000 is October 19, 1982. PG and E also proposes a mechanism to adjust the transmission service rates and charges on a yearly basis in those years occurring between the five year review periods specified in Original Volume No. 4.

The proposed changes in rates and charges will allow PG and E to collect revenues necessary to meet, PG and E's revenue and operating requirements.

Copies of the filing were served upon the Western Area Power Administration and the California Public Utilities Commission.

Any person desiring to be heard or to protest said application should file a petition to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, D.C. 20426, in accordance with §§ 1.8and 1.10 of the Commission's Rules of Practice and Procedure (18 CFR 11,[.8 1.10). All such petitons or protests should be filed on or before September 8, 1982. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a petition to intervene. Copies of this application are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 82-23446 Filed 8-25-82; 8:45 am]

BILLING CODE 6717-01-M

[Project No. 5833-000]

Pennsylvania Hydroelectric Development Corp.; Application for License (5 MW or Less)

August 20, 1982.

Take notice that Pennsylvania Hydroelectric Development Corporation (Applicant) filed on December 31, 1982, an application for license (pursuant to the Federal Power Act, 16 U.S.C. 791(a)-825(r)) for construction and operation of a water power project to be known as the Easton/Raubsville Power Project No. 5833. This application for license was filed during the term of the Applicant's preliminary permit for Project No. 2803. The project would be located on the

Lehigh River in Northampton County, Pennsylvania. Correspondence with the Applicant should be directed to: Mr. Lawrence Gleeson, President, Pennsylvania Hydroelectric Development Corporation, DeKalb Pike, Box 814, King of Prussia, PA 19406.

Project Description—The proposed project would be run-of-the-river and would consist of: (1) The existing Easton Dam, approximately 590 feet long and 12 feet high, constructed of timber cribs with concrete cap and spillway crest elevation of 170.5 feet (m.s.l.); (2) a reservoir having minimal pondage; (3) an existing canal headworks at the right river bank and the Delaware Canal, 5.8 miles long to the (4) Ground Hog Locks and an intake structure with gates and trashracks; (5) the existing Raubsville Hydroelectric Station with rehabilitated turbines and two new generators having a rated capacity of 750 kW each for a total rated capacity of 1500 kW; (6) a tailrace discharging into the Delaware River; (7) a new 4.8-kV transmission line; and (8) appurtenant facilities. The Applicant estimates that the average annual energy output would be 9,500,000 kWh. Project energy would be sold to the Metropolitan Edison Company. Easton Dam is owned by the Commonwealth of Pennsylvania.

Agency Comments—Federal, State, and local agencies that receive this notice through direct mailing from the Commission are requested to provide comments pursuant to the Federal Power Act, the Fish and Wildlife Coordination Act, the Endangered Species Act, the National Historic Preservation Act, the Historical and Archeological Preservation Act, the National Environmental Policy Act, Pub. L. No. 88–29, and other applicable statutes. No other formal requests for comments will be made.

Comments should be confined to substantive issues relevant to the issuance of a license. A copy of the application may be obtained directly from the Applicant. If an agency does not file comments within the time set below, it will be presumed to have no comments.

Competing Applications—Anyone desiring to file a competing application must submit to the Commission, on or before November 3, 1982, either the competing application itself (See 18 CFR 4.33(a) and (d)) or a notice of intent (see 18 CFR 4.33 (b) and (c)) to file a competing application. Submission of a timely notice of intent allows an interested person to file an acceptable competing application no later than the time specified in 4.33(c) or 4.101 et. seq. (1981).

Comments, Protests, or Petitions To Intervene—Anyone may submit comments, a protest, or a petition to intervene in accordance with the requirements of the Rules of Practice and Procedure, 18 CFR 1.8 or 1.10 (1980). In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a petition to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or petitions to intervene must be received on or before November 3, 1982.

Filing and Service of Responsive Documents—Any filings must bear in all capital letters the title "COMMENTS," "NOTICE OF INTENT TO FILE COMPETING APPLICATION," "COMPETING APPLICATION," "PROTEST," or "PETITION TO INTERVENE," as applicable, and the Project Number of this notice. Any of the above named documents must be filed by providing the original and those copies required by the Commission's regulations to: Kenneth F. Plumb, Secretary, Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, D.C. 20426. An additional copy must be sent to: Fred Springer, Chief, Applications Branch, Division of Hydropower Licensing, Federal Energy Regulatory Commission, Room 208 RB at the above address. A copy of any notice of intent, competing application, or petition to intervene must also be served upon each representative of the Applicant specified in the first paragraph of this notice.

Kenneth F. Plumb,

Secretary.

[FR Doc. 82–23407 Filed 8–25–82; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. ER77–277–000]

Pennsylvania Power Co.; Filing

August 20, 1982.

The filing Company submits the following:

Take notice that on August 16, 1982, Pennsylvania Power Company (Company) filed a petition for a declaratory order recognizing its right to recoup refunds improperly made and revenues which the Company failed to collect due to a computational error. Company states that the computational error resulted in it making excess refunds to, and failing to collect enough revenues from, its jurisdictional customers (the Boroughs).

Any person desiring to be heard or to protest said filing should file a petition to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, N.E., Washington, D.C. 20426, in accordance with §§ 1.8 and 1.10 of the Commission's Rules of Practice and Procedure (18 CFR 1.8 and 1.10). All such petitions or protests should be filed on or before September 24, 1982. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a petition to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 82–23447 Filed 8–25–82; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. ER82–697–000]

Public Service Co. of New Mexico; Cancellation

August 20, 1982.

The filing Company submits the following:

Take notice that on July 29, 1982, the Public Service Company of New Mexico (PSM) tendered for filing a notice of cancellation of Rate Schedule No. 40, "Public Service Company of New Mexico and Department of Water and Power of the City of Los Angeles Firm Surplus Energy Agreement," initially effective January 17, 1980, and filed with the Commission by Public Service Company of New Mexico. The Agreement was cancelled by its own terms and no new rate schedule or part thereof is to be filed in its place.

PSM requests an effective date of April 30, 1982.

PSM states that copies of this filing have been served upon the Department of Water and Power of the City of Los Angeles.

Any person desiring to be heard or to protest said filing should file a petition to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, N.E., Washington, D.C. 20426, in accordance with §§ 1.8 and 1.10 of the Commission's Rules of Practice and Procedure (18 CFR 1.8, 1.10). All such petitions or protests should be filed on or before September 7, 1982. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a petition to intervene. Copies of this filing are on file

with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 82-23448 Filed 8-25-82; 8:45 am]

BILLING CODE 6717-01-M

[Project No. 3721-001]

Puget Sound Power & Light Co.; Notice of Application for License (Over 5 MW)

August 20, 1982.

Take notice that Puget Sound Power & Light Company (Applicant) filed on February 23, 1982, an application for license (pursuant to the Federal Power Act, 16 U.S.C. 791(a)–825(r)) for construction and operation of a water power project to be known as Nooksack Falls Hydroelectric Project No. 3721. The project would be located on the North Fork of the Nooksack River in Whatcom County, Washington. Correspondence with the Applicant should be directed to: Robert V. Myers, Vice-President, Generation Resources, Puget Sound Power & Light Company, Puget Power Building, Bellevue, Washington 98009.

Project Description—The proposed project would consist of: (1) A proposed concrete gravity-type diversion dam 26-foot high, 67-foot long at a point 650 feet upstream from Nooksack Falls; (2) a proposed concrete intake structure 29-foot long, 6 to 10-foot wide, 15 to 25-foot deep; (3) a proposed 9-foot diameter, 565-foot long concrete diversion conduit from the intake headworks to an existing tunnel; (4) proposed enlargement, to a 62.4 square foot cross-section, of the existing 1,025-foot long tunnel used to convey diverted flow to the penstock; (5) a proposed 15-foot diameter, 40-foot high concrete surge tank; (6) a proposed 78-inch diameter, 617-foot long steel penstock; (7) proposed twin 5,500 hp Francis type turbines with twin generators rated at 4,000 kW each; (8) a proposed 60-foot long, 36-foot wide, 16-foot deep concrete tailrace; (9) a proposed switchyard; (10) 7 miles of existing 55 kV primary transmission line to the Glacier substation; and, (11) appurtenant facilities. The estimated average annual energy production of the project is 44.6 GWh. The energy would be sold to the Bonneville Power Administration. The site is situated within the Mount Baker National Forest and involves 178 acres of Forest Service lands.

Competing Applications—Anyone desiring to file a competing application must submit to the Commission, on or before November 1, 1982, either the competing application itself (see 18 CFR 4.33(a) and (d)) or a notice of intent (see 18 CFR 4.33(b) and (c)) to file a competing application. Submission of a timely notice of intent allows an interested person to file an acceptable competing application no later than the time specified in § 4.33(c) or § 4.101 et. seq. (1981).

Comments, Protests, or Petitions To Intervene—Anyone may submit comments, a protest, or a petition to intervene in accordance with the requirements of the Rules of Practice and Procedure, 18 CFR 1.8 or 1.10 (1980). In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a petition to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or petitions to intervene must be received on or before November 1, 1982.

Filing and Service of Responsive Documents—Any filings must bear in all capital letters the title "COMMENTS," "NOTICE OF INTENT TO FILE COMPETING APPLICATION," "COMPETING APPLICATION," "PROTEST," or "PETITION TO INTERVENE," as applicable, and the Project Number of this notice. Any of the above named documents must be filed by providing the original and those copies required by the Commission's regulations to: Kenneth F. Plumb, Secretary, Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, D.C. 20426. An additional copy must be sent to: Fred E. Springer, Chief, Applications Branch, Division of Hydropower Licensing, Federal Energy Regulatory Commission, Room 208 RB at the above address. A copy of any notice of intent, competing application, or petition to intervene must also be served upon each representative of the Applicant specified in the first paragraph of this notice.

Kenneth F. Plumb,

Secretary.

[FR Doc. 82-23418 Filed 8-25-82; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. ER82-725-000]

Southwestern Public Service Co.; Notice of Filing

August 20, 1982.

The filing Company submits the following:

Take notice that Southwestern Public Service Company (Southwestern), on August 16, 1982, tendered for filing proposed changes in FERC Electric Service Tariffs to all full requirements customers as follows:

Name of customer	Rate schedule FPC No.
Bailey County Electric Cooperative	59
Central Valley Electric Coopertive	60
Deaf Smith Electric Cooperative	61
Farmers Electric Cooperative	62
Greenbelt Electric Cooperative	63
Lamb County Electric Cooperative	64
Lighthouse Electric Cooperative	65
Lyntegar Electric Cooperative	66
Northfork Electric Cooperative	67
Roosevelt County Electric Cooperative	68
South Plains Electric Cooperative	69
Swisher Electric Cooperative	70
Rita Bianca Electric Cooperative	71
North Plains Electric Cooperative	72
Tri County Electric Cooperative	73
Cochran Power & Light Company	[1]74
Texas New Mexico Power Company	[1]75

[1] Supplement No. 6 as proposed to be amended in docket No. ER80-573.

The proposed changes, which are based upon an agreement with the rural electric cooperatives, would result in an increase of $34,115,454 for Period II year ended August 31, 1983.

The reasons for the proposed increase are that southwestern has incurred increased capital costs resulting from building coal fired plants to provide its customers lower electricity costs and that it has experienced increases in labor, material and operating costs since the effective date of the existing rates.

Southwestern estimates its rate of return on jurisdictional rate base to be .558 percent for the Period II, considerably below its current cost of capital.

Southwestern requests waiver of suspension of the proposed rate changes in recognition of its large capital investment incurred to replace gas-fired generation with coal-fired generation, the abnormally low rate of return and aforementioned agreement to the rate change, allowing the rates to become effective, subject to refund, on October 19, 1982.

Copies of the filing were served on the affected customers, the Public Utility Commission of Texas, the Public Service Commission of New Mexico and the Oklahoma Corporation Commission.

Any person desiring to be heard or to protest said application should file a petition to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, N.E., Washington, D.C. 20426, in accordance with sections 1.8 and 1.10 of the Commission's rules of practice and on or before September 7, 1982. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding.

Any person wishing to become a party must file a petition to intervene. Copies of this application are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 82-23419 Filed 8-25-82; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. CP82-107-001]

Tennessee Gas Pipeline Co., a Division of Tenneco Inc., Notice of Amendment

August 20, 1982.

Take notice that on June 11, 1982,[1] Tennessee Gas Pipeline Company; a Division of Tenneco Inc. (Tennessee), P.O. Box 2511, Houston, Texas 77001, filed in Docket No. CP82-107-001, an amendment to its pending application filed pursuant to Section 7(c) of the Natural Gas Act so as to reflect an adjustment of annual volumetric limitations (AVL) for certain of its small customers, all as more fully set forth in the amendment which is on file with the Commission and open to public inspection.

It is asserted that in its application Tennessee had sought increases in the AVLs for a number of the smaller customers on its system. Tennessee explains, however, that as a result of a recent survey of those customers for whom an increase was sought, certain customers have informed Tennessee of changes in their original requests; specifically, Ellix T. Myer Gas Company, the City of Hemphill, the City of Lobelville, and the City of Woodville are no longer requesting any increase in their existing AVLs' the Town of Walnut has reduced its original request; and the Sam Houston Public Utility District has requested an increase in its existing AVL.

Tennessee proposes to make the following adjustments in AVLs:

[1] The amendment was initially tendered for filing on June 11, 1982; however, the fee required by Section 159.2(c) was not paid until June 25, 1982; thus, filing was not completed until the latter date.

AMENDMENT TO AVL INCREASES FOR SMALL CUSTOMERS BY PRIORITY CATEGORY (MCF)

Particulars	Winter					Summer					Total increases
	Priority 0	Priority 1	Priority 2	Priority 3	Priority 4	Priority 0	Priority 1	Priority 2	Priority 3	Priority 4	
Summary of initial response	115,734	1,220,243	65,259	1,137,558	53,312	91,631	892,558	515,129	2,016,274	77,004	6,184,702
Less:											
City of Hemphill	(344)	(11,431)				(258)	(8,614)				(20,647)
City of Lobelville	(103)	(3,542)	(730)	(757)		(91)	(1,740)	(475)	(532)		(7,970)
Ellis T. Myers Gas		(6,500)		(4,200)			(1,700)		(1,600)		(14,000)
Town of Walnut	(223)	(169)		(32,615)		(94)			(94,086)		(127,187)
City of Woodville		(10,000)					(7,000)				(17,000)
Add: Sam Houston P.U.D		100,000									100,000
Adjusted AVL increase	115,064	1,288,601	64,529	1,099,986	53,312	91,188	873,504	514,654	1,920,056	77,004	6,097,898

Any person desiring to be heard or to make any protest with reference to said amendment should on or before September 10, 1982 file with the Federal Energy Regulatory Commission, Washington, D.C. 20426, a petition to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 1.8 or 1.10) 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 petition to intervene in accordance with the Commission's Rules. All persons who have heretofore filed need not file again.

Kenneth F. Plumb,

Secretary.

[FR Doc. 82-23420 Filed 8-25-82; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. CP82-453-000]

Texas Eastern Transmission Corp.; Notice of Application

August 20, 1982.

Take notice that on July 30, 1982, Texas Eastern Transmission Corporation (Applicant), P.O. Box 2521, Houston, Texas 77252, filed in Docket No. CP82-453-000 an application pursuant to Section 7(c) of the Natural Gas Act for a certificate of public convenience and necessity authorizing the transportation of natural gas for Orange and Rockland Utilities, Inc. (Orange and Rockland), all as more fully set forth in the application which is on file with the Commission and open to public inspection.

It is stated that Orange and Rockland has a supply of natural gas committed to it from Columbia Gas Transmission Corporation (Columbia) under Columbia's Rate Schedule CDS and desires to use a portion of such supplies at its Lovett generating plant. Pursuant to an agreement dated July 28, 1982, Applicant proposes to transport for Orange and Rockland up to 30,000 dekatherms equivalent of natural gas per day, less quantities retained for shrinkage. Applicant would receive the subject gas from Columbia by displacement at an existing point of interconnection between Applicant and Columbia located at Applicant's meter station in Chester County, Pennsylvania, and would transport and redeliver equal quantities, less quantities retained for shrinkage, to Algonquin Gas Transmission Company (Algonquin), for the account of Orange and Rockland at the existing points of interconnection with Algonquin at meter station 087 in Hunterdon County, New Jersey, or other mutually agreeable delivery points.

Applicant further proposes that the authorization requested be limited to a term commencing upon date of initial delivery or 60 days after receipt of the

requested authorization, whichever is earlier, and terminating on and including October 31, 1982.

For such service Applicant would charge Orange and Rockland the rate under Applicant's Rate Schedule TS–1, currently 9.13 cents per dekatherm. However, Applicant adds that for quantities transported and delivered to Orange and Rockland which, when added to quantities transported under Rate Schedule TS–1, nonfirm SS–II, and other transportation agreements, exceed the combined total curtailment of gas sales to Orange and Rockland under all of Applicant's firm sales rate schedules, Applicant would charge Orange and Rockland under the TS–1 excess rate, currently 10.56 cents per dekatherm. In addition, Applicant would retain shrinkage volumes as determined by the Applicant from time to time unless the Commission establishes lessor or greater shrinkage under Applicant's Rate Schedule TS–1. Applicant indicates that its current applicable shrinkage is 2 percent of all gas received for transportation from April 16 through November 15 of each year and 8 percent of all gas received for transportation from November 16 through April 15 of each year.

Applicant proposes that the retention of revenues from the proposed service should be subject to the determination in Applicant's pending rate proceeding in Docket No. RP81–109–000.

Any person desiring to be heard or to make any protest with reference to said application should on or before September 10, 1982, file with the Federal Energy Regulatory Commission, Washington, D.C. 20426, a petition to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 1.8 or 1.10) 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 petition 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 petition 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 petition 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 Applicant to appear or be represented at the hearing.

Kenneth F. Plumb,

Secretary.

[FR Doc. 82–23421 Filed 8–25–82; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. CP82–446–000]

Texas Eastern Transmission Corp.; Notice of Application

August 20, 1982.

Take notice that on July 29, 1982, Texas Eastern Transmission Corporation (Applicant), P.O. Box 2521, Houston, Texas 77252, filed in Docket No. CP82–446–000 an application pursuant to Section 7(c) of the Natural Gas Act for a certificate of public convenience and necessity authorizing the construction and operation of certain pipeline and appurtenant facilities and the transportation of natural gas for Algonquin Gas Transmission Company (Algonquin), all as more fully set forth in the application which is on file with the Commission and open to public inspection.

Applicant states that it seeks authorization to construct and operate 80.5 miles of 30-inch pipeline (the Leidy-Perulack Expansion), and related facilities, extending from the terminus of a proposed Trans-Niagara Pipeline at the Leidy Storage Field near Tamarack, Pennsylvania, to Applicant's existing Penn-Jersey system at Perulack, Pennsylvania, which would completely loop Applicant's existing 24-inch Leidy-Perulack pipeline; to construct and operate 16.25 miles of 30-inch and 1.25 miles of 36-inch pipeline (Penn-Jersey Expansion), extending existing loop lines at five locations on Applicant's existing Penn-Jersey system extending from Perulack, Pennsylvania to Applicant's compressor station No. 26 located near Lambertville, New Jersey, and point of interconnection between Applicant's existing Penn-Jersey system and Algonquin's existing system near Lambertville, New Jersey; and to transport the dekatherm equivalent of maximum daily quantities of 101,961 Mcf, less applicable shrinkage, of natural gas for Algonquin from the point of interconnection of the proposed Trans-Niagara Pipeline with Applicant's Leidy-Perulack pipeline locate at the Leidy Storage Field, to Algonquin at the existing point of interconnection between Applicant's Penn-Jersey system and Algonquin's system near Lambertville, New Jersey, or other such point of delivery as may be mutually agreed to from time to time.

Applicant states that the proposed Leidy-Perulack and Penn-Jersey Expansions would significantly increase Applicant's system capacity on its existing Leidy-Perulack and Penn-Jersey systems. The Leidy-Perulack Expansion has been designed to increase the capacity of Applicant's existing Leidy-Perulack system by approximately 400,000 Mcf per day, it is explained. It is further explained that the Penn-Jersey Expansion has been designed to increase the capacity of Applicant's existing Penn-Jersey system by approximately 100,000 Mcf per day in order to deliver incremental gas supply to Algonquin at Applicant's meter station No. 087 located near Lambertville, New Jersey.

The estimated total capital cost of the proposed facilities expansion is $142,169,000. It is asserted that such cost is based upon a 1983–1984 construction period with completion of the proposed facilities projected for no later than November 1, 1984. Applicant would initially finance the cost of constructing the proposed facilities through revolving credit arrangements, short-term loans and from funds on hand, it is asserted. Permanent financing would be undertaken as part of Applicant's overall long-term financing programs at a later date, it is explained.

Applicant also seeks authorization to render firm transportation service of the dekatherm equivalent of maximum daily quantities of up to 101,961 Mcf, less applicable shrinkage, for Algonquin from the point of interconnection of the proposed Trans-Niagara pipeline with Applicant's Leidy-Perulack pipeline, at the Leidy Storage Field near Tamarack, Pennsylvania, to the existing point of interconnection between Applicant's Penn-Jersey system and Algonquin's pipeline system located near Lambertville, New Jersey, or other such point of delivery as may be mutually agreed to from time to time. It is stated that Applicant and Algonquin have entered into a precedent agreement dated July 28, 1982, which evidences the agreement of Applicant and Algonquin to negotiate and, upon fulfillment of the conditions precedent set forth therein, to enter into a transportation agreement, containing terms and conditions

mutually agreeable to Applicant and Algonquin. The transportation agreement would provide for a monthly demand charge and retention of shrinkage for gas used in rendering the transportation, it is stated.

The proposed facilities would permit Applicant and Algonquin to attach natural gas purchased from three Canadian sources, Pan-Atlantic Gas, Ltd., ProGas Limited, and Trans-Canada PipeLines Limited, it is asserted. Applicant states further that the arrangement with Trans-Niagara for transportation services would provide Applicant with access to these substantial Canadian gas supplies remote from its existing system. Accordingly, Applicant submits that it is in the public interest to permit it to track the transportation cost associated with this arrangement, and requests that the Commission authorize Applicant to track such transportation costs.

Any person desiring to be heard or to make any protests with reference to said amendment should on or before September 10, 1982, file with the Federal Energy Regulatory Commission, Washington, D.C. 20426, a petition to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 1.8 or 1.10) 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 petition 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 petition 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 petition 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 Applicant to appear or be represented at the hearing.

Kenneth F. Plumb,

Secretary.

[FR Doc. 82-23422 Filed 8-25-82; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. CP79-80-008]

Trailblazer Pipeline Co. et al.; Notice of Petition To Amend

August 20, 1982.

Take notice that on August 3, 1982, Trailblazer Pipeline Company, 122 South Michigan Avenue, Chicago, Illinois 60603, Overthrust Pipeline Company, 79 South State Street, Salt Lake City, Utah 84147, and Wyoming Interstate Company, Ltd, Second North Nevada Avenue, Colorado Springs, Colorado 80944 (Petitioners), filed a joint petition to amend the order of March 12, 1982, issuing a certificate of public convenience and necessity pursuant to Section 7(c) of the Natural Gas Act in Docket No. CP79-80 so as to authorize (1) service under a plant start-up coordination (PSC) rate schedule for the Trailblazer System to be effective through December 31, 1982, (2) the transportation of natural gas for new shippers which can be accommodated by using authorized facilities, and (3) changes in contract demands consistent with proposed tariffs being filed by Petitioners so long as such changes can be effectuated using authorized facilities.

Petitioners request blanket authorization to transport gas for new third party shippers and to change the contract demands of new or existing shippers in conformance with its tariff.

Petitioners state that the Trailblazer System is designed to provide for the transportation of gas by existing or potential shippers who have gas supplies in the Rocky Mountains which they desire to transport to markets in the Midwest or East and that the Trailblazer System participants have developed tariffs which provide for an annual nomination and related procedures which are designed to enhance access by third party shippers to the Trailblazer System and to help tailor the contract demands of shippers to their needs.

In addition, petitioners propose a special rate to be applicable only during the period from the operational dates of the pipeline until January 1, 1983. It is stated that the Amoco and Chevron plants, principal sources of initial gas supply for the Trailblazer System, are to come on-stream sometime during this period, but their initial output would be sporadic. It is stated that the proposed rate would be volumetric in nature and designed to recover all operating and maintenance expenses and taxes other than income taxes. Petitioners state that the proposed rate would not recover any depreciation, interest expense, or return on equity.

Petitioners state that Rate Schedule PSC would be available to a shipper which has executed a service agreement with Petitioners for firm service under Rate Schedule T effective January 1, 1983, and that such shipper would pay a volumetric rate each month which would be designed to recover currently all operating and maintenance expenses and taxes other than income taxes. It is stated that the volumetric rate would be calculated by dividing the total costs to be recovered by the total volumes received by Petitioners' for transportation during that month, and that if actual data are not available, Petitioners may use estimates, subject to adjustment in the billing for the subsequent month. Petitioners explain that each shipper would pay each month an amount equal to the product of (a) volumes received by Petitioners from shipper at the points of receipt and (b) Petitioners' effective volumetric rate.

Petitioners request assurance from the Commission that the increase in its shippers' transportation expense attributed to the two-part rate which is proposed to become effective January 1, 1983, will not be disallowed from the shippers' cost of service.

Any person desiring to be heard or to make any protest with reference to said petition to amend should on or before September 13, 1982, file with the Federal Energy Regulatory Commission, Washington, D.C. 20426, a petition to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 1.8 or 1.10) 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 petition to intervene in accordance with the Commission's Rules.

Kenneth F. Plumb,

Secretary.

[FR Doc. 82-23423 Filed 8-25-82; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. CP82-46-001]

Transcontinental Gas Pipe Line Corp.; et al.; Notice of Amendment

August 20, 1982.

Take notice that on July 26, 1982, Transcontinental Gas Pipe Line Corporation (Transco), P.O. Box 1396, Houston, Texas, 77251, Algonquin Gas Transmission Company (Algonquin), 1284 Soldiers Field Road, Boston, Massachusetts 02135, and Texas Eastern Transmission Corporation (Texas Eastern), P.O. Box 2521, Houston, Texas 77001, filed in Docket No. CP82-46-001 pursuant to Section 3 of the Natural Gas Act an amendment to their application filed in Docket No. CP82-46-000 revising their request for authorization to import natural gas from Canada to reflect changes contained in their third contract amendment with Pan-Alberta Gas Ltd., all as more fully set forth in the amendment which is on file with the Commission and open to public inspection.

Applicants state that in their application they requested authority to import up to 305,882 Mcf of natural gas per day from Canada at a point on the international boundary near St. Stephen, New Brunswick. It is stated that because of unfavorable economic and political conditions, maintaining removeal permits from the province of Alberta and obtaining an export license from the National Energy Board of Canada are doubtful if the St. Stephen export point is used. Applicants, therefore, amend their application so as to make Niagara Falls, Ontario, rather than St. Stephen, New Brunswick, the delivery point.

Applicants also amend the application so as to maintain Texas Eastern's entitlement to one-third of the import quantities. It is stated that Applicants, therefore, delete clause 2.10 in their gas sale contract which would have eliminated Texas Eastern's entitlement to quantities imported through Niagara Falls.

Applicants also amend their take-or-pay provision in the gas sales contract. It is stated that Applicants were obligated to take and pay for or nevertheless pay for 85 percent of the maximum daily volumes, as calculated on an annual basis. It is asserted that Applicants amend this provision to reduce the take-or-pay level to 75 percent of the maximum daily level, as calculated on an annual basis. Applicants further assert that in consideraton for this reduction in take-or-pay requirements, Applicants have agreed to revisions to the make-up provisions of the gas sale contracts.

Any person desiring to be heard or to make any protest with reference to said petition to amendment should on or before September 10, 1982, file with the Federal Energy Regulatory Commission, Washington, D.C. 20426. A petition to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 1.8 or 1.10). 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 petition to intervene in accordance with the Commission's Rules. All persons who have heretofore filed need not file again.

Kenneth F. Plumb,

Secretary.

[FR Doc 82-23424 Filed 8-25-82, 8:45 am]

BILLING CODE 6717-01-M

[Docket No. ST81-25-001]

Trunkline Gas Co.; Notice of Extension Reports

August 19, 1982.

The companies listed below have filed extension reports pursuant to Section 311 of the Natural Gas Policy Act of 1978 (NGPA) and Part 284 of the Commission's regulations giving notice of their intention to continue transportation and sales of natural gas for an additional term of up to 2 years. These transactions commenced on a self-implementing basis without case-by-case Commission authorization. The Commission's regulations provide that the transportation or sales may continue for an additional term if the Commission does not act to disapprove or modify the proposed extension during the 90 days preceding the effective date of the requested extension.

The table below lists the name and addresses of each company selling or transporting pursuant to Part 284, the party receiving the gas; the date that the extension report was filed; and the effective date of the extension. A letter "B" in the Part 284 column indicates a transportation by an interstate pipeline which is extended under § 284.105. A letter "C" indicates transportation by an intrastate pipeline extended under § 284.125. A "D" indicates a sale by an intrastate pipeline extended under § 284.146.

Any person desiring to be heard or to make any protest with reference to said extension report should on or before August 25, 1982 file with the Federal Energy Regulatory Commission, Washington, D.C. 20426, a petition to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 1.8 or 1.10). All protest filed with the Commission will be considered by it in determining the appropriate action to be taken will not serve to make the protestants party to a proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a petition to intervene in accordance with the Commission's Rules.

Kenneth F. Plumb,

Secretary.

Docket No.	Transporter/seller	Recipient	Date filed	Part 284 subpart	Effective date
ST81-25-001.	Trunkline Gas Co., P.O. Box 1642, Houston, TX 77251	United Gas Pipe Line Co	July 29, 1982	G	Oct. 22, 1982.
ST81-49-001.	Trunkline Gas Co., P.O. Box 1642, Houston, TX 77261	Consumers Power Co	July 30, 1982	B	Oct. 31, 1982.
ST81-85-001.	Northern Natural Gas Co., 2223 Dodge St., Omaha, NE 68102	Valero Transmission Co	July 28, 1982	B	Oct. 28, 1982.
ST81-90-001.	Natural Gas Pipeline Co. of America, 122 South Michigan Ave., Chicago, IL 60603.	Lone Star Gas Co	July 14, 1982	B	Oct. 14, 1982.
ST81-95-001.	Delhi Gas Pipeline Corp., Fidelity Union Tower, Dallas, TX 75201	Transcontinental Gas Pipe Line Corp	July 14, 1982	C	Nov. 5, 1982.
ST81-105-001.	Producer's Gas Co., 4925 Greenville Ave., Dallas, TX 75206	El Paso Natural Gas Co	July 19, 1982	D	Oct. 24, 1982.
ST81-129-001.	Natural Gas Pipeline Co. of America, 122 South Michigan Ave., Chicago, IL 60603.	Panhandle Eastern Pipe Line Co	July 30, 1982	G	Nov. 1, 1982.
ST81-145-001.	Delhi Gas Pipeline Corp., Fidelity Union Tower, Dallas, TX 75201	Natural Gas Pipeline Co. of America	July 30, 1982	C	Dec. 15, 1982.
ST81-158-001.	Mountain Fuel Supply Co., P.O. Box 11368, Salt Lake City, UT 84139.	Colorado Interstate Gas Co	July 19, 1982	G	Feb. 4, 1983.

Docket No.	Transporter/seller	Recipient	Date filed	Part 284 subpart	Effective date
ST81-219-001.	Mountain Fuel Supply Co., P.O. Box 11368, Salt Lake City, UT 84139.	Colorado Interstate Gas Co	July 19, 1982	G	Apr. 8, 1983.
ST81-466-001.	Seagull Pipeline Corp., 1100 Louisiana, Houston, TX 77002	El Paso Natural Gas Co	July 19, 1982	C	Nov. 1, 1982.
ST82-83-001.	Mountain Fuel Supply Co., P.O. Box 11368, Salt Lake City, UT 84139.	Colorado Interstate Gas Co	July 19, 1982	G	Dec. 2, 1982.

[FR Doc. 82-23433 Filed 8-25-82; 8:45 am]
BILLING CODE 6717-01-M

[Docket No. CP82-456-000]

United Gas Pipe Line Co.; Notice of Application

August 20, 1982.

Take notice that on July 30, 1982, United Gas Pipe Line Company (Applicant), P.O. Box 1478, Houston, Texas 77001 filed in Docket No. CP82-456-000 an application pursuant to Section 7(c) of the Natural Gas Act for a certificate of public convenience and necessity authorizing unspecified sales of natural gas, on an interruptible basis to its existing on-system customers, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

Applicant proposes to make interruptible sales of natural gas to its existing on-system customers on such days as its supplies of natural gas exceed the current demands of such customers for authorized firm service, taking into account storage volumes and the requirements for storage injection. Applicant maintains that if the requests to purchase interruptible volumes on any day exceed the volumes it has available to make such sales, Applicant would make such volumes available to customers desiring them on a *pro rata* basis in proportion to the customers' maximum daily quantities.

Applicant submits that it is experiencing a situation in which its supplies of natural gas exceed the current demands of its customers and that this condition is due in large measure to economic conditions in its own market area and in the areas served by its pipeline customers. Applicant states that some pipelines facing similar market conditions on their systems have received authorization to make off-system sales, thus tending to reduce further the demand on the system of Applicant and its pipeline customers. Applicant explains that it has reduced its takes from all sources where such reduction is possible and is faced with the likelihood of take-or-pay obligations in the near future and that some existing customers of Applicant have indicated that they would like to purchase additional volumes of gas from Applicant on an interruptible basis.

It is stated that the proposed sales would be offered only if both gas supplies and capacity are available to satisfy them after meeting all the current firm requirements of Applicant's customers. It is further stated that since the proposed sales would be interruptible, there would be no detriment to the existing service on Applicant's system

Applicant notes that it has no interruptible sales at present and thus no tariff for interruptible sales currently on file with the Commission. Therefore, Applicant proposes that such a sale to any jurisdictional customer be made at a rate equal to the rate then applicable to that customer computed on a 100 percent load factor basis.

Any person desiring to be heard or to make any protest with reference to said application should on or before September 13, 1982, file with the Federal Energy Regulatory Commission, Washington, D.C. 20426, a petition to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 1.8 or 1.10) 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 petition 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 petition 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 petition 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 Applicant to appear or be represented at the hearing.

Kenneth F. Plumb,

Secretary.

[FR Doc. 82-23425 Filed 8-24-82; 8:45 am]
BILLING CODE 6717-01-M

[Docket No. CP82-459-000]

United Gas Pipe Line Co., Notice of Application

August 20, 1982

Take notice that on August 2, 1982, United Gas Pipe Line Company (Applicant), P.O. Box 1478, Houston, Texas 77001, filed in Docket No. CP82-459-000 an application pursuant to Section 7(c) of the Natural Gas Act for a certificate of public convenience and necessity authorizing the delivery of natural gas at an additional point to serve the City of Joaquin, Texas (Joaquin), all as more full set forth in the application which is on file with the Commission and open to public inspection.

Applicant states that pursuant to an agreement dated September 28, 1977, between Applicant and Joaquin, it delivers up to 665 Mcf of natural gas per day to Joaquin Under Rate Schedule G-N. Applicant further states Joaquin has requested Applicant to deliver gas to Joaquin through Applicant's 1-inch farm tap on the 10-inch Joaquin Field line to enable Joaquin to serve an existing customer. Applicant proposes to deliver approximately 968 Mcf of natural gas per year through this tap to Joaquin's customer, R. B. Childress Dry Cleaning and Laundry (Childress), located in Shelby County, Texas. No additional gas is proposed to be sold to Joaquin.

Applicant submits that Joaquin now operates its system at higher than normal pressure to serve Childress, causing Joaquin to lose large volumes of gas each month. Applicant's service to

Childress through this farm tap would enable Joaquin to reduce the operating pressure and lessen gas lost through leakage on its system, it is claimed.

Any person desiring to be heard or to make any protest with reference to said application should on or before September 10, 1982, file with the Federal Energy Regulatory Commission, Washington, D.C. 20426, a petition to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 1.8 or 1.10) 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 petition 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 petition 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 petition 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 Applicant to appear or be represented at the hearing.

Kenneth F. Plumb,

Secretary.

[FR Doc. 82-23426 Filed 8-25-82; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. SA82-10-000]

Western Continental Operating Co.; Notice of Extension of Time

August 19, 1982.

On August 10, 1982, Western Continental Operating Company (Western) filed a motion for an extension of time to file a petition for review of the Order of the Director, OPPR, Denying Application for Adjustment from Commission's NGPA Regulations Regarding Retroactive Collection, issued July 26, 1982, in the above-docketed proceeding. The motion states that additional time is required because key company personnel who will be involved in the preparation of the petition for review, are presently unavailable for consultation. The motion further states that Commission Staff does not oppose Western's motion.

Upon consideration, notice is hereby given that an extension of time for the filing of a petition for review of the Director's order is granted to and including September 24, 1982.

Kenneth F. Plumb,

Secretary.

[FR Doc. 82-23434 Filed 8-25-82; 8:45 am]

BILLING CODE 6717-01-M

Determinations by Jurisdictional Agencies Under the Natural Gas Policy Act of 1978

Issued: August 20, 1982.

JD NO	JA DKT	API NO	D	SEC(1)	SEC(2)	WELL NAME	FIELD NAME	PROD	PURCHASER
						TEXAS RAILROAD COMMISSION			
						RECEIVED: 07/26/82 JA: TX			
-AKERS AND FULTZ INC									
8245690	F-09-054086	4249700000		108		JOHN ROBINSON 44104	CHICO WEST (CADDO CON	14.2	CITIES SERVICE GA
8245677	F-09-054046	4249700000		108		VERNON APPLING #43544	CHICO WEST (CADDO CON	10.6	CITIES SERVICE GA
						RECEIVED: 07/26/82 JA: TX			
-ALLIED PRODUCTION CORP									
8245427	F-03-038911	4220100000		108		IVON LEE III #2	TOMBALL (950')	0.0	TENNESSEE GAS PIP
						RECEIVED: 07/26/82 JA: TX			
-ALMAC OIL CO									
8245699	F-10-054133	4206500000		103		BUCKET SHOP #1 (ID# 05092)	PANHANDLE CARSON	100.0	GETTY OIL CO
8245700	F-10-054134	4206500000		103		BUCKET SHOP #2 (ID# 05092)	PANHANDLE CARSON	124.0	GETTY OIL CO
						RECEIVED: 07/26/82 JA: TX			
-AMERICAN PETROFINA COMPANY OF TEXAS									
8245535	F-02-050303	4205730978		103		D W MEEKS #1	SHERIFF EAST (8100 B)	48.0	UNITED TEXAS TRAN
8245441	F-06-045283	4242330476		103	107-TF	PERRY G U #1 WELL #1	OVERTON (COTTON VALLE	200.0	UNITED GAS PIPE L
						RECEIVED: 07/26/82 JA: TX			
-AMOCO PRODUCTION CO									
8245571	F-04-051815	4247933099		102-4	107-TF	KILLAM HURD AMOCO TRAUTMAN #5	DEL MAR (LOWER HIRSCH	492.8	DELHI GAS PIPELIN
8245570	F-04-051814	4247933135		102-4	107-TF	KILLAM HURD AMOCO TRAUTMAN #6	DEL MAR (LOWER HIRSCH	1095.0	DELHI GAS PIPELIN
8245572	F-04-051816	4247933036		102-4	107-TF	KILLAM-HURD-AMOCO WALKER #1	DEL MAR (LOWER HIRSCH	178.9	DELHI GAS PIPELIN
						RECEIVED: 07/26/82 JA: TX			
-ANDERSON PETROLEUM INC									
8245534	F-7C-050163	4210533512		103	107-TF	DOROTHY B MILLSPAUGH "B" 1-36	OZONA (CANYON SAND)	200.0	ANDERSON PIPELINE
8245533	F-7C-050161	4210533515		103	107-TF	DOROTHY B MILLSPAUGH "B" 2-36	OZONA (CANYON SAND)	200.0	ANDERSON PIPELINE
8245448	F-7C-046375	4210533734		103	107-TF	DOROTHY B MILLSPAUGH "B" 3-36	OZONA (CANYON SAND)	200.0	ANDERSON PIPELINE
8245523	F-7C-049796	4210500000		103	107-TF	JOHN MITCHELL EST "A" 4-55	OZONA (CANYON SAND)	50.0	ANDERSON PIPELINE
8245525	F-7C-049826	4210533220		103	107-TF	PEERY HOLMSLEY "A2" 3-1	OZONA (CANYON SAND)	40.0	ANDERSON PIPELINE
						RECEIVED: 07/26/82 JA: TX			
-ARCO OIL AND GAS COMPANY									
8245518	F-04-049410	4221500000		108		RICE UNIT #2L	DONNA (HARRELL)	16.0	TENNESSEE GAS PIP
						RECEIVED: 07/26/82 JA: TX			
-AVIPS PETROLEUM INC									
8245668	F-7B-054012	4225331421		103		BROWN-SNYDER #1 (16192)	HORTON (CISCO SAND)	4.0	CONOCO INC
8245666	F-7B-054010	4225331943		103		BROWN-SNYDER #2 (16192)	HORTON (CISCO SAND)	15.0	CONOCO INC
8245667	F-7B-054011	4225332165		103		BROWN-SNYDER #3 (16192)	HORTON (CISCO SAND)	22.0	CONOCO INC
						RECEIVED: 07/26/82 JA: TX			
-BILL FENN INC									
8245596	F-03-052746	4228700000		103		CHILEK UNIT #15405	GIDDINGS (AUSTIN CHAL	18.5	PGP GAS PRODUCTS
						RECEIVED: 07/26/82 JA: TX			
-BLUESKY OIL & GAS INC									
8245456	F-03-046734	4214931032		102-2		BILTON #1	GIDDINGS (AUSTIN CHAL	0.0	CLAJON GAS CO
						RECEIVED: 07/26/82 JA: TX			
-BRAMMER ENGINEERING INC									
8245608	F-06-053206	4220320870		102-4		C F FRANCIS #1	HARLETON NE (PETTET)	19.0	TEJAS GAS CORP
						RECEIVED: 07/26/82 JA: TX			
-BRIDWELL OIL CO									
8245576	F-09-051992	4223733516		102-4		HILL ESTATE "B" #1	ANTELOPE SE (MARBLE F	200.0	LONE STAR GAS CO
8245602	F-09-052890	4223733696		102-4		HILL ESTATE "B" #2	ANTELOPE S E	200.0	LONE STAR GAS CO
8245593	F-09-052663	4223733693		102-4		HILL ESTATE "B" #3	ANTELOPE S E	200.0	LONE STAR GAS CO
						RECEIVED: 07/26/82 JA: TX			
-CASHCO OIL CO									
8245430	F-03-040044	4218500000		102-4		W O YEAGER ADAMS #1	IOLA (SUB-CLARKSVILLE	0.0	LONE STAR GAS CO
8245447	F-03-046282	4218500000		102-2		YEAGER ADAMS #2	IOLA (SUB CLARKSVILLE	0.0	LONE STAR GAS CO
						RECEIVED: 07/26/82 JA: TX			
-CHAMPLIN PETROLEUM COMPANY									

JD NO	JA DKT	API NO	D	SEC(1)	SEC(2)	WELL NAME	FIELD NAME	PROD	PURCHASER
8245428	F-06-039049	4236500000		103	107-TF	CARTHAGE GAS UNIT 13 #4	CARTHAGE	0.0	TENNESSEE GAS PIP
8245485	F-03-048666	4205131995		102-2	103	MARTIN KNESEK "A" #1	BIG A (TAYLOR)	1040.0	FERGUSON CROSSING
8245439	F-04-044727	4235531934		102-4	103	TEXON ROYALTY CO #6-U	STRATTON (F-31-12)	0.0	TENNESSEE GAS PIP
-CHESTER R UPHAM JR				RECEIVED:	07/26/82	JA: TX			
8245431	F-7B-040199	4236300000		102-4		CALABRIA ESTATE #3-T	CALABRIA (ATOKA CONGL	0.0	SOUTHWESTERN GAS
-CHEVRON U S A INC				RECEIVED:	07/26/82	JA: TX			
8245682	F-8A-054056	4241532175		103		SACROC UNIT #15-11	KELLY-SNYDER	14.0	EL PASO NATURAL G
8245683		4241532154		103		SACROC UNIT #75-12	KELLY-SNYDER	43.0	EL PASO NATURAL G
-CIRCLE SEVEN PRODUCTION CO				RECEIVED:	07/26/82	JA: TX			
8245493	F-7B-049170	4236732163		102-4		CHARLES SMITH #1	TOTO (BEND CONGL 5350	6.0	NATURAL GAS PIPEL
-CITIES SERVICE COMPANY				RECEIVED:	07/26/82	JA: TX			
8245685	F-10-054068	4206530935		103		BURNETT RANCH E #13	PANHANDLE CARSON CO	39.9	CITIES SERVICE GA
8245696	F-08-054111	4213500111		108		CUMMINS J #7	GOLDSMITH	6.0	PHILLIPS PETROLEU
8245687	F-04-054079	4242700000		108		MARTINEZ "B" #19 (02349)	RINCON NORTH	2.3	TENNESSEE GAS PIP
8245629	F-08-053643	4238931248		103		MATTHEWS CAMP A #2	COLLIE (DELAWARE)	16.0	INTRATEX GAS CO
8245688	F-04-054080	4235500000		108		STATE TRACT 49-4L (041908)	ENCINNAL CHANNEL (FB-	2.0	HOUSTON PIPE LINE
8245689	F-04-054081	4235531285		108		STATE TRACT 52 A-4 (078099)	ENCINNAL CHANNEL (FB-	2.5	HOUSTON PIPE LINE
-CLAYTON W WILLIAMS JR				RECEIVED:	07/26/82	JA: TX			
8245433	F-03-042055	4204100000		102-2		J W MCFARLANE #1	GIDDINGS (AUSTIN CHAL	0.0	VALERO TRANSMISSI
-CLEAR FORK GAS CO				RECEIVED:	07/26/82	JA: TX			
8245538	F-7B-050373	4244732205		102-2		A L WHITAKER #10	THROCKMORTON COUNTY R	0.0	LONE STAR GAS CO
8245539	F-7B-050384	4244731637		102-2		DAVID BELLAH #2	THROCKMORTON COUNTY R	0.0	LONE STAR GAS CO
8245527	F-7B-049893	4244731885		102-2		L E PARROTT ESTATE #7 12552	LEACH (2550 STRAWN)	0.0	LONE STAR GAS CO
-CONOCO INC				RECEIVED:	07/26/82	JA: TX			
8245660	F-08-054000	4222700000		108		H R CLAY -E- #15 ID #02692	HOWARD-GLASSCOCK	1.5	PHILLIPS PETROLEU
8245631	F-08-053652	4222732699		103		H R CLAY -E- #62 ID #18993	HOWARD-GLASSCOCK/GLOR	4.0	PHILLIPS PETROLEU
8245663	F-08-054003	4222732700		103		H R CLAY -E- #63 ID #18993	HOWARD-GLASSCOCK/GLOR	4.0	PHILLIPS PETROLEU
8245662	F-08-054002	4222732701		103		H R CLAY -E- #64 ID #18993	HOWARD-GLASSCOCK/GLOR	4.0	PHILLIPS PETROLEU
8245661	F-08-054001	4222700000		108		H R CLAY #6 ID #02690	HOWARD-GLASSCOCK	1.0	PHILLIPS PETROLEU
8245659	F-08-053999	4213500000		108		KLOH B-7 #1 ID #20260	TXL/SAN ANDRES/	5.5	SHELL OIL CO
8245630	F-7B-053651	4215131481		103		ROUND TOP (PALO PINTO) #11416 168	ROUND TOP (PALO PINTO	59.5	LONE STAR GAS CO
-COOK PRODUCTION CO				RECEIVED:	07/26/82	JA: TX			
8245567	F-7B-051690	4213300000		102-2		HOLLOWAY #1	SHOAF-MERGNER (MISS)	1204.5	INTERNORTH INC
-COSTA RESOURCES INC				RECEIVED:	07/26/82	JA: TX			
8245454	F-08-046637	4210332516		103		ADAMS #4	COSTA (TUBB)	36.5	INTERNORTH INC
8245443	F-08-046170	4210332624		103		DAVIS #3	COSTA (TUBB)	36.5	PERRY GAS PROCESS
-COTTON PETROLEUM CORPORATION				RECEIVED:	07/26/82	JA: TX			
8245488	F-10-048769	4235731127		103		MURPHY #1	BARLOW (OIL)	0.0	
8245432	F-06-041988	4220330833		103	107-TF	PYLE #1	WOODLAWN (COTTON VALL	175.0	EAST TEXAS INDUST
-CRB OIL & GAS INC				RECEIVED:	07/26/82	JA: TX			
8245547	F-03-050926	4205132145		102-4		HARRIS UNIT #2	BIG "A" (TAYLOR) FIEL	550.0	CLAJON GAS CO
-CROWN CENTRAL PETROLEUM CORP				RECEIVED:	07/26/82	JA: TX			
8245461	F-09-047292	4249732262		103		EMMA KRELL #2	BOONESVILLE BEND	101.0	SOUTHWESTERN GAS
8245487	F-09-048701	4249700000		103		L D SHAWVER UNIT #2	BOONESVILLE BEND	200.0	NATURAL GAS PIPEL
-D & B PETROLEUM INC				RECEIVED:	07/26/82	JA: TX			
*8245495	F-10-049208	4248330926		103		APRIL #1	PANHANDLE EAST	0.0	WARREN PETROLEUM
*8245496	F-10-049210	4248330904		103		BEAU #1	PANHANDLE EAST	0.0	WARREN PETROLEUM
*8245497	F-10-049211	4248330942		103		BUBBA #1	PANHANDLE EAST	0.0	WARREN PETROLEUM
*8245498	F-10-049213	4248330888		103		BURKS #1	PANHANDLE EAST	0.0	WARREN PETROLEUM
*8245499	F-10-049214	4248330898		103		CADRA #1	PANHANDLE EAST	0.0	WARREN PETROLEUM
*8245500	F-10-049215	4248330952		103		CAROL #1	PANHANDLE EAST	0.0	WARREN PETROLEUM
*8245501	F-10-049217	4248330937		103		CHRISTIAN #1	PANHANDLE EAST	0.0	WARREN PETROLEUM
*8245502	F-10-049218	4248330915		103		COURTNEY #1	PANHANDLE EAST	0.0	WARREN PETROLEUM

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JD NO	JA DKT	API NO	D	SEC(1)	SEC(2)	WELL NAME	FIELD NAME	PROD	PURCHASER
*8245503	F-10-049219	4248330963		103		DAVID #1	PANHANDLE EAST	0.0	WARREN PETROLEUM
*8245504	F-10-049222	4248330897		103		JILL #1	PANHANDLE EAST	0.0	WARREN PETROLEUM
*8245505	F-10-049223	4248330902		103		JUDY #1	PANHANDLE EAST	0.0	WARREN PETROLEUM
*8245506	F-10-049225	4248330953		103		KENDA #1	PANHANDLE EAST	0.0	WARREN PETROLEUM
*8245516	F-10-049240	4248330914		103		KORBIN #1	PANHANDLE EAST	0.0	WARREN PETROLEUM
*8245515	F-10-049239	4248330983		103		LANCE #1	PANHANDLE EAST	0.0	WARREN PETROLEUM
*8245514	F-10-049237	4248330985		103		OLETA #1	PANHANDLE EAST	0.0	WARREN PETROLEUM
*8245513	F-10-049236	4248330967		103		PAM #1	PANHANDLE EAST	0.0	WARREN PETROLEUM
*8245512	F-10-049235	4248330966		103		PEGGY #1	PANHANDLE EAST	0.0	WARREN PETROLEUM
*8245511	F-10-049234	4248330867		103		RILEY #1	PANHANDLE EAST	0.0	WARREN PETROLEUM
*8245510	F-10-049232	4248330903		103		SANDRA #1	PANHANDLE EAST	0.0	WARREN PETROLEUM
*8245509	F-10-049230	4248330886		103		TROSTLE #2	PANHANDLE EAST	0.0	WARREN PETROLEUM
*8245508	F-10-049228	4248330965		103		VIRGINIA #1	PANHANDLE EAST	0.0	WARREN PETROLEUM
*8245507	F-10-049227	4248330863		103		WESLEY #1	PANHANDLE EAST	0.0	WARREN PETROLEUM
-D B MCGUFFIN				RECEIVED:	07/26/82	JA: TX			
8245536	F-04-050345	4242700000		103		GONZALEZ GU #3	ZIM-WEST (980)	3.6	INTRASTATE GATHER
-DALECO RESOURCES				RECEIVED:	07/26/82	JA: TX			
8245573	F-03-051911	4205131217		102-4		JESSE MOORE #4	CLAY NE (EDWARDS LIME	0.0	CLAJON GAS CO
8245665	F-7B-054009	4244732171		102-4		MCKNIGHT "E" #5 (16233)	MCKNIGHT S (CONGL)	1.0	GREAT WESTERN GAS
-DEB-DON CORP				RECEIVED:	07/26/82	JA: TX			
8245670	F-09-054016	4223734283		102-4		MONTGOMERY PROPERTIES INC #1-A	OAKLAND (MARBLE FALLS	273.0	SOUTHWESTERN GAS
-DERRICK OIL & GAS INC				RECEIVED:	07/26/82	JA: TX			
8245462	F-03-047339	4203900000		103		V S HUFFMAN #2	ARCOLA HUFFMAN SAND (	150.0	TENNGASCO INC
-DIAMOND SHAMROCK CORPORATION				RECEIVED:	07/26/82	JA: TX			
8245656	F-10-053995	4234100000		108		C R JONES "C" #1	PANHANDLE W	14.0	INTER NORTH INC
8245463	F-03-047341	4221131277		103		DAVID QUENTIN ISAACS SR #3	CANADIAN SE	96.0	INTERNORTH INC
8245418	F-10-020341	4223300000		108-ER		LUCAS #6	PANHANDLE	4.0	NORTHERN NATURAL
-DINERO OIL CO				RECEIVED:	07/26/82	JA: TX			
8245436	F-01-043571	4240731403		103		R B WILLOUGHBY #6	LEONA (ELAINE)	58.0	VALERO TRANSMISSI
-DONALD C SLAWSON				RECEIVED:	07/26/82	JA: TX			
8245615	F-10-053412	4221131417		103		CLEVELAND #3-22	GLAZIER N W (MORROW U	300.0	HIGH PLAINS NATUR
-DYNAMIC PRODUCTION INC				RECEIVED:	07/26/82	JA: TX			
8245491	F-03-048896	4228731098		102-2	103	SCHULZE #2	GIDDINGS (AUSTIN CHAL	0.0	PHILLIPS PETROLEU
-EARL T WARREN				RECEIVED:	07/26/82	JA: TX			
8245565	F-7C-051684	4230730605		102-4		ALEX FINLAY #1 (099259)	WARREN (CANYON)	35.0	ODESSA NATURAL CO
8245566	F-7C-051685	4230730519		102-4		BOB FINLAY #1 (099261)	WARREN (CANYON)	35.0	ODESSA NATURAL CO
8245562	F-7C-051681	4230730519		102-4		BRADLEY #1 (099263)	WARREN (CANYON)	35.0	ODESSA NATURAL CO
8245561	F-7C-051679	4230730515		102-4		CAYLOR #1	WARREN (CANYON)	35.0	ODESSA NATURAL CO
8245560	F-7C-051678	4230730546		102-4		MARY PEARCE #2	WARREN (CANYON)	8.0	ODESSA NATURAL CO
8245564	F-7C-051683	4230730527		102-4		MCCUTCHEON #1	WARREN (CANYON)	37.0	ODESSA NATURAL CO
8245563	F-7C-051682	4230730528		102-4		SMITH #1	WILDCAT	31.0	ODESSA NATURAL CO
-EGAN-WILSON PETROLEUM INC				RECEIVED:	07/26/82	JA: TX			
8245482	F-04-048513	4235500000		102-4		LEON BALZER UNIT #2 ID #N/A	BALZER (1600)	60.0	GASTRANS INC
-EL PASO NATURAL GAS COMPANY				RECEIVED:	07/26/82	JA: TX			
8245664	F-7C-054005	4243519194		108		BERGER GAS UNIT #1	SONORA - CANYON UPPER	12.0	EL PASO NATURAL G
-ENTERPRISE RESOURCES INC				RECEIVED:	07/26/82	JA: TX			
8245552	F-03-051311	4229100000		102-4		CHAMPION INTERNATIONAL CORP #1	QUINN S (7060)	350.0	TRUNKLINE GAS CO
-ESTATE OF WM D MCBEE				RECEIVED:	07/26/82	JA: TX			
8245652	F-06-053894	4245930507		103	107-TF	SPENCER GAS UNIT #1 WELL #2	ROSEWOOD (COTTON VALL	710.0	WESTERN GAS CORP
-EXXON CORPORATION				RECEIVED:	07/26/82	JA: TX			
8245557	F-10-051527	4207131298		103		A D MIDDLETON A/C 4 #97	ANAHUAC	292.0	HOUSTON PIPELINE
8245616	F-03-053418	4232131181		103		FLORENCE V BOULDIN -B- #4	SUGAR VALLEY (TRUITT	550.0	NATURAL GAS PIPEL
8245614	F-10-053346	4229531149		103		HENRY FRASS JR "D" #6	FRASS (TONKAWA)	8.0	TRANSWESTERN PIPE

JD NO	JA DKT	API NO	D	SEC(1)	SEC(2)	WELL NAME	FIELD NAME	PROD	PURCHASER
8245611	F-04-053317	4226131239		102-4		J G KENEDY JR E-22-F (099579)	EL PAISTLE (I-75)	438.0	NATURAL GAS PIPEL
*8245698	F-04-054128	4227331208		103		K R STRATTON T-41-F (07496)	STRATTON (L-12)	19.0	ARMCO STEEL CORP
8245617	F-03-053419	4207131301		103		MARIE ZAPPE #30	ANAHUAC	237.0	HOUSTON PIPELINE
8245575	F-02-051930	4229732218		103		MARY A REYNOLDS #36 098691	RAMIRENA SW (YEGUA #2	149.0	NATURAL GAS PIPEL
8245587	F-04-052352	4226130661		102-4		MRS S K EAST 129-D (099188)	RITA (7-B,II)	65.7	NATURAL GAS PIPEL
*8245583	F-04-052296	4204730914		102-4		RJK JR TR BARROSA PAST 23 (097861)	PITA NW (VICKSBURG 10	110.0	ARMCO STEEL CORP
-FAGADAU ENERGY CORP				RECEIVED:	07/26/82	JA: TX			
8245653	F-7B-053895	4242932824		102-4		C W WULFJEN #1 18503	FOUR J (CONGL 3650')	50.0	WARREN PETROLEUM
-FLORIDA GAS EXPLORATION COMPANY				RECEIVED:	07/26/82	JA: TX			
8245586	F-7C-052321	4243532666		103	107-TF	FLORENCE 31 #2	PHYLLIS SONORA	0.0	INTRATEX GAS COMP
-FOY BOYD MANAGEMENT CORP				RECEIVED:	07/26/82	JA: TX			
8245694	F-08-054109	4247532413		103		PITZER "B" #1	PITZER N (CHERRY CANY	18.7	INTERNORTH INC
-FRANK CASS				RECEIVED:	07/26/82	JA: TX			
8245686	F-7C-054076	4238300000		108		NEWMONT 3701 - RRC #07643	SPRABERRY (TREND AREA	3.4	EL PASO NATURAL G
-FUNK EXPLORATION INC				RECEIVED:	07/26/82	JA: TX			
8245606	F-10-053063	4229531166		103		P S REYNOLDS #3	RICKS (UPPER MORROW)	110.0	HIGH PLAINS NATUR
-GALAXY OIL COMPANY				RECEIVED:	07/26/82	JA: TX			
8245479	F-03-048280	4204130668		102-2		JAMES O FREEMAN #1	GIDDINGS (AUSTIN CHAL	150.0	PRODUCERS GAS CO
-GENERAL PRODUCTION CORP				RECEIVED:	07/26/82	JA: TX			
8245524	F-03-049823	4228731102		103		C E NEAL UNIT #1	GIDDINGS (AUSTIN CHAL	0.0	CLAJON GAS CO
8245531	F-03-050151	4205132061		103		ROBERT PLASEK #1	WILLARD (NAVARRO)	0.0	FERGUSON CROSSING
-GEOSOUTHERN ENERGY CORP				RECEIVED:	07/26/82	JA: TX			
8245457	F-10-046739	4205100000		102-2	103	SNOOK #1-A	GIDDINGS (AUSTIN CHAL	0.0	FERGUSON CROSSING
-GETTY OIL COMPANY				RECEIVED:	07/26/82	JA: TX			
8245601	F-10-052881	4229530932		108		M F CUNNINGHAM #1	BECHTOLD (TONKAWA)	15.0	INTERNORTH INC
8245691	F-02-054087	4212300000		108		NORDHEIM UNIT #11	NORDHEIM UNIT NO 11	15.0	VALERO TRANSMISSI
8245444	F-03-046175	4205100000		102-2		R H KNOLLE #2	GIDDINGS (AUSTIN CHAL	0.0	FERGUSON CROSSING
8245607	F-08-053093	4249531247		103		S M HALLEY #260	EMPEROR (DEVONIAN)	55.0	CABOT CORP
8245421	F-06-030115	4236500000		102-4		WALLACE UNIT #3	CARTHAGE (TRAVIS PEAK	0.0	TEXAS GAS TRANSMI
-GHR ENERGY CORP				RECEIVED:	07/26/82	JA: TX			
8245471	F-04-047999	4247933068		102-4		SCHWARZ #5	SCHWARZ (10500)	1095.0	VALERO TRANSMISSI
-GOLDKING PRODUCTION COMPANY				RECEIVED:	07/26/82	JA: TX			
8245446	F-04-046239	4235500000		102-4		MANLEY #1-U	DOUGHTY (FRIO 9811')	0.0	HOUSTON PIPELINE
8245445	F-04-046237	4235500000		102-4		MANLEY #2-U	DOUGHTY (FRIO 9811')	0.0	HOUSTON PIPELINE
8245492	F-03-049147	4203900000		102-4		TEN BRINK #2	CHENANGO (9520)	0.0	HOUSTON PIPELINE
-GULF OIL CORPORATION				RECEIVED:	07/26/82	JA: TX			
8245658	F-03-053997	4204130518		102-2		B YEAGER UNIT I WELL #1	KURTEN (BUDA)	29.0	
8245707	F-08-054158	4247501231		108		ESTES E W #166	ESTES BLOCK 34 (PENN)	9.0	CABOT CORP
8245671	F-10-054018	4221131411		102-4		FORGEY #2-112	GEM HEMPHILL/DOUGLAS	457.0	TRANSWESTERN PIPE
8245473	F-04-048057	4221530441		102-4		GARZA #1	EL STAGGS (4100)	0.0	TENNGASCO GAS GAT
8245472	F-04-048056	4221530771		102-4		HINOJOSA #2	EL STAGGS (4100)	438.0	VALERO INTERSTATE
8245705	F-08-054155	4210332859		103		W N WADDELL #1227	SAND HILLS (JUDKINS)	123.0	
8245470	F-06-047852	4236531338		103	107-TF	1ST NATL BANK-BALDWIN UNIT #3	CARTHAGE (COTTON VALL	365.0	UNITED GAS PIPE L
-GZG ENERGY INC				RECEIVED:	07/26/82	JA: TX			
8245646	F-01-053717	4228330878		103		LANE MOFFETT #1	PEARSALL (AUSTIN CHAL	0.0	ESPERANZA TRANSMI
-H & S PRODUCTION INC				RECEIVED:	07/26/82	JA: TX			
8245459	F-09-047248	4249732236		103		HELEN MCGEE #1	ALVORD (MARBLE FALLS	172.0	TEXAS UTILITIES F
-HARRISON INTERESTS LTD				RECEIVED:	07/26/82	JA: TX			
8245585	F-03-052310	4207131231		102-4	103	ANDY FRANKLAND #	SMITH POINT E (F-22 L	600.0	HOUSTON PIPELINE
-HAWKEYE OIL & GAS CORP				RECEIVED:	07/26/82	JA: TX			
8245480	F-09-048351	4223734235		102-4		JACKIE WORTHINGTON #2	CAMPBELL (ATOKA CONGL	91.0	SOUTHWESTERN GAS
-HERITAGE OPERATING CO INC				RECEIVED:	07/26/82	JA: TX			
8245579	F-03-052109	4208900000		102-4		TULANE GORDON #1	CHESTERVILLE	0.0	SEAGULL PIPELINE

JD NO	JA DKT	API NO	D	SEC(1)	SEC(2)	WELL NAME
-HEYDRICK PETROLEUM CO				RECEIVED:	07/26/82	JA: TX
8245551	F-09-051205	4207732482		102-4		A VEITENHEIMER #5-B RRC#-19988
-HILL PRODUCTION CO				RECEIVED:	07/26/82	JA: TX
8245466	F-06-047527	4240131367		103	107-TF	CAGLE-HARRIS #1
-HNG OIL COMPANY				RECEIVED:	07/26/82	JA: TX
8245526	F-04-049881	4247933202		102-4	103	BRUNI MINERAL "B" #2
8245526	F-04-049881	4247933202		107-TF		BRUNI MINERAL "B" #2
8245703	F-04-054141	4247900000		102-4		HIRSCH ESTATE "1772" #1
-HOUSTON OIL & MINERALS CORPORATION				RECEIVED:	07/26/82	JA: TX
8245460	F-03-047258	4216700000		103		STATE TRACT 321 WELL #4R 14877
-HUGGS INCORPORATED				RECEIVED:	07/26/82	JA: TX
8245517	F-06-049399	4220330813		103		GRIFFIN UNIT #2
-HUGHES & HUGHES				RECEIVED:	07/26/82	JA: TX
8245556	F-02-051524	4202531843		102-4		JULIA B CRYER #1
-HUNT ENERGY CORPORATION ET AL				RECEIVED:	07/26/82	JA: TX
8245440	F-10-044799	4248330808		102-2		BRITT-CALDWELL RANCH #1
-HUNT OIL COMPANY				RECEIVED:	07/26/82	JA: TX
8245623	F-05-053593	4216130665		102-2	107-TF	O L GRAGG #1
-HUNT PETROLEUM CORPORATION				RECEIVED:	07/26/82	JA: TX
8245529	F-10-050073	4248330853		102-2	107-TF	LEDBETTER #1
-INDIAN WELLS OIL CO				RECEIVED:	07/26/82	JA: TX
8245684	F-7C-054064	4223531898		103		SCHEUBER 710-1
-INTEGRATED ENERGY INC				RECEIVED:	07/26/82	JA: TX
8245712	F-03-054176	4220131149		103		SCHWEINLE #1
-INTERNORTH INC				RECEIVED:	07/26/82	JA: TX
8245578	F-1D-052054	4229531093		103		MEIER 527 #1
-JOHN G VOIGHT				RECEIVED:	07/26/82	JA: TX
8245594	F-03-052687	4248100000		102-4		CHUMCHALL-HENDERSON #1
8245595	F-03-052688	4248100000		102-4		MARY MATUSEK #1
-JOHN H YOUNG INC				RECEIVED:	07/26/82	JA: TX
8245468	F-03-047616	4214931161		102-2		TREYBIG UNIT #1
-JOHNSON JACK JR				RECEIVED:	07/26/82	JA: TX
8245605	F-10-053046	4234100000		103		LOEBER #6 RRC #01798
-JOYCE & HILTY INC				RECEIVED:	07/26/82	JA: TX
8245453	F-03-046570	4215713116		102-4		PERRY V COOK TRUST GAS UNIT #1
-JUDY OIL CO				RECEIVED:	07/26/82	JA: TX
8245701	F-10-054135	4217900000		103		LLOYD A B #1
-JUMAS OIL PART CORP				RECEIVED:	07/26/82	JA: TX
8245549	F-09-051078	4249700000		108		BURGE MYRTLE IU 021685
-KILLAM & HURD LTD				RECEIVED:	07/26/82	JA: TX
8245425	F-04-036003	4247932951		102-4	107-TF	J C MARTIN III #5
-KIRBY EXPLORATION CO				RECEIVED:	07/26/82	JA: TX
*8245455	03-046652	4270430078		102-4		STATE 68903 340-L NW/4 #1
-L R SPRADLING				RECEIVED:	07/26/82	JA: TX
8245692	F-10-054107	4234100000		103		BROWN #4
8245693	F-10-054108	4234100000		103		BROWN #5
-LANTANA NATURAL RESOURCES INC				RECEIVED:	07/26/82	JA: TX
8245452	F-04-046535	4224931370		103		HERBERT BIERSTEDT #1
-LEWIS B BURLESON				RECEIVED:	07/26/82	JA: TX
8245582	F-08-052239	4237133761		102-4		KAY #2
8245580	F-08-052214	4237133760		103		PUCKETT #2
-LONDON & WAGGONER				RECEIVED:	07/26/82	JA: TX
8245489	F-7B-048775	4236732048		102-4		FORT WOLTERS-USA #1

FIELD NAME	PROD	PURCHASER
ARROWHEAD (CADDO)	1.4	FAGADAU ENERGY CO
POD FIELD (COTTON VAL	547.0	DELHI GAS PIPELIN
JUANITA (LOBO)	259.5	HOUSTON PIPELINE
JUANITA (LOBO)	259.5	HOUSTON PIPELINE
BIG COWBOY (LOBO)	196.0	HOUSTON PIPELINE
BAFFLE POINT (S-5)	72.0	LONE STAR GAS CO
BETHANY (TRAVIS PEAK	183.0	UNITED GAS PIPE L
NORBEE SE (4250' SAND	183.0	UNITED GAS PIPE L
BRITT RANCH (GRANITE	400.0	ARKANSAS-LOUISIAN
GOODE RANCH (BOSSIER	180.0	
STILES RANCH (MORROW)	1004.0	COLORADO INTERSTA
IRION W (CANYON)	0.0	INTERNORTH INC
INDIAN HILLS (YEGUA)	49.3	
LIPSCOMB (CLEVELAND)	150.0	INTERNORTH INC
MARY MACHA (MIOCENE)	584.0	LONE STAR GAS CO
MARH MACHA (FRIO 4300	62.8	LONE STAR GAS CO
GIDDINGS AUSTIN CHALK	275.0	CLAJON GAS CO
PANHANDLE HUTCHINSON	127.8	PHILLIPS PETROLEU
KATY S (FIRST WILCOX)	40.0	INTRASTATE GATHER
PANHANDLE GRAY	73.0	GETTY OIL CO
WISE KENT (STRAWN REE	1.4	LONE STAR GAS CO
DOLORES CREEK (WILCOX	0.0	TRANSCONTINENTAL
BLOCK 340	1450.0	SOUTHERN NATURAL
PANHANDLE MOORE COUNT	75.0	PANHANDLE EASTERN
PANHANDLE MOORE COUNT	25.0	PANHANDLE EASTERN
WADE CITY W (2150') F	100.0	VALERO TRANSMISSI
BELDING YATES	0.0	APACHE GAS CORP
BELDING (YATES)	0.0	APACHE GAS CORP
FORT WOLTERS (MARBLE	183.0	SOUTHWESTERN GAS

JD NO	JA DKT	API NO	D	SEC(1)	SEC(2)	WELL NAME	FIELD NAME	PROD	PURCHASER
-LOUISIANA CRUDE OIL & GAS CO INC				RECEIVED:	07/26/82	JA: TX			
8245590	F-7B-052449	4242932402		103		P NALL #2	STEPHENS COUNTY REGUL	38.0	SOUTHWESTERN GAS
-MARLEX OIL & MINERALS INC				RECEIVED:	07/26/82	JA: TX			
8245568	F-03-051750	4204130702		102-2		MCCULLOUGH #1	GIDDINGS (AUSTIN CHAL	540.0	CLAJON GAS CO
-MARTIN OIL & GAS CO				RECEIVED:	07/26/82	JA: TX			
8245648	F-03-053799	4214900000		102-2		RING "A" #1	GIDDINGS (AUSTIN CHAL	0.0	PHILLIPS PETROLEU
-MAY PETROLEUM INC				RECEIVED:	07/26/82	JA: TX			
8245649	F-10-053806	4219530821		103		MCCLELLAN #2	GRUVER NW (MORROW UPP	5.0	PHILLIPS PETROLEU
-MAYNARD OIL COMPANY				RECEIVED:	07/26/82	JA: TX			
8245610	F-02-053296	4202531839		103		ANNA L KOENIG #1	NORBEE (1900)	15.0	UNITED GAS PIPE L
-MELLON OPERATING CO				RECEIVED:	07/26/82	JA: TX			
8245695	F-01-054110	4233131299		103		MCBRIDE FLOSSIE #1	CHEROKEE (NAVARRO)	36.5	PRODUCER'S GAS CO
-MEWBOURNE OIL COMPANY				RECEIVED:	07/26/82	JA: TX			
8245437	F-10-043937	4235731155		103		STOREY #1	PERRYTON (MORROW UPPE	20.0	INTENORTH INC
-MGF OIL CORP				RECEIVED:	07/26/82	JA: TX			
8245627	F-08-053629	4231700000		103		ROMAN #1	SPRABERRY (TREND AREA	8.0	ADOBE OIL & GAS C
-MILES PRODUCTION CO				RECEIVED:	07/26/82	JA: TX			
8245537	F-09-050367	4223733853		102-4		JACKSON HEIRS #1 PENDING	ANTELOPE SE (MARBLE F	6.5	SOUTHWESTERN GAS
-MITCHELL ENERGY CORPORATION				RECEIVED:	07/26/82	JA: TX			
8245426	F-09-038154	4249732055		103		H E MYERS #6	BOONSVILLE (BEND CONG	145.0	NATURAL GAS PIPEL
8245618	F-09-053433	4223734225		103		JACK BLANTON "A" #1	GILLEY WEST (ATOKA CO	225.0	NATURAL GAS PIPEL
8245451	F-09-046460	4223700000		108		JOHN PURSLEY 1649 #1 57458	JACK COUNTY REGULAR	2.5	BRAZOS GAS & OIL
8245621	F-09-053559	4249732378		103		MATT CLARK #2	BOONSVILLE (BEND CONG	426.0	NATURAL GAS PIPEL
8245574	F-09-051927	4249732248		103		SAM KIKER #3	BOONSVILLE (BEND CONG	1051.0	NATURAL GAS PIPEL
8245494	F-09-049185	4249700000		108		WINFORD W CARTER #1 #76649	BOONSVILLE (BEND CONG	12.4	NATURAL GAS PIPEL
-MOORE OIL & GAS INC				RECEIVED:	07/26/82	JA: TX			
8245548	F-04-050995	4224931212		103		A O COOK 3-T	TOM GRAHAM (VICKSBURG	100.0	TENNESSEE GAS PIP
-MORROW RESOURCES INC				RECEIVED:	07/26/82	JA: TX			
8245612	F-7C-053327	4232730433		102-4	103	PFLUGER "D" #1	CELERY (STRAWN B)	28.8	SUN GAS CO
-MOSBACHER PRODUCTION CO				RECEIVED:	07/26/82	JA: TX			
8245569	F-02-051808	4225500000		108		J B MIXON #1	S W RUNGE (SLICK)	12.0	VALERO TRANSMISSI
-NATOMAS NORTH AMERICA INC				RECEIVED:	07/26/82	JA: TX			
8245520	F-7C-049692	4245130697		102-4		JONES #1	HOUR (STRAWN)	500.0	INTERNORTH INC
8245521	F-7C-049693	4245130745		102-4		JONES #2	HOUR (STRAWN)	49.0	INTERNORTH INC
-NORTH CENTRAL OIL CORPORATION				RECEIVED:	07/26/82	JA: TX			
8245438	F-09-044589	4249732274		103		A P DEATON UNIT #2	BOONESVILLE (BEND CON	0.0	NATURAL GAS PIPEL
-NORTH RIDGE CORP				RECEIVED:	07/26/82	JA: TX			
8245434	F-7B-042490	4213300000		102-4		W T DAVIS #1	RANGER (BLACK LIME WE	59.0	PRISM ENTERPRISES
-NUCORP ENERGY INC				RECEIVED:	07/26/82	JA: TX			
8245619	F-01-053515	4217700000		103		HRBACEK #1	PILGRIM (WILCOX)	146.0	VALERO TRANSMISSI
-OMNI OPERATING CO				RECEIVED:	07/26/82	JA: TX			
8245541	F-04-050526	4227331554		103		KING RANCH B-1	KINGSVILLE FRIO 6574	0.0	TEXAS EASTERN GAS
-ORLA PETCO INC				RECEIVED:	07/26/82	JA: TX			
8245622	F-08-053579	4210931508		102-4		CATCLAW-STATE #2	GERALDINE (DELAWARE 3	14.6	TEXACO INC
-PALO PETROLEUM INC				RECEIVED:	07/26/82	JA: TX			
8245420	F-7C-026496	4238300000		103		ROBERTSON MULHOLLAND #1-A	SPRABERRY	0.0	BIG LAKE GASOLINE
8245474	F-7C-048064	4238331820		103		UNIVERSITY 14 #1	SPRABERRY (TREND AREA	54.8	EL PASO NATURAL G
-PENNZOIL PRODUCING COMPANY				RECEIVED:	07/26/82	JA: TX			
8245588	F-04-052389	4250531482		102-4		ALBERT TREVINO NO A-1	ESCOBAS S (9,300')	876.0	TENNESSEE GAS PIP
8245651	F-04-053879	4250531193		108		JENNINGS #44	JENNINGS WEST (ROSENB	10.0	NATURAL GAS PIPEL
-PETROTEX MANAGEMENT CO				RECEIVED:	07/26/82	JA: TX			
8245558	F-04-051609	4204730944		103		SYLVESTRE RODRIGUEZ #2 ID	SCOTT & HOPPER (6500)	190.0	ESPERANZA TRANSMI
-PHILLIPS PETROLEUM COMPANY				RECEIVED:	07/26/82	JA: TX			

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JD NO	JA DKT	API NO	D	SEC(1)	SEC(2)	WELL NAME	FIELD NAME	PROD	PURCHASER
8245465	F-10-047387	4242100000		108		BIVENS L #1	TEXAS HUGOTON	0.0	MICHIGAN WISCONSI
8245669	F-09-054015	4249700000		108		BLANTON A #1	MORRIS (CONSOLIDATED	20.0	NATURAL GAS PIPEL
8245449	F-10-046437	4242100000		108		RIFFE #1	TEXAS HUGOTON- DOLOMI	0.0	MICHIGAN WISCONSI
8245450	F-10-046439	4235700000		108		SUSAN A #1	PERRYTON W-CLEVELAND	0.0	
-PITTS OIL CO & DALLAS PROD INC				RECEIVED:	07/26/82	JA: TX			
8245545	F-06-050660	4242330507		103		BUTLER ESTATE #1	CHAPEL HILL (PALUXY)	86.0	ETEXAS PRODUCERS
8245609	F-06-053268	4242330573		102-4		WALTON HEIRS "A" #1	CHAPEL HILL NE (TRAVI	259.0	ETEXAS PRODUCERS
-PRODUCERS ENGINEERING CO				RECEIVED:	07/26/82	JA: TX			
8245592	F-01-052574	4217731210		102-2		BERNICE BACON #1	PEACH CREEK (AUSTIN C	0.0	VALERO TRANSMISSI
-QUINTANA PETROLEUM CORP				RECEIVED:	07/26/82	JA: TX			
8245546	F-03-050804	4232100000		102-4		OSCAR JOHNSON #1	TIDEHAVEN (11,000' SA	1095.0	TEXCOL GAS SERVIC
-R H ENGELKE				RECEIVED:	07/26/82	JA: TX			
8245553	F-03-051312	4232131145		102-4	103	CLARK UNIT 1 WELL #2	CHALMERS (9250)	46.0	CHANNEL INDUSTRIE
-REO INDUSTRIES INC				RECEIVED:	07/26/82	JA: TX			
8245657	F-8A-053996	4207900000		103		F O MASTEN A #1	LEVELLAND	500.0	CITIES SERVICE CO
-RICO OIL CO				RECEIVED:	07/26/82	JA: TX			
8245528	F-09-050018	4223734088		103		SMITH-WEST #097718	COGDELL (CONGL GAS)	75.0	CITIES SERVICE GA
-RIDGE OIL CO				RECEIVED:	07/26/82	JA: TX			
8245628	F-7B-053631	4213338858		102-4	103	BEIDLEMAN #1	RANGER NW (MARBLE FAL	28.0	COMPRESSOR RENTAL
-SAMEDAN OIL CORPORATION				RECEIVED:	07/26/82	JA: TX			
8245458	F-04-046764	4227331643		102-2		STATE TRACT 818-L #C-3	SAMEDAN FRIO	1100.0	EL PASO NATURAL G
-SANCHEZ-OBRIEN OIL & GAS CORP				RECEIVED:	07/26/82	JA: TX			
8245544	F-03-050638	4207131270		102-4		B B ROGERS #1	WHITE BAYOU SOUTH (PR	500.0	UNITED TEXAS TRAN
8245483	F-02-048569	4229742297		102-4		GEORGE WEST GAS UNIT #2 WELL #3	GEORGE WEST WEST (850	500.0	TEXAS EASTERN TRA
-SANTA FE-WINDSOR PRODUCING CO				RECEIVED:	07/26/82	JA: TX			
8245554	F-03-051374	4228731179		102-2	103	OTTO UNIT #1	GIDDINGS (AUSTIN CHAL	109.5	PERRY PIPELINE CO
-SCANDRILL CO				RECEIVED:	07/26/82	JA: TX			
8245419	F-09-026020	4250333989		103		KURK #8	NAPECO (MISS)	107.7	SUN GAS GATHERING
-SEQUOIA FOSSIL FUELS INC				RECEIVED:	07/26/82	JA: TX			
8245620	F-7B-053522	4205933524		102-4		PRUET 2277 #1	PRUET (CONGL)	150.0	LONE STAR GAS CO
-SESCO PRODUCTION CO				RECEIVED:	07/26/82	JA: TX			
8245422	F-06-031143	4240130989		103	107-TF	DAVID ALLEN #1	MINDEN (COTTON VALLEY	0.0	TEXAS UTILITIES F
8245423	F-06-034323	4240100000		103	107-TF	HOMER GREEN #1	WILDCAT	0.0	LONE STAR GAS CO
8245424	F-06-035750	4240100000		103	107-TF	JAMES E MCCUNE #1	WILDCAT	0.0	
-SHELL OIL CO				RECEIVED:	07/26/82	JA: TX			
8245702	F-09-054138	4218130671		103		BIG MINERAL CREEK S SAND UNIT #343	BIG MINERAL CREEK (S	16.1	UNION TEXAS PETRO
-SIERRA PRODUCTION CO				RECEIVED:	07/26/82	JA: TX			
8245559	F-02-051669	4202531805		102-4		CHESNUTT JOSEPHINE 149892	NE MEDIO CREEK (REQUE	110.0	HOUSTON PIPE LINE
-SOHIO PETROLEUM CO				RECEIVED:	07/26/82	JA: TX			
8245481	F-7C-048443	4217331169		103		W B ATKINSON "C" #5	CALVIN (DEAN)	16.0	EL PASO NATURAL G
-STAYBAR PRODUCTION CO				RECEIVED:	07/26/82	JA: TX			
8245467	F-7B-047555	4209330848		102-4		HAROLD PIERSON -D- #5	ZOURETTE N (MARBLE FA	189.0	ENERGY PIPELINE I
-SUN EXPLORATION & PRODUCTION CO				RECEIVED:	07/26/82	JA: TX			
8245639	F-08-053673	4200333072		103		ARGO #4	MARTIN (TUBB)	58.0	PHILLIPS PETROLEU
8245655	F-7C-053992	4208131089		103		D M MILLICAN #3	JAMESON S E (STRAWN)	84.0	LONE STAR GAS CO
8245704	F-09-054149	4227531152		103		FANT EST 57A #5	FANI (CONGL LOWER)	23.0	SUN GAS TRANSMISS
8245643	F-08-053678	4200300000		108		HOLT O B #10	COWDEN NORTH	0.1	WESTAR TRANSMISSI
8245636	F-08-053670	4200300000		108		HOLT O B GRBG #1-17	COWDEN NORTH	1.0	WESTAR TRANSMISSI
8245641	F-08-053676	4200300000		108		HOLT O B GRBG #2-10	COWDEN NORTH	0.3	WESTAR TRANSMISSI
8245634	F-08-053668	4200300000		108		HOLT O B GRBG #2-3	COWDEN NORTH	1.0	WESTAR TRANSMISSI
8245637	F-08-053671	4200300000		108		HOLT O B GRBG #3-10	COWDEN NORTH	1.0	WESTAR TRANSMISSI
8245633	F-08-053667	4200300000		108		HOLT O B GRBG #3-9	COWDEN NORTH	1.0	WESTAR TRANSMISSI
8245635	F-08-053669	4200300000		108		HOLT O B GRBG #5-1	COWDEN NORTH	1.0	WESTAR TRANSMISSI

JD NO	JA DKT	API NO	D	SEC(1)	SEC(2)	WELL NAME
8245642	F-08-053677	4200300000		108		HOLT O B JR EST #2
8245632	F-08-053663	4200300000		108		HOLT O B PENN #1-15
8245613	F-6E-053367	4218300000		108		J C GRAY #13
8245654	F-8A-053990	4207931497		103		LEAGUE 91 PROJECT #4-9
8245640	F-02-053674	4246931575		103		NANCY F SHELTON #8
8245638	F-08-053672	4200300000		108		O B HOLT JR EST #3
8245650	F-8A-053822	4221933328		103		S E LEVELLAND UNIT #276
-SUN OIL COMPANY (DELAWARE)				RECEIVED:	07/26/82	JA: TX
8245417	F-04-013589	4242713589		108-ER		AGUSTIN OLIVARES #20
8245416	F-04-000966	4242700000		102-4		REILLY GAS UNIT #1
-SUNRAY OIL CO INC				RECEIVED:	07/26/82	JA: TX
8245645	F-10-053695	4234130796		103		CAM #1
-SUPERIOR OIL CO				RECEIVED:	07/26/82	JA: TX
8245540	F-03-050476	4228731151		102-2	103	L P VAVRA UNIT #1
8245532	F-08-050155	4200332978		103		LOCKHART & BROWN "17-B" #1
-TAYLOR CLAYTON & HAWLEY				RECEIVED:	07/26/82	JA: TX
8245625	F-10-053621	4217930686		103		W H TAYLOR "GO" #5
8245624	F-10-053620	4217930687		103		W H TAYLOR "L" #1
8245626	F-10-053622	4217930770		103		W H TAYLOR "L" #2
-TDC ENGINEERING INC				RECEIVED:	07/26/82	JA: TX
8245711	F-01-054167	4217731296		102-4		CITY OF GONZALES UNIT #2-A (08042)
-TENEXPLO CORP				RECEIVED:	07/26/82	JA: TX
8245674	F-09-054024	4250300000		102-2		WORTH-GRAGG #13
8245675	F-09-054025	4250300000		102-2		WORTH-GRAGG #14
8245673	F-09-054023	4250300000		102-2		WORTH-GRAGG #15
-TEXACO INC				RECEIVED:	07/26/82	JA: TX
8245600	F-8A-052856	4221933348		103		IRA P DELOACHE #39
8245598	F-8A-052831	4221933320		103		IRA P DELOACHE #52
8245484	F-8A-048583	4221933387		103		MONTGOMERY ESTATE DAVIES NCT-2 #85
8245710	F-10-054161	4206500000		108		S B BURNETT NCT-2 #32
8245709	F-10-054160	4206500000		108		S B BURNETT NCT-2 #44
-TEXAS CRUDE INC				RECEIVED:	07/26/82	JA: TX
8245477	F-06-048197	4207330404		102-4		NEW BIRMINGHAM "B" GU#3 W#3
8245476	F-06-048194	4207330331		102-4		WAYMON PIERCE GU#1 W#1 85699
8245478	F-06-048198	4207330414		102-4		WHITEMAN DECKER GU#1 W#3 94986
-TOM F MARSH INC				RECEIVED:	07/26/82	JA: TX
8245591	F-01-052549	4213730810		102-2	107-TF	JAMES E EPPERSON 1
-TOWNER PETROLEUM CO				RECEIVED:	07/26/82	JA: TX
8245469	F-03-047661	4214931229		102-2		DUSEK UNIT #3
-TRAVELERS OIL CO				RECEIVED:	07/26/82	JA: TX
8245597	F-10-052789	4217900000		108		GRIGSBY #1 097714
-TUCKER & GILMORE				RECEIVED:	07/26/82	JA: TX
8245555	F-10-051457	4229531125		103		SHUTTERLY #1
-TUCKER DRILLING COMPANY INC				RECEIVED:	07/26/82	JA: TX
8245543	F-7C-050545	4243532610		103	107-TF	DUNBAR #16
8245542	F-7C-050544	4243532611		103	107-TF	DUNBAR #17
-TXO PRODUCTION CORP				RECEIVED:	07/26/82	JA: TX
8245475	F-03-048121	4248132083		102-4		NEISWENDER GAS UNIT #1
8245429	F-02-039545	4223931617		103		STAFFORD G U A-2
-U S OPERATING INC				RECEIVED:	07/26/82	JA: TX
8245522	F-03-049714	4205131967		102-2		ANNAMAE #1 RRC ID N/A
8245464	F-03-047371	4228731072		102-2		MILDRED #1 RRC ID 15403
8245530	F-03-050074	4205132087		102-2		NITA UNIT #1 RRC ID N/A

FIELD NAME	PROD	PURCHASER
COWDEN NORTH	0.3	WESTAR TRANSMISSI
TRIPLE N	3.0	WESTAR TRANSMISSI
EAST TEXAS	0.3	UNITED GAS PIPE L
SLAUGHTER	6.0	AMOCO PRODUCTION
PALO ALTO (6631) PROP	19.0	UNITED TEXAS TRAN
COWDEN NORTH	0.4	WESTAR TRANSMISSI
LEVELLAND	6.0	AMOCO PRODUCTION
SUN	7.0	
REILLY (VICKSBURG)	100.0	TRANSCONTINENTAL
PANHANDLE MOORE COUNT	0.0	DIAMOND SHAMROCK
GIDDINGS (AUSTIN CHAL	0.0	
NIX, SOUTH	0.0	PHILLIPS PETROLEU
PANHANDLE GRAY COUNTY	0.0	PHILLIPS PETROLEU
PANHANDLE GRAY COUNTY	0.0	PHILLIPS PETROLEU
PANHANDLE GRAY COUNTY	0.0	PHILLIPS PETROLEU
PEACH CREEK (AUSTIN C	108.0	VALERO TRANSMISSI
YOUNG COUNTY REGULAR	5523.5	MID-STATE GAS COR
YOUNG COUNTY REGULAR	5523.5	MID-STATE GAS COR
YOUNG COUNTY REGULAR	5523.5	MID-STATES GAS CO
LEVELLAND	9.1	AMOCO PRODUCTION
LEVELLAND	13.9	AMOCO PRODUCTION
LEVELLAND	0.0	AMOCO PRODUCTION
PANHANDLE CARSON COUN	3.7	PHILLIPS PETROLEU
PANHANDLE CARSON COUN	2.7	PHILLIPS PETROLEU
WHITE OAK CREEK (TRAV	138.0	DELHI GAS PIPELIN
WHITE OAK CREEK (TRAV	9.0	DELHI GAS PIPELIN
WHITE OAK CREEK	1188.0	DELHI GAS PIPELIN
EPPERSON (CANYON SAND	0.0	
GIDDINGS (EDWARDS GAS	1116.0	CLAJON GAS CO
PANHANDLE GRAY COUNTY	0.0	
KIOWA CREEK SOUTH	90.0	INTERNORTH INC
SAWYER (CANYON)	388.4	EL PASO NATURAL G
SAWYER (CANYON)	233.3	EL PASO NATURAL G
BONUS (4050')	0.0	TRUNKLINE GAS CO
MORALES (FRIO M-3 N)	0.0	DELHI GAS PIPELIN
GIDDINGS (AUSTIN CHAL	0.0	PHILLIPS PETROLEU
GIDDINGS (AUSTIN CHAL	0.0	PERRY PIPELINE CO
GIDDINGS (AUSTIN CHAL	0.0	FERGUSON CROSSING

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JD NO	JA DKT	API NO	D	SEC(1)	SEC(2)	WELL NAME	FIELD NAME	PROD	PURCHASER
-UNION OIL COMPANY OF CALIF				RECEIVED:	07/26/82	JA: TX			
8245435	F-06-042543	4236531203		103	107-TF	R C MENEFEE #2	CARTHAGE	365.0	UNITED GAS PIPE L
-VANGUARD EXPLORATION CO INC				RECEIVED:	07/26/82	JA: TX			
8245581	F-7B-052217	4222130666		108		MASSEY #1 95587	GRANBURY NE (ATOKA)	0.0	EMPIRE PIPELINE C
-VENUS OIL COMPANY				RECEIVED:	07/26/82	JA: TX			
8245519	F-01-049602	4201300000		103		MARY CAROL SMITH #1	FASHING	0.0	VALERO TRANSMISSI
-VOLVO PETROLEUM INC				RECEIVED:	07/26/82	JA: TX			
8245603	F-09-052946	4209731776		102-4		MARJORIE MCMAHON #2	HANDY WEST (YOUNG) FI	300.0	CCGP LTD
-W L PULS				RECEIVED:	07/26/82	JA: TX			
8245486	F-03-048678	4224531548		102-4		JOSIE ENGLIN #3	STOWELL S (SULLIVAN U	150.0	WINNIE PIPELINE
8245647	F-03-053732	4224531563		102-4		LUM EDWARDS #1	FARR (9100)	100.0	WINNIE PIPELINE C
-W R EDWARDS JR				RECEIVED:	07/26/82	JA: TX			
8245697	F-10-054127	4223300000		103		MERCHANT ET AL #3	PANHANDLE HUTCHINSON	326.0	PANHANDLE PRODUCI
-WARREN PETR CO A DIV OF GULF OIL CO				RECEIVED:	07/26/82	JA: TX			
8245708	F-08-054159	4210332798		103		STATE EG #28	DUNE	9.9	EL PASO NATURAL G
8245706	F-08-054157	4210332820		103		STATE EG #33	DUNE	9.6	EL PASO NATURAL G
8245672	F-08-054021	4210332860		103		W N WADDELL #1237	SAND HILLS (JUDKINS)	235.8	EL PASO NATURAL G
-WARREN PINNEY JR				RECEIVED:	07/26/82	JA: TX			
8245589	F-04-052441	4213100000		102-4		JAMES F WELDER HEIRS "D" 2	DEJAY (6TH QUEEN CITY	53.0	SEAGULL PIPELINE
-WESSELY ENERGY CORPORATION				RECEIVED:	07/26/82	JA: TX			
8245550	F-05-051157	4239530255		103	107-TF	BEAL ESTATE #1	BALD PRAIRIE (COTTON	225.0	TEXAS UTILITIES F
-WEST TEXAS OIL & GAS CORP				RECEIVED:	07/26/82	JA: TX			
8245644	F-08-053694	4217300000		103		WOODY #4	SPRABERRY (TREND AREA	0.0	PHILLIPS PETROLEU
-WHITING PETROLEUM CORP				RECEIVED:	07/26/82	JA: TX			
8245604	F-02-052985	4212330958		102-4		RUSCHHAUPT G U 097123	MYERS FIELD EAST (WIL	24.0	TEXAS EASTERN TRA
-WILLIAM PERLMAN				RECEIVED:	07/26/82	JA: TX			
8245679	F-7C-054052	4243500000		108		DAN CAUTHORN "B" #1 (063996)	CAUTHORN RANCH (STRAW	0.0	EL PASO NATURAL G
8245584	F-7C-052307	4243532108		108		DAN CAUTHORN "134" #1 (81914)	SHURLEY RANCH (CANYON	0.0	EL PASO NATURAL G
8245681	F-7C-054054	4210531854		108		L M HUDSPETH MEM HOSP "B"#1 084474	WHITEHEAD (STRAWN)	0.0	EL PASO NATURAL G
8245680	F-7C-054053	4243500000		108		WESLEY E SAWYER #3 (066503)	SAWYER (CANYON)	0.0	EL PASO NATURAL G
-WINN EXPLORATION/DULCE CO				RECEIVED:	07/26/82	JA: TX			
8245577	F-01-052004	4250731633		102-4		PRYOR RANCH 53	WINN-DULCE	0.0	INTERNORTH INC
-WOLSEY OIL INC				RECEIVED:	07/26/82	JA: TX			
8245442	F-03-045705	4208900000		108-ER		PEARL H WOOTEN #3 035297	CECIL NOBLE (WOOTEN)	21.0	TENNESSEE GAS PIP
-WOOLEY PETROLEUM				RECEIVED:	07/26/82	JA: TX			
8245599	F-09-052847	4249732315		103		RODNEY L WOOLEY #2	ALVORD SOUTH (ATOKA)	12.0	TEXAS UTILITIES F
-WY-VEL CORP				RECEIVED:	07/26/82	JA: TX			
8245676	F-10-054040	4206531090		103		CALDWELL (05094) #1	PANHANDLE	146.0	GETTY OIL CO
8245678	F-10-054049	4206531135		103		CALDWELL (05094) #2A	PANHANDLE	6.0	GETTY OIL CO
-ZONERGY INC				RECEIVED:	07/26/82	JA: TX			
8245490	F-01-048850	4217731240		102-2		NIXON #2	CHRISTIAN (6800)	0.0	TIPPERARY CORP

OTHER PURCHASERS VOLUME NO :712

82-45455 Florida Gas Transmission Co
82-45583 E I Dupont De Nemours & Co
82-45698 E I Dupont De Nemours & Co

All Others High-Plains Natural Gas Co

Kenneth R. Plumb,

Secretary.

[FR Doc. 82-23408 Filed 8-25-82; 8:45 am]

BILLING CODE 6717-01-C

Determinations by Jurisdictional Agencies Under the Natural Gas Policy Act of 1978

Issued: August 20, 1982.

JD NO	JA DKT	API NO	D	SEC(1)	SEC(2)	WELL NAME	FIELD NAME	PROD	PURCHASER
PENNSYLVANIA DEPARTMENT OF ENVIRONMENTAL RESOURCES									
-ANGERMAN ASSOCIATES INC				RECEIVED:	07/29/82	JA: PA			
8245713	11895	3700522666		103		J M PETTIGREW #3 - ARM-22666	W PA - UPPER DEVONIAN	45.0	PEOPLES NATURAL G
-BOYD & SHRIVER				RECEIVED:	07/29/82	JA: PA			
8245715	12456	3700527662		103		BOWERSOX - #525	MAHONING	0.0	COLUMBIA GAS TRAN
-C & N CO				RECEIVED:	07/29/82	JA: PA			
8245724	9207	3706325396		108		DAY NICHOL #1 (30A)	WHITE	0.3	COLUMBIA GAS TRAN
8245722	9205	3706325397		108		EVELYN TRIMBLE #2	WHITE	0.0	COLUMBIA GAS TRAN
8245723	9206	3706325399		108		H A NICHOL #1	WHITE	0.3	COLUMBIA GAS TRAN
8245725	9208	3706325400		108		H A NICHOL #2	WHITE	0.0	COLUMBIA GAS TRAN
8245718	09131	3706325109		108		S W JACK JR #1	WHITE	480.0	COLUMBIA GAS TRAN
8245721	9204	3706325417		108		WILLIAM J MCINTIRE #2	WHITE	0.0	COLUMBIA GAS TRAN
8245720	9203	3706325416		108		WM J MCINTIRE #1	WHITE	10.0	COLUMBIA GAS TRAN
8245719	9202	3706325418		108		WM J MCINTIRE #3	WHITE	0.0	COLUMBIA GAS TRAN
-DOC-NCC SERVICE CO				RECEIVED:	07/29/82	JA: PA			
8245728	12154	3712922013		103		CLAYTON L UBER JR 829-2	EAST HUNTINGDON	30.0	TEXAS EASTERN TRA
8245727	12149	3712922027		103		JAMES G SCHENCK 1254-1	E HUNTINGDON	30.0	TEXAS EASTERN TRA
8245726	12148	3712921976		103		JAMES P SKOVIRA 891-4	E HUNTINGDON	30.0	TEXAS EASTERN TRA
-ENVIROGAS INC				RECEIVED:	07/29/82	JA: PA			
8245729	12122	3704921714		107-TF		H HAMRICK #2	LAKESHORE	18.0	NATIONAL FUEL GAS
-FELMONT OIL CORPORATION				RECEIVED:	07/29/82	JA: PA			
8245733	12061	3702120097		102-2		M L BEARER #11 F-293	DRISCOLL HOLLOW	0.0	
8245732	12060	3721200960		102-2		MARTIN L BEARER #10 F-292	DRISCOLL HOLLOW	0.0	
8245734	12062	3702120098		102-2		MARTIN L BEARER #12 F-294	DRISCOLL HOLLOW	0.0	
8245735	12063	3702120106		102-2		MARTIN L BEARER #15 F-305	DRISCOLL HOLLOW	0.0	
8245736	12064	3702120103		102-2		MARTIN L BEARER #16 F-306	DRISCOLL HOLLOW	0.0	
8245730	12028	3702120104		102-2		MARTIN L BEARER #17 F-307	DRISCOLL HOLLOW	0.0	
8245731	12059	3702120092		102-2		MARTIN L BEARER #9 F-291	DRISCOLL HOLLOW	0.0	
-FLANIGAN BROTHERS				RECEIVED:	07/29/82	JA: PA			
8245737	11212	3703921462		103		RUSSELL #1	CUSSEWAGO	15.0	
-GULF OIL CORPORATION				RECEIVED:	07/29/82	JA: PA			
8245803	12354	3706500000		108		ARTHUR H BEERS #1	SIGEL	1.0	NATIONAL FUEL GAS
8245804	12355	3706500000		108		BROADACRES INC #1	SIGEL	1.0	NATIONAL FUEL GAS
8245805	12356	3706500000		108		BROADACRES INC #2	SIGEL	1.0	NATIONAL FUEL GAS
8245812	12363	3706500000		108		BROOKVILLE GIRL SCOUTS #1	SIGEL	1.0	NATIONAL FUEL GAS
8245813	12364	3706520065		108		BROOKVILLE GIRL SCOUTS #2	SIGEL	1.0	NATIONAL FUEL GAS
8245814	12365	3706520065		108		CABLE IRENE #1	HOWE	1.0	NATIONAL FUEL GAS
8245748	12299	3706500000		108		CARRIER #6	WARSAW	0.7	NATIONAL FUEL GAS
8245747	12298	3706500000		108		CARRIER #7	WARSAW	0.7	NATIONAL FUEL GAS
8245739	12290	3706500000		108		CARRIER #8	WARSAW	0.7	NATIONAL FUEL GAS
8245787	12338	3706500000		108		FEE "C" #20	HOWE	1.0	NATIONAL FUEL GAS
8245740	12291	3706500000		108		FEE "H" #11	WARSAW	0.7	NATIONAL FUEL GAS

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JD NO	JA DKT	API NO	D	SEC(1)	SEC(2)	WELL NAME	FIELD NAME	PROD	PURCHASER
8245742	12293	3706500000		108		FEE "H" #17	WARSAW	0.7	NATIONAL FUEL GAS
8245743	12294	3706500000		108		FEE "H" #20	WARSAW	0.7	NATIONAL FUEL GAS
8245744	12295	3706500000		108		FEE "H" #21	WARSAW	0.7	NATIONAL FUEL GAS
8245750	12301	3706500000		108		FEE "H" #5	WARSAW	0.7	NATIONAL FUEL GAS
8245751	12302	3706500000		108		FEE "H" #6	WARSAW	0.7	NATIONAL FUEL GAS
8245752	12303	3706500000		108		FEE "H" #7	WARSAW	0.7	NATIONAL FUEL GAS
8245753	12304	3706500000		108		FEE "H" #8	WARSAW	0.7	NATIONAL FUEL GAS
8245741	12292	3706500000		108		FEE "H" #9	WARSAW	0.7	NATIONAL FUEL GAS
8245783	12334	3706500000		108		FEE DEEMER #10	HOWE	1.0	NATIONAL FUEL GAS
8245784	12335	3706500000		108		FEE DEEMER #13	HOWE	1.0	NATIONAL FUEL GAS
8245785	12336	3706500000		108		FEE DEEMER #14	HOWE	1.0	NATIONAL FUEL GAS
8245782	12333	3706500000		108		FEE DEEMER #3	HOWE	1.0	NATIONAL FUEL GAS
8245815	12366	3706500000		108		FEE/C/ #1	HOWE	1.0	NATIONAL FUEL GAS
8245820	12371	3706500000		108		FEE/C/ #10	HOWE	1.0	NATIONAL FUEL GAS
8245821	12372	3706500000		108		FEE/C/ #11	HOWE	1.0	NATIONAL FUEL GAS
8245822	12373	3706500000		108		FEE/C/ #12	HOWE	1.0	NATIONAL FUEL GAS
8245823	12374	3706500000		108		FEE/C/ #13	HOWE	1.0	NATIONAL FUEL GAS
8245824	12375	3706500000		108		FEE/C/ #14	HOWE	1.0	NATIONAL FUEL GAS
8245825	12376	3706500000		108		FEE/C/ #16	HOWE	1.0	NATIONAL FUEL GAS
8245826	12377	3706500000		108		FEE/C/ #19	HOWE	1.0	NATIONAL FUEL GAS
8245797	12348	3706500000		108		FEE/C/ #21	HOWE	1.0	NATIONAL FUEL GAS
8245788	12339	3706500000		108		FEE/C/ #22	HOWE	1.0	NATIONAL FUEL GAS
8245789	12340	3706500000		108		FEE/C/ #25	HOWE	1.0	NATIONAL FUEL GAS
8245790	12341	3706500000		108		FEE/C/ #26	HOWE	1.0	NATIONAL FUEL GAS
8245796	12347	3706500000		108		FEE/C/ #27	HOWE	1.0	NATIONAL FUEL GAS
8245791	12342	3706500000		108		FEE/C/ #31	HOWE	1.0	NATIONAL FUEL GAS
8245792	12343	3706500000		108		FEE/C/ #32	HOWE	1.0	NATIONAL FUEL GAS
8245793	12344	3706500000		108		FEE/C/ #34	HOWE	1.0	NATIONAL FUEL GAS
8245794	12345	3706500000		108		FEE/C/ #36	HOWE	1.0	NATIONAL FUEL GAS
8245798	12349	3706500000		108		FEE/C/ #37	HOWE	1.0	NATIONAL FUEL GAS
8245799	12350	3706500000		108		FEE/C/ #41	HOWE	1.0	NATIONAL FUEL GAS
8245800	12351	3706500000		108		FEE/C/ #42	HOWE	1.0	NATIONAL FUEL GAS
8245795	12346	3706500000		108		FEE/C/ #46	HOWE	1.0	NATIONAL FUEL GAS
8245801	12352	3706500000		108		FEE/C/ #47	HOWE	1.0	NATIONAL FUEL GAS
8245802	12353	3706500000		108		FEE/C/ #48	HOWE	1.0	NATIONAL FUEL GAS
8245754	12305	3706500000		108		FEE/C/ #49	HOWE	1.0	NATIONAL FUEL GAS
8245755	12306	3706500000		108		FEE/C/ #50	HOWE	1.0	NATIONAL FUEL GAS
8245756	12307	3706500000		108		FEE/C/ #51	HOWE	1.0	NATIONAL FUEL GAS
8245757	12308	3706500000		108		FEE/C/ #53	HOWE	1.0	NATIONAL FUEL GAS
8245758	12309	3706500000		108		FEE/C/ #57	HOWE	1.0	NATIONAL FUEL GAS
8245759	12310	3706500000		108		FEE/C/ #58	HOWE	1.0	NATIONAL FUEL GAS
8245760	12311	3706500000		108		FEE/C/ #59	HOWE	1.0	NATIONAL FUEL GAS
8245816	12367	3706500000		108		FEE/C/ #6	HOWE	1.0	NATIONAL FUEL GAS
8245761	12312	3706500000		108		FEE/C/ #60	HOWE	1.0	NATIONAL FUEL GAS
8245762	12313	3706500000		108		FEE/C/ #64	HOWE	1.0	NATIONAL FUEL GAS
8245763	12314	3706500000		108		FEE/C/ #65	HOWE	1.0	NATIONAL FUEL GAS
8245764	12315	3706500000		108		FEE/C/ #66	HOWE	1.0	NATIONAL FUEL GAS
8245765	12316	3706500000		108		FEE/C/ #67	HOWE	1.0	NATIONAL FUEL GAS
8245766	12317	3706500000		108		FEE/C/ #68	HOWE	1.0	NATIONAL FUEL GAS
8245767	12318	3706500000		108		FEE/C/ #69	HOWE	1.0	NATIONAL FUEL GAS
8245817	12368	3706500000		108		FEE/C/ #7	HOWE	1.0	NATIONAL FUEL GAS
8245768	12319	3706500000		108		FEE/C/ #73	HOWE	1.0	NATIONAL FUEL GAS
8245769	12320	3706500000		108		FEE/C/ #74	HOWE	1.0	NATIONAL FUEL GAS

JD NO	JA DKT	API NO	D	SEC(1)	SEC(2)	WELL NAME	FIELD NAME	PROD	PURCHASER
8245770	12321	3706500000		108		FEE/C/ #75	HOWE	1.0	NATIONAL FUEL GAS
8245771	12322	3706500000		108		FEE/C/ #76	HOWE	1.0	NATIONAL FUEL GAS
8245772	12323	3706500000		108		FEE/C/ #77	HOWE	1.0	NATIONAL FUEL GAS
8245773	12324	3706500000		108		FEE/C/ #78	HOWE	1.0	NATIONAL FUEL GAS
8245774	12325	3706500000		108		FEE/C/ #79	HOWE	1.0	NATIONAL FUEL GAS
8245818	12369	3706500000		108		FEE/C/ #8	HOWE	1.0	NATIONAL FUEL GAS
8245775	12326	3706500000		108		FEE/C/ #80	HOWE	1.0	NATIONAL FUEL GAS
8245776	12327	3706500000		108		FEE/C/ #81	HOWE	1.0	NATIONAL FUEL GAS
8245777	12328	3706500000		108		FEE/C/ #82	HOWE	1.0	NATIONAL FUEL GAS
8245778	12329	3706500000		108		FEE/C/ #83	HOWE	1.0	NATIONAL FUEL GAS
8245779	12330	3706500000		108		FEE/C/ #84	HOWE	1.0	NATIONAL FUEL GAS
8245780	12331	3706500000		108		FEE/C/ #85	HOWE	1.0	NATIONAL FUEL GAS
8245781	12332	3706500000		108		FEE/C/ #88	HOWE	1.0	NATIONAL FUEL GAS
8245819	12370	3706500000		108		FEE/C/ #9	HOWE	1.0	NATIONAL FUEL GAS
8245808	12359	3706500000		108		H H BROSIUS #1 (55 ACRES)	SIGEL	1.0	NATIONAL FUEL GAS
8245807	12358	3706500000		108		H H BROSIUS #1 (56 ACRES)	SIGEL	1.0	NATIONAL FUEL GAS
8245738	12289	3706500000		108		L CHAMBERLIN #1-1	WARSAW	0.7	NATIONAL FUEL GAS
8245746	12297	3706500000		108		L CHAMBERLIN #1-2	WARSAW	0.7	NATIONAL FUEL GAS
8245745	12296	3706500000		108		L CHAMBERLIN #1-3	WARSAW	0.7	NATIONAL FUEL GAS
8245749	12300	3706500000		108		L CHAMBERLIN #2-1	WARSAW	0.7	NATIONAL FUEL GAS
8245809	12360	3706500000		108		M G BROSIUS #1 (40 ACRES)	SIGEL	1.0	NATIONAL FUEL GAS
8245806	12357	3706500000		108		M G BROSIUS #1 (85 ACRES)	SIGEL	1.0	NATIONAL FUEL GAS
8245810	12361	3706500000		108		M G BROSIUS "A" 1	SIGEL	1.0	NATIONAL FUEL GAS
8245811	12362	3706500000		108		M G BROSIUS "B" #2	SIGEL	1.0	NATIONAL FUEL GAS
8245786	12337	3706500000		108		MINEWEASER #1	HOWE	1.0	NATIONAL FUEL GAS
-HAROLD E BROWN				RECEIVED:		07/29/82 JA: PA			
8245717	12455	3700500000		108		RAY FARN CONTRACT 742	APOLLO FIELD	2.5	APOLLO GAS CO
8245716	12454	3700500000		108		ROSENSTEEL CONTRACT 1564	APOLLO FIELD	1.3	PEOPLES NATURAL G
-IRA F. BITTINGER				RECEIVED:		07/29/82 JA: PA			
8245714	12145	3700500000		108		HOMER CESSNA #1	COWANSHANNOCK	2.0	PEOPLES NATURAL G
-J & J ENTERPRISES INC				RECEIVED:		07/29/82 JA: PA			
8245828	12151	3703321217		103		R & P COAL CO #1 (27A)	BRADY	0.0	COLUMBIA GAS TRAN
-J C ENTERPRISES				RECEIVED:		07/29/82 JA: PA			
8245827	12153	3706522497		103		FLOYD KELLER #185-1 JEF-22497	FROSTBURG	15.0	T W PHILLIPS GAS
-KEYSTONE ENERGY OIL & GAS PRODUCTIO				RECEIVED:		07/29/82 JA: PA			
8245829	12288	3706522365		103		BUFFINGTON #1	CLIFFORD BUFFINGTON	35.1	T W PHILLIPS GAS
-MERIDIAN EXPLORATION CORP				RECEIVED:		07/29/82 JA: PA			
8245831	12117	3703921482		102-2		BLAKESLEE #598-1	ROCKDALE	0.0	COLUMBIA GAS TRAN
8245836	12116	3703921482		107-TF		BLAKESLEE #598-1	ROCKDALE	0.0	COLUMBIA GAS TRAN
8245830	12115	3739213750		102-2		BROWN S #593-1	CAMBRIDGE SPRINGS	0.0	COLUMBIA GAS TRAN
8245835	12114	3703921375		107-TF		BROWN S #593-1	CAMBRIDGE SPRINGS	0.0	COLUMBIA GAS TRAN
8245839	12471	3703921339		107-TF		G THUMM #574-1	EDINBORO NORTH	30.0	NATIONAL FUEL GAS
8245833	12121	3703921335		102-2		HENNING #572-1	CAMBRIDGE SPRINGS	0.0	NATIONAL FUEL GAS
8245838	12120	3703921335		107-TF		HENNING #572-1	CAMBRIDGE SPRINGS	0.0	NATIONAL FUEL GAS
8245832	12118	3703921334		102-2		HENNING #573-1	CAMBRIDGE SPRINGS	0.0	NATIONAL FUEL GAS
8245837	12119	3703921334		107-TF		HENNING 573-1	CAMBRIDGE SPRINGS	0.0	NATIONAL FUEL GAS
8245834	12472	3703921339		102-2		THUMM #574-1	EDINBORO NORTH	30.0	NATIONAL FUEL GAS
-MONROE RESOURCES LTD				RECEIVED:		07/29/82 JA: PA			
8245840	10700	3712329954		102-2		W HORNBURG #1	FREEHOLD	20.0	COLUMBIA GAS TRAN
8245841	10699	3712329954		107-TF		W HORNBURG #1	FREEHOLD	20.0	COLUMBIA GAS TRAN
-NATIONAL FUEL GAS SUPPLY CORP				RECEIVED:		07/29/82 JA: PA			
8246042	12449	3706500000		108		A B SMITH #5764	PINECREEK TOWNSHIP	1.4	GENERAL SYSTEM PU
8246002	12409	3706500000		108		A B SMITH #5795	PINECREEK TOWNSHIP	1.1	GENERAL SYSTEM PU

JD NO	JA DKT	API NO	D	SEC(1)	SEC(2)	WELL NAME	FIELD NAME	PROD	PURCHASER
8245845	12162	3706500000		108		A W LATHROP #788	HEATH TOWNSHIP	2.8	GENERAL SYSTEM PU
8245844	12161	3706500000		108		A W LATHROP #846	HEATH TOWNSHIP	1.6	GENERAL SYSTEM PU
8245851	12168	3704700000		108		ADAM EBERLY #620	MILLSTONE TOWNSHIP	0.4	GENERAL SYSTEM PU
8246029	12436	3700500000		108		AGNES C MCGARVEY #4990	SUGAR CREEK TOWNSHIP	0.6	GENERAL SYSTEM PU
8246030	12437	3700500000		108		AGNES C MCGARVEY FARM #4991	SUGARCREEK TOWNSHIP	0.5	GENERAL SYSTEM PU
8245852	12169	3706500000		108		ALOHY RIVER MIN CO #5958	BEAVER TOWNSHIP	0.8	GENERAL SYSTEM PU
8246071	12503	3704700000		108		ALLEG NAT FOR #4417	JONES	1.3	GENERAL SYSTEM PU
8245940	12257	3704700000		108		ALLEG NAT FOR #4433	JONES	1.8	GENERAL SYSTEM PU
8245907	12224	3704700000		108		ALLEG NAT FOR #5140	RIDGWAY	0.6	GENERAL SYSTEM PU
8245906	12223	3704700000		108		ALLEG NAT FOR #5143	RIDGWAY	0.6	GENERAL SYSTEM PU
8245905	12222	3704700000		108		ALLEG NAT FOR #5144	RIDGWAY	0.3	GENERAL SYSTEM PU
8245904	12221	3704700000		108		ALLEG NAT FOR #5145	RIDGWAY	0.2	GENERAL SYSTEM PU
8245903	12220	3704700000		108		ALLEG NAT FOR #5146	RIDGWAY	0.2	GENERAL SYSTEM PU
8245902	12219	3704700000		108		ALLEG NAT FOR #5147	RIDGWAY	0.7	GENERAL SYSTEM PU
8245901	12218	3704700000		108		ALLEG NAT FOR #5149	RIDGWAY	0.4	GENERAL SYSTEM PU
8245942	12259	3704700000		108		ALLEG NAT FOR 4535	JONES	1.9	GENERAL SYSTEM PU
8245872	12189	3706500000		108		ALLEG RIVER MINING FARM #5915	BEAVER TOWNSHIP	0.7	GENERAL SYSTEM PU
8245853	12170	3706500000		108		ALLEG RIVER MINING FARM #5951	BEAVER TOWNSHIP	1.2	GENERAL SYSTEM PU
8245966	12283	3710500000		108		BALDWIN #6005	OSWAYO TOWNSHIP	0.9	GENERAL SYSTEM PU
8246061	12493	3710500000		108		BALDWIN #6158	OSWAYO TOWNSHIP	0.9	GENERAL SYSTEM PU
8245994	12401	3710500000		108		BALDWIN FARM #6156	OSWAYO TOWNSHIP	0.9	GENERAL SYSTEM PU
8245875	12192	3706500000		108		BERKHOUSE #5917	PINECREEK TOWNSHIP	0.5	GENERAL SYSTEM PU
8245874	12191	3706500000		108		BERKHOUSE #5918	PINECREEK TOWNSHIP	1.7	GENERAL SYSTEM PU
8246014	12421	3708300000		108		BROWN & MEDLANDER #5402	HAMLIN TOWNSHIP	0.9	GENERAL SYSTEM PU
8246048	12475	3708300000		108		BUFFALO COAL CO #1246	SERGEANT TOWNSHIP	1.3	GENERAL SYSTEM PU
8246047	12474	3708300000		108		BUFFALO COAL CO #1253	SERGEANT TOWNSHIP	0.9	GENERAL SYSTEM PU
8246049	12476	3708300000		108		BUTTERFIELD LANDS #1279	SERGEANT TOWNSHIP	2.4	GENERAL SYSTEM PU
8246025	12432	3700500000		108		C & N MALONE FARM #2792	SUGARCREEK TOWNSHIP	1.3	GENERAL SYSTEM PU
8246032	12439	3700522497		108		C M CRAWFORD #5193	SUGAR CREEK TOWNSHIP	1.0	GENERAL SYSTEM PU
8246031	12438	3700500000		108		C W HALL #4994	SUGAR CREEK TOWNSHIP	0.5	GENERAL SYSTEM PU
8246027	12434	3700500000		108		C Y BOWSER #4180	SUGAR CREEK TOWNSHIP	1.1	GENERAL SYSTEM PU
8246024	12431	3700500000		108		CAMPSEY & MCLAIN #2786	SUGAR CREEK TOWNSHIP	1.1	GENERAL SYSTEM PU
8245944	12261	3705300000		108		CARSON TYNDALE #2316	HICKORY TOWNSHIP	0.2	GENERAL SYSTEM PU
8245945	12262	3705300000		108		CARSON TYNDALE #2323	HICKORY TOWNSHIP	0.4	GENERAL SYSTEM PU
8245965	12282	3710500000		108		CHARLES DUKE #6001	OSWAYO TOWNSHIP	1.0	GENERAL SYSTEM PU
8245976	12383	3710500000		108		CHARLES DUKE #6049	OSWAYO TOWNSHIP	1.8	GENERAL SYSTEM PU
8245975	12382	3710500000		108		CHARLES DUKE #6051	OSWAYO TOWNSHIP	0.9	GENERAL SYSTEM PU
8245974	12381	3710500000		108		CHARLES DUKE #6054	OSWAYO TOWNSHIP	1.3	GENERAL SYSTEM PU
8246066	12498	3710500000		108		CHARLES DUKE #6056	OSWAYO TOWNSHIP	1.2	GENERAL SYSTEM PU
8245995	12402	3710500000		108		CHARLES DUKE #6165	OSWAYO TOWNSHIP	1.0	GENERAL SYSTEM PU
8246063	12495	3710500000		108		CHARLES DUKE #6167	OSWAYO TOWNSHIP	1.5	GENERAL SYSTEM PU
8246033	12440	3703100000		108		CHARLES TIGH #4578	MADISON TOWNSHIP	0.4	GENERAL SYSTEM PU
8245960	12277	3700500000		108		CHARLES TIGH #4600	MADISON TOWNSHIP	2.8	GENERAL SYSTEM PU
8245909	12226	3704700000		108		CLEM EBERLY #4436	MILLSTONE TOWNSHIP	0.5	GENERAL SYSTEM PU
8246019	12426	3704700000		108		COMMIS OF ELK CO #SC 305	JONES TOWNSHIP	1.6	GENERAL SYSTEM PU
8246051	12483	3706500000		108		CURTIS #7 #5647	HEATH TOWNSHIP	0.7	GENERAL SYSTEM PU
8245854	12171	3705300000		108		D E GUITON #2365	KINGSLEY TOWNSHIP	1.2	GENERAL SYSTEM PU
8246022	12429	3700500000		108		D S & M HEPLER FARM #917	SUGARCREEK TOWNSHIP	1.4	GENERAL SYSTEM PU
8245998	12405	3710500000		108		DANIEL DALRYMPLE FARM #6132	OSWAYO TOWNSHIP	0.6	GENERAL SYSTEM PU
8245969	12286	3710500000		108		DANIEL DALRYMPLE HEIRS FARM #6033	OSWAYO TOWNSHIP	0.6	GENERAL SYSTEM PU
8245877	12194	3706500000		108		DENNISON #5900	WARSAW TOWNSHIP	1.0	GENERAL SYSTEM PU
8246053	12485	3706500000		108		DISQUE #5740	HEATH TOWNSHIP	0.8	GENERAL SYSTEM PU
8245923	12240	3706500000		108		E C CROSBY #5799	WARSAW TOWNSHIP	0.7	GENERAL SYSTEM PU

JD NO	JA DKT	API NO	D	SEC(1)	SEC(2)	WELL NAME	FIELD NAME	PROD	PURCHASER
8245861	12178	3706500000		108		E E PLYER FARM #SC 229	BEAVER TOWNSHIP	0.6	GENERAL SYSTEM PU
8245889	12206	3706500000		108		E J VASBINDER #5839	WARSAW TOWNSHIP	1.4	GENERAL SYSTEM PU
8245883	12200	3706500000		108		E R MOORE #5852	WARSAW TOWNSHIP	1.7	GENERAL SYSTEM PU
8245891	12208	3706500000		108		E VASBINDER #5828	WARSAW TOWNSHIP	0.7	GENERAL SYSTEM PU
8246023	12430	3700500000		108		ELI CAMPBELL FARM #926	SUGAR CREEK TOWNSHIP	3.1	GENERAL SYSTEM PU
8245846	12163	3704700000		108		FRANCIS C ELLIOTT #660	SPRING CREEK TOWNSHIP	0.2	GENERAL SYSTEM PU
8246072	12504	3708300000		108		FRITZ BLOCK FARM #2907	HAMLIN TOWNSHIP	1.0	GENERAL SYSTEM PU
8245932	12249	3708300000		108		G C SIMONS #5373	HAMLIN TOWNSHIP	0.9	GENERAL SYSTEM PU
8245848		3704700000		108		GATZ & LOEBMAN #2052	MILLSTONE TOWNSHIP	0.8	GENERAL SYSTEM PU
8245849		3704700000		108		GATZ & LOEBMAN #839	MILLSTONE TOWNSHIP	0.5	GENERAL SYSTEM PU
8245843	12160	3706500000		108		GEO SHAFFER FARM #4721	MCCALMONT TOWNSHIP	0.5	GENERAL SYSTEM PU
8245961	12278	3700500000		108		H A MCKEE #4340	MONROE TOWNSHIP	1.2	GENERAL SYSTEM PU
8246075	12742	3702300000		108		H A MOATE #SC 344	GIBSON TOWNSHIP	4.8	GENERAL SERVICE P
8245962	12279	3706500000		108		H H BROSIUS FARM #4396	BEAVER TOWNSHIP	1.7	GENERAL SYSTEM PU
8245910	12227	3704700000		108		H H HALLOCK #3794	SPRING CREEK TOWNSHIP	0.5	GENERAL SYSTEM PU
8245847	12165	3704700000		108		H TRUMAN #2630	MILLSTONE TOWNSHIP	0.5	GENERAL SYSTEM PU
8245893	12210	3704700000		108		HALL & KAUL #5418	BENZINGER TOWNSHIP	2.3	GENERAL SYSTEM PU
8245911	12228	3704700000		108		HALLOCK #3814	SPRING CREEK TOWNSHIP	0.5	GENERAL SYSTEM PU
8245912	12229	3704700000		108		HALLOCK FARM #3839	SPRING CREEK TOWNSHIP	2.0	GENERAL SYSTEM PU
8246050	12477	3708300000		108		HALSEY LANDS #1352	SERGEANT TOWNSHIP	0.6	GENERAL SYSTEM PU
8246046	12473	3708300000		108		HALSEY LANDS FARM #1238	SERGEANT TOWNSHIP	1.0	GENERAL SYSTEM PU
8245949	12266	3700500000		108		HENRY RICKEL #3208	WASHINGTON TOWNSHIP	0.7	GENERAL SYSTEM PU
8245950	12267	3700500000		108		HENRY RICKLE #3220	WASHINGTON TOWNSHIP	0.7	GENERAL SYSTEM PU
8246073	12505	3708300000		108		HUGH W ADAMS #3639	HAMLIN TOWNSHIP	0.7	GENERAL SYSTEM PU
8246036	12443	3706500000		108		HUMPHREY #5748	PINECREEK TOWNSHIP	0.6	GENERAL SYSTEM PU
8246037	12444	3706500000		108		HUMPHREY #5749	PINECREEK TOWNSHIP	0.3	GENERAL SYSTEM PU
8246038	12445	3706500000		108		HUMPHREY #5750	PINECREEK TOWNSHIP	0.8	GENERAL SYSTEM PU
8246040	12447	3706500000		108		HUMPHREY #5759	PINECREEK TOWNSHIP	0.3	GENERAL SYSTEM PU
8246045	12452	3706500000		108		HUMPHREY #5769	PINECREEK TOWNSHIP	1.3	GENERAL SYSTEM PU
8245879	12196	3706500000		108		HUMPHREY #5899	WARSAW TOWNSHIP	3.3	GENERAL SYSTEM PU
8245862	12179	3706500000		108		HUMPHREY #5928	PINECREEK TOWNSHIP	0.5	GENERAL SYSTEM PU
8245869	12186	3706500000		108		HUMPHREY #5939	WASHINGTON TOWNSHIP	2.7	GENERAL SYSTEM PU
8245924	12241	3706500000		108		HUMPHREY INDUSTRIES #5805	WARSAW TOWNSHIP	1.5	GENERAL SYSTEM PU
8246074	12539	3704700000		108		HYDE LAND CO #5089	RIDGWAY TOWNSHIP	0.9	GENERAL SYSTEM PU
8245856	12173	3708300000		108		I SCHULTZ FARM #4430	WETMORE TOWNSHIP	1.7	GENERAL SYSTEM PU
8245955	12272	3700500000		108		J & J WILLIAMS #4530	WASHINGTON TOWNSHIP	1.6	GENERAL SYSTEM PU
8245935	12252	3708300000		108		J BROWN & A MEDLANDER #5379	HAMLIN TOWNSHIP	0.7	GENERAL SYSTEM PU
8246017	12424	3708300000		108		J BROWN & A MEDLANDER #5410	HAMLIN TOWNSHIP	0.8	GENERAL SYSTEM PU
8246013	12420	3708300000		108		J BROWN & A MELANDER #5393	HAMLIN TOWNSHIP	0.7	GENERAL SYSTEM PU
8245957	12274	3700500000		108		J H MINTEER #2794	WEST FRANKLIN TOWNSHI	1.3	GENERAL SYSTEM PU
8245958	12275	3700500000		108		J H MINTEER #2795	WEST FRANKLIN TOWNSHI	1.3	GENERAL SYSTEM PU
8245959	12276	3700500000		108		J H MINTEER #4592	WEST FRANKLIN TOWNSHI	1.9	GENERAL SYSTEM PU
8245894	12211	3704700000		108		J K P HALL #5336	JAY TOWNSHIP	1.4	GENERAL SYSTEM PU
8245892	12209	3704700000		108		J K P HALL #5439	JAY TOWNSHIP	3.5	GENERAL SYSTEM PU
8245933	12250	3708300000		108		J L BROWN #5376	HAMLIN TOWNSHIP	0.4	GENERAL SYSTEM PU
8245934	12251	3708300000		108		J L BROWN #5377	HAMLIN TOWNSHIP	0.4	GENERAL SYSTEM PU
8245936	12253	3708300000		108		J L BROWN #5380	HAMLIN TOWNSHIP	0.4	GENERAL SYSTEM PU
8245937	12254	3708300000		108		J L BROWN #5381	HAMLIN TOWNSHIP	0.8	GENERAL SYSTEM PU
8246011	12418	3708300000		108		J L BROWN #5382	HAMLIN TOWNSHIP	0.8	GENERAL SYSTEM PU
8246012	12419	3708300000		108		J L BROWN #5391	HAMLIN TOWNSHIP	0.8	GENERAL SYSTEM PU
8246015	12422	3708300000		108		J L BROWN #5404	HAMLIN TOWNSHIP	1.3	GENERAL SYSTEM PU
8246016	12423	3708300000		108		J L BROWN #5405	HAMLIN TOWNSHIP	0.3	GENERAL SYSTEM PU
8246034	12441	3706500000		108		J T BURNS #5567	ROSE TOWNSHIP	0.7	GENERAL SYSTEM PU

JD NO	JA DKT	API NO	D	SEC(1)	SEC(2)	WELL NAME	FIELD NAME	PROD	PURCHASER
8246035	12442	3706500000		108		JACOB KNICELEY #5561	KNOX TOWNSHIP	0.7	GENERAL SYSTEM PU
8246001	12408	3706500000		108		JAMES SHAFFER #5792	PINECREEK TOWNSHIP	0.3	GENERAL SYSTEM PU
8245880	12197	3706500000		108		JAMES SHAFFER #5886	PINECREEK TOWNSHIP	0.8	GENERAL SYSTEM PU
8245908	12225	3704700000		108		JEROME POWELL #3017	MILLSTONE TOWNSHIP	0.1	GENERAL SYSTEM PU
8245956	12273	3700500000		108		JOHN BUZZARD #912	WEST FRANKLIN TOWNSHI	1.4	GENERAL SYSTEM PU
8246041	12448	3706500000		108		JOHN HAINES #5762	PINECREEK TOWNSHIP	0.5	GENERAL SYSTEM PU
8245963	12280	3706500000		108		JOHN MATHEWS #4290	KNOX TOWNSHIP	1.7	GENERAL SYSTEM PU
8246028	12435	3700500000		108		JOSIAH G TAYLOR FARM #4403	SUGARCREEK TOWNSHIP	1.1	GENERAL SYSTEM PU
8245914	12231	3706500000		108		L C WYNCOOP #4676	HEATH TOWNSHIP	0.8	GENERAL SYSTEM PU
8245855	12172	3705300000		108		L S WOLF #2325	KINGSLEY TOWNSHIP	0.3	GENERAL SYSTEM PU
8245953	12270	3700500000		108		LEVI HANKEY ESTATE #4414	WASHINGTON TOWNSHIP	1.2	GENERAL SYSTEM PU
8245973	12380	3710500000		108		MARY ANN KIBBE FARM #6061	OSWAYO TOWNSHIP	0.6	GENERAL SYSTEM PU
8245941	12258	3704700000		108		MARY M POTTS FARM #4509	JONES TOWNSHIP	0.7	GENERAL SYSTEM PU
8245993	12400	3710500000		108		MARY R BUCHANAN FARM #6154	OSWAYO TOWNSHIP	0.6	GENERAL SYSTEM PU
8245899	12216	3704700000		108		MORGAN E CARTWRIGHT #5302	RIDGWAY TOWNSHIP	2.2	GENERAL SYSTEM PU
8245898	12215	3704700000		108		MORGAN E CARTWRIGHT #5303	RIDGWAY TOWNSHIP	0.5	GENERAL SYSTEM PU
8245897	12214	3704700000		108		MORGAN E CARTWRIGHT #5304	RIDGWAY TOWNSHIP	0.9	GENERAL SYSTEM PU
8245896	12213	3704700000		108		MORGAN E CARTWRIGHT #5305	RIDGWAY TOWNSHIP	1.0	GENERAL SYSTEM PU
8245895	12212	3704700000		108		MORGAN E CARTWRIGHT #5306	RIDGWAY TOWNSHIP	1.0	GENERAL SYSTEM PU
8245863	12180	3706500000		108		MRS CALEB TILLEY #5930	PINECREEK TOWNSHIP	0.9	GENERAL SYSTEM PU
8245980	12387	3710500000		108		MRS R GOLDSMITH FARM #6041	OSWAYO TOWNSHIP	1.6	GENERAL SYSTEM PU
8245946	12263	3705300000		108		N P WHEELER FARM #3137	HICKORY TOWNSHIP	0.9	GENERAL SYSTEM PU
8245952	12269	3700500000		108		NANCY B MCCLATCHEY #4336	WASHINGTON TOWNSHIP	2.0	GENERAL SYSTEM PU
8246005	12412	3706500000		108		NOLPH #5803	PINECREEK TOWNSHIP	1.5	GENERAL SYSTEM PU
8246020	12427	3708300000		108		NORTH PIPELINE CO #5544	NORWICH TOWNSHIP	0.5	GENERAL SYSTEM PU
8245938	12255	3704700000		108		O CARLSON #4488	HIGHLAND TOWNSHIP	1.6	GENERAL SYSTEM PU
8245926	12243	3706500000		108		P D BULLERS #5817	WARSAW TOWNSHIP	1.1	GENERAL SYSTEM PU
8246006	12413	3706500000		108		P D BULLERS #5821	WARSAW TOWNSHIP	0.9	GENERAL SYSTEM PU
8246007	12414	3706500000		108		P D BULLERS #5822	WARSAW TOWNSHIP	1.1	GENERAL SYSTEM PU
8246008	12415	3706500000		108		P D BULLERS #5824	WARSAW TOWNSHIP	0.9	GENERAL SYSTEM PU
8245890	12207	3706500000		108		P D BULLERS #5830	WARSAW TOWNSHIP	1.5	GENERAL SYSTEM PU
8245888	12205	3706500000		108		P D BULLERS #5841	WARSAW TOWNSHIP	1.7	GENERAL SYSTEM PU
8245887	12204	3706500000		108		P D BULLERS #5842	WARSAW TOWNSHIP	1.9	GENERAL SYSTEM PU
8245878	12195	3706500000		108		P D BULLERS #5873	WARSAW TOWNSHIP	2.7	GENERAL SYSTEM PU
8245922	12239	3706500000		108		P MCGAREY #4709	ROSE TOWNSHIP	1.5	GENERAL SYSTEM PU
8246054	12486	3706500000		108		PA STATE FOREST #5552	POLK TOWNSHIP	0.4	GENERAL SYSTEM PU
8245917	12234	3706500000		108		PA STATE GAME LANDS #4300	POLK TOWNSHIP	0.7	GENERAL SYSTEM PU
8245900	12217	3704700000		108		PA STATE GAME LANDS #5177	RIDGWAY TOWNSHIP	1.0	GENERAL SYSTEM PU
8246021	12428	3700500000		108		PA STATE GAME LANDS #5187	BRADYS BEND TOWNSHIP	1.3	GENERAL SYSTEM PU
8246018	12425	3708300000		108		PHEBE HOLMES #5437	HAMLIN TOWNSHIP	0.8	GENERAL SYSTEM PU
8245939	12256	3704700000		108		POTTS TRACT #4424	JONES TOWNSHIP	1.9	GENERAL SYSTEM PU
8246010	12417	3706500000		108		PREACHER MCFADDEN #5827	PINECREEK TOWNSHIP	2.1	GENERAL SYSTEM PU
8246062	12494	3710500000		108		R A GOLDSMITH #6164	OSWAYO TOWNSHIP	1.0	GENERAL SYSTEM PU
8245915	12232	3706522404		108		R BUGHMAN #3821	POLK TOWNSHIP	0.8	GENERAL SYSTEM PU
8245916	12233	3706500000		108		R BUGHMAN #4196	POLK TOWNSHIP	1.3	GENERAL SYSTEM PU
8245948	12265	3700500000		108		RACHEL RICKLE #3164	WASHINGTON TOWNSHIP	0.6	GENERAL SYSTEM PU
8246052	12484	3706500000		108		RHODES #5739	HEATH TOWNSHIP	0.2	GENERAL SYSTEM PU
8245954	12271	3700500000		108		S F BOOHER #4454	WASHINGTON TOWNSHIP	0.8	GENERAL SYSTEM PU
8245850		3704700000		108		STAIB & CO #830	MILLSTONE TOWNSHIP	0.6	GENERAL SYSTEM PU
8246055	12487	3706500000		108		STATE GAME LANDS #5864	SNYDER TOWNSHIP	0.6	GENERAL SYSTEM PU
8246056	12488	3706500000		108		STATE GAME LANDS #5874	SNYDER TOWNSHIP	1.1	GENERAL SYSTEM PU
8246057	12489	3706500000		108		STATE GAME LANDS #5895	SNYDER TOWNSHIP	0.7	GENERAL SYSTEM PU
8246058	12490	3706500000		108		STATE GAME LANDS #5901	SNYDER TOWNSHIP	4.0	GENERAL SYSTEM PU

JD NO	JA DKT	API NO	D	SEC(1)	SEC(2)	WELL NAME	FIELD NAME	PROD	PURCHASER
8246059	12491	3706500000		108		STATE GAME LANDS #5905	SNYDER TOWNSHIP	1.0	GENERAL SYSTEM PU
8246060	12492	3706500000		108		STATE GAME LANDS FARM #5933	SNYDER TOWNSHIP	1.0	GENERAL SYSTEM PU
8246039	12446	3706500000		108		SULGER #5754	PINECREEK TOWNSHIP	0.7	GENERAL SYSTEM PU
8246043	12450	3706500000		108		SULGER #5767	PINECREEK TOWNSHIP	2.4	GENERAL SYSTEM PU
8246044	12451	3706500000		108		SULGER #5768	PINECREEK TOWNSHIP	1.0	GENERAL SYSTEM PU
8246003	12410	3706500000		108		SULGER #5798	WARSAW TOWNSHIP	2.2	GENERAL SYSTEM PU
8246004	12411	3706500000		108		SULGER #5802	PINECREEK TOWNSHIP	1.0	GENERAL SYSTEM PU
8246009	12416	3706500000		108		SULGER #5825	WARSAW TOWNSHIP	0.8	GENERAL SYSTEM PU
8245886	12203	3706500000		108		SULGER #5847	PINECREEK TOWNSHIP	1.1	GENERAL SYSTEM PU
8245885	12202	3706500000		108		SULGER #5848	PINECREEK TOWNSHIP	0.9	GENERAL SYSTEM PU
8245884	12201	3706500000		108		SULGER #5850	PINECREEK TOWNSHIP	0.3	GENERAL SYSTEM PU
8245918	12235	3706500000		108		SULGER #5851	PINECREEK TOWNSHIP	1.8	GENERAL SYSTEM PU
8245919	12236	3706500000		108		SULGER #5853	PINECREEK TOWNSHIP	1.0	GENERAL SYSTEM PU
8245882	12199	3706500000		108		SULGER #5854	WARSAW TOWNSHIP	1.6	GENERAL SYSTEM PU
8245920	12237	3706500000		108		SULGER #5857	PINECREEK TOWNSHIP	2.9	GENERAL SYSTEM PU
8245921	12238	3706500000		108		SULGER #5859	PINECREEK TOWNSHIP	0.9	GENERAL SYSTEM PU
8245881	12198	3706500000		108		SULGER #5866	PINECREEK TOWNSHIP	1.8	GENERAL SYSTEM PU
8245876	12193	3706500000		108		SULGER #5908	PINECREEK TOWNSHIP	0.6	GENERAL SYSTEM PU
8245873	12190	3706500000		108		SULGER #5910	WARSAW TOWNSHIP	1.7	GENERAL SYSTEM PU
8245864	12181	3706500000		108		SULGER #5932	PINECREEK TOWNSHIP	1.6	GENERAL SYSTEM PU
8245865	12182	3706500000		108		SULGER #5934	PINECREEK TOWNSHIP	0.8	GENERAL SYSTEM PU
8245866	12183	3706500000		108		SULGER #5935	PINECREEK TOWNSHIP	1.7	GENERAL SYSTEM PU
8245867	12184	3706500000		108		SULGER #5936	PINECREEK TOWNSHIP	0.6	GENERAL SYSTEM PU
8245868	12185	3706500000		108		SULGER #5937	WARSAW TOWNSHIP	2.6	GENERAL SYSTEM PU
8245870	12187	3706500000		108		SULGER #5940	WARSAW TOWNSHIP	1.6	GENERAL SYSTEM PU
8245925	12242	3706500000		108		SWINEFORD #5812	WARSAW TOWNSHIP	0.9	GENERAL SYSTEM PU
8245927	12244	3706500000		108		SWINEFORD #5834	WARSAW TOWNSHIP	0.8	GENERAL SYSTEM PU
8245928	12245	3708300000		108		SYLVANIA CORP FARM #SC-149	HAMLIN TOWNSHIP	0.6	GENERAL SYSTEM PU
8245929	12246	3708300000		108		SYLVANIA CORP FARM #SC-250	HAMLIN TOWNSHIP	1.4	GENERAL SYSTEM PU
8245930	12247	3708300000		108		SYLVANIA CORP FARM #SC-254	HAMLIN TOWNSHIP	0.4	GENERAL SYSTEM PU
8245931	12248	3708300000		108		SYLVANIA CORP FARM #SC-266	HAMLIN TOWNSHIP	0.5	GENERAL SYSTEM PU
8245951	12268	3700500000		108		T N REIGHARD #3663	WASHINGTON TOWNSHIP	1.5	GENERAL SYSTEM PU
8245858	12175	3706500000		108		V & HIBBARD CO #5948	KNOX TOWNSHIP	2.2	GENERAL SYSTEM PU
8245857	12174	3706500000		108		V & HIBBARD CO #5950	KNOX TOWNSHIP	1.3	GENERAL SYSTEM PU
8245964	12281	3706500000		108		V F BOWSER #4366	PINECREEK TOWNSHIP	0.6	GENERAL SYSTEM PU
8245871	12188	3706500000		108		VERSTINE HIBBARD CO #5942	KNOX TOWNSHIP	0.9	GENERAL SYSTEM PU
8245860	12177	3706500000		108		VERSTINE HIBBARD CO #5946	KNOX TOWNSHIP	0.9	GENERAL SYSTEM PU
8245859	12176	3706500000		108		VERSTINE-HIBBARD CO #5947	KNOX TOWNSHIP	1.7	GENERAL SYSTEM PU
8245977	12384	3710500000		108		W A RUSSELL FARM #6048	SHARON TOWNSHIP	0.4	GENERAL SYSTEM PU
8245968	12285	3710500000		108		W B MEASEREAV #6029	OSWAYO TOWNSHIP	0.8	GENERAL SYSTEM PU
8246069	12501	3710500000		108		W B MERSEREAU #6027	OSWAYO TOWNSHIP	0.2	GENERAL SYSTEM PU
8246065	12497	3710500000		108		W B MERSEREAU #6028	OSWAYO TOWNSHIP	1.1	GENERAL SYSTEM PU
8246068	12500	3710500000		108		W B MERSEREAU #6169	OSWAYO TOWNSHIP	1.3	GENERAL SYSTEM PU
8245842	12159	3706500000		108		W D KANE #4831	PINECREEK TOWNSHIP	0.5	GENERAL SYSTEM PU
8245967	12284	3710500000		108		W F DUBOIS #6007	OSWAYO TOWNSHIP	0.7	GENERAL SYSTEM PU
8245990	12397	3710500000		108		W F DUBOIS #6068	OSWAYO TOWNSHIP	0.6	GENERAL SYSTEM PU
8245970	12287	3710500000		108		W F DUBOIS FARM #6036	OSWAYO TOWNSHIP	0.5	GENERAL SYSTEM PU
8245987	12394	3710500000		108		W F DUBOIS FARM #6078	OSWAYO TOWNSHIP	0.8	GENERAL SYSTEM PU
8245986	12393	3710500000		108		W F DUBOIS FARM #6079	OSWAYO TOWNSHIP	0.5	GENERAL SYSTEM PU
8245985	12392	3710500000		108		W F DUBOIS FARM #6080	OSWAYO TOWNSHIP	1.2	GENERAL SYSTEM PU
8245984	12391	3710500000		108		W F DUBOIS FARM #6081	OSWAYO TOWNSHIP	0.7	GENERAL SYSTEM PU
8245979	12386	3710500000		108		W MERSEREAU FARM #6045	SHARON TOWNSHIP	0.2	GENERAL SYSTEM PU
8245978	12385	3710500000		108		W MERSEREAU FARM #6046	SHARON TOWNSHIP	0.2	GENERAL SYSTEM PU

JD NO	JA DKT	API NO	D	SEC(1)	SEC(2)	WELL NAME	FIELD NAME	PROD	PURCHASER
8245989	12396	3710500000		108		W MERSEREAU FARM #6071	SHARON TOWNSHIP	0.5	GENERAL SYSTEM PU
8245988	12395	3710500000		108		W MERSEREAU FARM #6074	SHARON TOWNSHIP	1.1	GENERAL SYSTEM PU
8245972	12379	3710500000		108		WESTON LUMBER CO #6062	OSWAYO TOWNSHIP	1.0	GENERAL SYSTEM PU
8245971	12378	3710500000		108		WESTON LUMBER CO #6065	OSWAYO TOWNSHIP	0.8	GENERAL SYSTEM PU
8245997	12404	3710500000		108		WESTON LUMBER CO #6141	OSWAYO TOWNSHIP	1.6	GENERAL SYSTEM PU
8245996	12403	3710500000		108		WESTON LUMBER CO #6145	OSWAYO TOWNSHIP	0.5	GENERAL SYSTEM PU
8245991	12398	3710500000		108		WESTON LUMBER CO #6146	OSWAYO TOWNSHIP	0.4	GENERAL SYSTEM PU
8245992	12399	3710500000		108		WESTON LUMBER CO #6147	OSWAYO TOWNSHIP	1.0	GENERAL SYSTEM PU
8245982	12389	3710500000		108		WESTON LUMBER CO FARM #6123	OSWAYO TOWNSHIP	0.7	GENERAL SYSTEM PU
8245981	12388	3710500000		108		WESTON LUMBER CO FARM #6125	OSWAYO TOWNSHIP	0.4	GENERAL SYSTEM PU
8246000	12407	3710500000		108		WESTON LUMBER CO FARM #6129	OSWAYO TOWNSHIP	0.7	GENERAL SYSTEM PU
8245999	12406	3710500000		108		WESTON LUMBER CO FARM #6131	OSWAYO TOWNSHIP	1.2	GENERAL SYSTEM PU
8245947	12264	3705300000		108		WHEELER & DUSENBURY #4603	HICKORY TOWNSHIP	0.4	GENERAL SYSTEM PU
8245913	12230	3704720796		108		WM H HYDE #5022	SPRING CREEK TOWNSHIP	5.1	GENERAL SYSTEM PU
8246064	12496	3710500000		108		WM H NORTON #6025	OSWAYO TOWNSHIP	0.6	GENERAL SYSTEM PU
8246067	12499	3710500000		108		WM H NORTON #6170	OSWAYO TOWNSHIP	0.8	GENERAL SYSTEM PU
8245983	12390	3710500000		108		WM HYATT FARM #6090	SHARON TOWNSHIP	0.7	GENERAL SYSTEM PU
8245943	12260	3704700000		108		WM M & G H POTTS FARM #4547	JONES TOWNSHIP	1.2	GENERAL SYSTEM PU
8246070	12502	3710500000		108		WM O'NEIL #6018	OSWAYO TOWNSHIP	1.6	GENERAL SYSTEM PU
8246076	12743	3710500000		108		WM O'NEIL #6171	OSWAYO TOWNSHIP	1.3	GENERAL SYSTEM PU
8246026	12433	3700500000		108		ZELLEFROW BROTHERS #3734	SUGAR CREEK TOWNSHIP	1.0	GENERAL SYSTEM PU
-PENN PROJECTS LTD DRILLING PROGRAM				RECEIVED:	07/29/82	JA: PA			
8246077	12453	3712921938		103		FREDRICK SHIPMAN #1	BELL	25.0	
-PHILLIPS PRODUCTION CO				RECEIVED:	07/29/82	JA: PA			
8246085	11982	3706325777		108		EDWARD C BAKER #1	MONTGOMERY	12.0	COLUMBIA GAS TRAN
8246087	11987	3706325736		108		EDWARD C HOUCK #1	GREEN	2.0	COLUMBIA GAS TRAN
8246082	11979	3706325614		108		G W GROMLEY #1	GRANT	2.0	COLUMBIA GAS TRAN
8246080	10402	3706325533		108		GENE HANKINSON #1	WASHINGTON	12.0	COLUMBIA GAS TRAN
8246083	11980	3706325488		108		HELEN DAUGHERTY #1	GRANT	10.0	COLUMBIA GAS TRAN
8246079	10400	3706323967		108		HELEN RIGLEY ESTATE #4	CENTER	13.0	COLUMBIA GAS TRAN
8246089	11989	3706325744		108		JAMES C STONEBRAKER #1	GREEN	9.0	COLUMBIA GAS TRAN
8246081	10410	3706324440		108		OLIVE C STUCHELL #1	WASHINGTON	8.0	WALLACE-MURRAY CO
8246086	11983	3706325616		108		PAUL SARNOVSKY #1	GRANT	1.0	COLUMBIA GAS TRAN
8246084	11981	3706325619		108		VINCENT B HORNER #1	GRANT	3.0	COLUMBIA GAS TRAN
8246088	11988	3706325737		108		W L BRICKELL #1	GREEN	9.0	COLUMBIA GAS TRAN
8246078	09187	3706325100		108		WILLIAM A GEORGE #2	CENTER	12.0	COLUMBIA GAS TRAN
-REX-HIDE REALTY INC				RECEIVED:	07/29/82	JA: PA			
8246116	12158	3706326775		103		CURTIS F POOLE #1	YOUNG	25.0	
8246115	12157	3706326789		103		JAMES L DUDLEY #1	YOUNG	25.0	
8246114	12150	3712922020		103		WILLIAM BORBONUS #1	DERRY	50.0	
-T W PHILLIPS GAS & OIL CO				RECEIVED:	07/29/82	JA: PA			
8246091	12132	3706320458		108		ALBERT D AULT #1	ARMSTRONG	2.3	T W PHILLIPS GAS
8246102	12458	3706320287		108		ANNA M HOBAUGH #1	CONEMAUGH	1.7	T W PHILLIPS GAS
8246112	12468	3706320843		108		BOYD CLAWSON #1	BLACKLICK	3.2	T W PHILLIPS GAS
8246092	12133	3706320235		108		BUFFALO & SUSQUEHANNA COAL&COKE #1	SOUTH MAHONING	2.2	T W PHILLIPS GAS
8246097	12138	3706321921		108		BUFFALO & SUSQUEHANNA COAL&COKE #2	WASHINGTON	7.0	T W PHILLIPS GAS
8246109	12465	3706321639		108		DALE & PATRICIA DUNLAP #1	CONEMAUGH	1.9	T W PHILLIPS GAS
8246099	12140	3706320485		108		G T CROCKS #3	SOUTH MAHONING	3.2	T W PHILLIPS GAS
8246104	12460	3706320054		108		GEORGE M KINER #1	CONEMAUGH	0.9	T W PHILLIPS GAS
8246111	12467	3706320212		108		GEORGE M KINER #2	CONEMAUGH	9.5	T W PHILLIPS GAS
8246098	12139	3706320757		108		H B VAN HORN #1	SOUTH MAHONING	4.0	T W PHILLIPS GAS
8246096	12137	3706320495		108		IRVIN J WOOD #2	ARMSTRONG	2.2	T W PHILLIPS GAS
8246100	12141	3706320570		108		JOHN H ROCHESTER #2	GRANT	5.7	T W PHILLIPS GAS

JD NO	JA DKT	API NO	D	SEC(1)	SEC(2)	WELL NAME	FIELD NAME	PROD	PURCHASER
8246090	12143	3706323691		103		KENNEDY & PETERSON #2	CONEMAUGH	45.0	T W PHILLIPS GAS
8246110	12466	3700520426		108		KENNETH O SMAY #1	PLUMCREEK	1.2	T W PHILLIPS GAS
8246106	12462	3706321211		108		LESTER MOTTARN #1	NORTH MAHONING	11.8	T W PHILLIPS GAS
8246107	12463	3706320844		108		LESTER MOTTARN #3	NORTH MAHONING	5.9	T W PHILLIPS GAS
8246101	12457	3706321600		108		LUTHER S WILLIAMS #1	WHITE	2.4	T W PHILLIPS GAS
8246095	12136	3706321314		108		MARGARET SCOTT DEAL #1	SOUTH MAHONING	1.2	T W PHILLIPS GAS
8246094	12135	3706321093		108		MURRAY N RAMER #3	ARMSTRONG	2.4	T W PHILLIPS GAS
8246113	12469	3706320577		108		NILE E FULMER #3	ARMSTRONG	2.5	T W PHILLIPS GAS
8246093	12134	3706320817		108		SILAS C STREAMS & BEYRL L SEANOR #1	WASHINGTON	4.3	T W PHILLIPS GAS
8246103	12459	3706320635		108		THOMAS H MIKESELL JR #1	BLACKLICK	2.7	T W PHILLIPS GAS
8246105	12461	3706320737		108		W THOMAS MALCOLMM TRUSTEE #1	WASHINGTON	2.8	T W PHILLIPS GAS
8246108	12464	3706320132		108		WILLIAM T KINNAN #2	CONEMAUGH	1.3	T W PHILLIPS GAS
-VICTORY DEVELOPMENT CO				RECEIVED:	07/29/82	JA: PA			
8246117	12152	3703321143		103		JACOB RADZIETA #1 CLE-21143	PENN	36.0	CONSOLIDATED GAS
-WAINOCO OIL & GAS CO				RECEIVED:	07/29/82	JA: PA			
8246120	12125	3703921445		102-2		ALBERT H EBITZ #1 (W-129)	ATHENS (ROME)	0.0	COLUMBIA GAS TRAN
8246123	12126	3703921445		107-TF		ALBERT H EBITZ #1 (W-129)	ATHENS (ROME)	0.0	COLUMBIA GAS TRAN
8246121	12127	3703921432		102-2		CHARLES M BRUCKNER #1 (W-124)	ATHENS (ROME)	0.0	COLUMBIA GAS TRAN
8246122	12129	3703921446		102-2		F A MCKUHN #1 (W-128)	ATHENS (ROME)	0.0	COLUMBIA GAS TRAN
8246124	12130	3703921446		107-TF		F A MCKUHN #1 (W-128)	ATHENS (ROME)	0.0	COLUMBIA GAS TRAN
8246119	12123	3703921406		102-2		GEORGE M STEWART #1 (W-121)	ATHENS (ROME)	0.0	COLUMBIA GAS TRAN
-WILLIAM C WOOD				RECEIVED:	07/29/82	JA: PA			
8246118	12155	3706320967		107-TF		J E SHAFFER WELL #1	WASHINGTON	0.0	PEOPLE NATURAL GA

BILLING CODE 6717-01-C

The above notices of determination were received from the indicated jurisdictional agencies by the Federal Energy Regualtory Commission pursuant to the Natural Gas Policy Act of 1978 and 18 CFR 274.104. Negative determiantions are indicated by a "D" before the section code. Estimated annual production (PROD) is in million cubic feet (MMCF). An (*) before the Control (JD) number denotes additional purchasers listed at the end of the notice.

The applications for determination are available for inspection except to the extent such material is confidential under 18 CFR 275.206, at the Commission's Division of Public Information, Room 1000, 825 North Capitol St., Washington, D.C. Persons objecting to any of these determinations may, in accordance with 18 CFR 275.203 and 275.204, file a protest with the Commission on or before September 10, 1982.

Categories within each NGPA section are indicated by the following codes:

Section 102–1: New OCS lease
102–2: New well (2.5 mile rule)
102–3: New Well (1000 ft rule)
102–4: New onshore reservoir
102–5: New reservoir on old OCS lease
Section 107–DP: 15,000 feet or deeper
107–GB: Geopressured brine
107–CS: Coal seams
107–DV: Devonian shale
107–PE: Production enhancement
107–TF: New tight formation
107–RT: Recompletion tight formation
Section 108: Stripper well
108–SA: Seasonally affected
108–ER: Enhanced recovery
108–PB: Pressure buildup

Kenneth F. Plumb,

Secretary.

[FR Doc. 82–23409 Filed 8–25–82; 8:45 am]

BILLING CODE 6717–01–M

Determinations by Jurisdictional Agencies Under the Natural Gas Policy Act of 1978

Issued: August 20, 1982.

JD NO	JA DKT	API NO	D	SEC(1)	SEC(2)	WELL NAME	FIELD NAME	PROD	PURCHASER
LOUISIANA OFFICE OF CONSERVATION									
-DAVIS OIL COMPANY			RECEIVED:	08/02/82		JA: LA			
8246253	81-2478	1710121175		102-4		STATE LEASE 5097 #1	LITTLE BAY	5475.0	MONTERAY PIPELINE
8246252	81-2477	1710121175		102-4		STATE LEASE 5097 #1-D	LITTLE BAY	5475.0	MONTERAY PIPELINE
-MCCLINTON & 4-M INVESTMENT INC			RECEIVED:	08/02/82		JA: LA			
8246254	81-2074	1700120943		102-4		A HARRY FREY #1	SOUTH BAYOU MALLET	1650.0	TRANSCONTINENTAL
-TEXACO INC			RECEIVED:	07/29/82		JA: LA			
8246125	82-1238	1770720109		102-4		SL 340 MOUND POINT #88	MOUND POINT	805.0	TEXAS GAS TRANSMI
-THE STONE OIL CORPORATION			RECEIVED:	08/02/82		JA: LA			
8246255	82-1239	1704520710		102-4		STATE LEASE 6343 #1	SOUTH TIGRE LAGOON	713.0	
NEW MEXICO DEPARTMENT OF ENERGY & MINERALS									
-AMOCO PRODUCTION CO			RECEIVED:	07/30/82		JA: NM			
8246169		3004524952		103		VALENCIA GAS COM #1M	BLANCO-MESAVERDE	17.0	EL PASO NATURAL G
-ANADARKO PRODUCTION COMPANY			RECEIVED:	07/30/82		JA: NM			
8246166		3002527617		103		NEW MEXICO STATE U #6	E K QUEEN EAST	1.8	CONOCO INC
-DOYLE HARTMAN OIL OPERATOR			RECEIVED:	07/30/82		JA: NM			
8246160		3002526948		103		E C WINTERS #2	JALMAT - YATES (OIL)	118.6	EL PASO NATURAL G
-EL PASO EXPLORATION CO			RECEIVED:	07/30/82		JA: NM			
8246159		3003922340		108		SHIPLEY #3	SOUTH BLANCO - PICTUR	11.0	EL PASO NATURAL G
-EXXON CORPORATION			RECEIVED:	07/30/82		JA: NM			
8246151		3002537663		103		NEW MEXICO "DD" STATE #2	SCHARB - WOLFCAMP	115.0	
-GULF OIL CORPORATION			RECEIVED:	07/30/82		JA: NM			
8246130		3002525157		108		CENTRAL DRINKARD UNIT #402	DRINKARD	4.0	EL PASO NATURAL G
8246129		3002525159		108		CENTRAL DRINKARD UNIT #404	DRINKARD	11.2	EL PASO NATURAL G
8246128		3002525160		108		CENTRAL DRINKARD UNIT #405	DRINKARD	16.6	EL PASO NATURAL G
8246126		3002525336		108		CENTRAL DRINKARD UNIT #407	DRINKARD	6.6	EL PASO NATURAL G
8246127		3002525235		108		CENTRAL DRINKARD UNIT #410	DRINKARD	12.4	EL PASO NATURAL G
8246150		3002525223		108		CENTRAL DRINKARD UNIT #412	DRINKARD	6.1	EL PASO NATURAL G
8246132		3002504509		108		H T ORCUTT (NCT-B) #1	EUMONT GAS	18.3	INTERNORTH INC
8246145		3002511572		108		LEARCY MCBUFFINGTON #11	JUSTIS TUBB DRINKARD	5.4	EL PASO NATURAL G
8246143		3002507003		108		MARK OWEN #4	TUBB GAS	9.0	INTERNORTH INC
8246144		3002523117		108		W T MCCOMACK #17	TUBB GAS	14.1	INTERNORTH INC
-H W PACE			RECEIVED:	07/30/82		JA: NM			
8246164		3004120615		103		RHONDA "PG" STATE #1	TODD UPPER SAN ANDRES	146.0	CITIES SERVICE CO
-HIXON DEVELOPMENT COMPANY			RECEIVED:	07/30/82		JA: NM			
8246158		3004524224		108		VIRGINIA STATE #3	WAW-FRUITLAND-PC	3.6	EL PASO NATURAL G
-JEROME P MCHUGH			RECEIVED:	07/30/82		JA: NM			
8246165		3004525214		103		JOHN A BRIMHALL #1	MEADOWS GALLUP	27.0	INTRASTATE GATHER
-MARBOB ENERGY CORPORATION			RECEIVED:	07/30/82		JA: NM			
8246167		3001524121		103		GILLESPIE STATE #3	RED LAKE QUEEN GRAYBU	55.0	PHILLIPS PETROLEU

JD NO	JA DKT	API NO	D	SEC(1)	SEC(2)	WELL NAME	FIELD NAME	PROD	PURCHASER
-PETROLEUM CORP OF DELAWARE				RECEIVED:	07/30/82	JA: NM			
8246163		3001523108		103		PARKWAY WEST UNIT #10	UNDESIGNATED PARKWAY	365.0	EL PASO NATURAL G
-PHILLIPS PETROLEUM COMPANY				RECEIVED:	07/30/82	JA: NM			
8246141		3002500336		108		CHEM STATE #2	TULK/WOLFCAMP	1.0	WARREN PETROLEUM
8246136		3002502892		108		EAST VACUUM GB/SA TRACT 2720-004	VACUUM GB/SA	1.0	EL PASO NATURAL G
8246139		3002527422		103		EV GBSA TR 1978 #3	VACUUM GB/SA	23.0	EL PASO NATURAL G
8246133		3002526420		108		LEAMEX #19	MALJAMAR GB/SA	4.0	EL PASO NATURAL G
8246135		3002526423		108		LEAMEX #23	MALJAMAR GB/SA	6.0	EL PASO NATURAL G
8246137		3002527734		103		MEXCO A #8	MALJAMAR GB/SAN ANDRE	19.0	EL PASO NATURAL G
8246168		3002525950		103		PHILLIPS E STATE #31	MALJAMAR GRAYBURG/SAN	3.0	EL PASO NATURAL G
8246138		3002527088		103		SANTA FE #130	BUCKEYE ABO POOL	2.0	EL PASO NATURAL G
8246134		3002502868		108		VACUUM ABO UNIT #2-02	VACUUM ABO REEF	1.0	EL PASO NATURAL G
-POGO PRODUCING COMPANY				RECEIVED:	07/30/82	JA: NM			
8246161		3001500000		102-3		STATE 58 #1	SOUTH LOVING	365.0	LLANO INC
-SOUTHLAND ROYALTY CO				RECEIVED:	07/30/82	JA: NM			
8246142		3004520541		108		CRANDELL #6	BLANCO	16.6	SOUTHERN UNION GA
-STEVENS OPERATING CORP				RECEIVED:	07/30/82	JA: NM			
8246152		3000561905		103		O'BRIEN "D" #3	TWIN LAKES-SAN ANDRES	7.4	TRANSWESTERN PIPE
8246157		3000561261		103		O'BRIEN "D" #4	TWIN LAKES-SAN ANDRES	9.4	TRANSWESTERN PIPE
8246155		3000560794		103		O'BRIEN "E" #4	TWIN LAKES-SAN ANDRES	0.7	TRANSWESTERN PIPE
8246156		3000560809		103		O'BRIEN "E" #5	TWIN LAKES-SAN ANDRES	10.5	TRANSWESTERN PIPE
8246154		3000561135		103		O'BRIEN "E" #7	TWIN LAKES-SAN ANDRES	4.5	TRANSWESTERN PIPE
8246153		3000571031		103		O'BRIEN "L" #12	TWIN LAKES-SAN ANDRES	1.6	TRANSWESTERN PIPE
-WARREN PETR CO A DIV OF GULF OIL CO				RECEIVED:	07/30/82	JA: NM			
8246147		3002504893		108		ARNOTT RAMSAY (NCT-D) #12	EUNICE SOUTH	16.5	EL PASO NATURAL G
8246131		3002506839		108		EUNICE KING #3	PENROSE SKELLY	7.1	EL PASO NATURAL G
8246149		3002504044		108		GRAHAM STATE (NCT-C) #2	EUNICE MONUMENT	13.6	EL PASO NATURAL G
8246148		3002508757		108		HARRY LEONARD (NCT-D) #7	EUNICE SOUTH	8.0	EL PASO NATURAL G
8246146		3002506835		108		J N CARSON (NCT-C) #8	SAN ANDRES	8.7	EL PASO NATURAL G
-WORLDWIDE ENERGY CORPORATION				RECEIVED:	07/30/82	JA: NM			
8246140		3002500000		108		E C MOSLEY #2	JALMAT	0.0	EL PASO NATURAL G
-YATES PETROLEUM CORPORATION				RECEIVED:	07/30/82	JA: NM			
8246162		3000561492		102-2	107-TF	KING "TF" STATE #2	PECOS SLOPE ABO	0.0	TRANSWESTERN PIPE
OKLAHOMA CORPORATION COMMISSION									
-AMERICAN PUBLIC ENERGY CO				RECEIVED:	07/30/82	JA: OK			
8246195	18045	3513921116		102-4	103	KESSLER #1	HARRINGTON	18.0	PANHANDLE EASTERN
-AMSTAR OIL INC				RECEIVED:	07/30/82	JA: OK			
8246212	18224	3510920508		102-2		FAITH #1		20.0	WESTWIND GAS CO
8246208	18220	3510920532		102-2		FAITH #2		15.0	WESTWIND GAS CO
8246209	18221	3510920532		102-2		FAITH #2		150.0	WESTWIND GAS CO
8246213	18225	3510920545		102-2		FAITH #3		30.0	WESTWIND GAS CO
8246219	18226	3510920547		102-2		FAITH #4		30.0	WESTWIND GAS CO
8246210	18222	3510900000		102-2		YOUNG #1		10.0	WESTWIND GAS CO
8246211	18223	3510920540		102-2		YOUNG #2		15.0	WESTWIND GAS CO
-ANDOVER OIL COMPANY				RECEIVED:	07/30/82	JA: OK			
8246196	15588	3512521225		103		KURTZ #32-2A		180.0	PUBLIC SERVICE CO
8246194	17740	3501772829		102-2	103	ROTHER #11-4		180.0	DELHI GAS PIPELIN
-BLUE QUAIL ENERGY INC				RECEIVED:	07/29/82	JA: OK			
8246176	15503	3501722002		103		CMI #2	SE/4 SW/4 NW/4 SEC 1	700.0	CONOCO INC
-BOGERT OIL CO				RECEIVED:	07/29/82	JA: OK			
8246174	15501	3507323266		103		BARBARA 3-35	SOONER TREND	294.0	PHILLIPS PETROLEU

JD NO	JA DKT	API NO	D	SEC(1)	SEC(2)	WELL NAME
-BURKHART PETROLEUM CORP				RECEIVED:	07/30/82	JA: OK
8246198	15517	3515321231		103		SCATES #1-13
				RECEIVED:	07/30/82	JA: OK
-CHASE EXPLORATION CORP				108		CURFMAN #1-6
8246200	12458	3507121034		108		DECKER 2-28
8246206	12424	3507122020		108		EKLUND 2-11
8246205	12431	3507121666		108		KAHLE #1-24
8246204	12439	3507121050		108		KAHLE #2-18
8246203	12441	3507121125		108		MEYER #3-19
8246201	12452	3507121974		108		NEAL #2-15
8246202	12451	3507121640		RECEIVED:	07/30/82	JA: OK
-DI EXPLORATION				107-DP		BEAR #1
8246215	19965	3501521094		RECEIVED:	07/30/82	JA: OK
-GADSCO INC				107-DP		GADSCO - HAROLD 1-35
8246216	19983	3503920616		RECEIVED:	07/30/82	JA: OK
-GRACE PETROLEUM CORPORATION				107-DP		TRACY 1-29
8246214	16036	3512920569		RECEIVED:	07/29/82	JA: OK
-KAISER-FRANCIS OIL COMPANY				108		ALLEN #1
8246170	14978	3505935232		RECEIVED:	07/30/82	JA: OK
-KAISER-FRANCIS OIL COMPANY				108		ALLEN #1
8246199	14978	3505935232		RECEIVED:	07/29/82	JA: OK
-NORTHWEST EXPLORATION COMPANY				103		KEHNEMUND #1
8246175	15499	3509322349		103		WESTFAHL #1
8246172	15498	3509322308		RECEIVED:	07/30/82	JA: OK
-OKLA OIL & GAS ROYALTIES INC				103		BROWN #1
8246218	15679	3503320469		RECEIVED:	07/30/82	JA: OK
-OKLAHOMA CONVEYANCE CORP				108		KEMNITZ #2-23
8246217	13404	3507121870		RECEIVED:	07/29/82	JA: OK
-PETROMARK EXPLORATION INC				103		JODY 36-1
8246171	14016	3507322993		RECEIVED:	07/29/82	JA: OK
-RH OPERATING CO				103		COCKRELL #1
8246173	15497	3508121373		RECEIVED:	07/29/82	JA: OK
-SERVICE DRILLING CO				103		PRIESS #1-32
8246191	15589	3508308321		103		REEVES #1-19
8246192	15590	3511921774		RECEIVED:	07/29/82	JA: OK
-SUN EXPLORATION & PRODUCTION CO				102-2		BROOKEN #1
8246185	18182	3506120462		102-2		HASKELL HEAD ESTATE #1
8246188	18198	3506120451		102-2		HEAD #1
8246182	18191	3506120448		102-2		LAKE EUFAULA #1
8246180	18196	3506120465		102-2		MURPHY #1
8246187	18197	3506120459		102-2		SHIRLEY WHISENHUNT #1
8246190	18200	3506120480		102-2		TWIDWELL #1
8246189	18199	3506120464		102-2		USA #1-9
8246181	18193	3506120453		102-2		WENDELL #2
8246186	18188	3506120439		102-2		WENDELL #3
8246183	18190	3506120438		102-2		WENDELL #4
8246184	18189	3506120440		RECEIVED:	07/29/82	JA: OK
-TENNECO OIL COMPANY				103		BLAIR-PAIN #1-8
8246193	15592	3512920678		RECEIVED:	07/30/82	JA: OK
-TOWNER PETROLEUM CO				107-DP		HIXSON #19-1
8246207	18828	3500920490		RECEIVED:	07/30/82	JA: OK
-WHITMAR EXPLORATION CO				102-4		SILVER BULLETT #1-11
8246197	17738	3507720246		RECEIVED:	07/29/82	JA: OK
-WINDFALL EXPLORATION						

FIELD NAME	PROD	PURCHASER
N W SHARON	146.0	PANHANDLE EASTERN
UNNAMED	0.0	CITIES SERVICE GA
UNNAMED	1.4	CITIES SERVICE GA
UNNAMED	0.4	CITIES SERVICE GA
UNNAMED	7.7	CITIES SERVICE GA
UNNAMED	4.0	CITIES SERVICE GA
UNNAMED	4.7	CITIES SERVICE GA
UNNAMED	1.0	CITIES SERVICE GA
N EAKLEY	1.0	EL PASO NATURAL G
	365.0	TRANSWESTERN PIPE
WEST CHEYENNE	0.0	
LAVERNE	19.0	INTER NORTH INC
LAVERNE	150.0	INTERNORTH INC
N E OKEENE	200.0	CITIES SERVICE CO
N E OKEENE	200.0	CITIES SERVICE CO
	0.0	LONE STAR GAS CO
PERMEAN BASIN	4.0	CITIES SERVICE GA
SOONER TREND	100.0	CITIES SERVICE GA
EAST DAVENPORT FIELD	182.5	MERIDIAN ENERGY I
	22.0	CITIES SERVICE GA
	22.0	CITIES SERVICE GA
BROOKEN	229.0	UNITED GAS PIPELI
BROOKEN	1108.0	UNITED GAS PIPELI
BROOKEN	1117.0	UNITED GAS PIPELI
BROOKEN	393.0	UNITED GAS PIPELI
BROOKEN	1410.0	UNITED GAS PIPELI
BROOKEN	1061.0	UNITED GAS PIPELI
BROOKEN	1197.0	UNITED GAS PIPELI
BROOKEN	1263.0	UNITED GAS PIPELI
BROOKEN	1229.0	UNITED GAS PIPELI
BROOKEN	1389.0	UNITED GAS PIPE L
BROOKEN	1068.0	UNITED GAS PIPELI
S E STRONG C	540.0	
WILDCAT	0.0	
HARTSHORNE	0.0	ARKANSAS LOUISIAN

JD NO	JA DKT	API NO	D	SEC(1)	SEC(2)	WELL NAME	FIELD NAME	PROD	PURCHASER
8246177	15504	3514722788		103		FEARS #1	BARTLESVILLE	0.0	PHILLIPS PETROLEU
8246178	15506	3514722790		103		POLK #1	BARTLESVILLE	0.0	PHILLIPS PETROLEU
8246179	15505	3514722803		103		POLK #2	BARTLESVILLE	0.0	PHILLIPS PETROLEU
		WEST VIRGINIA DEPARTMENT OF MINES							
-BRAXTON OIL AND GAS CORP				RECEIVED:	08/02/82	JA: WV			
8246250		4702103800		103		DARNALL #4	GILMER 7.5	40.0	CONSOLIDATED GAS
-KEPLINGER OPERATING CO				RECEIVED:	08/02/82	JA: WV			
8246221		4708504384		103		BARGELOH H-846	MURPHY DISTRICT	2.4	COLUMBIA GAS TRAN
8246229		4708504155		103		BETTY SEMMELMAN H-651	MURPHY DISTRICT	1.4	COLUMBIA GAS TRAN
8246227		4708504199		103		BETTY SEMMELMAN H-652	MURPHY DISTRICT	1.4	COLUMBIA GAS TRAN
8246244		4708504253		103		BETTY SEMMELMAN H-727	MURPHY DISTRICT	1.4	COLUMBIA GAS TRAN
8246249		4708504248		103		BETTY SEMMELMAN H-728	MURPHY DISTRICT	1.4	COLUMBIA GAS TRAN
8246248		4708504249		103		BETTY SEMMELMAN H-729	MURPHY DISTRICT	1.4	COLUMBIA GAS TRAN
8246234		4708504261		103		BLAINE MILLER H-739	MURPHY DISTRICT	4.2	COLUMBIA GAS TRAN
8246231		4708504267		103		BLAINE MILLER H-740	MURPHY DISTRICT	4.2	COLUMBIA GAS TRAN
8246246		4708504262		103		G P RYAN HEIRS H-736	MURPHY DISTRICT	0.8	COLUMBIA GAS TRAN
8246228		4708504263		103		G P RYAN HEIRS H-737	MURPHY DISTRICT	0.8	COLUMBIA GAS TRAN
8246223		4708504359		103		GOLDIE KESTER H-797	MURPHY DISTRICT	3.2	COLUMBIA GAS TRAN
8246222		4708504360		103		GOLDIE KESTER H-798	MURPHY DISTRICT	3.2	COLUMBIA GAS TRAN
8246242		4708504273		103		HOWARD BARTON H-747	MURPHY DISTRICT	3.5	COLUMBIA GAS TRAN
8246233		4708504264		103		HW BARTON H-738	MURPHY DISTRICT	3.5	COLUMBIA GAS TRAN
8246236		4708504252		103		MARTIN BROS H-650	MURPHY DISTRICT	1.5	COLUMBIA GAS TRAN
8246243		4708504251		103		MARTIN BROS H-731	MURPHY DISTRICT	1.5	COLUMBIA GAS TRAN
8246247		4708504268		103		MARY GARDNER H-741	MURPHY DISTRICT	4.2	COLUMBIA GAS TRAN
8246240		4708504269		103		MARY GARDNER H-742	MURPHY DISTRICT	4.2	COLUMBIA GAS TRAN
8246241		4708504270		103		MARY GARDNER H-743	MURPHY DISTRICT	4.2	COLUMBIA GAS TRAN
8246232		4708504266		103		MARY GARDNER H-744	MURPHY DISTRICT	4.2	COLUMBIA GAS TRAN
8246238		4708504317		103		MARY WELCH H-756	MURPHY DISTRICT	1.5	COLUMBIA GAS TRAN
8246224		4708504318		103		MARY WELCH H-757	MURPHY DISTRICT	1.5	COLUMBIA GAS TRAN
8246220		4708504388		103		NEWLON H-847	MURPHY DISTRICT	2.6	COLUMBIA GAS TRAN
8246226		4708504389		103		NEWLON H-848	MURPHY DISTRICT	2.6	COLUMBIA GAS TRAN
8246230		4708504250		103		NEWTON H-730	MURPHY DISTRICT	0.5	COLUMBIA GAS TRAN
8246237		4708504319		103		ST LUKE'S U M CHURCH H-750	MURPHY DISTRICT	3.7	COLUMBIA GAS TRAN
8246239		4708504275		103		ST LUKE'S U M CHURCH H-752	MURPHY DISTRICT	3.7	COLUMBIA GAS TRAN
8246225		4708504276		103		ST LUKE'S U M CHURCH H-753	MURPHY DISTRICT	3.7	COLUMBIA GAS TRAN
8246245		4708504254		103		T R FRASHURE H-732	MURPHY DISTRICT	1.7	COLUMBIA GAS TRAN
8246235		4708504255		103		T R FRASHURE H-733	MURPHY DISTRICT	1.7	COLUMBIA GAS TRAN
-TEXAS INTERNATIONAL PET CORP				RECEIVED:	08/02/82	JA: WV			
8246251		4706700541		103		BETHLEHEM STEEL #55	TWENTY MILE CREEK	36.0	CABOT CORP
		** BUREAU OF INDIAN AFFAIRS, OSAGE AGENCY, PAWHUSKA,OK							
-J M GRAVES				RECEIVED:	08/02/82	JA: OK 8			
8246258		3511300000		102-4		NOMO #8	N E BLACKLAND	7.0	CITIES SERVICE GA
-NADEL & GUSSMAN				RECEIVED:	08/02/82	JA: OK 8			
8246278		3511300000		103		#14-B SHIRLEY #14-B	LEE DOME	2.5	PHILLIPS PETROLEU
8246264		3511300000		103		DAISY #1-B	WYNONA	9.0	PHILLIPS PETROLEU
8246265		3511300000		103		DAISY #5	WYNONA	3.0	PHILLIPS PETROLEU
8246259		3511300000		103		ELLIS #1	BLACKBURN N E	5.0	PHILLIPS PETROLEU
8246260		3511300000		103		ELLIS #3	BLACKBURN N E	2.5	PHILLIPS PETROLEU
8246261		3511300000		103		ELLIS #4	BLACKBURN N E	5.0	PHILLIPS PETROLEU

JD NO	JA DKT	API NO	D	SEC(1)	SEC(2)	WELL NAME	FIELD NAME	PROD	PURCHASER
8246262		3511300000		103		ELLIS #5	BLACKBURN N E	5.0	PHILLIPS PETROLEU
8246263		3511300000		103		ELLIS #6	BLACKBURN N E	1.5	PHILLIPS PETROLEU
8246266		3511300000		103		SHIRLEY #1-B	LEE DOME	3.0	PHILLIPS PETROLEU
8246270		3511300000		103		SHIRLEY #10-B	LEE DOME	3.0	PHILLIPS PETROLEU
8246275		3511300000		103		SHIRLEY #11-B	LEE DOME	3.0	PHILLIPS PETROLEU
8246276		3511300000		103		SHIRLEY #12-B	LEE DOME	4.0	PHILLIPS PETROLEU
8246277		3511300000		103		SHIRLEY #13-B	LEE DOME	3.0	PHILLIPS PETROLEU
8246279		3511300000		103		SHIRLEY #15-B	LEE DOME	4.0	PHILLIPS PETROLEU
8246267		3511300000		103		SHIRLEY #2-B	LEE DOME	4.0	PHILLIPS PETROLEU
8246268		3511300000		103		SHIRLEY #3-B	LEE DOME	4.0	PHILLIPS PETROLEU
8246271		3511300000		103		SHIRLEY #4-B	LEE DOME	3.0	PHILLIPS PETROLEU
8246269		3511300000		103		SHIRLEY #6-B	LEE DOME	2.5	PHILLIPS PETROLEU
8246272		3511300000		103		SHIRLEY #7-B	LEE DOME	2.5	PHILLIPS PETROLEU
8246273		3511300000		103		SHIRLEY #8-B	LEE DOME	3.0	PHILLIPS PETROLEU
8246274		3511300000		103		SHIRLEY #9-B	LEE DOME	3.5	PHILLIPS PETROLEU
-R D T PROPERTIES				RECEIVED:	08/02/82	JA: OK 8			
8246257		3511300000		103		LOOKOUT #1B	WILDCAT	25.0	ANDOVER OIL CO
-REVCO PETROLEUM CORP				RECEIVED:	08/02/82	JA: OK 8			
8246256		3511300000		103		HULETT #4-A	PERSHING	250.0	PHILLIPS PETROLEU

BILLING CODE 6717-01-C

The above notices of determination were received from the indicated jurisdictional agencies by the Federal Energy Regulatory Commission pursuant to the Natural Gas Policy Act of 1978 and 18 CFR 274.104. Negative determinations are indicated by a "D" before the section code. Estimated annual production (PROD) is in million cubic feet (MMCF). An (*) before the Control (JD) number denotes additional purchasers listed at the end of the notice.

The applications for determination are available for inspection except to the extent such material is confidential under 18 CFR 275.206, at the Commission's Division of Public Information, Room 1000, 825 North Capitol St., Washington, D.C. Persons objecting to any of these determinations may, in accordance with 18 CFR 275.203 and 275.204, file a protest with the Commission on or before September 10, 1982.

Categories within each NGPA section are indicated by the following codes:

Section 102–1: New OCS lease
102–2: New well (2.5 mile rule)
102–3: New well (1000 ft rule)
102–4: New onshore reservoir
102–5: New reservoir on old OCS lease
Section 107–DP: 15,000 feet or deeper
107–GB: Geopressured brine
107–CS: Coal seams
107–DV: Devonian shale
107–PE: Production enhancement
107–TF: New tight formation
107–RT: Recompletion tight formation
Section 108: Stripper well
108–SA: Seasonally affected
108–ER: Enhanced recovery
108–PB: Pressure buildup

Kenneth F. Plumb,

Secretary.

[FR Doc. 82–23410 Filed 8–25–82; 8:45 am]

BILLING CODE 6717–01–M

Determinations by Jurisdictional Agencies Under the Natural Gas Policy Act of 1978

Issued: August 20, 1982.

JD NO	JA DKT	API NO	D	SEC(1)	SEC(2)	WELL NAME	FIELD NAME	PROD	PURCHASER
		OHIO DEPARTMENT OF NATURAL RESOURCES							
-AMERICAN EXPLORATION CO				RECEIVED:	08/02/82	JA: OH			
8246280		3411923268		108		E ARDELION #1		10.0	EAST OHIO GAS CO
-ATLAS ENERGY GROUP INC				RECEIVED:	08/02/82	JA: OH			
8246288		3415520235		108		JOHNSON-DURIG #1		64.0	COLUMBIA GAS TRAN
-BARTLO OIL AND GAS COMPANY				RECEIVED:	08/02/82	JA: OH			
8246304		3410323026		103	107-TF	VANSELOW UNIT #1	WEST RICHFIELD	0.0	
-BELDEN & BLAKE OIL PRODUCTION				RECEIVED:	08/02/82	JA: OH			
8246305		3413320196		108		A & M COSTICK COMM 1-368		15.0	
-BEREA OIL AND GAS CORPORATION				RECEIVED:	08/02/82	JA: OH			
8246307		3411924407		108		AULT #1	RICH HILL	16.6	COLUMBIA GAS TRAN
-BJVC ENERGY MANAGEMENT CORP				RECEIVED:	08/02/82	JA: OH			
8246302		3410521998		107-TF		FEENEY BENNETT POST 128 #1	SALISBURY	4.0	COLUMBIA GAS TRAN
8246303		3410522101		107-TF		FEENEY BENNETT POST 128 #3	SALISBURY	3.0	COLUMBIA GAS TRAN
8246295		3410521856		107-TF		FRED RIGGS #1	BEDFORD	5.0	COLUMBIA GAS TRAN
8246301		3410521883		107-TF		FRED RIGGS #2	BEDFORD	6.0	COLUMBIA GAS TRAN
8246294		3410521848		107-TF		HARLEY E RIGGS #1	BEDFORD	6.0	COLUMBIA GAS TRAN
8246299		3410521880		107-TF		HARLEY RIGGS #2	BEDFORD	5.0	COLUMBIA GAS TRAN
8246300		3410521882		107-TF		HARLEY RIGGS #3	BEDFORD	3.0	COLUMBIA GAS TRAN
8246292		3410521840		107-TF		ROY SMITH #1	BEDFORD	5.0	COLUMBIA GAS TRAN
8246290		3410521800		107-TF		THELMA DALTON #3	SCIPIO	5.0	COLUMBIA GAS TRAN
8246296		3410521876		107-TF		THOMAS HART #2	BEDFORD	5.0	COLUMBIA GAS TRAN
8246297		3410521877		107-TF		THOMAS HART #3	BEDFORD	5.0	COLUMBIA GAS TRAN
8246291		3410521838		107-TF		VIRGIL C KING #1	BEDFORD	6.0	COLUMBIA GAS TRAN
8246293		3410521846		107-TF		WILLIAM HART #1	BEDFORD	3.0	COLUMBIA GAS TRAN
8246298		3410521818		107-TF		WILLIAM HART #2	BEDFORD	3.0	COLUMBIA GAS TRAN
8246289		3410521790		107-TF		WILLIAM HOWARD #1	SCIPIO	5.0	COLUMBIA GAS TRAN
-BRENDEL PRODUCING CO				RECEIVED:	08/02/82	JA: OH			
8246348		3415720352		108		ROBINSON-CLAY #4		1.5	EAST OHIO GAS CO
-BROWN PETROLEUM CORP				RECEIVED:	08/02/82	JA: OH			
8246350		3407523617		103	107-TF	GRAY #2	KILLBUCK	25.0	COLUMBIA GAS TRAN
8246349		3407523528		103	107-TF	GRAY #3	KILLBUCK	25.0	COLUMBIA GAS TRAN
-BUCKEYE OIL PRODUCING CO				RECEIVED:	08/02/82	JA: OH			
8246352		3416922312		108		CORVIN GERIG #1		8.0	EAST OHIO GAS CO
8246351		3407522363		108		DANIEL WEAVER #1		12.0	COLUMBIA GAS TRAN
-CANAAN OIL CO				RECEIVED:	08/02/82	JA: OH			
8246353A		3400922358		102-2		MICHAEL #1	CANAAN	1.5	COLUMBIA GAS TRAN
8246353B		3400922358	D	107-TF		MICHAEL #1	CANAAN	1.5	COLUMBIA GAS TRAN
-CLARENCE SHERMAN				RECEIVED:	08/02/82	JA: OH			
8246539		3407523761		103		D & E YODER #1	CLARK	27.4	EAST OHIO GAS CO
-COLUMBIA GAS TRANSMISSION CORP				RECEIVED:	08/02/82	JA: OH			
8246406		3415720459		108		BELDEN MARTIN ENTRPR 709771	SOUTHERN DIST STE OF	2.0	COLUMBIA GAS TRAN

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JD NO	JA DKT	API NO	D	SEC(1)	SEC(2)	WELL NAME	FIELD NAME	PROD	PURCHASER
8246405		3415720260		108		CHARLES D DEIBEL 709740	SOUTHERN DIST STE OF	1.0	COLUMBIA GAS TRAN
8246384		3411920307		108		CHARLES I HAYES 707351	SOUTHERN DIST STE OF	1.0	COLUMBIA GAS TRAN
8246362		3401300832		108		ELLA MAE RAMSEY 709649	SOUTHERN DIST STE OF	2.0	COLUMBIA GAS TRAN
8246369		3407520882		108		ELLEN A WOLGAMATT 709808	SOUTHERN DIST STE OF	1.0	COLUMBIA GAS TRAN
8246390		3415120237		108		ELMER C GARAUX 709716	NORTHERN DIST STE OF	1.0	COLUMBIA GAS TRAN
8246391		3415120263		108		ELMER C GARAUX 709724	NORTHERN DIST STE OF	0.5	COLUMBIA GAS TRAN
8246365		3403121060		108		ERNEST A FRY JR 709866	SOUTHERN DIST STE OF	0.5	COLUMBIA GAS TRAN
8246364		3403121027		108		ERNEST FRY 709842	SOUTHERN DIST STE OF	1.0	COLUMBIA GAS TRAN
8246378		3410520552		108		ETHEL BLACKWOOD 708018	SOUTHERN DIST STE OF	0.3	COLUMBIA GAS TRAN
8246374		3410321186		108		EVA H HAMILTON 710062	NORTHERN DIST STE OF	1.0	COLUMBIA GAS TRAN
8246402		3415720132		108		FLORENCE M BELDEN 709706	SOUTHERN DIST STE OF	2.0	COLUMBIA GAS TRAN
8246363		3402920614		108		FRANK SWANEY 610444	OHIO SHALLOW	1.0	COLUMBIA GAS TRAN
8246408		3416320172		108		GARNET F BETTS 710157	SOUTHERN DIST STE OF	2.0	COLUMBIA GAS TRAN
8246376		3410520470		108		GAROLD HAYES 707389	SOUTHERN DIST STE OF	0.3	COLUMBIA GAS TRAN
8246377		3410520542		108		GAROLD HAYES 707954	SOUTHERN DIST STE OF	1.0	COLUMBIA GAS TRAN
8246380		3411520300		108		HARRY GIBBS 707356	SOUTHERN DIST STE OF	1.0	COLUMBIA GAS TRAN
8246383		3411920269		108		HARRY POWELSON EXEC 707152	SOUTHERN DIST STE OF	1.0	COLUMBIA GAS TRAN
8246385		3411900358		108		JAMES E TUNIS EXEC 703170	SOUTHERN DIST STE OF	2.0	COLUMBIA GAS TRAN
8246386		3411900644		108		JAMES E TUNIS EXEC 705924	SOUTHERN DIST STE OF	1.0	COLUMBIA GAS TRAN
8246382		3411520927		108		JERRY KNODERER TR 709928	SOUTHERN DIST STE OF	0.8	COLUMBIA GAS TRAN
8246399		3415720091		108		JOSEPH C MONTE 709695	SOUTHERN DIST STE OF	2.0	COLUMBIA GAS TRAN
8246411		3416921212		108		KATHLEEN G KOCH 710280	NORTHERN DIST STE OF	2.0	COLUMBIA GAS TRAN
8246359		3400921109		108		LAWRENCE SKINNER JR 709307	SOUTHERN DIST STE OF	0.7	COLUMBIA GAS TRAN
8246366		3403500009		108		LILLIAN D GRAHAM 704624	NORTHERN DIST STE OF	4.0	COLUMBIA GAS TRAN
8246356		3400521923		108		LLOYD R MONG 710293	NORTHERN DIST STE OF	4.0	COLUMBIA GAS TRAN
8246372		3410300014		108		LOTTIE E LYONS 707194	NORTHERN DIST STE OF	1.0	COLUMBIA GAS TRAN
8246389		3415120217		108		MARVIN L COOK 709709	NORTHERN DIST STE OF	1.0	COLUMBIA GAS TRAN
8246409		3416920973		108		MYRTLE POTATO FARMS 710150	NORTHERN DIST STE OF	2.0	COLUMBIA GAS TRAN
8246410		3416921112		108		MYRTLE POTATO FARMS 710211	NORTHERN DIST STE OF	2.0	COLUMBIA GAS TRAN
8246368		3407520113		108		OCT HILL CAMPLOT LTD 707201	SOUTHERN DIST STE OF	6.0	COLUMBIA GAS TRAN
8246381		3411520309		108		OHIO POWER COMPANY 707382	SOUTHERN DIST STE OF	2.0	COLUMBIA GAS TRAN
8246379		3410521190		108		PAUL SIMON 709537	SOUTHERN DIST STE OF	1.0	COLUMBIA GAS TRAN
8246360		3400921314		108		PRESTON GIBBS 709969	SOUTHERN DIST STE OF	0.8	COLUMBIA GAS TRAN
8246392		3415120277		108		R L BROTHERS 709727	NORTHERN DIST STE OF	1.0	COLUMBIA GAS TRAN
8246407		3415120928		108		R L BROTHERS 709769	NORTHERN DIST STE OF	1.0	COLUMBIA GAS TRAN
8246396		3415700040		108		RALPH K ERVIN 709656	SOUTHERN DIST STE OF	0.5	COLUMBIA GAS TRAN
8246400		3415720099		108		RALPH K ERVIN 709696	SOUTHERN DIST STE OF	1.0	COLUMBIA GAS TRAN
8246404		3415720194		108		REEVES BANKING/TRUST 709735	SOUTHERN DIST STE OF	1.0	COLUMBIA GAS TRAN
8246397		3415700226		108		RICHARD A WITMAN 709657	SOUTHERN DIST STE OF	0.5	COLUMBIA GAS TRAN
8246370		3407521174		108		ROBERT COOPER 710265	SOUTHERN DIST STE OF	0.4	COLUMBIA GAS TRAN
8246367		3405900259		108		ROBERT EIDENS 705391	SOUTHERN DIST STE OF	3.0	COLUMBIA GAS TRAN
8246393		3415120282		108		ROBERT H MOTTER 709728	NORTHERN DIST STE OF	1.0	COLUMBIA GAS TRAN
8246361		3401300162		108		ROBERTA TOOTHMAN 709641	SOUTHERN DIST STE OF	2.0	COLUMBIA GAS TRAN
8246373		3410320142		108		ROGER W EASTON 706168	NORTHERN DIST STE OF	14.0	COLUMBIA GAS TRAN
8246398		3415720029		108		ROY S RICE 709689	SOUTHERN DIST STE OF	1.0	COLUMBIA GAS TRAN
8246357		3400900528		108		SUNDAY CK COAL CO 705896	SOUTHERN DIST STE OF	3.0	COLUMBIA GAS TRAN
8246358		3400920842		108		SUNDAY CK COAL CO 708570	SOUTHERN DIST STE OF	2.0	COLUMBIA GAS TRAN
8246371		3409320798		108		THIRD FED SAV/LOAN 710289	NORTHERN DIST STE OF	2.0	COLUMBIA GAS TRAN
8246401		3415720116		108		TREAS OF THE US 709703	SOUTHERN DIST STE OF	1.0	COLUMBIA GAS TRAN
8246354		3400520206		108		WALLACE W RAMSIER 707406	NORTHERN DIST STE OF	3.0	COLUMBIA GAS TRAN
8246355		3400520218		108		WALLACE W RAMSIER 707610	NORTHERN DIST STE OF	2.0	COLUMBIA GAS TRAN
8246375		3410520457		108		WILLIAM T HART 707292	SOUTHERN DIST STE OF	0.0	COLUMBIA GAS TRAN
8246387		3410500176		108		WILLIE R SHAMBLIN 703287	SOUTHERN DIST STE OF	1.0	COLUMBIA GAS TRAN

JD NO	JA DKT	API NO	D	SEC(1)	SEC(2)	WELL NAME	FIELD NAME	PROD	PURCHASER
8246388		3415100372		108		WM LEBOLD LAND MGR - 709733	NORTHERN DIST STE OF	1.0	COLUMBIA GAS TRAN
8246403		3415720152		108		WM LEBOLD LAND MGR 709715	SOUTHERN DIST STE OF	1.0	COLUMBIA GAS TRAN
8246394		3415120329		108		WM LEBOLD LAND MGR 709737	NORTHERN DIST STE OF	3.0	COLUMBIA GAS TRAN
8246395		3415120755		108		WM LEBOLD LAND MGR 709743	NORTHERN DIST STE OF	2.0	COLUMBIA GAS TRAN
-CUYAHOGA EXPLORATION & DEVELOPMENT				RECEIVED:	08/02/82	JA: OH			
8246412		3416727051		107-DV		DELMAR HENDERSHOT #4	DALZELL	54.8	
-DUGAN & EARLYWINE INVESTMENT & DEVE				RECEIVED:	08/02/82	JA: OH			
8246413		3403122740		108		WARREN GIFFEN #1	WALHONDING QUAD	9.0	COLUMBIA GAS TRAN
8246414		3408322135		108		WILLIAM STAATS #1	WALHONDINE QUAD	9.0	OHIO CUMBERLAND G
-DUSTY DRILLING COMPANY INC				RECEIVED:	08/02/82	JA: OH			
8246417		3411522041		107-TF		C DODRILL #2	MALTA	0.0	COLUMBIA GAS TRAN
8246416		3411522040		107-TF		C DODRILL #4	MALTA	0.0	COLUMBIA GAS TRAN
8246421		3411522308		107-TF		C HILL #1	DEERFIELD	0.0	COLUMBIA GAS TRAN
8246422		3411522310		107-TF		C HILL #2	DEERFIELD	0.0	COLUMBIA GAS TRAN
8246423		3411522336		107-TF		C HILL #3	DEERFIELD	0.0	COLUMBIA GAS TRAN
8246424		3411522337		107-TF		C HILL #4	DEERFIELD	0.0	COLUMBIA GAS TRAN
8246425		3411522338		107-TF		C HILL #5	DEERFIELD	0.0	COLUMBIA GAS TRAN
8246427		3411522346		107-TF		C HILL #6	DEERFIELD	0.0	COLUMBIA GAS TRAN
8246426		3411522339		107-TF		C HILL #7	DEERFIELD	0.0	COLUMBIA GAS TRAN
8246415		3411521996		107-TF		HANN #1	MALTA	0.0	COLUMBIA GAS TRAN
8246418		3411522124		107-TF		HANN #3-A	DEERFIELD	0.0	COLUMBIA GAS TRAN
8246419		3411522277		107-TF		R PATTERSON #1	DEERFIELD	0.0	COLUMBIA GAS TRAN
8246420		3411522278		107-TF		R PATTERSON #2	DEERFIELD	0.0	COLUMBIA GAS TRAN
-EDCO DRILLING & PRODUCING INC				RECEIVED:	08/02/82	JA: OH			
8246430		3407522040		108		GRASSBAUGH CF-1A		18.0	COLUMBIA GAS TRAN
8246428		3403124187		103	107-TF	SHRIMPLIN WB-3F	RANDLE	18.0	
8246429		3403124630		103	107-TF	SHRIMPLIN WB-5G	RANDLE	18.0	COLUMBIA GAS TRAN
-EDWARD E ATHA				RECEIVED:	08/02/82	JA: OH			
8246284		3400922318		107-TF		CHESTER A COPELAND #3	ROME TWP	2.6	COLUMBIA GAS TRAN
8246282		3400922151		107-TF		COPELAND #2	ROME TWP	2.0	COLUMBIA GAS TRAN
8246287		3400922465		107-TF		JAMES D HAYES "B" #1	ROME TWP	12.0	
8246283		3400922309		107-TF		JERRY R JACKSON #1	CARTHAGE TWP	10.0	COLUMBIA GAS TRAN
8246285		3400922319		107-TF		LLOYD DILLINGER #2	ROME TWP	5.0	COLUMBIA GAS TRAN
8246281		3400922137		107-TF		LLOYD DILLINGER #3	ROME TWP	4.8	COLUMBIA GAS TRAN
8246286		3400922321		107-TF		ROMUALD GRIMM #1	CARTHAGE TWP	5.0	COLUMBIA GAS TRAN
-EDWARD H EVERETT CO				RECEIVED:	08/02/82	JA: OH			
8246439		3411926309		103		E HOLT/P MORAN #1	JACKSON-MUSKINGUM	18.3	NATIONAL GAS & OI
-ENERGY DEVELOPMENT CORP				RECEIVED:	08/02/82	JA: OH			
8246434		3400721948		103	107-TF	DEAN #2	JEFFERSON	20.0	
8246431		3400721873		103	107-TF	GUTZMAN #2	NEW LYME	18.0	
8246433		3400721947		103	107-TF	HRONEK #1	ORWELL	19.0	POI ENERGY INC
8246432		3400721919		103	107-TF	ONEILL #1	ORWELL	18.0	
8246435		3400721949		103	107-TF	STOKES #2	ORWELL	20.0	
-ENERGY INVESTMENTS INCORPORATED				RECEIVED:	08/02/82	JA: OH			
8246436		3412122059		108		GRIMES HEIRS #1		0.0	COLUMBIA GAS TRAN
-ENERGY UNLIMITED INC				RECEIVED:	08/02/82	JA: OH			
8246437		3400922507		103	107-DV	D KING #1	LODI TOWNSHIP	0.0	COLUMBIA GAS TRAN
-ENTERPRISE ENERGY CORP				RECEIVED:	08/02/82	JA: OH			
8246438		3401921447		103		LLOYD #2	BOWERSTON	36.5	EAST OHIO GAS CO
-FREDERICK PETROLEUM CORP				RECEIVED:	08/02/82	JA: OH			
8246440		3412122794		103		R NAU #1	MACKSBURG	43.0	
-G W F CORP				RECEIVED:	08/02/82	JA: OH			
8246452		3400922374		107-TF		ARTIE MILLER #3	ROME	14.0	

JD NO	JA DKT	API NO	D	SEC(1)	SEC(2)	WELL NAME	FIELD NAME	PROD	PURCHASER
8246446		3400922256		107-TF		BRADLEY - THURMAN #2	LOSI	13.0	
8246441		3400922116		107-TF		CARL PUCKETT #1	LODI	14.0	
8246447		3400922299		107-TF		CLARENCE L FROST #2	ROME	13.0	
8246454		3400922411		107-TF		ESTA COOPER #1	ROME	11.0	
8246451		3400922331		107-TF		JOHN BERRY #9	ROME	12.0	
8246443		3400922141		107-TF		LARRY BEAN #1	CARTHAGE	13.0	
8246442		3400922140		107-TF		RICHARD DAILEY #1	CARTHAGE	14.0	
8246448		3400922300		107-TF		RICHARD DAILEY #2	CARTHAGE	12.0	
8246449		3400922301		107-TF		RICHARD DAILEY #3	CARTHAGE	11.0	
8246455		3400922511		107-TF		ROBERT MILTNER #1	ROME	12.0	
8246444		3400922142		107-TF		ROY PARSONS #3	ROME	14.0	
8246445		3400922143		107-TF		ROY PARSONS #4	ROME	15.0	
8246453		3400922387		107-TF		ROY PARSONS #5	ROME	12.0	
8246450		3400922302		107-TF		WILMA L MINEAR #2-A	ROME	14.0	
-GASEARCH INC				RECEIVED:	08/02/82	JA: OH			
8246456		3413322439		103	107-TF	M & H DEVELOPMENT #1	NELSON	20.0	AMERICAN ENERGY S
-GLACIER ENERGY CORP				RECEIVED:	08/02/82	JA: OH			
8246458		3400922475		107-TF		NADROSKI #2		12.0	COLUMBIA GAS TRAN
8246457		3400922474		107-TF		VARNER #4	AMESVILLE	11.0	COLUMBIA GAS TRAN
-GREEN GAS COMPANY				RECEIVED:	08/02/82	JA: OH			
8246459		3403521147		103	107-TF	POERTNER UNIT #1	OLMSTEAD	2.0	COLUMBIA GAS OF O
-H S D OIL & GAS COMPANY				RECEIVED:	08/02/82	JA: OH			
8246460		3410521765		107-RT		TITUS #1	RUTLAND	0.0	COLUMBIA GAS TRAN
-J D DRILLING CO				RECEIVED:	08/02/82	JA: OH			
8246481		3410522022		107-TF		ALBERT ROUSH #2	SALISBURY	3.0	COLUMBIA GAS TRAN
8246480		3410522020		107-TF		ALPHA RAMEY #2	BEDFORD	4.0	COLUMBIA GAS TRAN
8246475		3410521981		107-TF		ALVIN BARNETT #1	SALISBURY	3.0	COLUMBIA GAS TRAN
8246476		3410521982		107-TF		ALVIN BARNETT #2	SALISBURY	3.0	COLUMBIA GAS TRAN
8246490		3410522363		107-TF		ARNOLD WEBSTER #4	POMEROY	5.0	COLUMBIA GAS TRAN
8246485		3410522192		107-TF		C O CORE #3	BEDFORD	4.0	COLUMBIA GAS TRAN
8246488		3410522217		107-TF		CHARLES ESKEW #2	SALISBURY	3.0	COLUMBIA GAS TRAN
8246483		3410522115		107-TF		CHARLES NEECE #1	SALISBURY	4.0	COLUMBIA GAS TRAN
8246471		3410521807		107-TF		CLYDE STEWART #1	SALISBURY	5.0	COLUMBIA GAS TRAN
8246474		3410521954		107-TF		CLYDE STEWART #2	SALISBURY	3.0	COLUMBIA GAS TRAN
8246467		3405320470		107-TF		EARL ICARD #1	CHESHIRE	3.0	COLUMBIA GAS TRAN
8246482		3410522082		107-TF		ELDON MORRIS #2	SALISBURY	3.0	COLUMBIA GAS TRAN
8246461		3405320447		107-TF		ELMER SPAULDING #1	CHESHIRE	5.0	COLUMBIA GAS TRAN
8246462		3405320454		107-TF		FRANCIS RIFE #1	ADDISON	4.0	COLUMBIA GAS TRAN
8246469		3405320555		107-TF		GEORGE & DOROTHY BOOTH #1	CHESHIRE	4.0	COLUMBIA GAS TRAN
8246465		3405320459		107-TF		GEORGE CROYLE #1	CHESHIRE	4.0	COLUMBIA GAS TRAN
8246477		3410521990		107-TF		HANDLEY DUNN #1	SALISBURY	3.0	COLUMBIA GAS TRAN
8246484		3410522117		107-TF		HARRY OSBORNE #1	SALISBURY	3.0	COLUMBIA GAS TRAN
8246478		3410522007		107-TF		HERMAN TROUT #1	SALISBURY	3.0	COLUMBIA GAS TRAN
8246464		3405320457		107-TF		JAMES SHAVER #1	ADDISON	4.0	COLUMBIA GAS TRAN
8246473		3410521953		107-TF		LARRY THOMAS #2	SALISBURY	3.0	COLUMBIA GAS TRAN
8246479		3410522008		107-TF		MANNING WEBSTER #1	SALISBURY	3.0	COLUMBIA GAS TRAN
8246487		3410522199		107-TF		MARIE STEINER #3	RUTLAND	4.0	COLUMBIA GAS TRAN
8246470		3405320580		107-TF		MELVIN J STOVER #1	CHESHIRE	3.0	COLUMBIA GAS TRAN
8246468		3405320507		107-TF		PAUL CARMAN #1	ADDISON	3.0	COLUMBIA GAS TRAN
8246472		3410521868		107-TF		RAYMOND J SMITH #1	RUTLAND	3.0	COLUMBIA GAS TRAN
8246486		3410522195		107-TF		ROY SMITH #1	BEDFORD	4.0	COLUMBIA GAS TRAN
8246489		3410522326		107-TF		VIRGIL PARSONS #3	POMEROY	5.0	COLUMBIA GAS TRAN
8246466		3405320468		107-TF		WALTER KALINOLOSKI #1	CHESHIRE	3.0	COLUMBIA GAS TRAN

JD NO	JA DKT	API NO	D	SEC(1)	SEC(2)	WELL NAME	FIELD NAME	PROD	PURCHASER
8246463		3405320456		107-TF		WALTER LOVEDAY #1	CHESHIRE	4.0	COLUMBIA GAS TRAN
-JOHN C MASON				RECEIVED:	08/02/82	JA: OH			
8246494		3403123121		108		CONKLE 1B		5.0	COLUMBIA GAS TRAN
8246495		3403124418		108		CONKLE 3B		5.0	COLUMBIA GAS TRAN
8246496		3407521972		108		HOOD #1		5.0	COLUMBIA GAS TRAN
8246497		3407522184		108		HOOD #4		5.0	COLUMBIA GAS TRAN
-JOHN E BELL & SONS				RECEIVED:	08/02/82	JA: OH			
8246306		3412725625		103		HELEN I EVERITT #1	JACKSON	2.0	NATIONAL GAS & OI
-LANDPROVEST INC				RECEIVED:	08/02/82	JA: OH			
8246491		3411926147		103		R SMITH #5	NASHPORT	50.0	NATIONAL GAS & OI
-LEADER EQUITIES INC				RECEIVED:	08/02/82	JA: OH			
8246492		3411924400		103		OTSEGO-LANE #1	MONROE	10.0	
-LOMAK PETROLEUM INC				RECEIVED:	08/02/82	JA: OH			
8246493		3408323082		103		J WELLS #1	JEFFERSON	12.0	COLUMBIA GAS TRAN
-MID-CON OIL COMPANY				RECEIVED:	08/02/82	JA: OH			
8246498		3408924473		103		PAUL BORING #1	COOPERRIDEN	12.0	COLUMBIA GAS TRAN
-MOBREAL OIL INC				RECEIVED:	08/02/82	JA: OH			
8246500		3412725632		103		DE WITT #1	GLENFORD	30.0	NATIONAL GAS & OI
8246499		3412725241		103		RIDENOUR-WINEMAN #1	HOPEWELL	3.0	NATIONAL GAS & OI
-OHIO INDUSTRIAL GAS CO				RECEIVED:	08/02/82	JA: OH			
8246501		3411521182		108		ALICE MAE DAVIS #1	BRISTOL	7.0	COLUMBIA GAS TRAN
8246502		3411521190		108		ALICE MAE DAVIS #3	BRISTOL	3.0	COLUMBIA GAS TRAN
-OHIO NATURAL FUEL CO				RECEIVED:	08/02/82	JA: OH			
8246503		3407522899		103		BUTLER #1	KNOX	10.0	COLUMBIA GAS TRAN
8246504		3407523683		103		FASIG #1	GREER	15.0	COLUMBIA GAS TRAN
8246505		3407523684		103		FASIG #2	GREER	15.0	COLUMBIA GAS TRAN
-ORWIG OIL COMPANY				RECEIVED:	08/02/82	JA: OH			
8246507		3410521728		108		LEE WOOD #1		1.5	COLUMBIA GAS TRAN
8246508		3410521739		108		MARGARET LEWIS #1		2.0	COLUMBIA GAS TRAN
8246506		3405322650		108		SHOEMAKER-SMITH #1		4.0	COLUMBIA GAS TRAN
-PARTNERS OIL COMPANY				RECEIVED:	08/02/82	JA: OH			
8246509		3400921963		107-RT		MARSHALL-WADE #1	ROME	20.0	COLUMBIA GAS TRAN
-PETROLEUM SEC FD-1977	DR PROGRAM			RECEIVED:	08/02/82	JA: OH			
8246510		3416922022		108		GLEN R & ELLA J MILLER #4	MILTON-HERMANVILLE PO	20.0	COLUMBIA GAS TRAN
8246511		3416922023		108		GLENN R & ELLA J MILLER #3	MILTON-HERMANVILLE PO	20.0	COLUMBIA GAS TRAN
-PREMIER ENERGY CORP				RECEIVED:	08/02/82	JA: OH			
8246512		3416725504		107-DV		ROBERT T LANG #1	WATERTOWN	5.5	COLUMBIA GAS TRAN
-R GENE BRASEL DBA BRASEL & BRASEL				RECEIVED:	08/02/82	JA: OH			
8246342		3410521644		108		A RIFE #1		2.5	COLUMBIA GAS TRAN
8246323		3405320344		108		A RIFE #1-A		2.5	COLUMBIA GAS TRAN
8246340		3410520344		108		A RIFE #2		2.5	COLUMBIA GAS TRAN
8246344		3410521962		108		A RIFE #3		2.5	COLUMBIA GAS TRAN
8246334		3405320415		108		A RIFE #5		2.5	COLUMBIA GAS TRAN
8246332		3405320407		108		A RIFE #6		2.5	COLUMBIA GAS TRAN
8246337		3405320661		107-TF		ARTHUR JOHNSON #2	ADDISON	2.0	COLUMBIA GAS TRAN
8246317		3405320269		108		BAIRD UNIT #1		11.0	COLUMBIA GAS TRAN
8246346		3410522084		107-TF		BRASEL - CARSON #3	POMEROY	2.0	COLUMBIA GAS TRAN
8246347		3410522085		107-TF		BRASEL - CARSON #4	POMEROY	2.0	COLUMBIA GAS TRAN
8246318		3405320318		108		C WILLIAM PRICE #1		2.0	COLUMBIA GAS TRAN
8246319		3405320331		108		CARLISLE #1		2.0	COLUMBIA GAS TRAN
8246314		3405320233		108		CLARK HAGER #1		1.5	COLUMBIA GAS TRAN
8246315		3405320234		108		CLARK HAGER #2		1.5	COLUMBIA GAS TRAN
8246321		3405320340		108		CLARK HAGER #3		1.5	COLUMBIA GAS TRAN

JD NO	JA DKT	API NO	D	SEC(1)	SEC(2)	WELL NAME	FIELD NAME	PROD	PURCHASER
8246320		3405320339		108		CLARK HAGER #4		1.5	COLUMBIA GAS TRAN
8246330		3405320389		108		CLARK HAGER #5		1.5	COLUMBIA GAS TRAN
8246336		3405320437		108		CLARK HAGER #6		1.5	COLUMBIA GAS TRAN
8246335		3405320436		108		CLARK HAGER #7		1.5	COLUMBIA GAS TRAN
8246339		3405320771		107-TF		D G FISHER #1	ADDISON	2.0	COLUMBIA GAS TRAN
8246313		3405320232		108		DENNIS LANE #1		1.0	COLUMBIA GAS TRAN
8246338		3405320759		107-TF		EDWARD ENGLAND #1	GALLIPOLIS	0.0	COLUMBIA GAS TRAN
8246326		3405320360		108		ELMER FIFE #1		2.0	COLUMBIA GAS TRAN
8246327		3405320371		108		F SISSON #1		2.0	COLUMBIA GAS TRAN
8246325		3405320357		108		GILMAN-CHURCH #1		3.0	COLUMBIA GAS TRAN
8246309		3405320199		108		HUGHES #7		2.0	COLUMBIA GAS TRAN
8246333		3405320410		108		J RIFE #2		5.0	COLUMBIA GAS TRAN
8246308		3405320177		108		JOE LAWSON #1		1.0	COLUMBIA GAS TRAN
8246311		3405320206		108		JOE LAWSON #2		0.5	COLUMBIA GAS TRAN
8246312		3405320207		108		JOE LAWSON #3		0.5	COLUMBIA GAS TRAN
8246310		3405320205		108		JOE LAWSON #4		0.5	COLUMBIA GAS TRAN
8246329		3405320374		108		K DRUMMOND #1		1.5	COLUMBIA GAS TRAN
8246341		3410521575		108		LORRAINE RICE #1		1.0	COLUMBIA GAS TRAN
8246328		3405320373		108		M DARNELL #1		2.5	COLUMBIA GAS TRAN
8246324		3405320356		108		MILDRED GILMER #1-A		2.0	COLUMBIA GAS TRAN
8246316		3405320242		108		ROBERT CONKLE #1		1.5	COLUMBIA GAS TRAN
8246343		3410521677		108		W RIFE #1		1.0	COLUMBIA GAS TRAN
8246322		3405320341		108		W RIFE #1-A		1.0	COLUMBIA GAS TRAN
8246331		3405320405		108		W RIFE #2		1.0	COLUMBIA GAS TRAN
8246345		3410521803		108		W RIFE #3		1.0	COLUMBIA GAS TRAN
-ROBERT SCRIMGEOUR				RECEIVED:	08/02/82	JA: OH			
8246537		3412122705		107-DV		HOWARD MORRISON #1	ELK	25.0	
-ROVI RESOURCES CORP				RECEIVED:	08/02/82	JA: OH			
8246518		3411522044		107-TF		CORY #1	BLOOM	11.0	TENNESSEE GAS PIP
8246517		3411522043		107-TF		CORY #2	BLOOM	11.0	TENNESSEE GAS PIP
8246520		3411522048		107-TF		DAILEY #2	MORGAN	11.0	TENNESSEE GAS PIP
8246519		3411522047		107-TF		DAILEY #3	MORGAN	11.0	TENNESSEE GAS PIP
8246521		3411522049		107-TF		DAILEY #4	MORGAN	11.0	TENNESSEE GAS PIP
8246527		3411924944		107-TF		HUELSMAN #1	RICH HILL	11.0	COLUMBIA GAS TRAN
8246528		3411924945		107-TF		HUELSMAN #2	RICH HILL	11.0	COLUMBIA GAS TRAN
8246529		3411924946		107-TF		HUELSMAN #3	RICH HILL	11.0	COLUMBIA GAS TRAN
8246525		3411924941		107-TF		HUELSMAN #4	SALT CREEK	11.0	COLUMBIA GAS TRAN
8246526		3411424942		107-TF		HUELSMAN #5	SALT CREEK	11.0	COLUMBIA GAS TRAN
8246524		3411924940		107-TF		HUELSMAN #6	SALT CREEK	11.0	COLUMBIA GAS TRAN
8246523		3411924939		107-TF		MILLER #1	SALT CREEK	11.0	COLUMBIA GAS TRAN
8246522		3411924936		107-TF		MILLER #3	SALT CREEK	11.0	COLUMBIA GAS TRAN
8246531		3411924984		107-TF		MILLER #5	SALT CREEK	11.0	COLUMBIA GAS TRAN
8246514		3411521812		107-TF		NEEDHAM #2	MORGAN	0.0	TENNESSEE GAS PIP
8246515		3411521938		107-TF		NEEDHAM #3	MORGAN	11.0	TENNESSEE GAS PIP
8246516		3411521939		107-TF		NEEDHAM #4	BLOOM	11.0	TENNESSEE GAS PIP
8246532		3411924988		107-TF		WHITE #1	RICH HILL	11.0	COLUMBIA GAS TRAN
8246533		3411924989		107-TF		WHITE #2	RICH HILL	11.0	COLUMBIA GAS TRAN
8246530		3411924974		107-TF		WHITE #3	RICH HILL	11.0	COLUMBIA GAS TRAN
-RPJ ENERGY FUND MANAGEMENT INC				RECEIVED:	08/02/82	JA: OH			
8246513		3408322993		103		RUSH #1	MT VERNON	50.0	
-RYCOL EXPLORATION INC				RECEIVED:	08/02/82	JA: OH			
8246534		3411122302		102-2		DALLAS R BOLEN #1	LEE	109.5	COLUMBIA GAS TRAN
-SANDHILL ENERGY INC (OH)				RECEIVED:	08/02/82	JA: OH			

JD NO	JA DKT	API NO	D	SEC(1)	SEC(2)	WELL NAME	FIELD NAME	PROD	PURCHASER
8246536		3416726981		107-DV		EARLEY #3	NEW MATAMORAS	9.1	
8246535		3411122749		103	107-RT	MERCKLE #2	NEW MATAMORAS	14.6	
-SHAWNEE OIL & GAS CO				RECEIVED:	08/02/82	JA: OH			
8246538		3410521891		107-TF		KENNETH CHANEY #1	BEDFORD	3.0	COLUMBIA GAS TRAN
-STONEWALL GAS CO INC				RECEIVED:	08/02/82	JA: OH			
8246540		3405320502		107-TF		M T EPPLING #1 - 123-GC	GALLIPOLIS TOWNSHIP	5.0	COLUMBIA GAS OF O
8246541		3405320605		107-TF		ROBERT THOMPSON #1 - 122-GC	GALLIPOLIS TOWNSHIP	5.0	COLUMBIA GAS OF O
-TEMPLE OIL & GAS CO				RECEIVED:	08/02/82	JA: OH			
8246543	2976	3411522506		107-TF		LUCY THOMAS #2	YORK	10.0	NATIONAL GAS & OI
8246542	4042	3411522488		107-TF		TEMPLE NORVORIA FEE #1	YORK	10.0	NATIONAL OIL & GA
-TOWNER PETROLEUM CO				RECEIVED:	08/02/82	JA: OH			
8246546		3406720542		103	107-TF	E RIGGS #2	EAST GUERNSEY	0.0	TENNESSEE GAS PIP
8246547		3412121815		108		HUTCHINS #5	OLIVE	19.0	EAST OHIO GAS CO
8246545		3405922478		108		LILLY #1	GUERNSEY	21.0	EAST OHIO GAS CO
8246544		3405921951		108		SHRIVER #1	GUERNSEY	13.0	TENNESSEE GAS PIP
-TRIPLE GAS CO				RECEIVED:	08/02/82	JA: OH			
8246548		3400922402		107-TF		DEPUE #5	AMES	10.0	COLUMBIA GAS TRAN
8246549		3400922403		107-TF		DEPUE #6	AMES	10.0	COLUMBIA GAS TRAN
-WILLEY OIL & GAS CO				RECEIVED:	08/02/82	JA: OH			
8246550		3408924291		103		HOOVER #10	PERRYTON	3.0	NATIONAL GAS & OI

BILLING CODE 6717-01-C

The above notices of determination were received from the indicated jurisdictional agencies by the Federal Energy Regulatory Commission pursuant to the Natural Gas Policy Act of 1978 and 18 CFR 274.104. Negative determinations are indicated by a "D" before the section code. Estimated annual production (PROD) is in million cubic feet (MMCF). An (*) before the Control (JD) number denotes additionalpurchasers listed at the end of the notice.

The applications for determination are available for inspection except to the extent such material is confidential under 18 CFR 275.206, at the Commission's Division of Public Information, Room 1000, 825 North Capitol St., Washington, D.C. Persons objecting to any of these determinations may, in accordance with 18 CFR 275.203 and 275.204, file a protest with the Commission on or before September 10, 1982.

Categories within each NGPA section are indicated by the following codes:

Section 102–1: New OCS lease
102–2: New well (2.5 mile rule)
102–3: New Well (1000 ft rule)
102–4: New onshore reservoir
102–5: New reservoir on old OCS lease
Section 107–DP: 15,000 feet or deeper
107–GB: Geopressured brine
107–CS: Coal seams
107–DV: Devonian shale
107–PE: Production enhancement
107–TF: New tight formation
107–RT: Recompletion tight formation
Section 108: Stripper well
108–SA: Seasonally affected
108–ER: Enhanced recovery
108–PB: Pressure buildup

Kenneth F. Plumb,

Secretary.

[FR Doc. 82–23411 Filed 8–25–82; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. GP82–47–000]

Review of Off-System Sales Program; Informal Public Conference

August 6, 1982.

AGENCY: Federal Energy Regulatory Commission, DOE.

ACTION: Notice of Informal Public Conference.

SUMMARY: An Informal Public Conference will be convened on October 20, 1982, to examine and evaluate the existing off-system sales program. The Commission seeks to elicit the views of interstate and intrastate pipelines, producers, distributors, end-users, and State commissions regarding the extent to which the off-system sales program has achieved its stated policy objectives, and the justification, or lack thereof, for continuing, modifying or eliminating the off-system sales program.

DATES: Notices of intent to present data or views regarding the Commission's off-system sales program are due on or before September 15, 1982. Ten copies of any prepared statements are requested to be filed by September 30, 1982. The informal public conference is scheduled for October 20, 1982, at 10:00 a.m.

ADDRESSES: All notices and filings should refer to Docket No. GP82–47–000 and should be addressed to:

Office of the Secretary Federal Energy Regulatory Commission, 825 North Capitol Street NE. Washington, D.C. 20426

The informal public conference will be held in Hearing Room A of the offices of the Commission, 825 North Capitol Street NE., Washington, D.C.

FOR FURTHER INFORMATION CONTACT:

Mary Jane Reynolds, Office of Commissioner Hughes, Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, D.C. 20426, (202) 357–8388, or

David N. Cook, Office of the General Counsel, Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, D.C. 20426, (202) 357–5591

SUPPLEMENTARY INFORMATION:

Informal Public Conference

August 6, 1982.

The Commission will convene an informal conference to review the Commission's existing program whereby interstate pipeline companies (and in certain limited instances, their distribution customers) sell natural gas to new customers outside the historical market area of the seller. This practice is generally known as the off-system sales program. The Commission seeks a broad base of views, including those of interstate and intrastate pipelines, producers, distributors, end-users and state and local regulatory authorities as well as the general public regarding the impact of the off-system sales program on the gas industry and consumers, and the justification for continuing, modifying or eliminating it.

The conference will be held in Hearing Room A of the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, D.C., commencing at 10 A.M. on October 20, 1982. Members of the public are welcome to attend.

I. Background

Some interstate natural gas pipeline companies have experienced a surplus of available natural gas supplies following passage of the Natural Gas Policy Act ("NGPA") in late 1978. It appears that some pipelines have more gas supply physically available, and under contract, on a daily basis (called daily deliverability), than their traditional gas markets can currently absorb. Several major factors are reported to have contributed to the existing deliverability surplus.

Pipelines Claim a Need to Seek Long-Term Gas Reserves

Over the past decade the United States, on the average, has produced natural gas at more than twice the rate that it found new gas each year.[1] Over the same period, proved recoverable reserves of natural gas have declined by about 40 percent.[2] In turn, the reserves to production ratios (R/P ratios) of interstate pipelines, which are used to measure the theoretical timespan in which production at existing rates will exhaust existing reserves, have declined, although the R/P ratios have apparently stabilized in the past two years. Pipelines claim that the pattern of declining R/P ratios is of great importance to them. They argue that they must look to the future and exhaust every reasonable effort to secure long-term gas reserves, because customers rely on pipelines' representations of their long-term gas supply when entering into long-term contracts with the pipelines. Furthermore, institutional lenders also depend on the pipelines' long-term gas supply as an essential assurance that long-term loan commitments with the pipelines will be honored.

Interstate pipelines have also expressed concern with the expected decline in gas supply deliverability from the major producing region of the Texas-Louisiana Gulf Coast, where large volumes of gas reserves are being depleted at very high rates of production. Data supplied by the pipelines for this region indicate an expected turning point in deliverability within the next three to five years, with a steep decline in gas production thereafter.

The severity of the situation is further compounded by the market profiles of both interstate and intrastate pipelines. Of the 47 million gas consumers

[1] "Gas Supplies of Interstate Pipelines-1980," Energy Information Administration (December 1981), Table 10.

[2] Id.

nationally, less than 200,000 are industrial gas users. The rest are residential and commercial consumers who (except for large commercial operations) cannot readily switch to other fuels.[3] These users rely exclusively on natural gas for their energy needs. Meeting the gas requirements of many smaller users in this group is regarded as essential for health and safety reasons. Additionally, many industrial users rely on natural gas for feedstock and process uses where use of other fuels such as coal or oil may not be practicable, particularly in the short run and under existing technology.

Producers' Claim Need for Cash Flow

Gas producers, faced with expensive, risky exploration and development programs, state they must plan the economics of their drilling operations to permit recovery of their investments over reasonably short periods of time. With most categories of gas production subject to federal price controls, producers argue that they must receive a high take-or-pay commitment from pipelines if they are to maximize the return on their investment. In the period from 1973 to 1979 pipelines were apparently unable to bargain for the type of relatively low take-or-pay levels commonplace during the 1950's and 1960's, when competition for new gas supplies was less intense than during the curtailment era of the 1970's. Many of the 1973–1979 take-or-pay provisions require takes of up to 90% of deliverability of acreage dedicated to the contract. Consequently, the make-up of undertakes is expected to be difficult or impossible if significant undertakes are accumulated. This may also be a problem in post-1979 contracts requiring take percentages ranging from 75% to over 90%. However, with the improved deliverability situation, there may be some lessening of the insistence on high take-or-pay obligations.

Natural Gas Demand v. Existing Supply Deliverability

Both the pipelines and their distributor customers report difficulty in maintaining existing sales levels in their conventional market areas. These reports allege several reasons for the softness in gas markets. First, sales volumes have declined in the aggregate market (residential, commercial and industrial) in response to increasing gas prices. This conversation effect (whether through simple reduction in demand or improved technology) is expected to continue as long as gas prices increase. Second, many industrial and large commercial gas consumers are switching to cheaper fuels whenever possible. While natural gas prices continue to rise, prices for coal and fuel oil are claimed to have stabilized or declined, particularly during the past year. Third, the general reduction in the level of economic activity is causing reduced demand for all fuels. This situation may have depressed prices for fuel oil and coal in the short run, giving those fuels a competitive edge. In short, the pipelines and distribution companies present a natural gas market characterized by a great deal of uncertainty.

II. The Off-System Sales Program

One of the gas industry's responses to the surplus supply problem, which was originally thought to be only short-term (one or two years), was to find new markets for natural gas, generally outside the selling pipeline's or distributor's historical market area. The arrangements were usually structured on a one year, interruptible basis, where the seller located a buyer with a need for gas at a particular price. Purchasers in transactions that the Commission has approved include interstate and intrastate pipelines, distributors and large industrial end-users, including fertilizer and power plants using gas or boiler fuel. The sales were generally structured at the interstate pipeline's 100 percent load factor rate applicable to its on-system customers, plus the cost of transportation to the buyer's facilities. Sales between interstate pipelines were generally priced at some established price level to existing customers for comparable service.

The reasons cited by the seller in support for the off-system sales were generally: (1) It had a deliverability surplus; (2) it has take-or-pay exposure; (3) it could not compete effectively with other pipelines in contracting for new gas acquisitions because it could not take contract minimums under existing contracts; (4) its existing customers would be disadvantaged in the future because of potential gas supply shortages; and (5) existing customers would share in the benefits of off-system sales because the seller would credit revenues in excess of the system's weighted average cost of gas to the seller's purchased gas adjustment account.

Certain existing customers, end-users and state authorities have opposed off-system sales proposals indicating, generally: (1) The gas supplies should be left in the ground for future use; (2) the price was too low and consequently the benefits to existing customers were too low; (3) the pipelines would continue buying high-priced NGPA, Section 107, gas supplies and raise the PGA's of existing customers; (4) the off-system sales should be priced at the replacement cost of gas plus allowance for cost of transportation; (5) the existing price-regulated "bubble of over-supply" held by interstate pipelines should be retained for existing customers to hold down future economic impacts from new high price gas purchases.

In addition, some intrastate pipelines have also expressed opposition to the off-system sales program. They claim that the interstate pipelines' presumed cushion of lower-cost old gas combines with the outlet for surplus deliverability provided by the off-system sales to give the interstate pipelines a bidding advantage for decontrolled natural gas reserves. On the other hand, other intrastate pipelines have endorsed the off-system sales program as a means of allowing intrastate users to share in the lower priced cushion gas of the interstate pipelines.

Through June 30, 1982, the Commission has authorized the off-system sale of 954 Bcf of gas. (See attached Table I.) These include sales by interstate pipelines and by distributors served by interstate pipelines. These also include sales to interstate pipelines, existing and newly-formed intrastate pipelines, Hinshaw pipelines and end-users. As indicated by Table I, only 182 Bcf of the volumes authorized have been sold.

Thus far, in determining whether the public convenience and necessity require an off-system sale, the Commission has evaluated each proposal in terms of nine criteria:

(1) The proposed sale should stimulate domestic natural gas exploration and development;

(2) The selling pipeline should demonstrate an on-system gas surplus;

(3) The proposed sale should help ameliorate a pipeline's take-or-pay exposure;

(4) The proposed sales rate should be equivalent to at least a 100 percent load factor rate and must exceed the seller's system-wide average purchased gas costs;

(5) The term of sale should generally not exceed one year;

(6) The should be an appropriate treatment of the revenues received by the selling pipeline;

(7) The purchaser should demonstrate a need for the gas;

(8) The sale should be interruptible;

(9) The gas should not displace coal or other abundant and/or renewable energy resources.

[3] "Gas Facts," American Gas Association, 1980.

III. Issues To Be Addressed in This Policy Review

When requests for off-system sales authorizations were first presented to the Commission, many perceived the surplus as temporary. However, the surplus has not abated, and thus the Commission believes it should review the off-system sales program in its entirety. The Commission is interested in determining if the criteria it has used heretofore are appropriate, or whether alternative criteria may better assist in determining the public convenience and necessity of continuing to permit off-system sales. The Commission is also interested in learning whether, and to what extent, its off-system sales policy may ameliorate or exacerbate those concerns which led to the program. It wonders further whether the program has created or exacerbated any problems not directly raised in the off-system sales cases that have been presented to the Commission. In particular, the Commission wishes commenters to address the following questions:

(1) What are the dimensions of the current and projected deliverability surplus by source and NGPA price category? For how long will there be a surplus?

(2) Has the off-system sales program enabled the interstate pipelines to maintain aggressive gas acquisition programs? Have their reserve and deliverability circumstances (a) improved, (b) remained stable, or (c) deteriorated? Why? (In this connection, Tables III and IV present recent reserve acquisition experience by a number of the pipelines active, or seeking to become active, in the off-system sales program.)

(3) What would be the effect of not making off-system sales upon the development of additional reserves? To what extent, if any, has the off-system sales program assisted in the avoidance of take-or-pay obligations?

(4) What levels of prepayment were actually made, and for what NGPA categories, during the past year? How, if at all, did off-system sales affect that level of prepayment? What level would have resulted without off-system sales? (In this connection, Table II provides information with respect to the actual and projected levels of prepayments (take-or-pay) made by pipelines active, or seeking to become active, in the off-system sales program.)

(5) What is the explanation for the difference between the volume of off-system sales that have been authorized and the volume of deliveries that have actually been made? Is this relationship between authorized and actual deliveries expected to continue over the next year? Why? (In this conjunction, see Table I).

(6) Under what circumstances would it be cheaper for natural gas consumers to bear the carrying costs of take-or-pay for gas than to bear the purchased gas costs associated with off-system sales? Do those circumstances exist? Is there a level of prepayments which should be made prior to off-system sales? If so, what is the level, and can it be quantified in terms of costs/benefits to on-system customers?

(7) Have producers, with off-system sales being made or contemplated, negotiated for higher take-or-pay obligations? Do off-system sales encourage such a negotiating posture and, if so, to what degree? In what other ways, if any, is the negotiating posture of producers affected by the off-system sales program?

(8) What are the approaches used by pipelines in contracting with producers for new supplies when faced with surplus supplies and demands by producers for high take-or-pay obligations? How have producers responded to these approaches?

(9) Public service commissions and customers of selling pipelines are now arguing more strongly that the 100 percent load factor rate may not provide sufficient benefits to on-system customers due to higher gas replacements costs. Does a quantification of replacement costs support such an argument? If so, what should be the sales rate level? Are there other specific off-setting benefits from the sale that minimize the importance of replacement costs? Should the rates at which off-system sales are permitted be established so as to reduce or eliminate the price advantages that certain interstate pipelines are alleged to have over other interstate pipelines?

(10) Do, or will, sales by interstate pipelines to certain intrastate pipelines at less than replacement cost give such intrastates a competitive advantage in selling gas over other intrastates in regard to markets due to lower prices? If so, quantify the actual and projected advantage. Do, or will, such sales allow the intrastate to outbid other intrastates for intrastate supplies due to its newly acquired lower average cost of gas? If so, quantify the actual and projected advantage.

(11) To what extent, if any, is the availability of interstate gas to the intrastate market discouraging the development of intrastate reserves, particularly since certain intrastate pipelines also may have surplus supplies and depressed markets? Has the program resulted in the shut-in of intrastate production? What has been the effect on intrastate producers and how have they responded?

(12) Under what circumstances, if any, would it be appropraite to authorize the off-system sale by local distribution companies of their interstate pipeline contractual entitlements? What specific offsetting disadvantages, if any, would result from such sales?

(13) Are the purchaser's need and use for the gas necessary factors in determining whether a proposed off-system sale is required by the public convenience and necessity?

(14) As to the requests for individual pipeline blanket off-system sales authorizations, should such authorizations be granted under a Section 7(c) application or is a rulemaking proceeding appropriate? Is customer participation appropriate at the generic level or is case-by-case participation deemed essential?

IV. Procedure

Any person wishing to present data or views to the Commission must so notify the Secretary of the Commission, 825 North Capitol Street, NE., Washington, D.C. 20426, by September 15, 1982. In order to establish a logical order of presentations, each participant should also submit by that date a brief summary of his/her interest and the issues to be addressed in his/her prepared statement. Participants will be assigned to a panel in order to facilitate the informal exchange of views. A schedule of the participants and panels will be issued in advance of the conference. Ten copies of any prepared statement should be filed with the Secretary of the Commission by September 30, 1982 and should refer to Docket No. GP82–47–000.

The Commission expects participants to submit written statements which evaluate the existing off-system sales program and supporting policy conclusions, and advocate continuation, modification or elimination of the existing program. These written statements will be made part of the record, and participants therefore should be prepared to deliver only a brief summary of their position at the conference. Participants should be prepared, however, for extensive examination of the conclusions and arguments contained in their prepared written statements by a panel representing the Commission, and for questioning by this panel on any issues raised in this notice, even if not addressed in the participants' prepared statements. For purposes of

summarizing prepared statements and responding to questions, participants may be grouped by the type of interest which they represent, *e.g.*, producers, end-users, interstate pipelines, intrastate pipelines, or local or state regulatory authorities. To ensure that participants are able to respond to any questions raised by the panel, participants should have available for questioning those individuals with technical and operating expertise who are responsible for developing and are thoroughly familiar with the data which supports the positions taken in prepared statements which are relevant to issues raised in this notice and not addressed in the participant's prepared statement. Thus, participants should have available for questioning, persons knowledgeable of gas supply forecasts, market forecasts and profiles, gas acquisition programs, gas exploration and development programs and gas purchase contract provisions. Conclusory statements will be afforded consideration only when supported by verifiable data. The Commission expects that those who in the past have espoused continuation, modification or elimination of the off-system sales program will avail themselves of this opportunity to present their views, arguments, data and studies to the Commission.

A transcript of the conference will be made and will be available to the public through the Commission's Office of Congressional and Public Affairs, Division of Public Information. The Commission expects to utilize the information and views gathered in this conference to expand its technical expertise to deal with the various policy issues discussed. In particular, the Commission may use the information and views gathered herein to evaluate individual applications for authority to make off-system sales. The Commission may also utilize the information gained from these proceedings in determining the appropriate procedure for acting upon requests to make off-system sales. Finally, the Commission may refer to the information gained from these proceedings in any future rulemaking proceeding concerning continuation, modification or elimination of the existing off-system sales program and policy. In any adjudicatory proceedings in which the Commission relies on the transcript of this proceeding, the Commission intends to incorporate the transcript by reference and afford an opportunity for cross-examination to extablish specific adjudicatory facts.

By direction of the Commission.

Kenneth F. Plumb,

Secretary.

TABLE I.—MAJOR OFF-SYSTEM SALES SINCE DECEMBER, 1980

Docket	volume authorized (Bcf)	Seller/buyer	Volume sold as of June 30, 1982 (Bcf)	Authorized period
CP80-499-000/004	127.8	Cities/El Paso	52.40	12-22-80 to 12-31-82.
CP80-520-001	18.3	Natural/EGI	0.90	1-27-81 to 1-31-82.
CP80-550-000	36.5	Trunkline/United	10.50	2-08-81 to 2-28-82.
CP80-550-000	36.5	Trunkline/Transwestern	13.90	2-08-81 to 2-28-82.
CP90-550-000	4.4	Trunkline/Chevron	1.00	2-08-81 to 2-28-82.
CP81-174-000	54.8	CIG/Trans La	3.07	8-11-81 to 7-31-82.
CP81-219-000,001	18.0	East Tenn/PSE&G	0.20	6-01-81 to 10-31-82 and 4-01-82 to 10-31-82.
CP81-124-000		MichCon/PIT	0.00	2 years Subpart G Blanket.
CP81-221-000	36.0	MichWisc/Faustina	0.00	1 year from Initial Del.
CP81-235-000	36.5	Northern/Faustina	0.00	1 year from Initial Del.
CP81-236-000	57.7	Northern/El Paso	11.30	7-31-81 to 7-31-82.
CP81-283-000,001	2.9	Alabama Tenn/PSE&G	1.06	6-10-81 to 10-31-81.
CP81-302-000	15.0	Natural/Dow Chemical	12.41	8-12-81 to 7-31-82.
CP81-303-000	37.0	Natural/Faustina	7.20	8-12-81 to 7-31-82.
CP81-304-000	37.0	Natural/United	13.60	8-12-81 to 7-31-82.
CP81-349-000	36.5	Northern/United	0.00	12-11-81 to 12-11-82.
CP81-364-000	18.0	Natural/Texas Eastern	16.94	10-30-81 to 10-28-82.
CP81-365-000	36.5	Natural/Transwestern	.37	5-24-82 to 5-22-83.
CP81-371-000	18.0	Northern/Transwestern	.22	5-11-82 to 5-11-83.
CP81-377-000	18.0	Northern/Texas Eastern	7.27	10-30-81 to 10-30-82.
CP81-386-000	37.0	Natural/El Paso	7.80	9-18-81 to 9-16-82.
CP81-392-000	37.0	Natural/Cleco	0.00	11-13-81 to 11-11-82.
CP81-421-000	36.0	East Tenn/Trans La	1.62	7-10-81 to 10-31-81, 4-01-82 to 10-31-82.
CP81-447-000	15.0	Con Gas/West Lake Arthur	0.70	9-21-81 to 10-31-81.
CP81-455-000	8.0	Kokomo/Cajun	.02	6-18-82 to 6-16-83.
CP81-528-000	94.0	Con Gas/Texas Gas	16.35	2-01-82 to 1-31-85.
CP82-33-000	47.8	Northern/Allied	.23	4-09-82 to 10-31-84.
CP82-98-000	20.0	Natural/Cajun	1.48	6-18-82 to 6-16-83.
CP82-187-000	13.9	Con Gas/New Jersey Natural	1.89	5-10-82 to 10-31-82.
Total	954.1		182.43	

TABLE II.—PREPAYMENTS—ACCOUNT 165—GAS PURCHASES

Company name	Docket No.	Base Period average (actual)	Test period as filed (projected)
Natural Gas Pipeline Co	RP81-49	$14,014,993	$141,024,498
Northern Natural Gas Co	RP82-62	51,127,490	174,346,000
Trunkline Gas Co	RP81-52	[1]68,437,745	132,649,359
Cities Service Gas Co	RP82-71	64,387,830	123,639,679
Mich-Wisc Pipe Line Co	RP80-106	0	0
	RP81-78	0	4,000,000
	RP82-114	0	11,000,000
Consolidated Gas Supply Corp.	RP80-100	1,541,479	4,751,575
	RP81-61	7,446,749	9,186,749
Transcontinental Gas Pipe Line Corp.	RP81-80	0	0
	RP82-115	0	0
	RP80-117	13,371,615	157,197,443
	RP82-3	36,038,667	424,440,000
	RP82-55	47,107,373	450,969,008

TABLE II.—PREPAYMENTS—ACCOUNT 165—GAS PURCHASES—Continued

Company name	Docket No.	Base Period average (actual)	Test period as filed (projected)
Columbia Gas Transmission Corp.	RP81-83	7,003,000	10,022,335
	RP82-120	0	0
Colorado Interstate Gas Co	RP82-54	5,020,123	23,942,522

[1]Represents ending base period monthly balance allowed by staff.

TABLE III.—FORM 15 RESERVES, PRODUCTION, AND INDICATED GROSS RESERVES ADDITION

	Dec. 31, 1980 reserves [1]	Dec. 31, 1981 reserves [1]	1981 production [1]	Indicated gross additions [2]	Company owned storage gas [3]
Columbia Gas Trans. Co	3,748,100	4,939,439	666,178	1,857,517	612,126
Natural Gas P/L Co	6,330,818	6,346,357	875,350	890,889	314,344
Northern Natural Gas Co	7,079,424	6,955,418	788,213	664,207	106,402
Michigan-Wisconsin	3,756,003	3,556,319	547,945	348,261	134,037
Cities Service Gas Co	4,856,065	5,000,356	293,518	437,809	142,425
Consolidated Gas Supply Corp	1,428,513	1,809,355	163,574	544,398	390,765
Colorado Interstate Gas Co	3,819,112	3,537,571	301,351	19,810	54,999
Trunkline Gas Co	2,494,951	2,429,514	535,174	469,737	5,349
Tennessee Gas P/L Co	7,956,832	7,871,541	1,127,831	1,042,540	109,212
Transcontinental Gas P/L Co	5,944,126	5,990,657	900,840	947,371	77

[1] Company Owned and Producer Contracted from Form 15 Schedule 1.
[2] Calculated net of reserve revisions plus new reserve additions.
[3] Recoverable company owned gas in underground storage from synopsis of Gas Supply (page 0002). The 1981 Form 15 was the first year that all companies were required to report owned gas in underground storage as Company Owned Gas Reserves.

TABLE IV.—HISTORICAL INDICATED GROSS RESERVE ADDITIONS [1]

	1977	1978	1979	1980	1981
Columbia Gas Trans Co.	(38,917)	716,552	502,563	749,872	[2]1,245,391
Natural Gas P/L Co.	291,540	684,324	1,642,108	691,131	890,887
Northern Natural Gas Co.	188,762	384,596	599,688	720,983	[2]557,805
Michigan-Wisconsin	(242,546)	640,048	233,346	356,265	[2]214,224
Cities Service Gas Co.	264,396	217,683	595,099	454,747	[2]295,384
Consolidated Gas Supply Corp.	147,682	347,921	113,678	272,512	[2]153,633
Colorado Interstate Gas Co	465,982	375,647	332,159	456,073	19,810
Trunkline Gas Co.	444,838	719,353	697,952	513,393	469,737
Tennessee Gas P/L Co.	488,801	940,087	886,468	761,969	1,042,540
Transcontinental GAs P/L Co.	513,486	1,002,187	1,667,768	1,059,104	947,371

[1] Company Owned and Producer Contracted from Form 15.
[2] The 1981 Form 15 was the first year that all companies were required to report owned gas in underground storage as Company Owned Gas Reserves. Underground stored gas deducted because of first time reporting and was not a true gross reserve addition.

[FR Doc. 82-23292 Filed 8-25-82; 8:45 am]
BILLING CODE 6717-01-M

[Docket No. RA82-26-000]

Ashland Oil, Inc.; Granting Motion for Extension of Time

Issued: August 18, 1982.

Good cause having been shown, Ashland Oil, Inc.'s motion for an extension of time until September 20, 1982, by which to file its petition for review, is granted.

Kenneth F. Plumb,

Secretary.

[FR Doc. 82-23349 Filed 8-25-82; 8:45 am]
BILLING CODE 6717-01-M

[Docket No. RI82-2-000]

Everett J. Carlson, et al.; Petition for Special Relief

August 19, 1982.

Take notice that on May 5, 1982, Everett J. Carlson, *et al.* (petitioners), Overlay Operating Co., D-312 Petroleum Center, San Antonio, Texas 78209, filed in Docket No. RI82-2-000 a petition for special relief pursuant to 18 CFR 1.7(b), 2.76, and 271.402(c)(5) of the Commission's Rules of Practice and Procedure.

Carlson seeks special relief on his own behalf and on behalf of other working interests in the Lude No. 1 and Otto Luedicke No. 1 wells located in Cabeza Creek Area, Goliad, Texas. Petitioners requests and increased rate which would justify the investment required to restore production of gas from the above-mentioned wells. Neither well has produced gas since approximately the fall of 1981 due to water encroachment. Petitioner estimates that there are approximately 115,000 Mcf and 150,000 Mcf remaining recoverable gas reserves underlying the Otto Luedicke No. 1 and Lude No. 1 wells respectively. United Gas Pipe Line (United) is purchaser of the subject gas under a replacement purchase contract dated August 17, 1973.

Petitioners states that the two above-mentioned wells are entitled to the 104 small producer rates under the Natural Gas Policy Act (NGPA). However, petitioners states that the proposed workover operations will not be economically justified unless the NGPA 109 rate is received upon the re-establishment of production.

On August 3, 1982, petitioner filed an offer of settlement. In this document, petitioners offered to settle their petitioners for special relief, filed May 5, 1982, at a base rate of $2.194 per MMBtu at 14.73 psia plus tax reimbursements for all gas hereafter produced and delivered to United from the two aforementioned wells.

Any person desiring to be heard or to make any protest with reference to said petition should on or before September 7, 1982, file with the Federal Energy Regulatory Commission, Washington, D.C. 20426, a petition to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 1.8 or 1.10). 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 party wishing to become a party to a proceeding, or to participate as a party in any hearing therein, must file a petition to intervene in accordance with the Commission's Rules.

Kenneth F. Plumb,

Secretary.

[FR Doc. 82-23350 Filed 8-25-82; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RA82-24-000]

Charter Oil Co.; Filing of Petition for Review Under 42 U.S.C. 7194

August 19, 1982.

Take notice that Charter Oil Company on July 2, 1982, filed a Petition for Review under 42 U.S.C. 7194(b) (1977) Supp.) from an order of the Secretary of Energy (Secretary).

Copies of the petition for review have been served on the Secretary and all participants in prior proceedings before the Secretary.

Any person who participated in the prior proceedings before the Secretary may be a participant in the proceeding before the Commission without filing a petition to intervene. However, any such person wishing to be a participant is requested to file a notice of participation on or before September 3, 1982, with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, D.C. 20426. Any other person who was denied the opportunity to participate in the prior proceedings before the Secretary or who is aggrieved or adversely affected by the contested order, and who wishes to be a participant in the Commission proceeding, must file a petition to intervene on or before September 3, 1982, in accordance with the Commission's rules of practice and procedure (18 CFR 1.8 and 1.40(e)(3)).

A notice of participation or petition to intervene filed with the Commission must also be served on the parties of record in this proceeding and on the Secretary of Energy through the Office of General Counsel, the Deputy General Counsel for Enforcement and Litigation, Department of Energy, Room 6H-025, 1000 Independence Avenue, SW. Washington, D.C. 20585.

Copies of the petition for review are on file with the Commission and are availble for public inspection at Room 1000, 825 North Capitol St., NE., Washington, D.C. 20426.

Kenneth F. Plumb,

Secretary.

[FR Doc. 82-23351 Filed 8-25-82; 8:45 am]

BILLING CODE 6717-01-M

[Project No. 4165-001]

Cogeneration, Inc., Surrender of Exemption

August 18, 1982.

Take notice that Cogeneration, Inc., Exemptee for the proposed Rock Creek Hydro Project No. 4165, has requested that its exemption be terminated. The exemption from licensing was issued on June 30, 1981. The project would have been located on Rock Creek in Twin Falls County, Idaho.

The Exemptee filled its request on August 5, 1982, and the surrender of the exemption for Project No. 4165 is deemed accepted as of the date of this notice.

Kenneth F. Plumb,

Secretary.

[FR Doc. 82-23352 Filed 8-25-82; 8:45 am]

BILLING CODE 6717-01-M

[Project No. 6250-001]

Cogeneration, Inc.; Application for Exemption for Small Hydroelectric Power Project Under 5 MW Capacity

August 19, 1982.

Take notice that on July 15, 1982, Cogeneration, Inc. (Applicant) filed an application under Section 408 of the Energy Security Act of 1980 (Act) (16 U.S.C. 2705 and 2708 *as amended*), for exemption of a proposed hydroelectric project from licensing under Part I of the Federal Power Act. The proposed small hydroelectric Project No. 6250 would be located on Lateral No. 10 of an irrigation canal near Buhl in Twin Falls County, Idaho. Correspondence with the Applicant should be directed to: Mr. John J. Straubhar, P.O. Box 768, Borah Station, Boise, Idaho 83701.

Project Description—The proposed project would consist of: (1) A 3.5-foot-high diversion structure on the existing Lateral No. 10 of an irrigation canal owned and operated by the Twin Falls Canal Company; (2) a 470-foot-long, 54-inch-diameter pipe; (3) a 1,050-foot-long, 4-foot-deep power canal; (4) a powerhouse with a total installed capacity of 1,615 kW; and (5) a 3.5-mile-long, 34.5-kV transmission line interconnecting with an existing utility transmission line. The estimated annual energy output would be 10.2 GWh.

Purpose of Exemption—An exemption, if issued, gives the Exemptee priority of control, development, and operation of the project under the terms of the exemption from licensing, and protects the Exemptee from permit or license applicants that would seek to take or develop the project.

Agency Comments—The U.S. Fish and Wildlife Service, The National Marine Fisheries Service, and the Idaho Department of Fish and Game are requested, for the purposes set forth in Section 408 of the Act, to submit within 60 days from the date of issuance of this notice appropriate terms and conditions to protect any fish and wildlife resources or to otherwise carry out the provisions of the Fish and Wildlife Coordination Act. General comments concerning the project and its resources are requested; however, specific terms and conditions to be included as a condition of exemption must be clearly identified in the agency letter. If an agency does not file terms and conditions within this time period, that agency will be presumed to have none. Other Federal, State, and local agencies are requested to provide any comments they may have in accordance with their duties and responsibilities. No other formal requests for comments will be made. Comments should be confined to substantive issues relevant to the granting of an exemption. If an agency does not file comments within 60 days from the date of issuance of this notice, it will be presumed to have no comments. One copy of an agency's comments must also be sent to the Applicant's representatives.

Competing Application—Any qualified license applicant desiring to file a competing application must submit to the Commission, on or before October 12, 1982 either the competing license application that proposes to develop at least 7.5 megawatts in that project, or notice of intent to file such a license application. Submission of a timely notice of intent allows an interested person to file the competing license application no later than 120 days from the date that comments, protests, etc. are due. Applications for preliminary permit will not be accepted.

A notice of intent must conform with the requirements of 18 CFR 4.33 (b) and (c) (1980). A competing license application must conform with the requirements of 18 CFR 4.33 (a) and (d) (1980).

Comments, Protests, or Petitions to Intervene—Anyone may submit comments, a protest, or a petition to intervene in accordance with the requirements of the Rules of Practice

and Procedure, 18 CFR 1.8 or 1.10 (1980). In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a petition to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or petitions to intervene must be received on or before October 12, 1982.

Filing and Service of Responsive Documents—Any filings must bear in all capital letters the title "COMMENTS", "NOTICE OF INTENT TO FILE COMPETING APPLICATION", "COMPETING APPLICATION", "PROTEST", or "PETITION TO INTERVENE", as applicable, and the Project Number of this notice. Any of the above named documents must be filed by providing the original and those copies required by the Commission's regulations to: Kenneth F. Plumb, Secretary, Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, D.C. 20426. An additional copy must be sent to: Fred E. Springer, Chief, Applications Branch, Division of Hydropower Licensing, Federal Energy Regulatory Commission, Room 208 RB at the above address. A copy of any notice of intent, competing application, or petition to intervene must also be served upon each representative of the Applicant specified in the first paragraph of this notice.

Kenneth F. Plumb,

Secretary.

[FR Doc. 82-23353 Filed 8-25-82; 8:45 am]

BILLING CODE 6717-01-M

[Docket Nos. RP82-33-000, RP82-94-000, and RP82-108-000]

El Paso Natural Gas Co.; Rescheduling of Informal Settlement Conference

August 18, 1982.

Take notice that the informal settlement conference in the above-captioned docket scheduled previously for August 19, 1982, and noticed on July 21, 1982, has been rescheduled for September 1, 1982. This meeting will commence at 9:30 a.m. at the offices of the Federal Energy Regulatory Commission, 825 North Capitol Street, N.E., Washington, D. C. 20426, in a Commission meeting room to be announced.

Customers and other interested persons will be permitted to attend, but if such persons have not previously been permitted to intervene in this matter by order of the Commission, attendance will not be deemed to authorize intervention as a party in this proceeding.

Kenneth F. Plumb,

Secretary.

[FR Doc. 82-23356 Filed 8-25-82; 8:45 am]

BILLING CODE 6717-01-M

[Docket Nos. CP82-179-000, CP82-222-000, and CP82-232-000]

El Paso Natural Gas Co., Natural Gas Pipeline Company of America, and Northern Natural Gas Company, Division of InterNorth, Inc.; Indefinite Postponement of Informal Technical Conference

August 18, 1982.

Take notice that the informal technical conference scheduled September 1, 1982 at 10:00 a.m. to discuss the application of El Paso Natural Gas Company (El Paso) in Docket No. CP82-179-000 for authorization to expand further its Panoma Pipeline System and the related applications of Natural Gas Pipeline Company of American and Northern Natural Gas Company, Division of InterNorth, Inc., in Docket Nos. CP82-222-000 and CP82-232-000, respectively, is postponed indefinitely upon the motion of El Paso and with the concurrence of all interested parties appearing herein.

Said postponement is in recognition that the matters to be discussed are presently being addressed by El Paso, Commission staff and other interested parties in settlement discussions in El Paso's pending general rate increase proceeding in Docket No. RP82-33-000. The necessity to reschedule this technical conference will be re-examined upon the conclusion of the settlement discussions in Docket No. RP82-33-000.

Kenneth F. Plumb,

Secretary.

[FR Doc. 28-23357 Filed 8-25-82; 8:45 am]

BILLING CODE 6717-01-M

[Project No. 5214-002]

Hyder Hydro Co.; Application for Exemption for Small Hydroelectric Power Project Under 5 MW Capacity

August 19, 1982.

Take notice that on June 7, 1982, Hyder Hydro Company (Applicant) filed an application, under Section 408 of the Energy Security Act of 1980 (Act) (16 U.S.C. 2705, and 2708 *as amended*), for exemption of a proposed hydroelectric project from licensing under Part I of the Federal Power Act. The proposed small hydroelectric Project No. 5214 would be located on an unnamed creek on the west side of Mt. Hinckley in the Tongass National Forest near Hyder, Alaska. Correspondence with the Applicant should be directed to: John MacGregor, P.O. Box 1776, Lummi Island, Washington 98226.

Project Description—(1) The proposed project would consist of a 3-foot-high diversion structure at elevation 1,150 feet; (2) a 24-inch-diameter, 4,800-foot-long, steel penstock; (3) a powerhouse at elevation 110 feet containing two 1.3-MW generating units; (4) a 300-foot-long, 20-foot-wide tailrace channel designed for fish spawning; and (5) a 2.9-mile-long, 15-kV, underground transmission line.

Purpose of Exemption—An exemption, if issued, gives the Exemptee priority of control, development, and operation of the project under the terms of the exemption from licensing, and protects the Exemptee from permit or license applicants that would seek to take or develop the project.

Agency Comments—The U.S. Fish and Wildlife Service, The National Marine Fisheries Service, and the Alaska Department of Fish and Game are requested, for the purposes set forth in Section 408 of the Act, to submit within 60 days from the date of issuance of this notice appropriate terms and conditions to protect any fish and wildlife resources or to otherwise carry out the provisions of the Fish and Wildlife Coordination Act. General comments concerning the project and its resources are requested; however, specific terms and conditions to be included as a condition of exemption must be clearly identified in the agency letter. If an agency does not file terms and conditions within this time period, that agency will be presumed to have none. Other Federal, State, and local agencies are requested to provide any comments they may have in accordance with their duties and responsibilities. No other formal requests for comments will be made. Comments should be confined to substantive issues relevant to the granting of an exemption. If an agency does not file comments within 60 days from the date of issuance of this notice, it will be presumed to have no comments. One copy of an agency's comments must also be sent to the Applicant's representatives.

Competing Applications—Any qualified license applicant desiring to file a competing application must submit to the Commission, on or before October 12, 1982 either the competing license application that proposes to develop at least 7.5 megawatts in that project, or a notice of intent to file such a license

application. Submission of a timely notice of intent allows an interested person to file the competing license application no later than 120 days from the date that comments, protests, etc. are due. Applications for preliminary permit will not be accepted.

A notice of intent must conform with the requirements of 18 CFR 4.33(b) and (c) (1980). A competing license application must conform with the requirements of 18 CFR 4.33(a) and (d) (1980).

Comments, Protests, or Petitions To Intervene—Anyone may submit comments, a protest, or a petition to intervene in accordance with the requirements of the Rules of Practice and Procedure, 18 CFR 1.8 or 1.10 (1980). In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a petition to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or petitions to intervene must be received on or before October 12, 1982.

Filing and Service of Responsive Documents—Any filings must bear in all capital letters the title "COMMENTS", "NOTICE OF INTENT TO FILE COMPETING APPLICATION", "COMPETING APPLICATION", "PROTEST", or "PETITION TO INTERVENE", as applicable, and the Project Number of this notice. Any of the above named documents must be filed by providing the original and those copies required by the Commission's regulations to: Kenneth F. Plumb, Secretary, Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, D.C. 20426. An additional copy must be sent to: Fred E. Springer, Chief, Applications Branch, Division of Hydropower Licensing, Federal Energy Regulatory Commission, Room 208 RB at the above address. A copy of any notice of intent, competing application, or petition to intervene must also be served upon each representative of the Applicant specified in the first paragraph of this notice.

Kenneth F. Plumb,

Secretary.

[FR Doc. 82-23358 Filed 8-25-82; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RA82-27-000]

Industrial Fuel & Asphalt of Indiana, Inc.; Filing of Petition for Review Under 42 U.S.C. 7194

August 19, 1982.

Take notice that Industrial Fuel & Asphalt of Indiana, Inc., on Augst 16, 1982, filed a Petition for Review under 42 U.S.C. 7194(b) (1977) Supp.) from an order of the Secretary of Energy (Secretary).

Copies of the petition for review have been served on the Secretary and all participants in prior proceedings before the Secretary.

Any person who participated in the prior proceedings before the Commission without filing a petition to intervene. However, any such person wishing to be a participant is requested to file a notice of participation on or before September 3, 1982, with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, D.C. 20426. Any Other person who was denied the opportunity to participate in the prior proceedings before the Secretary or who is aggrieved or adversely affected by the contested order, and who wishes to be a participant in the Commission proceeding, must file a petition to intervene on or before September 3, 1982, in accordance with the Commission's Rules of Practice and Procedure (18 CFR 1.8 and 1.40(e)(3)).

A notice of participation or petition to intervene filed with the Commission must also be served on the parties of record in this proceeding and on the Secretary of Energy through the Office of General Counsel, the Deputy General Counsel for Enforcement and Litigation, Department of Energy, Room 6H-025, 1000 Independence Avenue, S.W. Washington, D.C. 20585.

Copies of the petition for review are on file with the Commission and are available for public inspection at Room 1000, 825 North Capitol St., N.E., Washington, D.C. 20426.

Kenneth F. Plumb,

Secretary.

[FR Doc. 82-23359 Filed 8-25-82; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. ES82-69-000]

Interstate Power Co.; Application

August 19, 1982.

Take notice that on August 11, 1982, Interstate Power Company (Applicant) filed an Application with this Commission seeking an order pursuant to Section 204 of the Federal Power Act for authorization to issue not more than $40 million of promissory notes and/or commercial paper, to be issued on or before December 31, 1983 and to mature not later than December 31, 1984.

Any person desiring to be heard or to make any protest with reference to said application should on or before september 10, 1982, file with the Federal Energy Regulatory Commission, Washington, D.C. 20426, petitions to intervene or protests in accordance with the requirements of the Commission's rules of practice and procedure (18 CFR 1.8 or 1.10). The Application is on file with the Commission and available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 82-23360 Filed 8-25-82; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. ER82-720-000]

The Kansas Power and Light Co.; Filing

August 19, 1982.

Take notice that on August 11, 1982, The Kansas Power and Light Company (KPL) tendered for filing amendment #7 to the General Participation Agreement of Mokan Pool members.

Amendment #7 provides for a revision of the Schedule A Equalization charge and Schedule B rate for Standby Service. No estimate of sales under this rate schedule can be made at this time. The following individual schedules which have been filed individually by pool members will not be incorporated within the General Participation Agreement: Schedule C, Rate for System Energy; Schedule D, Rate for Economy Energy, and Schedule E, Purchase-for-resale rate. Additionally, the name change resulting in Midwest Energy, Inc. is reflected within the amendment.

KPL states that the following are presently Participants under the General Participation Agreement with the following FPC Rate Schedule Numbers:

Kansas City Power & Light Company—Rate Schedule FPC No. 32
Missouri Public Service Company—Rate Schedule FPC No. 8
The Empire District Electric Company—Rate Schedule FPC No. 73
Kansas Gas and Electric Company—Rate Schedule FPC No. 94

Central Telephone & Utilities Corporation—Rate Schedule FPC No. 53
St Joseph Light & Power Company, Midwest Energy, Inc., Sunflower Electric Cooperative, Inc., Board of Public Utilities of the City of Kansas City, Kansas—Rate Schedule FPC No. 17

KPL states that all Participants under the General Participation Agreement filed certificates of concurrence to the proposed change with KPL's submittal.

Any person desiring to be heard or to protest said application should file a petition to intervene or protest with the Federal Energy Regulatory Commission, Washington, D.C., 20426, in accordance with §§ 1.8 and 1.10 of the Commission's Rules of Practice and Procedure (18 CFR 1.8, 1.10). All such petitions of protests should be filed on or before September 2, 1982. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a petition to intervene. Copies of the application are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 82-23361 Filed 8-25-82; 8:45 am]

BILLING CODE 6717-01-M

[Docket Nos. G-3973-000, et al.]

Mobil Producing Texas & New Mexico Inc., et al.; Applications for Certificates, Abandonment of Service and Petitions To Amend Certificates [1]

August 19, 1982.

Take notice that each of the Applicants listed herein has filed an application or petition pursuant to Section 7 of the Natural Gas Act for authorization to sell natural gas in interstate commerce or to abandon service as described herein, all as more fully described in the respective applications and amendments which are on file with the Commission and open to public inspection.

Any person desiring to be heard or to make any protest with reference to said applications should on or before September 7, 1982, file with the Federal Energy Regulatory Commission, Washington, D.C. 20426, petitions to intervene or protests in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 1.8 or 1.10). 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. Persons wishing to become parties to a proceeding or to participate as a party in any hearing therein must file petitions to intervene in accordance with the Commission's Rules.

Take further notice that, pursuant to the authority contained in and subject to the 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 on all applications in which no petition to intervene is filed within the time required herein if the Commission on its own review of the matter believes that a grant of the certificates or the authorization for the proposed abandonment is required by the public convenience and necessity. Where a petition for leave to intervene is timely filed, or where 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 Applicants to appear or to be represented at the hearing.

Kenneth F. Plumb,

Secretary.

[1] This notice does not provide for consolidation for hearing of the several matters covered herein.

Docket No. and date filed	Applicant	Purchaser and location	Price per 1,000 ft.[2]	Pressure base
G-3973-000, D, Aug. 4, 1982	Mobil Producing Texas & New Mexico Inc., Nine Greenway Plaza, Suite 2700, Houston, Texas 77046.	Texas Eastern Transmission Corporation, Waskom Field, Harrison County, Texas.	([1])	
G-3973-001, D, Aug. 4, 1982	....do	....do	([3])	
G-5705-000, and G-5706-000, D, July 26, 1982.	Dorchester Gas Producing Company, 5735 Pineland Drive, P.O. Box 31049, Dallas, Texas 75231.	Pandhandle Eastern Pipe Line Company, The Council Grove Formation, Stevens County, Kansas.	([3])	
G-5716-007, D, Aug. 9, 1982	Northern Natural Gas Producing Company, Nine Greenway Plaza, Suite 2700, Houston, Texas 77046.	Northern Natural Gas Company, Hugoton Field, Stevens County, Kansas.	([4])	
G-7643-002, D, Aug. 9, 1982	Mobil Oil Corporation	Northern Natural Gas Company, Hugoton "B" System Field, Stevens County, Kansas.	([5])	
G-12004-001, D, July 28, 1982	Mobil Oil Exploration & Producing Southeast Inc.	Transcontinental Gas Pipe Line Corporation, West Gueydan Field, Vermilion Parish, Louisiana.	([6])	
G-13324-002, D, Aug. 9, 1982	Mobil Oil Corporation	Michigan Wisconsin Pipe Line Company, Mocane-Laverne Gas Area, Beaver County, Oklahoma.	([7])	
CI61-1024-003, D, Aug. 9, 1982	....do	Natural Gas Pipeline Company of America, North Custer City Field, Custer County, Oklahoma.	([8])	
CI63-464-004, D, July 26, 1982	Mobil Producing Texas & New Mexico Inc.	Transcontinental Gas Pipe Line Corporation, Jim Wells County, Texas.	([9])	
CI63-474-002, D, July 28, 1982	....do	Natural Gas Pipeline Company of America, Jim Wells County, Texas.	([9])	
CI64-698-000, D, Aug. 2, 1982	Texaco Inc., P.O. Box 3109, Midland, Texas 79702	Northern Natural Gas Company, Caprito (Ellenburger) Field, Ward County, Texas.	([10])	
CI73-728-001, E, June 16, 1977	Cities Service Company (Succ. to Cities Service Oil Company), P.O. Box 300, Tulsa, Oklahoma 74102.	Tennessee Gas Pipeline Company, Second one-half (½ in the S/2 and NW/4 Block 33, East Cameron Area, Offshore Louisiana.	([11])	15.025

Docket No. and date filed	Applicant	Purchaser and location	Price per 1,000 ft.[3]	Pressure base
CI71-508-000, D, July 14, 1982	Sun Exploration and Production Company, formerly Sun Oil Company, P.O. Box 20, Dallas, Texas 75221.	Cities Service Gas Company Winchester Field, Woods County, Oklahoma.	[12]	
CI75-19-000, Aug. 9, 1982	Texas Eastern Exploration Co., P.O. Box 2521, Houston, Texas 77252.	Texas Eastern Transmission Corporation, Block 222, East Cameron Area, Offshore Louisiana.	[13]	15.025
CI79-671-001, C, July 30, 1982	Amoco Production Company, P.O. Box 50879, New Orleans, Louisiana 70150..	Michigan Wisconsin Pipe Line Company, South Marsh Island Block 260, Offshore Louisiana.	[14]	15.025
CI82-11-001, C, July 29, 1982	Conoco Inc., P.O. Box 2197, Houston, Texas 77252	Texas Eastern Transmission Corporation, High Island Block 138 N/2, Offshore Texas.	[15]	14.65
CI82-334-000 (CI77-404), B, July 26, 1982	Terra Resources Inc., P.O. Box 2329, Tulsa, Oklahoma 74101	El Paso Natural Gas Company, South Rock Tank Field, Eddy County, New Mexico.	[16]	
CI82-335-000, A, July 26, 1982	Felmont Oil Corporation, P.O. Box 2266, Midland, Texas 79702	Transcontinental Gas Pipe Line Corporation, Block 238 Ship Shoal Area, Offshore Louisiana.	[17]	15.025
CI82-336-000, A, July 28, 1982	Samedan Oil Corporation (Operator), P.O. Box 909, Ardmore, Oklahoma 73401.	Transcontinental Gas Pipe Line Corporation, Vermilion Block 76, Offshore Louisiana.	[18]	15.025
CI82-337-000 (G-13275), B, July 29, 1982	Mobil Producing Texas & New Mexico Inc., Nine Greenway Plaza, Suite 2700, Houston, Texas 77046.	W. M. Laughlin, Jim Wells County, Texas.	[19]	
CI82-338-000, E, July 30, 1982 [20]	Phillips Petroleum Company (Succ. to Blair-Vreeland), 336 HS&L Building, Bartlesville, Oklahoma 74004.	Florida Gas Transmission Company, Hinde Field, Starr County, Texas.	[21]	14.65
CI82-339-000, A, July 30, 1982	Kerr-McGee Corporation, P.O. Box 25861, Oklahoma City, Oklahoma 73125.	Texas Eastern Transmission Corporation, Vermilion Area Block 264, Offshore Louisiana.	[22]	15.025
CI82-340-000, A, Aug. 2, 1982	Felmont Oil Corporation, P.O. Box 2266, Midland, Texas 79702	Transcontinental Gas Pipe Line Corporation, Block 237 Ship Shoal Area, Offshore Louisiana.	[23]	15.025
CI82-341-000, A, Aug. 2, 1982	Marathon Oil Company (Operator), 539 South Main Street, Findlay, Ohio.	Natural Gas Pipeline Company of America, South Marsh Island Area, South Marsh, Island Block 144 Field, South Addition, Offshore Louisiana.	[24]	15.025
CI82-342-000, A, Aug. 2, 1982	Getty Oil Company, P.O. Box 1404, Houston, Texas 77001	Texas Eastern Transmission Corporation, Chandeleur Area, Blocks 17 and 25, Offshore Louisiana.	[25]	15.025
CI82-343-000, B, Aug. 2, 1982	Jake L. Hamon, 611 The Petroleum Building, Midland, Texas 79701	Chevron USA Inc., Sejita Field, Duval County, Texas.	[26]	
CI82-344-000, B, Aug. 2, 1982	Trinity Gas Corporation, 1150 Mercantile Dallas Building, Dallas, Texas 75201.	do	[26]	
CI82-345-000, B, Aug. 2, 1982	Edwin L. Cox, 3800 First National Bank Building, Dallas, Texas 75201.	do	[26]	
CI82-346-000, D, July 30, 1982	Herbert H. Champlin, *et al.* Succ. in interest to Herbert Hiram Champlin Trust Estate, Joanna Champlin Trust Estate and Douglas Lloyd Champlin Trust Estate), P.O. Drawer 3488, Enid, Oklahoma 73701.	Michigan Wisconsin Pipe Line Company, Sec. 10, T17N, R17W, Allen No. 1 Well, Dewey County, Oklahoma.	[27]	
CI82-348-000, A, Aug. 3, 1982	Elf Aquitaine Inc., 1100 Milam Building, Suite 3000, Houston, Texas 77002.	Southern Natural Gas Company, Brazos Block A-47, Offshore Texas.	[28]	14.65
CI82-349-000, E, Aug. 4, 1982 [29]	Getty Oil Company (Succ. to Getty Reserve Oil Inc.), P.O. Box 1404, Houston, Texas 77001.	Cities Services Company, Johnson No. 1, N.E. Winchester Field, Wood County, Oklahoma.	[30]	14.65
CI82-350-000, A, Aug. 4, 1982	Cities Service Company, P.O. Box 300, Tulsa, Oklahoma 74102	Texas Eastern Transmission Corporation, Chandleur Block 25 Field, Offshore Louisiana.	[31]	14.73
CI82-351-000, A, Aug. 6, 1982	Sun Exploration and Production Company, P.O. Box 20, Dallas, Texas 75221.	Michigan Wisconsin Pipe Line Company, High Island Block A-561, Offshore Texas.	[32]	14.65
CI82-352-000, B, Aug. 6, 1982	Samedan Oil Corporation, *et al.*, P.O. Box 909, Ardmore, Oklahoma 73401.	Florida Gas Transmission Company, Murdock Pass Field, Kenedy County, Texas.	[33]	
CI82-353-000, A, Aug. 6, 1982	Texoma Production Company, P.O. Box 90996, Houston, Texas 77090.	Tennessee Gas Pipeline Company, South Timbalier Block 38 Field, Offshore Louisiana.	[34]	15.025
CI78-932-001, Aug. 9, 1982	Odeco Oil & Gas Company, 1600 Canal Street, New Orleans, Louisiana 70161.	Transcontinental Gas Pipe Line Corporation, Vermilion Block 102, in the Gulf of Mexico, Offshore Louisiana.	[35]	15.025
CI64-1154-000, CI64-669-000, G-15438-000, C, Aug. 11, 1982.	Amoco Production Company, P.O. Box 50879, New Orleans, Louisiana 70150.	Trunkline Gas Company, Vermilion 14 Field (Blocks 14, 15, 26, and 27), Offshore Louisiana.	[36]	15.025
CI64-668-000, Aug. 12, 1982	Union Oil Company of California, Union Oil Center, Room 904, P.O. Box 7600, Los Angeles, California 90051.	Trunkline Gas Company, Block 14 Field, Vermilion Area, Offshore Louisiana.	[37]	14.73
CI82-355-000, A, Aug. 11, 1982	do	United Gas Pipe Line Company, Block 40, Vermilion Area, Offshore Louisiana.	[38]	14.73
CI82-354-000, A, Aug. 10, 1982	Mesa Petroleum Company, One Mesa Square, P.O. Box 2009, Amarillo, Texas 79189.	Michigan Wisconsin Pipe Line Company, High Island Block A-315, Offshore Texas.	[39]	14.65

[1] Leases surrendered March 1972.

[2] By partial assignment of Oil and Gas Lease, effective February 1, 1970, Mobil Oil Corporation assigned to Arnold Pipe & Supply Company, all of its right, title and interest in and to that certain acreage.
[3] Dorchester agreed to assign to Marsh *et al.* all of its rights to production from The Council Grove Formation. By assignmet dated July 10, 1981, Dorchester made this assignment and by Letter dated July 14, 1982.
[4] To release gas for irrigation fuel.
[5] By partial assignment of Oil and Gas Lease, effective September 16, 1981, Mobil assigned to Mid-Continent Energy Corporation, all of its right, title and interest in and to that certain producing acreage.
[6] Leases expired.
[7] By partial assignment of Oil and Gas Lease, November 5, 1981, Mobil assigned to NRM Petroleum Corp., *et al.* all of its right, title and interest in and to that certain producing acreage.
[8] By partial assignment of Oil and Gas Lease, effective August 25, 1980, Mobil assigned to Gadsco Inc., all of its right, title and interest in and to that certain producing acreage.
[9] Lease surrendered.
[10] Uneconomical for either party to connect to Buyer's facilities.
[11] Applicant is filing under Gas Purchase and Sales Agreement dated November 14, 1972, amended by a new agreement dated March 28, 1977.
[12] Applicant is requesting that its Certificate of Public Convenience and Necessity issued in Docket No. C171-508 be abandoned because of assignment effective January 1, 1982 to Curtis F. Clark and Kathleen T. Clark, d.b.a. Exploration.
[13] Applicant is filing under Letter Agreements of February 4, 1981, and July 29, 1982, to the Gas Purchase Contract dated August 24, 1973.
[14] Applicant is filing under Contract Amendment dated June 1, 1982.
[15] Applicant is filing under Gas Purchase Contract dated October 1, 1981, by a letter supplement dated May 27, 1982.
[16] Production from the South Rock Tank #1 Located in Sec. 2-24S-24E, the only well subject to this Gas Rate Schedule, was plugged and abandoned on March 7, 1979. Terra Resources, Inc. no longer holds this lease.
[17] Applicant is filing under Gas Purchase Agreement dated July 14, 1982.
[18] Applicant is filing under a Gas Purchase Contract dated October 5, 1981, via a Farmout Agreement dated March 24, 1982.
[19] Leases ceased production during 1970. Contract expired under its own terms on October 18, 1977 and leases surrendered.
[20] Applicant is filing to continue the service heretofore rendered under Blair-Vreeland's FERC G.R.S. No. 2 and later authorized in CS 76-137.
[21] Applicant is filing under Gas Purchase Agreement dated July 21, 1956.
[22] Applicant is filing under Gas Purchase Contract dated June 30, 1982.
[23] Applicant is filing under Gas Purchase Agreement dated July 14, 1982.
[24] Applicant is filing under Gas Purchase Contract dated February 17, 1982.
[25] Applicant is filing under Gas Purchase Contract dated July 2, 1982.
[26] To simplify the contractural arrangement between the Named Seller and Distributor of the gas in interstate commerce.
[27] Uneconomical to install compression facilities necessary to effect delivery of the gas.
[28] Applicant is filing under Gas Puchase Contract dated June 4, 1981.
[29] A Gas Purchase Agreement between L. S. Youngblood and Van Grisso Oil Company as sellers and Cities Service Gas Company as Buyer (ratified by Producing Properties Inc., predecessor in interest to Getty Oil Company by Agreement dated July 8, 1963) covering the continued sale of gas from the NE Winchester Field, Woods County, Oklahoma.
[30] Applicant is requesting a certificate of public convenience and necessary to continue the sale of gas to Cities Service Company under a contract dated November 8, 1982, as amended. Effective August 1, 1980, Getty Reserve Oil, Inc. assigned all of its oil, gas and mineral properties, assets and rights to Getty Oil Company.
[31] Applicant is filing under Contract dated June 8, 1982.
[32] Applicant is filing under Gas Purchase Contract dated June 30, 1982.
[33] Well watered out.
[34] Applicant is filing under Gas Sales Contract dated June 22, 1982, as supplemented by letter agreement dated July 13, 1982.
[35] Applicant is filing under Gas Purchase Contact dated June 13, 1978, amended by amendment dated June 1, 1982.
[36] Applicant is filing under Gas Purchase Contract dated June 26, 1958, amended by rollover gas purchase contract dated April 6, 1982.
[37] Applicant is filing under Amendment dated July 13, 1982 to Rollover Contract dated February 10, 1982 (Original Contract dated June 17, 1958).
[38] Applicant is fling under Gas Purchase Contract dated July 23, 1982.
[39] Applicant is filing under Gas Purchase Agreement dated April 16, 1982.
Filing Code: A—Initial Service. B—Abandonment. C—Amendment to add acreage. D—Amendment to delete acreage. E—Total Succession. F—Partial Succession.

[FR Doc. 82-23362 Filed 8-25-82; 8:45 am]
BILLING CODE 6717-01-M

[Docket No. ID-1749-000]

William F. O'Connor;

August 19, 1982.

Take notice that on August 10, 1982, William F. O'Connor filed an application pursuant to Section 305(b) of the Federal Power Act to hold the following positions: Assistant Secretary, Blackstone Valley Electric Company; Clerk, Eastern Edison Company; Clerk and Director, Montaup Electric Company.

Any person desiring to be heard or to protest said application should file a petition to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, N.E., Washington, D.C. 20426, in accordance with §§ 1.8 and 1.10 of the Commission's Rules of Practice and Procedure (18 CFR 1.8, 1.10). All such petitions or protests should be filed on or before September 10, 1982. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a petition to intervene. Copies of this application are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,
Secretary.

[FR Doc. 82-23334 Filed 8-25-82; 8:45 am]
BILLING CODE 6717-01-M

[Docket No. ER82-719-000]

Public Service Electric and Gas Co.; Filing

August 19, 1982.

Take notice that on August 11, 1982, the Public Service Electric and Gas Company (PSEG) tendered for filing proposed changes in its FERC Electric Tariff, Original Vol. 1. The proposed changes would increase revenues from jurisdictional sales and service by $1,316,689 based on year ended December 31, 1981 (Period I), and $1,416,356 based on twelve months ended June 30, 1983 (Period II). In addition, the proposed filing also slightly modified Public Service Electric and Gas Company's existing fuel adjustment clause in the above tariff to conform to Section 35.14 of the Commission's regulations.

PSEG states that despite all efforts by it to combat increased costs, the continuing inflationary trend has affected practically all its operations. Due to these increased costs, PSEG further states that it is becoming increasingly difficult for it to provide adequate and reliable service for the growing needs of its customers. The Company also contends that the rate increases are necessary to assure continued confidence in its financial integrity to provide earnings which will attract additional capital at reasonable cost to enable the Company to finance its electrical construction program.

PSEG requests an effective date of October 11, 1982.

Copies of the filing were served upon the public utility's jurisdictional customers, Atlantic Electric and the Boroughs of Milltown, South River, Park Ridge, and the New Jersey Board of Public Utilities.

Any person desiring to be heard or to protest said filing should file a petition to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, N.E., Washington, D.C. 20426, in accordance with §§ 1.8 and 1.10 of the Commission's Rules of Practice and Procedure (18 CFR 1.8, 1.10). All such petitions or protests should be filed on or before September 2, 1982. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a petition to intervene. Copies of this filing are on file

with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 82-23363 Filed 8-25-82; 8:45 am]

BILLING CODE 6717-01-M

[Project No. 3446-001]

Cascade Water Power Development Corp.; Surrender of Preliminary Permit

August 18, 1982.

Take notice that the Cascade Water Power Development Corporation (Cascade), Permittee for the proposed Crane Prairie Project No. 3446, has requested that its preliminary permit be terminated. The preliminary permit was issued on August 3, 1981, and would have expired on January 31, 1983. The project would have been located at the Crane Prairie Dam on the Deschutes River in Deschutes County, Oregon. Cascade stated that a preliminary study found that the project would not be economically feasible.

Cascade filed its request on July 27, 1982, and the surrender of its permit for Project No. 3446 has been deemed accepted as of the date of this notice.

Kenneth F. Plumb,

Secretary.

[FR Doc. 82-23365 Filed 8-25-82; 8:45 am]

BILLING CODE 6717-01-M

[Project No. 4160-002]

Rangen Research Station; Surrender of Preliminary Permit

August 18, 1982.

Take notice that Rangen Research Station, Permittee for the proposed Rangen Research Water Power Project No. 4160, has requested that its preliminary permit be terminated. The permit was issued on December 10, 1981, and would have expired May 30, 1983. The project would have been located on the Billingsley Creek in Gooding County, Idaho.

The Permittee filed its request on July 26, 1982, and the surrender of the preliminary permit for Project No. 4160 is deemed accepted as of the date of this notice.

Kenneth F. Plumb,

Secretary.

[FR Doc. 82-23366 Filed 8-25-82; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. ER82-718-000]

Southern Company Services Inc.,

August 18, 1982.

Take notice that Southern Company Services, Inc., on August 10, 1982, acting as agent for Alabama Power Company, Georgia Power Company, Gulf Power Company and Mississippi Power Company (Southern Companies) tendered for filing a Supplemental Contract for Additional Long Term Power Sales between Jacksonville Electric Authority and Southern Companies under the provisions of an existing interchange contract on file with the Federal Energy Regulatory Commission.

Southern Companies requests an effective date of August 5, 1982, and therefore requests waiver of the Commission's Notice requirements.

Any person desiring to be heard or to protest said filing should file a petition to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, D.C. 20426, in accordance with §§ 1.8 and 1.10 of the Commission's Rules of Practice and Procedure (18 CFR 1.8, 1.10). All such petitions or protests should be filed on or before September 1, 1982. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a petition to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 82-23368 Filed 8-25-82; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. ER82-684-000]

Washington Water Power Co.; Filing

August 18, 1982.

Take notice that on August 9, 1982, the Washington Water Power Company (Washington) tendered for filing copies of a service schedule applicable to what Washington refers to as a "Letter Agreement" dated July 1, 1982 which extends for one year the "Letter Agreement" dated August 21, 1981 between Washington and Public Utility District No. 1 of Douglas County (Douglas). The Agreement provides for the delivery of energy to Washington beginning July 1982 with the return to Douglas during the months of September 1982 through June 1983 at a reduced rate. Any energy not returned can be settled out at a price of 20 mills per kilowatt-hour.

Washington requests an effective date of July 1, 1982, and therefore requests waiver of the Commission's notice requirements.

Any person desiring to be heard or to protest said filing should file a petition to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, D.C. 20426, in accordance with §§ 1.8 and 1.10 of the Commission's Rules of Practice and Procedure (18 CFR 1.8, 1.10). All such petitions or protests should be filed on or before September 1, 1982. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a petition to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 82-23369 Filed 8-25-82; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. ER82-23-000]

West Texas Utilities Co.; Order Granting Motion To Collect Interim Settlement Rates

Issued: August 19, 1982.

On July 20, 1982, West Texas Utilities Company (WTU) filed a motion for authorization to collect settlement rates from Texas-New Mexico Power Company (TNP) and from its one municipal and fourteen cooperative customers. The settlement rates would replace interim rates currently in effect for these customers as a result of a Commission order issued on February 26, 1982. A formal offer of settlement was submitted on July 28, 1982.

In its motion, WTU states that the settlement rates for the municipal and cooperative customers feature a summer-winter differential at the request of these customers, and that early implementation, of the settlement rates will provide the municipal and cooperative customers the opportunity to give to their own retail customers the intended summer price signal. In addition, TNP will be charged lower rates than it is currently paying.

The motion seeks permission for WTU to place the settlement rates in effect, beginning with bills to be issued in August, 1982. The motion further seeks approval for a surcharge to be collected over a six month period to make up any

difference in the amount collected between the presently effective interim rates and the settlement rates, in the event that the Commission does not approve the settlement agreement filed in this docket. The motion further states that the affected customers concur in the motion.

Pursuant to §§ 35.1(e) and 35.11 of the Commission's regulations, we find that good cause exists to permit the collection of the settlement rates, subject to refund, beginning with bills to be issued in August, 1982, until such time as the Commission acts upon the settlement agreement filed in this docket on July 28, 1982. This order shall be without prejudice to our subsequent determination on the merits of the settlement agreement. In the event that the settlement agreement is not approved, the provisions of WTU's motion shall apply to the recovery of revenues for the interim period.

The Commission orders:

(A) The motion filed by WTU on July 20, 1982, requesting permission to collect settlement rates in lieu of the rates originally filed in the docket and in lieu of the interim rates currently being collected in the docket is hereby granted.

(B) Good cause having been shown, WTU is hereby authorized, pursuant to §§ 35.1(e) and 35.11 of the Commission's regulations, to collect, subject to refund, the settlement rates which it has filed, beginning with bills to be issued in August, 1982, until final Commission action on the settlement. In the event that the settlement agreement is not approved, the provisions of WTU's motion shall apply to the recovery of revenues for the interim period.

(C) The Secretary shall promptly publish this order in the **Federal Register.**

By the Commission.

Kenneth F. Plumb,

Secretary.

[FR Doc. 82-23397 Filed 8-25-82; 8:45 am]

BILLING CODE 6717-01-M

Determinations by Jurisdictional Agencies Under the Natural Gas Policy Act of 1978

Issued: August 18, 1982.

JD NO	JA DKT	API NO	D	SEC(1)	SEC(2)	WELL NAME	FIELD NAME	PROD	PURCHASER
OHIO DEPARTMENT OF NATURAL RESOURCES									
-ALLEN M ANDERSON				RECEIVED:	07/26/82	JA: OH			
8244999A		3416727010		103		RALPH STACY #1	MARIETTA	10.0	
8244999B		3416727010	D	107-TF		RALPH STACY #1	MARIETTA	10.0	
8245000A		3416727011		103		RUSSELL DEVAL #1	MARIETTA	10.0	
8245000B		3416727011	D	107-TF		RUSSELL DEVAL #1	MARIETTA	10.0	
-ALTIER PETROLEUM INC				RECEIVED:	07/26/82	JA: OH			
8244998		3412724225		103	107-RT	G SHERRICK #1	BEARFIELD	12.0	NATIONAL GAS & OI
8244997		3412724224		103	107-RT	G SHERRICK #2	BEARFIELD	12.0	NATIONAL GAS & OI
-BATES OIL & GAS INC				RECEIVED:	07/26/82	JA: OH			
8245001		3408322956		103		BERMAN FLESHMAN #2	JACKSON	120.0	COLUMBIA GAS TRAN
-BELDEN & BLAKE OIL PRODUCTION				RECEIVED:	07/26/82	JA: OH			
8245021		3415123324		108		A SCHLABACH COMM 2 1-990		3.0	
8245006		3401920836		108		C JANELLO COMM 1 - 1-774		3.0	
8245003		3401921280		108		D & B UNKEFER #1 1-883		3.0	
8245017		3415122844		108		D & G SWARTZ COMM #1 1-839		3.0	
8245015		3415122699		108		E RIGGENBACH COMM #1 1-879		3.0	
8245016		3415122835		108		G & M GESSAKER #1 1-836		15.0	
8245023		3415123443		108		H & M TESSMER #2 1-921		3.0	
8245009		3415122504		108		I & R WOLFE #1 1-710		3.0	
8245013		3415122672		108		J & P KRAMER COMM 1 1-776		15.0	
8245020		3415123063		108		J & S RITZERT COMM #1 1-910		3.0	
8245011		3415122542		108		L & G THOUVENIN COMM 5 - 1-726		3.0	
8245005		3415122345		108		L & I TEDROW COMM #1 1-650		3.0	
8245018		3415122872		108		M SHILLING COMM #1 1-854		15.0	
8245019		3415122884		108		N & W RR COMM #1 1-852		15.0	
8245012		3415122583		108		O & R PREISING COMM #1 1-742		3.0	
8245014		3415122673		108		P & A SURMAY COMM 1 1-775		15.0	
8245022		3415123375		108		W & E LLOYD COMM 1 1-1003		3.0	
8245010		3415122512		108		W & M MILLER #1 1-718		3.0	
8245004		3415122245		108		WHITACRE GREER #20 1-617		3.0	
8245002		3401920652		108		WHITACRE-GREER #25 1-654		3.0	
8245007		3401920852		108		WHITACRE-GREER #29 1-755		3.0	
8245008		3415122500		108		1-704 - G & V GARREN #1 1-704		3.0	
-CARL E SMITH INC				RECEIVED:	07/26/82	JA: OH			
8245196		3400922582		103		BARTON UNIT #237	COOLVILLE	15.0	COLUMBIA GAS TRAN
8245197		3410522422		103		KENNEDY-YOST #242	COOLVILLE	12.0	COLUMBIA GAS TRAN
-CLINTON OIL CO				RECEIVED:	07/26/82	JA: OH			
8245024		3403124692		103		M W C D #5-579	BRINKHAVEN	10.0	
-COLUMBIA GAS TRANSMISSION CORP				RECEIVED:	07/26/82	JA: OH			
8245061		3410320600		108		AGNES THOMPSON 708138	NORTHERN DIST STE OF	2.0	
8245039		3408900003		108		AL SALOME 708360	SOUTHERN DIST STE OF	0.4	COLUMBIA GAS TRAN

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JD NO	JA DKT	API NO	D	SEC(1)	SEC(2)	WELL NAME	FIELD NAME	PROD	PURCHASER
8245099		3415720334		108		ALVIN J HAUETER 709747	SOUTHERN DIST STE OF	0.2	COLUMBIA GAS TRAN
8245026		3400520203		108		ASSOCIATED FARM INC 707396	NORTHERN DIST STE OF	1.0	COLUMBIA GAS TRAN
8245075		3411520561		108		BERNARD ANDERSON 708420	SOUTHERN DIST STE OF	1.0	COLUMBIA GAS TRAN
8245103		3416900099		108		BERNARD P BUCHHOLZ 702355	NORTHERN DIST STE OF	1.0	COLUMBIA GAS TRAN
8245101		3416700659		108		BETTY L KELLY 702696	SOUTHERN DIST STE OF	0.2	COLUMBIA GAS TRAN
8245066		3410520465		108		BILLIE RAY OBRIEN 707340	SOUTHERN DIST STE OF	1.0	COLUMBIA GAS TRAN
8245090		3412721153		108		CARL MAROLT 708591	SOUTHERN DIST STE OF	1.0	COLUMBIA GAS TRAN
8245091		3412721527		108		CARL MAROLT 708957	SOUTHERN DIST STE OF	2.0	COLUMBIA GAS TRAN
8245038		3408700116		108		CARRIELANG 706595	SOUTHERN DIST STE OF	1.0	COLUMBIA GAS TRAN
8245047		3410300051		108		CHARLES BLAHA 710336	NORTHERN DIST STE OF	0.6	COLUMBIA GAS TRAN
8245031		3407520259		108		CITIZENS NATL BANK 707272	SOUTHERN DIST STE OF	2.0	COLUMBIA GAS TRAN
8245071		3411520324		108		CLARENCE A GRAHAN 707428	SOUTHERN DIST STE OF	5.0	COLUMBIA GAS TRAN
8245102		3416900098		108		CLIFFORD D VARNS 707754	NORTHERN DIST STE OF	0.4	COLUMBIA GAS TRAN
8245083		3411921064		108		CONSOLIDATION COAL 708645	SOUTHERN DIST STE OF	3.0	COLUMBIA GAS TRAN
8245074		3411520552		108		DALE H PLETCHER 708371	SOUTHERN DIST STE OF	0.2	COLUMBIA GAS TRAN
8245064		3410321323		108		DANA F REYNOLDS 710339	NORTHERN DIST STE OF	4.0	COLUMBIA GAS TRAN
8245063		3410320688		108		DONALD E KRUSH 708564	NORTHERN DIST STE OF	0.3	COLUMBIA GAS TRAN
8245053		3410320449		108		DONALD FARROW 707317	NORTHERN DIST STE OF	1.0	COLUMBIA GAS TRAN
8245044		3409320244		108		DONALD PEPPERS 707285	NORTHERN DIST STE OF	6.0	COLUMBIA GAS TRAN
8245076		3411520577		108		EFFIE JACKSON 708448	SOUTHERN DIST STE OF	2.0	COLUMBIA GAS TRAN
8245037		3408700115		108		EGERTON LAND CO 705731	SOUTHERN DIST STE OF	1.0	COLUMBIA GAS TRAN
8245095		3415720044		108		ERVINE WARD ADMR 709755	SOUTHERN DIST STE OF	0.5	COLUMBIA GAS TRAN
8245027		3400520213		108		ETHEL M AUSTIN 707335	NORTHERN DIST STE OF	1.0	COLUMBIA GAS TRAN
8245043		3409320079		108		EUGENE B SOHN 706328	NORTHERN DIST STE OF	2.0	COLUMBIA GAS TRAN
8245045		3409320415		108		FLOYD CROWE 708158	NORTHERN DIST STE OF	2.0	COLUMBIA GAS TRAN
8245055		3410320461		108		FRANKLIN D BAER 707434	NORTHERN DIST STE OF	1.0	COLUMBIA GAS TRAN
8245094		3415720041		108		FREDERICK BREITMEIR 709754	SOUTHERN DIST STE OF	2.0	COLUMBIA GAS TRAN
8245067		3410520509		108		G F LOGAN 707723	SOUTHERN DIST STE OF	1.0	COLUMBIA GAS TRAN
8245078		3411920010		108		GEORGE B ALEXANDER 706196	SOUTHERN DIST STE OF	2.0	COLUMBIA GAS TRAN
8245093		3415320131		108		GEORGE BROWN TRUSTEE 707052	NORTHERN DIST STE OF	2.0	COLUMBIA GAS TRAN
8245084		3412720502		108		GOLDIE HESKETT 707453	SOUTHERN DIST STE OF	0.5	COLUMBIA GAS TRAN
8245068		3410520691		108		H W RITCHIE ESTATE 708342	SOUTHERN DIST STE OF	3.0	COLUMBIA GAS TRAN
8245080		3411920350		108		HENRY J SLETZER 707622	SOUTHERN DIST STE OF	2.0	COLUMBIA GAS TRAN
8245087		3412720960		108		HERMAN MILLER 708390	SOUTHERN DIST STE OF	1.0	COLUMBIA GAS TRAN
8245059		3410320482		108		HUGH EYERDOM 707683	NORTHERN DIST STE OF	0.4	COLUMBIA GAS TRAN
8245082		3411920613		108		J E ALEXANDER 708093	SOUTHERN DIST STE OF	2.0	COLUMBIA GAS TRAN
8245035		3408300013		108		JAMES L RINGWALT 707575	SOUTHERN DIST STE OF	1.0	COLUMBIA GAS TRAN
8245054		3410320455		108		JAMES MAGISAND 707333	NORTHERN DIST STE OF	7.0	COLUMBIA GAS TRAN
8245048		3410320332		108		JEAN BISHOP 706906	NORTHERN DIST STE OF	1.0	COLUMBIA GAS TRAN
8245041		3408923195		108		JOHN CLAYPOOL 708465	SOUTHERN DIST STE OF	3.0	COLUMBIA GAS TRAN
8245060		3410320489		108		JOSEF FODOR 707689	NORTHERN DIST STE OF	1.0	COLUMBIA GAS TRAN
8245081		3411920360		108		KENNETH STAKER 707642	SOUTHERN DIST STE OF	4.0	COLUMBIA GAS TRAN
8245065		3410500321		108		KENNETH WARD HARTLEY 705374	SOUTHERN DIST STE OF	0.7	COLUMBIA GAS TRAN
8245096		3415720142		108		LEAMON RAY AMMONS 709758	SOUTHERN DIST STE OF	1.0	COLUMBIA GAS TRAN
8245079		3411920327		108		LEO PAUL 707441	NORTHERN DIST STE OF	1.0	COLUMBIA GAS TRAN
8245056		3410320464		108		LEON DAVID STOCKWELL 707460	NORTHERN DIST STE OF	1.0	COLUMBIA GAS TRAN
8245034		3407520117		108		LESTER E GIGAX 707239	SOUTHERN DIST STE OF	0.7	COLUMBIA GAS TRAN
8245051		3410320435		108		LLOYD C SIMON 707318	NORTHERN DIST STE OF	3.0	COLUMBIA GAS TRAN
8245069		3411520273		108		LUCILLE WEAVER 707257	NORTHERN DIST STE OF	1.0	COLUMBIA GAS TRAN
8245073		3411520520		108		LUCILLE WEAVER 708218	SOUTHERN DIST STE OF	3.0	COLUMBIA GAS TRAN
8245046		3410300048		108		MARY RYBA 710337	NORTHERN DIST STE OF	3.0	COLUMBIA GAS TRAN
8245030		3400920615		108		MICHAEL MONTLE 707323	SOUTHERN DIST STE OF	1.0	COLUMBIA GAS TRAN
8245040		3408900006		108		O EARL MITCHELL 707035	SOUTHERN DIST STE OF	1.0	COLUMBIA GAS TRAN

JD NO	JA DKT	API NO	D	SEC(1)	SEC(2)	WELL NAME	FIELD NAME	PROD	PURCHASER
8245058		3410320472		108		OLD PHOENIX NATL BNK 707400	NORTHERN DIST STE OF	1.0	COLUMBIA GAS TRAN
8245042		3409320071		108		PAUL K GARDNER 706204	NORTHERN DIST STE OF	4.0	COLUMBIA GAS TRAN
8245097		3415720235		108		PAUL KRAMER 709762	SOUTHERN DIST STE OF	1.0	COLUMBIA GAS TRAN
8245032		3407520276		108		PAUL STITZLEIN 707793	SOUTHERN DIST STE OF	1.0	COLUMBIA GAS TRAN
8245085		3412720528		108		PEABODY COAL CO 707596	SOUTHERN DIST STE OF	2.0	COLUMBIA GAS TRAN
8245033		3407520116		108		PRESHIE ADAMS 707232	SOUTHERN DIST STE OF	0.7	COLUMBIA GAS TRAN
8245072		3411520372		108		R H PHILLIPS TRUSTEE 707670	SOUTHERN DIST STE OF	2.0	COLUMBIA GAS TRAN
8245057		3410520445		108		ROBERT E LEE 707223	SOUTHERN DIST STE OF	1.0	COLUMBIA GAS TRAN
8245092		3415120700		108		ROBERT H LITTLE 709764	NORTHERN DIST STE OF	1.0	COLUMBIA GAS TRAN
8245089		3412721121		108		ROBERT M FOWLE 708559	SOUTHERN DIST STE OF	1.0	COLUMBIA GAS TRAN
8245036		3408700113		108		ROBERT NICOL 705671	SOUTHERN DIST STE OF	3.0	COLUMBIA GAS TRAN
8245050		3410320428		108		ROBERT W RIDDLE 707261	NORTHERN DIST STE OF	1.0	COLUMBIA GAS TRAN
8245086		3412720951		108		RONALD SCHOOLEY 708377	SOUTHERN DIST STE OF	4.0	COLUMBIA GAS TRAN
8245025		3400520201		108		ROSS S SELLERS 707310	NORTHERN DIST STE OF	3.0	COLUMBIA GAS TRAN
8245070		3411520307		108		RUTH EPPLEY 707374	SOUTHERN DIST STE OF	1.0	COLUMBIA GAS TRAN
8245028		3400900529		108		SUNDAY C K COAL CO 705971	SOUTHERN DIST STE OF	2.0	COLUMBIA GAS TRAN
8245029		3400900530		108		SUNDAY C K COAL CO 706025	SOUTHERN DIST STE OF	2.0	COLUMBIA GAS TRAN
8245088		3412721045		108		SUNDAY CRK COAL CO 708485	SOUTHERN DIST STE OF	0.0	COLUMBIA GAS TRAN
8245062		3410320607		108		TERRENCE J GAVIN 708190	NORTHERN DIST STE OF	1.0	COLUMBIA GAS TRAN
8245052		3410320436		108		USA DIST CORP ENG MD 707241	NORTHERN DIST STE OF	2.0	COLUMBIA GAS TRAN
8245098		3415720317		108		VERNA E KIENZLE 709745	SOUTHERN DIST STE OF	1.0	COLUMBIA GAS TRAN
8245049		3410320427		108		WALLACE MCKEE 707245	NORTHERN DIST STE OF	1.0	COLUMBIA GAS TRAN
8245077		3411520596		108		WARREN WALPOOL 708519	SOUTHERN DIST STE OF	1.0	COLUMBIA GAS TRAN
8245104		3416920270		108		WAYNE CO NATL BANK 707290	NORTHERN DIST STE OF	1.0	COLUMBIA GAS TRAN
8245100		3415720364		108		WM LEBOLD LAND MGR 709750	SOUTHERN DIST STE OF	1.0	COLUMBIA GAS TRAN
-CRYSTAL ENERGY				RECEIVED: 07/26/82 JA: OH					
8245105		3410322424		103	107-TF	AUDRA & LAVADA RAMEY #1	SPENCER	10.0	COLUMBIA GAS TRAN
-CUYAHOGA EXPLORATION & DEVELOPMENT				RECEIVED: 07/26/82 JA: OH					
8245109		3416727051		103		DELMAR HENDERSHOT #4	DALZELL	54.8	NOT YET DETERMINE
8245108		3412122783		103		HERMAN BROCK #4	STAFFORD	43.8	
-DISCOVERY OIL LTD				RECEIVED: 07/26/82 JA: OH					
8245110		3410322862		107-TF		LUTTNER #1	SEVILLE	0.0	
-EARTH RESOURCES EXPL DEV CORP				RECEIVED: 07/26/82 JA: OH					
8245111		3416923022		103	107-TF	NAGY #1	DOYLESTOWN	55.0	
8245112	,	3416923033		103	107-TF	NAGY #2	DOYLESTOWN	50.0	
-ENNEY OILFIELD RENTAL CO				RECEIVED: 07/26/82 JA: OH					
8245113		3411922728		107-RT		HERB ROLL #1	DUNCAN FALLS	6.0	NATIONAL GAS & OI
-EVERFLOW EASTERN INC				RECEIVED: 07/26/82 JA: OH					
8245114		3415123709		103	107-TF	RUMBLE #1	LAKE	0.0	
-FRANK W HOOVER PROD				RECEIVED: 07/26/82 JA: OH					
8245122		3411924971		107-TF		HEDGES #1	JACKSON	15.0	COLUMBIA GAS TRAN
-GASEARCH INC				RECEIVED: 07/26/82 JA: OH					
8245117		3415522087		103	107-TF	A S W CO #2	WEATHERSFIELD	20.0	AMERICAN ENERGY S
8245118		3415522182		103	107-TF	NILES CITY-BYRNFORD PARK #1	WEATHERSFIELD	20.0	AMERICAN ENERGY S
8245119		3415522183		103	107-TF	NILES CITY-Y M C A #1	WEATHERSFIELD	20.0	AMERICAN ENERGY S
8245116		3415521650		103	107-TF	PASSELL #1	MECCA	20.0	
8245115		3400721793		103	107-TF	SCHOMMER #1	CHERRY VALLEY	20.0	AMERICAN ENERGY S
-GEO ENERGY INC				RECEIVED: 07/26/82 JA: OH					
8245120		3410322604		107-TF		GILBERT & MILDRED WOLF #18-2-1	LIVERPOOL	10.0	COLUMBIA GAS TRAN
-HILLTOP DEVELOPMENT CORP				RECEIVED: 07/26/82 JA: OH					
8245121		3411926241		103		W.WAGNER #3	CASS	1.0	NATIONAL GAS & OI
-HOPCO RESOURCES INC				RECEIVED: 07/26/82 JA: OH					
8245124		3403124624		103	107-TF	DOUGHTY #1B	KEENE	12.0	COLUMBIA GAS TRAN

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JD NO	JA DKT	API NO	D	SEC(1)	SEC(2)	WELL NAME	FIELD NAME	PROD	PURCHASER
8245123		3403124487		103	107-TF	PARKHILL #1	KEENE	12.0	COLUMBIA GAS TRAN
-J-R DEVELOPMENT CO				RECEIVED:	07/26/82	JA: OH			
8245125		3412725269		107-TF		DEADMAN & HURST #1	CLAYTON	0.0	COLUMBIA GAS TRAN
8245126		3412725347		107-TF		HURST #1	CLAYTON	0.0	COLUMBIA GAS TRAN
-JEFFERSON OIL & GAS CO				RECEIVED:	07/26/82	JA: OH			
8245128		3403124774		107-TF		SMITH #2	CLARK	20.0	COLUMBIA GAS TRAN
8245127		3403124497		107-TF		STEWART #1	CLARK	17.0	COLUMBIA GAS TRAN
-JOHN C MASON				RECEIVED:	07/26/82	JA: OH			
8245156		3407523736		107-TF		ATLEE ERB #1	BERLIN	24.0	COLUMBIA GAS TRAN
-K S T OIL & GAS CO INC				RECEIVED:	07/26/82	JA: OH			
8245134		3415320860		103	107-TF	BLANKENSHIP #1	NORTHAMPTON	0.0	REPUBLIC STEEL CO
8245138		3415321057		103	107-TF	BLOSSOM #4	NORTHAMPTON	0.0	
8245139		3415321058		103	107-TF	BLOSSOM #5	NORTHAMPTON	0.0	
8245140		3415321060		103	107-TF	BLOSSOM #7	NORTHAMPTON	0.0	
8245141		3415321061		103	107-TF	BLOSSOM #8	NORTHAMPTON	0.0	
8245129		3401921296		103	107-TF	EDISON & RUBY GARTELL #2	ORANGE	0.0	
8245132		3409921360		103	107-TF	HEINEMAN #1	GOSHEN	0.0	
8245131		3405922610		103	107-TF	JACK AND SARAH YOUNGS #1	VALLEY	0.0	
8245130		3401921310		103	107-TF	PATRICIA EVANS #4	ORANGE	0.0	
8245133		3415320822		103	107-TF	SMITH-TEEL UNIT #1	NORTHAMPTON	0.0	
8245135		3415321045		103	107-TF	UNDERWOOD #2	NORTHAMPTON	0.0	
8245137		3415321054		103	107-TF	WHEATLEY #1	NORTHAMPTON	0.0	
8245136		3415321053		103	107-TF	WILT #1	NORTHAMPTON	0.0	
-KENOIL				RECEIVED:	07/26/82	JA: OH			
8245142		3416922798		107-TF		NANCY IRVIN #1	CRESTON	10.0	COLUMBIA GAS TRAN
-LANDPROVEST INC				RECEIVED:	07/26/82	JA: OH			
8245144		3411924923		107-TF		L A ROBERTSON #2	MEIGS	0.0	
8245145		3411924924		107-TF		L A ROBERTSON #3	MEIGS	0.0	
8245147		3411925092		107-TF		L A ROBERTSON #4	MEIGS	0.0	
8245146		3411925083		107-TF		L A ROBERTSON #5	MEIGS	0.0	
8245143		3411924907		107-TF		L A ROBERTSON JR #1	MEIGS	0.0	
-LESLIE OIL AND GAS CO INC				RECEIVED:	07/26/82	JA: OH			
8245152		3410322364		107-TF		CLARK #1	SPENCER TWP	7.5	COLUMBIA GAS TRAN
8245153		3410322415		107-TF		CLARK #2	SPENCER TWP	7.5	COLUMBIA GAS TRAN
8245155		3415522059		107-TF		MAC DONALD #3	BRISTOL TWP	7.5	AMERICAN ENERGY S
8245154		3415522058		107-TF		MACDONALD #2	BRISTOL TWP	7.5	AMERICAN ENERGY S
8245151		3410322235		107-TF		MANTZ #1	SPENCER TWP	7.5	COLUMBIA GAS TRAN
8245148		3410321981		107-TF		SIMMERMAN #1	SPENCER TWP	7.5	COLUMBIA GAS TRAN
8245149		3410322146		107-TF		SIMMERMAN #2	SPENCER TWP	7.5	COLUMBIA GAS TRAN
8245150		3410322210		107-TF		SIMMERMAN-SIMAN #1	SPENCER TWP	7.5	COLUMBIA GAS TRAN
-MEGA OIL CORP				RECEIVED:	07/26/82	JA: OH			
8245159		3408720314		107-TF		HERSCHEL & ANNA ROACH #1	WATERLOO	12.0	COLUMBIA GAS TRAN
-MELLENCO INC				RECEIVED:	07/26/82	JA: OH			
8245161		3410323048		103	107-TF	RUMSEY #1	GRANGER	20.0	
8245160		3410322370		103	107-TF	SMITH #3	GRANGER	20.0	
-MID-CON OIL COMPANY				RECEIVED:	07/26/82	JA: OH			
8245162		3408924430		103		RUSSELL SEABRIGHT #1	RUSSELL SEABRIGHT	12.0	COLUMBIA GAS TRAN
8245163		3408924459		103		WALTER GREATHOUSE #1	WALTER GREATHOUSE	12.0	COLUMBIA GAS TRAN
-NEIL R. WYNN				RECEIVED:	07/26/82	JA: OH			
8245206		3416727169		103		N WYNN #3	WARREN	2.0	GAS TRANSPORT INC
8245207		3416727173		103		R LEMASTERS #6	WARREN	2.5	GAS TRANSPORT INC
-ORION ENERGY CORP				RECEIVED:	07/26/82	JA: OH			
8245165		3416923234		107-TF		JACKSON #1	CHESTER	8.0	COLUMBIA GAS TRAN

JD NO	JA DKT	API NO	D	SEC(1)	SEC(2)	WELL NAME	FIELD NAME	PROD	PURCHASER
-OXFORD OIL CO				RECEIVED: 07/26/82 JA: OH					
8245167		3416923308		107-TF		PHILLIP MATTESON #1	CANAAN	12.0	
8245166		3411926257		107-TF		ROBERT DERRY #1	DRESDEN	10.0	
-PEERLESS/TRANSATLANTIC OHIO 82				RECEIVED: 07/26/82 JA: OH					
8245172		3400721997		103	107-TF	DORSON #P-1	COLEBROOK	27.0	EAST OHIO GAS CO
8245170		3400721992		103	107-TF	FINLAW UNIT P-1	COLEBROOK	30.0	EAST OHIO GAS CO
8245171		3400721993		103	107-TF	ONDREJKO #P-1	COLEBROOK	30.0	EAST OHIO GAS CO
-POI ENERGY INC				RECEIVED: 07/26/82 JA: OH					
8245169		3413322791		103	107-TF	SCHEFFEL #3	STREETSBORO	42.0	
8245168		3413322587		103	107-TF	WEINGART-EVERGREEN #1	FRANKLIN	40.0	
-POMINEX INC				RECEIVED: 07/26/82 JA: OH					
8245178		3413322625		103	107-TF	EAST FREEDOM #1	FREEDOM	18.0	
8245179		3413322637		103	107-TF	EAST FREEDOM #2	FREEDOM	18.0	
8245183		3413322684		103	107-TF	EAST FREEDOM #3	FREEDOM	18.0	
8245182		3413322683		103	107-TF	EAST FREEDOM #5	FREEDOM	18.0	
8245177		3413322264		103	107-TF	MORRISON #1	FREEDOM	18.0	
8245181		3413322663		103	107-TF	MORRISON #2	FREEDOM	18.0	
8245184		3413322691		103	107-TF	MORRISON #3	FREEDOM	18.0	
8245180		3413322638		103	107-TF	NEISS #1	RAVENNA	18.0	
8245185		3413322734		103	107-TF	SIMERA #1	WINDHAM	18.0	
8245186		3413322735		103	107-TF	SIMERA #2	WINDHAM	18.0	
8245187		3413322761		103	107-TF	SOUTH SLAGLE #1	WINDHAM	18.0	
8245188		3413322762		103	107-TF	SOUTH SLAGLE #2	WINDHAM	18.0	
8245191		3413322784		103	107-TF	SPORTSMAN #1	RAVENNA	18.0	
8245190		3413322783		103	107-TF	SPORTSMAN #4	RAVENNA	18.0	
8245189		3413322782		103	107-TF	SPORTSMAN #5	RAVENNA	18.0	
8245173		3409921347		103	107-TF	TIPPECANOE #1	COLUMBIANA	18.0	
8245175		3409921351		103	107-TF	TIPPECANOE #3	COLUMBIANA	18.0	
8245174		3409921348		103	107-TF	TIPPECANOE #4	COLUMBIANA	18.0	
8245176		3409921358		103	107-TF	WITTENAUER #1	COLUMBIANA	18.0	
-R D CURRY PRODUCTION COMPANY				RECEIVED: 07/26/82 JA: OH					
8245106		3407523516		103		ANDREWS #1	KILLBUCK	36.0	COLUMBIA GAS TRAN
8245107		3407523676		103		HEIM #1	KILLBUCK	110.0	COLUMBIA GAS TRAN
-RIMCO OPERATING INC				RECEIVED: 07/26/82 JA: OH					
8245193		3416923290		103	107-TF	BADGER #1	NEW PITTSBURG	12.0	COLUMBIA GAS TRAN
8245192		3416923197		103	107-TF	GALLAPOO #3	WOOSTER	12.0	COLUMBIA GAS TRAN
-RIVERLAND OIL INC				RECEIVED: 07/26/82 JA: OH					
8245194		3407523257		107-TF		ANDY J MAST #4	HOLMESVILLE	0.0	COLUMBIA GAS & TR
-RONALD F MORAN				RECEIVED: 07/26/82 JA: OH					
8245164		3408924420		103		WILLIAM L FISK #1	MARY ANN	0.0	
-SHAWNEE OIL & GAS CO				RECEIVED: 07/26/82 JA: OH					
8245195		3410521892		107-TF		ARCHIE STEGALL #1	BEDFORD	0.0	COLUMBIA GAS TRAN
-TIGER OIL INC				RECEIVED: 07/26/82 JA: OH					
8245198		3411122848		107-DV		BRADFIELD #3	JACKSON	0.0	RIVER GAS CO
8245199		3416727138		107-DV		G LAUER #1	SALEM	0.0	COLUMBIA GAS TRAN
8245200		3416727140		107-DV		MARTHA SUDER #1	SALEM	0.0	COLUMBIA GAS TRAN
-VICTOR MCKENZIE				RECEIVED: 07/26/82 JA: OH					
8245158		3412725499		103		FLOYD KING WELL #2	THORN	8.0	NATIONAL GAS & OI
8245157		3411926133		103		MILLARD OSBORN WELL #1	HOPEWELL	5.0	NATIONAL GAS & OI
-VIKING RESOURCES CORP				RECEIVED: 07/26/82 JA: OH					
8245201		3409921419		103	107-TF	BARLEY UNIT #1	MILTON	30.0	
8245202		3409921437		103	107-TF	G WOOLMAN UNIT #1	BERLIN	30.0	
8245203		3409921439		103	107-TF	G WOOLMAN UNIT #2	BERLIN	30.0	
8245204		3409921440		103	107-TF	G WOOLMAN UNIT #3	BERLIN	30.0	
-WITCO CHEMICAL CORP				RECEIVED: 07/26/82 JA: OH					
8245205		3408924415		103		S RECTOR #4	PERRYTON	3.0	NATIONAL GAS & OI

BILLING CODE 6717-01-C

The above notices of determinations were received from the indicated jurisdictional agencies by the Federal Energy Regulatory Commission pursuant to the Natural Gas Policy Act of 1978 and 18 CFR 274.104. Negative determinations are indicated by a "D" before the section code. Estimated annual production (PROD) is in million cubic feet (MMCF). An (*) before the Control (JD) number denotes additional purchasers listed at the end of the notice.

The applications for determination are available for inspection except to the extent such material is confidential under 18 CFR 275.206, at the Commission's Division of Public Information, Room 1000, 825 North Capitol St., Washington, D.C. Persons objecting to any of these determinations may, in accordance with 18 CFR 275.203 and 275.204, file a protest with the Commission on or before September 10, 1982.

Categories within each NGPA section are indicated by the following codes:

Section 102–1: New OCS lease
102–2: New well (2.5 mile rule)
102–3: New well (1,000 ft. rule)
102–4: New onshore reservoir
102–5: New reservoir on old OCS lease
Section 107–DP: 15,000 feet or deeper
107–GB: Geopressured brine
107–CS: Coal seams
107–DV: Devonian shale
107–PE: Production enhancement
107–TF: New tight formation
107–RT: Recompletion tight formation
Section 108: Stripper well
108–SA: Seasonally affected
108–ER: Enhanced recovery
108–PB: Pressure buildup

Kenneth F. Plumb,

Secretary.

[FR Doc. 82–23370 Filed 8–25–82; 8:45 am]

BILLING CODE 6717–01–M

Determinations by Jurisdictional Agencies Under the Natural Gas Policy Act of 1978

Issued: August 18, 1982.

JD NO	JA DKT	API NO	D	SEC(1)	SEC(2)	WELL NAME	FIELD NAME	PROD	PURCHASER
CALIFORNIA DEPARTMENT OF CONSERVATION									
-AMERADA HESS CORPORATION				RECEIVED:	07/27/82	JA: CA			
8245410	82-6-0025	0409520072		108		J MARKS #6	RIO VISTA DEEP	2.0	PACIFIC GAS & ELE
8245408	82-6-0027	0401300160		108		RIO VISTA GAS UNIT #66	RIO VISTA	5.4	PACIFIC GAS & ELE
8245407	82-6-0028	0401300162		108		RIO VISTA GAS UNIT #68	RIO VISTA	3.5	PACIFIC GAS & ELE
8245409	82-6-0026	0409500163		108		WINEMAN ZONE UNIT #12	MAINE PRAIRIE	15.5	PACIFIC GAS & ELE
-CAPITOL OIL CORP				RECEIVED:	07/27/82	JA: CA			
8245403	82-6-0020	0409520493		102-4		WOODEN #1	MAIN PRAIRIE	365.0	PACIFIC GAS & ELE
-CASEX CO				RECEIVED:	07/27/82	JA: CA			
8245400	82-6-0029	0409520487		102-4		SEAHAWK CALIF 2-1	LINDSEY SLOUGH	1000.0	TOSCO CORP
-CHEVRON U S A INC				RECEIVED:	07/27/82	JA: CA			
8245413	82-6-0035	0401120193		102-4		ARBUCKLE ROAD #9	GRIMES	360.0	PACIFIC GAS & ELE
8245411	82-6-0030	0401120195		102-4		SOUTH SYCAMORE #5	GRIMES	300.0	PACIFIC GAS & ELE
8245412	82-6-0031	0401120207		102-4		SOUTH SYCAMORE #6	GRIMES	52.0	PACIFIC GAS & ELE
-HILLIARD OIL & GAS INC				RECEIVED:	07/27/82	JA: CA			
8245401	82-6-0038	0409520481		102-4		HANNA #1	BUNKER GAS FIELD	1250.0	SHELL OIL CO
8245402	82-6-0039	0409520499		102-4		PARDI #1	BUNKER GAS	900.0	SHELL OIL CO
-HUSKY OIL COMPANY				RECEIVED:	07/27/82	JA: CA			
8245415	82-6-0036	0407720384		102-4		HUSKY-ROSSI INC #1	TRACY GAS	312.0	PACIFIC GAS & ELE
-NATURAL GAS CORPORATION OF CALIF				RECEIVED:	07/27/82	JA: CA			
8245405	82-6-0010	0410120176		102-4		"MAPCO-KYLLING" #1	WEST BUTTE	480.0	PACIFIC GAS & ELE
-SEAWARD RESOURCES INC				RECEIVED:	07/27/82	JA: CA			
8245404	82-6-0001	0411320647		102-2		MEANS 1-13	HARLAN RANCH	365.0	SHELL OIL CO
-TENNECO OIL COMPANY				RECEIVED:	07/27/82	JA: CA			
8245406	82-4-0089	0402966563		103		YOWLUMNE UNIT "A" 72X-10	YOWLUMNE	44.0	ARCO OIL & GAS CO
-TXO PRODUCTION CORP				RECEIVED:	07/27/82	JA: CA			
8245399	82-6-0037	0410320127		102-4		TAYLOR GLOVER 28-1	EAST RICE CREEK	100.0	PACIFIC GAS & ELE
8245414	82-6-0033	0402120232		103		TRANSAMERICA BEEHIVE 17-1	WILLOWS BEEHIVE BEND	100.0	PACIFIC GAS & ELE
LOUISIANA OFFICE OF CONSERVATION									
-ABCO PETROLEUM CORP				RECEIVED:	07/27/82	JA: LA			
8245221	82-1075	1711121770		108		EXXON FEE #1 #162289	MONROE GAS FIELD	32.5	IMC PIPELINE CO I
8245284	82-1076	1711121771		108		EXXON FEE #2 #162290	MONROE GAS FIELD	41.3	IMC PIPELINE CO I
8245285	82-1077	1711121782		108		EXXON FEE #3 #164224	MONROE GAS FIELD	46.4	IMC PIPELINE CO I
8245222	82-1078	1711121783		108		EXXON FEE #4 #162448	MONROE GAS FIELD	67.9	IMC PIPELINE CO I
8245220	82-1080	1711121785		108		EXXON FEE #6 162450	MONROE GAS FIELD	35.0	IMC PIPELINE CO I
8245290	82-1082	1711121787		108		EXXON FEE #8 #164226	MONROE GAS FIELD	27.0	IMC PIPELINE CO I
8245288	82-1032	1711122015		108		EXXON FEE A #1	MONROE GAS FIELD	43.8	IMC PIPELINE CO I
8245225	82-1033	1711122017		108		EXXON FEE A #3	MONROE GAS FIELD	50.4	IMC PIPELINE CO I
8245215	82-1034	1711122004		108		EXXON FEE A #4	MONROE GAS FIELD	49.3	IMC PIPELINE CO I
8245224	82-1035	1711122018		108		EXXON FEE A #5	MONROE GAS FIELD	55.5	IMC PIPELINE CO I

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JD NO	JA DKT	API NO	D	SEC(1)	SEC(2)	WELL NAME	FIELD NAME	PROD	PURCHASER
8245287	82-1036	1711122005		108		EXXON FEE A #6	MONROE GAS FIELD	58.4	IMC PIPELINE CO I
8245223	82-1037	1711122019		108		EXXON FEE A #7	MONROE GAS FIELD	52.6	IMC PIPELINE CO I
8245286	82-1038	1711122006		108		EXXON FEE A #8	MONROE GAS FIELD	38.3	IMC PIPELINE CO I
8245213	82-1016	1711122034		108		EXXON FEE B #1	MONROE GAS FIELD	43.1	IMC PIPELINE CO I
8245212	82-1018	1711122036		108		EXXON FEE B #3	MONROE GAS FIELD	34.7	IMC PIPELINE CO I
8245226	82-1019	1711122037		108		EXXON FEE B #4	MONROE GAS FIELD	39.4	IMC PIPELINE CO I
8245214	82-1020	1711122446		108		EXXON FEE D #2	MONROE GAS FIELD	17.2	IMC PIPELINE CO I
8245289	82-1021	1711122447		108		EXXON FEE D #3	MONROE GAS FIELD	18.3	IMC PIPELINE CO I
-BETHLAN PRODUCTION CORP				RECEIVED:	07/27/82	JA: LA			
8245228	82-1083	1707321626		108		BENTZ #1	MONROE GAS FIELD	12.7	IMC PIPELINE CO I
8245274	82-1086	1707321673		108		BENTZ #5	MONROE GAS FIELD	12.7	IMC PIPELINE CO I
*8245292	82-0977	1707321654		108		OSTERLAND #1	MONROE GAS FIELD	6.8	UNITED GAS PIPE L
*8245248	82-1010	1707321689		108		OSTERLAND #10	MONROE GAS FIELD	6.8	UNITED GAS PIPE L
*8245281	82-0978	1707321658		108		OSTERLAND #2	MONROE GAS FIELD	6.8	UNITED GAS PIPE L
*8245233	82-0979	1707321675		108		OSTERLAND #3	MONROE GAS FIELD	6.8	UNITED GAS PIPE L
*8245291	82-0980	1707321652		108		OSTERLAND #4	MONROE GAS FIELD	6.8	UNITED GAS PIPE L
*8245276	82-1006	1707321655		108		OSTERLAND #6	MONROE GAS FIELD	6.8	UNITED GAS PIPE L
*8245227	82-1007	1707321657		108		OSTERLAND #7	MONROE GAS FIELD	6.8	UNITED GAS PIPE L
*8245275	82-1008	1707321656		108		OSTERLAND #8	MONROE GAS FIELD	6.8	UNITED GAS PIPE L
*8245229	82-1009	1707321687		108		OSTERLAND #9	MONROE GAS FIELD	6.8	UNITED GAS PIPE L
*8245219	82-0969	1707321660		108		OSTERLAND PENNZOIL #1	MONROE GAS FIELD	5.8	UNITED GAS PIPE L
*8245283	82-0970	1707321661		108		OSTERLAND PENNZOIL #2	MONROE GAS FIELD	5.8	UNITED GAS PIPE L
*8245271	82-0971	1707321662		108		OSTERLAND PENNZOIL #3	MONROE GAS FIELD	5.8	UNITED GAS PIPE L
*8245272	82-0972	1707321663		108		OSTERLAND PENNZOIL #4	MONROE GAS FIELD	5.8	UNITED GAS PIPE L
*8245282	82-0973	1707321665		108		OSTERLAND PENNZOIL #5	MONROE GAS FIELD	5.8	UNITED GAS PIPE L
*8245270	82-0974	1707321666		108		OSTERLAND PENNZOIL #6	MONROE GAS FIELD	5.8	UNITED GAS PIPE L
*8245279	82-0975	1707321664		108		OSTERLAND PENNZOIL #7	MONROE GAS FIELD	5.8	UNITED GAS PIPE L
*8245280	82-0976	1707321688		108		OSTERLAND PENNZOIL #8	MONROE GAS FIELD	0.0	UNITED GAS PIPE L
*8245232	82-0999	1707321419		108		OUACHITA PARISH SCHOOL BOARD #5	MONROE GAS FIELD	10.0	UNITED GAS PIPE L
*8245277	82-1000	1707321430		108		OUACHITA PARISH SCHOOL BOARD #6	MONROE GAS FIELD	10.0	UNITED GAS PIPE L
*8245231	82-1001	1703214310		108		OUACHITA PARISH SCHOOL BOARD #7	MONROE GAS FIELD	10.0	UNITED GAS PIPE L
*8245278	82-1002	1707321437		108		OUACHITA PARISH SCHOOL BOARD #8	MONROE GAS FIELD	10.0	UNITED GAS PIPE L
*8245230	82-1003	1707321438		108		OUACHITA PARISH SCHOOL BOARD #9	MONROE GAS FIELD	10.0	UNITED GAS PIPE L
-C E & J M WHITE				RECEIVED:	07/27/82	JA: LA			
8245299	82-1147	1707321837		108		FEE #1	MONROE GAS	9.0	MID-LOUISIANA GAS
-DECK OIL CO				RECEIVED:	07/27/82	JA: LA			
8245293	82-2823	1711320378		102-4		A J TAYLOR #1 SIPH-DAV SU A	PERRY FIELD	0.0	
-FRANKS-PETROFUNDS-PLACID-SWEPCO				RECEIVED:	07/27/82	JA: LA			
8245247	82-1143	1701320280		108		BODCAW C PET RA SU A	CASTOR	20.0	UNITED GAS PIPELI
-GAS RESOURCES INC				RECEIVED:	07/27/82	JA: LA			
8245255	82-1056	1711123220		108	000-TF	EXXON #25	MONROE	17.0	IMC PIPELINE CO I
8245273	82-1056	1711123220		103	000-TF	EXXON #25	MONROE	17.0	IMC PIPELINE CO I
8245208	82-1057	1711123221		103	108	EXXON #27	MONROE GAS	16.0	IMC PIPELINE CO I
8245210	82-1069	1711123227		103	108	EXXON #30	MONROE GAS	25.0	IMC PIPELINE CO I
8245246	82-1104	1711123223		103	108	EXXON #32	MONROE	26.0	IMC PIPELINE CO I
-GLENDA PETROLEUM CORP				RECEIVED:	07/27/82	JA: LA			
8245297	82-1201	1707321498		103		PENNZOIL 5 #4 S/N 170615	MONROE	16.0	UNITED GAS PIPELI
8245209	82-1202	1707321511		103		PENNZOIL 5 #7 S/N 170671	MONROE	13.0	UNITED GAS PIPELI
8245269	82-1203	1707321533		103		PENNZOIL5 #10 S/N 176965	MONROE	16.0	UNITED GAS PIPELI
-HADDOX PETROLEUM CORP				RECEIVED:	07/27/82	JA: LA			
8245249	82-1148	1711122895		108		MURPHY #1	MONROE	0.0	MID LOUISIANA GAS
8245245	82-1149	1711123003		108		TAUNTON #1	MONROE	14.2	LOUISIANA POWER &
8245268	82-1173	1711121734		108		THOMAS #1	MONROE	5.8	IMC PIPELINE CO I

JD NO	JA DKT	API NO	D	SEC(1)	SEC(2)	WELL NAME	FIELD NAME	PROD	PURCHASER
8245267	82-1174	1711121735		108		THOMAS #2	MONROE	5.8	IMC PIPELINE CO I
8245296	82-1213	1711123557		103		W B GLADNEY #1	MONROE	0.0	IMC PIPELINE CO I
-IMC EXPLORATION COMPANY				RECEIVED:		07/27/82 JA: LA			
8245261	82-1116	1707321784		108		COLE HEIRS A #18	MONROE	10.0	IMC PIPELINE CO I
8245294	82-1114	1711123270		108		OLIN GAS TRANSMISSION CO #82	MONROE	5.0	IMC PIPELINE CO I
8245242	82-1113	1711123236		108		OLIN MATHIESON #32	MONROE	6.0	IMC PIPELINE INC
8245262	82-1115	1711123312		108		OUACHITA NATIONAL BANK #F-336	MONROE	6.0	IMC PIPELINE CO I
8245218	82-1117	1711123321		108		ROBERSON #F-335	MONROE	10.0	IMC PIPELINE CO I
8245211	82-1118	1706721660		108		TENSAS DELTA #F-344	MONROE	10.0	IMC PIPELINE CO I
-LINVILLE NATURAL GAS CO INC				RECEIVED:		07/27/82 JA: LA			
8245251	82-1110	1711100514		108		A R CROW #3	MONROE	4.0	IMC PIPELINE CO I
8245252	82-1111	1711100512		108		A R CROW #4	MONROE	4.0	IMC PIPELINE CO I
8245244	82-1108	1711100520		108		KATIE CROW SMITH #1	MONROE	3.0	IMC PIPELINE CO I
8245250	82-1109	1711100519		108		KATIE CROW SOUTH #2	MONROE	2.0	IMC PIPELINE CO I
8245295	82-1107	1711121332		108		RABUN #2	MONROE	2.0	IMC PIPELINE CO I
-LOUISIANA CRUDE OIL & GAS CO INC				RECEIVED:		07/27/82 JA: LA			
8245243	81-2685	1711120299		108		HUMBLE-ARCO #4	MONROE GAS	9.0	MID-LOUISIANA GAS
-MARSHALL EXPLORATION INC				RECEIVED:		07/27/82 JA: LA			
8245253	82-1061	1703120145		103		FRANK MATTHEWS "A" #1	BENSON	150.0	SABINE-DESOTO PIP
8245266	82-1177	1703121372		108		MONTGOMERY #1	BENSON	10.0	PRODUCER'S GAS CO
8245298	82-1146	1703121464		108		PANKEY #3	BETHANY-LONGSTREET	10.0	ARKANSAS-LOUISIAN
8245254	82-1112	1703121397		103		WADE #1	BELLE BOWER	160.0	SOUTHERN NATURAL
-MID LOUISIANA GAS COMPANY				RECEIVED:		07/27/82 JA: LA			
8245304	82-1091	1707321609		108		MLG-GTC #21	MONROE GAS FIELD	20.9	MID LOUISIANA GAS
8245303	82-1092	1707321605		108		MLG-GTC #22	MONROE GAS FIELD	11.8	MID LOUISIANA GAS
8245240	82-1093	1707321344		108		MLG-GTC #23	MONROE GAS FIELD	20.3	MID LOUISIANA GAS
8245241	82-1094	1711122825		108		MLG-GTC #24	MONROE GAS FIELD	20.3	MID LOUISIANA GAS
8245265	82-1095	1711122836		108		MLG-GTC #26	MONROE GAS FIELD	20.6	MID LOUISIANA GAS
8245263	82-1214	1711123245		103		MLGC FEE GAS #1076	MONROE GAS FIELD	0.0	MID LOUISIANA GAS
8245302	82-1215	1711123295		103		MLGC FEE GAS #1094	MONROE GAS FIELD	0.0	MID LOUISIANA GAS
8245264	82-1216	1711123540		103		MLGC FEE GAS #1106	MONROE GAS FIELD	0.0	MID LOUISIANA GAS
8245239	82-1217	1711123543		103		MLGC FEE GAS #1107	MONROE GAS FIELD	0.0	MID LOUISIANA GAS
-MIDWAY PRODUCTION CO XIV				RECEIVED:		07/27/82 JA: LA			
8245238	82-1134	1707321835		108		THIBEAUX #2	MONROE	18.0	PETRO-LEWIS CORP
-OLIDITT PRODUCTION INC				RECEIVED:		07/27/82 JA: LA			
8245301	82-1205	1707321714		103	108	ROBERT PHILLIPS #2 174208	MONROE GAS FIELD	0.0	IMC CORP
8245260	82-1206	1707321715		103	108	ROBERT PHILLIPS #3 174209	MONROE GAS FIELD	0.0	IMC PIPELINE CO I
-PRIMOS PRODUCTION CO				RECEIVED:		07/27/82 JA: LA			
8245257	82-1159	1711122903		108		PETRO LEWIS MATTHEWS #7	MONROE	43.8	PETRO LEWIS FUNDS
8245259	82-1154	1711122887		108		PETRO LEWIS UNION PROD FEE 113 #8	MONROE	47.9	PETRO-LEWIS FUNDS
8245258	82-1155	1711122886		108		PETRO LEWIS UNION PROD FEE 113 #9	MONROE	47.8	PETRO LEWIS FUNDS
8245235	82-1156	1711122781		108		PETRO LEWIS W B MCKINNIE #1	MONROE	2.6	PETRO-LEWIS FUNDS
8245234	82-1158	1711122898		108		PETRO-LEWIS C L MCKINNIE #1	MONROE	9.9	PETRO-LEWIS FUNDS
8245236	82-1157	1711122829		108		PETRO-LEWIS M H PACE #1	MONROE	4.1	PETRO-LEWIS FUNDS
8245300	82-1153	1711122816		108		PETRO-LEWIS UNION PROD FEE 113 #3	MONROE	31.2	PETRO-LEWIS FUNDS
8245237	82-1151	1711122814		108		PETRO-LEWIS UNION PROD FEE 113 #1	MONROE	37.9	PETRO-LEWIS FUNDS
8245216	82-1152	1711122815		108		PETRO-LEWIS UNION PROD FEE 113 #2	MONROE	31.2	PETRO-LEWIS FUNDS
-TEDCO				RECEIVED:		07/27/82 JA: LA			
8245256	82-1220	1706720966		108		PERRY HEIRS #5	MONROE	2.0	IMC PIPELINE CO I
8245217	82-1221	1706720967		108		PERRY HEIRS #6	MONROE	3.0	IMC PIPELINE CO I
-TEXAS GENERAL PETROLEUM CORP				RECEIVED:		07/28/82 JA: LA			
8245368	81-2397	1701521579		102-4		TOMMY TAYLOR #2 - #172126	ELM GROVE	150.0	TEXAS EASTERN TRA

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OHIO DEPARTMENT OF NATURAL RESOURCES

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-COLUMBIA GAS TRANSMISSION CORP RECEIVED: 07/16/82 JA: OH

JD NO	JA DKT	API NO	D	SEC(1)	SEC(2)	WELL NAME	FIELD NAME	PROD	PURCHASER
8243739		3408700112		108		MAXELL G MCNEELY 705187	SOUTHERN DIST STE OF	5.0	COLUMBIA GAS TRAN
OKLAHOMA CORPORATION COMMISSION									
-CHASE EXPLORATION CORP				RECEIVED:	07/26/82	JA: OK			
8245319	12481	3507121485		108		HONICK 2-22	UNNAMED	1.0	CITIES SERVICE GA
8245307	12469	3507121119		108		JANTZ 1-20	UNNAMED	1.1	CITIES SERVICE GA
8245317	12453	3507121956		108		MEYERS 2-25	UNNAMED	1.4	CITIES SERVICE GA
8245309	12460	3507121669		108		MILLER #2-28	UNNAMED	3.9	CITIES SERVICE GA
8245316	12449	3507121714		108		PIXLEY 1-25	UNNAMED	1.2	CITIES SERVICE GA
8245308	12465	3507121692		108		ROWE #2-34	UNNAMED	1.2	CITIES SERVICE GA
-DOME PETROLEUM CORP				RECEIVED:	07/26/82	JA: OK			
8245313	15594	3513722777		103		DOYLE #16-32	EAST DUNCAN	83.2	GETTY OIL CO
-GLENCO PETROLEUM CORP				RECEIVED:	07/26/82	JA: OK			
8245318	15198	3506300000		103		C BAILEY #1	GREASY CREEK	31.8	PUBLIC SERVICE CO
-HOLDEN ENERGY CORP				RECEIVED:	07/26/82	JA: OK			
8245314	15439	3508520541		103		CIRCLE "C" 2-1	JOINER CITY	96.0	AMINOIL USA INC
-M M RESOURCES INC				RECEIVED:	07/26/82	JA: OK			
8245311	15621	3508321846		103		SEEDS #1		91.3	EASON OIL CO
-PHILLIPS PETROLEUM COMPANY				RECEIVED:	07/26/82	JA: OK			
8245310	17171	3501721149		108		BLACK A #1	YUKON	18.0	PANHANDLE EASTERN
-RONALD W SUMMERS				RECEIVED:	07/26/82	JA: OK			
8245315	15199	3510525333		103		KING #4		912.5	FUEL PRODUCTS INC
-SHELL OIL CO				RECEIVED:	07/26/82	JA: OK			
8245305	19872	3501521199		107-DP		SHELL FERRIS #1-28		212.4	TENNESSEE GAS PIP
8245306	19868	3501521238		107-DP		SHELL MCCLURE #1-20		1131.5	TENNESSE GAS PIPE
-WALKER CORP				RECEIVED:	07/26/82	JA: OK			
8245312	15620	3501722193		103		TREDWAY 17-2	YUKON	217.0	CONOCO INC
PENNSYLVANIA DEPARTMENT OF ENVIRONMENTAL RESOURCES									
-CABOT OIL & GAS CORP				RECEIVED:	07/23/82	JA: PA			
8245325	12088	3708520360		102-2		BOY SCOUTS OF AMERICA #1	FRENCH CREEK	50.0	TENNESSEE GAS PIP
8245332	12089	3708520360		107-TF		BOY SCOUTS OF AMERICA #1	FRENCH CREEK	50.0	TENNESSEE GAS PIP
8245324	12086	3712131224		102-2		CHARLES LINTON #1	CANAL	50.0	TENNESSEE GAS PIP
8245331	12087	3712131224		107-TF		CHARLES LINTON #1	CANAL	50.0	TENNESSEE GAS PIP
8245326	12090	3703921393		102-2		KENNETH VATTER #1	WAYNE	50.0	TENNESSEE GAS PIP
8245333	12091	3703921393		107-TF		KENNETH VATTER #1	WAYNE	50.0	TENNESSEE GAS PIP
8245323	12084	3703921425		102-2		MARTIN ANDERHALT #1	WAYNE	50.0	TENNESSEE GAS PIP
8245330	12085	3703921425		107-TF		MARTIN ANDERHALT #1	WAYNE	50.0	TENNESSEE GAS PIP
8245320	12078	3703921495		102-2		PETER WAGLER #1	FAIRFIELD	50.0	TENNESSEE GAS PIP
8245327	12079	3703921495		107-TF		PETER WAGLER #1	FAIRFIELD	50.0	TENNESSEE GAS PIP
8245322	12082	3712130977		102-2		RICHARD FIELD #1	CANAL	50.0	TENNESSEE GAS PIP
8245329	12083	3712130977		107-TF		RICHARD FIELD #1	CANAL	50.0	TENNESSEE GAS PIP
8245321	12080	3712130978		102-2		RICHARD FIELD #2	CANAL	50.0	TENNESSEE GAS PIP
8245328	12081	3712130978		107-TF		RICHARD FIELD #2	CANAL	50.0	TENNESSEE GAS PIP
-CONSOLIDATED GAS SUPPLY CORPORATION				RECEIVED:	07/23/82	JA: PA			
8245334	09584	3706521918		108		WN-1765	MCCALMONT TOWNSHIP	0.2	GENERAL SYSTEM PU
-DOC-NCC SERVICE CO				RECEIVED:	07/23/82	JA: PA			
8245335	12076	3712922019		103		GILBERT W & FOSTER POORBAUGH 797-4		30.0	TEXAS EASTERN TRA
8245336	12077	3712922026		103		LOUIS M BEHANNA 1551-3		30.0	TEXAS EASTERN TRA
-DORAN & ASSOCIATES INC				RECEIVED:	07/23/82	JA: PA			
8245337	12092	3706326490		103		R & P COAL CO #5 KN-15	CENTER	30.0	COLUMBIA GAS TRAN

JD NO	JA DKT	API NO	D	SEC(1)	SEC(2)	WELL NAME	FIELD NAME	PROD	PURCHASER
-FELMONT OIL CORPORATION				RECEIVED:	07/23/82	JA: PA			
8245348	12018	3702120143		102-2		DONALD JOHNSON #1 F-335	DRISCOLL HOLLOW	0.0	
8245349	12019	3702120139		102-2		ELIZABETH SABELLA #1 F-334	DRISCOLL HOLLOW	0.0	
8245355	12025	3702120129		102-2		LESTER KLINE #1 F-328	DRISCOLL HOLLOW	0.0	
8245357	12027	3702120105		102-2		MARTIN L BEARER #18 F-308	DRISCOLL HOLLOW	0.0	
8245356	12026	3702120107		102-2		MARTIN L BEARER #21 F-311	DRISCOLL HOLLOW	0.0	
8245353	12023	3702120136		102-2		NELSON MCKEE #2 F-331	DRISCOLL HOLLOW	0.0	
8245352	12022	3702120137		102-2		NELSON MCKEE #3 F-332	DRISCOLL HOLLOW	0.0	
8245351	12021	3702120138		102-2		NELSON MCKEE #4 F-333	DRISCOLL HOLLOW	0.0	
8245350	12020	3702120144		102-2		NELSON MCKEE #5 F-336	DRISCOLL HOLLOW	0.0	
8245347	12017	3702120147		102-2		SPICHER-GROMLEY #2 F-338	DRISCOLL HOLLOW	0.0	
8245354	12024	3721201330		102-2		VINCENT CARPINELLO #1 F-329	DRISCOLL HOLLOW	0.0	
-FOX OIL & GAS INC				RECEIVED:	07/23/82	JA: PA			
8245358	12099	3706326679		103		BUTERBAUGH LAND & TIMBER CORP #1	GREEN TOWNSHIP	25.5	COLUMBIA GAS TRAN
-LAWRENCE FAES				RECEIVED:	07/23/82	JA: PA			
8245345	12112	3708300000		108		OLSON #1	SWEDE HILL	2.0	NATIONAL FUEL GAS
8245346	12113	3708300000		108		OLSON #2	SWEDE HILL	2.1	NATIONAL FUEL GAS
8245338	12105	3708300000		108		TRYON #10	SWEDE HILL	9.8	NATIONAL FUEL GAS
8245342	12109	3708300000		108		TRYON #11	SWEDE HILL	5.1	NATIONAL FUEL GAS
8245343	12110	3708300000		108		TRYON #12	SWEDE HILL	3.0	NATIONAL FUEL GAS
8245344	12111	3708300000		108		TRYON #23	SWEDE HILL	3.0	NATIONAL FUEL GAS
8245341	12108	3708300000		108		TRYON #3	SWEDE HILL	3.9	NATIONAL FUEL GAS
8245340	12107	3708300000		108		TRYON #4	SWEDE HILL	2.1	NATIONAL FUEL GAS
8245339	12106	3708300000		108		TRYON #5	SWEDE HILL	3.9	NATIONAL FUEL GAS
-NORTHWEST NATURAL GAS CO				RECEIVED:	07/23/82	JA: PA			
8245361	12097	3703921548		107-TF		AUSTIN F CONLEY	CONNEAUTVILLE	0.0	NATIONAL FUEL GAS
8245359	12094	3703921548		103		AUSTIN F CONLEY #2	CONNEAUTVILLE	0.0	NATIONAL FUEL GAS
8245360	12095	3703921547		103		MASON H & MARION B BIXLER #1	CONNEAUTVILLE	0.0	NATIONAL FUEL GAS
8245362	12098	3703921547		107-TF		MASON H & MARION B BIXLER #1	CONNEAUTVILLE	0.0	NATIONAL FUEL GAS
-OILMARK & CO INC				RECEIVED:	07/23/82	JA: PA			
8245364	12102	3704920947		108		BALDWIN #1	LAKESHORE	15.0	NATIONAL FUEL GAS
8245363	12100	3704920930		108		BALDWIN #2	LAKESHORE	5.0	NATIONAL FUEL GAS
8245365	12103	3704920931		108		BALDWIN #3	LAKESHORE	10.0	NATIONAL FUEL GAS
-S T JOINT VENTURE-81A				RECEIVED:	07/23/82	JA: PA			
8245367	12003	3703321191		103		GALENTINE #1	NONE	25.0	NATIONAL FUEL GAS
-T W PHILLIPS GAS & OIL CO				RECEIVED:	07/23/82	JA: PA			
8245366	12131	3706320255		108		JAMES W WALLACE #1	WASHINGTON	4.5	T W PHILLIPS GAS
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** DEPARTMENT OF THE INTERIOR, MINERALS MANAGEMENT SERVICE, METAIRIE,LA									
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-AMOCO PRODUCTION CO				RECEIVED:	07/27/82	JA: LA 3			
8245382	G2-2854	1771340092		102-1		OCS-G-4234 #A-2	SOUTH PELTO	2000.0	
8245383	G2-2855	1771340098		102-1		OCS-G-4234 #A-5	SOUTH PELTO	2000.0	
-CNG PRODUCING COMPANY				RECEIVED:	07/27/82	JA: LA 3			
8245373	G2-2588	1771240187		102-5		B-2S2	SHIP SHOAL	700.0	CONSOLIDATED GAS
-EXXON CORPORATION				RECEIVED:	07/27/82	JA: LA 3			
8245381	G2-2857	1770840540		102-1		OCS-G 4109 #A-7	SOUTH MARSH ISLAND	4000.0	COLUMBIA GAS TRAN
-GULF OIL CORPORATION				RECEIVED:	07/27/82	JA: LA 3			
8245374	G2-2604	1771140601		102-5		SHIP SHOAL B 169 OCS-G0820#BB6 S/T	SHIP SHOAL	200.0	TRANSCONTINENTAL
-KERR-MCGEE CORPORATION				RECEIVED:	07/27/82	JA: LA 3			
8245395	G2-2822	1771140624		107-DP		OCS 0347 #4	SHIP SHOAL	1395.0	TRANSCONTINENTAL
-MARATHON OIL COMPANY				RECEIVED:	07/27/82	JA: LA 3			
8245394	G2-2595	1771240253		102-5		SHIP SHOAL BLK 253 WELL E-3 S2	SHIP SHOAL	730.0	TRANSCONTINENTAL

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JD NO	JA DKT	API NO	D	SEC(1)	SEC(2)	WELL NAME	FIELD NAME	PROD	PURCHASER
-MOBIL OIL EXPLORATION & PROD S E				RECEIVED: 07/27/82		JA: LA 3			
8245376	G2-2719	1771140419		102-5		OCS-060 #17A SHIP BLK 72	SHIP SHOAL	730.0	TRANSCONTINENTAL
8245380	G2-2558	1771140590		102-5		SHIP SHOAL 63 #9A	SHIP SHOAL	256.0	TRANSCONTINENTAL
8245384	G2-2557	1771140590		102-5		SHIP SHOAL 63 #9B (ALT)	SHIP SHOAL	73.0	TRANSCONTINENTAL
8245372	G2-2556	1771140590		102-5		SHIP SHOAL 63 #9C	SHIP SHOAL	500.0	TRANSCONTINENTAL
8245390	G2-2621	1771140368		102-5		SHIP SHOAL 72 #13 E (ALT)	SHIP SHOAL	365.0	TRANSCONTINENTAL
8245398	G2-2622	1771140368		102-5		SHIP SHOAL 72 #13 F (ALT)	SHIP SHOAL	518.0	TRANSCONTINENTAL
-MTS LIMITED PARTNERSHIP				RECEIVED: 07/27/82		JA: LA 3			
*8245378	G2-2640	1770640389		102-5		VERMILION BLK 348 WELL #A-20	VERMILION BLOCK	1825.0	TRANSCONTINENTAL
-TEXOMA PRODUCTION CO				RECEIVED: 07/27/82		JA: LA 3			
8245388	G2-2613	1770440507		102-5		EAST CAMERON 340 WELL #A-4	EAST CAMERON	1300.0	NATURAL GAS PIPEL
8245391	G2-2614	1770440507		102-5		EAST CAMERON 340 WELL #A-4 ALT 1	EAST CAMERON	0.0	NATURAL GAS PIPEL
8245377	G2-2608	1770440507		102-5		EAST CAMERON 340 WELL #A-4 ALT 2	EAST CAMERON	0.0	NATURAL GAS PIPEL
8245386	G2-2609	1770440511		102-5		EAST CAMERON 340 WELL #A-5	EAST CAMERON	0.0	NATURAL GAS PIPEL
8245392	G2-2606	1770440500		102-5		EAST CAMERON 347 WELL #A-1	EAST CAMERON	0.0	NATURAL GAS PIPEL
8245389	G2-2612	1770440327		102-5		EAST CAMERON 347 WELL #A-3	EAST CAMERON	1300.0	NATURAL GAS PIPEL
8245393	G2-2607	1770440327		102-5		EAST CAMERON 347 WELL #A-3 ALT	EAST CAMERON	0.0	NATURAL GAS PIPEL
8245375	G2-2610	1770440518		102-5		EAST CAMERON 347 WELL #A-6	EAST CAMERON	0.0	NATURAL GAS PIPEL
8245379	G2-2611	1770440500		102-5		EAST CAMERON 347 WELL A-1	EAST CAMERON	780.0	NATURAL GAS PIPEL
-UNION OIL COMPANY OF CALIF				RECEIVED: 07/27/82		JA: LA 3			
8245397	G2-2598	1771240254		102-5		OCS-G 1031 #E-4	SHIP SHOAL BLOCK	1000.0	TRANSCONTINENTAL
8245387	G2-2846	1771040780		102-1		OCS-G 3570 #A-1	EUGENE ISLAND	639.0	TEXAS GAS TRANSMI
8245396	G2-2797	1771540440		102-1		OCS-G 4000 #A-13	SOUTH TIMBALIER	1585.0	TENNESSEE GAS PIP
8245385	G2-2837	1770540503		102-1		OCS-G 4787 #1	VERMILION	1825.0	
-CONOCO INC				RECEIVED: 07/27/82		JA: TX 3			
8245370	G2-2510	4271240029		102-5		MUSTANG ISLAND A-85 A-3D	MUSTANG ISLAND	5475.0	TRANSCONTINENTAL
-MCMORAN OFFSHORE EXPLORATION CO				RECEIVED: 07/27/82		JA: TX 3			
8245371	G2-2850	4270340097		102-1		OCS-G 3932 #A-8	MATAGORDA ISLAND	7300.0	
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** DEPARTMENT OF THE INTERIOR, MINERALS MANAGEMENT SERVICE, ALBUQUERQUE,NM									
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-JEROME P MCHUGH				RECEIVED: 07/26/82		JA: NM 4			
8245369		3003920348	D	108-PB		TIGER #1	TAPACITO PICTURED CLI	17.0	NORTHWEST PIPELIN

OTHER PURCHASERS VOLUME NO :711

8245219	IMC PIPELINE CO INC
8245227	IMC PIPELINE CO INC
8245229	I M C PIPELINE CO INC
8245230	I M C PIPELINE CO INC
8245231	I M C PIPELINE CO IN
8245232	I M C PIPELINE CO INC
8245233	I M C PIPELINE CO INC
8245248	IMC PIPELINE CO INC
8245270	IMC PIPELINE CO INC
8245271	IMC PIPELINE CO INC
8245272	IMC PIPELINE CO INC
8245275	IMC PIPELINE CO INC
8245276	IMC PIPELINE CO INC
8245277	IMC PIPELINE CO INC
8245278	IMC PIPELINE CO INC
8245279	IMC PIPELINE CO INC
8245280	IMC PIPELINE CO INC
8245281	IMC PIPELINE CO INC
8245282	IMC PIPELINE CO INC
8245283	IMC PIPELINE CO INC
8245291	IMC PIPELINE CO INC
8245292	IMC PIPELINE CO INC
8245378	TRUNKLINE GAS CO

Kenneth F. Plumb,

Secretary.

[FR Doc. 82-23371 Filed 8-25-82; 8:45 am]

BILLING CODE 6717-01-C

Office of Hearings and Appeals

Issuance of Decisions and Orders; Week of June 28 Through July 2, 1982

Correction

In the issue of Thursday, August 19, 1982, two duplicate documents regarding the issuance of decisions and orders for the week of June 28—July 2, 1982, were published at pages 36273 and 36274. The original document is published as FR Doc. 82–22631 beginning on page 36274. The duplicate document (FR Doc. 82–22632) incorrectly reflects the August 13, 1982 signature date as August 10, 1982.

BILLING CODE 1505-01-M

ENVIRONMENTAL PROTECTION AGENCY

[OPTS–51422; TSH–FRL 2171–5]

Certain Chemicals; Premanufacture Notices

Correction

In FR Doc. 82–19149 appearing on page 31063 in the issue for Friday, July 16, 1982, the OPTS number was inclrrectly printed in the heading as "OPTS–51442". The correct number is "OPTS–51422".

BILLING CODE 1505-01-M

[OW-FRL 2195-7]

National Drinking Water Advisory Council; Open Meeting

Under section 10(a)(2) of Pub. L. 92–423, "The Federal Advisory Committee Act," notice is hereby given that a meeting of the National Drinking Water Advisory Council established under the Safe Drinking Water Act, as amended (42 U.S.C. S300f *et seq.*), will be held at 9:00 a.m. on September 23, 1982, and at 8:30 a.m. on September 24, 1982, at EPA Headquarters, Room S353, Mall Area, 401 M Street, SW., Washington, D.C. 20460. Council Subcommittees will be meeting at EPA Headquarters on September 22, 1982.

The purpose of the meeting is to discuss the Advance Notice of Proposed Rulemaking on Volatile Organic Chemicals as published in the Federal Register, Vol. 47, No. 43, on March 4, 1982.

This meeting will be open to the public. The Council encourages the hearing of outside statements and will allocate a portion of its meeting time for public participation. Oral statements are generally limited to 15 minutes followed by a 15 minute discussion period. It is preferred that there be one presentor for each statement. Any outside parties interested in presenting an oral statement should petition the Council in writing. The petition should inculude the topic of the proposed statement, the petitioner's telephone number and should be received by the Council before September 10, 1982.

Any person who wishes to file a written statement can do so before or after a Council meeting. Accepted written statements will be recognized at the Council meeting and will be part of the permanent meeting record.

Any member of the public wishing to attend the Council meeting, present an oral statement, or submit a written statement, should contact Ms. Charlene Shaw, Executive Assistant, National Drinking Water Advisory Council, Office of Drinking Water (WH–550), U.S. Environmental Protection Agency, 401 M Street SW., Washington, D.C. 20460.

The telephone number is: Area Code 202/426–8877.

Dated: August 16, 1982.

Frederic A. Eidsness, Jr.,

Assistant Administrator for Water.

[FR Doc. 82–23347 Filed 8–25–82; 8:45 am]

BILLING CODE 6560-50-M

[A-1-FRL-2195-V4]

Region I; Approval of a PSD Permit

Notice is hereby given that the Environmental Protection Agency (EPA) has issued a Prevention of Significant Deterioration (PSD) permit to UOP, Inc., Des Plaines, Illinois (PSD–029121MA16) to construct and operate a resource recovery facility in North Andover, Massachusetts. The PSD permit was issued on May 27, 1982.

This permit has been issued under EPA's PSD regulations (40 CFR 52.21) and is subject to certain conditions. These include:

1. The firing rate will not exceed 62.5 tons of municipal solid waste per hour;

2. Oil firing will take place in the auxiliary boiler only. The maximum firing rate of the auxiliary boiler will not exceed 140 gallons per hour of No. 2 fuel oil having a sulfur content of not more than 0.3%;

3. The auxiliary boiler cannot operate simultaneously with the solid waste boiler;

4. TSP emissions will not exceed 0.05 gr/dscf, corrected to 12% CO_2;

5. SO_2 emissions will not exceed 0.27 lb/million BTU;

6. NO_x emissions will not exceed 0.32 lb/million BTU;

7. CO emissions will not exceed 0.07 lb/million BTU; and,

8. Sulfuric acid emissions will not exceed 0.02 lb/million BTU.

The time period established by the Consolidated Permit Regulations at 40 CFR 124.19 for petitioning the Administrator to review any condition of the permit decision has expired. Such a petition to the Administrator is, under 5 U.S.C. 704, a prerequisite to the seeking of judicial review of the final agency action. No petitions for review of this permit have been filed with the Administrator.

Copies of the application and permit are available for public inspection upon request at the following locations: U.S. Environmental Protection Agency, Region I, State Air Programs Branch, Rm 1903, JFK Federal Building, Boston, Massachusetts 02203; and, Massachusetts Department of Environmental Quality Engineering, Metropolitan Boston-Northeast Region, Air Section, 323 New Boston St., Woburn, Massachusetts 01801.

Dated: July 27, 1982.

Lester A. Sutton, P.E.,

Regional Administrator, Region I.

[FR Doc. 82–23344 Filed 8–25–82; 8:45 am]

BILLING CODE 6560-50-M

EQUAL EMPLOYMENT OPPORTUNITY COMMISSION

Agency Report Forms Under OMB Review; Request for Comments

AGENCY: Equal Employment Opportunity Commission.

ACTION: Request for comments.

SUMMARY: Under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35), agencies are required to submit proposed information collection requests to OMB for review and approval, and to publish a notice in the **Federal Register** notifying the public that the agency has made such a submission. The proposed report forms under review are listed below.

DATE: Comments must be received on or before October 12, 1982. If you anticipate commenting on a report form but find that time to prepare will prevent you from submitting comments promptly, you should advise the OMB Reviewer and the Agency Clearance Officer of your intent as early as possible.

ADDRESS: Copies of the proposed report form, the request for clearance (S.F. 83), supporting statement, instructions,

transmittal letters, and other documents submitted to OMB for review may be obtained from the Agency Clearance Officer. Comments on the item listed should be submitted to the Agency Clearance Officer and the OMB Reviewer.

FOR FURTHER INFORMATION CONTACT:

EEOC Agency Clearance Officer: Thomas P. Goggin, Office of Administration, Room 3230, 2401 E Street, NW., Washington, D.C. 20506; Telephone (202) 634–6983.

OMB Reviewer: Richard Eisinger, Office of Information and Regulatory Affairs, Office of Management and Budget, Room 3208, New Executive Office Building, Washington, D.C. 20503; Telephone (202) 395–6880.

Type of Request Extension (Burden Change—Decrease)
Title: Local Union Report, EEO–3
Form Number: EEOC FORM 274
Frequency of Report: Annually
Type of Respondent: Businesses/other institutions
Standard Industrial Classification (SIC) Code: 863
Description of Affected Public: Referral Unions with 100 or more members.
Responses: 3,000
Reporting Hours: 4,500
Federal Cost: $30,900
Applicable under Section 3504(h) of Public Law 96–511: Not applicable
Number of Forms: 1
Abstract—Needs/Uses: Data are used to investigate charges of employment discrimination against local unions and apprenticeship programs and in EEOC systemic program decisions. Data are shared with 38 State and 102 local Fair Employment Practice Commission agencies, and other Federal agencies.

Type of Request Extension (No Change)
Title: Employer Information Report, EEO–1
Form Number: S.F. 100
Frequency of Report: Annually
Type of Respondent: Businesses/other institutions
Standard Industrial Classification (SIC) Code: Multiple
Description of Affected Public: All employers with 100 or more employees and Federal government contractors with 50 or more employees
Responses: 180,000
Reporting Hours: 900,000
Federal Cost: $542,500
Applicable under Section 3504(h) of Public Law 96–511: Not applicable
Number of Forms: 1
Abstract—Needs/Uses: Data are used by EEOC to investigate charges of discrimination in employment against private employers. Data are shared with several Federal government agencies particularly the Office of Federal Contract Compliance Programs, Labor Department, and also with the State and local Fair Employment Practice Commission agencies.

For the Commission.

Clarence Thomas,

Chairman, Equal Employment Opportunity Commission.

[FR Doc. 82–23462 Filed 8–25–82; 8:45 am]

BILLING CODE 6570–06–M

FEDERAL DEPOSIT INSURANCE CORPORATION

Forms Submitted to OMB for Review

AGENCY: Federal Deposit Insurance Corporation.

ACTION: Notice of forms submitted to OMB for review and approval under the Paperwork Reduction Act of 1980.

TITLE OF INFORMATION COLLECTION: Consolidated Reports of Condition and Consolidated Reports of Income (State Banks not members of the Federal Reserve System).

BACKGROUND: In accordance with requirements of the Paperwork Reduction Act of 1980 (44 U.S.C. Chapter 35), the FDIC hereby gives notice that it has submitted to the Office of Management and Budget a form SF–83, "Request for OMB Review," for the information collection system identified above.

ADDRESS: Written comments may be sent to Mr. Hoyle L. Robinson, Executive Secretary, Federal Deposit Insurance Corporation, 550 17th Street, NW., Washington, D.C. 20429 and to Mr. Richard Sheppard, Reports Management Branch, Office of Management and Budget, New Executive Office Building, Room 3208, Washington, D.C. 20503. Comments should be received on or before October 25, 1982.

FOR FURTHER INFORMATION CONTACT: For a complete copy of the "Request for OMB Review" or related information, contact Dr. Panos Konstas, Information Clearance Officer, FDIC, telephone (202) 389–4351.

SUMMARY: The proposed information collection involves an addition to the Consolidated Reports of Condition and Income (Call Reports). This addition is to be made to the reports that will be filed as of September 30, 1982. The schedule to be added is: Supervisory Supplement 1—"Past Due, Nonaccrual, and Renegotiated Loans and Lease Financing Receivables." The FDIC will collect this supplemental schedule from all 8,930 insured state nonmember commercial banks.

Information collected in Supervisory Supplement 1 will be used for specific supervisory purposes, including the scheduling, planning, and conducting of onsite bank examinations, and for the effective discharge of the FDIC's responsibilities as the insurer of state nonmember, state member, and national banks.

It is estimated that the collection of Supplement 1 will create a reporting burden of about one hour per filing for each of the 8,930 respondent banks.

Federal Deposit Insurance Corporation.

Hoyle L. Robinson,

Executive Secretary.

[FR Doc. 82–23313 Filed 8–25–82; 8:45 am]

BILLING CODE 6714–01–M

FEDERAL MARITIME COMMISSION

Security for the Protection of the Public Financial Responsibility To Meet Liability Incurred for Death or Injury to Passengers or Other Persons on Voyages; Issuance of Certificate (Casualty)

Notice is hereby given that the following have been issued a Certificate of Financial Responsibility To Meet Liability Incurred for Death or Injury to Passengers or Other Persons on Voyages pursuant to the provisions of Section 2, Pub. L. 89–777 (80 Stat. 1356, 1357) and Federal Maritime Commission General Order 20, as amended (46 CFR Part 540): Maritime Enterprises (1981) Ltd., Artus Investment, Inc. and Paquet Cruises Inc., c/o Paquet Cruises Inc., 1370 Avenue of the Americas, New York, New York 10019.

Dated: August 20, 1982.

Francis C. Hurney,

Secretary.

[FR Doc. 82–23461 Filed 8–25–82; 8:45 am]

BILLING CODE 6730–01–M

Security for the Protection of the Public Indemnification of Passengers for Nonperformance of Transportation; Issuance of Certificate (Performance)

Notice is hereby given that the following have been issued a Certificate of Financial Responsibility for Indemnification of Passengers for Nonperformance of Transportation pursuant to the provisions of Section 3, Pub. L. 89–777 (80 Stat. 1357, 1358) and

Federal Maritime Commission General Order 20, as amended (46 CFR Part 540): Coastal Cruise Lines, Inc. and Clipper Cruise Line, Inc., 120 South Central, St. Louis, Missouri 63105.

Dated: August 23, 1982.

Francis C. Hurney,

Secretary.

[FR Doc. 82-23460 Filed 8-25-82; 8:45 am]

BILLING CODE 6730-01-M

FEDERAL RESERVE SYSTEM

Acquisition of Bank Shares by Bank Holding Company

The company listed in this notice has applied for the Board's approval under section 3(a)(3) of the Bank Holding Company Act (12 U.S.C. 1842(a)(3)) to acquire voting shares or assets of a bank. The factors that are considered in acting on the application are set forth in section 3(c) of the Act (12 U.S.C. 1842(c)).

The application may be inspected at the offices of the Board of Governors, or at the Federal Reserve Bank indicated. With respect to the application, interested persons may express their views in writing to the address indicated. Any comment on the application that requests a hearing must include a statement of why a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute and summarizing the evidence that would be presented at a hearing.

A. **Secretary, Board of Governors of the Federal Reserve System,** Washington, D.C. 20551:

1. *Bank Securities, Inc.*, Albuquerque, New Mexico; to acquire 100 percent of the voting shares or assets of American National Bank of Santa Fe, Santa Fe, New Mexico. The application may be inspected at the Federal Reserve Bank of Dallas. Comments on this application must be received not later than September 20, 1982.

Board of Governors of the Federal Reserve System, August 20, 1982.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 82-23301 Filed 8-25-82; 8:45 am]

BILLING CODE 6210-01-M

Acquisition of Bank Shares by Bank Holding Companies

The companies listed in this notice have applied for the Board's approval under section 3(a)(1) of the Bank Holding Company Act (12 U.S.C. 1842(a)(1)) to become bank holding companies by acquiring voting shares and/or assets of a bank. The factors that are considered in acting on the applications are set forth in section 3(c) of the Act (12 U.S.C. 1842(c).

Each application may be inspected at the offices of the Board of Governors, or at the Federal Reserve Bank indicated for that application. With respect to each application, interested persons may express their views in writing to the address indicated for that application. Any comment on an application that requests a hearing must include a statement of why a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute and summarizing the evidence that would be presented at a hearing.

A. **Federal Reserve Bank of Kansas City** (Thomas M. Hoenig, Assistant Vice President) 925 Grand Avenue, Kansas City, Missouri 64198:

1. *Bunceton Bancshares, Inc.*, Blue Springs, Missouri; to become a bank holding company by acquiring 100 percent of the voting shares of Bunceton State Bank, Bunceton, Missouri. Comments on this application must be received not later September 20, 1982.

B. **Federal Reserve Bank of San Francisco** (Harry W. Green, Vice President) 400 Sansome Street, San Francisco, California 94120:

1. *Fresno Bancorp*, Fresno, California; to become a bank holding company by acquiring 100 percent of the voting shares of the successor by merger to Bank of Fresno, Fresno, California. Comments on this application must be received not later than September 20, 1982.

Board of Governors of the Federal Reserve System, August 20, 1982.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 82-23302 Filed 8-25-82; 8:45 am]

BILLING CODE 6210-01-M

Bank Holding Companies; Proposed de Novo Nonbank Activities

The bank holding companies listed in this notice have applied, pursuant to section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) and § 225.4(b)(1) of the Board's Regulation Y (12 CFR 225.4(b)(1)), for permission to engage *de novo* (or continuesa to engage in an activity earlier commenced *de novo*), directly or indirectly, solely in the activities indicated, which have been determined by the Board of Governors to be closely related to banking.

With respect to each application, interested persons may express their views on the question whether consummation of the proposal can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interest, or unsound banking practices." Any comment on an application that requests a hearing must include a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of that proposal.

Each application may be inspected at the offices of the Board of Governors or at the Federal Reserve Bank indicated for that application. Comments and requests for hearings should identify clearly the specific application to which they relate, and should be submitted in writing and received by the appropriate Federal Reserve Bank not later than the date indicated for each application.

A. **Federal Reserve Bank of New York** (A. Marshall Puckett, Vice President), 33 Liberty Street, New York, New York 10045:

1. *Manufacturers Hanover Corporation*, New York, New York (office relocation; Illinois): To continue to hold the shares of Manufacturers Hanover Mortgage Corporation ("MHMC") after MHMC engages in the activities of arranging, making, or acquiring for its own account or for the account of others loans and other extensions of credit such as would be made or acquired by a mortgage company; servicing such loans and other extensions of credit; and acting as agent or broker for the sale of credit life insurance and credit accident and health insurance relating to such loans and other extensions of credit in Homewood, Illinois. MHMC presently engages in these activities in Oak Lawn, Illinois. MHMC presently serves customers in Cook, Will, and Dupage, Counties. MHMC has submitted an application for prior approval to expand the service area to include Lake County. From the Oak Lawn location, MHMC would serve customers in the present service area and the proposed expanded service area. Comments on this application must be received not later than September 20, 1982.

2. *Manufacturers Hanover Corporation*, New York, New York (expansion of service area; Maryland): To expand the service area of Manufacturers Hanover Mortgage Corporation ("MHMC") located in

Lanham, Maryland. MHMC engages in the activities of arranging, making, or acquiring for its own account or for the account of others loans and other extensions of credit such as would be made or acquired by a mortgage company; servicing such loans and other extensions of credit; and acting as agent or broker for the sale of credit life insurance and credit accident and health insurance relating to such loans and other extensions of credit. MHMC presently serves customers in Montgomery and Prince Georges Counties, Maryland. MHMC will continue to serve these customers and proposes to expand the service area to include Calvert, Anne Arundel, Charles, Howard, Frederick, Baltimore, Harford, St. Mary's, and Worcester Counties, Maryland, Sussex and Kent Counties in the State of Delaware, and the District of Columbia. Comments on this application must be received not later than September 20, 1982.

B. **Federal Reserve Bank of Philadelphia** (Thomas K. Desch, Vice President), 100 North 6th Street, Philadelphia, Pennsylvania 19105:

Philadelphia National Corporation, Philadelphia, Pennsylvania (commercial finance and factoring; Minneapolis, Minnesota): To engage through its subsidiary, Congress Financial Corporation, in commercial finance and factoring activities including the solicitation and making of loans to businesses and corporations secured by accidents receivable, inventory, machinery and equipment and/or other commercial finance collateral and the factoring of accounts receivable. These activities would be conducted from an office located in Minneapolis, Minnesota, serving Minneapolis, Minnesota and surrounding areas. Comments on this application must be received not later than September 20, 1982.

C. **Federal Reserve Bank of Cleveland** (Harry W. Hunting, Vice President), 1455 East Sixth Street, Cleveland, Ohio 44101:

1. *BancOhio Corporation*, Columbus, Ohio (financing and servicing activities; Ohio): To engage, through its subsidiary, BancOhio Mortgage Company, in making, acquiring or servicing for its own account or for the account of others, all types of residential and commercial mortgage loans and other extensions of credit (including issuing letters of credit and accepting drafts) and such other activities as are incidental thereto. These activities will be conducted from office in Columbus, Worthington, Cincinnati, Dayton, and Cleveland, Ohio and BancOhio Mortgage Company's existing main office in Columbus, Ohio serving the entire states of Ohio and Kentucky. Comments on this application must be received not later than September 15, 1982.

Board of Governors of the Federal Reserve System, August 20, 1982.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 82-23300 Filed 8-25-82; 8:45 am]

BILLING CODE 6210-01-M

National Westminster Bank PLC and NatWest Holdings, Inc.; Proposed Acquisition of Certain Assets and Liabilities of the Factoring Division of First Pennsylvania Bank, N.A.

National Westminster Bank, PLC, London, England and NatWest Holdings, Inc., New York, New York have applied, pursuant to section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) and § 225.4(b)(2) of the Board's Regulation Y (12 CFR 225.4(b)(c)), for permission to acquire through their wholly owned subsidiary, NatWest Commercial Services, Inc., Wilmington, Delaware, the business and certain assets and to assume certain liabilities of the factoring division of First Pennsylvania Bank, Philadelphia, Pennsylvania.

Applicants state that the proposed subsidiary would continue to engage in factoring and commercial finance activities and would expand its services to new types of industry customers. In addition, Applicant intends to offer international factoring services to domestic clients. These activities would be performed from the newly acquired offices of the Applicants subsidiary including offices in Philadelphia, Pennsylvania, New York, New York, and Dalton, Georgia. The Philadelphia and New York offices currently serve the northeastern and southeastern regions of the U.S., and the Dalton office currently serves the southeastern region of the U.S. Thus, Applicants will expand the above described activities in these geographic areas. Such activities have been specified by the Board in § 225.4(a) of Regulation Y as permissible for bank holding companies, subject to Board approval of individual proposals in accordance with the procedures of § 225.4(b).

Interested persons may express their views on the question whether consummation of the proposal can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices." Any request for a hearing on this question must be accompanied by a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

The application may be inspected at the offices of the Board of Governors or at the Federal Reserve Bank of New York.

Any person wishing to comment on the application should submit views in writing to the Reserve Bank to be received no later than September 19, 1982.

Board of Governors of the Federal Reserve System, August 20, 1982.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 82-23303 Filed 8-25-82; 8:45 am]

BILLING CODE 6210-01-M

Citicorp; Proposed Acquisition of Fidelity Savings and Loan Association of San Francisco, Notice of Second Informal Hearing in Washington, D.C.

Citicorp, New York, New York, a bank holding company within the meaning of the Bank Holding Company Act (the "Act"), has applied for the Board's approval under section 4(c)(8) of the Act (12 U.S.C. 1843(c)(8)) and § 225.4(b)(2) of the Board's Regulation Y (12 CFR 225.4(b)(2)), to acquire all of the voting shares of Fidelity Federal Savings and Loan Association of San Francisco, San Francisco, California, a stock Federal savings and loan association. Citicorp will thereby engage in the activity of operating a savings and loan association from offices located in California that serve the areas surrounding those offices. A service corporation subsidiary of Fidelity also provides ancillary services from offices in Hawaii and Nevada.

The Federal Home Loan Bank Board has requested that the Board act expeditiously on the application in view of the emergency nature of the Fidelity situation.

Although the Board has not added the operation of a savings and loan association to the list of nonbanking activities permissible for bank holding companies set forth in § 225.4(a) of the Board's Regulation Y (12 CFR 225.4(a)), the Board has determined by individual order that the operation of a savings and loan association such as Fidelity is closely related to banking.

On August 18, 1982, the Board published notice of this application in the **Federal Register** (47 FR 36018) and afforded the opportunity for interested persons to express their views on the question whether the acquisition of Fidelity would be so closely related to banking as to be a proper incident thereto within the meaning of the Act. In view of the request of the Federal Home Loan Bank Board for expeditious action and the serious financial condition of Fidelity, a 15 day notice period was provided. The time for submitting written comments expires September 2, 1982. The Board also directed that an informal public hearing be held on September 4, 1982, at the Federal Reserve Bank of San Francisco to provide interested persons an opportunity to be heard.

On August 20, 1982, the Board announced by press release that it will hold an additional informal hearing in Washington, D.C., to receive comments and afford interested persons an opportunity to be heard on this proposal. This informal public hearing on the application in Washington, D.C., will be held at the offices of the Board of Governors of the Federal Reserve System, in the Martin Building, at 20th and C Streets, NW., Washington, D.C., on September 2, 1982, commencing at 10 a.m. The presiding officer at the hearing shall be authorized to administer oaths and to establish time limits for persons wishing to be heard. A person wishing to present evidence at this informal hearing should file with the Secretary of the Board a request to appear at the hearing. The request to present evidence should be received at the Secretary's office in Washington, D.C. 20551, no later than August 31, 1982, and should specify the names of the persons who desire to present evidence, the interest of those persons in the proceeding, the matters concerning which those persons desire to present evidence, and that the persons will be appearing at the Washington D.C. hearing.

The application may be inspected at the offices of the Board of Governors in Washington, D.C., or at the Federal Reserve Banks of New York or San Francisco.

Board of Governors of the Federal Reserve System, August 24, 1982.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 82-23571 Filed 8-25-82; 8:45 am]

BILLING CODE 6210-01-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Alcohol, Drug Abuse, and Mental Health Administration

Mental Health Small Grant Review Committee; Meeting

In accordance with Section 10(a)(2) of the Federal Advisory Committee Act (5 U.S.C. Appendix I), announcement is made of the following national advisory body scheduled to assemble during the month of September 1982.

Mental Health Small Grant Review Committee

September 9–11; 1:30 p.m.

The Capitol Hill, 200 C Street SE., Rooms 308 and 408, Washington, D.C. 20003

Open—September 9; 1:30–2:30 p.m.

Closed—Otherwise

Contact: Ms. Virginia Harter, Parklawn Building

Room 9–95, 5600 Fishers Lane, Rockville, Maryland 20857, (301) 443–4843

Purpose: The Committee is charged with the initial review of applications for assistance from the National Institute of Mental Health, the National Institute on Alcohol Abuse and Alcoholism, and the national Institute on Drug Abuse for support of research in all disciplines pertaining to alcohol, drug abuse, and mental health, including psychiatry, psychological sciences, biological sciences, and epidemiology, and makes recommendations to the National Advisory Councils of the respective Institutes for final review.

Agenda: From 1:30–2:30 p.m. on September 9, the meeting will be open for discussion of administrative announcements and program developments. Otherwise, the Committee will be performing initial review of applications for assistance and will not be open to the public in accordance with the determination by the Administrator, Alcohol, Drug Abuse, and Mental Health Administration, pursuant to the provisions of 5 U.S.C. 552b (c)(6), and Section 10(d) of Pub. L. 92–463 (5 U.S.C. Appendix I).

Substantive program information may be obtained from the contact person listed above. A summary of the meeting and a roster of the committee members will be furnished upon request from Ms. Helen W. Garrett, Committee Management Officer, National Institute of Mental Health, Parklawn Building, Room 17C26, Rockville, Maryland 20857, (301) 443–4333.

Dated: August 20, 1982.

Elizabeth A. Connolly,

Committee Management Officer, Alcohol, Drug Abuse, and Mental Health Administration.

[Fr Doc. 82-23296 Filed 8-25-82; 8:45am]

BILLING CODE 4170-20-M

Office of the Secretary

Privacy Act of 1974; Report on New System

AGENCY: Health and Human Services Department.

ACTION: Notification of Report on New System, Health Care Program Violations, HHS/OS/OIG.

SUMMARY: The Department of Health and Human Services (HHS) proposes to establish a new system of records entitled Health Care Program violations, HHS/OS/OIG, under the Privacy Act. Written comments will be received until September 27, 1982.

DATES: The Department sent new system reports for this system to the Congress and OMB on August 23, 1982. The system notice will be effective 60 days from the date submitted to OMB. The routine uses will be effective 30 days from the date of publication provided no comment is received which results in a contrary determination. However, no routine use disclosure will be made until the effective date of the system notice.

ADDRESS: Comments should be addressed to Mr. Al Shpiegelman, Department of Health and Human Services, 200 Independence Avenue, SW., Washington, D.C. 20201. Comments received will be available for inspection in Room 5640, HHS North Building, 330 Independence Ave. SW., Washington, D.C. 20201.

FOR FURTHER INFORMATION CONTACT: Mr. Al Shpiegelman, Office of Inspector General, Department of Health and Human Services, 330 Independence Avenue SW., Room 5655, Washington, D.C. 20201, or call (202) 472–3482.

SUPPLEMENTARY INFORMATION: The proposed system of records will serve as a clearinghouse for public information on persons or organizations suspended, excluded or debarred from health care programs, or convicted of violations in such programs. The system should help the Department and other government and private agencies and organizations to determine whether such persons or organizations are also committing violations in their own health assistance and insurance programs. In addition, the information will be useful for aggregate

statistical analysis, to determine trends, impact and priorities.

Under current law, suppliers of health care services may be suspended, excluded or terminated from participation in the Medicare and Medicaid programs for violations of Titles XVIII or XIX of the Social Security Act. This system of records will alert other health related programs as well as the medicare and Medicaid programs to potentially fraudulent claims for reimbursement or other significant evidence of a lack of integrity.

The system will also give organizations responsible for licensing, certifying or otherwise approving the health-related activities of suppliers the information they may need for their decisions. In addition, the system should serve as a deterrent by virtue of public knowledge of its very existence. Finally, it offers a means of analyzing trends and impact in fraud and abuse detection and determining priorities for resource allocation.

The information in the records will be submitted by concerned agencies and organizations to the Department, for analysis and merging into a master list. The merged list will be disseminated periodically to participating agencies and organizations. The source of information will be indicated on the list to enable recipients on it to verify its accuracy. In addition, participating agencies and organizations will be required to update any information they provide, to assure accuracy. It will, however, ultimately be the responsibility of the recipients of the information to verify it before use as the basis for any formal action.

The disclosures provided for under the routine uses, are necessary to accomplish the purpose of the system of records by providing alerting information to organizations that investigate or regulate fraud or abuse in the health care field, or organizations that may fall victim to such fraud or abuse. Disclosures from this system of records also may be made in accordance with the disclosure provisions of the Privacy Act (5 U.S.C. 522a(b)).

Dated: August 23, 1982.

Richard P. Kusserow,

Inspector General.

09-90-0101

SYSTEM NAME:

Health Care Program Violations, HHS/OS/OIG

SECURITY CLASSIFICATION:

None

SYSTEM LOCATION:

Office of Inspector General, Office of Investigations, 330 Independence Avenue, SW., Washington, D.C. 20201.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Individuals, institutions or other suppliers of health care services or items, who have been suspended, excluded, or debarred from any public or private health care assistance, insurance or casualty program or plan, or convicted of defrauding such a program or plan. The persons and organizations would include all types of physicians, nurses, pharmacists, dentists, therapists, pharmacies, hospitals, clinics, nursing homes, manufacturers and vendors.

CATEGORIES OF RECORDS IN THE SYSTEM:

Public information on persons or organizations which have been convicted of fraud, suspended, excluded or debarred, including names, publicly available social security numbers, aliases and "doing-business-as," addresses, and other available unique identifiers related to fraud, waste and abuse; occupations and specialties, and institutional affiliations; types and dates of formal action (suspension, exclusion, debarment, indictment, conviction, acquittal, sentencing and reversals); sentences (incarceration, suspension, probation, public service, etc.) and amounts of fines; types of fraud, and service and amounts defrauded; program and program requirements violated; and sources of the information.

AUTHORITY FOR MAINTENANCE OF THIS SYSTEM:

Title II of Pub. L. 94-505.

PURPOSES:

To reduce fraud and abuse in health care programs by providing a clearinghouse of public information on persons suspended, excluded or debarred from health care programs, or convicted of violations of such programs.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

1. Information maintained by this system may be disclosed, as a routine use, to Federal, State, local public and private agencies and organizations, as follows:

a. Agencies or organizations which reimburse or regulate reimbursement to persons or organizations for health-related services or items, to alert them to possible violations of their own payment programs or plans.

b. Agencies or organizations which license, certify or otherwise regulate the health-related activities of persons or organizations which provide health care services or items, to alert them to possibly disqualifying actions, practices or conditions.

c. Agencies or organizations charged with investigating or prosecuting possible violations indicated in Items a and b.

d. Upon request, agencies or organizations seeking information in connection with the hiring or retention of an employee, the issuance of a security clearance, the reporting of an investigation of an employee, the letting of a contract, or the issuance of a license, grant, or other benefit by the requesting agency, to the extent that the record is relevant and necessary to the requesting agency's decision on the matter.

e. Professional and business organizations concerned with standards and conduct of persons engaged in providing health services and items.

f. Scholars or other reserchers investigating trends and characteristics in the health care field.

2. Disclosure may be made to a Congressional office from the record of an individual in response to an inquiry from the Congressional office made at the request of that individual.

3. In the event of litigation where the defendant is (a) the Justice Department, any component of the Department, or any employee of the Department in his or her official capacity; (b) the United States where the Department determines that the claim, if successful, is likely to directly affect the operations of the Department or any other of its components; or (c) any Department employee in his or her individual capacity where the Department has agreed to represent such employee, the Department may disclose such records as it deems desirable or necessary to the Department of Justice to enable that Department to present an effective defense, provided such disclosure is compatible with the purpose for which the records were collected.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING AND DEPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

The records are stored on computer tape files and computer-printed listings.

RETRIEVABILITY:

The records are retrievable by agency-assigned case numbers, name, social security number, address, occupation, type of violation, program

violated, service defrauded, institutional affiliation, and source of information.

SAFEGUARD:

Direct access is restricted to authorized staff members of the Office of Inspector General (OIG). Computer files and printed listings are maintained in security type safes or lock bar file cabinets. They are safeguarded in accordance with the provisions of the National Bureau of Standards Federal Information Processing Standards 41 and 31, and the HHS Information Processing Standards, HHS ADP Systems Manual, Part 6, "ADP Systems Security". All computer tapes are password protected prohibiting unauthorized access.

RETENTION AND DISPOSAL:

OIG maintains the records and files for three years, after which they are transferred to the Federal Records Center for an additional two years.

SYSTEM MANAGER(S) AND ADDRESS:

Inspector General/Deputy Inspector General, Department of Health and Human Services, 330 Independence Avenue SW., Room 5246, Washington, D.C. 20201.

NOTIFICATION PROCEDURE:

To determine if a record exists, write to: Mr. Phil Cogan, Department of Health and Human Services, 330 Independence Avenue, SW., Room 5238, Washington, D.C. 20201.

RECORD ACCESS PROCEDURE:

Same as Notification Procedure.

CONTESTING RECORD PROCEDURES:

Contact the official at the address specified under Notification Procedure above, and reasonably identify the record and specify the information to be contested, and the corrective action sought, and the reasons for the correction, with supporting justification.

RECORD SOURCE CATEGORIES:

Government and private agencies and organizations furnish records included in the system.

SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

None.

[FR Doc. 82-23380 Filed 8-25-82; 8:45 am]
BILLING CODE 4150-04-M

DEPARTMENT OF THE INTERIOR

Bureau of Indian Affairs

Plan for the Use and Distribution of Cherokee Nation of Oklahoma Judgment Funds in Docket 309-74 Before the United States Court of Claims

July 9, 1982.

This notice is published in exercise of authority delegated by the Secretary of the Interior to the Assistant Secretary for Indian Affairs by 209 DM 8.

The Act of October 19, 1973 (Pub. L. 93-134, 87 Stat. 466), requires that a plan be prepared and submitted to Congress for the use or distribution of funds appropriated to pay a judgment of the Indian Claims Commission or Court of Claims to any Indian tribe. Funds were appropriated on June 15, 1981, in satisfaction of the award granted to the Cherokee Nation of Oklahoma in United States Court of Claims Docket 309-74. The plan for the use and distribution of the funds was submitted to the Congress with a letter dated February 9, 1982, and was received (as recorded in the Congressional Record) by the House of Representatives and by the Senate on February 22, 1982. The plan became effective on May 11, 1982, as provided by Section 5 of the 1973 Act since Congress did not adopt a resolution disapproving it.

The plan reads as follows:

The funds appropriated on June 15, 1981, in satisfaction of the award granted to the Cherokee Nation of Oklahoma in Docket 309-74 before the United States Court of Claims, less attorney fees and litigation expenses, and including all interest and investment income accrued, shall be invested by the Secretary of the Interior and the principal and interest and investment income accrued shall be utilized by the tribal governing body, subject to the approval of the Secretary, as matching funds in support of EDA Project No. 08-01-02161, a tribal horticulture enterprise.

The funds so used for economic programing shall not be subject to Federal or State income taxes or be considered income or resources in determining eligibility for assistance under the Social Security Act.

Kenneth Smith,

Assistant Secretary—Indian Affairs.

[FR Doc. 82-23501 Filed 8-25-82; 8:45 am]
BILLING CODE 4310-02-M

Bureau of Land Management

F-19154-19

Alaska Native Claims Selection

On November 14, 1974, NANA Regional Corporation, Inc., filed selection application F-19154-19 under the provisions of Sec. 12(c) of the Alaska Native Claims Settlement Act of December 18, 1971 (43 U.S.C. 1601, 1611(c) (1976)) (ANCSA), for the surface and subsurface estates of certain lands in the vicinity of Deering.

As to the lands described below, the application submitted by NANA Regional Corporation, Inc., is properly filed and meets the requirements of the Alaska Native Claims Settlement Act and of the regulations issued pursuant thereto. These lands do not include any lawful entry perfected under or being maintained in compliane with laws leading to acquisition of title.

In view of the foregoing, the surface and subsurface estates of the following described lands, selected pursuant to Sec. 12(c) of ANCSA, aggegating approximately 20,326 acres, are considered proper for acquisition by NANA Regioinal Corporation, Inc., and are hereby approved for conveyance pursuant to Sec. 14(e) of the ANCSA:

Kateel River Meridian, Alaska (Surveyed)

7T. 7 N., 19 W.,

Secs. 1, 2, and 3 (fractional);
Secs. 4 to 26, inclusive;
Sec. 27, excluding Native allotment F-18612 Parcel B;
Secs. 28 to 32, inclusivel;
Sec. 33, excluding Native allotment F-17660;
Secs. 34, 35; and 36.
Containing approximately 20,326 acres.

Excluded from the above-described lands herein approved for conveyance are the submerged lands, up to the orf[dinary high water mark, beneathall water bodies determined by the Bureau of Land Management to be tidally influenced as depicted on the navigability map, the original of which will be found in easement case file F-22361-19.

All namde and unnamed water bodies within the above-described lands were reviewed and, based on existing evidence, they were determined to be nonnavigable.

The lands excluded in the above description are not being approved for conveyance at this time and have been excluded because the lands are under applications pending further adjudication. These exclusions *do not* constitute a rejection of the selection application, unless specifically so stated.

The conveyance issued for the surface and subsurface estates of the lands described above shall contain the following reservation to the United States:

Pursuant to Sec. 17(b) of the Alaska Nataive Claims Settlement Acta of December 18, 1971 (43 U.S.C. 1601, 1616(b)), the

following public easement, referenced by easement identification number (EIN) on the easement map, a copy of which will be found in case file F–22361–19, is reserved to the United States. All easements are subject to applicable Federal, State, or Municipal corporation regulation. The following is a listing of uses allowed for each type of easement. any uses which are not specifically listed are prohibited.

25 Foot Trial.—The uses allowed on a twenty-five (25) foot wide trail easement are: trarvel by foot, dogsled, animals, showmobiles, two– and three-wheel vehicles, and small all-terrain vehicles (less than 3,000 lbs. Gross Vehicle Weight (GVW)).

(EIN 14 d1) An easement for an existing access troal, twenty-five (25) feet in width, from the vill age of Deering in Sec. 20, T. 8 N., R. 19 W., Kateel River Meridian, easterly to public lands. The uses allowed are those listed above for a twenty-five (25) foot wide trail easement. The season of use will be limited to winter.

The grant of the above-described lands shall be subject to:

1. Issuance of a patent after approval and filing by the Bureau of Land Management of the official supplemental plat of survey confirming the boundary description and acreage of the lands hereinabove granted; and

2. Valid existing rights therein, if any, including but not limited to those created by any lease (including a lease issued under Sec. 6(g) of the Alaska Statehood Act of July 7, 1958 (48 U.S.C. Ch. 2 Sec 6(g))), contract, permit, right-of-way, or easement, and the right of the lessee, contractee, permittee, or grantee to the complete enjoyment of all rights, privileges, and benefits thereby granted to him. Further, pursuant to Sec. 17(b0(2) of the Alaska Native Claims Settlement Act of December 18, 1971 (43 U.S.C. 1601, 1616(b)(2)) (ANCSA), any valid existing right recognized by ANCSA shall continue to have whatever right of access as is now provided for under existing law.

Reindeer Grasing Permit, F–21633, issued to Qungnig, Inc., located within the lands herein approved for conveyance, will terminate upon conveyance of these lands in accordance with Sec. 9, Additional Condition or Stipulation No. 1 of the permit.

NANA Regional Corporation, Inc., is entitled to conveyance of a minimum of 731,242 acres of land selected pursuant to Sec. 12(c) of ANCSA. Together with the lands herein approved, the total acreage conveyed or approved for conveyance is approximately 141,250 acres. The remaining entitlement of approximately 589,992 acres will be conveyed at a later date.

In accordance with Departmental regulation 43 CFR 2650.7(d) notice of this decision is being published once in the **Federal Register** and once a week for four (4) consecutive weeks, in the Tundra Times.

Any party claiming a property interest in lands affected by this decision, an agency of the Federal government, or regional corporation may appeal the decision to the Interior Board of Land Appeals, Office of Hearings and Appeals, in accordance with the attached regulations in Title 43 *Code of Federal Regulations* (CFR), Part 4, Subpart E, as revised. However, pursuant to Pub. L. 96–487, this decision constitutes the final administrative determination of the Bureau of Land Management concerning navigability of water bodies.

If an appeal is taken the notice of appeal must be filed in the Bureau of Land Management, Alaska State Office, Division of ANCSA and State Conveyances, (960), 701 C Street, Box 13, Anchorage, Alaska 99513. Do not send the appeal directly to the Interior Board of Land Appeals. The appeal and copies of pertinient case files will be sent to the Board from this office. A copy of the Appeal must be served upon the Regional Solicitor, 510 L Street, Suite 100, Anchorage, Alaska 99501.

The time limits for filing an appeal are:

1. Parties receiving service of this decision shall have 30 days from the receipt of this decision to file an appeal.

2. Unknown parties, parties unable to be located after reasonable efforts have been expended to locate, and parties who failed or refused to sign the return receipt shall have until September 27, 1982 to file an appeal.

Any party known or unknown who is adversely affected by this decision shall be deemed to have waived those rights which were adversely affected unless an appeal is timely filed with the Bureau of Land Management, Alaska State Office, Division of ANCSA and State Conveyances.

To avoid summary dismissal of the appeal, there must be strict compliance with the regulations governing such appeal. Further information on the manner of and requirements for filing an appeal may be obtained from the Bureau of Land Management, 701 C Street, Box 13, Anchorage, Alaska 99513.

If an appeal is taken, the parties to be served with a copy of the notice of appeal are: State of Alaska, Department of Natural Resources, Division of Research and Development, Pouch 7–005, Anchorage, Alaska 99510; NANA Regional Corporation, Inc., P.O. Box 49, Kotzebue, Alaska 99852.

Ann Johnson,

Chief, Branch of ANCSA Adjudication.

[FR Doc. 82–23375 Filed 8–25–82; 8:45 am]

BILLING CODE 4310–84–M

[F–14851–A through F–14851–H, F–14851–L and F–14851–B2]

Alaska Native Claims Selection

On January 3, 1974, and November 14, 1974, Deering Ipnatchiak Corporation (for the Native village of Deering) filed selection applications F–14851–A, F–14851–B through F–14851–H, and F–14851–L; and on December 18, 1975, filed selection application F–14851–B2 under the provisions of Sec. 12 of the Alaska Native Claims Settlement Act of December 18, 1971 (43 U.S.C. 1601, 1611 (1976)) (ANCSA), for the surface estate of certain lands in the vicinity of Deering.

On April 16, 1976, in accordance with Title 10 Chapter 05 of the Alaska Business Corporation Act, and as authorized by the act of January 2, 1976 (43 U.S.C. 1627), the following Native village corporations and NANA Regional Corporation, Inc. merged, with NANA Regional Corporation, Inc. being the surviving corporation.

Akuliak Incorporated (Selawik)
Buckland Nunachiak Corporation (Buckland)
Deering Ipnatchiak Corporation (Deering)
Ivisaapaagmitt Corporation (Ambler) also known as Ivisaapaagmitt Corporation
Isingnakmeut Incorporated (Shungnak), also known as Isingmakmeut Incorporated
Katyaak Corporation (Kiana)
Kivalina Sinuakmeut Corporation (Kivalina)
Koovukmeut Incorporation (Kobuk), also known as Koovukmeut Incorporated
Noatak Napaaktukmeut Corporation (Noatak)
Putoo Corporation (Noorvik)

As to the lands described below, the applications submitted by the Deering Ipnatchiak Corporation, as amended, are properly filed, and meet the requirements of the Alaska Native Claims Settlement Act and of the regulations issued pursuant thereto. These lands do not include any lawful entry perfected under or being maintained in compliance with laws leading to acquisition of title.

In view of the foregoing, the surface estate of the following described lands, selected pursuant to Sec. 12(a) aggregating approximately 75,912 acres, and approximately 640 acres selected pursuant to Sec. 12(b) of ANCSA, is considered proper for acquisition by NANA Regional Corporation, Inc., as successor in interest to Deering Ipnatchiak Corporation, and is hereby approved for convenyance pursuant to Sec. 14(a) of the Alaska Native Claims Settlement Act.

Kateel River Meridian, Alaska (Surveyed)

T. 7 N., R. 17 W.,
Secs. 2 and 3;

Secs. 4 and 5 (fractional), excluding Native allotment F–17574;
Secs. 6 and 7 (fractional);
Secs. 8, 9, and 18.

Containing approximately 4,654 acres.

T. 6 N., R. 18 W.,
Secs. 15;
Secs. 19, 20, 21, and 22;
Secs. 27 and 28, excluding mineral survey application F–23143;
Secs. 29 and 30;
Secs. 33 and 34, excluding mineral survey application F–23143.

Containing approximately 6,726 acres.

T. 7 N., R. 18 W.,
Sec. 2 (fractional), excluding Native allotment F–18762;
Sec. 3 (fractional);
Secs. 4 and 5;
Sec. 6 (fractional), excluding Native allotment F–18572 Parcel A;
Secs. 7, 8, 9, and 10;
Secs. 11 and 12 (fractional), excluding Native allotment F–18762;
Secs. 13, 14, and 15.

Containing approximately 7,775 acres.

T. 6 N., R. 19 W.,
Sec. 4, excluding Native allotment F–17660;
Secs. 5 and 6;
Secs. 7 and 8, excluding Native allotment F–17662 Parcel B;
Sec. 9;
Secs. 14 to 18, inclusive;
Secs. 20 to 24, inclusive;
Sec. 25, excluding Native allotment F–18071;
Secs. 26, 27, and 28;
Secs. 33, 34, and 35;
Secs. 36, excluding Native allotment F–18071.

Containing approximately 15,012 acres.

T. 8 N., R. 19 W.,
Sec. 7 (fractional);
Sec. 18 (fractional), excluding ANCSA Sec. 3(e) application F–23137;
Sec. 19 (fractional);
Sec. 20 (fractional), excluding ANCSA Sec. 3(e) application F–80757;
Secs. 21 and 28 (fractional);
Secs. 29, 30, 31, and 32;
Sec. 33 (fractional), excluding Native allotment F–16614 Parcel A;
Sec. 34 (fractional).

Containing approximately 4,207 acres.

T. 6 N., R. 20 W.,
Secs. 1 and 6;
Sec. 7, excluding mineral survey application F–69596 and unsurveyed mining claims F–63694 and F–63695;
Secs. 18 and 19.

Containing approximately 3,065 acres.

T. 7 N., R. 20 W.,
Secs. 1 to 5, inclusive;
Sec. 6, excluding Native allotment F–17475 Parcel A;
Secs. 7 to 12, inclusive;
Secs. 14 and 15;
Secs. 16 and 17, excluding Native allotment F–17474 Parcel A;
Secs. 18 to 21, inclusive;
Secs. 29 to 32, inclusive.

Containing approximately 15,006 acres.

T. 8 N., R. 20 W.,
Sec. 13 (fractional), excluding Native allotment F–17571;
Sec. 14 (fractional);
Secs. 16, 17, 18, and 19 (fractional);
Sec. 20;
Secs. 21, 22, and 23 (fractional);
Secs. 24 to 36, inclusive.

Containing approximately 11,283 acres.

T. 6 N., R. 21 W.,
Sec. 1;
Sec. 12, excluding mineral survey application F–69596 and unsurveyed mining claims F–63694 and F–63695;
Sec. 13, excluding mineral survey application F–69596 and unsurveyed mining claims F–63689, F–63690, and F–63693;
Sec. 23, excluding mineral survey application F–69596;
Sec. 24, excluding mineral survey application F–69596 and surveyed mining claim F–63689;
Secs. 25, 26, 27, and 28, excluding mineral survey application F–69596;
Sec. 29;
Sec. 30, excluding Native allotment F–13794;
Sec. 31, excluding Mineral Survey No. 1106 and Native allotment F–13794;
Secs. 32, 33, 34, and 35, excluding mineral survey application F–69596.

Containing approximately 8,824 acres.
Aggregating approximately 76,552 acres.

Excluded from the above-described lands herein approved for conveyance are the submerged lands, up to the ordinary high water mark, beneath all water bodies determined by the Bureau of Land Management to be tidally influenced as depicted on the navigability maps, the originals of which will be found in easement case file F–14851–EE.

All named and unnamed water bodies within the above-described lands were reviewed and, based on existing evidence, they were determined to be nonnavigable.

The lands excluded in the above description are not being approved for conveyance at this time and have been excluded for one or more of the following reasons: Lands are no longer under Federal jurisdiction; lands are under applications pending further adjudication; lands are pending a determination under Sec. 3(e) of NACSA: or lands were previously rejected by decision. These exclusions *do not* constitute a rejection of the selection application, unless specifically so stated.

The conveyance issued for the surface estate of the lands described above shall contain the following reservations to the United States:

1. The subsurface estate therein, and all rights privileges, immunities, and appurtenances, of whatsoever nature, accruing unto said estate pursuant to the Alaska Native Claims Settlement Act of December 18, 1971 (43 U.S.C. 1601, 1613(f)); and

2. Pursuant to Sec. 17(b) of the Alaska Native Claims Settlement Act of December 18, 1971 (43 U.S.C. 1601, 1616(b)), the following public easements, referenced by easement identification number (EIN) on the easement maps, copies of which will be found in case file F–14851–EE, are reserved to the United States. All easements are subject to application Federal, State, or Municipal corporation regulation. The following is a listing of uses allowed for each type of easement. Any uses which are not specifically listed are prohibited.

25 Foot Trail—The uses allowed on a twenty-five (25) foot wide trail easement are: travel by foot, dogsled, animals, snowmobiles, two- and three-wheel vehicles, and small all-terrain vehicles (less than 3,000 lbs. Gross Vehicle Weight (GVW)).

50 Foot Trail—The uses allowed on a fifty (50) foot wide trail easement are: travel by foot, dogsled, animals, snowmobiles, two- and three-wheel vehicles, small and large all terrain vehicles, track vehicles, and four-wheel drive vehicles.

a. (EIN 6 D1) An easement for an existing access trail, twenty-five (25) feet in width, from the village of Deering in Sec. 20, T. 8 N., R. 19 W., Kateel River Meridian, westerly to public lands. The uses allowed are those listed above for a twenty-five (25) foot wide trail easement. The season of use will be limited to winter.

b. (EIN 7 C5) An easement for an existing access trail, twenty-five (25) feet in width, from Cue Creek in Sec. 30, T. 7 N., R. 20 W., Kateel River Meridian, southwesterly from Federal Aid Secondary Route No. 1510 (Deering-Inmachuk Road) to public land in Sec. 36, T. 7 N., R. 21 W., Kateel River Meridian. The uses allowed are those listed above for a twenty-five (25) foot wide trail easement.

c. (EIN 9a D1, O) An easement, twenty-five (25) feet in width, for an existing access trail, from the junction with Federal Aid Secondary Route No. 1510 (Deering-Inmachuk Road), in Sect. 32, %. 6 N., R. 21 W., Kateel River Meridian, westerly to public lands. The uses allowed are those listed above for a twenty-five (25) foot wide trail easement.

d. (EIN 9b D1) An easement fifty (50) feet in width, for and existing access trail from Federal Aid Secondary Route No. 1510 (Deering-Inmachuk Road), in Sect 24, T. 6 N., R. 21 W., Kateel River Meridian, easterly to the junction with trail EIN 13a D1 thence continuing southeasterly to the junction with tail EIN 9c C3, D1, D9, O, thence southwesterly to public lands. The uses

allowed are those listed above for a fifty (50) foot wide trail easement. Large all-terrain vehicles (greater than 3,000 lbs. Gross Vehicle Weight (GVW)), track vehicles, and four-wheel drive vehicles will be limited to winter use only.

e. (EIN 9c C3, D1, D9, O) An easement for an existing access trail, fifty (50) feet in width, from the junction with EIN 9b D1 in Sec. 34, T. 6 N., R. 18 W., Kateel River Meridian, easterly to public lands. The uses allowed are those listed above for a fifty (50) foot wide trail easement.

f. (EIN 13a D1) An easement for an existing access trail, twenty-five (25) feet in width, from the west side of Ninemile Point in Sect. 33, T. 8 N., R. 18 W., Kateel River Meridian, southerly through public lands to a junction with trail EIN 9b D1 in Sec. 21, T. 6 N., R. 18 W., Kateel River Meridian. The uses allowed are those listed above for a twenty-five (25) foot wide trail easement.

g. (EIN 14 D1) An easement for an existing access trail, twenty-five (25) feet in width, from the village of Deering in Sec. 20, T. 8 N., R. 19 W., Kateel River Meridian, easterly to public lands. The uses allowed are those listed above for a twenty-five (25) foot wide trail easement. The season of use will be limited to winter.

h. (EIN 28b C5) An easement, fifty (50) feet in width, for a proposed access trail, from Federal Aid Secondary Route No. 1510 (Deering-Inmachuk Road) in Sec. 16, T. 7 N., R. 20 W., Kateel River Meridian, southerly to public lands. The uses allowed are those listed above for a fifty (50) foot wide trail easement. Large all-terrain vehicles (greater than 3,000 lbs. gross vehicle weight), track vehicles, and four-wheel drive vehicles will be limited to winter use only.

The grant of the above-described lands shall be subject to:

1. Issuance of a patent after approval and filing by the Bureau of Land Management of the official supplemental plat of survey confirming the boundary description and acreage of the lands hereinabove granted;

2. Valid existing rights therein, if any, including but not limited to those created by any lease (including a lease issued under Sec. 6(g) of the Alaska Statehood Act of July 7, 1958 (48 U.S.C. Ch. 2, Sec. 6(g))), contract, permit, right-of-way or easement, and the right of the lessee, contractee, permittee or grantee to the complete enjoyment of all rights, privileges and benefits thereby granted to him. Further, pursuant to Sec. 17(b)(2) of the Alaska Native Claims Settlement Act of December 18, 1971 (43 U.S.C. 1601, 1616(b)(2)) (ANCSA), any valid existing right recognized by ANCSA shall continue to have whatever right of access as is now provided for under existing law;

3. Any right-of-way interest in Federal Aid Secondary Route No. 1510 (Deering-Inmachuk Road) from Deering village airstrip southwest along Inmachuk River to mining area, transferred to the State of Alaska by the quitclaim deed dated June 30, 1959, executed by the Secretary of Commerce under the authority of the Alaska Omnibus Act, Public Law 86–70 (73 Stat. 141), as to Tps. 8 N., Rs. 19 and 20 W., Tps. 6 and 7 N., R. 20 W., and T. 6 N., R. 21 W., Kateel River Meridian;

4. Airport lease F–034588, located within Secs. 19 and 30, T. 8 N., R. 19 W., and Secs. 24 and 25, T. 8 N., R. 20 W., Kateel River Meridian, issued to the State of Alaska, Division of Aviation, under the provisions of the act of May 24, 1928 (49 U.S.C. 211–214); and

5. Requirements of Sec. 14(c) of the Alaska Native Claims Settlement Act of December 18, 1971 (43 U.S.C. 1601, 1613(c)), that the grantee hereunder convey those portions, if any, of the lands hereinabove granted, as are prescribed in said section.

Reindeer Grazing Permit, F–030432, issued to Alfred K. Karmun located within the lands herein approved for conveyance, will terminate upon conveyance of these lands in accordance with Sec. 9, Additional Condition or Stipulation No. 1 of the permit.

Reindeer Grazing permit F–21633, issued to Qungniq, Inc. located within the lands herein approved for conveyance, will terminate upon conveyance of these lands in accordance with Sec. 9, Additional Condition or Stipulation No. 1 of the permit.

NANA Regional Corporation, Inc., as successor in interest to Deering Ipnatchiak Corporation, is entitled to conveyance of 92,160 acres of land selected pursuant to Sec. 12(a) and the reallocation of approximately 640 acres of land selected pursuant to Sec. 12(b) of ANSCA. To date, approximately 75,912 acres of the Sec. 12(a) entitlement and approximately 640 acres of the Sec. 12(b) reallocation have been approved for conveyance. The remaining Sec. 12(a) entitlement of approximately 16,248 acres will be conveyed at a later date.

Pursuant to Sec. 14(f) of ANCSA, conveyance of the subsurface estate of the lands described above shall be granted to NANA Regional Corporation, Inc. when conveyance is granted to NANA Regional Corporation, Inc., as successor in interest to Deering Ipnatchiak Corporation, for the surface estate and shall be subject to the same conditions as the surface conveyance.

In accordance with Departmental regulation 43 CFR 2650.7(d), notice of this decision is being published once in the **Federal Register** and once a week, for four (4) consecutive weeks, in the Tundra Times.

Any party claiming a property interest in lands affected by this decision, an agency of the Federal government, or regional corporation may appeal the decision to the Interior Board of Land Appeals, Office of Hearings and Appeals, in accordance with the attached regulations in Title 43 *Code of Federal Regulations* (CFR), Part 4, Subpart E, as revised. However, pursuant to Public Law 96–487, this decision constitutes the final administrative determination of the Bureau of Land Management concerning navigability of water bodies.

If an appeal is taken the notice of appeal must be filed in the Bureau of Land Management, Alaska State Office, Division of ANCSA and State Conveyances (960), 701 C Street, Box 13, Anchorage, Alaska 99513. Do not send the appeal directly to the Interior Board of Land Appeals. The appeal and copies of pertinent case files will be sent to the Board from this office. A copy of the appeal must be served upon the Regional Solicitor, 510 L Street, Suite 100, Anchorage, Alaska 99501.

The time limits for filing an appeal are:

1. Parties receiving service of this decision shall have 30 days from the receipt of this decision to file an appeal.

2. Unknown parties, parties unable to be located after reasonable efforts have been expended to locate, and parties who failed or refused to sign the return receipt shall have until September 27, 1982 to file an appeal.

Any party known or unknown who is adversely affected by this decision shall be deemed to have waived those rights which were adversely affected unless an appeal is timely filed with the Bureau of Land Management, Alaska State Office, Division of ANSCA and State Conveyances.

To avoid summary dismissal of the appeal, there must be strict compliance with the regulations governing such appeal. Further information on the manner of and requirements for filing an appeal may be obtained from the Bureau of Land Management, 701 C Street, Box 13, Anchorage, Alaska 99513.

If an appeal is taken, the parties to be served with a copy of the notice of appeal are:

State of Alaska, Department of Natural Resources, Division of Research and

Development, Pouch 7–005, Anchorage, Alaska 99510
NANA Regional Corporation, Inc., Successor in Interest to Deering Ipnatichiak Corporation, P.O. Box 49, Kotzebue, Alaska 99752

Ann Johnson,

Chief, Branch of ANCSA Adjudication.

[FR Doc. 82–23376 Filed 8–25–82; 8:45 am]

BILLING CODE 4310–84–M

[AA–8489–A]

Alaska Native Claims Selection

On September 30, 1980, a Decision to Issue Conveyance (DIC) was issued to Chickaloon Moose Creek Native Association, Inc. The decision was amended on September 3, 1981, to relocate an easement.

On September 29, 1981, Ray DeVilbis (Wolverine Grazers Association) filed an appeal with the Alaska Native Claims Appeal Board (ANCAB), VLS 81–9, taking issue with the amended easement as stated in his brief of September 26, 1981. Following subsequent proceedings, ANCAB issued an Order of Remand on April 30, 1982, and easement EIN 36 has now been added to provide access to Wolverine Lake Road.

Therefore, the decision is hereby amended to include the following easement:

25 Foot Trail—The uses allowed on a twenty-five (25) foot wide trail easement are: travel by foot, dogsled, animals, snowmobiles, two- and three-wheel vehicles and small all-terrain vehicles (less than 3,000 lbs. Gross Vehicle Weight (GVW)).

(EIN 36) An easement for an existing access trail twenty-five (25) feet in width from trail EIN 1a D9 in Sec. 20, T. 18 N., R. 3 E., Seward Meridian, northwesterly to Wolverine Lake Road in Sec. 7, T. 18 N., R. 3 E., Seward Meridian. The uses allowed are those uses listed for a twenty-five (25) foot wide trail easement.

In accordance with Departmental regulation 43 CFR 2650.7(d), notice of this decision is being published once in the **Federal Register** and once a week, for four (4) consecutive weeks, in the ANCHORAGE TIMES.

Any party claiming a property interest in lands affected by this decision, an agency of the Federal government, or regional corporation may appeal the decision to the Interior Board of Land Appeals, Office of Hearings and Appeals, in accordance with the attached regulations in Title 43 *Code of Federal Regulations* (CFR), Part 4, Subpart E as revised. However, pursuant to Pub. L. 96–487, this decision constitutes the final administrative determination of the Bureau of Land Management concerning navigability of water bodies.

If an appeal is taken, the notice of appeal must be filed in the Bureau of Land Management, Alaska State Office, Division of ANCSA and State Conveyances (960), 701 C Street, Box 13, Anchorage, Alaska 99513. Do not send the appeal the appeal directly to the Interior Board of Land Appeals. The appeal and copies of pertinent cases files will be sent to the Board from this office. A copy of the appeal must be served upon the Regional Solicitor, Office of the Solicitor, 510 L Street, Suite 100, Anchorage, Alaska 99501.

The time limits for filing an appeal are:

1. Parties receiving service of this decision shall have 30 days from receipt of this decision to file an appeal.

2. Unknown parties, parties unable to be located after reasonable efforts have been expended to locate, and parties who failed or refused to sign the return receipt shall have until September 27, 1982 to file an appeal.

Any party known or unknown who is adversely affected by this decision shall be deemed to have waived those rights which were adversely affected unless an appeal is timely filed with the Bureau of Land Management, Alaska State Office, Division of ANCSA and State Conveyances.

To avoid summary dismissal of the appeal, there must be strict compliance with the regulations governing such appeals. Further information on the manner of and requirements for filing an appeal may be obtained from the Bureau of Land Management, 701 C Street, Box 13, Anchorage, Alaska 99513.

If an appeal is taken, the parties to be served with a copy of the notice of appeal are:

Chickaloon Moose Creek Native Association, Inc., 2600 Fairbanks Street, Anchorage, Alaska 99503;
State of Alaska, Department of Natural Resources, Division of Research and Development, Pouch 7–005, Anchorage, Alaska 99510;
Cook Inlet Region, Inc., P.O. Drawer 4–N, Anchorage, Alaska 99509.

Except as amended by this decision, the decisions of September 30, 1980, and September 3, 1981, stand as written.

Ann Johnson,

Chief, Branch of ANCSA Adjudication.

[FR Doc. 82–23377 Filed 8–25–82; 8:45 am]

BILLING CODE 4310–84–M

[F–14857–A, F–14857–B]

Alaska Native Claims Selection

Gwitchyaazhee Corporation, for the Native village of Fort Yukon, filed selection applications F–14857–A, as amended, on September 25, 1974, and F–14857–B on December 16, 1974, under the provisions of Sec. 12 of the Alaska Native Claims Settlement Act of December 18, 1971 (43 U.S.C. 1601, 1611, (1976)) (ANCSA), as amended, for the surface estate of certain lands in the vicinity of Fort Yukon.

Gwitchyaazhee Corporation, in its applications, excluded several bodies of water. Because certain of those water bodies have been determined to be nonnavigable, they are considered to be public lands withdrawn under Sec. 11(a)(1) and available for selection by the village pursuant to Sec. 12(a) of ANCSA.

Section 12(a) and 43 CFR 2651.4(b) and (c) provide that the village corporation shall select all available lands within the township or townships within which the village is located. The regulations also provide that the area selected will not be considered to be reasonably compact if it excludes other lands available for selection within its exterior boundaries.

For these reasons, the water bodies which were improperly excluded in the applications of Gwitchyaazhee Corporation are considered selected.

As to the lands described below, the applications are properly filed and meet the requirements of ANCSA and of the regulations issued pursuant thereto, these lands do not include any lawful entry perfected under or being maintained in compliance with laws leading to acquisition of title.

In view of the foregoing, the surface estate of the following described lands, selected pursuant to Sec. 12(a) of ANCSA, aggregating approximately 147,896 acres, is considered proper for acquisition by Gwitchyaazhee Corporation, and is hereby approved for conveyance pursuant to Sec. 14(a) of ANCSA:

U.S. Survey No. 4073, Alaska, situated on the right bank of the Yukon River in the village of Fort Yukon and adjacent to the northwest boundary of U.S. Survey No. 1251.
Containing 6.98 acres.

Lots 1, 2, 3, 4, 8, 9, and 10, of Block 8, of U.S. Survey No. 2760 A and B, for the townsite of Fort Yukon, situated on the north bank of the Yukon River.
Containing 1.92 acres.

U.S. Survey No. 4381, Alaska, situated approximately one-quarter mile west of the southwest end of the airstrip at Fort Yukon, Alaska.
Containing 2.68 acres.

U.S. Survey No. 2641, Alaska, situated on the right bank of the Yukon River, on northeast side of the town of Fort Yukon, adjoining U.S. Survey No. 2122.
Containing 6.05 acres.
Aggregating 17.63 acres.

Fairbanks Meridan, Alaska (Unsurveyed)

T. 20 N., R. 9 E.
Secs. 1 to 12, inclusive;
Secs. 13 and 14, excluding Native allotment F–13401;
Secs. 15 and 16;
Secs. 17 and 18, excluding Native allotment F–025732 Parcel A;
Sec. 19;
Sec. 20, excluding Native allotment F–025732 Parcel A;
Secs. 21 and 22;
Sec. 23, excluding Native allotment F–13401;
Sec. 24, excluding Native allotments F–13401 and F–031966;
Secs. 25 to 36, inclusive.
Containing approximately 19,363 acres.

T. 22 N., R. 9 E.
Secs. 25 and 26, excluding U.S. Survey No. 5220;
Secs. 34, 35, and 36, excluding U.S. Survey No. 5220.
Containing approximately 1,041 acres.

T. 19 N., R. 10 E.
Secs. 1 to 6, inclusive;
Sec. 23;
Sec. 24, excluding Native allotment F–14045 Parcel A;
Sec. 25, excluding Native allotments F–14045 Parcel A and F–13738 Parcels A and B;
Sec. 26;
Sec. 36, excluding Native allotment F–13738 Parcel A.
Containing approximately 6,722 acres.

T. 21 N., R. 10 E.
Secs. 1 and 2;
Sec. 3, excluding Native allotment F–14043 Parcel A;
Sec. 4, excluding Native allotments F–14043 Parcel A and F–025733 Parcel B;
Secs. 5, 6, and 7;
Sec. 8, excluding Native allotment F–14043 Parcel B;
Secs. 9 to 15, inclusive;
Sec. 16, excluding Native allotment F–13446;
Sec. 17, excluding Native allotment F–14043 Parcel B;
Secs. 18 to 23, inclusive;
Sec. 24, excluding Native allotment F–13700;
Secs. 25 to 29, inclusive;
Sec. 30, excluding Native allotments F–14722 and F–14723 Parcel B;
Secs. 31, 32, and 33;
Sec. 34, excluding Native allotment F–14778 Parcel D;
Sec. 35, excluding Native allotment F–17760;
Sec. 36.
Containing approximately 21,103 acres.

T. 20 N., R. 11 E.
Sec. 1, excluding Native allotments F–14712 Parcel A and F–025741 Parcels B and C;
Secs. 2, 3, and 4;
Secs. 5 and 6, excluding Native allotment F–025731;
Secs. 7, 8, and 9;
Sec. 10, excluding Native allotment F–13693;
Sec. 11, excluding Native allotments F–14814 Parcel C and F–13587 Parcel A;
Sec. 12, excluding Alaska Native Claims Settlement Act Sec. 3(e) application F–73261 and Native allotments F–14712 Parcel A, F–025733 Parcel A, and F–025741 Parcel C;
Sec. 13, excluding Native allotment F–025733 Parcel A;
Sec. 14;
Sec. 15, excluding Native allotment F–13693;
Secs. 16 and 17;
Sec. 18, excluding Native allotment F–17789 Parcel B;
Secs. 19, 20, and 21;
Sec. 22, excluding Native allotments F–14045 Parcel B and F–13448 Parcel B;
Sec. 23, excluding Native allotment F–13448 Parcel B;
Sec. 24, excluding Native allotment F–14712 Parcel B;
Sec. 25, excluding Native allotments F–14712 Parcel B and F–13540;
Sec. 26, excluding Native allotment F–13448 Parcel B;
Secs. 27 to 35, inclusive;
Sec. 36, excluding Native allotment F–14710.
Containing approximately 15,960 acres.

T. 19 N., R. 12 E.
Sec. 1, excluding Native allotment F–13695;
Sec. 2, excluding Native allotments F–13695 and F–13740;
Secs. 3 to 10, inclusive;
Sec. 11, excluding Native allotments F–13740 and F–13695;
Sec. 12, excluding Native allotments F–13695 and F–17789 Parcel A;
Secs. 13 to 34, inclusive;
Sec. 35, excluding Native allotments F–15501 Parcel D and F–13702;
Sec. 36, excluding Native allotments F–13701 Parcel B and F–13702.
Containing approximately 17,738 acres.

T. 20 N., R. 12 E.
Secs. 1 and 2;
Sec. 3, excluding Native allotment F–13699 Parcel B;
Sec. 4, excluding Native allotments F–13520 and F–13699 Parcel B;
Sec. 5, excluding Alaska Native Claims Settlement Act Sec. 3(e) application F–73257 and Native allotment F–13531;
Sec. 6, excluding Native allotments F–13531 and F–14712 Parcel A;
Sec. 7, excluding the following described lands:
U.S. Survey No. 1251,
U.S. Survey No. 2122,
U.S. Survey No. 2760A and B,
U.S. Survey No. 3191,
U.S. Survey No. 3781,
U.S. Survey No. 4073,
U.S. Survey No. 4381,
U.S. Survey No. 4399,
Alaska Native Claims Settlement Act Sec. 3(e) applications F–73261, F–73257, and F–73259, and
Native allotments F–14712 Parcel A, and F–13542 Parcel A;
Sec. 8, excluding the following described lands:
U.S. Survey No. 2760A and B,
U.S. Survey No. 3191,
U.S. Survey No. 4399,
Alaska Native Claims Settlement Act Sec. 3(e) applications F–73257, and F–73259, and
Native allotment F–13542 Parcel B;
Sec. 9, excluding Alaska Native Claims Settlement Act Sec. 3(e) application F–73257 and Native allotments F–13547 and F–13699 Parcel B;
Sec. 10, excluding Native allotments F–13743, F–13699 Parcel B, and F–14810 Parcel A;
Sec. 11, excluding U.S. Survey No. 5006 and Native allotments F–17157 and F–13743;
Sec. 12, excluding U.S. Survey No. 5006;
Sec. 13, excluding Native allotment F–13741;
Sec. 14, excluding Native allotments F–13741 and F–17157;
Sec. 15;
Sec. 16, excluding Public Land Order 1396;
Sec. 17, excluding the following described lands:
U.S. Survey No. 2760A and B,
U.S. Survey No. 3639,
U.S. Survey No. 4310,
U.S. Survey No. 4387,
U.S. Survey No. 4396 (Native allotment F–010702 Parcel 1),
Public Land Order 1396,
Public Land Order 1996,
Alaska Native Claims Settlement Act Sec. 3(e) applications F–35322 and F–73257, and
Native allotment F–035317;
Sec. 18, excluding the following described lands:
U.S. Survey No. 1251,
U.S. Survey No. 2122,
U.S. Survey No. 2263,
U.S. Survey No. 2641,
U.S. Survey No. 2760A and B,
U.S. Survey No. 4073,
Public Land Order 1396, and
Alaska Native Claims Settlement Act Sec. 3(e) applications F–74051 and F–73258;
Sec. 19, excluding Native allotment F–14770 Parcel A;
Sec. 20, excluding Native allotment F–14724 Parcel A;
Sec. 21;
Sec. 22, excluding Native allotment F–14732;
Sec. 23, excluding Native allotments F–14732 and F–13741;
Sec. 24, excluding Native allotment F–13741;
Secs. 25 and 26;
Sec. 27, excluding Native allotments F–14732, F–14777, and F–029786 Parcel B;
Sec. 28, excluding Native allotments F–14777 and F–14811 Parcel A;
Sec. 29, excluding Native allotments F–14724 Parcel A, F–14718, and F–029786 Parcel A;
Sec. 30, excluding Native allotments F–14718 and F–029786 Parcel A;
Sec. 31, excluding Native allotment F–14710;
Secs. 32 and 33;
Sec. 34, excluding Native allotments F–14777 and F–029786 Parcel B;

Sec. 35, excluding Native allotment F-029786 Parcel B;
Sec. 36.
Containing approximately 16,031 acres.
T. 21 N., R. 12 E.
Secs. 1 to 7, inclusive;
Sec. 8, excluding Native allotments F-16245 and F-022797;
Sec. 9, excluding Native allotment F-022797;
Secs. 10 to 15, inclusive;
Secs. 16 and 17, excluding Native allotment F-022797;
Sec. 18;
Secs. 19 and 20, excluding Native allotment F-14787;
Secs. 21 and 22, excluding Native allotment F-14735;
Sec. 23, excluding Native allotment F-14731;
Secs. 24, 25, and 26;
Secs. 27 and 28, excluding Native allotment F-14735;
Sec. 29, excluding U.S. Survey No. 4301 and Native allotments F-13537 and F-13528;
Sec. 30, excluding Native allotments F-13259 and F-16290;
Sec. 31, excluding Native allotments F-13736 Parcel D and F-13528;
Sec. 32, excluding U.S. Survey No. 4301 and Native allotments F-13528, F-13736 Parcel D, F-13537, F-13734, and F-13699 Parcel A;
Sec. 33, excluding Native allotment F-13734;
Sec. 34;
Secs. 35 and 36, excluding Native allotment F-13539.
Containing approximately 19,315 acres.
T. 18 N., R. 13 E.
Secs. 1 to 6, inclusive;
Secs. 7 and 8, excluding Native allotment F-14815;
Secs. 9 to 27, inclusive;
Secs. 28, excluding Native allotment F-13701 Parcel C;
Secs. 29 to 36, inclusive.
Containing approximately 17,197 acres.
T. 20 N., R. 13 E.
Sec. 1, excluding Native allotment F-025741 Parcel E;
Secs. 2 and 3;
Sec. 4, excluding Native allotment F-025741 Parcel D;
Sec. 5, excluding Native allotment F-025741 Parcel A;
Secs. 6 and 7;
Secs. 8 to 11, inclusive;
Secs. 17 to 20, inclusive;
Sec. 29, excluding Native allotment F-14719;
Secs. 30 and 31.
Containing approximately 11,038 acres.
T. 22 N., R. 13 E.
Secs. 25, 26, 35, and 36.
Containing approximately 2, 380 acres.
Aggregating approximately 147,878 acres.
Total aggregated acreage approximately 147,896 acres.

Excluded from the above-described lands herein approved for conveyance are the submerged lands, up to the ordinary high water mark, beneath all water bodies determined by the Bureau of Land Management to be navigable because they have been or could be used in connection with travel, trade and commerce. Those water bodies are identified on the attached navigability maps, the original of which will be found in easement case file F-14857-EE.

All other water bodies not depicted as navigable on the attached maps within the lands to be conveyed were reviewed. Based on existing evidence, they were determined to be nonnavigable.

The lands excluded in the above description are not being approved for conveyance at this time and have been excluded for one or more of the following reasons: Lands are no longer under Federal jurisdiction; lands are under applications pending further adjudication, or lands are pending a determination under Section 3(e) of ANCSA. Lands within U.S. Surveys which are excluded are described separately in this decision if they are available for conveyance. These exclusions *do not* constitute a rejection of the selection application, unless specifically so stated.

The conveyance issued for the surface estate of the lands described above shall contain the following reservations to the United States:

1. The subsurface estate therein, and all rights, privileges, immunities, an appurtenances, of whatsoever nature, accruing unto said estate pursuant to the Alaska Native Claims Settlement Act of December 18, 1971 (43 U.S.C. 1601, 1613(f)), as amended; and

2. Pursuant to Sec. 17(b) of the Alaska Native Claims Settlement Act of December 18, 1971 (43 U.S.C. 1601, 1616(b)), as amended, the following public easements referenced by easement identification number (EIN) on the easement maps attached to this document, copies of which will be found in case file F-14857-EE, are reserved to the United States. All easements are subject to applicable Federal, State, or Municipal corporation regulation. The following is a listing of uses allowed for each type of easement. Any uses which are not specifically listed are prohibited.

25 Foot Trail—The uses allowed on a twenty-five (25) foot wide trail easement are: travel be foot, dogsled, animals, snowmobiles, two- and three-wheel vehicles, and small all-terrain vehicles (less than 3,000 lbs. Gross Vehicle Weight (GVW)).

60 Foot Road—The uses allowed on a sixty (60) foot wide road easement are: travel by foot, dogsled, animals, snowmobiles, two- and three-wheel vehicles, small and large all-terrain vehicles, track vehicles, four-wheel drive vehicles, automobiles, and trucks.

One Acre Site—The uses allowed for a site easement are: vehicle parking (e.g., aircraft, boats, ATV's, snowmobiles, cars, trucks), temporary camping, and loading or unloading. Temporary camping, loading or unloading shall be limited to 24 hours.

a. (EIN 1 C3, C5, D4, D9) An easement for an existing access trail twenty-five (25) feet in width from Fort Yukon in Sec. 7, T. 20 N., R. 12 E., Fairbanks Meridian, northerly to public lands. The uses allowed are those listed above for a twenty-five (25) foot wide trail easement.

b. (EIN 2 C3, C5, D1) An easement for an existing access trail twenty-five (25) feet in width from Fort Yukon in Sec. 18, T. 20 N., R. 12 E., Fairbanks Meridian, southeasterly to public lands and the village of Circle. The uses allowed are those listed above for a twenty-five (25) foot wide trail easement.

c. (EIN 3 C3, C5, D1, D9) An easement for an existing access trail twenty-five (25) feet in width from trail EIN 2 C3, C5, D1 in Sec. 29, T. 20 N., R. 12 E., Fairbanks Meridian, southwesterly to public land and the village of Birch Creek. The uses allowed are those listed above for a twenty-five (25) foot wide trail easement.

d. (EIN 4 C3, C5, D1, L) An easement sixty (60) feet in width for an existing road from the Federal Aviation Administration (FAA) Remote Communication Outlet (RCO) site in Sec. 8, T. 20 N., R. 12 E., Fairbanks Meridian, crossing EIN 5b C5, thence northerly to the Porcupine River. The uses allowed are those listed above for a sixty (60) foot wide road easement.

e. (EIN 4a C4) A one (1) acre site easement upland of the ordinary high water mark in Sec. 32, T. 21 N., R. 12 E., Fairbanks Meridian, on the left bank of the Sucker River, about one mile upstream from its confluence with the Porcupine River. The uses allowed are those listed above for a one (1) acre site.

f. (EIN 4b C4) an easement sixty (60) feet in width for an existing access road from EIN 4 C3, C5, D1, L in Sec. 8, T. 20 N., R. 12 E., Fairbanks Meridian, southeasterly to the FAA's Remote Center Air/Ground Communication Facility (RCAG). The uses allowed are those listed above for a sixty (60) foot wide road easement.

g. (EIN 5a C3, C5, D1) An easement twenty-six (26) feet in width for an existing road from road easement EIN 4 C3, C5, D1, L in Sec. 8, T. 20 N., R. 12 E., Fairbanks Meridian, easterly to the Sucker, River. The uses allowed are those listed above for a sixty (60) foot wide road easement.

h. (EIN 5b C5) An easement sixty (60) feet in width for an existing road from the Fort Yukon airport in Sec. 8, T. 20 N., R. 12 E., Fairbanks Meridian, southeasterly to road easement EIN 30 C4, K. The uses allowed are those listed above for a sixty (60) foot wide road easement.

i. (EIN 7 C5, D1) An easement for an existing access trail twenty-five (25) feet in width from trail easement EIN 1 C3, C5, D4, D9 in Sec. 7, T. 20 N., R. 12 E., Fairbanks Meridian, westerly to Venetie Landing and public lands. The uses allowed are those listed above for a twenty-five (25) foot wide trail easement.

j. (EIN 9 C5, L) An easement for an existing access trail twenty-five (25) feet in width from the east terminus of road easement EIN 5a C3, C5, D1 in Sec. 2, T. 20 N., R. 12 E., Fairbanks Meridian, northeasterly to public lands and the village of Chalkyitsik. The uses allowed are those listed above for a twenty-five (25) foot wide trail easement.

k. (EIN 15 C1) A one (1) acre site easement upland of the ordinary high water mark in Sec. 18, T. 20 N., R. 12 E., Fairbanks Meridian, on an island in the Yukon River. The uses allowed are those listed above for a one (1) acre site.

l. (EIN 26a C4) An easement for a proposed access trail twenty-five (25) feet in width from the east terminus of road easement EIN 5a C3, C5, D1 in Sec. 2, T. 20 N., R. 12 E., Fairbanks Meridian, southeasterly to public lands. The uses allowed are those listed above for a twenty-five (25) foot wide trail easement.

m. (EIN 26b C4) A one (1) acre site easement upland of the ordinary high water mark in Sec. 2, T. 20 N., R. 12 E., Fairbanks Meridian, on the left bank of Sucker River. The uses allowed are those listed above for a one (1) acre site.

n. (EIN 27a C4) An easement for a proposed access trail twenty-five (25) feet in width from the Yukon River in Sec. 12, T. 18 N., R. 13 E., Fairbanks Meridian, northeasterly to public lands. The uses allowed are those listed above for a twenty-five (25) foot wide trail easement.

o. (EIN 27b C4) A one (1) acre site easement upland of the ordinary high water mark in Sec. 12, T. 18 N., R. 13 E., Fairbanks Meridian, on the right bank of the Yukon River. The uses allowed are those listed above for a one (1) acre site.

p. (EIN 30 C4, K) An easement sixty (60) feet in width for an existing road, pipeline, and communication line from East Third Avenue of the Fort Yukon Townsite in Sec. 17, T. 20 N., R. 12 E., Fairbanks Meridian, easterly to the Fort Yukon Air Force Station withdrawn in Public Land Orders 1396 and 1996. The uses allowed are those listed above for a sixty (60) foot wide road easement and those activities associated with the construction, operation, and maintenance of the pipeline and communication line.

q. (EIN 32 C4, K) An easement fourteen (14) feet in width for an existing communications cable from the FAA Quarters-Equipment Building in Sec. 18, T. 20 N., R. 12 E., Fairbanks Meridian, northerly a distance of less than four hundred feet to U.S. Survey 2122. The uses allowed are those associated with the construction, operation, and maintenance of the communications cable.

r. (EIN 33 C4, C5) An easement sixty (60) feet in width for an existing road from the VORTAC Site in Sec. 7, T. 20 N., R. 12 E., Fairbanks Meridian, southerly to the boundary of U.S. Survey 3191. The uses allowed are those listed above for a sixty (60) foot wide road easement.

The grant of the above-described lands shall be subject to:

1. Issuance of a patent after approval and filing by the Bureau of Land Management of the official plat of survey confirming the boundary description and acreage of the lands hereinabove granted;

2. Valid existing rights therein, if any, including but not limited to those created by any lease (including a lease issued under Sec. 6(g) of the Alaska Statehood Act of July 7, 1958 (48 U.S.C. Ch. 2, Sec. 6(g))], contract, permit, right-of-way, or easement, and the right of the lessee, contractee, permittee, or grantee to the complete enjoyment of all rights, privileges, and benefits thereby granted to him. Further, pursuant to Sec. 17(b)(2) of the Alaska Native Claims Settlement Act of December 18, 1971 (43 U.S.C. 1601, 1616(b)(2) (ANCSA), as amended, any valid existing right recognized by ANCSA shall continue to have whatever right of access as is now provided for under existing law;

3. Public Airport Lease, F-029281, located in protracted Secs. 5, 7, 8, and 17, T. 20 N., R. 12 E., Fairbanks Meridian, issued to the State of Alaska, Division of Aviation, under the provisions of the Act of May 24, 1928 (49 U.S.C. 211-214), as amended;

4. A right-of-way, F-52057, for a Federal Aid Secondary Highway located in Sec. 12, T. 20 N., R. 11 E., and Secs. 7 and 8, T. 20 N., R. 12 E., Fairbanks Meridian under the provisions of the Act of August 27, 1958 (23 U.S.C. 317);

5. The following third-party interests, if valid, identified by the U.S. Department of the Interior, Fish and Wildlife Service, as provided by Sec. 14(g) of the Alaska Native Claims Settlement Act of December 18, 1971 (43 U.S.C. 1601, 1613(g):

(a) Special use permit, YF-4-82, issued to Bureau of Land Management, Division of Cadastral Survey to authorize the use of helicopter support and landing for cadastral survey of Native allotments within the Yukon Flats National Wildlife Refuge, as to all lands herein approved for conveyance;

(b) Special use permit, YF-12-82, issued to Tanana Chiefs Conference, Inc., to conduct timber inventory in T. 18 N., R. 13 E.; T. 19 N., R. 12 E.; T. 20 N., Rs. 9 and 11 E.; and T. 21 N., Rs. 10 and 12 E., Fairbanks Meridian;

(c) Special use permit, YF-3-82, issued to State of Alaska to survey and construct vocational education training center buildings in T. 20 N., R. 12 E., Fairbanks Meridian; and

6. Requirements of Sec. 14(c) of the Alaska Native Claims Settlement Act of December 18, 1971 (43 U.S.C. 1601, 1613(c)), as amended, that the grantee hereunder convey those portions, if any of the lands hereinabove granted, as are prescribed in said section.

Gwitchyaazhee Corporation is entitled to conveyance of 161,280 acres of land selected pursuant to Sec. 12(a) of ANCSA. Together with the lands herein approved, the total acreage conveyed or approved for conveyance is approximately 147,896 acres. The remaining entitlement of approximately 13,384 acres will be conveyed at a later date.

Pursuant to Sec. 14(f) of ANCSA, conveyance of the subsurface estate of the lands described above shall be issued to Doyon, Limited, when the surface estate is conveyed to Gwitchyaazhee Corporation, and shall be subject to the same conditions as the surface conveyance.

In accordance with Departmental regulation 43 CFR 2650 7(d), notice of this decision is being published once in the Federal Register and once a week, for four (4) consecutive weeks, in the Tundra Times.

Any party claiming a property interest in lands affected by this decision, an agency of the Federal government, or regional corporation may appeal the decision to the Interior Board of Land Appeals, Office of Hearings and Appeals, in accordance with the attached regulations in Title 43 *Code of Federal Regulations* (CFR), Part 4, Subpart E as revised. However, pursuant to Pub. L. 96-487, this decision constitutes the final administrative determination of the Bureau of Land Management concerning navigability of water bodies.

If an appeal is taken the notice of appeal must be filed in the Bureau of Land Management, Alaska State Office, Division of ANCSA and State Conveyances (960), 701 C Street, Box 13, Anchorage, Alaska 99513. Do not send the appeal directly to the Interior Board of Land Appeals. The appeal and copies of pertinent case files will be sent to the Board from this office. A copy of the appeal must be served upon the Regional Solicitor, 510 L Street, Suite 100, Anchorage, Alaska 99501.

The time limits for filing an appeal are:

1. Parties receiving service of this decision shall have 30 days from receipt of this decision to file an appeal.

2. Unknown parties, parties unable to be located after reasonable efforts have been expended to locate, and parties who failed or refused to sign the return receipt shall have until September 27, 1982 to file an appeal.

Any party known or unknown who is adversely affected by this decision shall be deemed to have waived those rights which were adversely affected unless an appeal is timely filed with the Bureau of Land Management, Alaska State Office, Division of ANCSA and State Conveyances.

To avoid summary dismissal of the appeal, there must be strict compliance with the regulations governing such appeals. Further information on the manner of and requirements for filing an appeal maybe obtained from the Bureau of Land Management, 701 C Street, Box 13, Anchorage, Alaska 99513.

If an appeal is taken, the parties to be served with a copy of the notice of appeal are:

Gwitchyaazhee Corporation, P.O. Box 57, Fort Yukon, Alaska 99740;
Doyon, Limited, Land Department, Doyon Building, 201 First Avenue, Fairbanks, Alaska 99701.

Ann Johnson,

Chief, Branch of ANCSA Adjudication.

[FR Doc. 82-23378 Filed 8-25-82; 8:45 am]

BILLING CODE 4310-84-M

[C-35876]

Colorado; Invitation for Coal Exploration License Application; Wyoming Fuel Company

All interested parties are hereby invited to participate with Wyoming Fuel Company in its proposed exploration of certain Federal coal deposits in the following described lands in Jackson County, Colorado:

Sixth Principal Meridian, Colorado

T. 8 N., R. 78 W.,
Sec. 3, lots 8, 9, and 16;
Sec. 4, lots 5, 12, and 13.
T. 9 N., R. 78 W.,
Sec. 20, SE¼NE¼, NW¼, and SE¼;
Sec. 21, SW¼SW¼;
Sec. 28, SW¼NE¼, NW¼, E½SW¼, W½SE¼, and SE¼SE¼;
Sec. 29, lots 1 to 5, inclusive;
Sec. 33, NE¼ and E½SE¼;
Sec. 34, lots 5, 12, 13, and 14.

The area described contains 1598.68 acres.

Any party participating in this exploration license will share all costs on a pro rata basis with Wyoming Fuel Company and with any other participants. The exploration plan, as submitted to the Bureau of Land Management, is available under serial number C-35876 for public review during normal business hours at the Colorado State Office, 1037 20th Street, Denver, Colorado. Additional copies of the exploration plan are available for review at the BLM Craig District Office, 455 Emerson Street, Craig, Colorado, and at the Minerals Management Sevice District Mining Supervisor's Office, The Mart, 2135 East Main Street, Grand Junction, Colorado.

Any party seeking to participate in the exploration program described in the application must notify both the Bureau of Land Management and Wyoming Fuel Company in writing on or before September 27, 1982. Such written notice must be addressed to:

Chief, Mineral Leasing Section, Colorado State Office, Bureau of Land Management, 1037 20th Street, Denver, Colorado 80202, and
Layne F. Mann, Wyoming Fuel Company, 445 Union Blvd., Suite 310, Lakewood, Colorado 80228.

This notice of invitation is published in the **Federal Register** pursuant to 43 CFR 3410.2-1(c) (47 FR 33135, July 30, 1982).

Rodney A. Roberts,

Chief, Mineral Leasing Section.

[FR Doc. 82-23467 Filed 8-25-82; 8:45 am]

BILLING CODE 4310-84-M

[Serial No. I-1542]

Idaho; Partial Termination of Classification for Multiple-Use Management

1. Pursuant to authority delegated to me by Bureau Order No. 701, dated July 23, 1964 (29 FR 10526), I hereby terminate the Bureau of Land Management Multiple-Use Classification Order dated June 14, 1968, (Serial No. I-1542) published in the **Federal Register** June 28, 1968 (Vol. 33, No. 126), insofar as it affects the lands described below:

Boise Meridian, Idaho

Crystal Ice Caves Site

T. 5 S., R. 28 E.,
Sec. 19, NE¼, E½SE¼;
Sec. 20, W½;
Sec. 29, W½NE¼, NW¼, NE¼SW¼, W½SW¼, E½SE¼, NW¼SE¼;
Sec. 30, E½NE¼, SE¼;
Sec. 31, NE¼;
Sec. 32, E½NE¼, SW¼NE¼, W½NW¼, SE¼NW¼, SW¼, SE¼;
Sec. 33, W½W½.
T. 6 S., R. 28 E.,
Sec. 4, lot 4, SW¼NW¼;
Sec. 5, lots 1, 2, 3, S½NE¼, SE¼NW¼, E½SW¼, SE¼.

The areas described above aggregate 2,773.86 acres in Power County.

2. The segregative effect on the lands described in this order will terminate upon publication of this notice in the **Federal Register** as provided by the regulations in 43 CFR 2461.5(c)(2).

3. At 9:00 a.m. on September 20, 1982, the described lands will be open to operation of the public land laws generally, subject to valid existing rights, the provisions of existing withdrawals and the requirements of applicable law. All valid applications received at or prior to 9:00 a.m. on September 20, 1982, will be considered simultaneously filed at that time. Those received thereafter shall be considered in the order of filing.

4. The lands also will be open to location under the United States mining laws at 9:00 a.m. on September 20, 1982. The lands have been and continue to be open to applications and offers under the mineral leasing laws.

Inquiries concerning the lands should be addresed to the Chief, Branch of Lands and Minerals Operations, Bureau of Land Management, Federal Building, Box 042, 550 West Fort Street, Boise, Idaho 83724.

Clair M. Whitlock,

State Director.

[FR Doc. 82-23484 Filed 8-25-82; 8:45 am]

BILLING CODE 4310-84-M

[Serial No. I-2837]

Idaho; Partial Termination of Classification for Mutliple-Use Management

August 18, 1982.

1. Pursuant to authority delegated to me by Bureau Order No. 701, dated July 23, 1964 (29 FR 10526), I hereby terminate the Bureau of Land Management Mutliple-Use Classification order dated November 20, 1970, (serial No. I-2837) published in the **Federal Register** November 26, 1970, (Vol. 35 No.

230) insofar as it affects the lands described below:

Boise Meridian, Idaho

Camas County

T. 1 N., R. 15 E.,
All.
T. 1 N., R. 16 E.,
Secs. 3 to 9, inclusive;
Secs. 16 to 21, inclusive;
Secs. 27 to 33, inclusive.
T. 2 N., R. 16 E.,
Sec. 26 in Camas County;
Secs. 27 to 29, inclusive;
Secs. 30, NE¼, NW¼, N½SW¼, S½SW¼SW¼, SE¼SW¼, SE¼;
Secs. 31 to 34, inclusive.

Blaine County

T. 1 N., R. 16 E.,
Sec. 1, all;
Sec. 2, all;
Sec. 10, all;
Sec. 11, all;
Sec. 13, all;
Sec. 14, all;
Secs. 22 to 26, inclusive;
Sec. 35, all.
T. 2 N., R. 16 E.,
Sec. 25, all, in Blaine County;
Sec. 26, all, in Blaine County;
Sec. 35, all;
Sec. 36, all.
T. 1 S., R. 16 E.,
Sec. 1, lots 1 to 4, inclusive, S½NE¼, E½SE¼.
T. 1 N., R. 17 E.,
All.
T. 2 N., R. 17 E.,
Sec. 1, all;
Sec. 2, all;
Secs. 11 to 16, inclusive;
Secs. 20 to 36, inclusive.
T. 3 N., R. 17 E.,
Sec. 1, all;
Sec. 2, all;
Secs. 11 to 14, inclusive;
Secs. 23 to 26, inclusive;
Sec. 35, all;
Sec. 36, all.
T. 4 N., R. 17 E.,
Sec. 1, all;
Sec. 12, all;
Sec. 13, all;
Sec. 24, all;
Sec. 25, all;
Sec. 36, all.
T. 5 N., R. 17 E.,
Sec. 36, all.
T. 1 S., R. 17 E.,
Secs. 1 to 5, inclusive;
Sec. 6, lot 4;
Secs. 10 to 12, inclusive, in Blaine County;
Secs. 13 to 15, inclusive, in Blaine County.
T. 1 N., R. 18 E.,
Secs. 2 to 11, inclusive;
Sec. 12, SW¼NW¼;
Secs. 17 to 21, inclusive;
Secs. 29 to 32, inclusive.
T. 2 N., R. 18 E.,
Sec. 1, all;
Sec. 2, all;
Sec. 3, lots 1 to 4, inclusive, S½N½, N½S½, S½SE¼;
Sec. 4, SE¼NE¼;
Secs. 5 to 8, inclusive;
Sec. 10, E½;
Secs. 11 to 14, inclusive;
Sec. 15, E½;
Secs. 17 to 21, inclusive;
Sec. 22, E½, W½SW¼;
Secs. 23 to 36, inclusive.
T. 3 N., R. 18 E.,
All.
T. 4 N., R. 18 E.,
All outside Sawtooth National Forest.
T. 5 N., R. 18 E.,
Sec. 31, all;
Sec. 32, all.
T. 1 S., R. 18 E.,
Secs. 5 to 8, inclusive;
Sec. 17, all;
Sec. 18, all.
T. 1 N., R. 19 E.,
Secs. 1 to 17, inclusive;
Secs. 21 to 27, inclusive;
Secs. 34 to 36, inclusive.
T. 2 N., R. 19 E.,
All.
T. 3 N., R. 19 E.,
All outside Sawtooth National Forest.
T. 4 N., R. 19 E.,
Secs. 28 to 33, inclusive.
T. 1 S., R. 19 E.,
Sec. 1, lots 1, 2, SE¼;
Sec. 12, NE¼, NE¼SE¼.
T. 1 N., R. 20 E.,
All.
T. 2 N., R. 20 E.,
All.
T. 3 N., R. 20 E.,
Secs. 19 to 36, inclusive.
T. 1 S., R. 20 E.,
Secs. 1 to 15, inclusive;
Sec. 22, NW¼NE¼;
Secs. 23 to 26, inclusive.
T. 1 N., R. 21, E.,
All.
T. 2 N., R. 21 E.,
All.
T. 3 N., R. 21 E.,
All outside Sawtooth National Forest.
T. 1 S., R. 21 E.,
Sec. 1, all;
Sec. 2, all;
Sec. 3, lot 1, SE¼SE¼;
Sec. 4, lots 1 to 4, inclusive, SE¼SE¼;
Sec. 5, lot 1;
Sec. 6, all;
Sec. 7, lot 1, N½NE¼, NE¼NW¼;
Sec. 10, E½NE¼, NE¼SE¼;
Sec. 11, N½N½, SE¼NE¼, SW¼NW¼, NW¼SW¼;
Sec. 12, NW¼NE¼, N½NW¼, NW¼SW¼;
Sec. 17, W½;
Sec. 18, all;
Secs. 29 to 32, inclusive;
Sec. 33, NW¼NW¼, NW¼SE¼, S½SE¼.
T. 2 S., R. 21 E.,
Secs. 4 to 9, inclusive;
Sec. 17, all;
Sec. 20, N½NE¼, NE¼NW¼;
Sec. 21, N½NW¼.
T. 1 N., R. 22 E.,
Secs. 1 to 14, inclusive;
Sec. 15, E½NE¼, W½NW¼, SE¼NW¼;
Secs. 16 to 36, inclusive.
T. 2 N., R. 22 E.,
All.
T. 3 N., R. 22 E.,
All outside Sawtooth National Forest.
T. 1 S., R. 22 E.,
Sec. 5, lot 4;
Sec. 6, lot 1.
T. 1 N., R. 23 E.,
All.
T. 2 N., R. 23 E.,
All in Blaine County.
T. 3 N., R. 23 E.,
All in Blaine County and outside Sawtooth National Forest.
T. 1 N., R. 24 E.,
All in Blaine County.
T. 2 N., R. 24 E.,
All in Blaine County.

The area above aggregates 228,290.38 acres in Blaine and Camas Counties.

2. The following described lands are further segregated from appropriation under the general mining laws.

Boise Meridian, Idaho

Fish Creek Reservoir

T. 1 N., R. 22 E.,
Sec. 15, W½NE¼, NE¼NW¼.

Cherry Creek

T. 2 N., R. 16 E.,
Sec. 30, N½SW¼SW¼.

The area described above aggregates 140 acres in Blaine and Camas Counties.

3. The segregative effect on the lands described in this order will terminate upon publication of this notice in the **Federal Register** as provided by the regulations in 43 CFR 2641.5(c)(2).

4. At 9:00 a.m. on September 20, 1982, the lands will be open to operation of the public land laws generally, subject to valid existing rights, the provisions of existing withdrawals and the requirements of applicable laws. All valid applications received at or prior to 9:00 a.m. on September 20, 1982, shall be considered as simultaneously filed at the time. Those received thereafter shall be considered in the order of filing.

5. The lands in paragraph one and two above have been and will continue to be open to applications and offers under the mineral leasing laws.

6. The lands in paragraph two above also will be open to location under the mining laws at 9:00 a.m. on September 20, 1982. Inquiries concerning the lands should be addressed to the Chief, Branch of Lands and Minerals Operations, Bureau of Land Management, Federal Building, Box 042, Boise, Idaho 83724.

Clair M. Whitlock,

State Director.

[FR Doc. 82-23465 Filed 8-25-82; 8:45 am]

BILLING CODE 4310-84-M

Selection of Issues and Planning Criteria, Headwaters Resource Management Plan; Butte District, Montana

AGENCY: Bureau of Land Management, Interior.

ACTION: Selection of issues and planning criteria, headwaters resource management plan.

SUMMARY: Issues and planning criteria to guide land use planning decisions for the Headwaters Resource Area, Butte District, Bureau of Land Management, have been selected by the Butte District Manager with the concurrence of the Montana State Director. The Headwaters Resource Management Plan is scheduled for completion by September 30, 1983, and will provide land and resource management direction for public lands in Pondera, Teton, Lewis and Clark, Cascade, Meagher, Broadwater, Jefferson, Gallatin, and Park counties, Montana. The issues and criteria to be addressed in the plan are available for public review and comment until September 27, 1982, at the Butte District office during normal business hours.

EFFECTIVE DATE: August 27, 1982.

FOR FURTHER INFORMATION CONTACT: Jack A. McIntosh, District Manager, Butte District, BLM, 106 N. Parkmont, P.O. Box 3388, Butte, Montana 59702, phone (406) 494–5059.

SUPPLEMENTARY INFORMATION: The issues selected for consideration in the Headwaters Resource Management Plan include oil and gas leasing; grazing allotment management, wilderness study area recommendations, riparian and aquatic habitat management, forest management, land ownership adjustments, mineral development in the Scratchgravel Hills, motorcycle use areas, motorized vehicle access, utility and transportation corridors, National Guard use in the Limestone Hills, and coal leasing. Each issue has been further defined by its geographical extent within the Resource Area; the principal conflicts, impacts, or opportunities anticipated; and the level of planning decision(s) needed to adequately address the issue.

Planning criteria have been developed and selected for each issue, and will serve as guidelines to be used in formulating alternatives, and as factors to be considered in evaluating alternatives and selecting a preferred alternative. Based on any additional comments received, the issues and critieria may be modified concurrent with preparation of the Headwaters Resource Management Plan and Environmental Impact Statement. The final list of selected issues and criteria will be published as a part of the RMP/EIS document.

Dated: August 19, 1982.

Jack A. McIntosh,

District Manager.

[FR Doc. 82-23490 Filed 8-25-82; 8:45 am]

BILLING CODE 4310-84-M

[M 55150]

Realty Action, Modified Competitive Sale of Public Land in Carter County, Montana

August 17, 1982.

The following described lands have been examined and identified as suitable for disposal by sale pursuant to Sec. 203 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. 1713 (1976), at no less than the fair market value:

Principal Meridian

T. 2 N., R. 56 E.,
Sec. 13, lot 3.

The area described contains 32.99 acres.

The land will be offered for sale by sealed bid utilizing modified competitive bidding procedures. Mr. Ralph Bruski, President of F and R Ranches, Inc., an adjacent land owner, is the proposed designated bidder and will be offered the right to meet the highest bid. Refusal or failure to meet the highest bid shall constitute a waiver of such bidding provisions.

The subject land is located 8 miles west of Ekalaka, Montana, and State Highway 7. The land is isolated, with no legal access, is unusable by the general public, and is difficult and uneconomic to manage as part of the public lands system. The subject land has no unique values and has historically been used for livestock grazing. No threatened or endangered species are known to occur on the subject land. The tract is not within a potential wilderness area or an area of critical environmental concern. The sale, if consummated, will also resolve an unauthorized grazing use.

The proposed sale is consistent with the Bureau's planning system and Carter County government officials have been notified of the sale. Since the land has a low resource value, the transfer of the tract into private ownership will benefit the public interest and provide for better land management.

The terms and conditions applicable to the sale are as follows:

1. All minerals will be reserved to the United States together with the right to explore, prospect for, mine, and remove them under applicable law and regulations;

2. A right-of-way for ditches and canals will be reserved to the United States; and

3. The sale of these lands will be subject to all valid existing rights and reservations of record.

Detailed information concerning the sale, including the planning documents, environmental assessment, and the record of public discussions, is available for review at the Miles City District Office, West of Miles City, P.O. Box 940, Miles City, Montana 59301.

The bid opening for the modified competitive sale of the above-described public land in Carter County, Montana, will be held at the Montana State Office, 222 North 32nd Street, Billings, Montana, on Monday, November 1, 1982, at 10 a.m.

Bidding Information and Instructions:

Bidder Qualifications: The Federal Land Policy and Management Act requires that bidders be U.S. citizens or, in the case of a corporation, subject to the laws of any state or the U.S. A State, State instrumentality or political subdivision submitting a bid must be authorized to hold property. Any other entity submitting a bid must be legally capable of conveying and holding lands or interests there in under the laws of the State of Montana.

Bids must be made by the principal or his agent.

Bid Standards: No bid will be accepted for less than the appraised value of $1,800 and bids must include all of the land identified in this sale notice.

Method of Bidding: The land will be sold by sealed bid only. Bids delivered or sent by mail will be considered only if received by the Bureau of Land Managemewnt, 222 North 32nd Street, P.O. Box 30157, Billings, Montana 59107, prior to 10 a.m. on November 1. Each bid must be in a sealed envelope accompanied by a certified check, postal money order, bank draft, or cashier's check made payable to the Bureau of Land Management for not less than one-fifth of the amount of the bid. The sealed bid envelope must be marked in the lower left-hand corner as follows:

Public Land Sale M 55150

November 1, 1982.

If two or more envelopes containing valid bids of the same amount are received, the determination of which is to be considered the highest bid shall be by drawing. The drawing, if required, shall be held immediately following the opening of the sealed bids. The highest qualifying sealed bid shall then be publicly declared.

Modified Bidding: For a period of 30 days following the date of the sale, Mr. Ralph Bruski of F and R Ranches, Inc.,

an adjacent land owner, be offered the right to meet the highest bid. If he meets the highest bid, the land will be sold to him, and the other bid will be returned. His refusal to meet the highest bid shall constitute a waiver of such bidding provisions.

Final Details: Once a high bid is accepted, the successful bidder shall submit the remainder of the full bid price within the time period designated by the authorized officer. Failure to submit the required amount within the allotted time will result in cancellation of the sale and the deposit will be forfeited.

All bids will be either returned, accepted or rejected within 60 days of the sale date.

For a period of 45 days from the date of this notice, interested parties may submit comments to the District Manager, Bureau of Land Management, P.O. Box 940, Miles City, Montana 59301. Any adverse comments will be evaluated by the State Director, who may vacate or modify this realty action and issue a final determination. In the absence of any action by the State Director, this realty action will become a final determination of the Department of the Interior.

Bill D. Noble,

Acting State Director.

[FR Doc. 82-23486 Filed 8-25-82; 8:45 am]

BILLING CODE 4310-84-M

[N-36653]

Realty Action Corrected; Exchange of Public and Private Lands in Elko County, Nevada

August, 16, 1982.

FR Doc. 82-21293, appearing on pages 200 and 201 of the issue of Friday, August 6, 1982 is hereby corrected to include Item No. 3 under "And will be subject to:"

3. Those rights granted by geothermal lease, N-34350, made under the Geothermal Steam Act of 1970, 84 Stat. 1566; 30 U.S.C. 1001-1025. This patent is issued subject to the right of the prior permittee or lessee to use so much of the surface of said land as is required for geothermal exploration and development operations, without compensation to the patentee for damages resulting from proper geothermal operations, for the duration of geothermal lease, N-34350, and any authorized extension of that lease. Upon termination or relinquishment of said geothermal lease, this reservation shall terminate.

Wm. J. Malencik,

Chief, Division of Operations.

[FR Doc 82-23499 Filed 8-25-82; 8:45 am]

BILLING CODE 4310-84-M

[Nev-047449]

Nevada; Proposed Continuation of Withdrawal; Correction

August 17, 1982.

In the **Federal Register** Doc. 81-33236, published on pages 56664 thru 56666, on November 18, 1981, delete the following:

On page 56666, first column delete "T. 14 N., R. 51 E., sec. 34, SE¼NW¼, NE¼SW¼."

On page 56666, second column, line 8, change "14,979.34" to read "14,659.34;" line 14, change "1661.60" to read "1581.60."

Wm. J. Malencik,

Chief, Division of Operations.

[FR Doc. 82-23500 Filed 8-25-82; 8:45 am]

BILLING CODE 4310-84-M

Opening of Branch of Casefile Processing; Anchorage District Office

AGENCY: Bureau of Land Management.

ACTION: Opening of a branch of casefile processing at the Anchorage District Office, 4700 E. 72nd Avenue, Anchorage, Alaska 99507.

SUMMARY: As a result of a reorganization of functions in the Bureau of Land Management's Alaska offices, a Branch of Casefile Processing has been opened in the Anchorage District Office. The reorganization transfers the following types of cases to the district: Rights-of-way, FLPMA easements and permits, new settlements and waivers of administration.

DATES: September 1, 1982.

LOCATION: Anchorage District Office, 4700 E. 72nd Avenue, Anchorage, Alaska 99507.

FOR FURTHER INFORMATION CONTACT: Fred Lohse, 907-267-1228.

Richard J. Vernimen,

Acting District Manager.

[FR Doc. 82-23373 Filed 8-25-82; 8:45 am]

BILLING CODE 4310-84-M

[ORE-04135; ORE-04645]

Oregon; Proposed Continuation of Withdrawal

The Bureau of Land Management, U.S. Department of the Interior, proposes that the existing land withdrawal made by Public Land Order No. 1726 of September 3, 1958, be continued in part as to the following described lands for a 20-year period, pursuant to Section 204 of the Federal Land Policy and Management Act of October 21, 1976, 90 Stat. 2751, 43 U.S.C. 1714:

Willamette Meridian

T. 34 S., R. 1 W.,
Sec. 10, lot 2.
T. 36 S., R. 3 W.,
Sec. 12, lots 5, 8, and S½NW¼NW¼.
T. 34 S., R. 7 W.,
Sec. 6, lots 3 to 7, inclusive, and SE¼NW¼;
Sec. 18, lots 3, 4, and E½SW¼;
Sec. 30, lot 1, except that portion in MS 734, 2, 4, and E½NW¼.
T. 35 S., R. 7 W.,
Sec. 4, lots 5, 6, 7, 8, 9, S½NE¼, and N½SE¼;
Sec. 5, S½ of lot 8;
Sec. 6, lots 1 to 7, inclusive, 12, 13, SE¼NW¼, and NW¼SW¼;
Sec. 10, lots 1, 5, N½NE¼, SE¼NE¼, SW¼NW¼, N½SW¼, and S½SE¼.
T. 36 S., R. 7 W.,
Sec. 2, lots 5, 8, 9, and 10;
Sec. 3, lots 1, 8, and 9;
Sec. 12, lot 3 and W½SW¼.

The areas described aggregate 2,159.50 acres in Josephine and Jackson Counties.

Willamette Meridian

Revested Oregon and California Railroad Grant Lands

T. 33 S., R. 1 W.,
Sec. 35, SE¼SE¼.
T. 34 S., R. 1 W.,
Sec. 3, NE¼SE¼.
T. 39 S., R. 1 W.,
Sec. 29, S½SW¼.
T. 36 S., R. 2 W.,
Sec. 13, lot 7.
T. 39 S., R. 2 W.,
Sec. 19, NE¼SE¼;
Sec. 23, SW¼SW¼ and SW¼SE¼.
T. 36 S., R. 3 W.,
Sec. 11, lot 3, N½SE¼, and SE¼SE¼;
Sec. 13, lot 7.
T. 38 S., R. 3 W.,
Sec. 33, lot 1.
T. 34 S., R. 7 W.,
Sec. 19, lots 2, 4, and E½W½;
Sec. 31, lots 3, 4, E½SW¼, and S½SE¼.
T. 35 S., R. 7 W.,
Sec. 3, SW¼;
Sec. 5, lots 7, N½ of 8, 9, S½NE¼, SE¼NW¼, and NE¼SW¼;
Sec. 9, lots 1, 2, NW¼NE¼, and S½NE¼.
T. 36 S., R. 7 W.,
Sec. 3, lots 2 and 7;
Sec. 11, lot 3.
T. 33 S., R. 8 W.,
Sec. 32, W½NW¼SW¼;
Sec. 33, N½NE¼, N½NW¼, N½SW¼NW¼, SE¼SE¼SW¼ and S½S½SE¼;
Sec. 34, lots 1, 3 to 10, inclusive, and S½SW¼;
Sec. 35, lots 8, 9, 10, SE¼SW¼, and S½SE¼.
T. 34 S., R. 8 W.,
Sec. 1, lots 1, 3, 8 to 13, inclusive, NE¼SW¼NE¼, S½SW¼NE¼, NE¼SW¼, NE¼NW¼SW¼, S½NW¼SW¼, S½SW¼, and NW¼SE¼;

Sec. 5, lots 1, 2, E½SW¼NW¼, SW¼SW¼ NW¼, SE¼NW¼, and N½SW¼;
Sec. 6, S½NE¼SW¼ and S½NW¼SE¼;
Sec. 12, lots 1 to 8, inclusive, and NW¼SW¼;
Sec. 13, lots 1 to 13, inclusive, SE¼NE¼, and W½SW¼;
Sec. 24, lots 1, 3, 4, 5, and 8, except a tract described as beginning at a point on the East section line of Sec. 24, which is 15 chains North of the southeast corner of said section; thence West 10 chains; thence North 20 chains; thence East to West bank of Rogue River; thence southerly along West bank of Rogue River to East section line of Sec. 24; thence South to point of beginning;
Sec. 25, lots 1 to 6, inclusive, 8, 9, 10, and NE¼NW¼.

T. 35 S., R. 8 W.,
Sec. 1, lots 1, 2, 3, 5, 8, NW¼SW¼, and N½SE¼.

T. 33 S., R. 9 W.,
Sec. 8, SW¼SW¼, N½SE¼SW¼, N½SW¼ SE¼, N½SE¼SE¼, and SE¼SE¼SE¼;
Sec. 16, NE¼NW¼NW¼, E½SE¼NW¼, SW¼SW¼SW¼, NE¼NW¼SE¼, and N½SE¼SE¼;
Sec. 17, S½SW¼NE¼, NE¼SW¼, S½NW¼ SW¼, SW¼SW¼, W½NE¼SE¼, SE¼NE¼ SE¼, NW¼SE¼, and SE¼SE¼;
Sec. 18, lot 10, N½NE¼NE¼, SE¼NE¼NE¼, NW¼NE¼, N½NE¼NW¼, and SE¼NE¼ NW¼;
Sec. 21, SW¼SW¼NE¼, SW¼NE¼NW¼, NW¼NW¼, SE¼NW¼, W½NE¼SE¼, SE¼NE¼SE¼, NW¼SE¼, and SE¼SE¼;
Sec. 22, N½SE¼NE¼ and S½NW¼SW¼;
Sec. 23, S½NW¼, N½NE¼SW¼, SE¼NE¼ SW¼, NW¼SE¼, E½SW¼SE¼, and SE¼SE¼;
Sec. 26, E½NW¼NE¼;
Sec. 35, E½NW¼NE¼, NE¼SW¼NE¼, SE¼NE¼, W½NW¼SW¼, SW¼SW¼, and N½NE¼SE¼.

T. 34 S., R. 9 W.,
Sec. 1, SW¼NW¼, N½SW¼, S½NE¼SE¼, S½NW¼SE¼, and S½SE¼.

T. 33 S., R. 10 W.,
Sec. 9, N½NE¼, N½SW¼NE¼, NW¼, NW¼NE¼SW¼, NW¼SW¼, and SE¼SE¼;
Sec. 10, N½NE¼NE¼, W½NE¼NW¼, NW¼NW¼, NE¼SW¼SW¼, S½SW¼ SW¼, SE¼SW¼, S½NE¼SE¼, and S½SE¼;
Sec. 11, S½NE¼, N½NW¼NW¼, SE¼NW¼NW¼, NE¼SE¼NW¼, W½SW¼SW¼, SE¼SW¼SW¼, N½NE¼ SE¼, SE¼NE¼SE¼, and NE¼NW¼SE¼;
Sec. 12, N½SW¼, NW¼SE¼, NE¼SW¼SE¼, and SE¼SE¼;
Sec. 13, SW¼NW¼, W½SE¼NW¼, SE¼SE¼NW¼, W½NE¼SE¼, SE¼NE¼ SE¼, and NW¼SE¼;
Sec. 14, S½NE¼, W½NE¼NW¼, and SE¼NE¼NW¼.

T. 33 S., R. 1 E.,
Sec. 23, E½SW¼, and S½SE¼.

T. 33 S., R. 2 E.,
Sec. 11, NE¼SW¼, S½SW¼, and SE¼;
Sec. 19, NW¼NE¼, S½NE¼, E½NW¼, SE¼SW¼, and SW¼SE¼.

The areas described aggregate 8,006.16 acres in Jackson, Josephine and Curry Counties.

The total areas described aggregate 10,165.66 acres.

The purpose of the withdrawal is to protect the scenic and recreation areas adjacent to the Rogue River. The lands are currently segregated from operation of the public land laws generally, including the mining laws, but not from leasing under the mineral leasing laws. No change is proposed in the purpose or segregative effect of the withdrawal.

Notice is hereby given that an opportunity for a public hearing is afforded in connection with the proposed withdrawal continuation. All interested persons who desire to be heard on the proposal must submit a written request for a hearing to the undersigned on or before September 30, 1982. Upon determination by the state Director, Bureau of Land Management, that a public hearing will be held, a notice will be published in the **Federal Register** giving the time and place of such hearing. In lieu of or in addition to attendance at a scheduled public hearing, written comments or objections to the proposed withdrawal continuation may be filed with the undersigned officer on or before September 30 1982.

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. He will review the withdrawal rejustification to insure that continuation would be consistent with the statutory objectives of the programs for which the land is dedicated; the area involved is the minimum essential to meet the desired needs; the maximum concurrent utilization of the land is provided for; and an agreement is reached on the concurrent management of the land and its resources. He will also prepare a report 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.

All communications in connection with this proposed withdrawal continuation should be addressed to the undersigned officer, Bureau of Land Management, U.S. Department of the Interior, P.O. Box 2965, Portland, Oregon 97208.

Dated: August 20, 1982.

Champ C. Vaughan, Jr.,

Acting Chief, Branch of Lands and Minerals Operations.

[FR Doc. 82-23477 Filed 8-25-82; 8:45 am]

BILLING CODE 4310-84-M

[OR 4732]

Oregon; Termination of Classification for Multiple Use Management

1. By order of the Oregon State Director, Bureau of Land Management, which was published in the **Federal Register** on September 17, 1970 (35 FR 14570), approximately 186,290.00 acres of public lands under the jurisdiction of the Bureau of Land Management were classified for multiple use management pursuant to the Classification and Multiple Use Act of September 19, 1964 (43 U.S.C. 1411–18) and the regulations in 43 CFR Part 2460. The lands are located in Klamath County, Oregon.

2. Pursuant to 43 CFR 2461.5(c)(2), the classification is terminated in its entirety upon publication of this notice in the **Federal Register.**

3. At 9:30 a.m., on October 4, 1982, subject to valid existing rights, the provisions of existing withdrawals, and the requirements of applicable law, the lands involved will be open to operation of the public land laws. All valid applications received at or prior to 9:30 a.m., on October 4, 1982, shall be considered as simultaneously filed at that time. Those received thereafter shall be considered in the order of filing. Subject to the provisions of existing withdrawals, the lands have been and continue to be open to operation of the mining laws and minerals leasing laws.

Inquiries concerning the lands should be addressed to the State Director, Bureau of Land Management, P.O. Box 2965, Portland, Oregon 97208.

Dated: August 17, 1982.

Paul M. Vetterick,

Associate State Director.

[FR Doc. 82-23493 Filed 8-25-82; 8:45 am]

BILLING CODE 4310-84-M

[OR 4971]

Oregon; Termination of Disposal Classification

1. By order of the Oregon State Director, Bureau of Land Management, which was published in the **Federal Register** on March 5, 1970 (35 FR 4144), approximately 31,380.00 acres of public lands, pursuant to the Act of September 19, 1964 (43 U.S.C. 1411–18), and to the regulations in 43 CFR 2460, were

classified for disposal by exchange under the Act of June 28, 1934 (48 Stat. 1269; 43 U.S.C. 315g), as amended. The lands are located in Crook, Deschutes, Harney, Jefferson, Wasco, and Wheeler Counties, Oregon.

2. Pursuant to 43 CFR 2461.5(c)(2), the classification as to the lands referred to in paragraph 1, is terminated upon publication of this notice in the **Federal Register.**

3. At 9:30 a.m., on October 5, 1982, 21,842.16 acres of the lands referred to in paragraph 1, which remain in United States ownership, will be open to operation of the public land laws generally, subject to valid existing rights, the provisions of existing withdrawals, and the requirements of applicable law. All valid applications received at or prior to 9:30 a.m., on October 5, 1982, will be considered as simultaneously filed at that time. Those received thereafter shall be considered in the order of filing.

4. At 9:30 a.m., on October 5, 1982, the lands referred to in paragraph 1, to the extent that the minerals are still in United States ownership, will be open to location under the United States mining laws. To the extent that the minerals are still in United States ownership, the lands have been and continue to be open to applications and offers under the mineral leasing laws.

5. 9,537.84 acres of the lands referred to in paragraph 1 have been conveyed out of United States ownership.

Inquiries concerning the lands should be addressed to the State Director, Bureau of Land Management, P.O. Box 2965, Portland, Oregon 97208.

Dated: August 19, 1982.

Steve R. Drossos,

Acting State Director.

[FR Doc. 82-23472 Filed 8-25-82; 8:45 am]

BILLING CODE 4310-84-M

[OR 9041-A

Oregon; Order Providing for the Opening of Public Lands

1. The following identified Secretarial Orders of Interpretation of Public Water Reserve No. 107 are hereby revoked insofar as they affect the following described lands which do not meet the criteria of the Executive Order of April 17, 1926:

Willamette Meridian

Interpretation No. 59 of March 6, 1928

T. 19 S., R. 33½ E.,
Sec. 22, E½NW¼ and E½SW¼NW¼.

Interpretation No. 81 of February 26, 1929

T. 22 S., R. 27 E.,
Sec. 23, all;
Sec. 26, NE¼, NW¼NW¼, S½NW¼, and S½.
T. 33 S., R. 33 E.,
Sec. 3, S½SE¼NE¼;
Sec. 4, NW¼ and N½S½;
Sec. 35, W½E½SW¼, S½NW¼SW¼, SW¼SW¼, and E½SE¼.
T. 34 S., R. 33 E.,
Sec. 2, lots 1, 2, 3, and 4, and S½N½;
Sec. 4, N½NE¼SW¼, SW¼NE¼SW¼, N½SE¼, and SE¼SE¼.
T. 39 S., R. 34 E.,
Sec. 9, NW¼SW¼.

Interpretation No. 130 of May 6, 1930

T. 20 S., R. 33½ E.,
Sec. 7, NE¼NE¼.

Interpretation No. 151 of July 23, 1931

T. 39 S., R. 34 E.,
Sec. 8, N½NW¼SE¼, and NE¼SE¼.

Interpretation No. 160 of April 8, 1932

T. 21 S., R. 31 E.,
Sec. 32, SW¼SW¼.
T. 22 S., R. 31 E.,
Sec. 5, Lot 4.

Interpretation No. 177 of February 15, 1933

T. 21 S., R. 29 E.,
Sec. 15, W½SW¼SE¼ and E½SE¼SE¼.
T. 29 S., R. 30 E.,
Sec. 29, SE¼SW¼ and SW¼SE¼;
Sec. 32, S½NW¼NE¼.
T. 40 S., R. 38 E.,
Sec. 9, NW¼NW¼.

Interpretation No. 185 of May 6, 1933

T. 27 S., R. 24 E.,
Sec. 11, S½NE¼, NW¼SW¼, S½SW¼, and SE¼;
Sec. 12, SW¼NE¼, N½NW¼, and SW¼
T. 20 S., R. 33½ E.,
Sec. 21, S½.

Interpretation No. 204 of May 26, 1934

T. 34 S., R. 33 E.,
Sec. 35, SE¼SW¼.

Interpretation No. 209 of September 27, 1934

T. 19 S., R. 35 E.,
Sec. 33, NW¼NE¼, NW¼SE¼, and SE¼SE¼;
Sec. 34, SW¼SW¼.

Interpretation No. 212 of January 18, 1935

T. 21 S., R. 33 E.,
Sec. 3, SW¼SE¼.
T. 20 S., R. 33½ E.,
Sec. 25, SW¼NW¼ and NW¼SW¼.

BLM Order Interpretation of March 30, 1965

T. 26 S., R. 27 E.,
Sec. 13, NW¼NE¼, N½N½NW¼, and SE¼NW¼.

The areas described aggregate 4,171.07 acres in Grant and Harney Counties, Oregon.

2. The E½NW¼ and E½SW¼NW¼ of sec. 22, T. 19 S., R. 33½ E., has been conveyed from United States ownership, and will not be restored to operation of the public land laws.

3. At 9:30 a.m., on October 5, 1982, the lands described in paragraph 1, except as provided in paragraph 2, will be open to operation of the public land laws generally, subject to valid existing rights, the provisions of existing withdrawals, and the requirements of applicable law. All valid applications received at or prior to 9:30 a.m., on October 5, 1982, shall be considered as simultaneously filed at that time. Those received thereafter shall be considered in the order of filing.

4. At 9:30 a.m., on October 5, 1982, the lands will be open to nonmetalliferous mineral location under the United States mining laws. The lands have been and continue to be open to metalliferous mineral location under the United States miing laws and to applications and offers under the mineral lwasing laws.

Inquiries concerning the lands should be addressed to the State Director, Bureau of Land Management, P.O. Box 2965, Portland, Oregon 97208.

Dated: August 19, 1982.

Steve R. Drossos,

Acting State Director.

[FR Doc. 82-23473 Filed 8-25-82; 8:45 am]

BILLING CODE 4310-84-M

[OR 9041-B]

Oregon; Order Providing for the Opening of Public Lands

1. The following identified Secretarial Orders of Interpretation of Public Water Reserve No. 107 are hereby revoked insofar as they affect the following described lands which do not meet the criteria of the Executive Order of April 17, 1926:

Willamette Meridian

Interpretation No. 140 of November 11, 1930

T. 38 S., R. 43 E.,
Sec. 2, lots 1, 2, and 3, and S½NW¼;
Sec. 25, NE¼NW¼ and S½NW¼;
Sec. 26, N½NE¼NE¼ and S½SE¼NE¼.
T. 38 S., R. 44 E.,
Sec. 30, N½NE¼SE¼, SW¼NE¼SE¼, W½SE¼, W½SE¼SE¼, and SW¼SE¼ SE¼;
Sec. 31, lot 3 and E½SW¼.
T. 39 S., R. 44 E.,
Sec. 30, NE¼SE¼ and W½SE¼.
T. 40 S., R. 44 E.,
Sec. 6, lots 1 and 2, SE¼NE¼.
T. 39 S., R. 45 E.,
Sec. 21, N½SW¼NE¼, SE¼SW¼NE¼, N½SE¼NW¼, SW¼SE¼NW¼, W½NE¼ SW¼, and E½NW¼SE¼.

Interpretation No. 160 of April 8, 1932

T. 25 S., R. 40 E.,
Sec. 26, SE¼SW¼ and SW¼SE¼;
Sec. 35, NW¼NE¼ and NE¼NW¼.
T. 25 S., R. 41 E.,
Sec. 23, SE¼NE¼;
Sec. 24, W½NW¼.

Interpretation No. 177 of February 15, 1933

T. 38 S., R. 44 E.,
Sec. 5, SW¼ and E½SE¼;

Sec. 8, NE¼.
T. 41 S., R. 45 E.,
Sec. 12, SW¼NW¼.

Interpretation No. 196 of February 3, 1934

T. 20 S., R. 40 E.,
Sec. 2, NE¼SE¼.

Interpretation No. 199 of February 27, 1934

T. 28 S., R. 45 E.,
Sec. 27, SW¼SW¼;
Sec. 34, NW¼NW¼.

Interpretation No. 206 of August 22, 1934

T. 24 S., R. 46 E.,
Sec. 17, SE¼NW¼.

Interpretation No. 221 of November 7, 1936

T. 27 S., R. 43 E.,
Sec. 29, N½NE¼, N½S½NE¼, SW¼SW¼ NE¼, and SE¼SE¼NE¼.

The areas described aggregate 1,979.67 acres in Malheur County, Oregon.

2. The SE¼NW¼ of Sec 17, T. 24 S., R. 46 E., and the SE¼SW¼ and SW¼SE¼ of Sec. 26, and the NW¼NE¼ and NE¼NW¼ of Sec. 35, T. 25 S., R. 40 E., have been conveyed from the United States ownership, and will not be restored to operation of the public lands laws.

3. At 9:30 a.m., on October 5, 1982, the lands described in paragraph 1, except as provided in paragraph 2, will be open to operation of the public land laws generally, subject to valid existing rights, the provisions of existing withdrawals, and the requirements of applicable law. All valid applications received at or prior to 9:30 a.m., on October 5, 1982, shall be considered as simultaneously filed at that time. Those received thereafter shall be considered in the order of filing.

4. At 9:30 a.m., on October 5, 1982, the lands will be open to nonmetalliferous mineral location under the United States mining laws. The lands have been and continue to be open to metalliferous mineral location under the United States mining laws and to applications and offers under the mineral leasing laws.

Inquiries concerning the lands should be addressed to the State Director, Bureau of Land Management, P.O. Box 2965, Portland, Oregon 97208.

Dated: August 19, 1982.

Steve R. Drossos,

Acting State Director.

[FR Doc 82-23474 Filed 8-25-82, 8:45 am]

BILLING CODE 4310-84-M

[CA-12776]

Realty Action—Exchange; Public Lands in Humboldt County, Calif.

The following described public land has been determined to be suitable for disposal under the provisions of Public Law 91-476, an Act to provide for the establishment of the King Range National Conservation Area (84 Stat. 1067), and Sec. 206 of the Federal Land Policy and Management Act of 1976 (90 Stat. 2756).

Humbold Meridian

T. 1 S., R. 2 W.,
Sec. 2, NW¼SE¼;
Sec. 5, Lot 1, S½NE¼;
Sec. 6, SE¼NE¼;
Sec. 8, S½;
Sec. 9, N½SW¼, SW¼SW¼.
T. 1 N., R. 1 W.,
Sec. 31, Lots 1, 2, 3, 7, 8, 9, 10, 12, 13, 14, 15, and 16.
T. 1 S., R. 1 W.,
Sec. 2, NE¼SW¼, SW¼SW¼;
Sec. 5, Lots 3 and 4, SE¼SE¼
Sec. 6, SE¼SE¼;
Sec. 8, SW¼NW¼;
Sec. 10, NW¼NE¼;
Sec. 13, SW¼NW¼, W½SW¼;
Sec. 14, Lots 8 and 9;
Sec. 24, NE¼SE¼.
T. 2 S., R. 1 W.,
Sec. 11, SW¼SE¼;
Sec. 13, N½NW¼, SE¼NW¼;
Sec. 14, N½NE¼, NE¼NW¼.
T. 1 S., R. 1 E.,
Sec. 5, SW¼NE¼, SE¼NW¼, NW¼SE¼;
Sec. 6, SE¼SW¼;
Sec. 7, E½NW¼;
Sec. 19, NE¼NW¼;
Sec. 32, W½SE¼, SE¼SE¼;
Sec. 33, SW¼SW¼.

Containing 2,305.20 acres, more or less.

Richard J. Bosio, 2236 California Avenue, Modesto, California 95351, has applied to acquire the above described lands in exchange for the following described privately owned lands.

Humboldt Meridian

Parcel One

All that portion of the SW¼SW¼ of Section 32, T. 2 S., R. 2 W., which lies on the Easterly side of Sea Lion Gulch Creek, as it existed on February 18, 1972.

Parcel Two

T. 2 S., R. 2 W.,
Sec. 29, S½SE¼;
Sec. 32, E½NE¼;
Sec. 33, SW¼NW¼, NW¼SE¼, NE¼SW¼, W½SW¼, S½NE¼;
Sec. 34, NW¼SE¼, SW¼NE¼, S½NW¼.

Parcel Three

T. 2 S., R. 2 W.,
Sec. 4, Lot 4, SW¼NW¼, SW¼;
Sec. 5, Lots 1, 3, 4, 5, 6 and 7, SE¼NE¼, SE¼NW¼, SE¼;
Sec. 6, Lot 7;
Sec. 8, Lots 2, 3, and 4, NE¼NE¼;
Sec. 9, Lots, 1 and 3, SW¼NE¼, NW¼, NE¼SW¼, SE¼;
Sec. 10, S½SW¼, S½SE¼;
Sec. 11, SW¼SW¼.

Parcel Four

T. 2 S., R. 2 W.,
Those Portions of the SE¼NE¼ and the NE¼SE¼ of Section 31, and those portions of the SE¼, SW¼NW¼, NW¼SW¼, NW¼SW¼ and the E½SW¼ of Section 32 which lie on the Southerly side of Sea Lion Gulch, as it existed on December 14, 1876.

Parcel Six

T. 3 S., R. 2 W.,
The fractional SE¼ of Section 6, excepting therefrom, Lot 7 thereof.

Parcel Seven

T. 3 S., R. 2 W.,
Sec. 5, Lot 8.

Containing 2,800 acres, more or less.

A mineral evaluation has been requested on the public land. If any minerals are identified, a reservation of identified minerals will be made to the United States. If no minerals are identified, the mineral estate of the public lands will be conveyed with the surface. The mineral estate of the privately owned lands will be conveyed with the surface, unless previously reserved.

The publication of this notice in the **Federal Register** shall segregate the applied for public lands from all other forms of appropriation under the public land laws, including the mining laws, for a period of two years. The exchange is expected to be consummated before the end of that period.

The value of the lands to be exchanged is approximately equal, and money will be used to equalize the values upon completion of the final appraisal of the lands.

There will be reserved to the United States in the applied for lands, a right-of-way thereon for ditches and canals constructed by the authority of the United States (43 U.S.C. 945) and reservation of right-of-way to the United States and it's assigns for forest management purposes for a term to be specified prior to consummation of this exchange.

Reservation of Timber

The United States will reserve commercial timber in the approximate volumes shown on the following described public lands:

T. 1 S., R. 2 W., H.B.M.
Sec. 8, S½;
Sec. 9, N½SW¼, SW¼SW¼.

Reserving a total of 6 mmbf net volume of commercial conifer timber to be known as the Davis Creek Timber Sale.

T. 1 S., R. 1 W., H.B.M.
Sec. 5, Lots 3 and 4.
T. 1 N., R. 1 W., H.B.M.
Sec. 31, Lots 1 to 3 inclusive and Lots 7 to 16 inclusive.

Reserving 5 mmbf net volume of commercial conifer timber known as the Pigtoe I & II Timber Sale.

Purpose of Exchange

The purpose of the exchange is to acquire non-Federal lands within the King Range National Conservation Area for more effective management. The exchange is in conformance with Bureau planning, and in the public interest.

Detailed information concerning the exchange, including the environmental

analysis and the record of non-federal participation, is available for review at the Eureka Resource Area Office, BLM, 1585 J Street, P.O. Box II, Arcata, California 95521.

For a period of 45 days from the first publication of this notice interested parties may submit comments to the California State Director, Bureau of Land Management, Rm E-2841 Federal Office Building, 2800 Cottage Way, Sacramento, California 95825. Any adverse comments will be evaluated by the California State Director, who may vacate or modify this realty action and issue a final determination. In the absence of a vacation or modification this realty action will become the final determination of the Bureau.

Edwin G. Katlas,

Acting District Manager, Bureau of Land Management, Ukiah District.

[FR Doc. 82-23314 Filed 8-25-82; 8:45 am]

BILLING CODE 4830-01-M

[OR-22432 (WASH)]

Washington; Order Providing for the Opening of Public Land

1. The following identified Secretarial Order of Interpretation of Public Water Reserve No. 107 is hereby revoked insofar as it affects the following described land which does not meet the criteria of the Executive Order of April 17, 1926:

Williamette Meridian

Interpretation No. 209 of September 27, 1934

T. 40 N., R. 25 E.,

Sec. 33, lots 1 to 6, inclusive.

The area described contains 206.49 acres in Okanogan County, Washington.

2. At 9:30 a.m., on October 5, 1982, the land will be open to operation of the public land laws generally, subject to valid existing rights, the provisions of existing withdrawals, and the requirements of applicable law. All valid applications received at or prior to 9:30 a.m., on October 5, 1982, shall be considered as simultaneously filed at that time. Those received thereafter shall be considered in the order of filing.

3. At 9:30 a.m., on October 5, 1982, the land will be open to nonmetalliferous mineral location under the United States mining laws. The land has been and continues to be open to metalliferous mineral location under the United States mining laws and to applications and offers under the mineral leasing laws.

Inquiries concerning the land should be addressed to the State Director, Bureau of Land Management, P.O. Box 2965, Portland, Oregon 97208.

Dated: August 19, 1982.

Steve R. Drossos,

Acting State Director.

[FR Doc. 82-23471 Filed 8-25-82; 8:45 am]

BILLING CODE 4310-84-M

South Dakota; Call for Coal Resource Information

AGENCY: Bureau of Land Management, Interior.

ACTION: Call for coal resource information for South Dakota.

SUMMARY: The Bureau of Land Management is initiating a Resource Management Plan for the public lands and minerals in South Dakota. As part of its scoping process and in accordance with the provisions of 43 CFR 3420.1-2, the Bureau is formally soliciting indications of interest and information on coal resource development potential for public lands in South Dakota. Industry, state and local governments and the general public may submit information on lands that should be considered for coal leasing, including statements describing why the lands should be considered for leasing.

Non-proprietary data and general comments should be submitted to: District Manager, Bureau of Land Management, Miles City District Office, P.O. Box 940, Miles City, Montana 59301

Proprietary data marked as confidential may be submitted only to: District Supervisor for Resource Evaluation, Minerals Management Service, 111 South Wolcott, Room 305, Casper, Wyoming 82601

SUPPLEMENTARY INFORMATION: Coal companies, state and local governments and the general public are encouraged to submit relevant information at any time during the planning process. However, information about the coal resource will be most useful in focusing the Bureau's planning efforts if received prior to December 1, 1982.

FOR FURTHER INFORMATION CONTACT: Ray Brubaker, District Manager, (406) 232-4331 or write to Miles City District Office, P.O. Box 940, Miles City, Montana 59301.

Robert A. Teegarden,

Associate District Manager.

[FR Doc. 82-23483 Filed 8-25-82; 8:45 am]

BILLING CODE 4310-84-M

Minerals Management Service

Availability of Geophysical Logs; Wyoming

Notice is hereby given that Minerals Management Service (MMS) goephysical logs of 11 coal drill holes located in Carbon County, Wyoming are now available to the public. The drilling, completed in May, 1982, as a result of MMS efforts in support of the Federal coal management program, provides geologic information necessary to evaluate and classify coal resources on lands in the public domain.

The drill holes, located in Township 23 North, Ranges 83 and 84 West, Sixth Principal Meridian, Wyoming, were designed to investigate coal beds in the Ferris Formation of Tertiary/Cretaceous age in the Hanna Coal Field of the western Hanna Basin of south-central Wyoming. The geophysical logs are available for reproduction from the Minerals Management Service, North Central Region, 2001 Federal Building, P.O. Box 2859, Casper, Wyoming 82602. (307) 261-5421.

Dwayne E. Hull,

Acting Minerals Manager, North Central Region.

[FR Doc. 82-23468 Filed 8-25-82; 8:45 am]

BILLING CODE 4310-MR-M

Oil and Gas and Sulphur Operations in the Outer Continental Shelf; Amoco Production Company

AGENCY: Minerals Management Service, Interior.

ACTION: Notice of the receipt of a proposed development and production plan.

SUMMARY: Notice is hereby given that Amoco Production Company (USA) has submitted a Development and Production Plan describing the activities it proposed to conduct on Lease OCS-G 0987, Block 273, Eugene Island Area, offshore Louisiana.

The purpose of this Notice is to inform the public, pursuant to Section 25 of the OCS Lands Act Amendments of 1978, that the Minerals Management Service is considering approval of the Plan and that is it available for public review at the Office of the Minerals Manager, Gulf of Mexico OCS Region, Minerals Management Service, 3301 North Causeway Blvd., Room 147, Metairie, Louisiana 70002.

FOR FURTHER INFORMATION CONTACT: Minerals Management Service, Public Records, Room 147, open weekdays 9 a.m. to 3:30 p.m., 3301 North Causeway

Blvd., Metairie, Louisiana 70002, Phone (504) 837–4720, Ext. 226.

SUPPLEMENTARY INFORMATION: Revised rules governing practices and procedures under which the Minerals Management Service makes information contained in Development and Production Plans available to affected States, executives of affected local governments, and other interested parties became effective December 13, 1979, (44 FR 53685). Those practices and procedures are set out in a revised § 250.34 of Title 30 of the Code of Federal Regulations.

Dated: August 20, 1982.

John L. Rankin,

Acting Minerals Manager, Gulf of Mexico OCS Region.

[FR Doc. 82–23496 Filed 8–25–82; 8:45 am]

BILLING CODE 4310–31–M

Oil and Gas and Sulphur Operations in the Outer Continental Shelf; Chevron, U.S.A., Inc.

AGENCY: Minerals Management Service, Interior.

ACTION: Notice of the receipt of a proposed development and production plan.

SUMMARY: Notice is hereby given that Chevron U.S.A. Inc. has submitted a Development and Production Plan describing the activities it proposes to conduct on Lease OCS–G 1634, Block 144, Main Pass Area, offshore Louisiana.

The purpose of this Notice is to inform the public, pursuant to Section 25 of the OCS Lands Act Amendments of 1978, that the Minerals Management Service is considering approval of the Plan and that it is available for public review at the Office of the Minerals Manager, Gulf of Mexico OCS Region, Minerals Management Service, 3301 North Causeway Blvd., Room 147, Metairie, Louisiana 70002.

FOR FURTHER INFORMATION CONTACT: Minerals Management Service, Public Records, Room 147, open weekdays 9 a.m. to 3:30 p.m., 3301 North Causeway Blvd., Metairie, Louisiana 70002, Phone (504) 837–4720, Ext. 226.

SUPPLEMENTARY INFORMATION: Revised rules governing practices and procedures under which the Minerals Management Service makes information contained in Development and Production Plans available to affected States, executives of affected local governments, and other interested parties became effective December 13, 1979, (44 FR 53685). Those practices and procedures are set out in a revised § 250.34 of Title 30 of the Code of Federal Regulations.

Dated: August 20, 1982.

John L. Rankin,

Acting Minerals Manager, Gulf of Mexico OCS Region.

[FR Doc. 82–23495 Filed 8–25–82; 8:45 am]

BILLING CODE 4310–31–M

Oil and Gas and Sulphur Operations in the Outer Continental Shelf; Gulf Oil Exploration and Production Co.

AGENCY: Minerals Management Service, Interior.

ACTION: Notice of the receipt of a proposed development and production plan.

SUMMARY: Notice is hereby given that Gulf Oil Exploration and Production Company has submitted a Development and Production Plan describing the activities it proposes to conduct on Lease OCS–G 3336, Block 35, South Timbalier Area, offshore Louisiana.

The purpose of this Notice is to inform the public, pursuant to Section 25 of the OCS Lands Act Amendments of 1978, that the Minerals Management Service is considering approval of the Plan and that it is available for public review at the Office of the Minerals Manager, Gulf of Mexico OCS Region, Minerals Management Service, 3301 North Causeway Blvd., Room 147, Metairie, Louisiana 70002.

FOR FURTHER INFORMATION CONTACT: Minerals Management Service, Public Records, Room 147, open weekdays 9 a.m. to 3:30 p.m., 3301 North Causeway Blvd., Metairie, Louisiana 70002, Phone (504) 837–4720, Ext. 226.

SUPPLEMENTARY INFORMATION: Revised rules governing practices and procedures under which the Minerals Management Service makes information contained in Development and Production Plans available to affected States, executives of affected local governments, and other interested parties became effective December 13, 1979, (44 FR 53685). Those practices and procedures are set out in a revised § 250.34 of Title 30 of the Code of Federal Regulations.

Dated: August 17, 1982.

John L. Rankin,

Acting Minerals Manager, Gulf of Mexico OCS Region.

[FR Doc. 82–23495 Filed 8–25–82; 8:45 am]

BILLING CODE 4310–31–M

National Park Service

Delta Region Preservation Commission; Meeting

Notice is hereby given in accordance with the Federal Advisory Committee Act that a meeting of the Delta Region Preservation Commission will be held at 7:30 p.m., CST, on September 23, 1982, at the Jefferson Parish Council Chambers, 3330 North Causeway Boulevard, Metairie, Louisiana.

The Delta Region Preservation Commission was established pursuant to Pub. L. 95–265, Section 907(a) to advise the Secretary of the Interior in the selection of sites for inclusion in Jean Lafitte National Historical Park, and in the development and implementation of a general management plan and of a comprehensive interpretive program of the natural, historic, and cultural resources of the Region.

The matters to be discussed at this meeting include:

—General Management Plan
— Interpretive Plan
—1982–83 Hunting Season

The meeting will be open to the public. However, facilities and space for accommodating members of the public are limited, and persons will be accommodated on a first-come, first-serve basis. Any member of the public may file a written statement concerning the matters to be discussed with the Superintendent, Jean Lafitte National Historical Park.

Persons wishing futher information concerning this meeting, or who wish to submit written statements may contact James Isenogle, Superintendent, Jean Lafitte National Historical Park, c/o Municipal Auditorium, 1201 St. Peter's Street, New Orleans, Louisiana 70116 telephone, area code 504 589–3882. Minutes of the meeting will be available for public inspection four weeks after the meeting at the office of Jean Lafitte National Historical Park.

Dated: August 17, 1982.

Robert I. Kerr,

Regional Director, Southwest Region.

[FR Doc. 82–23497 Filed 8–25–82; 8:45 am]

BILLING CODE 4310–70–M

Death Valley National Monument; Intention to Renew Concession Contract; TWA Services, Inc.

Pursuant to the provisions of Section 5 of the Act of October 9, 1965 (79 Stat. 969; 16 U.S.C. 20 et seq.), public notice is hereby given that thirty (30) days after the date of publication of this notice, the

Department of the Interior, through the Director of the National Park Service, proposes to renew a Concession Contract No. 9900C20102 with TWA Services, Inc., authorizing it to continue to provide, pursuant to Contract No. 9900C20102 Subsection 2(a): (1) food and beverage services, (2) merchandising services, (3) any and all services which are customary in connection with such operations for the public at Scotty's Castle, Death Valley National Monument, California, for a period of ten (10) years from January 1, 1983, through December 31, 1992.

The foregoing concessioner has performed its obligations to the satisfaction of the Secretary under an existing contract which expires by limitation of time on December 31, 1982, and therefore, pursuant to the Act of October 9, 1965, as cited above, is entitled to be given preference in the renewal of the contract and in the negotiation of a new contract. This provision, in effect, grants TWA Services, Inc., as the present satisfactory concessioner, the right to meet the terms of responsive proposals for the proposed new contract and a preference in the award of the contract, if, thereafter, the proposal of TWA Services, Inc., is substantially equal to others received. In the event a responsive proposal superior to that of TWA Services, Inc. (as determined by the Secretary) is submitted, TWA Services, Inc., will be given the opportunity to meet the terms and conditions of the superior proposal the Secretary considers desirable, and, if it does so, the new contract will be negotiated with TWA Services, Inc. The Secretary will consider and evaluate all proposals received as a result of this notice.

Any proposal, including that of the existing concessioner, must be postmarked or hand-delivered on or before the thirtieth (30th) day following publication of this notice to be considered and evaluated.

It has been determined that the proposed renewal of this contract does not have potential for causing significant environmental impact and therefore preparation of an environmental assessment is not required.

Interested parties should contact the Regional Director, Western Region, 450 Golden Gate Avenue, P.O. Box 36063, San Francisco, California 94102, for information as to the requirements of the proposed contract.

Howard H. Chapman,

Regional Director, Western Region.

[FR Doc. 82-23498 Filed 8-25-82; 8:45 am]

BILLING CODE 4310-70-M

INTERSTATE COMMERCE COMMISSION

Motor Carriers; Decision-Notice; Finance Applications

As indicated by the findings below, the Commission has approved the following applications filed under 49 U.S.C. 10924, 10926, 10931 and 10932.

We Find

Each transaction is exempt from section 11343 (formerly section 5) of the Interstate Commerce Act, and complies with the appropriate transfer rules.

This decision is neither a major Federal action significantly affecting the quality of the human environment nor a major regulatory action under the Energy Policy and Conservation Act of 1975.

Petitions seeking reconsideration must be filed within 20 days from the date of this publication. Replies must be filed within 20 days after the final date for filing petitions for reconsiderations; any interested person may file and serve a reply upon the parties to the proceeding. Petitions which do not comply with the relevant transfer rules at 49 CFR 1132.4 may be rejected.

If petitions for reconsideration are not timely filed, and applicants satisfy the conditions, if any, which have been imposed, the application is granted and they will receive an effective notice. The notice will indicate that consummation of the transfer will be presumed to occur on the 20th day following service of the notice, unless either applicant has advised the Commission that the transfer will not be consummated or that an extension of time for consummation is needed. The notice will also recite the compliance requirements which must be met before the transferee may commence operations.

Applicants must comply with any conditions set forth in the following decision-notices within 30 days after publication, or within any approved extension period. Otherwise, the decision-notice shall have no further effect.

It is Ordered

The following applications are approved, subject to the conditions stated in the publication, and further subject to the administrative requirements stated in the effective notice to be issued hereafter.

By the Commission, Review Board No. 3. Members Krock, Joyce, and Dowell.

MC-FC-79956. By decision of August 10, 1982 issued under 49 U.S.C. 10926 and the transfer rules at 49 C.F.R. 1132, Review Board No. 3 approved the transfer to Carroll Moving & Transfer Company, of Carrollton, OH, of Permit No. MC-113089 and Subs 1, 2, 4, 5, 8, 9, 10, 11 and 12 issued to Ed Galigher, (James E. Galigher, Executor) of Bowerston, OH, authorizing the transportation of specified commodities, *primarily mining machinery and hydraulic railroad car pushers, clay products and materials and supplies* used in the manufacturing or distribution thereof, and *earthenware and materials and supplies* used in the manufacturing or distribution thereof, from, to or between points in the U.S. under continuing contracts with (1) The Nolan Company, of Bowerston, OH, (2) Bowerston Shale Company, of Bowerston, OH, and (3) Scio Pottery Company, of Scio, OH. Representative: A. Charles Tell, Suite 1800, 100 E. Broad St., Columbus, OH 43215.

Note.—Transferee is a carrier (MC-145777) and controls Keenan Bros., Inc., a carrier (MC-14458).

MC-FC-79968. By decision of August 10, 1982, issued under 49 U.S.C. 10931 or 10932 and the transfer rules at 49 CFR 1132, Review Board Number 3 approved the transfer to ROBERT L. SIMON, D/B/A SIMON'S EXPRESS, of Pittsburgh, PA, of Certificate of Registration No. MC-96899 (Sub-No. 1), issued March 11, 1965, to DOUGLAS POSKIN, D/B/A BRIDGEVILLE-AVELLA EXPRESS, of Bridgeville, PA, evidencing a right to engage in transportation in interstate commerce corresponding in scope to Certificate No. 84409, dated October 14, 1957, issued by the Pennsylvania Utility Commission, transporting property between the Village of Venice and Pittsburgh, PA and between Pittsburgh and Avella, PA. Approval of this transfer is conditioned upon applicant furnishing the Commission with a certified copy of the Pennsylvania certificate as reissued to it, or if the Pennsylvania Public Utility Commission does not reissue the certificate, a certified copy of the order which approved the transfer of the Pennsylvania intrastate certificate, together with a statement in writing confirming the date of consummation of the intrastate transaction. Representative: John A. Pillar, 1500 Bank Tower, 307 Fourth Avenue, Pittsburgh, PA 15222; and John A. Vuono, 2310 Grant Building, Pittsburgh, PA 15219.

Note.—Transferee is not a carrier.

MC-FC-79972. By decision of August 10, 1982 issued under 49 U.S.C. 10926 and the transfer rules at 49 CFR 1132, Review Board No. 3 approved the transfer to Northern Michigan Coaches,

Inc., of Marquette, MI, of Certificate No. MC–144534F issued February 4, 1980, to Huron Bay Transit, Inc., of La'Anse, MI, authorizing: *Passengers and their baggage* (1) in round trip sightseeing and pleasure tours, in special and charter operations, beginning and ending at points in Alger, Baraga, Delta and Marquette Counties, MI, and extending to points in the United States (including AK but excluding HI), and (2) in one-way sightseeing and pleasure tours, in special and charter operations, between points in Alger, Baraga, Delta and Marquette Counties, MI, on the one hand, and, on the other, points in the U.S. (including AK, but excluding HI). Restriction: The one-way operations in (2) above are restricted to the transportation of passengers and the baggage having a prior or subsequent movement from or to one of the above-named points in MI and further restricted to the transportation of residents of one of the above-named counties in MI. Representative: Robert D. Schuler, 100 West Long Lake Road—Suite 102, Bloomfield Hills, MI 48013. TA lease is sought. Transferee is not a carrier but is affiliated with a carrier.

MC–FC–79973. By decision of August 9, 1982, issued under 49 U.S.C. 10926 and the transfer rules at 49 CFR 1132, Review Board Number 3 approved the transfer to La Porte Truck Lines, Inc., of Mars, PA of Permit No. MC–148400 (Sub-Nos. 3F and 7X) issued to Sun Valley Tank Lines, Inc., of Mars, PA authorizing (1) *general commodities* (except household goods as defined by the Commission and classes A and B explosives), between points in the United States under continuing contract(s) with Jacob Stern & Sons, Inc.; Snow Commodities Co., Inc.; Acme Hardesty Co., Inc.; Kaber Commodities Company; and Murro Chemical Co., Inc., all of Jenkintown, PA. (2) *Meats, packinghouse products,* and *commodities used by packinghouses,* between points in the United States. Restricted to a transportation services to be performed under a continuing contract(s) with (a) Jacob Stern & Sons, Inc. of Philadelphia, PA; (b) Cuyahoga Soap Co., Inc., of Cleveland, OH; (c) Far Best Corporation, of Verona, PA; (d) Darlington & Company, of Chicago, IL; (e) A. W. Stadler, Inc., of Cleveland, OH; and (f) Mayco Oil and Chemical Company, Inc., of Neville Island, PA. (3) *Petroleum, natural gas and their products,* between points in the United States. Restricted to a transportation service to be performed under continuing contract(s) with Far Best Corporation, of Penn Hills Township, PA. Representative: William A. Gray, 2310 Grant Bldg., Pittsburgh, PA 15219. TA lease is not sought. Transferee is not a carrier.

Agatha L. Mergenovich,
Secretary.

[FR Doc. 82–23330 Filed 8–25–82; 8:45 am]
BILLING CODE 7035–01–M

Motor Carriers; Permanent Authority Decisions; Decision-Notice

The following applications, filed on or after February 9, 1981, are governed by Special Rule of the Commission's Rules of Practice, see 49 CFR 1100.251. Special Rule 251 was published in the **Federal Register** on December 31, 1980, at 45 FR 86771. For compliance procedures, refer to the **Federal Register** issue of December 3, 1980, at 45 FR 80109.

Persons wishing to oppose an application must follow the rules under 49 CFR 1100.252. Applications may be protested *only* on the grounds that applicant is not fit, willing, and able to provide the transportation service or to comply with the appropriate statutes and Commission regulations. A copy of any application, including all supporting evidence, can be obtained from applicant's representative upon request and payment to applicant's representative of $10.00.

Amendments to the request for authority are not allowed. Some of the applications may have been modified prior to publication to conform to the Commission's policy of simplifying grants of operating authority.

Findings

With the exception of those applications involving duly noted problems (e.g., unresolved common control, fitness, water carrier dual operations, or jurisidictional questions) we find, preliminarily, that each applicant has demonstrated a public need for the proposed operations and that it is fit, willing, and able to perform the service proposed, and to conform to the requirements of Title 49, Subtitle IV, United States Code, and the Commission's regulations. This presumption shall not be deemed to exist where the application is opposed. Except where noted, this decision is neither a major Federal action significantly affecting the quality of the human environment nor a major regulatory action under the Energy Policy and Conservation Act of 1975.

In the absence of legally sufficient opposition in the form of verified statements filed on or before 45 days from date of publication (or, if the application later become unopposed), appropriate authorizing documents will be issued to applicants with regulated operations (except those with duly noted problems) and will remain in full effect only as long as the applicant maintains appropriate compliance. The unopposed applications involving new entrants will be subject to the issuance of an effective notice setting forth the compliance requirements which must be satisfied before the authority will be issued. Once this compliance is met, the authority will be issued.

Within 60 days after publication an applicant may file a verified statement in rebuttal to any statement in opposition.

To the extent that any of the authority granted may duplicate an applicant's other authority, the duplication shall be construed as conferring only a single operating right.

Note.—All applications are for authority to operate as a motor common carrier in interstate or foreign commerce over irregular routes, unless noted otherwise. Applications for motor contract carrier authority are those where service is for a named shipper "under contract".

Please direct status inquiries to the Ombudsman's Office, (202) 275–7326.

Volume No. OP 3–132

Decided: August 18, 1982.

By the Commission, Review Board No. 2, Members Carleton, Fisher, and Williams.

MC 163304, filed August 6, 1982. Applicant: PALLETT TRUCKING, 685 West D Avenue, Kalamazoo, MI 49007. Representative: Leon Pallett (same address as applicant), (616) 349–1103. Transporting *food and other edible products and byproducts intended for human consumption* (except alcoholic beverages and drugs), *agricultural limestone and fertilizers, and other soil conditioners,* by the owner of the motor vehicle in such vehicle, between points in the United States.

MC 163325, filed August 9, 1982. Applicant: JERRY ORTSMAN, d.b.a. MERCHANTS SHIPPING, 1279 E. 72nd St., Brooklyn, NY 11234. Representative: Jerry Ortsman, (same address as applicant), (212) 513–1505. As a *broker of general commodities* (except household goods), between points in the United States (except AK and HI).

MC 163334, filed August 10, 1982. Applicant: J. REX GREER, 4404 18th St., Lubbock, TX 79416. Representative: (same as applicant) (806) 795–0433. Transporting *food and other edible products and byproducts intended for human consumption* (except alcoholic beverages and drugs), *agricultural limestone and fertilizer, and other soil conditioners* by the owner of the motor

vehicle in such vehicle, between points in the United States (except HI).

MC 163335, filed August 10, 1982. Applicant: O & E GROWERS, INC., Main St., Box 215, Elba, NY 14058. Representative: John M. Panara, 4388 Clark St., Hamburg, NY 14075, (716) 648–6131. As a *broker of general commodities* (except household goods), between points in the United States (except AK and HI).

MC 163365, filed August 12, 1982. Applicant: ROCCO MARCHETTA, d.b.a. TRANSPORT TRAJET INC., 1 A Colony Rd., Port Jersey, Jersey City, NJ 07305. Representative: Joseph F. Stern, 17 Bradley Dr., Shoreham, NY 11786, (516) 744–0520. As a *broker of general commodities* (except household goods), between points in the United States.

Volume No. OP4–306

Decided: August 18, 1982.

By the Commission, Review Board No. 2, Members Carleton, Fisher, and Williams.

MC 163326, filed August 9, 1982. Applicant: LINDEN WAREHOUSE AND DISTRIBUTION CO., INC., 1300 Lower Rd., Linden, NJ 07036. Representative: George A. Olsen, P.O. Box 357, Gladstone, NJ 07934, (201) 234–0301. As a *broker of general commodities* (except household goods), between points in the United States (except AK and HI).

Volume No. OP4–308

Decided: August 19, 1982.

By the Commission, Review Board No. 2, Members Carleton, Fisher, and Williams.

MC 163246, filed August 2, 1982. Applicant: BARBARA K. MARTINEC, 231 Kenilworth Ave., Bolingbrook, IL 60439. Representative: Anthony E. Young, 20 S. LaSalle St., Chicago, IL 60603, (312) 782–8880. As a *broker of general commodities* (except household goods), between points in the U.S. (except AK and HI).

MC 163346, filed August 11, 1982. Applicant: SAME DAY DELIVERY SERVICE COMPANY, Rural Route #1, Pocahontas, IL 62275. Representative: Jack Foehner (same address as applicant), (618) 669–2640. Transporting *shipments weighing 100 pounds or less* if transported in a motor vehicle in which no one package exceeds 100 pounds, between points in the U.S. (except AK and HI).

Volume No. OP4–310

Decided: August 20, 1982.

By the Commission, Review Board No. 2, Members Carleton, Fisher, and Williams.

MC 163436, filed August 17, 1982. Applicant: BRETT SHANE, Route 1, Box 20–b, Amenia, ND 58004. Representative: Brett Shane (same address as applicant), (701) 967–8565. Transporting *food and other edible products and byproducts intended for human consumption* (except alcoholic beverages and drugs), *agricultural limestone and fertilizers, and other soil conditioners* by the owner of the motor vehicle in such vehicle, between points in the U.S. (except AK and HI).

MC 163416, filed August 16, 1982. Applicant: VIRGIL L. ROPER, P.O. Box 1166, Sterling, CO 80751. Representative: Virgil L. Roper (same address as applicant), (303) 522–0892. Transporting *food and other edible products and byproducts intended for human consumption* (except alcoholic beverages and drugs), *agricultural limestone and fertilizers, and other soil conditioners* by the owner of the motor vehicle in such vehicle, between points in the U.S. (except AK and HI).

Volume No. OP5–171

Decided: August 12, 1982.

By the Commission, Review Board No. 1, Members Parker, Chandler, and Fortier.

MC 124408 (Sub–26), filed July 15, 1982. Applicant: THOMPSON BROS., INC., 3604 Hovland Drive, P.O. Box 1283, Sioux Falls, SD 57101. Representative: Richard P. Anderson, P.O. Box 2581, Fargo, ND 58108, (701) 235–3300. Transporting, for or on behalf of the United States Government, *general commodities* (except used household goods, hazardous or secret materials, and sensitive weapons and munitions), between points in the U.S. (except AK and HI).

MC 143308 (Sub-3), filed August 2, 1982. Applicant: GENERAL TRUCKING SERVICE, INC., 3700 Park East Dr., Cleveland, OH 44122. Representative: J. A. Kundtz, 1100 National City Bank Bldg., Cleveland, OH 44114, 216–566–5639. Transporting, for or on behalf of the United States Government, *general commodities* (except used household goods, hazardous or secret materials, and sensitive weapons and munitions), between points in the U.S.

MC 163119, filed July 23, 1982. Applicant: BRYCE FREI, 2895 West Santa Clara Dr., Santa Clara, UT 84765. Representative: J. Ralph Atkin, 60 North 300 East, St. George, UT 84770, (801) 628–2612. Transporting *food and other edible products and byproducts intended for human consumption* (except alcoholic beverages and drugs), *agricultural limestone and fertilizers, and other soil conditioners* by the owner of the motor vehicle in such vehicle, between points in the U.S. (except AK and HI).

Agatha L. Mergenovich,

Secretary.

[FR Doc. 82–23333 Filed 8–25–82; 8:45 am]

BILLING CODE 7035–01–M

Motor Carriers; Permanent Authority Decisions; Decision-Notice

The following applications, filed on or after February 9, 1981, are governed by Special Rule of the Commission's Rules of Practice, see 49 CFR 1100.251. Special Rule 251 was published in the **Federal Register** of December 31, 1980, at 45 FR 86771. For compliance procedures, refer to the **Federal Register** issue of December 3, 1980, at 45 FR 80109.

Persons wishing to oppose an application must follow the rules under 49 CFR 1100.252. A copy of any application, including all supporting evidence, can be obtained from applicant's representative upon request and payment to applicant's representative of $10.00.

Amendments to the request for authority are not allowed. Some of the applications may have been modified prior to publication to conform to the Commission's policy of simplifying grants of operating authority.

Findings

With the exception of those applications involving duly noted problems (e.g., unresolved common control, fitness, water carrier dual operations, or jurisdictional questions) we find, preliminarily, that each applicant has demonstrated a public need for the proposed operations and that it is fit, willing, and able to perform the service proposed, and to conform to the requirements of Title 49, Subtitle IV, United States Code, and the Commission's regulations. This presumption shall not be deemed to exist where the application is opposed. Except where noted, this decision is neither a major Federal action significantly affecting the quality of the human environment nor a major regulatory action under the Energy Policy and Conservation Act of 1975.

In the absence of legally sufficient opposition in the form of verified statements filed on or before 45 days from date of publication, (or, if the application later becomes unopposed) appropriate authorizing documents will be issued to applicants with regulated operations (except those with duly noted problems) and will remain in full effect only as long as the applicant maintains appropriate compliance. The

unopposed applications involving new entrants will be subject to the issuance of an effective notice setting forth the compliance requirements which must be satisfied before the authority will be issued. Once this compliance is met, the authority will be issued.

Within 60 days after publication an applicant may file a verified statement in rebuttal to any statement in opposition.

To the extent that any of the authority granted may duplicate an applicant's other authority, the duplication shall be construed as conferring only a single operating right.

Agatha L. Mergenovich,

Secretary.

Note.—All applications are for authority to operate as a motor common carrier in interstate or foreign commerce over irregular routes, unless noted otherwise. Applications for motor contract carrier authority are those where service is for a named shipper "under contract".

Please direct status inquiries to the Ombudsman's Office, (202) 275–7326.

Volume No. OP4–309

Decided: August 19, 1982.

By the Commission, Review Board No. 2, Members Carleton, Fisher, and Williams.

MC 37896 (Sub-61), filed August 12, 1982. Applicant: YOUNGBLOOD TRUCK LINES, INC., P.O. Box 1048, Fletcher, NC 28732. Representative: Leonard S. Cassell (same address as applicant), (704) 684–5321. Transporting *general commodities* (except classes A and B explosives, household goods and commodities in bulk), between points in the U.S., under continuing contract(s) with Kellwood Company, of Chesterfield, MO.

MC 105016 (Sub-17), filed August 16, 1982. Applicant: PELLSSIER TRUCKING, INC., 1002 Hostetler, P.O. Box 192, The Dalles, OR 97058. Representative: Russel M. Allen, 1200 Jackson Tower, Portland, OR 97205, (503) 224–4840. Transporting *general commodities* (except classes A and B explosives, household goods, and commodities in bulk), between points in OR, WA, ID, MT, and UT; and (2)(a) *food and related products*, (b) *pipe*, and (c) *machinery and construction equipment*, between points in OR and CA.

MC 128496 (Sub-2), filed August 12, 1982. Applicant: RAY CROSSEN HORSE VANS, INC., 104 W. Barlow Rd., Hudson, OH 44236. Representative: J. A. Kundtz, 1100 National City Bank Bldg., Cleveland, OH 44114. Transporting *horses*, between points in AL, AR, CT, DE, FL, GA, IA, IL, IN, KS, KY, LA, ME, MD, MA, MI, MS, MO, NE, NH, NJ, NY, NC, OK, OH, PA, RI, SC, TN, TX, VT, VA, WV, WI and DC.

MC 146196 (Sub-4), filed August 16, 1982. Applicant: RICH DOSS, INC., P.O. Box 4808, Santa Rosa, CA 95402. Representative: Matthew F. Hunziker, 2306 Gifford Ct., Santa Rosa, CA 95401, (707) 575–0235.Transporting (1) *lumber and wood products*, (2) *forest products*, (3) *building materials*, (4) *chemicals and related products*, and (5) *metal products*, between points in CA, OR, WA, ID, UT, NV, WY, CO, and AZ.

MC 154416 (Sub-6), filed August 13, 1982. Applicant: J & S LINES, INC., P.O. Box 184, Mukwonago, WI 53149. Representative: Ronald E. Laitsch, 108 S. 2nd St., Watertown, WI 53094, (414) 261–9725. Transporting *food and related products*, between points in WI, IL, IN, OH, PA, NJ, NY, CA, WA, OR, AZ, CT, MO, and MA, on the one hand, and, on the other, points in the U.S. (except AK and HI).

MC 158376 (Sub-1), filed August 16, 1982. Applicant: WILLIAMS TRUCKING, 8394 LeSourdsville Rd., West Chester, OH 45069. Representative: Martin Williams, 4220 Cornell Rd., Sharonville, OH 45241, (513) 769–5736. Transporting *general commodities* (except Classes A and B explosives, household goods and commodities in bulk), between points in the U.S. (except AK and HI).

MC 160536 (Sub-2), filed August 3, 1982. Applicant: BADDOUR TRANSPORTATION, INC., 4300 New Getwell Rd., Memphis, TN 38118. Representative: Harold J. Holcomb (same address as applicant), (901) 365–8880, Ext. 3053. Transporting *general commodities* (except classes A and B explosives, household goods, and commodities in bulk), between Memphis, TN, on the one hand, and, on the other, points in AR, AL, MO, MS, LA, GA, and KY.

MC 161166, filed August 13, 1982. Applicant: MIDLAND TRANSPORTATION CORPORATION, 237 Depot St., Berea, OH 44017. Representative: Davis H. Baker, 600 Maryland Ave., SW., Washington, DC 20024, (202) 484–9090. Transporting *general commodities* (except classes A and B explosives, household goods and commodities in bulk), between points in OH, Allegheny, Westmoreland, Butler, and Erie Counties, PA, Wayne, Oakland, Macomb Counties, MI, on the one hand, and, on the other, Cleveland, OH, New York, NY, Hoboken, Newark, Camden, Port Elizabeth and Jersey City, NJ, Philadelphia, PA, Baltimore, MD, Norfolk, Newport News and Hampton Roads, VA.

MC 163316, filed August 9, 1982. Applicant: SINGING RIVER TRAVEL AGENCY, INC., 3664 14th St., Pascagoula, MS 39567. Representative: Erika Hamilton (same address as applicant), (601) 769–7231. As a *broker*, at Pascagoula, MS, arranging for the transportation of *passengers and their baggage*, between points in Jackson County, MS, on the one hand, and, on the other, points in the U.S.

MC 163386, filed August 13, 1982. Applicant: ELLSWORTH GRUE AND SONS, R.F.D. #1, Champlain, NY 12919. Representative: Daniel J. Grue (same address as applicant), (518) 298–8560. Transporting *machinery*, between points in Clinton County, NY, on the one hand, and, on the other, points in the U.S. (except AK and HI).

Volume No. OP4–311

Decided: August 20, 1982.

By the Commission, Review Board No. 2, Members Carleton, Fisher, and Williams.

MC 129016 (Sub-10), filed August 13, 1982. Applicant: M & E CORP., P.O. Box 2097, Muncie, IN 47302. Representative: Michael D. McCormick, 1301 Merchants Plaza, Indianapolis, IN 46204, (317) 638–1301. Transporting *food and related products*, between points in the U.S., under continuing contract(s) with Process Sugar Sales, Division of Process Supply Co., Inc., of Muncie, IN.

MC 160796, filed August 16, 1982. Applicant: TOUR MASTERS TRANSPORTATION CO., INC., 1054 Wilshire Blvd., Room 303, Los Angeles, CA 90017. Representative: Donald R. Hedrick, P.O. Box 4334, Santa Ana, CA 92702, (714) 667–8107. Transporting *passengers and their baggage* in the same vehicle, in round-trip special and charter operations, beginning and ending in Los Angeles, Orange and San Bernardino Counties, CA and extending to points in AZ, NV, UT, NM, and TX.

MC 162336, filed August 16, 1982. Applicant: BARBARA W. DeLUE, d.b.a. DeLUE HAULERS, 4681 North Creek, Palmyra, NY 14522. Representative: James E. Brown, 36 Brunswick Rd., Depew, NY 14043, (716) 681–7190. Transporting *motorcycles*, between points in NJ, on the one hand, and, on the other, points in NY.

MC 162576, filed August 16, 1982. Applicant: TANCO DISTRIBUTING COMPANY, INC., 6807 Industrial, El Paso, TX 79917. Representative: Greg Crutcher, (same address as applicant), (915) 778–0018. Transporting *foodstuffs*, between points in AZ, NM, and TX.

MC 163396, filed August 16, 1982. Applicant: ANDERSON TRUCKING, Route 278, Williston, SC 29853.

Representative: Nathan I. Finkelstein, 1729–21st St., NW., Washington, DC 20009, (202) 332–7737. Transporting *fresh and frozen meat and meat by-products,* between points in the U.S. on and east of a line beginning at the mouth of the Mississippi River, and extending along the Mississippi River to its junction with the western boundary of Itasca County, MN, then northward along the western boundaries of Itasca and Koochiching Counties, MN, to the International boundary line between the U.S. and Canada, and points in TX, on the one hand, and, on the other, points in SC.

MC 163406, filed August 16, 1982. Applicant: NERSESIAN BROS. AUTO TRANSPORT, INC., 516 Terrace Rd., Bayport, NY 11705. Representative: John L. Alfano, 550 Mamaroneck Ave., Harrison, NY 10528, (914) 835–4411. Transporting *transportation equipment,* in truckaway service, between points in CT, NJ, NY, and PA.

MC 163426, filed August 16, 1982. Applicant: SACKRIDER TRUCKING, INC., 945 Buena Vista Lane, Grants Pass, OR 97526. Representative: James H. Sackrider (same address as applicant), (503) 479–4401. Transporting *general commodities* (except classes A and B explosives, household, and commodities in bulk), between points in AZ, CA, CO, ID, MT, NM, NV, OR, TX, UT, WA, and WY.

Volume No. OP5–170

Decided: August 12, 1982.

By the Commission, Review Board No. 1, members Parker, Chandler, and Fortier.

MC 6319 (Sub-11), filed August 4, 1982. Applicant: CALIFORNIA CARTAGE COMPANY, INC., 20021 Susana Road, Compton, CA 90221. Representative: John C. Russell, 1545 Wilshire Blvd., Suite 606, Los Angeles, CA 90017, (213) 483–4700. Transporting *general commodities* (except classes A and B explosives, household goods and commodities in bulk), (a) between points in CA, on the one hand, and, on the other, points in the U.S. (except AK and HI), and (b) between points in AZ, NV, NM, UT, CO, OR, WA, and TX.

MC 135518 (Sub-32), filed August 2, 1982. Applicant: WESTERN CARRIERS, INC., 210 Hudson St., P.O. Box 24625, Seattle, WA 98124–0625. Representative: A. J. Swanson, P.O. Box 1103, Sioux Falls, SD 57101–1103, 605–335–1777. Transporting *food and related products,* between those points in the U.S. in and west of WI, IL, MO, OK, and TX (except AK and HI).

MC 136268 (Sub-33), filed August 4, 1982. Applicant: WHITEHEAD SPECIALTIES, INC., 1017 Third Ave., Monroe, WI 53566. Representative: Michael J. Wyngaard, 150 East Gilman St., Madison, WI 53703, 608–256–7444. Transporting *general commodities* (except classes A and B explosives, household goods, and commodities in bulk), between points in IL, IN, IA, MN, and WI, on the one hand, and, on the other, points in the U.S. (except AK and HI).

MC 146689 (Sub-17), filed July 20, 1982. Applicant: BLUE CHIP TRANSPORTATION, INC., 261 Maplewood Drive, Pottstown, PA 19464. Representative: Gerald K. Gimmel, Suite 200, 444 N. Frederick Ave., Gaithersburg, MD 20877, (301) 840–8565. Transporting *general commodities* (except classes A and B explosives, household goods, and commodities in bulk), between points in the U.S. (except AK and HI), under continuing contract(s) with Mobil Corporation, of Fairfax, VA, and its subsidiaries, Container Corporation of America, W. F. Hall Printing Company and Montgomery Ward & Co., all of Chicago, IL, and Mobil Oil Corporation, of Fairfax, VA.

MC 150529 (Sub-2), filed August 2, 1982. Applicant: AMERICAN FINE FOODS, INC., P.O. Box 460, 25 No. 6th Street, Payette, ID 83661. Representative: Orval D. Cary, (same address as applicant), 208–642–9061. Transporting (1) *such commodities* as are dealt in by wholesale, retail and chain grocery and food business houses and (2) *containers,* between points in ID, OR, WA, UT, NV, CO, CA, AZ, and MT.

MC 151879 (Sub-1), filed July 29, 1982. Applicant: OWEN WEINBERG, Rural Route 1, Box 52, Mt. Vernon, SD 57363. Representative: Thomas J. Simmons, P.O. Box 480, Sioux Falls, SD 57101, 605–339–3629. Transporting *food and related products,* between points in SD on the one hand, and, on the other, those points in the U.S. in and west of MI, OH, KY, TN, GA, and FL (except AK and HI).

MC 156609 (Sub-1), filed August 4, 1982. Applicant: A & G TRUCKING, INC., 6981 74th Ave., N.E., Salem, OR 97305. Representative: Gerald D. Biggins, (same address as applicant), (503) 393–1764. Transporting *food and related products* between points in OR, CA, WA, AZ, ID, and NV.

MC 162339, filed August 2, 1982. Applicant: LESTER WINFREE, d.b.a., LESTER WINFREE RICE AND CATTLE, Route 9, Box 347, Orange, TX 77630. Representative: Doyle G. Owens, 4655 Dellwood, Beaumont, TX 77706, (713) 898–8086. Transporting *Mercer commodities* between points in Orange, Jefferson, Hardin, Liberty, Montgomery, San Jacinto, Polk, Tyler, Jasper, Newton, Chambers, Galveston, Harris, Ft. Bend, Brazoria, Matagorda, and Wharton Counties, TX, on the one hand, and, on the other, points in LA and TX.

MC 162679, filed August 2, 1982. Applicant: RICHARD KEMPKES, d.b.a. KEMPKES FARMS, Walton, NE 68461. Representative: Lavern R. Holdeman, 1610 South 70th St., #200, Lincoln, NE 68506, (402) 488–0985. Transporting *such commodities* as are dealt in or used by agricultural supply business houses, between points in AL, AR, CO, IL, IN, IA, KS, KY, LA, MI, MN, MS, MO, MT, NE, NM, ND, OK, SK, TN, TX, WI, and WY.

MC 162688 (Sub-1), filed July 29, 1982. Applicant: WHITE ROCK DISTILLERIES, INC., d.b.a. LAWRENCE & COMPANY, 88 Commercial Street, P.O. Box 1829, Lewiston, ME 04240. Representative: Raymond R. Coulombe, (same address as applicant), (207) 783–1433. Transporting *bottled water,* between points in ME, on the one hand, and, on the other, points in NC, IL, PA, MD, NY, OH, NJ, NH, VT, MA, RI, and CT, under continuing contract(s) with Poland Spring Corp., of Poland Spring, ME.

[FR Doc. 82–23334 Filed 8–25–82; 8:45 am]
BILLING CODE 7035–01–M

[Volume No. OP1–145]

Motor Carriers; Permanent Authority; Republications of Grants of Operating Rights Authority Prior to Certification

The following grants of operating rights authorities are republished by order of the Commission to indicate a broadened grant of authority over that previously noticed in the **Federal Register.**

An original and one copy of petitions for leave to intervene must be filed with the Commission within 30 days after the date of this **Federal Register** notice. Such pleadings shall comply with 49 CFR 1100.252 addressing specifically the issue(s) indicated as the purpose for republication.

By the Commission, Review Board Number 3, Members Krock, Joyce, and Dowell (Member Dowell not participating).

Agatha L. Mergenovich,

Secretary.

MC 160291 (republication), filed March 25, 1982, previously noticed in the **Federal Register** issue of May 7, 1982, and republished this issue. Applicant: TOTAL TRANSPORTATION TRUCKING, INC., P.O. Box 6931, Cleveland, OH 44101. Representative: William J. Keely (same address as applicant), (216) 341–5448. A decision by the Commission, Review Board Number 3, decided July 12, 1982, served July 16,

1982, finds that applicant is authorized to operate as a *common carrier*, by motor vehicle, in transporting *general commodities* (except classes A and B explosives and household goods), between points in Connecticut, Delaware, Illinois, Indiana, Kentucky, Maryland, Massachusetts, Michigan, Missouri, New Jersey, New York, Ohio, Pennsylvania, Rhode Island, Tennessee, Virginia, West Virginia, and the District of Columbia. Applicant is fit, willing, and able properly to perform such service and to conform to statutory and administrative requirements. The purpose of this republication is to eliminate the restriction initially imposed.

Note.—This application is directly related to MF-F-14833, published in the **Federal Register** issue of April 22, 1982.

[FR Doc. 82-23331 Filed 8-25-82; 8:45 am]

BILLING CODE 7035-01-M

[Volume No. OP2-194]

Motor Carriers; Permanent Authority; Republications of Grants of Operating Rights Authority Prior to Certification

The following grant of operating right authority is republished by order of the Commission to indicate a broadened grant of authority over that previously notice in the **Federal Register**.

An original and one copy of an appropriate petition for leave to intervene, setting forth in detail the precise manner in which petitioner has been prejudiced, must be filed with the Commission within 30 days after the date of this **Federal Register** notice.

By the Commission.

Agatha L. Mergenovich,

Secretary.

MC 154432 (Republication), filed October 19, 1981, published in the **Federal Register** issue of November 10, 1981, and republished this issue. Applicant: FORTY EIGHT TRANSPORT, INC., 17135 Westview, South Holland, IL 60473. Representative: Philip A. Lee, 120 W. Madison, Chicago, IL 60602. A Decision of the Commission, *Review Board 2*, decided February 22, 1982, and served March 8, 1982, finds that the present and future public convenience and necessity require operations by applicant in interstate or foreign commerce, over irregular routes, as a *common carrier*, by motor vehicle, transporting *glass products; commercial food equipment; signal sound warning equipment; cleaning, scouring and washing utensils; iron wire and commodities in bulk*, between Chicago, IL, on the one hand, and on the other, points in the United States (except Alaska and Hawaii). The purpose of this republication is to reflect an appropriate proposed commodity description consistent with the Commission's policy as discussed in the March 8, 1982 decision.

[FR Doc. 82-23332 Filed 8-25-82; 8:45 am]

BILLING CODE 7035-01-M

[Docket No. AB-167 (Sub-No. 342N)]

Conrail Abandonment Between Groveland and Alexander, NY; findings

Notice is hereby given pursuant to Section 306(e) of the Regional Rail Reorganization Act of 1973 that the Commission, Review Board Number 1 has issued a certificate authorizing the Consolidated Rail Corporation to abandon its rail line between milepost 339.7 and milepost 360.2 in the Counties of Livingston and Genessee, NY, a total distance of 20.5 miles effective on March 12, 1982.

The net liquidation value of this line is $1,357,066. If, within 120 days from the date of this publication, Conrail receives a bona fide offer for the sale, for 75 percent of the net liquidation value, of this line it shall sell such line and the Commission shall, unless the parties otherwise agree, establish an equitable division of joint rates for through routes over such lines.

Agatha L. Mergenovich,

Secretary.

[FR Doc. 82-23329 Filed 8-25-82; 8:45 am]

BILLING CODE 7035-01-M

[Finance Docket No. 29972]

Declaratory Order—The Applicability of 49 U.S.C. 11342 to Agreements Between Household Goods Carriers and Noncarrier Agents

AGENCY: Interstate Commerce Commission.

ACTION: Notice of declaratory order proceeding.

SUMMARY: Atlas Van Lines Inc., has tentatively announced its intention to terminate the existing pooling agreement with its agents, or to seek Commission approval of an amendment to the existing agreement, to effectuate a new policy of dealing only with noncarrier agents. The Commission instituted this declaratory order proceeding to solicit public comment on certain aspects of the new Atlas policy. Specifically, the Commission is concerned with whether agents holding no operating authority themselves, but having motor carrier affiliates, are carriers for the purpose of 49 U.S.C. 11342.

DATES: Comments must be filed with the Commission on or before September 27, 1982.

ADDRESS: An original and 10 copies (when possible) of each submission should be forwarded to: Deputy Director, Section of Finance, Room 5417, Interstate Commerce Commission, Washington, DC 20423.

FOR FURTHER INFORMATION CONTACT: Frederick T. Stocker, (202) 275-7618.

SUPPLEMENTARY INFORMATION: Additional information concerning specific aspects of the proposed policy of Atlas Van Lines, Inc., is in the Commission decision instituting this proceeding served on the date of this publication. To purchase a copy of the full decision, contact T. S. Info Systems, Room 2227, Interstate Commerce Commission, Washington, DC 20423, or call 289-4357 (D.C. Metropolitan area) or toll free (800) 242-5403.

Decided: August 16, 1982.

By the Commission, Chairman Taylor, Vice Chairman Gilliam, Commissioners Sterrett, Andre, Simmons, and Gradison. Commissioner Sterrett dissented in part with a separate expression. Commissioner Andre dissented from the institution of the declaratory investigation.

Agatha L. Mergenovich,

Secretary.

Commissioner Sterrett, dissenting in part:

Those whom we regulate, as well as the taxpaying public generally, will be ill-served by the institution of a proceeding which never may be necessary or of any value to anyone. The institution of the declaratory order proceeding, at this time, cannot pass muster if we apply, as we should, a cost-benefit analysis to this proposed agency action. It is possible that no agents will elect either of the two options which the declaratory order proceeding would address. Further, if we clearly explain the potential problems with the first and fifth options proposed by Atlas, it is likely that Atlas will go back to the drawing board on these two options to avoid costly litigation and further problems. Also, agents would be even less inclined to select options about which the Commission has raised questions.

It is impossible to justify the institution of a proceeding, which will be costly both to the government and to the parties, when the Commission could very easily, economically, and effectively attempt now to resolve, or diminished the likelihood of, any problems by merely explaining the potential problems which may inhere in the first and fifth options. The parties would then be in a position to initiate appropriate responses to the potential problems. For these reasons, I object to the institution of a declaratory order proceeding.

[FR Doc. 82-23328 Filed 8-25-82; 8:45 am]

BILLING CODE 7035-01-M

[Ex Parte No. 387 (Sub-234)]

The Denver & Rio Grande Western Railroad Co.; Exemption for Contract Tariff ICC-DRGW-C-0044 (FLUORSPAR)

AGENCY: Interstate Commerce Commission.

ACTION: Notice of Provisional Exemption.

SUMMARY: A provisional exemption is granted under 49 U.S.C. 10505 from the notice requirements of 49 U.S.C. 10713(e), and the above-noted contract tariff may become effective on one day's notice. This exemption may be revoked if protests are filed.

DATES: Protests are due within 15 days of publication in the Federal Register.

ADDRESSES: An original and 6 copies should be mailed to: Office of the Secretary, Interstate Commerce Commission, Washington, DC 20423.

FOR FURTHER INFORMATION CONTACT: Douglas Galloway (202) 275-7278.

SUPPLEMENTARY INFORMATION: The 30-day notice requirement is not necessary in this instance to carry out the transportation policy of 49 U.S.C. 10101a or to protect shippers from abuse of market power; moreover, the transaction is of limited scope. Therefore, we find that the exemption request meets the requirements of 49 U.S.C. 10505(a) and is granted subject to the following condition:

This grant neither shall be construed to mean that the Commission has approved the contracts for purposes of 49 U.S.C. 10713(e) nor that the Commission is deprived of jurisdiction to institute a proceeding on its own initiative or on complaint, to review these contracts and to determine their lawfulness.

This action will not significantly affect the quality of the human environment or conservation of energy resources.

(49 U.S.C. 10505)

Decided: August 19, 1982.

By the Commission, Division 2, Commissioners Andre, Gilliam, and Taylor. Commissioner Taylor is assigned to this Division for the purpose of resolving tie votes. Since there was no tie in this matter, Commissioner Taylor did not participate.

Agatha L. Mergenovich,

Secretary.

[FR Doc. 82-23335 Filed 8-25-82; 8:45 am]

BILLING CODE 7035-01-M

Motor Carriers; Permanent Authority Decisions; Decision-Notice

Correction

In FR Doc. 82-19911, at page 31973, in the issue of Friday, July 23, 1982, on page 31975, first column, fourth full paragraph, designated as "MC161411", line 9, insert "ND," after the word "County,".

BILLING CODE 1505-01-M

DEPARTMENT OF JUSTICE

Proposed Consent Decree in Action for Penalties and to Enjoin Discharge of Air Pollutants

In accordance with Departmental Policy, 28 CFR 50.7, 38 FR 19029, notice is hereby given that on July 26, 1982, a proposed consent decree in *United States* v. *Delta Refining Company* was lodged with the United States District Court for the Western District of Tennessee (Western Division). The proposed decree would require Delta Refining Company to pay a penalty of $28,500.00 and to comply with all applicable requirements of Municipal, State or Federal law, which includes applicable requirements under the Clean Air Act.

The Department of Justice will receive for thirty (30) days from the date of publication of this notice, written comments relating to the proposed judgment. Comments should be addressed to the Assistant Attorney General of the Land and Natural Resources Division, Department of Justice, Washington, D.C. 20530, and refer to *United States* v. *Delta Refining Company*, D. J. Ref. 90-5-2-1-280.

The proposed consent decree may be examined at the office of the United States Attorney, 1026 Federal Office Building, Memphis, Tennessee 38103, at the Region IV Office of the Environmental Protection Agency, Office of Regional Counsel, 345 Courtland Street, N.E., Atlanta, Georgia 30308, and at the Environmental Enforcement Section, Land and Natural Resources Division, Department of Justice (Room 2625), Ninth Street and Pennsylvania Avenue, NW., Washington, D.C., 20530. A copy of the proposed consent decree may be obtained in person or by mail from Enviornmental Enforcement Section, Land and Natural Resources Division, Department of Justice.

Carol E. Dinkins,

Assistant Attorney General, Land and Natural Resources Division.

[FR Doc. 82-23464 Filed 8-25-82; 8:45 am]

BILLING CODE 4410-01-M

NUCLEAR REGULATORY COMMISSION

[Docket No. 50-413]

Saluda River Electric Cooperative, Inc. and North Carolina Electric Membership Corp.; Notice of receipt of Antitrust Information

Note.—This document originally appeared in the Federal Register for August 12, 1982. It is reprinted in this issue at the request of the agency.

The Saluda River Electric Cooperative, Inc. and the North Carolina Electric Membership Corporation have each submitted antitrust information in conjunction with their application for an operating license for a pressurized water nuclear plant (known as Catawba Unit No. 1) located in northeastern York County, South Carolina. The data submitted contain antitrust information for review pursuant to NRC Regulatory Guide 9.3 necessary to determine whether there have been any significant changes since the completion of the antitrust review at the construction permit stage. (The lead applicant, Duke Power Company, submitted its 9.3 response at an earlier date as noted in the September 21, 1981, edition of the Federal Register—Vol. 46, No. 182.)

On completion of a staff antitrust review, the Director of Nuclear Reactor Regulation will issue an initial finding as to whether there have been "significant changes" under section 105c(2) of the Atomic Energy Act. A copy of this finding will be published in the Federal Register and will be sent to the Washington, D.C. and local public document rooms and to those persons providing comments or information in response to this notice. If the initial finding concludes that there have not been any significant changes, requests for reevaluation may be submitted for a period of 30 days after the date of the Federal Register notice.The results of any reevaluations that are requested will also be published in the Federal Register and copies sent to the Washington and local public document rooms.

A copy of the general information portion of the application for an operating license and the antitrust information submitted is available for public examination and copying for a fee at the Commission's Public Document Room, 1717 H Street, N.W., Washington, D.C. 20555, and in the local public document room at the York County Library, 325 South Oakland Avenue, Rock Hill, South Carolina 29730.

Any person who desires additional information regarding the matter covered by this notice or who wishes to have his views considered with respect to significant changes related to antitrust matters which have occurred in the licensees' activities since the construction permit antitrust review should submit such requests for information or views to the U.S. Nuclear Regulatory Commission, Washington, D.C. 20555, Attention: Chief, Antitrust and Economic Analysis Branch, Office of Nuclear Reactor Regulation on or before September 13, 1982.

Dated at Bethesda, Maryland, this 6th day of August 1982.

For the Nuclear Regulatory Commission.

Elinor G. Adensam,

Chief, Licensing Branch No. 4, Division of Licensing.

[FR Doc. 82-21929 Filed 8-11-82; 8:45 am]

BILLING CODE 7590-01-M

PACIFIC NORTHWEST ELECTRIC POWER AND CONSERVATION PLANNING COUNCIL

Fish and Wildlife Subcommittee Meeting; Regular Meeting Notice

AGENCY: Pacific Northwest Electric Power and Conservation Planning Council (Northwest Power Planning Council).

ACTION: Notice of meeting.

STATUS: Open.

SUMMARY: The Northwest Power Planning Council hereby announces a forthcoming meeting of the Fish and Wildlife Subcommittee of the Scientific and Statistical Advisory Committee.

DATE: Thursday, September 9, 1982, 9:00 a.m.

ADDRESS: The meeting will be held at the Council's Central Office located at 700 SW. Taylor Street, Suite 200, Portland, Oregon.

ITEMS FOR DISCUSSION: Elements of the Council's proposed draft fish and wildlife program will be discussed.

FOR FURTHER INFORMATION CONTACT: Ms. Torian Donohoe, (503) 222-5161.

Edward Sheets,

Executive Director.

[FR Doc. 82-23476 Filed 8-25-82; 8:45 am]

BILLING CODE 0000-00-M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 22610; (70-6645)]

American Electric Power Company, Inc.; Proposed Additional Indemnification by Holding Company in Connection with Subsidiaries' Surety Bonds

August 20, 1982.

American Electric Power Company, Inc. ("AEP"), 180 East Broad Street, Columbus, Ohio 43215, a registered holding company, has filed with this Commission a post-effective amendment to the declaration in this proceeding pursuant to Section 12(b) of the Public Utility Holding Company Act of 1935 ("Act") and Rule 45 promulgated thereunder.

By order of this proceeding dated October 29, 1981 (HCAR No. 22248), AEP was authorized to enter into an agreement or agreements of indemnity with one or more surety bonding companies providing for indemnification by AEP of liabilities incurred by any such surety bonding company or companies in connection with the issuance of surface mining reclamation surety bonds, self-insurance workmen's compensation surety bonds, and self-insurance pneumoconiosis (black lung) disability bonds that are required by certain AEP system companies operating in Virginia, West Virginia, Ohio, and Utah. The maximum amount of indemnity from AEP at any one time outstanding with respect to each type of bonds will not exceed $45,000,000, $39,000,000, and $5,000,000, respectively.

It is now proposed that AEP indemnify one or more surety bonding companies with respect to any liability that may be incurred as a result of any default under performance bonds purchased by certain subsidiaries of AEP to comply with the terms of coal leases on federal lands in Utah and permits issued by the Ohio Department of Natural Resources for the construction of dams, spillways, or levees. The total amount of such surety bonds presently aggregates $2,266,000, although this amount may increase and new bonds may be required.

the amended declaration and any further amendments thereto are available for public inspection through the Commission's Office of Public Reference. Interested persons wishing to comment or request a hearing should submit their views in writing by September 15, 1982, to the Secretary, Securities and Exchange Commission, Washington, D.C. 20549, and serve a copy on the declarant at the address specified above. Proof of service (by affidavit or, in case of an attorney at law, by certificate) should be filed with the request. Any request for a hearing shall identify specifically the issues of fact or law that are disputed. A person who so requests will be notified of any hearing, if ordered, and will receive a copy of any notice or order issued in this matter. After said date, the declaration, as now amended or as it may be further amended, may be permitted to become effective.

For the Commission, by the Division of Corporate Regulation, pursuant to delegated authority.

George A. Fitzsimmons,

Secretary.

[FR Doc. 82-23319 Filed 8-25-82; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 12610; 812-5214]

Connecticut Mutual Life Insurance Co., et al.; Filing of Application

August 20, 1982.

Notice is hereby given that Connecticut Mutual Life Insurance Company ("Company"), Panorama Separate Account ("Separate Account"), a separate account of the Company registered as a unit investment trust under the Investment Company Act of 1940 ("Act") and Connecticut Mutual Financial Services, Inc. ("Financial Services"), 140 Garden Street, Hartford, CT 06115, the principal underwriter, (hereinafter collectively referred to as "Applicants"), filed an application on June 11, 1982 and amendments thereto on June 29, 1982, August 3 and 12, 1982, for an order of the Commission, pursuant to Section 6(c) of the Act granting exemptions, to the extent requested, from the provisions of Sections 2(a)(32), 2(a)(35), 22(c), 22(e), 26(a)(2)(C), 27(c)(1), 27(c)(2) and 27(d) of the Act, and Rule 22c-1 thereunder, and for approval, pursuant to Section 11 of the Act, of the terms of certain offers of exchange, permitting Applicants to offer the variable annuity contracts described in the application. All interested persons are referred to the application on file with the Commission for a statement of the facts and representations contained therein, which are summarized below.

The Company and the Separate Account obtained a prior order granting exemptions from the above-captioned provisions on January 15, 1982 (Investment Company Act Release No. 12164) in connection with contracts issued under the Separate Account. Applicants request an order (1) to reflect revision of the contingent deferred sales charge; (2) to conform the prior order to

relevant changes in Texas law; (3) to permit transfers to a new sub-account funded by shares of a new series of the underlying investment medium, Connecticut Mutual Financial Services Series Fund I, Inc. ("Fund"); (4) to add Financial Services, principal underwriter, as a party; (5) to obtain exemptions from Sections 26 and 27 of the Act to permit the deduction and payment of all described contract fees and charges.

The Separate Account offers two forms of variable annuity contracts, a single premium annuity with payments beginning immediately and a deferred, periodic or single premium annuity with payments beginning at a future date. These contracts will be used in connection with, *inter alia*, the Texas Optional Retirement Program ("Texas ORP"). The purchase payments under a deferred contract are not subject to a front-end deduction for sales charges, but, as described in the prior order and the subject application, redemptions are subject to a contingent deferred sales charge. Applicants intend to waive the sales charge during the final five years, while reserving the right to reimpose the charge permitted under the prior order. Applicants state that the aggregate deferred sales charge shall not exceed nine percent of the total purchase payments made.

The contracts, application and the prior order also describe certain annual contract maintenance charges and transfer charges which Applicants are extending to transactions involving a new sub-account of the Separate Account funded by shares of a new series of the underlying Fund. Shares of the underlying Fund are to be held under an open account arrangement without stock certificates or physical possession of the shares of the Fund. The contracts also provide for deduction of a charge against net asset value equal to 0.73% annually to cover mortality and expense risks.

Applicants represent that the administrative charges payable to Financial Services represent a reasonable expense for custodial and other administrative services related to the issuance and performance of the contracts. Applicants represent that these charges are not designed to exceed the actual expenses incurred in administering the contracts or to subsidize the costs of administering other contracts issued by the Company.

Applicants represent that the mortality and expense risk charge under the contracts is consistent with the protection of investors because it is a reasonable and proper insurance charge. In return for this amount, the Company guarantees certain risks in the contracts. The mortality and expense risk charge is a reasonable charge to compensate the Company for the risk that annuitants under the contracts will live longer as a group than has been anticipated in setting the annuity rates guaranteed in the contracts, and for the risk that the maximum charges permitted under the contracts will prove to be insufficient to cover the costs incurred in regard to the contracts, including administrative and distribution expenses. The charge also allows the Company to realize a profit if actual experience under the contracts is favorable. Moreover, the amount of the charge is consistent with industry practice for similar policies (as reflected in public filings made by insurance companies with the Commission and with various state insurance departments).

Section 6(c)

Section 6(c) of the act authorizes the Commission to exempt any person, security or transaction, from the provisions of the Act and rules promulgated thereunder, if and to the extent, that such exemption is consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the Act. Applicants request exemption pursuant to Section 6(c) from certain provisions of the Act as summarized below.

Sections 27(c)(2) and 26(a)

Section 27(c)(2), in relevant part, prohibits the issuer of a periodic payment plan certificate and any depositor or underwriter for such issuer from selling such certificate unless the proceeds of all payments (other than any sales load) are deposited with a qualified bank acting as trustee or custodian and held under an agreement containing, in substance, the provisions required by Section 26(a)(2) and 26(a)(3).

Section 26(a) requires that such agreement must provide, *inter alia*, that the bank (i) shall have possession of all property of the unit investment trust and segregate and hold the same in trust subject only to the charges and collections specifically allowed under clauses (A), (B), and (C) of such Section until distribution to the security holders of the trust; (ii) shall not resign until the trust has been liquidated or a successor has been appointed; (iii) may collect from the income and, if necessary, from the corpus of the trust such fees for services provided for in the agreement; (iv) shall not allow as an expense any payment to the depositor or principal underwriter except a fee, not exceeding such reasonable amount as the Commission may prescribe, for performing bookkeeping and other administrative services of a character normally performed by the bank itself.

Applicants request exemption from Sections 27(c)(2) and 26(a) of the Act to the extent necessary to permit (a) shares of the Fund to be held under an open account arrangement without the use of stock certificates or the physical possession of the shares by the Custodian; (b) deduction of the .73% annual asset charge; (c) the deduction of the annual administrative charge; and (d) to recoup the costs of distributing the contracts by imposition of the contingent deferred sales charge.

Sections 2(32), 2(a)(35), 22(c), 27(a)(3), 27(c)(1), 27(d) and Rules 22c–1

Section 2(a)(32) of the Act defines a redeemable security as any security under the terms of which the holder is entitled to receive approximately his proportionate share of the issuer's current net assets, or the cash equivalent thereof. Section 27(c)(1) of the Act, in pertinent part, prohibits any registered investment company issuing periodic payment plan certificates, or for any depositor or underwriter of such company, to sell such certificate unless it is a redeemable security.

Section 2(a)(35) of the Act defines "sales load" as the difference between the price of a security to the public and that portion of the proceeds from its sale which is received and invested, less any portion of such difference deducted for trustee's or custodian's fees, insurance premiums, issue taxes, or administrative expenses or fees which are not properly chargeable to sales or promotional activities.

Section 22(c) of the Act and Rule 22c–1 thereunder prohibit a registered investment company issuing redeemable securities, such as the contracts, from selling, redeeming or repurchasing any such security except at a price based on the current net asset value of such security.

Section 27(d) of the Act, in pertinent part, requires that the holder who surrenders his or her periodic payment plan certificate within eighteen months of issuance receive his or her account value plus an amount equal to the excess paid for sales expenses which exceed 15% of the purchase payments made by the certificate holder.

Applicants assert that these provisions, to varying degrees, might be inconsistent with the proposed sales charges of the contracts and the limitations on redeemability imposed on Texas ORP contracts by the Texas Revised Civil Statute, Title 110B, and therefore request an order exempting them from these provisions to the extent

necessary to permit such sales, deductions and limitations as described above and as required by Texas law.

Request for Approval of Certain Offers of Exchange Pursuant to Section 11 of the Act

Section 11(a) of the Act provides that it shall be unlawful for any registered, open-end company, or any principal underwriter for such a company, to make, or cause to be made, an offer to the holder of a security of such company, or of any other open-end investment company, to exchange his security for a security in the same or another such company on any basis other than the relative net asset value of the respective securities to be exchanged, unless the terms of the offer have first been submitted to and approved by the Commission. Section 11(c) provides that, irrespective of the basis of exchange, the provisions of subsection (a) shall be applicable to any type of offer to exchange the securities of registered unit investment trusts for the securities of any other investment company.

As set forth above, Applicants propose that contract owners be permitted to transfer all or part of their investment in one account division of the Separate Account to another account division subject to certain transfer charges. Applicants request approval pursuant to Sections 11(a) and 11(c) of the Act to the extent requested to permit the transfers described in the contracts, where permitted under applicable law and by the retirement plan under which a given contract is issued.

Notice is further given that any interested person may, not later than September 14, 1982, at 5:30 p.m., submit to the Commission in writing a request for a hearing on the application accompanied by a statement as to the nature of his interest, the reasons for such request, and the issues, if any, of fact or law proposed to be controverted, or he may request that he be notified if the Commission shall order a hearing thereon. Any such communication should be addressed: Secretary, Securities and Exchange Commission, Washington, D.C. 20549. A copy of such request shall be served personally or by mail upon Applicants at the address stated above. Proof of such service (by affidavit or, in the case of an attorney-at-law, by certificate) shall be filed contemporaneously with the request. As provided by Rule 0–5 of the Rules and Regulations promulgated under the Act, an order disposing of the application herein will be issued as of course following said date unless the Commission thereafter orders a hearing upon request or upon the Commission's own motion. Persons who request a hearing, or advice as to whether a hearing is ordered, will receive any notices and orders issued in this matter, including the date of the hearing (if ordered) and any postponements thereof.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

George A. Fitzsimmons,

Secretary.

[FR Doc. 82–23323 Filed 8–25–82; 8:45 am]

BILLING CODE 8010–01–M

[Release No. 12608; (812–5159)]

Dean Witter Reynolds InterCapital Inc. et al.; Application for an Order Pursuant to Section 6(c) of the Act Exempting From Section 17(a) of the Act Certain Sales of Securities

Notice is hereby given that InterCapital Dividend Growth Securities Inc., InterCapital High Yield Securities Inc., InterCapital Income Securities Inc., InterCapital Industry-Valued Securities Inc., InterCapital Liquid Asset Fund Inc. ("Liquid Assets"), InterCapital Natural Resource Development Securities Inc., and Active Assets Money Trust ("Money Trust") (collectively the "Funds"), Five World Trade Center, New York, New York 10048, registered investment companies under the Investment Company Act of 1940 (the "Act"), Dean Witter Reynolds InterCapital Inc. ("InterCapital"), Sears Roebuck Acceptance Corp. ("SRAC") and Allstate Finance Corporation ("Allstate"), One Customs House Square, Wilmington, Delaware 19899 (collectively with the Funds, "Applicants"), filed on application on April 7, 1982, and an amendment thereto on June 18, 1982, requesting an order of the Commission, pursuant to Section 6(c) of the Act, granting an exemption from the provisions of Section 17(a) of the Act to the extent necessary to permit the Funds, and any other investment companies for which Sears, Roebuck and Co. ("Sears") or any of its subsidiaries may serve as investment adviser or principal underwriter in the future, to purchase the commercial paper of SRAC and Allstate, subject to certain condition. All interest persons are referred to the application on file with the Commission for a statement of the representations contained therein, which are summarized below.

Applicants state that InterCapital is a registered investment adviser under the Investment Advisers Act of 1940 and the InterCapital currently manages the Funds. Applicants state further that InterCapital is a wholly owned subsidiary of Dean Witter Reynolds Organization Inc. which in turn is a wholly owned subsidiary of Sears. Applicants represent that Sears and its consolidated subsidiaries comprise one of the world's largest publicly held companies, with businesses in merchandising, insurance, real eatate and financial services. SRAC, which is a direct whollyowned subsidiary of Sears, has as its principal business the purchase of short-term notes of Sears and also, on occasion, purchases revolving charge account balances of Sears Merchandise Group's Credit operation. Allstate, which is a wholly owned subsidiary of Allstate Enterprises, Inc. ("Allstate Enterprises"), a wholly owned subsidiary of Sears, has as its principal business the purchase at a discount and holding for liquidation of installment receivables originated by Allstate Enterprises and certain of its consumer finance subsidiaries.

Applicants state that SRAC and Allstate (the "Issuers") frequently issue, among other securities, short-term debt obligations commonly know as "commercial paper". Applicants represent that funds for SRAC's purchases of short-term notes and account balances from Sears are obtained primarily from the issuance of commercial paper and through borrowing agreements and private placements with bank trust departments. Applicants represent further that Allstate's business activities are partially financed by short-term borrowings which consist primarily of commercial paper sold in the open market and borrowings under agreements with bank trust departments. Applicants assert that during the year ended December 31, 1981, the largest aggregate amount of SRAC's commerical paper outstanding at any month end was $4.892 billion ($3.430 billion at December 31, 1981). Applicants further assert that Allstate's outstanding balance of commercial paper at December 31, 1981, was approximately $413 million.

Applicants represent that managers of large institutional investors have consistently viewed SRAC commerical paper as among the most attractive of all money market investments. Applicants represent further that SRAC is one of the largest, highest quality and most flexible and innovative of all finance company commercial paper issuers, a group which in turn is frequently favored over other issuers on the basis of higher yields and other

advantages. Applicants state that, among these advantages, SRAC commercial paper is highly liquid and that SRAC has generally been willing to prepay obligations if unusual cash flow needs on the part of the holder so warrant. It is stated that this is a particularly important feature for open-end investment companies. Applicants maintain that Allstate commercial paper is viewed by money managers as a similarly attractive short-term investment because it generally offers the same aggressive yield opportunities and advantageous terms as SRAC paper.

Section 17(a) of the Act provides, in pertinent part, that it shall be unlawful for any affiliated person or promoter of or principal underwriter for a registered investment company or any affiliated person of such a person, promoter, or principal underwriter, acting as principal, knowingly to sell any security to such registered company. Section 6(c) of the Act provides, in pertinent part, that the Commission may, by order upon application, conditionally, or unconditionally exempt any class of transactions from any provisions of the Act if and to the extent that such exemption is necessary or appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the Act.

Applicants state that because InterCapital is a second tier wholly owned subsidiary of Sears, it and any other subsidiary of Sears which may in the future serve as investment adviser for any of the Funds may be deemed to be an "affiliated person" of each of the Issuers by virtue of being under "common control" with SRAC and Allstate. Applicants state further that because InterCapital is the investment adviser of the Funds, it is an "affiliated person" of those investment companies, and that any other subsidiary of Sears would be an "affiliated person" of the Fund or Funds for which it serves as investment adviser. Applicants maintain, therefore, that each Fund is an affiliate of an affiliate of each Issuer, and that the Section 17(a) prohibition against sales of securities to an investment company would, absent an exemption, prohibit sales of any securities by any of the Issuers to any of the Funds.

Applicants represent that, at the present time, InterCapital generally considers investments in the commercial paper of approximately twelve finance company issuers. InterCapital currently views only two of those finance company commercial paper issuers as truly comparable to SRAC in size and quality. Applicants state that the present inability of the Funds (particularly Liquid Assets and Money Trust) to invest in SRAC paper prevents InterCapital from pursuing a number of investment goals on the Funds' behalf. Applicants state further that given the diversification requirements of the Funds' investment policies and restrictions, the exclusion of SRAC may cause the Funds to turn to smaller, possibly less attractive issuers. Applicants represent that InterCapital's frequent desire to diversify the Funds' commercial paper portfolios in terms of underlying industry (*e.g.*, autos, retail, utilities, banks, commercial lenders) is also hindered by SRAC's exclusion. Applicants maintain that because Allstate commercial paper is viewed as an alternative way to invest in commercial paper related to Sears and occasionally is preferable to SRAC due to higher yields for certain maturities, the exclusion of Allstate also impedes InterCapital's investment program on behalf of the Funds. Moreover, as neither Issuer sells its paper to dealers for resale in a secondary market, and little or no secondary market in the paper in fact exists, the Funds are also prevented from seeking these investment opportunities from other sources.

Applicants submit that, because the Funds' decisions to invest in these securities will likely be based on rapidly changing market conditions and may arise on various occasions, the interest of the Funds would be best served by an order pursuant to Section 6(c) exempting all such transactions as they occur from time to time, rather than by case-by-case exemptions under Section 17(b). Applicants have agreed that any order on the application may be issued subject to certain conditions which they contend will insure that the standards for exemptions under Section 17(b) of the Act are and continue to be met. Specifically, Applicants have agreed that any sales of commercial paper of the Issuers to any of the Funds, including any other investment companies for which Sears or any of its subsidiaries may serve as investment adviser or principal underwriter in the future, must meet the following conditions:

(1) Such sales by any Issuer are limited to securities issued by that Issuer.

(2) Before any such sale is consummated, the purchasing Fund or its investment adviser will obtain such information as they deem necessary to determine the most favorable price available with respect to the transaction and to satisfy themselves that such sales are at prices and on other terms at least as favorable to the purchasing Fund as those available to other institutional purchasers buying in approximately the same quantities at approximately the same time.

(3) A determination will be required in each instance, based upon the information available to the purchasing Fund and its investment adviser, that the commercial paper available from the Issuer in question is of an overall quality and value equal to or better than commercial paper then available in the same quantities from other issuers, taking into consideration such factors as the Fund's investment policies and restrictions, yield, maturity, rating (if any) by a recognized rating agency, quality of issuer, flexibility, transaction costs or any other factor deemed relevant by the Fund and adviser in evaluating the desirability of an investment in commercial paper.

(4) All transactions will originate with the purchasing Fund or its investment adviser. In initiating such transactions on behalf of a Fund, officers and employees of the Fund or its investment adviser who are also officers or employees of Sears or any other subsidiary thereof will not participate. No solicitations will be made of the Funds or their investment advisers by any Issuer, and in discussions with respect to proposed transactions between any Fund and any Issuer, the Issuer's personnel will confine their activities to responding to inquiries from the Fund or its investment adviser.

(5) Each such purchase by any of the Funds will be in accordance with that Fund's investment objectives, policies and restrictions, and neither InterCaptal nor any other investment adviser of any of the Funds will take any action to change such investment objectives, policies or restrictions with the intent of facilitating purchases of securities from any of the Issuers.[1]

(6) All commercial paper of the Issuers purchased by the Funds under the order will, at the time of purchase, be rated A–2 or above by Standard & Poor's Corporation or Prime–2 or above by Moody's Investors Service, Inc.

(7) The Funds will not purchase commercial paper of an Issuer if, after such purchase, the Funds in the aggregate would hold more than 20% of

[1] While the Funds have differing investment objectives, policies and restrictions, they are all able to invest some portion of their funds in commerical paper of the type issued or expected to be issued by the Issuers.

the outstanding commercial paper of that Issuer, taken separately.

(8) Neither Liquid Assets nor Money Trust will invest more than 10% of the value of its total assets, or, if lower, the maximum percentage permitted by its investment policies and restrictions, in the commercial paper of any one Issuer, taken separately, and none of the other Funds will invest more than 5% of the value of its total assets, or, if lower, the maximum percentage permitted by its investment policies and restrictions, in the commercial paper of any one Issuer, taken separately.[2]

(9) Each Fund and its investment adviser will maintain records with respect to its transactions with the Issuers, and will provide the Fund's board of directors and the Fund's board of directors will review, at least quarterly, reports with respect to such transactions specifying the terms thereof. Schedules of all transactions with the Issuers will be filed with the periodic reports filed by each Fund with the Commission pursuant to Sections 30(a) and 30(b)(1) of the Act.

(10) Legal counsel for each of the Issuers will prepare guidelines in an effort to assure that such sales are at prices and on other terms at least as favorable to the Fund in question as those available to other institutional purchasers buying in approximately the same quantities at approximately the same time, that transactions with the Issuers originate with officers or employees of the purchasing Fund or its investment adviser, that the no-solicitation policy is followed and that the parties maintain arm's-length relationships. Such counsel will periodically monitor the activities of the Issuers in this regard to make certain that the above policy is adhered to.

(11) The disinterested directors of each Fund will prepare guidelines for the Fund and its investment advisor to make certain that the Fund is obtaining favorable prices and other terms with respect to any transactions with an Issuer, that a determination is made that the commercial paper available from the Issuer in question is of an overall quality and value equal to or better than commercial paper then available in the same quantities from other issuers and that the above procedures are followed in all respects. The disinterested directors of each Fund will periodically monitor the activities of the Fund and its investment adviser in this regard to assure that these matters are being accomplished.[3]

Applicants believe that the conditions proposed to be followed with respect to transactions permitted by the proposed order are structured in such a way as to ensure that such transactions will be in all instances reasonable and fair to the shareholders of the Funds and to not involve overreaching on the part of any person concerned. Applicants emphasize that the Issuers would be prohibited from soliciting any of the proposed transactions with the Funds and from initiating contacts with the Funds designed to result in the sale of any of the Issuers' securities to the Funds. Applicants state that the quality and amount limitations contained in the order would further serve to prevent any possible overreaching. Applicants also note that the conditions generally would permit the Funds only to invest in the Issuers' paper in amounts which have tracked historical levels.[4] Applicants submit that the transactions would be consistent with the general purposes of the Act, and that the requested exemption is appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the Act.

Notice is further given that any interested person may, not later than September 13, 1982, at 5:30 p.m., submit to the Commission in writing a request for a hearing on the application accompanied by a statement as to the nature of his interest, the reason for such request, and the issues, if any, of fact or law proposed to be controverted, or he may request that he be notified if the Commission shall order a hearing thereon. Any such communication should be addressed: Secretary, Securities and Exchange Commission, Washington, D.C. 20549. A copy of such request shall be served personally or by mail upon Applicants at the addresses stated above. Proof of such service (by affidavit or, in the case of an attorney-at-law, by certificate) shall be filed contemporaneously with the request. As provided by Rule 0–5 of the Rules and Regulations promulgated under the Act, an order disposing of the application will be issued as of course following said date unless the Commission thereafter orders a hearing upon request or upon the Commission's own motion. Persons who request a hearing, or advice to whether a hearing is ordered, will receive any notices and orders issued in this matter, including the date of the hearing (if ordered) and any postponements thereof.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

George A. Fitzsimmons,

Secretary.

[FR Doc. 82–23325 Filed 8–25–82; 8:45 am]

BILLING CODE 8010–01–M

[2] Each of the Funds is presently prohibited by its investment restrictions from investing more than 5% of its total assets in the securities of any one issuer.

[3] The Applicants represent that the guidelines prepared pursuant to paragraph (11) will provide, among other things, that before making a particular purchase of the commercial paper of an Issuer, (i) the adviser of the Fund in question shall obtain through the Telerate System yield information on commercial paper with the same maturity then offered in the same quantities by at least two comparable finance company issuers, an issuer being deemed "comparable" on the basis of similar size and rating, and (ii) in comparing paper of these other issuers with that of the Issuer in question, the adviser shall consider, in addition to yield, such other factors as it deems relevant to the investment decision, including but not limited to such factors as the amount of paper of each issuer then held by the Fund, the amount of paper of issuers related to a given industry (e.g., autos, retail, utilities, banks, commercial lenders) then held by the Fund, the adviser's evaluation of the quality of particular issuers (whether or not reflected by different ratings), the flexibility and transaction costs associated with purcahsing, holding and redeeming the paper in question (whether based on the advisor's own experience or the issuer's reputation or other information then available to the adviser) and such other factors as are deemed relevant by the adviser.

[4] For example, Liquid Assets' average asset between January 1 and April 30, 1982, were approximately $9.6 billion. Had InterCapital not been affiliated with SRAC during that period, Liquid Assets' holdings in SRAC paper could (based on historical levels) quite conceivably have ranged from $432 million (4.5% of its assets) to more than $470 million (4.9% of its assets). These amounts would have represented between approximately 11.9% and 13.0% of SRAC's average outstanding commercial paper during that period (approximately $3.61 billion). If, for example, Money Trust's assets reach $3 billion and the portion of its assets held in SRAC paper tracks that of Liquid Assets, it could be purchasing as much as $147 million of SRAC paper (4.9% of the Fund's assets), which in turn would have represented about an additional 4% of SRAC average outstanding paper during the first four months of this year. Thus, assuming reasonably rapid growth of Money Trust, possible purchases by the non-money market Funds and even slow growth of Liquid Assets, the 20% limitation would, it is contended, keep purchases of SRAC paper at or below those which would prevail under the historical pattern of investment. This may particularly be the case if Sears achieves its stated desire to increase its proportion of long-term fixed rate debt to total debt.

[Release No. 18979; File No. SR–DTC–82–3]

Filing and Immediate Effectiveness of Proposed Rule Change by the Depository Trust Company

August 18, 1982.

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 July 16, 1982, the Depository Trust Company ("DTC") filed with the Securities and Exchange Commission the proposed rule change

as described herein. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

The proposed rule change revises DTC's current fees for certain municipal bond services. The proposed fee change raises the current fees charged for deposits, withdrawals, interest payments on participant positions in municipal securities, monthly account maintenance, delivery orders, CNS deliveries and underwriting services. DTC is also implementing a new fee for any withdrawal prepared in response to a Participant's instruction which is not picked up by the participant during the day for which the withdrawal was ordered. In addition, participants will be charged the same fee now applicable to corporate bonds for other DTC services associated with participant activity in municipal bonds, including redemptions, calls and deposits through depository facilities.

The foregoing change has become effective, pursuant to Section 19(b)(3)(A) of the Act and subparagraph (e) of Securities Exchange Act Rule 19b–4. At any time within 60 days of the filing of such proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

Interested persons are invited to submit written data, views and arguments concerning the submission on or before September 16, 1982. Persons desiring to make written comments should file six copies thereof with the Secretary of the Commission, Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, D.C. 20549. Reference should be made to File No. SR–DTC–82–3.

Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change which are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those which may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying at the Commission's Public Reference Room, 450 Fifth Street, N.W., Washington, D.C. Copies of the filing and of any subsequent amendments also will be available for inspection and copying at the principal office of the above-mentioned self-regulatory organization.

For the Commission, by the Division of Market Regulation pursuant to delegated authority.

George A. Fitzsimmons,

Secretary.

[FR Doc. 82–23324 Filed 8–25–82; 8:45 am]

BILLING CODE 8010–01–M

[Release No. 18990; File No. SR–CBOE–82–13]

Filing and Immediate Effectiveness of Proposed Rule Change by the Chicago Board Options Exchange, Incorporated

August 20, 1982.

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 August 9, 1982, the Chicago Board Options Exchange, Incorporated ("CBOE") filed with the Securities and Exchange Commission the proposed rule change as described herein. The Commission is publishing this notice to solicit comments on the rule change from interested persons.

Pursuant to its Rule 2.22, the CBOE has revised fees to (i) increase the member-firm transaction fee from three cents to six cents per contract side, effective with July trades; (ii) increase the quarterly booth rental fee from $312.50 to $375.00, effective October 1, 1982; and (iii) change the joint account application fee from a flat $500.00 fee per application to $250.00 per participant in the joint account, effective July 26, 1982. The larger fees, adopted pursuant to Section 6(b)(4) of the Act, will enable the CBOE to increase revenues by an equitable allocation of charges to meet the increased costs and expenses of the exchange.

The foregoing change has become effective, pursuant to Section 19(b)(3)(A)(ii) of the Act and subparagraph (e) of Rule 19b–4 under the Act. At any time within 60 days of the filing of such rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

Interested persons are invited to submit written data, views and arguments concerning the submission on or before September 16, 1982. Persons desiring to make written comments should file six copies thereof with the Secretary of the Commission, Securities and Exchange Commission, 450 Fifth Street, Washington, D.C. 20549. Reference should be made to File No. SR–CBOE–82–13.

Copies of the submission, all subsequent amendments, all written statements with respect to the rule change which are filed with the Commission, and all written communications relating to the rule change between the Commission and any person, other than those which may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying at the Commission's Public Reference Room, 450 Fifth Street, Washington, D.C. Copies of the filing and of any subsequent amendments also will be available for inspection and copying at the principal office of the above-mentioned self-regulatory organization.

For the Commission, by the Division of Market Regulation pursuant to delegated authority.

George A. Fitzsimmons,

Secretary.

[FR Doc. 82–23317 Filed 8–25–82; 8:45 am]

BILLING CODE 8010–01–M

[Release No. 22609; (70–6768)]

Indiana & Michigan Electric Co.; Proposed Acquisition of Common Stock of Nonassociate Economic Development Company

August 20, 1982.

Indiana & Michigan Electric Company ("I&MECo"), One Summit Square, P.O. Box 60, Fort Wayne, Indiana 46801, an electric utility subsidiary of American Electric Power Company, Inc., a registered holding company, has filed an application with this Commission pursuant to Sections 9(a) and 10 of the Public Utility Holding Company Act of 1935 ("Act").

I&MECo proposes to subscribe to and acquire up to 27 shares of the capital stock ("Common Shares") of a newly-organized Indiana corporation, the Corporation for Innovation Development (the "Corporation"), for an aggregate amount of not more than $270,000, which will represent not more than 2.7% of the maximum number of Common Shares that the Corporation will initially be authorized to issue. The remaining Common Shares of the corporation will be acquired by persons not affiliated with I&MECo.

The formation of the Corporation was mandated by the provisions of Public Law No. 86 of the Indiana General Assembly for 1981 which was passed as part of a legislative program designed to stimulate economic activity and new employment opportunity in the State of Indiana. To this end, the Corporation

will seek to make investments and provide financing in a manner that will materially broaden the technological base within Indiana, encourage the establishment and expansion of growth businesses and industries in the state, and encourage public and private research and development activities.

The application and any amendments thereto are available for public inspection through the Commission's Office of Public Reference. Interested persons wishing to comment or request a hearing should submit their views in writing by September 15, 1982, to the Secretary, Securities and Exchange Commission, Washington, D.C. 20549, and serve a copy on the applicant at the address specified above. Proof of service (by affidavit or, in case of an attorney at law, by certificate) should be filed with the request. Any request for a hearing shall identify specifically the issues of fact or law that are disputed. A person who so requests will be notified of any hearing, if ordered, and will receive a copy of any notice or order issued in this matter. After said date, the application, as filed or as it may be amended, may be granted.

For the Commission, by the Division of Corporate Regulation, pursuant to delegated authority.

George A. Fitzsimmons,

Secretary.

[FR Doc. 82-23320 Filed 8-25-82; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 22611 (70-6765)]

Maine Yankee Atomic Power Co.; Proposed Issuance and Sale of Notes and Issuance of Guarantees by Jointly-Owned Subsidiary Company; Exception From Competitive Bidding

August 20, 1982.

Maine Yankee Atomic Power Company ("Maine Yankee"), Edison Drive Augusta, Maine 04336, an electric utility subsidiary of the New England Electric System and Northeast Utilities, registered holding companies, has filed an application pursuant to Section 6(b) of the Public Utility Holding Company Act of 1935 ("Act") and Rule 50(a)(5) promulgated thereunder.

By prior order in a related proceeding (HCAR No. 19657, August 23, 1976), Maine Yankee was authorized to issue up to $35,000,000 of promissory notes ("notes") to MYA Fuel Company ("Fuel Company"), a subsidiary of BSC Holdings, Inc. ("BSC"). BSC is a New York corporation owned by partners of Goldman, Sachs & Co. The proceeds of the notes were to be used (i) to finance the acquisition of nuclear fuel for Maine Yankee's nuclear generating plant at Wiscasset, Maine and (ii) to repay bank indebtedness.

The notes are issued pursuant to a loan agreement ("loan agreement") between the Fuel Company and Maine Yankee. The loan agreement provides that Fuel Company will loan Maine Yankee up to $35,000,000 from time to time over a period of at least five years, extendable until 2002, unless terminated by either party upon three years notice. The notes will bear a stated maturity of 2002, but the notes will also become due and payable (i) upon the expiration of the term of the loan agreement, or (ii) 270 days after termination of the loan agreement by reason of certain events specified in the loan agreement. The notes may be prepaid at any time in whole or in part without premium or penalty.

Maine Yankee also entered into a security agreement ("security agreement") with the Fuel Company concurrently with execution of the loan agreement. The security agreement requires Maine Yankee to mortgage, pledge and assign to Fuel Company a continuing security interest in certain nuclear fuel and in Maine Yankee's right to funds under certain Capital Funds Agreements. Such security interests serve as collateral security for the payment of all of Maine Yankee's obligations under the loan agreement.

The notes bear interest in an amount equal to the Fuel Company's interest costs and other costs and expenses incurred by Fuel Company in connection with its loans to Maine Yankee plus ⅛ of 1% per annum of the aggregate principal amount of notes outstanding from time to time. The Fuel Company finances its loans to Maine Yankee by the sale of the Fuel Company's commercial paper through Goldman, Sachs & Co., for which service the latter receives a discount of ⅛ of 1% per annum. Such commercial paper is supported by letters of credit under a credit agreement ("credit agreement") between Fuel Company and Manufacturers Hanover Trust Company ("Bank"). The term of the credit agreement is concurrent with the loan agreement. The bank charges a fee of 1¼% per annum on the average principal amount committed by the bank under its outstanding letters of credit.

The credit agreement also authorizes Fuel Company to make direct borrowings from the bank so long as the aggregate principal amount of the outstanding letters of credit and direct borrowings does not exceed $35,000,000. The bank charges a commitment fee of ⅛ of 1% per annum on the excess of the maximum credit available under the credit agreement over the aggregate of (i) the amount of commercial paper outstanding and (ii) the amount of direct borrowings by Fuel Company. The annual interest rate on direct borrowings will be 125% of the base rate ("base rate") in effect at the bank from time to time. The base rate will be the higher of the rate of interest charged by the bank on certain commercial loans "(prime rate") or the average rate for certain commercial paper.

Maine Yankee also guarantees the obligations of Fuel Company to make payments under the credit agreement and the payment of commercial paper which Fuel Company issues pursuant to the loan agreement.

By the present application Maine Yankee proposes to enter into a first amendment ("first amendment") to the loan agreement. Said first amendment will increase the aggregate principal amount of loans which Fuel Company will make to Maine Yankee from $35,000,000 to $50,000,000. As of June 30, 1982, $33,375,000 of such loans were outstanding. The purpose of the increase in the loan commitment is to make additional funds available in order to finance the acquisition of nuclear fuel and other related property, the construction, completion, extension or improvement of its facilities, the improvement or maintenance of its services, and the reimbursement of its treasury for moneys used for such purposes. In addition, the first amendment will shorten the termination notice period from 36 to 18 months.

Fuel Company and the Bank will enter into a first amendment of the credit agreement to increase the Bank's commitment under said credit agreement from $35,000,000 to $50,000,000, to reduce the fee charged by the Bank for outstanding letters of credit from 1.25% to .95% and to reduce the notice period for termination of the credit agreement by the Bank from 36 months to 18 months. Maine Yankee proposes to guarantee Fuel Company's increased obligations under the credit agreement.

The effective cost of the additional $15,000,000 principal amount of loans which Fuel Company will make to Maine Yankee would be approximately 12.2% per annum, assuming that Maine Yankee uses 50% of the increased amount and that Fuel Company finances the purchase of the notes entirely by the sale of commercial paper yielding 11%. If Fuel Company financed the purchase of the additional $15,000,000 principal amount of notes entirely through direct bank borrowings under the credit agreement with the Bank, based on a

prime rate of 14%, the effective cost would be 17.5%.

Maine Yankee seeks an exception from the competitive bidding requirements of Rule 50 for the proposed issuance of up to $15,000,000 of notes pursuant to subparagraph (a)(5).

The application and any amendments thereto are available for public inspection through the Commission's Office of Public Reference. Interested persons wishing to comment or request a hearing should submit their views in writing by September 13, 1982, to the Secretary, Securities and Exchange Commission, Washington, D.C. 20549, and serve a copy on the applicant at the address specified above. Proof of service (by affidavit or, in the case of an attorney at law, by certificate) should be filed with the request. Any request for a hearing shall identify specifically the issues of fact or law that are disputed. A person who so requests will be notified of any hearing, if ordered, and will receive a copy of any notice or order issued in this matter. After said date, the application as filed or as it may be amended, may be granted.

For the Commission, by the Division of Corporate Regulation, pursuant to delegated authority.

George A. Fitzsimmons,

Secretary.

[FR Doc. 82-23318 Filed 8-25-82; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 18980; (SR-Phlx-82-6)]

Philadelphia Stock Exchange, Inc.; Order Approving Proposed Rule Change

August 18, 1982.

The Philadelphia Stock Exchange, Inc. ("Phlx") 1900 Market Street, Philadelphia, PA 19103, submitted on June 28, 1982, copies of a proposed rule change pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the "Act") and Rule 19b-4 thereunder to amend Commentary .13 to rule 1014 concerning the allowable number of registered options traders ("ROTs") who are establishing or increasing a position in a trading crowd at the same time. Currently, the rule prohibits the presence of more than three ROTs in a crowd unless an increase is approved in writing by a floor official. Under the proposed rule change, there would be no limitation on the number of ROTs that could be present in a trading crowd unless two floor officials determined the number of ROTs in the crowd should be temporarily limited in the interest of a fair and orderly market.

Notice of the proposed rule change together with the terms of substance of the proposed rule change was given by the issuance of a Commission Release (Securities Exchange Act Release No. 18870, July 6, 1982) and by publication in the **Federal Register** (47 FR 30678, July 14, 1982). No comments were received with respect to the proposed rule change.

The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange and, in particular, the requirements of Section 6 of the Act, and the rules and regulations thereunder.

It is therefore ordered, pursuant to Section 19(b)(2) of the Act, that the above-mentioned proposed rule change be, and it hereby is, approved.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.

George A. Fitzsimmons,

Secretary.

[FR Doc. 82-23326 Filed 8-25-82; 8:45 am]

BILLING CODE 8010-10-M

[Release No. 18982; File No. 4-281]

Receipt of an Amendment to the Consolidated Quotation Plan

August 19, 1982.

On July 7, 1982, the participants in the Consolidated Quotation Plan ("CQ Plan") [1] submitted to the Commission, pursuant to Rule 11Aa3-2 ("Plan Rule") under the Securities Exchange Act of 1934 ("Act"), an amendment to the CQ Plan.

I. Description of the Amendment

As provided by the provisions of the Intermarket Trading System ("ITS") Plan, as restated and amended by the Commission,[2] the CQ Plan participants have proposed amending the CQ Plan [3] to provide for dissemination of an ITS/Computer Assisted Execution System ("CAES") Best Bid and Offer ("BBO") display.[4]

II. Summary Effectiveness of the Amendment

On May 17, 1982, the ITS/CAES interface began operation, including the dissemination and display of an ITS/CAES BBO. Nevertheless, although the amended ITS Plan, which had been approved by the Commission, did contemplate the dissemination of an ITS/CAES BBO,[5] a formal CQ Plan amendment had not been filed. Accordingly, the Commission believes that it is appropriate to expedite the effectiveness of this amendment so as to provide for its immediate inclusion in the CQ Plan which, in turn, will ensure the continued operational efficiency of the pilot phase of the ITS/CAES interface.

The Commission, therefore, finds that granting the amendment summary effectiveness is in furtherance of the purposes of the Act and necessary to remove impediments to, and perfect mechanisms of, a national market system. Accordingly, pursuant to paragraph (c)(4) of the Plan Rule, the Commission hereby orders that this amendment take effect, for a period of 90 days, upon publication of notice thereof in the **Federal Register**.[6]

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[1] *See* Securities Exchange Act Release No. 15009, (July 28, 1978), 45 FR 34851.

[2] *See* Securities Exchange Act Release No. 18713, (May 6, 1982), 47 FR 20413. The ITS is an intermarket communications system operated jointly by certain national securities exchanges, and authorized by the Commission, on a provisional basis, as a national market system facility pursuant to Section 11A(a)(3)(B) of the Act. The "ITS Plan" is the governing and constituent documents for the ITS.

[3] In their submission, the CQ Plan participants state that "the amendment shall be effective as of May 17, 1982 when it has been executed on behalf of each participant and approved by the Commission." The Commission would note, however, that, the Plan rule only provides for an amendment to become effective after approval by the Commission, on either a permanent or temporary basis [paragraphs (c)(1) and (c)(4) of the Rule] or, under certain circumstances, upon filing with the Commission [paragraph (c)(3) of the Rule] Indeed, the release proposing Rule 11Aa3-2 for comment specifically stated that "any * * * proposed * * * amendment to an effective [national market system] [p]lan * * * be * * * approved by the Commission prior to effectiveness." Securities Exchange Act Release No. 16410, (December 7, 1979), 44 FR 72607, 72610. Accordingly, although the Commission has determined to approve the amendment on a temporary basis it will be effective only on a prospective basis from the date of this order.

[4] CAES is a computerized order routing and execution facility operated by the NASD for NASD members. On May 17, 1982, CAES was interfaced with ITS, and is presently being operated on a pilot basis to facilitate concurrent over-the-counter ("OTC") and exchange trading in 30 securities which are not subject to exchange off-board trading restrictions ("ITS/CAES securities"). *See* Securities Exchange Act Release No. 17744, (April 21, 1981), 46 FR 23856; Securities Exchange Act Release No. 18713, (May 6, 1982), 47 FR 20413.

The "ITS/CAES BBO" is a display of the best bid and best offer price, together with the size accompanying those quotations, for each ITS/CAES security based on quotations submitted by exchange and OTC market makers which trade through the interface.

[5] ITS Plan, *supra* note 2, at Section b(a)(i)(B).

[6] Paragraph (c)(4) of the Plan Rule provides that a plan amendment put into effect upon publication of its notice shall be effective only on a temporary basis not to exceed 120 days. Accordingly, the Commission expects to determine whether to approve this amendment on a permanent basis within 90 days from the date that notice of this amendment is published in the **Federal Register**.

III. Request for Comment

Publication of the amendment to the CQ Plan is expected to be made in the Federal Register during the week of August 23, 1982. In order to assist the Commission in determining whether to approve the amendment on a permanent basis, pursuant to paragraph (c)(1) of the Plan Rule, interested persons are invited to submit written data, views and arguments concerning the submission on or before September 16, 1982. Persons desiring to make written comments should file six copies thereof with the Secretary of the Commission, 450 5th Street, NW., Washington, D.C. 20549. Reference should be made to File No. 4–281.

Copies of the submission, all written statements with respect to the amendment which are filed with the Commission, and all written communications relating to the amendment between the Commission and any person, other than those which may be withheld from the public,[7] will be available for inspection and copying at the Commission's Public Reference Room, 450 5th Street, NW., Washington, D.C. 20549.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[8]

George A. Fitzsimmons,

Secretary.

[FR Doc. 82-23322 Filed 8-25-82; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 22612; (70-6767)]

Southwestern Electric Power Co.; Proposed Sale of Portion of Utility Plant and Certain Lignite Reserve Interests to Electric Cooperative

August 20, 1982.

Southwestern Electric Power Company ("SWEPCO"), 428 Travis Street, Shreveport, Louisiana 71556, an electric utility subsidiary of Central and South West Corporation ("CSW"), a registered holding company, has filed a declaration with this Commission pursuant to Section 12(d) of the Public Utility Holding Company Act of 1935 ("Act") and Rule 44 promulgated thereunder.

SWEPCO is currently the owner of a 100% undivided ownership interest in a 640 MW nominally rated, lignite-fired generating unit, currently under construction south of Hallsville in Harrison County, Texas, to be know as the Henry W. Pirkey Unit No. 1 (the "Pirkey Plant"). Total construction costs for the Pirkey Plant are expected to be $534,116,000, including AFUDC. At March 31, 1982, Pirkey Plant construction expenditures, including AFUDC, totaled $100,456,000. SWEPCO expects to place the Pirkey Plant into commercial operation in March, 1985.

SWEPCO and Northeast Texas Electric Cooperative, Inc., an electric cooperative corporation located in Gilmer, Texas ("NTEC"), have entered into an Ownership, Construction and Operating Agreement, (the "Ownership Agreement"). Pursuant to this Ownership Agreement, SWEPCO, subject to the receipt of all necessary regulatory approvals, will sell to NTEC an 11.72% undivided ownership interest in the Pirkey Plant. Closing is expected to take place about 10 days after such regulatory approval is received. SWEPCO will obtain a release of such interest from the lien of SWEPCO's First Mortgage Indenture. SWEPCO will retain an 88.28% undivided ownership interest in the Pirkey Plant.

The sale would include an undivided 11.72% interest in SWEPCO's right, title and interest in and to the Pirkey Plant, including all real and personal property exclusive of certain pollution and waste disposal facilities. The sale would also include an 11.72% undivided beneficial ownership interest in SWEPCO's right and interest in certain lignite reserves intended to be the principal fuel to be burned at the Pirkey Plant. Rights and interests in such lignite reserves were assigned or conveyed to SWEPCO pursuant to a Lignite Acquisition Agreement, dated May 24, 1974, between Robert Cargill and SWEPCO, covering certain lignite leases, lignite royalty interests and fee mining lands situated in the South Hallsville area in Harrison County, Texas, and delivery of such lignite reserves is to be made to the Pirkey Plant pursuant to a Lignite Mining Agreement, dated January 15, 1981, between SWEPCO and the Sabine Mining Company. NTEC will dedicate its 11.72% interest in such lignite reserves to the Pirkey Plant. NTEC has agreed to be bound by and subject to all agreements entered into by SWEPCO concerning such lignite reserves to the same extent and with the same force and effect as if NTEC has been an original party to such agreements. NTEC shall also own an 11.72% undivided interest in all other fuel to be burned at the Pirkey Plant as such is received.

SWEPCO will independently construct a substation on an approximately 14.12 acre tract within or contiguous to the Pirkey Plant site and said substation and substation site shall be wholly-owned and operated at the risk and expense of SWEPCO.

At the closing, in consideration for the sale of said property, NTEC is to pay to SWEPCO an amount equal to 11.72% of all capitalized costs of the Pirkey Plant from inception to the date of closing. Concurrently, for the lignite reserves interest NTEC will pay an amount equal to 11.8372% of SWEPCO's total cost and expense to date for such lignite reserves.

Under the Ownership Agreement, NTEC is also obligated to pay SWEPCO any applicable federal income taxes related to capital gains experienced by SWEPCO as a result of NTEC's participation in the Pirkey Plant or in the lignite reserves. Such amounts are to be paid to SWEPCO at such time or times as any such taxes are paid to the Internal Revenue Service by Central and South West Corporation.

After the closing, SWEPCO is to complete the construction of the Pirkey Plant and NTEC is, from time to time at the request of SWEPCO, to make monthly payments in advance equal to 11.72% of all additional costs to be incurred in the construction and completion of the Pirkey Plant. SWEPCO is also to take all reasonable action necessary for management of the lignite reserves on its own behalf and as agent for NTEC. SWEPCO may request NTEC to advance to SWEPCO such sums as SWEPCO reasonably anticipates for NTEC's share of the lignite costs for the next succeeding month.

If the closing were to take place on July 31, 1982, NTEC would be obligated to pay SWEPCO approximately $18,429,000. Such amount includes the following:

NTEC's share of Pirkey Plant costs to date	$16,573,000
Capital gain taxes on sale of Pirkey Plant	654,000
NTEC's share of lignite reserves capital costs to date	1,142,000
Capital gain taxes on sale of Lignite Reserves	60,000
Total	18,429,000

Of such amount, SWEPCO would receive approximately $17,715,000 at the closing. The remaining $714,000, representing capital gains taxes attributable to the sale of NTEC's share in the Pirkey Plant and the lignite reserves, would be received by SWEPCO when such taxes are due. SWEPCO expects to apply the proceeds of the sale to the repayment of short-term indebtedness incurred to finance SWEPCO's construction program, to the payment of future construction costs, and to the payment of capital gains taxes.

The Ownership Agreement also provides that SWEPCO shall have the exclusive right to operate and maintain the Pirkey Plant and to control the

[7] 17 CFR 240.24b-2.
[8] 17 CFR 200.30-3(a)(29).

mining of the lignite reserves. NTEC will make monthly payments to SWEPCO for its portion of all costs of operation, maintenance, overhead charges and expenses associated with the Pirkey Plant other than fuel costs, in accordance with its ownership interest, plus an additional 5% of such costs to compensate SWEPCO for costs and fees incurred in connection with the operation of the Pirkey Plant not directly chargeable to operation and maintenance of the Pirkey Plant. NTEC will also make monthly payments to SWEPCO for 11.8372% of the total cost, determined by SWEPCO's standard procedures for fuel delivered to the Pirkey Plant from the lignite reserves and for 11.72% of the total cost of all other fuel deliveries plus 5% of NTEC's percentage share.

The Ownership Agreement, including the operating arrangement, will terminate on the earlier of (1) the date the Pirkey Plant is retired from commercial service and salvaged, (2) the construction cancellation date, (3) a date on or before June 1, 1983, in the event NTEC is unable to a long-term loan needed to cover its costs under the proposed transactions, or (4) other mutually agreed upon date. In the event the Operating Agreement is terminated because of the event described in clause (3) above, SWEPCO shall repurchase from NTEC the property interests conveyed to NTEC pursuant to the Ownership Agreement for a price equal to the aggregate payments made by NTEC to SWEPCO in respect of such property interests plus all interest paid by NTEC in connection with the interim financing by NTEC of its purchase of such interests.

SWEPCO has also entered into a separate Entitlement Assignment Contract ("Entitlement Contract") with NTEC. Pursuant to the Entitlement Contract SWEPCO will purchase from NTEC declining percentages (beginning with 87% and declining to 40%) of the capacity and energy to which NTEC is entitled from the Pirkey Plant, during the first five years after commercial operation. SWEPCO will pay NTEC each month for such assigned entitlements at a monthly rate equal to that portion of NTEC's share of the costs of operation and the cost of fuel burned during such month under the Ownership Agreement and allocable to the entitlement rights of NTEC assigned to SWEPCO for such month, plus a monthly charge determined according to an annual fixed charge rate.

The declaration and any amendments thereto are available for public inspection through the Commission's Office of Public Reference. Interested persons wishing to comment or request a hearing should submit their views in writing by September 13, 1982, to the Secretary, Securities and Exchange Commission, Washington, D.C. 20549, and serve a copy on the declarant at the address specified above. Proof of service (by affidavit or, in the case of an attorney at law, by certificate) should be filed with the request. Any request for a hearing shall identify specifically the issues of fact or law that are disputed. A person who so requests will be notified of any hearing, if ordered, and will receive a copy of any notice or order issued in this matter. After said date, the declaration as filed or as it may be amended, may be permitted to become effective.

For the Commission, by the Division of Corporate Regulation, pursuant to delegated authority.

George A. Fitzsimmons,

Secretary.

[FR Doc. 82-23321 Filed 8-25-82; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 34-18985; File No. SR-CSE-82-1]

Self-Regulatory Organizations; Proposed Rule Change by the Cincinnati Stock Exchange Relating to Duration of National Securities Trading System and Number of Designated Issues

Comments requested on or before October 25, 1982. 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 July 19, 1982, The Cincinnati Stock Exchange (the "Exchange") 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 proposed rule change amends Rule 11.9 of the Exchange, relating to the National Securities Trading System (the "Rule"). The proposed rule change would (i) eliminate the Rule's expiration date so as to extend the duration of the Rule and the National Securities Trading System authorized thereby for an indefinite period and (ii) eliminate any limitation on the number of issues that may be designated at any one time to be traded in the National Securities Trading System ("NSTS" or "System").

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

The purpose of the proposed rule change (the "Proposed Rule Change") is to terminate the status of the NSTS as an experimental program by extending its duration for an indefinite period and by eliminating any limitation on the permissible number of securities designated by the Exchange to be traded in the System ("Designated Issues"). The Exchange believes that the NSTS as an automated auction market center has established its value as an effective, viable system in which to trade securities and thereby furthers the objectives of a national market system pursuant to Section 11A of the Securities Exchange Act of 1934 (the "Exchange Act").

For the NSTS to reach its full potential, however, it must be granted permanent approval. The System's experimental status to date has hurt the Exchange in competing on equal terms with other market centers. Specifically, the temporary nature of the System has made it less attractive to prospective users because there is a certain amount of start-up effort (such as choosing and training employees to work with the System, along with the installation of certain equipment) required to be made by new users of the NSTS. The Exchange believes that many prospective users are not willing to make such an "investment" without having some expectation that the NSTS will be approved on a permanent basis. Permanent approval of the System therefore would assist the Exchange in competing more fairly with other exchanges by attracting new participants and additional order flow to the System.

Moreover, the Exchange, unlike any of its competitors, is hampered by the arbitrary limit of 200 on the number of Designates Issued which may be traded in the System. The Exchange's technological capacity currently exceeds this artificially imposed limitation. Only by removing this barrier to expansion can the Exchange operate to its fullest potential and compete fairly with other market centers.

Without permanent approval, the Exchange is at a further competitive disadvantage in planning and implementing enhancements to the System. One of the objectives of the Exchange is to continue to upgrade systems and equipment to improve the System's reliability, efficiency and capacity. For example, the Exchange wishes to develop an automated, rather than manual, interface between the NSTS and the Intermarket Trading System ("ITS"). In addition, as new participants join the System, the Exchange anticipates expanding the system's capacity to handle increases in the number of Designated Issues and in the volume of order flow.

Control Data Corporation ("CDC"), the facilities manager and owner of the hardware and software used to operate the NSTS, has committed substantial resources over the last four years to upgrading the System and now must make decisions as to what further additional resources to commit to expand and improve the System. As the NSTA Develops, the level of resources required to expand and enhance the System also increases. It will be difficult to plan, implement and justify the cost of further enhancements without the assurance that the NSTS will be allowed to operate on a permanent basis.

The Proposed Rule Change is consistent with the requirements of the Exchange Act applicable to a national securities exchange. In particular, the Proposed Rule Change is designed to remove impediments to and perfect the mechanism of a free and open market and a national market system and, in general, to protect investors and the public interest, as required by Section 6(b)(5) of the Exchange Act. The Proposed Rule Change also is intended to further the objectives of a national market system as specified in Section 11A(a)(1) of the Exchange Act, among other things, by assuring fair competition among brokers and dealers and among exchange markets and by utilizing new data processing and communications techniques to create the opportunity for more efficient and effective markets.

In its release approving the System on an experimental basis through January 31, 1983, (the "Extension Release"), the Commission recognized that the System has many desirable features that are consistent with the above statutory objectives.[1] Such features include "increased speed and efficiency, the ability to generate a complete 'audit trail' for surveillance purposes," [2] and the opportunity for enhanced competition among brokers and dealers, among exchange markets and markets other than exchange markets.[3] Another recognized advantage of the System is that it incorporates a fundamental and desirable characteristic of an "auction" market—price/time priority—on a system-wide basis, thereby eliminating the advantage of a broker being in a particular geographic location.[4] Since all orders entered in NSTS are exposed to all NSTS Users and ITS participants and because execution of such orders is based on strict price/time priority, the NSTS also provides a valuable method of addressing the Commission's market structure concerns about the "internationalization" of agency order flow.[5]

Despite the recognized advantages of the System, the Commission, in its Extension Release, stated that, if the NSTS were to become a permanent feature of the national market system, it must "continue to make improvements, changes and adaptations to meet the needs of persons trading in the various market centers and to accomodate Commission regulatory requirements designed to improve order interaction and price protection between and among markets." [6] During the more than four years that the NSTS has been in operation, it has proven its ability to evolve in a manner consistent with these goals.

First, there have been a number of significant enhancements to the NSTS subsequent to the Extension Release. Equipment has been upgraded to expand the capacity and improve the efficiency of the System. Use of the System has been facilitated by automated links with users' order processing systems. The Exchange has improved operating procedures and documentation in connection with all aspects of the trading and order execution functions and CDC has increased programmer staffing.

In addition, as encouraged by the Commission, the Exchange has joined the joint industry plan for collecting and disseminating quotations required to be made available pursuant to Rule 11Ac1–1. In 1981, the Exchange also implemented an automatic interface between the NSTS and the National Securities Clearing Corporation and a manual interface between the NSTS and ITS consistent with the objectives of section 11A of the Exchange Act.

The system's ability to expand over recent years is further evidence of its value as a permanent feature of the evolving national market system. The NSTS has had to start from "ground-zero" in competing for business with a large and entrenched competition. Nevertheless, in 1981, seven new participants joined the NSTS, the number of Designated Issues increased from 25 to 71 and trading volume in the System increased over 100%. Since the NSTS–ITS linkage, the System's ITS volume also has increased steadily with received volume exceeding originating volume. The Exchange's participation rate in the ITS System similarly has risen.

Finally, in the time the NSTS has been in operation, no significant problems of any sort have arisen. The Exchange has not received substantial complaints from NSTS users or their customers concerning the System or the quality of executions obtained through the use of the System. The Commission's May 1981 monitoring report on the NSTS (the "Monitoring Report"), which covered the period prior to the NSTS–ITS linkage, revealed that only 1.5% of agency-dealer executions and 0.06% of agency-agency executions may have occurred at prices inferior to contemporaneous quotations on the New York Stock Exchange ("NYSE") while, in certain agency-dealer executions, the agency side of the transaction received an execution at a price better than the NYSE quotation.[7]

B. Self-Regulatory Organization's Statement of Burden on Competition

The Exchange believes that the Proposed Rule Change imposes no

[1] Securities Exchange Act Release No. 16216 (September 21, 1979).

[2] Extension Release at 13.

[3] Extension Release at 16.

[4] Subcomm. on Oversight and Investigations of the House Comm. on Interstate and Foreign Commerce, 96th Cong., 2d Sess., Report on National Market System: Five Year Status Report 29 (Comm. Print 1980).

[5] The Commission has defined the term "internationalization" as referring to "the withholding of retail orders from other market centers, for the purpose of executing them in-house, as principal, without exposing those orders to buying and selling interest in those other market centers." Securities Exchange Act Release No. 17744 (April 21, 1981). The System's sophisticated audit trail captures all trading activity as well as quotations. The System therefore can generate complete reports on trades internalized.

[6] Extension Release at 11.

[7] U.S. Securities and Exchange Commission, *A Monitoring Report on the Operations of the Cincinnati Stock Exchange National Securities Trading System*, 24–27 (May 1981).

burdens on competition. Indeed, it believes that by providing a system whereby data processing hardware and software along with electronic communication equipment is utilized for trading securities according to price/time priority in an automated auction environment linked to other market centers, it is fostering fair competition among brokers and dealers, among exchange markets, and between exchange markets and markets other than exchange markets, as contemplated by Section 11A(a)(1)(C)(ii) of the Act. NSTS further enhances competition by its implementation of a competing market maker system and by providing "open-access" to the System by specialists on other exchanges that are not members of the Exchange.

C. Self-Regulatory Organization's Statement on Comments Received from Members, Participants or Others on Proposed Rule Change

The Exchange has neither solicited nor received 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.

The Exchange consents to all necessary extensions of time required for Commission action under Section 19(b)(2) of the Act in order to allow for publication and dissemination of the report on NSTS being prepared by the Commission's Directorate of Economic and Policy Analysis.

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, D.C., 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 Street, NW., Washington, D.C. 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 on or before October 25, 1982. For the Commission by the Division of Market Regulation, pursuant to delegated authority.

Dated: August 19, 1982.

George A. Fitzsimmons,

Secretary.

[FR Doc. 82-23455 Filed 8-25-82; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 34-18986; File No. SR PHLX 82-7]

Self-Regulatory Organizations; Proposed Rule Change by Philadelphia Stock Exchange, Inc.; Relating to Assessments for Breach of Administrative Regulations

Comments requested on or before September 16, 1982.

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 August 5, 1982, the Philadelphia Stock Exchange, Inc. 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 Philadelphia Stock Exchange ("PHLX") proposes to amend PHLX Rule 60 (Assessments for Breach of Regulations) to add administrative regulations to the category of regulations enforced pursuant to the abbreviated disciplinary procedures provided by such rule.

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 Statements of the Purpose of, and Statutory Basis for the Proposed Rule Change

The proposed amendment to Rule 60 authorizes a floor official or exchange official to fine members for breaches of administrative regulations of the exchange. A floor official is a floor member of an exchange committee and an exchange official is an employee of the exchange, each with authority to enforce the regulation at issue. Administrative regulations relate to the operation of the trading floor of the exchange and the management of the business of the exchange.

As in the case of regulations relating to order, decorum, health, safety and welfare, Rule 60 as it pertains to administrative regulations, is not self-implementing, and the exchange will file a proposed rule change pursuant to section 19(b) of the Act for each administrative regulation it proposes to implement.

For a member wishing to contest an assessment concerning an administrative regulation, the rule provides a right to a hearing before a member of the exchange committee responsible for the regulation at issue. Also notice of all final disciplinary action taken by the exchange pursuant to this amendment will be filed with the Securities and Exchange Commission pursuant to Rule 19d-1 of the Act.

The proposed amendment is consistent with section 6(b) of the Act, in general, and furthers the objectives of section 6(b)(6) of the Act, in particular, in that it provides for appropriate disciplinary action for violations of exchange administrative regulations.

B. Self-Regulatory Organization's Statement on Burden on Competition

The PHLX does not believe that the proposed rule change will impose any burden on competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants, or Others

No comments on this proposed rule change have been solicited or received from members.

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 reason 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, D.C. 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 accordanced 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 Street NW., Washington, D.C. 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 on or before September 16, 1982.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.

Dated: August 19, 1982.

George A. Fitzsimmons,

Secretary.

[FR Doc. 82-23456 File 8-25-82; 8:45 am]

BILLING CODE 8010-01-M

[Rel. No. 18994; SR-OCC-92-11]

Options Clearing Corp. ("OCC"); Order Approving Proposed Rule Change (SR-OCC-82-11) and Withdrawing Proposed Rule Change (SR-OCC-75-5)

August 20, 1982.

On May 20, 1982, OCC filed with the Commission pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934, 15 U.S.C. 78s(b)(1), (the "Act") and Rule 19b-4 thereunder, a proposed rule change that permits OCC participants to meet their margin obligations to OCC by depositing eligible common stocks with a bank, trust company, or other approved financial institution. Stocks are eligible if they (i) underlie classes of option contracts that are outstanding at the time of deposit; and (ii) are not being used by those participants to cover existing options positions, pursuant to OCC Rule 610. The proposed rule change also includes several limitations on this authority. For example, the proposed rule change provides that, each day, OCC shall assign a value to the common stocks deposited for margin purposes. That value, however, is limited to the lower of the maximum loan value of such stocks established by Regulation U (currently 50 percent of market value, as determined by any reasonable method, *see* 12 CFR 221.4(a)), or the value established by OCC, which, in no event shall be greater than 70 percent of the current market value. The proposed rule change also limits the value of eligible stock in a single issue to ten percent of the value of a participant's aggregate daily margin requirement. Finally, the proposed rule change amends OC Rule 609. That Rule authorizes OCC to call for additional same-day margin from participants under specified circumstances. Under the proposed rule change, those circumstances would be expanded to allow OCC to require additional same-day margin in the event that the value of a participant's deposited eligible securities declines significantly during a business day.

Notice of the proposed rule change, together with the terms of substance of the proposed rule change, was given by publication of a Commission Release (Securities Exchange Act Release No. 18772 (May 28, 1982) and by publication in the **Federal Register** (47 FR 25085, June 9, 1982)). No letters of comment were received by the Commission.

The proposed rule change may allow extensions of credit by OCC that are in technical violation of the current version of Regulation T (12 CFR § 220.1 *et seq.*) as adopted by the Board of Governors of the Federal Reserve System ("BOG") pursuant to Sections 7 and 8(a) of the Act. The BOG, however, has published for comment a proposed revision to Regulation T that, among other things, would eliminate any conflict between Regulation T and the proposed rule change. *See* proposed 12 CFR § 220.13, 47 FR 13376 (March 24, 1982). The staff of the BOG has advised the Commission that on the basis of OCC's review of the proposed rule change, comments received on the proposed revision to Regulation T, and its anticipation that the revision will be adopted by the BOG within the next few months, the BOG has no objection to the Commission's approving OCC's proposal, to be effective immediately. Accordingly, the Commission believes that there is no justification for delaying the approval or the effective date of the proposed rule change.

Although the Commission recognizes that OCC's potential risks of financial exposure are somewhat increased by permitting the use of equity securities for OCC margin purposes in the event of a significant deterioration in the market value of those securities, in view of the benefits of the proposal, the safeguards provided therein and the remoteness of the potential risks to OCC, the Commission believes that the adoption of the proposed rule change will not significantly affect in an adverse manner OCC's ability to safeguard securities and funds in its custody or control or for which it is responsible. Thus, the Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to registered clearing agencies, and in partiuclar, the requirements of Section 17A of the Act.

The proposed rule change replaces OCC's proposed rule change previously filed with the Commission on October 29, 1975. On November 12, 1975, notice of File No. SR-OCC-75-5, together with the terms of substance of that proposed rule change, was given by publication in Securities Exchange Act Release No. 11920, 42 FR 53637 (November 19, 1975). Because that filing presented possible conflicts with certain regulations issued by the BOG pursuant to Sections 7 and 8(a) of the Act, including Regulation T, the Commission, in accordance with Section 19(b)(2) of the Act, obtained extensions of time within which the Commission must take action. However, in view of the BOG's proposed revisions to Regulation T, OCC has filed with the Commission File No. SR-OCC-82-11 to take the place of File No. SR-OCC-75-5. Thus, OCC has requested that the

Commission consent to the withdrawal of File No. SR–OCC–75–5.

Accordingly, it is therefore ordered, pursuant to Section 19 of the Act, that the proposed rule change (SR–OCC–82–11) be, and hereby is, approved, and that File No. SR–OCC–75–5 be, and hereby is, withdrawn.

For the Commission, by the Division of Market Regulation pursuant to delegated authority.

George A. Fitzsimmons,

Secretary.

[FR Doc. 82–23457 Filed 8–25–82; 8:45 am]

BILLING CODE 8010–01–M

[Release No. 34–18984; File No. SR–NYSE–82–13]

Self-Regulatory Organizations; Proposed Rule Changes by New York Stock Exchange, Inc.

In the matter of proposed rule changes by New York Stock Exchange, Inc. relating to changes to Rule 93 (Trading for Joint Account), Rule 349 (Representatives of the Press), Rule 403 (Bucket Shops, etc.), Rule 404 (Individual Members not to Carry Accounts), Rule 415 (Accounts and Securities), Rule 422 (Loans of and to Directors, etc.), Rule 423 (Participation in Joint Accounts) and Rule 432 (Daily Record of Required Margin).

Comments requested September 16, 1982.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934, 15 U.S.C. 78(s)(b)(1), notice is hereby given that on August 9, 1982, the New York Stock Exchange, Inc. filed with the Securities and Exchange Commission the proposed rule changes 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 changes from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Changes

The proposed rule changes would rescind Rule 349 to remove outdated references regarding member organization employment of press representatives; rescind Rule 403 to remove outdated references which when read literally appear to prohibit legitimate arbitrage and market making activities; combine Rule 404 into Rule 415 since these Rules deal with Exchange approval for carrying customers' accounts and holding customers' securities; amend Rule 422 to no longer require Exchange Committee members to receive Board approval of loans (unsecured) to or from member organizations; consolidate Rule 423 and Rule 93, both of which deal with joint accounts, to in effect require joint account reporting by members initiate transactions on the floor; and amend Rule 432 to clarify the intent of certain Exchange requirements dealing with daily records of margin calls.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Changes

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of and basis for the proposed rule changes, and discussed any comments it received on the proposed rule changes. 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 Changes

(a) *Purpose of Proposed Rule Changes—*

Rule 349 (Representatives of the Press) and Rule 403 (Bucket Shops, etc.) should be rescinded as they are outdated and their subject matters are covered by other Exchange provisions and the Federal Securities Laws.

Rule 404 (Individual Members not to Carry Accounts) and Rule 415 (Accounts and Securities) both deal with carrying accounts and holding customers' securities and should be combined.

The proposed amendment to Rule 422 (Loans of and to Directors, etc.) would eliminate required Exchange Board approval for unsecured loans to or from Exchange Committee members and member organizations since the proliferation of Exchange Advisory Committees has rendered application of this provision impractical. Board Members and Exchange employees would remain subject to the Rule.

Rule 423 (Participations in Joint Accounts) should be rescinded since other Exchange surveillance mechanisms (e.g., FOCUS and field examinations) monitor these type accounts from a financial impact perspective and Rule 93 (Trading for Joint Account) will be expanded to bolster the Exchange's ability to monitor potential manipulative situations by persons permitted to initiate trades on the floor (e.g., specialists, competitive traders and registered competitive market makers) by requiring reporting of joint accounts by them and others associated with their organizations.

The amendments to Rule 432 (Daily Record of Required Margin) are technical changes intended to clarify language dealing with Exchange margin requirements.

(b) *Statutory Basis for the Proposed Rule Changes*

The rescission of Rules 349 and 403 will not effect the ability of the Exchange to enforce compliance by its members and persons associated therewith with the provisions of the Act and Rules of the Exchange in accordance with Section 6(b)(1) of the Act. Nor will the changes alter the design of Exchange Rules intended to prevent fraudulent and manipulative acts, and to provide protection to investors and the public interest as required by Section 6(b)(5) of the Act. These changes will not hamper the Exchanges' ability to appropriately discipline members and persons associated therewith for violations of Exchange Rules and provisions of the Act, in accordance with Section 6(b)(6) of the Act.

The consolidation of the requirements for receiving Exchange approval for carrying customer accounts and holding customer's securities contained in Rules 404 and 415 will not affect the ability of the Exchange to enforce compliance by its members and persons associated therewith with the provisions of the '34 Act and the rules of the Exchange, in accordance with Section 6(b)(1) of the Act. Nor will the changes alter the ability of registered broker-dealers to become Exchange members and to carry accounts, as per Section 6(b)(2) of the Act. The proposed amendments are consistent with Section 6(b)(5) of the Act in that the consolidation of these Rules will not affect Exchange Rules designed to promote just and equitable principles of trade, to foster cooperation and coordination between persons engaged in clearing and processing information with respect to, and facilitating transactions in securities, and in general, to protect investors and the public interest.

The amendment to Rule 422 is consistent with the overall requirements of Section 6(b) of the Act in that the Rule is intended to avoid potential conflicts of interest by Exchange Board members, officers or employees in carrying out the responsibilities of the Exchange pursuant to this provision. The required reporting of loans to or from all Exchange Committee members dates back to when the full panoply of Exchange regulations was set forth by

Committee, as opposed to the Board of Directors and staff as at present, and is no longer necessary or appropriate.

The consolidation of Rule 93 and Rule 423 is consistent with Section 6(b)(5) of the Act in that required reporting of joint accounts by members able to initiate transactions on the floor and allied members therewith will serve to allow the Exchange to monitor for potential fraudulent and manipulative acts and practices thereby protecting investors and the public interest, and promoting just and equitable principles of trade. It is also consistent with Section 6(c)(3)(A) in that the Exchange will be able to insure the continued financial responsibility and operational capability of its members by monitoring the effect of joint accounts on a member or member organization's capital on a more timely basis through review of FOCUS reports and through field examinations.

The amendments to Rule 432 are essentially clarifying in nature and are not intended to alter the substance of the requirements. The rule remains consistent with Section 6(c)(3)(A) and Regulation 15c3–1 and 3 of the Act in that it serves to insure the continued financial responsibility and operational capability of Exchange members and the protection of customers. The amendments are also consistent with Section 7(a) of the Act in that they will serve to insure continued compliance with Regulation T of the Board of Governors of the Federal Reserve System.

B. Self-Regulatory Organization's Statement on Burden on Competition

The proposed rule changes do not impose any burden on competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Changes Received From Members, Participants, or Others

The Exchange has neither solicited nor received written comments on the proposed rule changes.

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 changes, or

B. institute proceedings to determine whether the proposed rule changes 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 5th Street, NW., Judiciary Plaza, Washington, D.C. 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule changes that are filed with the Commission, and all written communications relating to the proposed rule changes 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 5th Street, NW., Washington, D.C. 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 on or before September 16, 1982.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.

Dated: August 19, 1982.

George A. Fitzsimmons,

Secretary.

[FR Doc. 82–23458 Filed 8–25–82; 8:45 am]

BILLING CODE 8010–01–M

SMALL BUSINESS ADMINISTRATION

Region IX Advisory Council Meeting; Public Meeting

The Small Business Administration Region IX Advisory Council, located in the geographical area of San Diego will hold a public meeting at 9 a.m., on 8 September 1982, at the Federal Building, 880 Front Street, Room 2–S–14, San Diego, California, to discuss such matters as may be presented by members, staff of the Small Business Administration, or others present.

For further information, write or call George P. Chandler, Jr., District Director, U.S. Small Business Administration, 880 Front Street, Room 4–S–29, San Diego, California (714) 293–5430.

Jean M. Nowak,

Acting Director, Officer of Advisory Councils.

August 20, 1982.

[FR Doc. 82–23479 Filed 8–25–82; 8:45 am]

BILLING CODE 8025–01–M

[Declaration of Disaster Loan Area No. 2059; Amdt. No. 1]

Illinois; Declaration of Disaster Loan Area

The above numbered Declaration (See 47 FR 36064), is amended to include all of Lake County, Illinois, as a result of damage caused by heavy rains and flooding which occurred on July 21–22, 1982. All other information remains the same, i.e., the termination date for filing applications for physical damage is close of business on October 12, 1982, and for economic injury until the close of business on May 11, 1983.

(Catalog of Federal Domestic Assistance Program Nos. 59002 and 59008)

Dated: August 18, 1982.

James C. Sanders,

Administrator.

[FR Doc. 82–23480 Filed 8–25–82; 8:45 am]

BILLING CODE 8025–01–M

[Declaration of Disaster Loan Area #2060]

Pennsylvania; Declaration of Disaster Loan Area

Lehigh County in the State of Pennsylvania constitutes a disaster area as a result of damage caused by heavy rain and flooding which occurred on August 8, 1982. Eligible persons, firms and organizations may file applications for loans for physical damage until the close of business on October 15, 1982, and for economic injury until the close of business on May 16, 1983, at the address listed below:

U.S. Small Business Administration,
One Bala Cynwd Plaza, 231 St. Asaphs Road, Bala Cynwd, Pennsylvania

or other locally announced locations.

Interest rates for applicants filing for assistance under this declaration are as follows:

	Percent
Homeowners with credit available elsewhere	14¾
Homeowners without credit available elsewhere	7¾
Businesses with credit available elsewhere	15
Businesses without credit available elsewhere	8
Businesses (EIDL) without credit available elsewhere	8
Other (non-profit organizations including charitable and religious organizations)	11⅝

It should be noted that assistance for agriculture enterprises is the primary responsibility of the Farmers Home Administration as specified in Pub. L. 96–302.

(Catalog of Federal Domestic Assistance Programs Nos. 59002 and 59008)

Dated: August 16, 1982.

James C. Sanders,

Administrator.

[FR Doc. 82–23481 Filed 8–25–82; 8:45 am]

BILLING CODE 8025–01–M

DEPARTMENT OF TRANSPORTATION

Coast Guard

[CGD82–082]

OMEGA Station Australia Operational Declaration

SUMMARY: The purpose of this notice is to announce the operational declaration of OMEGA Station Australia on August 16, 1982 in consonance with the Federal Radionavigation Plan (FRP), dated March 1982.

OMEGA is a very low frequency, hyperbolic, phase comparison navigation system, which provides continuous, worldwide position fixing capability of two to four nautical miles accuracy for use by aircraft and ships. This is accomplished by utilizing only eight transmitting stations worldwide. Two are located in the United States; in North Dakota and in Hawaii and are maintained and operated by Coast Guard personnel. Five other stations are located in Argentina, La Reunion Island (France), Japan, Liberia, and Norway and are manned and operated by agencies of the respective partner nations.

As noted in the Federal Radionavigation Plan, OMEGA Station Australia, which will be manned and operated by the Department of Transport Australia, is the eighth and final permanent OMEGA Station. OMSTA Australia is located near the town of Woodside, in southeast Australia. It transmits OMEGA signals from a fourteen hundred foot grounded tower providing coverage to most of the Indian, North Pacific and South Pacific Oceans.

Thus, on August 16, 1982, OMEGA Station Australia is declared operational for navigation. All users are cautioned that the OMEGA Navigation System is still in an implementation stage. At present, the worldwide accuracy and reliability of the OMEGA system has not been precisely determined. A multiyear regional validation program is currently underway to verify the accuracy and extent of coverage provided. As validation results are available, announcements will be made. Therefore, positioning information derived from the OMEGA Navigation System should not be totally relied upon without reference to other navigational positioning methods.

FOR FURTHER INFORMATION CONTACT: Lt. D. Houghton, USCG, OMEGA/Radiobeacon Branch, U.S. Coast Guard (G–NRN–2), Washington, DC 20593, (202) 426–0990.

Dated: August 13, 1982.

H. H. Kothe,

Captain, U.S. Coast Guard, Acting Chief, Office of Navigation.

[FR Doc. 82–23379 Filed 8–25–82; 8:45 am]

BILLING CODE 4910–14–M

Federal Aviation Administration

[AC No. 21–YY]

Proposed Advisory Circular for Issuance of U.S. Airworthiness Certificates; U.S.-Manufactured Aircraft Located in Foreign Countries

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Proposed Advisory Circular (AC); comments invited.

SUMMARY: This proposed AC is intended to provide guidance to applicants who desire to obtain a U.S. airworthiness certificate for a U.S.-manufactured aircraft which is located in a foreign country.

AVAILABILITY OF PROPOSED AC: Copies of the proposed AC are available at the address listed below.

COMMENTS INVITED: Comments are invited on all aspects of the proposed AC. The comments must identify the AC by No. 21–YY, and must be received on or before October 29, 1982. Comments received on the AC will be available for public review in Room 301, FAA Headquarters Building (FOB–10A), 800 Independence Avenue, SW., Washington, D.C. 20591, between the hours of 8:30 a.m. and 5 p.m.

ADDRESS: Send all comments and requests for copies of the proposed AC to: Federal Aviation Administration, Attention: Aircraft Manufacturing Division (AWS–200), 800 Independence Avenue, SW., Washington, D.C. 20591.

FOR FURTHER INFORMATION CONTACT: Sandy DeLucia, Aircraft Manufacturing Division (AWS–200), Office of Airworthiness, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, D.C. 20591; Telephone (202) 426–8362.

Discussion of Proposed Advisory Circular

It has been common practice for the FAA to honor applications for U.S. airworthiness certificates for U.S.-manufactured aircraft which are located in a foreign country; however, in view of the severe shortage of FAA manpower and travel funds the FAA can no longer accept such applications, since such certification programs pose an undue burden on FAA resources.

This proposed AC provides options which are available to those persons who contemplate the purchase or have purchased U.S.-manufactured aircraft which are located in a foreign country and on which a U.S. airworthiness certificate will be sought.

This proposed AC further identifies the applicant's responsibility relative to obtaining a U.S. airworthiness certificate for such aircraft.

Issued in Washington, D.C., on August 17, 1982.

M. C. Beard,

Director of Airworthiness.

[FR Doc. 82–23384 Filed 8–25–82; 8:45 am]

BILLING CODE 4910–13–M

Radio Technical Commission for Aeronautics (RTCA)

Executive Committee; Meeting

Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463; 5 U.S.C. App. I) notice is hereby given of a meeting of the RTCA Executive Committee to be held on September 17, 1982 in the RTCA First Floor Conference Room, 1717 H Street NW., Washington, D.C. commencing at 9:30 a.m.

The Agenda for this meeting is as follows: (1) Chairman's Introductory Remarks; (2) Approval of Minutes of Meeting Held on July 16, 1982; (3) Chairman's Report on RTCA Administration and Activities; (4) Special Committee Activities Report for July-August, 1982; (5) Report of Fiscal and Management Subcommittee; (6) Consideration of Establishing New Special Committees; (7) Approval of Special Committee 137 Report on Minimum Operational Performance Standards for Airborne Area Navigation Equipment Using VOR/DME Reference Facility; (8) Approval of Special Committee Report on Minimum Operational Performance Standards for Air Traffic Control Radar Beacon System/Mode S (ATCRBS/Mode S) Airborne Equipment; and (9) Other Business.

Attendance is open to the interested public but limited to space available. With the approval of the Chairman, members of the public may present oral statements at the meeting. Persons wishing to present statements or obtain information should contact the RTCA Secretariat, 1717 H Street, N.W., Washington, D.C. 20006; (202) 296-0484. Any member of the public may present a written statement to the committee at any time.

Issued in Washington, D.C., on August 18, 1982.

Karl F. Bierach,

Designated Officer.

[FR Doc. 82-23197 Filed 8-25-82; 8:45 am]

BILLING CODE 4910-13-M

[Summary Notice No. PE-82-16]

Petitions for Exemption; Summary of Petitions Received; Dispositions of Petitions Issued

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: September 15, 1982.

ADDRESS: Send 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, D.C. 20591.

FOR FURTHER INFORMATION CONTACT: 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 916, FAA Headquarters Building (FOB 10A), 800 Independence Avenue, SW., Washington, D.C. 20591; telephone (202) 426-3644.

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 August 16, 1982.

Richard C. Beitel,

Acting Assistant Chief Counsel, Regulations and Enforcement Division.

Petitions for Exemption

Docket No.	Petitioner	Regulations affected	Description of relief sought
23226	Lowa Limited	14 CFR 61.58(c)	To permit pilots-in-command (PIC) to complete the entire 24-month PIC check in a FAA-approved simulator, provided that the pilot taking the flight check has completed at least three takeoffs and three landings within the preceding 90-days in a Boeing 707.
23231	ALM Antillean Airlines	14 CFR Portions of Parts 21 43, and 91	To permit petitioner to use the McDonnell Douglas Corporation master minimum list for its leased DC-9-80 aircraft.
22567	Altair Airlines, Inc	14 CFR 121.311(f)	Extension of Exemption No. 3481 to permit petitioner to continue operating its aircraft without each flight attendant having a seat for takeoff and landing in the passenger compartment that meets the seat requirements.
23132	Interstate Airlines	14 CFR 121.311	To permit petitioner to operate its modified aircraft for the purpose of transporting live animals, without each person on board occupying an approved seat or berth with a separate safety belt properly secured about him.
23072	Simulator Flight Time, Inc	14 CFR 61.65(c)(4)	To permit petitioner to substitute simulator training for the 250-nautical mile cross country trip.
17145	United Airlines	14 CFR 121.665 and 121.697(a)(b)	Extension of Exemption No. 2466B to permit petitioner to use computerized load manifests which bear the printed name and position instead of the required signature of the person responsible for loading the aircraft.
23216	McMahan Aviation, Inc	d14 CFR 91.79(b)(c) and 93.113	To permit petitioner's pipeline patrol aircraft to fly as low as 500 feet vertically from persons, 200 feet laterally from property; and also to permit transit through certain high density control zones under Special VFR.
23225	Hughes Helicopters, Inc	14 CFR 91.119(a)(2)	To permit petitioner to seek Special IFR authorization for aircraft operating into Hughes Airport when less than basic VFR weather conditions are reported within the Los Angeles Control Zone.

Dispositions of Petitions for Exemption

Docket No.	Petitioner	Regulations affected	Description of relief sought disposition
22993	Transamerican Aviation Services, Inc	14 CFR 91.31(a)	To relieve petitioner from certain operating limitations prescribed for its Douglas DC-6A aircraft. *Granted 8/6/82.*
22626	Pitts Aerobatics	14 CFR 45.29	To permit petitioner to display 2-inch marks on its aircraft instead of the required 12-inch marks. *Denied 8/6/82.*
22788	Empire Airlines, Inc	14 CFR 121.547	To allow petitioner to transport certain of its personnel, not directly related to flight operations, on the flight deck for the purpose of firsthand observation of routes, flight and block times, handling capabilities, and scheduling without a seat being available in the passenger compartment. *Denied 8/4/82.*
16784	Houston Helicopters, Inc	14 CFR 43.3(h)	Extension of Exemption No. 2445B to permit petitioner's appropriately trained and certificated pilots to remove, check, and install magnetic chip detector plugs on Allison 250C series engines used on Bell Model 206 helicopters. *Granted 8/6/82.*
22701	Omniflight Helicopters Inc	14 CFR 135.261(b)	To permit petitioner to operate helicopters from Grant Hospital, Columbus, Ohio, without complying with the duty time limitations. *Granted 8/3/82.*

DISPOSITIONS OF PETITIONS FOR EXEMPTION—Continued

Docket No.	Petitioner	Regulations affected	Description of relief sought disposition
12468	Petroleum Helicopters, Inc.	14 CFR 43.3(h)	Extension of Exemption No. 1821G to permit petitioner's appropriately trained and certificated pilots to remove, check, and reinstall magnetic chip detector plugs on certain Allison 250-C engines, tail rotor gear boxes, and transmissions installed in Bell Model 206 series and Bolkow Model BO-105 helicopters. *Granted 8/3/82.*
22769	Knoell Bros. Construction, Inc.	14 CFR 91.169 and 91.181(a)	To permit petitioner to operate its helicopter under Subpart D of Part 91 in the same manner as large and turbojet-powered multiengine civil airplanes. *Granted 8/3/82.*
19475	Flight Safety Int'l (FSI)	14 CFR 61.63(d)(2) and (3) & 61.157(d)(1)	Renewal of Exemption No. 2854A which permits petitioner's trainees to complete a practical test for the issuance of a type rating to be added to any grade of pilot certificate that includes the items and procedures for testing in an airplane simulator as set forth in Appendix A of Part 61, although FSI does not have an operating certificate issued under Part 121. *Granted 8/3/82.*

[FR Doc. 82-23307 Filed 8-25-82; 8:45 am]
BILLING CODE 4910-13-M

Federal Highway Administration

Environmental Impact Statement: Riverside County, Calif.

AGENCY: Federal Highway Administration (FWHA), DOT.

ACTION: Notice of Intent.

SUMMARY: The FHWA is issuing this notice to advise the public that an Environmental Impact Statement will be prepared for a proposed for a proposed highway project in Riverside County, California.

FOR FURTHER INFORMATION CONTACT: C. G. Clinton, District Engineer, Federal Highway Administration, P.O. Box 1915, Sacramento, California 95809, Telephone: (916) 440-2521.

SUPPLEMENTARY INFORMATION: The FHWA, in cooperation with the California Department of Transportation (Caltrans), will prepare an Environmental Impact Statement (EIS) for a proposal to convert to a full freeway a 3.6 mile segment of existing expressway on Interstate Route 215 between Van Buren Boulevard and the east junction of State route 60 in the community of Edgemont in Riverside County, California.

Safety would be enhanced by eliminating the existing at-grade intersections and controlling access on and off the highway. This project would contribute to route continuity by eliminating a section of expressway located between freeway sections. Other facilities such as HOV lanes, Park and Ride lots, bus bays, and bicycle lanes will be considered. The following alternatives are being considered: No project, Transportation System Management (TSM) and a range of freeway alternatives. Freeway alternatives could involve realigning the existing highway slightly to the west to reduce impacts to the community of Edgemont. The proposed project has been included in local planning processes for several years. As part of the scoping process, several public meetings have been held in the local communities. The public information program will continue throughout the environmental process. No formal scoping meeting has been scheduled at this time. To ensure that the full range of issues related to this proposed action are addressed and all significant issues are identified, comments and suggestions are invited from all interested parties. Comments or questions concerning this proposed action and the EIS should be directed to the FHWA at the address above.

Issued on: August 17, 1982.

C. G. Clinton,

District Engineer, Sacramento, California.

[FR Doc. 82-23494 Filed 8-25-82; 8:45 am]
BILLING CODE 4910-22-M

Maritime Administration

Tanker Construction Program; Determination by Maritime Subsidy Board That Neither a New nor a Supplemental Environmental Impact Statement for the Tanker Construction Program Is Required; Application by Moore McCormack Bulk Transport, Inc.

The Maritime Subsidy Board (the Board) has received an application from Moore McCormack Bulk Transport, Incorporated, (MorMac) for Construction-Differential Subsidy (CDS) to aid in retrofitting tankers, designated MA Hulls 313, 314, and 315, MA Design T6-S-93a, to comply with requirements for pollution prevention established by the Port and Tanker Safety Act of 1978. The Board has reviewed the application and has determined that the envrionmental impact of constructing such vessels, which can be categorized as handy size vessels, has already been adequately covered in the Environmental Impact Statement for the Tanker Construction Program (EIS) which was published on May 30, 1973, and adopted by the Maritime Administration/Maritime Subsidy Board in Docket No. A-75 on August 30, 1973.

A paper discussing the basis for the Board's decision, and copies of the EIS and Docket No. A-75, are available for public inspection in the Office of the Secretary (MSB), Room 7300, Maritime Administration, Department of Transportation, NASSIF Building, 400 7th Street, SW., Washington, DC 20590.

(Catalog of the Federal Domestic Assistance Program 11.500)

Dated: August 20, 1982.

By Order of the Maritime Subsidy Board/ Maritime Administration.

Murray A. Bloom,

Acting Assistant Secretary.

[FR Doc. 82-23299 Filed 8-25-82; 8:45 am]
BILLING CODE 4910-81-M

Office of the Secretary

[Notice No. 82-4a]

Texas Offshore Port, Inc.; Deepwater Port License Extension

AGENCY: Office of the Secretary, DOT.

ACTION: Extension of License Acceptance Period.

SUMMARY: The purpose of this Notice is to inform the public of the Department of Transportation's (DOT) decision to extend the date by which the deepwater port license offered Texas Offshore Port, Inc. (TOP) must be accepted in order to become effective.

DATE: Deadline for acceptance of the license is June 21, 1984, subject to the condition outlined herein.

FOR FURTHER INFORMATION CONTACT: Mr. Ernest T. Bauer, U.S. Department of

Transportation, Office of Economics, Review and Analysis Division, Deepwater Port Staff, P–38, 400 Seventh Street, SW., Washington, D.C. 20590, (202) 426–4144.

SUPPLEMENTARY INFORMATION: On Thursday, June 24, 1982, a Notice was published in the **Federal Register** (47 FR 27444) indicating that the Department had taken under consideration a request for a two year extension (to June 21, 1984) of the date by which the deepwater port license, offered TOP, must be accepted and soliciting public comment. Because of the possibility that other parties may desire to submit an application for the same location as the TOP facility and because the Deepwater Port Act of 1974 prevents the Secretary from accepting other applications for the same location for which a license offer is outstanding, the two year extension contained in the June 24, 1982 Notice would have been subject to revocation upon 30 days notice to TOP that another deepwater port license application has been received.

As a result of the June 24, 1982 Notice in the **Federal Register**, we received only four comments. None of these comments, offered by the U.S. Department of Justice (Antitrust Division), U.S. Department of the Interior (Minerals Management Service), the Port of Galveston, Texas and the transcontinental Gas Pipe Line Corporation, raised concerns that in our opinion, warrant our denying TOP's request.

Earlier this year the Transcontinental Gas Pipe Line Corporation received a U.S. Army Corps of Engineers Permit to install a natural gas pipeline across the TOP fairway as that fairway was delineated in the TOP final Environmental Impact Statement. Transcontinental was given the option to either bury its line across the fairway to the required minimum depth of three feet below sea bottom on condition that the line be lowered to ten feet at such time as TOP begins operation, or to bury the line to ten feet initially. While Transcontinental opted for the ten-foot initial burial, it is objecting to the TOP license offer extension on the grounds that the deeper depth required for its planned pipeline places a large continuing liability on Transcontinental and ultimately the gas consuming public on the U.S. eastern seaboard. Further, Transcontinental maintains it is not reasonable to burden nearby projects with what may be unnecessary construction costs and prevent other multiple uses of large areas of public lands by dedication to a project which may never be constructed. We understand Transcontinental's position, but believe the Army Engineers have provided reasonable options.

The Minerals Management Service (MMS) of the Department of the Interior expressed no objection to our plan to extend the TOP license offer by two years. For the most part, the MMS advised of the recently announced, more liberal oil and gas leasing schedule for the Outer Continental Shelf, including this portion of the Gulf of Mexico, and the resultant need for our two Federal departments to continue to keep each other advised regarding respective developments.

The Port of Galveston objected to any extension of time for acceptance of the deepwate port license on the grounds that the Deepwater Port Act and Regulations contemplated that expeditious decisions would be made on deepwater port license applications. Galveston also encouraged the Department to seek the advice and counsel of the other Federal agencies and Departments with jurisdiction over portions of the proposed license.

Finall, Galveston urged the Secretary to make a more current comparative analysis between TOP and Galveston's proposed deep-draft (55') channel, as provided for in Section 4(d) of the Deepwater Port Act.

We are confident, as the record shows, that expenditious decisions have been and are being made in consultation with all appropriate Federal agencies. We are also building into this extension protection for any new group that might want to file an application. Since our original 4(d) determination found that the TOP and Galveston projects were non-competitive, and since that fact has not changed, no useful purpose would be served redoing the 4(d) study.

The Department of Justice recommended that the extension of the TOP license offer stipulate that the filing of a competing application automatically cancels any rigts to the application automatically cancels any rights to the application area vested in TOP by virtue of extension. Otherwise, Justice contends, no competing facility would be likely to have the incentive to undertake the considerable expense involved in planning a port and preparing the application papers.

After considering all comments, the Department of Transportation has determined that an extension of the date by which TOP must accept its deepwater port license until June 21, 1984 is warranted. No comments received demonstrated that an extension of time of TOP would adversely affect or otherwise be harmful to the public interest.

While the TOP license offer is hereby extended for two years, this extension is subject to revocation within 30 days upon receipt of a genuine declaration of intent from any person or party that it shall, within those 30 days, submit a complete application for a deepwater port license in the same application area for which the TOP license is now outstanding. This condition is added to partially accommodate the comments of the Justice Department and because the Deepwater Port Act prevents us from accepting a deepwater port application so long as a bonafide offer is extant.

(Deepwater Port Act of 1974, 33 U.S.C. 1501 et seq.)

Issued in Washington, D.C. on August 19, 1982.

Darrell M. Trent,

Deputy Secretary of Transportation.

[FR Doc. 82–23293 Filed 8–25–82; 8:45 am]

BILLING CODE 4910–62–M

Research and Special Programs Administration

[Docket No. IRA 12]

General Battery Corporation; Application for Inconsistency Ruling; Public Notice and Invitation to Comment

AGENCY: Research and Special Programs Administration, Materials Transportation Bureau (MTB), DOT.

ACTION: Public notice and invitation to comment.

SUMMARY: General Battery Corporation has applied for an administrative ruling as to whether Ordinance No. 0–31–80 of the City of Covington, Kentucky, is inconsistent with and thus preempted by the Hazardous Materials Transportation Act (HMTA) and regulations issued thereunder. Ordinance No. 0–31–80 requires all commercial rail, barge and truck operators to give advance notification to the Covington Fire Department whenever they intend to transport hazardous, dangerous substances (as defined therein) within the jurisdictional confines of the City of Covington and established penalites for failure to comply.

DATES: Comments received on or before October 8, 1982, will be considered before an inconsistency ruling is issued.

ADDRESSES: The application and any comments received may be reviewed in the Dockets Branch, Materials Transportation Bureau, Room 8426, 400 Seventh Street, S.W., Washington, DC 20590. Comments on the application may

be submitted to the Docket Branch at the above address. Indicate the Docket Number IRA 12 on your submission. Five copies are requested. A copy of each comment must also be sent to: Mr Charles J. Smith, Jr., General Manager, Physical Distribution, General Battery Corporation, Box 1262, Reading, Pennsylvania 19603 and Mr. Otto Daniel Wolff, Assistant City Solicitor, Office of the City Solicitor, Room 906 City-County Building, Third and Court Streets, Covington, Kentucky 41011, and that fact certified at the time the comment is submitted to the Dockets Branch. (The following format is suggested: "I hereby certify that copies of this comment have been sent to Mr. Charles J. Smith, Jr. and Mr. Otto Daniel Wolff at the addresses noted in the **Federal Register** publication.").

FOR FURTHER INFORMATION CONTACT: Elaine Economides, Office of the Chief Counsel, Research and Special Programs Administration, 400 Seventh Street, SW., Washington, DC 20590. (Tel: 202/755–4972). .

SUPPLEMENTARY INFORMATION:

1. Background

The HMTA (49 U.S.C. 1801–1812) at section 112(a) (49 U.S.C. 1811(a)) expressly preempts "any requirement of a State or political subdivision thereof, which is inconsistent with any requirement set forth in (the HMTA) or regulations issued under (the HMTA)." However, section 112(b) (49 U.S.C. 1811(b)) provides that an inconsistent requirement of a State or political subdivision thereof ceases to be preempted if, upon the application aof an appropriae State agency, the Secretary of Transportation determines that such requirement (1) provides an equal or greater level of protection to the public than the HMTA or regulations issued thereunder and (2) does not unreasonably burden commerce.

Procedural regulations implementing § 112 of the HMTA are codified at 49 CFR 107.201–.225. These regulations provide for the issuance of inconsistency rulings and nonpreemption determinations. Briefly, an inconsistency ruling is an administrative opinion as to the relationship between a requirement of a State or political subdivision thereof and a requirement of the HMTA or regulations issued under the HMTA. 49 CFR 107.209(c) sets forth the following factors which are considered in determining whether a State or political subdivision requirement is inconsistent:

(1) Whether compliance with both the State or political subdivision requirement and the Act or the regulations issued under the Act is possible; and

(2) The extent to which the State or political subdivision requirement is an obstacle to the accomplishment and execution of the Act and the regulations issued under the Act.

If the State or local requirement is found to be inconsistent with a Federal requirement, the State or locality may seek a nonpreemption determination, i.e., waiver of preemption pursuant to section 112(b) of the HMTA (49 U.S.C. 1811(b)).

2. The Application for Inconsistency Ruling

By letter dated September 24, 1980, General Battery Corporation, a private carrier of hazardous materials, applied for an administrative ruling on the question of whether Ordinance No. 0–31–80 of the City of Covington, Kentucky, is inconsistent with the requirements of the HMTA or the regulations issued thereunder. The Ordinance, which is included as Appendix A to this document, requires all commercial rail, barge and truck operators to give advance notification to the Covington Fire Department whenever they intend to transport hazardous, dangerous substances (as defined in the Ordinance) within the jurisdictional confines of the City, and imposes a penalty of up to $500 and/or six months in jail for each failure to comply.

General Battery Corporation (Applicant) contends that the requirements of the Ordinance are inconsistent with the intent and language of both the HMTA and the regulations issued thereunder.

Section 1 of the Ordinance imposes a prenotification requirement on commercial rail, barge and truck operators in connection with the transportation of "dangerous and hazardous substances, with the exception of gasoline." Section 2 defines "hazardous, dangerous substances." Applicant contends that these definitions are inconsistent with the shipping paper, labeling and placarding requirements of 49 CFR Part 172, Subparts C, E and F.

Section 1 requires operators to provide advance notification to the Convington Fire Department whenever they intend to transport hazardous, dangerous substances within the jurisdictional confines of the City. Section 3 sets forth the maximum penalty for failure to comply. Applicant contends that this requirement imposes a costly burden on commerce which entails delays in the shipment of hazardous materials and is therefore inconsistent with 49 CFR 177.853(a).

Pursuant to 49 CFR 107.205(a), the Office of the City Solicitor for the City of Covington has submitted comments regarding the application for an inconsistency ruling. Essentially, the City of Covington argues the following:

Since the application is made pursuant to 49 CFR 107.201, the criteria to be considered in determining whether any inconsistency exists are those set forth in 49 CFR 107.209(c). These criteria are: Whether it is possible to comply with both the Ordinance and the HMTA or the regulations issued thereunder (§ 107.209(c) (1)); and, the extent to which the Ordinance is an obstacle to the accomplishment and execution of the HMTA and the regulations issued thereunder (§ 107.209(c)(2)).

With regard to the first criterion, the City contends that it is possible to comply with both the Ordinance and the HMTA and the regulations issued under the HMTA.

With regard to the second criteria, the City contends that the Applicant failed to demonstrate any obstacle posed by the Ordinance to the accomplishment of the HMTA.

The City also challenged Applicant's standing to request an administrative ruling under 49 CFR 107.203 on the grounds that: (1) Applicant has suffered no injury consequent to enforcement of the Ordinance; and (2) Applicant is not affected by those portions of the Ordinance which deal with rail and water shipping.

3. Public Comment

Comments should be restricted to the following issue: Whether Ordinance No. 0–31–80 of the City of Covington is inconsistent with the HMTA or regulations issued thereunder.

Since the application is for an inconsistency ruling and not for a non-preemption determination, comments regarding the effect of the Ordinance on interstate commerce as the effect relates to a waiver of preemption under 49 U.S.C. 1811 (b) are inappropriate at this time and will not be considered.

Persons intending to comment on the application should examine the HMTA (49 U.S.C. 1801–1812); the DOT Hazardous Materials Regulations (49 CFR Parts 171–179); the inconsistency rulings at 43 FR 16954, 44 FR 75566, 46 FR 18918, and 47 FR 1231; the procedures governing the Department's consideration of applications for inconsistency rulings (49 CFR 107.201–.211); and Ordinance No. 0–31–80 of the City of Covington which is provided as Appendix A to this notice.

Issued in Washington, D.C. on August 17, 1982.

Alan I. Roberts,

Associate Director, Office of Hazardous Materials Regulation, Materials Transportation Bureau.

Commissioners' Ordinance No. 0-31-80

An ordinance requiring all commercial rail, barge and truck operators within the City of Covington which haul dangerous and hazardous substances to give advance notification to the Covington Fire Department whenever they intend to transport said materials, excluding gasoline, within the jurisdictional confines of the City of Covington, and providing penalty for the violation thereof, and repealing and rescinding Commissioners' Ordinance 0-103-79.

* * * * *

Be it ordained by the Board of Commissioners of the City of Covington, Kenton County, Kentucky:

Section 1

That all commercial rail, barge and truck operators within the City of Covington which haul dangerous and hazardous substances, with the exception of gasoline, be and they are hereby required to give advance notificatino to the Covington Fire Department whenever they intend to transport said substances within the jurisdictional confines of the City of Covington.

Section 2

For the purposes of this ordinance, hazardous, dangerous substances means any substance or mixture of substances which is:

(a) Toxic and has the inherent capacity to produce bodily injury to man through ingestion, inhalation, or absorption through any body surface, including toxic substances which are poisonous;

(b) Corrosive on contact with living tissue causing substantial destruction of tissue by chemical action, but does not refer to action on inanimate surfaces;

(c) Irritant and not corrosive within the meaning of paragraph (b), which on immediate, prolonged or repeated contact with normal living tissue will induce a local inflammatory reaction;

(d) Strong sensitizer and will cause on normal living tissue through an allergic or photodynamic process a hypersensitivity which becomes evident on reapplication of the same substance and which is designated as such by the board;

(e) Flammable with a flashpoint of eighty (80°) degrees Fahrenheit or below;

(f) Radioactive as a result of disintegration of unstable atomic nuclei and emits energy;

(g) Capable of generating pressure through decomposition, heat or other means;

(h) Capable of causing substantial personal injury or illness during any customary or reasonably anticipated handling or use.

Section 3

That any person, firm or corporation in violation of any provision of this ordinance shall be fined in a sum not to exceed Five Hundred ($500.00) Dollars per occurrence and/or six (6) months in jail. Each occurrence shall constitute a separate offense.

Section 4

That all ordinances, or parts thereof, in conflict herewith are, to the extent of such conflict, hereby repealed. Specifically repealed is Commissioners' Ordinance 0-103-79.

Section 5

That any section or part of a section or any provision of this ordinance which is declared by a court of appropriate jurisdiction, for any reason, to be invalid, such decision shall not affect or invalidate the remainder of this ordinance.

Section 6

That this ordinance shall take effect and be in full force when passed, published and recorded according to law.

Bernard J. Moorman,

Mayor.

Attest:

Vivian Willman,

City Clerk.

Passed: first reading: May 13, 1980.

[FR Doc. 82-23238 Filed 8-25-82; 8:45 am]

BILLING CODE 4910-60-M

Urban Mass Transportation Administration

Scoping Meeting; Intent To Prepare an EIS

AGENCY: Urban Mass Transportation Administration, DOT.

ACTION: Notice of Intent To Prepare an EIS.

SUMMARY: Pursuant to the National Environmental Policy Act [42 U.S.C. 4321) and the Council on Environmental Quality's (CEQ) implementing regulations (40 CFR Parts 1500-1508), the Urban Mass Transportation Administration gives notice that an Environmental Impact Statement is being prepared for the proposed "Aguay Guagua" public transportation project to be located in the San Juan Metropolitan Area, Puerto Rico. Notice of the Scoping Meeting is hereby given.

DATES: September 15, 1982, at 9:30 a.m. and September 16, 1982, at 7:30 p.m.

ADDRESS: Colegio de Ingenieros, Calle Antolin Nen at the corner of Calle Skeret, Urbanizacion Rooselvelt, Hato Rey, Puerto Rico.

FOR FURTHER INFORMATION CONTACT: Kenneth Mowll, Community Planner, Program Guidance Division, Office of Planning Assistance, Urban Mass Transportation Administration, Washington, D.C., telephone (202) 426-2360 or Luis E. Moreno, Puerto Rico Department of Transportation and Public Works, P.O. Box 41269, Minillas Station, Santurce, Puerto Rico, 00940, telephone (809) 726-4470.

SUPPLEMENTARY INFORMATION: The Puerto Rico Department of Transportation and Public Works (PRDTPW), in cooperation with the Puerto Rico Ports Authority, the Metropolitan Bus Authority, the Municipality of San Juan and the U.S. Corps of Engineers, proposes to undertake, with Federal capital grant assistance, improvements and extensions of existing ferry and bus facilities. The Agua y Guagua project will result in the expansion of existing ferry service from Catano and Old San Juan to the Nuevo Centro Area of Hato Rey, and will improve the bus service in Nuevo Centro. Among the impacts to be considered will be those resulting from: (1) The relocation of Barrio Tokio; (2) dredging and/or widening of the Ochoa Channel and the Martin Pena Channel west of Munoz Rivera Avenue; (3) construction of a new multi-modal terminal (bus, ferry, etc.) along the Ochoa Channel in Hato Rey; (4) construction of bus lanes in the Nuevo Centro Area; (5) possible reconstruction of existing ferry terminals; and (6) operation of the expanded and/or modified bus and ferry system. Alternatives to be considered will include a no-build alternative and the proposed Agua y Guagua Project. Alternatives will also be considered for several elements of the proposed project, including alternative locations of the proposed Nuevo Centro terminal, alternative terminal and ferry designs, etc.

The Urban Mass Transportation Administration invites the participation of agencies and individuals with expertise or interest to comment on the scope of this Environmental Impact Statement.

Issue on: August 19, 1982.

James E. Davis,

Acting, Associate Administrator for Grants Management.

[FR Doc. 82-23470 Filed 8-25-82; 8:45 am]

BILLING CODE 4910-57-M

DEPARTMENT OF THE TREASURY

Customs Service

[T.D. 82-151]

Recordation of Trade Name; "Britches Great Outdoors"

On May 19, 1982, a notice of application for the recordation under section 42 of the Act of July 5, 1946, as amended (15 U.S.C. 1124), of the trade

name "Britches Great Outdoors" was published in the **Federal Register** (47 FR 21672). The notice advised that prior to final action on the application, filed pursuant to § 133.12, Customs Regulations (19 CFR 133.12), consideration would be given to relevant data, views, or arguments submitted in opposition to the recordation and received not later than 60 days from the date of publication of the notice. No responses were received in opposition to the application.

The name "Britches Great Outdoors" is hereby recorded as the trade name of Canterbury Tales, Inc., a coporation organized under the laws of the District of Columbia, located at 1321 Leslie Drive, Alexandria, Virginia 22301. The trade name is used in connection with the following merchandise which is manufactured in Hong Kong and Taiwan: Men's and women's clothing; shoes, slippers, down booties and shoe trees; umbrellas; key rings; brass accessories; gift items; wallets; leather goods; attaches; luggage clocks; watches and watch bands; sunglasses; razors; smoker's accessories; knives; games; books; food products; pens and ink; fabric; camping equipment; and retail clothing store services.

A. Piazza,

Deputy Director, Entry Procedures and Penalties Division.

[FR Doc. 82-23454 Filed 8-25-82; 8:45 am]

BILLING CODE 4820-02-M

Fiscal Service

[Dept. Circ. 570, 1982 Rev., Supp. No. 5]

Surety Companies Acceptable on Federal Bonds

A certificate of authority as an acceptable surety on Federal bonds is hereby issued to the following company under Sections 6 to 13 of Title 6 of the United States Code. An underwriting limitation of $2,788,000 has been established for the company.

Name of Company:
EVANSTON INSURANCE COMPANY
Business Address:
One American Plaza
Evanston, Illinois 60201
State of Incorporation:
Illinois

Certificates of authority expire on June 30 each year, unless renewed prior to that date or sooner revoked. The certificates are subject to subsequent annual renewal so long as the companies remain qualified (31 CFR, Part 223). A list of qualified companies is published annually as of July 1 in Department Circular 570, with details as to underwriting limitations, areas in which licensed to transact surety business and other information. Federal bond-approving officers should annotate their reference copies of the Treasury Circular 570, 1982 Revision, at page 28874 to reflect this addition. Copies of the circular, when issued, may be obtained from the Operations Staff (Surety), Banking and Cash Management, Bureau of Government Financial Operations, Department of the Treasury, Washington, D.C. 20226.

Dated: August 18, 1982.

W. E. Douglas,

Commissioner, Bureau of Government Financial Operations.

[FR Doc. 82-23298 Filed 8-25-82; 8:45 am]

BILLING CODE 4810-35-M

Internal Revenue Service

[Delegation Order No. 77 (Rev. 16)]

Delegation of Authority; Windfall Profit Tax Program

AGENCY: Internal Revenue Service, Treasury.

ACTION: Delegation of authority.

SUMMARY: The Delegation Order will include authority to process cases in the Windfall Profit Tax Program. Authorized persons who may sign have been increased. The text of the Delegation Order appears below.

EFFECTIVE DATE: August 24, 1982.

FOR FURTHER INFORMATION CONTACT: Robert Maiolatesi, OP:EX:E:E, Room 2410, 1111 Constitution Avenue, NW, Washington, DC 20224, (202) 566-4044 (Not a Toll-Free telephone number).

This document does not meet the criteria for significant regulations set forth in paragraph 8 of the Treasury directive appearing in the **Federal Register** for Wednesday, November 8, 1978.

W. C. Roth,

Acting Deputy Assistant Commissioner (Examination).

Delegation Order; Authority to Issue Notices of Deficiency

Date of issue: August 19, 1982.

1. The authority granted to the Commissioner of Internal Revenue and District Directors, by 26 CFR 301.7701-9, 26 USC 6212, 26 CFR 301.6212-1, Treasury Department Order 150-37, and 26 CFR 301.6861-1 to sign and send to the taxpayer by registered or certified mail any notice of deficiency is hereby delegated to the following officials:

a. Chief Counsel;
b. Regional Counsels;
c. Regional Directors of Appeals;
d. Chiefs and Associate Chiefs of Appeals Offices;
e. Appeals Team Chiefs as to their respective cases;
f. Service Center Directors;
g. Reviewers, (grade GS-12 and higher), in Employee Plans and Exempt Organizations Divisions.
h. Revenue Agents and Tax Examiners, (Reviewers), (grade GS-6 and higher), in the Examination Divisions;
i. Revenue Agents, (grade GS-11 and higher), in streamlined districts Examination Sections and/or groups
j. Chiefs of Correspondence and Processing Sections; and
k. Examination Tax Examiners/Revenue Agents, (grade GS-6 and higher), in Service Center Compliance Divisions.

2. This Order supersedes Delegation Order No. 77 (Rev. 15), dated March 21, 1982.

James I. Owens,

Acting Commissioner.

[FR Doc. 82-23381 Filed 8-25-82; 8:45 am]

BILLING CODE 4830-01-M

Sunshine Act Meetings

Federal Register
Vol. 47, No. 166
Thursday, August 26, 1982

This section of the FEDERAL REGISTER contains notices of meetings published under the "Government in the Sunshine Act" (Pub. L. 94-409) 5 U.S.C. 552b(e)(3).

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1

COMMODITY FUTURES TRADING COMMISSION

TIME AND DATE: 10 p.m., Tuesday, August 31, 1982.

PLACE: 2033 K Street, NW., Washington, D.C. Fifth floor hearing room.

STATUS: OPEN.

MATTERS TO BE CONSIDERED:

Options Contracts:
Comex (Gold)
Coffee, Sugar & Cocoa Exchange (Sugar)
MidAmerica Commodity Exchange (Gold)
Chicago Board of Trade (T-Bond)

CONTACT PERSON FOR MORE INFORMATION: Jane Stuckey, 254-6314.

[S-1224-82 Filed 8-23-82; 4:05 pm]

BILLING CODE 6351-01-M

2

COMMODITY FUTURES TRADING COMMISSION

TIME AND DATE: 11 a.m., Friday September 10, 1982.

PLACE: 2033 K Street, NW., Washington, D.C., eighth floor conference room.

STATUS: Closed.

MATTERS TO BE CONSIDERED: Surveillance briefing.

CONTACT PERSON FOR MORE INFORMATION: Jane Stuckey, 254-6314.

[S-1226-82 Filed 8-23-82; 4:05 pm]

BILLING CODE 6351-01-M

3

FEDERAL DEPOSIT INSURANCE CORPORATION

Changes in Subject Matter of Agency Meeting

Pursuant to the provisions of subsections (e)(2) of the "Government in the Sunshine Act" (5 U.S.C. 552b(e)(2)), notice is hereby given that at its open meeting held at 2:00 p.m. on Monday, August 23, 1982, the Corporation's Board of Directors determined, on motion of Chairman William M. Isaac, seconded by Director Irvine H. Sprague (Appointive), concurred in by Director C. T. Conover (Comptroller of the Currency), that Corporation business required the addition to the agenda for consideration at the meeting, on less than seven days' notice to the public, of the following matters:

Recommendations regarding the liquidation of a bank's assets acquired by the Corporation in its capacity as receiver, liquidator, or liquidating agent of those assets:
Case No. 45,357-L (Amended)—The Bowie County State Bank, Hooks, Texas
Case No. 45,358-L (Amended)—Guaranty Bond State Bank, Redwater, Texas

By the same majority vote, the Board further determined that no earlier notice of these changes in the subject matter of the meeting was practicable.

Dated: August 23, 1982.

Federal Deposit Insurance Corporation.

Hoyle L. Robinson,

Executive Secretary.

[S-1228-82 Filed 8-24-82; 11:20 am]

BILLING CODE 6714-01-M

4

FEDERAL DEPOSIT INSURANCE CORPORATION

Change in Subject Matter of Agency Meeting

Pursuant to the provisions of subsections (e)(2) of the "Government in the Sunshine Act" (5 U.S.C. 552b(e)(2)), notice is hereby given that at its closed meeting held at 2:30 p.m. on Monday, August 23, 1982, the Corporation's Board of Directors determined, on motion of Chairman William M. Isaac, seconded by Director Irvine H. Sprague (Appointive), concurred in by Director C. T. Conover (Comptroller of the Currency), that Corporation business required the addition to the agenda for consideration at the meeting, on less than seven days' notice to the public, of the following matter:

Application of First Gulf Beach Bank and Trust Company, St. Petersburg Beach, Florida, for consent to purchase the assets of and assume the liability to pay deposits made in First Bank and Trust Company, Belleair Bluffs, Florida, and for consent to establish the three offices of First Bank and Trust Company as branches of the resultant bank.

The Board further determined, by the same majority vote, that no earlier notice of the change in the subject matter of the meeting was practicable; that the public interest did not require consideration of the matter in a meeting open to public observation; and that the matter could be considered in a closed meeting by authority of subsections (c)(6), (c)(8), and (c)(9)(A)(ii) of the "Government in the Sunshine Act" (5 U.S.C. 552b(c)(6), (c)(8), and (c)(9)(A)(ii)).

Dated: August 23, 1982.

Federal Deposit Insurance Corporation.

Hoyle L. Robinson,

Executive Secretary.

[S-1229-82 Filed 8-24-82; 11:21 am]

BILLING CODE 6714-01-M

5

FEDERAL MARITIME COMMISSION

TIME AND DATE: 9 a.m., September 1, 1982.

PLACE: Hearing Room One, 1100 L Street, NW., Washington, D.C. 20573.

STATUS: Open.

MATTERS TO BE CONSIDERED:

1. Docket No. 82-3: South Atlantic-North Europe Rate Agreement (Agreement No. 9984-23) and Gulf European Freight Association (Agreement No. 10270-2)—Review of Discontinuance of Proceeding as to South Atlantic-North Europe Rate Agreement.
2. Special Docket No. 942: Application of Trans Freight Lines, Inc. for the Benefit of Militzer & Muench U.S.A., Inc. as Agent for Lodgegreen, Ltd.—Review of Initial Decision.

CONTACT PERSON FOR MORE INFORMATION: Francis C. Hurney, Secretary (202) 523-5725.

[S-1225-82 Filed 8-23-82; 4:05 pm]

BILLING CODE 6730-01-M

6

NUCLEAR REGULATORY COMMISSION

DATE: Week of August 30, 1982.

PLACE: Commissioners' Conference Room, 1717 H Street, NW., Washington, D.C.

STATUS: Open and closed.

MATTERS TO BE DISCUSSED: Tuesday, August 31:

10:00 a.m.:

Briefing by the Ad Hoc Committee on Regulatory Reform (public meeting)

Wednesday, September 1:

10:00 a.m.:
Discussion of Management-Organization and Internal Personnel Matters (Closed—Exemption 2 and 6)
2:00 p.m.:
Affirmation/Discussion Session (public meeting)
a. S–3 Policy Statement
b. Interpretative Rule Providing Guidance on Immediate Effectiveness Decisions
c. Indian Point Special Proceeding—Order Responding to Licensing Board's Certified Questions
d. Clinch River Stay Request

Thursday, September 2:

Briefing on Contested Issues in Summer–1 Operating License Proceeding (Closed—Exemption 10)
2:00 p.m.:
Discussion of Severe Accidents—Policy Statement and Research Plan (public meeting)

ADDITIONAL INFORMATION: On July 30, the Commission voted 4–0 (Commissioner Gilinsky not present) to hold on short notice the Affirmation of Review of Licensing Board Order Which Raises *Sua Sponte* Issues (In the Matter of Cincinnati Gas and Electric Company, et al.)—Docket No. 50–358–OL (public meeting), held that day.

AUTOMATIC TELEPHONE ANSWERING SERVICE FOR SCHEDULE UPDATE: (202) 634–1498. Those planning to attend a meeting should reverify the status on the day of the meeting.

CONTACT PERSON FOR MORE INFORMATION: Linda Stoloff (202) 634–1410.

August 24, 1982.

Linda Stoloff,

Office of the Secretary.

[S–1231–82 Filed 8–24–82; 3:52 pm]

BILLING CODE 7590–01–M

7

PAROLE COMMISSION

[2P0401]

National Commissioners (the Commissioners presently maintaining offices at Chevy Chase, Maryland, Headquarters).

TIME AND DATE: 2 p.m., Monday, August 30, 1982.

PLACE: Room 420–F, One North Park Building, 5550 Friendship Boulevard, Chevy Chase, Maryland 20815.

STATUS: Closed pursuant to a vote to be taken at the beginning of the meeting.

MATTERS TO BE CONSIDERED: Referrals from Regional Commissioners of approximately 7 cases in which inmates of Federal prisons have applied for parole or are contesting revocation of parole or mandatory release.

CONTACT PERSON FOR MORE INFORMATION: Linda Wines Marble, Chief Case Analyst, National Appeals Board, United States Parole Commission (301) 492–5987.

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Part II

Department of Transportation

Federal Highway Administration

Urban Mass Transportation Administration

Urban Transportation Planning; Proposed Rule

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

Urban Mass Transportation Administration

23 CFR Part 450

49 CFR Part 613

[FHWA Docket No. 82-10]

Urban Transportation Planning

AGENCIES: Federal Highway Administration (FHWA) and Urban Mass Transportation Administration (UMTA), DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: The purpose of this document is to propose amendments to the regulations governing urban transportation planning under FHWA and UMTA grant programs. The proposed amendments are intended to (1) increase flexibility at the State and local level, (2) reduce redtape and simplify administration of the planning process especially for urbanized areas under 200,000 population, and (3) shift certain responsibilities from the Federal to the State and local level while maintaining an appropriate Federal oversight role.

DATE: Written comments are due on or before October 25, 1982.

ADDRESS: Submit written comments, preferably in triplicate, to FHWA Docket No. 82-10, Federal Highway Administration, Room 4205, HCC-10, 400 Seventh Street SW., Washington, D.C. 20590. All comments received will be available for examination at the above address between 7:45 a.m. and 4:15 p.m. ET, Monday through Friday. Those desiring notification of receipt of comments must include a self-addressed, stamped postcard.

FOR FURTHER INFORMATION CONTACT: FHWA: Sam W. P. Rea, Jr., Urban Planning and Transportation Management Division, (202) 426-2961, or Jerry Boone, Office of the Chief Counsel, (202) 426-0791; or UMTA: Robert Kirkland, Office of Planning Assistance, (202) 426-2360, or Anthony Anderson, Office of the Chief Counsel, (202) 426-4011, all located at 400 Seventh Street, SW., Washington, D.C. 20590. FHWA office hours are from 7:45 a.m. to 4:15 p.m. ET, Monday through Friday; UMTA office hours are from 8:30 a.m. to 5:00 p.m. ET, Monday through Friday.

SUPPLEMENTARY INFORMATION: This document contains proposed amendments to the joint FHWA/UMTA regulations for urban transportation planning (23 CFR Part 450 and 49 CFR Part 613). The provisions of 23 CFR Part 450, Subparts A and C are incorporated into 49 CFR 613, Subparts A and B respectively. These proposed amendments are considered to be significant under the regulatory policies and procedures of the Department of Transportation (DOT) because they involve important departmental policy. A draft regulatory evaluation has been prepared and is available for inspection in the rulemaking docket (No. 82-10, Room 4205). Copies of the regulatory evaluation may be obtained by contacting Mr. Sam W. P. Rea, Jr., at the address provided above under the heading "For Further Information Contact." Although the proposed amendments are designed to reduce burdens imposed on State and local governments in the conduct of urban transportation planning, the amendments would not have a significant economic impact. Accordingly, the FHWA and UMTA have determined that this document does not contain a major proposal under Executive Order 12291. For the same reason, under the criteria of the Regulatory Flexibility Act, it is certified that these amendments, if promulgated, will not have a significant economic impact on a substantial number of small entities.

Background

On September 17, 1975, FHWA and UMTA jointly issued final regulations (40 FR 42976) implementing the urban transportation planning process mandated by the Federal-Aid Highway Acts and the Urban Mass Transportation Act of 1964 (UMT Act), as amended. The statutes require a continuing, comprehensive and cooperative (3C) planning process in all urban areas of more than 50,000 population.

Proposed amendments to the urban transportation planning regulations were published for notice and comment on October 30, 1980 (45 FR 71990). Final amendments and a request for additional public comments were published on January 19, 1981 (46 FR 5702). These amendments were originally scheduled to take effect on February 18, 1981. On February 4, 1981, the DOT postponed the effective date until March 31, 1981 (46 FR 10706). This action was taken pursuant to the President's memorandum of January 29, 1981, which, among other things, directed executive agencies to postpone for 60 days the effective dates of regulations which had been issued but were scheduled to become effective during the 60-day period following issuance of the memorandum. As a result of their initial review of the postponed amendments, the FHWA and UMTA decided to postpone the effective date further in order to provide sufficient time for full and appropriate review and revision of the subject amendments (46 FR 19233, March 30, 1981).

Based on their review of the postponed amendments and the comments submitted to the public docket, FHWA and UMTA decided to withdraw those amendments. In their place, interim final regulations were issued on August 6, 1981 (46 FR 40170) which incorporated only those provisions of the withdrawn amendments which: (1) Reduced redtape and streamlined the planning process for areas under 200,000 population; (2) incorporated recent legislative changes; and (3) clarified the purpose of transportation system management (TSM) and other aspects of the planning process.

As a part of FHWA and UMTA's continuing efforts to evaluate their programs, a comprehensive review of the urban transportation planning process has been undertaken to determine what changes should be made in the process. This review considered the shift in Federal priorities away from transit operating assistance and major new transportation investments and towards maintaining our existing highway and transit systems, as well as the President's efforts to reduce Federal intrusion in areas of essentially State and local interest. Neither FHWA nor UMTA had any preconceived positions on the issues presented. The only assumption used to guide this effort was that the Federal role would be reduced in areas of essentially State and local interests. The purpose of the comprehensive review was to analyze the various aspects of this planning process and to recommend any changes which would improve the existing delivery of transportation programs to States and local areas with a minimum of Federal involvement.

While this review has been a joint FHWA/UMTA effort, it also has been the subject of extensive participation by national interest groups and the public. Major national associations made suggestions on issues to be addressed, and these suggestions were helpful in preparing an issues and options paper, entitled "Solicitation of Public Comment on the Appropriate Federal Role in Urban Transportation Planning." A notice of availability and request for public comment was published in the **Federal Register** on December 17, 1981

(46 FR 61531), and an official docket was established to receive comments. This paper served as the vehicle to solicit public comment on specific issues as well as to solicit recommendations on issues not addressed in the paper. Three levels of discussion were presented:

• A "general issues" section addressed overall policy questions on the goals of the process, its benefits and costs, and its relationship to other programs.

• A more detailed "issues and options" section focused on major policy issues and presented an array of options intended to assist the respondents as well as to help focus comments.

The major issues discussed were:

—Federal Planning Requirement Threshold.

—Roles and Responsibilities.

—Planning and Project Implementation.

—Technical Requirements.

—Other Federal Mandates.

—Federal Funding for the Planning Process.

• A "concluding remarks" section provided the respondents the opportunity to summarize their overall opinions on the issues presented in the paper as well as on any other issues or comments they cared to bring up.

Two hundred sixty-five comments were received from the following groups:

—State DOTs: 36.

—Metropolitan planning organizations and regional planning agencies:

• Under 200,000 population: 48.

• Over 200,000 population: 51.

—Transit agencies: 20.

—Local governments:

• General: 13.

• Transit operators: 3.

• Public works/transportation departments: 15.

• Planning department: 11.

—Private citizens: 15.

—Interest groups:

• National associations: 9.

• Professional societies: 1.

• League of Women Voters: 12.

• Miscellaneous: 10.

—Business (including consultants): 9.

—Miscellaneous: 12.

There was general consistency and similarity in the comments. While not all commenters agreed on every issue, the following principal points were made:

• There is a need to differentiate planning activities and requirements by urbanized area population. Two hundred thousand was the most often quoted figure.

• State and local governments should have the option to have the 3C planning process apply in the smaller urbanized areas (i.e., between 50,000 and 200,000 population). If they decide to have it apply, Federal planning funds should be made available to them.

• There is a need for a local forum of cooperative decisionmaking.

• A stronger role for State and local officials in deciding whether Federal laws and regulations are being met is desirable. This applies not only to the certification of the planning process, but also to other Federal laws and regulations required to be considered during the planning process such as air quality, energy, etc.

• There was strong support for the transportation improvement program/annual element (TIP/AE) as currently required. However, several commenters sought improvements in procedures for revising this document.

• There is need for a more effective tie between planning and project development activities. Many commenters felt that the planning process should provide the first tier of information necessary for project development and support.

• There was substantial support for permitting State and local officials to tailor the technical activities to meet local needs. Many, however, felt that his flexibility already exists.

• A large majority of commenters recommended that funding should continue to be made available to all urbanized areas and that the delivery of FHWA and UMTA planning funds should be consolidated. There was no clear preference, however, on how the consolidation should be accomplished.

• There is a need for a Federal role in urban transportation planning. Many commenters wanted the Federal role to be changed to that of a facilitator; providing guidance, technical assistance and funding. The regulatory burdens of the Federal role should be reduced, especially in the smaller urbanized areas.

The public comments clearly indicate that the Federal role in the urban transportaton planning process needs revision, especially in regard to the smaller urbanized areas. This general conclusion was also reflected in the comments from the staffs of both FHWA and UMTA. As indicated earlier, the experience of FHWA and UMTA in administering the urban transportation planning program authorized by the Federal-Aid Highway and Urban Mass Transportation Acts, and the growing technical abilities of the States and local agencies indicate that administrative and regulatory revisions to the federally mandated urban transportation planning requirements must be considered at this time. This notice of proposed rulemaking (NPRM) has been developed as a result of the comprehensive review.

The overall policy direction of these proposed regulations is discussed under the following major subject areas: Federal Planning Requirement Threshold; Roles and Responsibilities; Planning and Project Implementation; Technical Requirements; Certification; and Federal Funding for the Planning Process. These areas were addressed in the issues and options paper. The specific proposals are discussed in detail in this preamble under the heading, "Section-by-Section Analysis." Miscellaneous issues relating to the urban transportation planning process are discussed under the heading, "Other Considerations."

In keeping with the President's efforts to reduce Federal intrusion in areas of essentially State and local interest and the consensus of the commenters on the issues and options paper, these proposed regulations are intended to reduce the role of the Federal Government in urban transportation planning to the maximum extent allowed by law. This would be accomplished by: (1) Providing for greater State and local flexibility in administering the planning process and associated Federal funds; (2) clarifying the intent with respect to the flexibility of institutional relationships; and (3) eliminating most of the non-regulatory language from the existing regulation. Consequently, these proposed regulations present a further reduced Federal role, based on a clearer distinction between Federal requirements and good planning practices. FHWA and UMTA intend to provide follow up program management guidance as necessary to assist State and local officials in carrying out the urban transportation planning process. In addition, FHWA and UMTA intend to continue to provide technical assistance to advance good planning and programming practices. Formalized training courses, as well as on-site visits on an "as requested" basis, will be provided along with other forms of technical assistance.

Federal Planning Requirement Threshold

Most of the commenters recognized a need to differentiate planning requirements and activities by population with 200,000 population being the most often quoted figure. Many of the commenters from the areas under 200,000 population preferred no change, or indicated that growth rate should also be considered in determining applicability of the 3C

requirements and funding if the threshold is changed. Analysis of the comments, as well as a FHWA staff analysis of the planning needs of the nation's urbanized areas, did not reveal a logical split between the various population levels which was more reasonable than the suggested one of 200,000 population. Therefore, we proposed that the split be made at that level. This decision also builds on past practice (i.e., use of 200,000 population in a "streamlining" appendix to the existing planning relugations; use of 200,000 population in the attribution of Federal-aid urban system funds; and, the use of 200,000 population in UMTA's section 5 allocation mechanism).

Since the statutes require an urban transportation planning process in all urbanized areas, these proposed regulations seek to employ the maximum flexibility allowed by the statutes so that States and local officials may choose the most appropriate manner in which to meet the statutory requirements in their individual urbanized areas. Consequently, the differences in requirements that would apply in areas above and below the 200,000 population threshold are minimal. FHWA and UMTA intend to emphasize the role of the Governor and the State transportation department in administering the urban transportation planning program in the urbanized areas below 200,000 population. UMTA intends to give States the option to receive and allocate Section 8 planning funds (authorized by Section 8 of the Urban Mass Transportaiton Act of 1964, as amended (49 U.S.C. 1607)) to be used to carry out transportation planning efforts benefiting these smaller urbanized areas. Also, FHWA encourages the State and the metropolitan planning oranization in each of these areas to provide increased latitude to the State to administer FHWA planning (PL) funds.

The newly designated urbanized areas should be able to meet fully the joint urban transportation requirements which are proposed in this rulemaking within the transition period offered to them by the "FHWA and UMTA Policy on the Applicability of Urban Planning Requirements in Newly Designated Urbanized Areas as a Result of the 1980 Federal Census," published in the **Federal Register** on September 17, 1981 (46 FR 46270).

Roles and Responsibilites

Most commenters to the issues and options paper supported the need for a local forum for cooperative decisionmaking, but again there was broad support for allowing States and local elected officials in the smaller urbanized areas especially wide latitude in meeting the statutory requirements concerning the organizational responsibility for the planning process and the mandate for consultation in developing the program of projects for these smaller urbanized areas. We should emphasize that the Governors and the local elected officals have the statutory responsibility of determining a mutually acceptable institutional arrangement responsible for transportation planning, which will meet the intent embodied in the phrase "metropolitan planning organization," (i.e., that local elected officials have a major role in the conduct of urban transportation planning at the urbanized area level). This NPRM provides the States and local elected officials the flexibility to involve implementing agencies (e.g., transit operators) in the institutional arrangements and programming procedures as their roles require. FHWA and UMTA do not anticipate significant organizational or functional changes being made to existing arrangements, but do anticipate a lessening of Federal prescription on what responsibilities the organizations or partners in the process must assume as long as there is mutual agreement.

Planning and Project Implementation

Under the current interim final regulations, the activities of the urban transportation planning process result in development of a transportation plan having long- and short-range elements. The elements of the plan form the basis for advancing projects and policies to implementation through the annual element (AE) of the transportation improvement programs (TIP). The TIP/AE is developed, under the policy direction of the metropolitan planning organization, jointly by State and local officials, and the implementing agencies. As part of the planning process, the metropolitan planning organization must annually endorse the TIP/AE. The processing of the TIP/AE and the projects contained in it varies according to the type of project and potential Federal funding source. There were many comments regarding the TIP requirement. More than 60 percent of those who commented on this subject area expressed no desire to change the requirements for a TIP and AE.

Despite the strong support for the TIP/AE, many commenters expressed frustration over the TIP/AE updating procedures. While the FHWA and UMTA are committed to reducing redtape, the procedures for updating the TIP/AE are a responsibility of the partners in the urban transportation planning process. FHWA and UMTA believe that an attempt to regulate updating procedures would result in more detailed, prescriptive Federal requirements and, therefore, are proposing to provide State and local officials greater flexibility in jointly deciding and advancing mutually acceptable transportation improvements.

Many commenters raised the issue of a more effective relationship between planning and project development. In order to clarify the intent of the regulations to have the process support transportation improvements and subsequent project development activities in the area, a statement to this effect would be added to the regulation. This suggests a more effective planning effort, which better supports the needs for the transportation improvements and is sensitive to the needs of the project development process, including the environmental impact assessment process.

Technical Requirements

The technical activities conducted as part of the urban transportation planning process should lead to the development of a transportation plan and TIP based on comprehensive planning. The existing FHWA/UMTA joint urban transportation planning regulations contain several activities that are appropriate for development of a transportation plan and TIP; however, the regulations recognize that not all these activities are necessary in every urbanized area. Also, the regulations recognize the varying planning needs in the urbanized areas by indicating that technical activities should be addressed to the degree appropriate for the size of the urbanized area and the complexity of its transportation problems. The FHWA and UMTA believe that the State and local agencies carrying out transportation planning have shown over the years that they have the ability to judge the technical needs of their planning process. The comments to the issues and options paper support this view. Almost 60 percent of the commenters said that State and local officials should be able to tailor the technical activities to meet local urban transportation needs. This flexibility should embrace both the types of technical activities addressed and the appropriate level of detail necessary. It was generally felt by those supporting this view that it was not possible to develop minimum requirements at the national level that could be applicable to all areas. It was felt while broad guidelines were appropriate, the State

and local areas are in the best position to decide which activities are appropriate for the particular urbanized area. There was a feeling that some of the activities presently required are time consuming, costly, and of little practical value to every area. Most of the commenters who wished there be "no change," felt that the existing regulation gave them sufficient latitude to manage their technical activities. These responses make it clear that there is confusion about what is required now. Therefore, this proposed regulation would make it clear that determining the mix of technical activities to support urban transportation planning is a State and local responsibility.

The FHWA and UMTA would continue both to provide technical guidance and to respond to requests by State and local agencies for technical assistance. FHWA and UMTA also will continue to assess the assistance they currently offer to prepare for future technical assistance needs and to respond to changing policy. This is particularly critical for technical support in such areas as new and small urbanized areas, management, maintenance, and cost effectiveness analysis.

Certification

The Federal administration of urban transportation planning requirements is a shared responsibility. The FHWA and UMTA jointly review the process in each urbanized area and certify the process if it substantially meets the requirements of the urban transportation regulations. This formal certification is, under current regulations, required only "as appropriate." When discussing this element of the planning process, less than 10 percent of those directly responding to this issue supported a Federal certification of the planning process while almost 50 percent believed the States and local officials should make this certification.

The FHWA and UMTA agree with the majority and, therefore, are proposing that the State and the metropolitan planning organization certify that the planning process is being carried on in conformance with all applicable requirements of relevent Federal laws and these proposed regulations. The intent is to provide a means to ensure that the planning process is functioning properly (as determined by the certifying officials). These certifications do not relieve the Federal Government of its statutory oversight responsibilities and, therefore, the planning process would be subject to review as part of periodic management reviews conducted by FHWA and UMTA. These reviews would be the basis for the Secretarial finding required by 23 U.S.C. 134(a) and section 8(c) of the UMT Act (49 U.S.C. 1607(c)).

The current joint planning regulations require that a number of Federal mandates be addressed in the planning process. The regulations state that the planning process shall: (1) Provide for the consideration of social, economic, and environmental effects; (2) comply with the procedures in 23 CFR Part 770 related to air quality; (3) include provisions to ensure involvement of the public; (4) be consistent with Title VI of the Civil Rights Act of 1964; (5) include special efforts to plan public mass transportation facilities that can be utilized by elderly and handicapped persons; (6) provide for the consideration of energy conservation goals and objectives; and (7) provide for the involvement of the appropriate public and private transportation providers.

The response to the "issues and options" paper indicated that most respondents (79 percent) favored the options which would effectively streamline how these mandates are treated in the planning process. Most respondents also favored placing the decision on how and when these mandates are met in the hands of State and local officials. Additionally, many respondents favored the provisions that State and local governments work jointly to certify that these mandates are addressed. FHWA and MUTA agree. The part of the proposed regulation dealing with this issue was developed only after examining the mandates themselves with regard to their original intent and their basis in law. We are proposing to streamline the administration of the mandates (except Civil Rights and private enterprise) by placing them under a self-certification procedure. The State and metropolitan planning organization would certify that the planning process complies with these mandates. FHWA and UMTA will review mandate compliance as part of their ongoing management reviews.

The private enterprise requirements set forth in sections 8(e) and 3(e) of the UMT Act are excepted from self-certification. The Congress in establishing requirements for encouraging and protecting private transportation services allowed for Federal assurance that Federal funds not impair the capabilities of the private sector to provide mass transportation services. The Administration's commitment to foster an environment which is more conducive to private enterprise underscores the necessity of maintaining this option of rigorous Federal assurance as provided for by the law. While the choice of service strategies and service providers is properly a local choice, it is important that local processes are established and followed that afford private transportation carriers fair and timely consideration in the development of mass transportation programs. The UMTA will soon issue guidance on this subject in a forthcoming statement on private enterprise.

FHWA and UMTA believe that Federal stewardship of the planning process, and the Federal funds supporting it, can be accomplished through the existing procedures for review and approval of the unified planning work program (UPWP) and program of projects (TIP/AE in UMTA's case and the "105" statewide program in FHWA's process). Also, periodic Federal reviews of the planning process would continue as part of the regular management of the Federal-Aid Highway and Urban Mass Transportation Programs.

Federal Funding for the Planning Process

The two major sources of Federal funding of the urban transportation planning process are FHWA PL funds and UMTA Section 8 funds. Other FHWA funds are also available for planning in urbanized areas, at the discretion of the State highway agency. The Major differences between FHWA and UMTA planning funds relate to the delivery mechanism, use of funds, and allocation mechanism. The FHWA fund are passed through the State to the metropolitan planning organization while UMTA funds typically go directly to the metropolitan planning organization. FHWA PL funds are used exclusively to support the 3C process while the UMTA Section 8 funds are used to support both the 3C process and technical planning studies related to transit operations. Another difference between the two programs is that FHWA funds are allocated by statutory formula while UMTA funds are allocated by an administratively developed formula.

Almost all commenters recommended that funding continue to all areas. However, there was considerable difference of opinion on the fund delivery mechanism. States suggested that they administer the funds while metropolitan planning organizations and local governments suggested that the funds go directly to them. The UMTA has decided that, for those urbanized areas below the 200,000 population

threshold, it will administratively give States the option of receiving and allocating its Section 8 funds. FHWA will continue to require, in accord with 23 U.S.C. 104(f) that the State distribute the funds to the metropolitan planning organizations but will encourage the State and the metropolitan planning organizations in areas under 200,000 population to establish a process where the State would have wide latitude to administer and/or expend these moneys for the benefit of these smaller urbanized areas.

Section-by-Section Analysis

In view of the interest in these proposed regulations as evidenced by the overwhelming response to the issues and options paper discussed earlier and due to the major substantive changes proposed, each section of the regulation in which substantive changes would be made is discussed in detail below. The following table indicates sections that are proposed to be changed.

Former section	New section
450.100	Changed.
450.102	Changed.
450.104	Changed.
450.106	Changed.
450.108	Deleted.
450.110	Deleted.
450.112	Changed.
450.114	450.108.
450.116	450.110.
450.118	450.110.
450.120	450.114.
450.122	450.114.
450.300	Changed.
450.302	450.202.
450.304	450.104.
450.306	450.204.
450.308	450.204.
450.310	450.206.
450.312	450.208.
450.314	450.204.
450.316	450.204.
450.318	450.210.
450.320	450.212.

A minor technical change in the format is proposed which will facilitate referencing the two subparts of Part 450 which, taken collectively, are referred to as the joint FHWA/UMTA urban transportation planning regulations. This change involves switching the subpart designations of existing Subparts B and C.

The existing appendices regarding transportation system management and simplified procedures in areas under 200,000 population are proposed to be deleted from this regulation since they are advisory.

Subpart A—Urban Transportation Planning

Section 450.106 Metropolitan Planning Organization

This section would be revised to eliminate as much of the prescriptive material as possible. The proposed rule follows 23 U.S.C. 134(b)(2) in order to ensure that the intent of Congress is followed with regard to the designation of metropolitan planning organizations. This section stresses the need for involvement by elected local officials. As discussed earlier, many of the commenters on the issues and options paper felt local official involvement is necessary. FHWA and UMTA agree.

Composition of the metropolitan planning organization is not mandated in law. However, the metropolitan planning organization must be designated in accordance with the provisions of 23 U.S.C. 134 and Section 8 of the UMT Act (49 U.S.C. 1607), that is, by agreement among the units of general purpose ge local government and the Governor. For this reason, FHWA and UMTA are not prescribing their composition in these proposed regulations. The description of a metropolitan planning organization as "a forum for cooperative decisionmaking by the principal elected officials of general purpose local governments" has been taken as a prescription for a particular institutional arrangement and membership. That was not the intent and, therefore, we propose to modify the sentence to allow others, in addition to elected officials, to be part of the metropolitan planning organization. FHWA and UMTA continue to believe that the metropolitan planning organization should adequately represent local elected officials and implementing agencies. This representation would be determined at the time of designation or redesignation and does not prohibit appointed officials, such as representatives of the State DOT or local public transit operators from being voting members of the metropolitan planning organization. The FHWA and UMTA would expect the implementing agencies to have a major role in urban transportation planning activities, especially in the smaller urbanized areas.

Section 450.108 Urban Transportation Planning Process: Funding

This new section would incorporate various provisions of several sections of the existing regulation and proposes UMTA's policy that Section 8 funds for use in urbanized areas with populations below 200,000 will be made available to the State, at their option, for administration for use and benefit of these urbanized areas. The reference to 23 U.S.C. 104(f)(3) is included in this proposed rule to ensure that the intent of Congress is followed in regard to the administration of PL funds. This section would not prohibit the administration and/or expenditure of PL funds by another organization so long as agreed to by the metropolitan planning organization. The FHWA strongly encourages such latitude be used in the smaller urbanized areas.

The FHWA and UMTA also encourage State and local officials to work together to ensure consistent and timely delivery of funds. FHWA and UMTA are working together to ensure the same at the Federal level.

In an effort to reduce the Federal presence in the administration of the planning process in smaller urbanized areas, the FHWA and UMTA are proposing that an UPWP need not be developed for these areas; rather planning tasks for these areas would be developed by the State and the metropolitan planning organization. These task could be identified as a line item in the highway planning and research (HPR) work program developed by the State pursuant to 23 U.S.C. 307.

Section 450.110 Urban Transportation Planning Process: Products

This section proposes the combination and simplification of several sections of the existing regulation. We intend to reduce requirements to the minimum necessary to permit Federal stewardship of the Program: (1) A transportation plan (without the requirement for long-and short-range elements), and (2) the TIP/AE. State and local officials will have almost complete flexibility in developing and endorsing these products. Also, a planning work program will continue to be required under § 450.108 to support the request for PL and Section 8 funds needed to perform these activities and prepare these products. The FHWA and UMTA believe many of the other existing provisions are advisory and, therefore, should not be included in these regulations.

Section 450.112 Urban Transportation Planning Process: Participant Responsibilities

This section proposes that the roles and responsibilities for developing the products of the urban transportation planning process be mutually determined by the metropolitan planning organization, the State and publicly owned operators of mass transportation services. This proposal gives the principal participants greater flexibility in determining their appropriate roles. FHWA and UMTA believe this proposal is consistent with the majority of the comments received in the comprehensive review of urban transportation planning by eleminating any perceived regulatory restrictions

regarding involvement of implementing agencies.

It is proposed that the existing requirement for an annual endorsement of the transportation plan and TIP/AE be eliminated since these may not change significantly from year to year and an endorsement is an unnecessary expense and delay in such cases. Endorsement of the transportation plan will only be necessary when significant changes occur and endorsement of the TIP/AE will be required when a new or revised TIP/AE is submitted to FHWA and UMTA.

The existing Federal requirements for agreements between the metropolitan planning organization, State and transit operators as necessary would be eliminated since thee requests meents are unnecessary Federal intrusion.

Section 450.114 Urban Transportation Planning Process:Certification

In keeping with the goal of reducing the Federal presence in urban transportation planning, FHWA and UMTA are proposing that the current procedures for Federal certification of the planning process be eliminated and that the State and the metropolitan planning organization certifiy that the planning process complies with all applicable Federal laws and regulations. Federal stewardship, as prescribed in the law, would focus more on the review and approval of the planning work program and program of projects.

The existing section concerning certification (§ 450.122) and elements (§ 450.120) are proposed to be combined to clarify what the self-certification action should address. Furthermore, the list of technical activities included in the existing regulations is considered to be advisory and, therefore, is deleted from this proposed regulation. As discussed earlier, FHWA and UMTA intend to continue to provide technical assistance through formal training courses and site visits intended to improve the transportation planning process.

The private enterprise requirements set forth in Sections 8(e) and 3(e) of the Urban Mass Transportation Act of 1964 and the requirements for consistency with Title VI of the Civil Rights Act of 1964 are excepted from self-certification.

Subpart B—Transportation Improvement Program

As noted earlier, the existing Subpart C, "Transportation Improvement Program," is proposed to be redesignated as Subpart B. The changes proposed for this subpart are not as extensive as those in Subpart A. The three most important changes are:

1. The AE may cover a 2-year period (see proposed §§ 450.104 and 450.208).
2. The prescriptive provisions included in the existing regulation regarding project initiation are eliminated (see proposed § 450.208).
3. The provision which permits proposed projects for which substantial commitment of Federal funding has been made to be included in the statewide program of projects under 23 U.S.C. 105 without having first been in the current AE is proposed to be extended to include projects to be funded with Federal aid-urban system funds. Currently this provision applies to Intersate and primary projects. Proposed projects under this provision may be included in the 105 program only if they have already received Federal approval for right-of-way acquistion or Federal approval of physical construction or implementation where right-of-way acquisition was not previously federally funded (see proposed §§ 450.206 and 450.210).

These changes are being proposed to streamline the TIP/AE development process. The FHWA and UMTA recognize that the TIP and especially the AE may need to be modified during the program period. The procedures to modify these documents should be as streamlined as possible and should not necessarily have to follow the same procedures as were used to develop the endorsed TIP/AE. The FHWA and UMTA urge State and local officials to develop more simplified procedures for TIP/AE modifications. As noted earlier, FHWA and UMTA intended to assist State and local officials in this area by providing technical and program management assistance.

The FHWA and UMTA determinations addressed in § 450.212 are internal actions which form the basis for the Secretarial finding required by 23 U.S.C. 134(a) and Section 8(c) of the UMT Act (49 U.S.C. 1607(c)).

Other Considerations

Comments on these proposed revisions are invited from all interested parties. In addition, FHWA and UMTA are inviting suggestions on any further improvements to the urban transportation regulations and, in particular, on further reductions in paperwork burdens associated with the urban transportation planning process. These proposed regulations are intended to reduce the burden placed on State and local officials by providing them with greater flexibility, reducing red tape and simplifying the administration of the planning process. Specifically, these proposed regulations reduce the overly prescriptive provisions regarding the preparation of the products of the process. As part of the preparation of the annual Information Collection Budget, required by the Office of Management and Budget, FHWA and UMTA are interested in receiving estimates of the resources necessary to comply with the information reporting aspects of these proposed regulations. In particular estimates of the resources necessary to prepare the documents relating to unified planning work program, transportation plan and transportation improvement program required by §§ 450.108 and 450.110 are requested. While the preparation of each of these documents will vary significantly depending on many factors it has been estimated that on the average, each urbanized area will spend roughly 540 person-hours preparing the unified planning work program document and roughly 740 person-hours preparing the TIP/AE. Estimates have not been made for the transportation plan.

FHWA and UMTA are currently evaluating the merits of having certification acceptance (23 CFR Part 640) apply to the 3C planning process. Certification Acceptance (CA) is an alternate procedure authorized by 23 U.S.C. 117(a) whereby a State can assume certain responsibilites otherwise assigned to the Secretary of Transportation under Title 23 for administering non-Interstate Federal-aid projects. The intent is to increase the latitude and authority afforded to States while reducing the level of Federal involvement and detailed Federal procedures relating to the Federal-Aid Highway Program.

The current FHWA regulations governing CA (23 CFR Part 640) exclude the urban transportation planning requirements of 23 U.S.C. 134 from the CA procedure. At the time the CA regulations were promulgated CA focused on project level requirements. FHWA has since felt that the benefits of CA should also apply to other parts of the Federal-Aid Highway Program.

As part of this evaluation the FHWA and UMTA request comments from the public on the applicability of CA to the planning process. The FHWA and UMTA recognize the difficulties in implementing any proposed revision given joint FHWA/UMTA administration of the 3C process, multi-State urbanized areas, the multitude of local jurisdictions involved in the 3C process and the differences between planning process requirements and project development requirements.

Comments on these and any other related issues should be sent to Docket

82-10 along with the comments on the proposed regulation.

In consideration of the foregoing, the FHWA and UMTA propose to amend Chapter I of Title 23, Code of Federal Regulations, and Chapter VI of Title 49, Code of Federal Regulations, as set forth below.

1. Part 450, Subpart A of 23 CFR is revised to read as follows:

PART 450—PLANNING ASSISTANCE AND STANDARDS

Subpart A—Urban Transportation Planning

Sec.

450.100 Purpose.
450.102 Applicability.
450.104 Definitions.
450.106 Metropolitan planning organization.
450.108 Urban transportation planning process: Funding.
450.110 Urban transportation planning process: Products.
450.112 Urban transportation planning process: Participant responsibilities.
450.114 Urban transportation planning process: Certification.

Authority: 23 U.S.C. 104(f)(3), 134, and 315; Secs. 3, 5, and 8 of the Urban Mass Transportation Act of 1964, as amended (49 U.S.C. 1602, 1604, and 1607); Sections 110, 172, 174 and 176 of the Clean Air Act (42 U.S.C. 7410, 7502, 7504, and 7506); and 49 CFR 1.48(b) and 1.51.

Subpart A—Urban Transportation Planning

§ 450.100 Purpose.

The purpose of this subpart is to implement 23 U.S.C. 134, and sections 5(1) and 8(a) and (c) of the Urban Mass Transportation Act of 1964, as amended (UMT Act) (49 U.S.C. 1604(1) and 1607(a) and (c)), which require that each urbanized area, as a condition to the receipt of Federal captial or operating assistance, have a continuing, cooperative, and comprehensive transportation planning process that results in plans and programs consistent with the comprehensively planned development of the urbanized area. These plans and programs support transportation improvements and subsequent project development activities in the area.

§ 450.102 Applicability.

The provisions of this subpart are applicable to the transportation planning process in urbanized areas.

§ 450.104 Definitions.

(a) Except as otherwise provided, terms defined in 23 U.S.C. 101(a) are used in this part as so defined.

(b) As used in this part:

"Governor" means the Governor of any one of the fifty States, or Puerto Rico, and includes the Mayor of the District of Columbia.

"Metropolitan planning organization" means that organization designated as being responsible, together with the State, for carrying out the provisions of 23 U.S.C. 134, as provided in 23 U.S.C. 104(f)(3), and capable of meeting the requirements of Sections 3(e)(1), 5(1), and 8(a) and (c) of the UMT Act (49 U.S.C. 1602(e)(1), 1604(1), and 1607 (a) and (c)). The metropolitan planning organization is the forum for cooperative transportation decisionmaking. It is recommended that principal elected officials of general purpose local governments be represented on the metropolitan planning organization.

"Annual element (AE)" means a list of transportation improvement projects proposed for implementation during a program period of up to 2 years.

"Transportation improvement program (TIP)" means a staged multiyear program of transportation improvements including an AE.

§ 450.106 Metropolitan planning organization.

(a) Designation of a metropolitan planning organization shall be made by agreement among the units of general purpose local government and the Governor. To the extent possible, only one metropolitan planning organization should be designated for each urbanized area or group of contiguous urbanized areas.

(b) Principal elected officials of general purpose local governments shall be represented on the metropolitan planning organization to the extent agreed to pursuant to paragraph (a) of this section.

§ 450.108 Urban transportation planning process: Funding.

(a) Funds authorized by 23 U.S.C. 104(f) shall be made available by the State to the metropolitan planning organization, as required by 23 U.S.C. 104(f)(3).

(b) In urbanized areas with populations at or over 200,000, funds authorized by Section 8 of the UMT Act (49 U.S.C. 1607) shall be made available to the metropolitan planning organization, to the extent possible.

(c) In urbanized areas with populations below 200,000, funds authorized by Section 8 of the UMT Act (49 U.S.C. 1607) shall, at the State's option, be made available to the State for the use by or benefit, of these urbanized areas. If the State does not elect this option, these funds shall be made available directly to the metropolitan planning organization, to the extent possible.

(d) In urbanized areas with populations at or over 200,000 a unified planning work program (UPWP) describing urban transportation and transportation-related planning activities anticipated in the area during the next 1- or 2-year period including the work to be performed with planning assistance provided under Section 8 of the UMT Act (49 U.S.C. 1607) (Section 8 funds) and 23 U.S.C. 104(f) (PL funds) and 307(c) (HPR funds) shall be developed. The UPWP shall be endorsed by the metropolitan planning organization.

(e) In urbanized areas with populations below 200,000, the State and the metropolitan planning organization shall describe how the Section 8, PL, and HPR funds, if any, would be expended in each area, who would do the work and what work in general would be done.

(f) Nothing herein shall be deemed to prohibit the metropolitan planning organization from utilizing, through contractual agreements, the staff resources of other agencies to carry out the planning process.

§ 450.110 Urban transportation planning process: Products.

The urban transportation planning process shall include the development of:

(a) A transportation plan describing policies, strategies and facilities or changes in facilities proposed. The transportation plan shall be consistent with the requirements of 23 U.S.C. 134 and Section 8 of the UMT Act (49 U.S.C. 1607) which include an analysis of transportation system management strategies to make more efficient use of existing transportation systems.

(b) A transportation improvement program (TIP) including an annual element (AE) as prescribed in Subpart B of this part. The program shall be a staged multiyear program of transportation improvement projects consistent with the transportation plan.

(c) Other planning and project development activities deemed necessary by State and local officials to assist in addressing transporation issues in the area.

§ 450.112 Urban transportation planning process: Participant responsibilities.

(a) The metropolitan planning organization, the State, and publicly owned operators of mass transportation services shall determine their mutual responsibilities in the development of the planning work program, transportation plan and TIP specified in §§ 450.108 and 450.110.

(b) The metropolitan planning organization shall endorse the transportation plan and TIP required by §§ 450.110 and 450.204. These endorsements are prerequisites for the approval of programs of projects in urbanized areas pursuant to 23 U.S.C. 105(d) and 134(a) Section 8(c) of the UMT Act (49 U.S.C. 1607(c)), and Subpart B of this part.

§ 450.114 Urban transportation planning process: Certification.

(a) The urban transportation planning process shall include; activities to support the development of a transportation plan and TIP/AE as necessary and to the degree appropriate for the size of the metropolitan area and the complexity of its transportation problems. The process shall also support subsequent project development activities, including the environmental impact assessment process.

(b) At the time the TIP/AE is submitted, the State and the metropolitan planning organization shall certify that the planning process is being carried on in conformance with all applicable requirements of:

(1) 23 U.S.C. 134, Section 8 of the UMT Act (49 U.S.C. 1607) and these regulations;

(2) Sections 174 and 176 (c) and (d) of the Clean Air Act (42 U.S.C. 7504, 7506 (c) and (d));

(3) Section 16 of the UMT Act (49 U.S.C. 1612), Section 165(b) of the Federal-Aid Highway Act of 1973, as amended, and 49 CFR Part 27, which call for special efforts to plan public mass transportation facilities and services that can effectively be utilized by elderly and handicapped persons; and

(4) 23 U.S.C. 109(h) and Sections 5(h) (2) and 14 of the UMT Act (49 U.S.C. 1604(h)(2) and 1610).

(c) The planning process shall be consistent with sections 3(d) and 14(b) (49 U.S.C. 1602(d) and 1610(b)) and Sections 8(e) and 3(e) (49 U.S.C. 1607 and 1602(e)) of the UMT Act concerning involvement of the public and appropriate public and private transportation providers respectively.

(d) The planning process shall be consistent with Title VI of the Civil Rights Act of 1964 and the Title VI assurance executed by each State under 23 U.S.C. 324 and 29 U.S.C. 794.

§§ 450.200 through 450.206 [Redesignated as §§ 450.300 through 450.306]

2. Part 450, Subpart B, Metropolitan Planning Funds, (40 FR 38151, August 27, 1975, as amended) is redesignated as Part 450, Subpart C.

The sections are renumbered as follows:

Former section	New section
450.200	450.300
450.202	450.302
450.204	450.304
450.206	450.306

3. Former Part 450, Subpart C is redesignated as Part 450, Subpart B and revised to read as follows:

Subpart B—Transportation Improvement Program

Sec.
450.200 Purpose.
450.202 Applicability.
450.204 Transportation improvement program: General.
450.206 Annual element: Project selection.
450.208 Annual element: Content.
450.210 Selection of projects for implementation.
450.212 Program approval.

Authority: 23 U.S.C. 105, 134(a), and 135(b); Sections 3, 5, and 8(c) of the Urban Mass Transportation Act of 1964, as amended (49 U.S.C. 1602, 1604, and 1607(c); Sections 110, 172, 174 and 176 of the Clean Air Act (42 U.S.C. 7410, 7502, 7504, 7506); and 49 CFR 1.48(b) and 1.51.

Subpart B—Transportation Improvement Program

§ 450.200 Purpose.

The purpose of this subpart is to establish regulations for the development, content, and processing of a cooperatively developed transporation improvement program (TIP) in urbanized areas.

§ 450.202 Applicability.

(a) The regulations in this subpart shall be applicable to projects in or serving urbanized areas with funds made available under:

(1) 23 U.S.C. 104(b)(6) (urban system projects);

(2) 23 U.S.C. 103(e)(4) (Interstate substitution projects);

(3) Sections 3 and 5 of the Urban Mass Transportation Act of 1964, as amended (UMT Act) (49 U.S.C. 1602 and 1604—UMTA capital and operating assistance projects);

(4) 23 U.S.C. 104(b)(1) (projects on extensions of primary systems in urbanized areas), except as provided in this subpart;

(5) 23 U.S.C. 104(b)(5) (projects on the Interstate System), except as provided in this subpart.

(b) Projects under paragraphs (a) (4) and (5) of this section, which are included in the highway safety improvement program prepared by the State pursuant to 23 CFR Part 924, may be excluded from the TIP at the option of the State.

§ 450.204 Transportation improvement program: General.

(a) The TIP, including the annual element (AE), shall be developed by the metropolitan planning organization, the State and publicly owned operators of mass transportation services in cooperation with recipients authorized under Section 5(b) (1) or (2) of the UMT Act (49 U.S.C. 1604(b) (1) or (2)).

(b) The TIP shall as a minimum:

(1) Consist of federally funded improvements recomended for advancement during the program period from the transportation plan developed under § 450.110(a);

(2) Cover a period of not less than 3 years;

(3) Indicate the area's priorities; and

(4) Include realistic estimates of the total costs and revenues for the program period.

(c) The metropolitan planning organization endorsement of the TIP including the AE is a prerequisite for the approval of programs of projects in urbanized areas pursuant to 23 U.S.C. 105(d) and 134(a), and Section 8(c) of the UMT Act (49 U.S.C. 1607(c)). The State, metropolitan planning organization, and publicly owned operators of mass transportation services are encouraged to develop simplified procedures for updating or modifying an endorsed AE.

(d) The TIP including the AE shall be submitted:

(1) To the Governor and the Urban Mass Transportation Administrator, and

(2) Through the State to the Federal Highway Administrator.

§ 450.206 Annual element: Project selection.

Federally funded projects shall be selected for inclusion in the AE at all stages in the development of the transportation improvement for which program action is proposed. These projects shall be selected in accordance with State and local law and procedures acceptable to the participants in the planning process.

§ 450.208 Annual element: Content.

(a) Except as provided in §§ 450.202 and 450.210(b)(3), the AE shall contain projects selected under § 450.206 and endorsed under § 450.204.

(b) With respect to each project under paragraph (a) of this section the AE shall include:

(1) Identification of the project;

(2) Estimated total cost and the amount of Federal funds proposed to be obligated during the program period;

(3) Proposed source of Federal and non-Federal matching funds; and

(4) Identification of the recipient and State and local agencies responsible for carrying out the project.

(c) Projects proposed for Federal funding that are not considered to be of appropriate scale for individual inclusion in the AE may be grouped by functional classification, geographic area, or work type.

(d) The AE shall be reasonably consistent with the amount of Federal funds expected to be available to the area. Federal funds that have been allocated to the area pursuant to 23 U.S.C. 150 shall be identified.

(e) The total Federal share of projects included in the AE and proposed for funding under Section 5 of the UMT Act (49 U.S.C. 1604) may not exceed apportioned Section 5 funds available to the urbanized area during the program year, or funds apportioned for 2 years if a 2-year AE Is selected.

§ 450.210 Selection of projects for implementation.

(a) The projects proposed to be implemented with Federal assistance under Sections 3 and 5 of the UMT Act (49 U.S.C. 1602 and 1604) and nonhighway public mass transit projects under 23 U.S.C. 103(e)(4) shall be those contained in the AE of the TIP submitted to the Urban Mass Transportation Administrator.

(b) Upon receipt of the TIP, the State shall include in the statewide program of projects required under 23 U.S.C. 105:

(1) Those projects drawn from the AE and proposed to be implemented with Federal assistance under 23 U.S.C. 104(b)(6) (Federal-aid urban system) in which the State concurs; provided, however, that in any case where the State does not concur in a nonhighway public mass transit project, a statement describing the reasons for the nonconcurrence shall accompany the statewide program of projects; and

(2) Those projects drawn from the AE and proposed to be implemented with Federal assistance under 23 U.S.C. 104(b)(1) (projects on urban extensions of the Federal-aid primary system and 23 U.S.C. 104(b)(5) (Interstate System projects in urbanized areas); and

(3) Those projects not drawn from the AE that are proposed to be implemented with Federal assistance under 23 U.S.C. 104(b)(6) (Federal-aid highway urban system), 23 U.S.C. 104(b)(1) (Projects on urban extensions of the Federal-aid primary system) and 23 U.S.C. 104(b)(5) (Projects on the Interstate System) provided that:

(i) Previous stages of such project or projects were selected pursuant to § 450.206, and advanced;

(ii) Such project or projects are for highway transportation improvements for which there has been a Federal authorization to acquire right-of-way or Federal approval of physical construction or implementation where right-of-way acquisition was not previously federally funded; and

(iii) A statement accompanies the statewide program of projects which includes for each project the views of the metropolitan planning organization and indicates how the requirements of 23 U.S.C. 134(a) have been met.

(c) The preparation and endorsement of the TIP and the selection of projects in accordance with this subpart will meet the requirements of 23 U.S.C. 105(d), 23 U.S.C. 134(a), and Section 8(a) of the UMT Act (49 U.S.C. 1607(a)).

(d) The State shall notify the metropolitan planning organization of actions taken under paragraph (b) of this section.

§ 450.212 Program approval.

(a) Upon the determination by the Federal Highway Administrator and the Urban Mass Transportation Administrator that the TIP or portion thereof is in conformance with this subpart and that the planning process is in conformance with Subpart A, programs of projects selected for implementation under § 450.210 will be considered for approval as follows:

(1) Federal-aid urban system projects included in the statewide program of projects under 23 U.S.C. 105 will be approved by:

(i) The Federal Highway Administrator with respect to highway projects;

(ii) The Urban Mass Transportation Administrator with respect to nonhighway public mass transit projects; and

(iii) The Federal Highway Administrator and the Urban Mass Transportation Administrator jointly in any case where the statewide program of projects submitted pursuant to 23 U.S.C. 105 does not include all Federal-aid urban system nonhighway public mass transit projects contained in the AE.

(2) Interstate substitution nonhighway public mass transit projects included in the AE will be approved by the Urban Mass Transportation Administrator.

(3) Projects proposed to be implemented under Section 3 and 5 of the UMT Act (49 U.S.C. 1602 and 1604) included in the AE will be approved by the Urban Mass Transportation Administrator after considering any comments received from the Governor within 30 days of the submittal required by § 450.204(d)(1).

(4) Federal-aid urban extensions of primary projects and Interstate projects included in the statewide program of projects under 23 U.S.C. 105 will be approved by the Federal Highway Administrator.

(b) Approvals by the Federal Highway Administrator or joint approvals by the Federal Highway Administrator and Urban Mass Transportation Administrator will be in accordance with the provisions of this subpart and with 23 CFR Part 630, Subpart A. Approvals granted under this section will constitute:

(1) The approval required under 23 U.S.C. 105; and

(2) A finding that the projects are based on a continuing, comprehensive transportation planning process carried on cooperatively by the States and local communities in accordance with the provisions of 23 U.S.C. 134.

(c) Approvals by the Urban Mass Transportation Administrator will be in accordance with the provisions of this subpart. These approvals will constitute:

(1) The approval required under Section 8(c) of the UMT Act (49 U.S.C. 1607(c));

(2) A finding that the program is based on a continuing, cooperative and comprehensive transportation planning process carried on in accordance with the provisions of Section 8 of the UMT Act (49 U.S.C. 1607), as applicable;

(3) A finding that the projects are needed to carry out a program for a unified officially coordinated urban transportation system in accordance with the provisions of Section 3(e)(1), 5(1), or 8(c) of the UMT Act (49 U.S.C. 1602(e)(1), 1604(1), or 1607(c)), as applicable; and

(4) In nonattainment areas which require transportation control measures, a finding that the program conforms with the SIP and that a priority has been given to transportation control measures contained in the SIP in accordance with procedures in 23 CFR Part 770.

Title 49—Transportation

PART 613—PLANNING ASSISTANCE AND STANDARDS

613.200 [Amended]

4. 49 CFR 613.200 is amended by removing the words "Subpart C" and inserting, in their place, the words, "Subpart B."

(Catalog of Federal Domestic Assistance Program Numbers 20.205, Highway Research, Planning and Construction; 20.500 Urban Mass Transportation Capital Grants; 20.501,

Urban Mass Transportation Capital Improvement Loans; and 20.507, Urban Mass Transportation Capital and Operating Assistance Formula Grants. The provisions of OMB Circular No. A-95 regarding State and local clearinghouse review of Federal and federally assisted programs and projects apply to these programs)

List of Subjects in 23 CFR Part 450 and 49 CFR Part 613

Grant programs—transportation, Highways and roads, Mass transportation, Urban transportation planning.

Issued on: August 20, 1982.

Charles A. Gargano,

Deputy Administrator, Administration.

L. P. Lamm,

Executive Director, Federal Highway Administration.

[FR Doc. 82-23277 Filed 8-25-82; 8:45am]

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Federal Register

Thursday
August 26, 1982

Part III

Department of Defense

Office of the Secretary

Discharge Review Board (DRB)
Procedures and Standards; Final Rule

DEPARTMENT OF DEFENSE

Office of the Secretary

32 CFR Part 70

[DoD Directive 1332.28]

Discharge Review Board (DRB) Procedures and Standards

AGENCY: Office of the Secretary, DoD.

ACTION: Final rule.

SUMMARY: This rule is being reissued to provide guidance to the Military Departments on the procedures and standards for the Discharge Review Board (DRBs). This revision is intended to ensure that applicants to the DRBs of the Military Services are fully aware of the proper procedures for submitting an application and the conduct of the review.

EFFECTIVE DATE: August 11, 1982 (also see § 70.7).

FOR FURTHER INFORMATION CONTACT: Colonel Thomas Cuthbert, USA, Office of the Deputy Assistant Secretary of Defense (Military Personnel and Force Management), Washington, D.C. 20301, telephone 202–697–3387.

SUPPLEMENTARY INFORMATION: In FR Doc. 82–11455, appearing in the **Federal Register** on April 28, 1982 [47 FR 18135], the Office of the Secretary of Defense published a proposed amendment to this part. The Supplementary Information accompanying the proposed amendments described the prior history of this rule.

In response to the notice of proposed rulemaking, DoD received comments from two organizations. Each comment was reviewed and given careful consideration. A number of changes were made in the proposed amendments as a direct result of comments submitted by the public. The major factors considered in evaluating the public comments are set forth below in the Sectional Analysis. Other changes were made as a result of the Department's overall reexamination of the proposed amendments in light of the comments. Additional changes were made as a result of the recently concluded proceedings in *Urban Law Institute of Antioch College, Inc.* v. *Secretary of Defense,* Civ. No. 76–0530 (D.D.C.) (Stipulation of Dismissal, Jan. 31, 1977) (Order and Settlement Agreement, July 30, 1982).

The entire rule is being reissued for ease of administration. The reissuance applies to all discharge review proceedings conducted on or after November 27, 1982. Section 70.7 applies to all complaint proceedings conducted on or after September 28, 1982. Final action on complaints shall not be taken until September 28, 1982 unless earlier corrective action is requested expressly by the applicant (or the applicant's counsel) whose case is the subject of the decisional document. If earlier corrective action is requested, it shall be taken in accordance with § 70.7. The complaint procedures published in FR Doc. 80–33887, appearing on October 31, 1980 [45 FR 72249], have been rescinded.

The Supplementary Information and Sectional Analysis contained herein are intended only to improve the internal management of the federal government, and are not intended to create any right or benefit, substantive or procedural, enforceable at law by a party against the United States, its officers, or any person.

Sectional Analysis of the Final Rule

DoD Directive 1332.28, 32 CFR Part 70

Section 70.1. Reissuance and purpose. This is taken from the current rule, as modified by the proposed rule, with several changes: first, the provision governing waiver of the statute of limitations has been deleted as obsolete; second, former § 70.1(b) has been deleted as unnecessary in view of the incorporation of the *Urban Law* requirements in the final rule.

Section 70.2. Applicability and scope. This is taken from the proposed rule, except that the applicability to the Coast Guard has been deleted at the request of that Service.

Section 70.3. Definitions. This is taken from the current rule, as modified by the proposed rule, with several changes. The definition of applicant has been modified, in response to a comment, to permit a counsel or representative to take certain actions on the applicant's behalf on the basis of an appropriate power of attorney. The definition of complainant has been modified to conform to the Court Order of July 30, 1982, in the *Urban Law* case. The definition of DRB Traveling or Regional Panel has been revised to improve clarity, and definition of the National Capital Region has been added.

Section 70.4. Policies and responsibilities. This is taken from the current rule, as modified by the proposed rule, except that responsibility for maintaining the index has been transferred to the Assistant Secretary of Defense (Manpower, Reserve Affairs, and Logistics). Other changes in style and format have been made throughout this section to improve clarity.

Section 70.5. Discharge Review Procedures. This is taken from the current rule, as modified by the proposed rule, with minor changes throughout based on internal review in the interest of clarity. In addition, a number of substantive changes have been made. With respect to the application for review (§ 70.5(a)) a revised address for the Reading Room has been provided in response to a comment. The discussion of the applicant's responsibilities with respect to the character of discharge has been revised to focus on the type of applications normally submitted. New guidance has been provided as to the effective date of the new DD Form 293 for submission of applications. The discussion of propriety has been expanded to cover references to regulations or other sources of law. Further detail has been added to the requirements for citations from decisions. One comment suggested that the word "issue" be defined. In view of the revisions to § 70.5(a) clarifying the requirements for submission of issues, such a definition is unnecessary. One comment on § 70.5(b) suggested that there was a conflict between § 70.5(b)(6), which provides for waiver of the right to a hearing when applicant fails to appear for a hearing, and § 70.3(c), which generally precludes counsel from waiving the applicant's right to a hearing. There is no conflict, because § 70.3 does not preclude counsel from presenting the case in the absence of the applicant when an applicant fails to appear for a hearing. In such cases, it is the applicant, not the counsel, whose actions result in waiver of the hearing. The revisions to § 70.5(b)(6) in the final rule make it clear that once the applicant has been sent a notice of the hearing, the applicant is required to make a prior, timely request for a continuation, postponement or withdrawal, and that further request for a hearing will not be granted unless that applicant's failure was due to circumstances beyond the applicant's control.

The comment further recommended that if the applicant fails to appear, the counsel should be able at that time to request a postponement, continuance, or withdrawal, or, in the alternative, to proceed with the hearing and then have another hearing at a later date with the applicant present. This was rejected. The DRBs make every reasonable effort to provide former members with ample opportunity for personal appearance hearings. It is the responsibility of the applicants, and their counsel, to make timely requests for postponements. Failure to do so not only wastes the time of the DRBs, it also precludes scheduling hearings for other former members who

otherwise would have been ready to appear.

In § 70.5(e), the requirement for dual consideration of certain issues under both propriety and equity has been deleted, after internal review, on the grounds that it unnecessarily confused two independent bases for relief. A new subsection has been added discussing the balancing of aggravating and mitigating factors in view of the need for guidance on this recurring issue. One comment inquired as to the basis for referring to "expressly retroactive" policies under the guidance for handling issues of propriety. This language was used because one of the propriety standards in § 70.6 pertains to policies that are expressly retroactive.

The last sentence of § 70.5(f)(1) of the proposed rule has been deleted as unnecessary because draft documents prepared for the DRB President are not part of the record in any case. The list of items to be included in the decisional document (§ 70.5(h)(6)) has been amended to make it clear that issues that have been withdrawn or modified with the applicant's consent need not be listed. In conformity with the Settlement Agreement in the *Urban Law* case, § 70.5(i) of the proposed rule has been amended to require that the applicant and counsel be notified of the availability of the complaint process when the decisional document is issued.

Section 70.6. Discharge Review Standards. The propriety standards are taken from the proposed rule, with two changes: first, the discussion of the effect of prior discretionary decisions was expanded to note that in the area of discharge review, no two cases present the same issues of equity; second, in response to a comment, the item governing discharges of inactive reservists was modified to refer specifically to the requirements of *Wood v. Secretary of Defense*, Civ. No. 77-0684 (D.D.C.) (Order, Dec. 3, 1981). Another comment addressed the equity standards concerning retroactive effect of current procedures (a matter that was not the subject of the proposed rulemaking) in terms of the adequacy of guidance on the application of current standards to prior discharges. The Department determined that the current rule provides sufficient guidance to the military departments without further modification.

In addition to the foregoing, one comment made several suggestions with respect to DD Form 293. These suggestions are being considered in the Department's revision of the Form, but final action on the Form is not part of this rulemaking.

Section 70.7. Complaints concerning decisional documents and index entries. This is taken from the proposed rule, with changes throughout to accommodate the recently signed Court Order and Settlement Agreement in the *Urban Law* case. The primary change involves the requirement that the complainant be a former member of the Armed Forces (or the former member's counsel) with respect to the decisional document issued in the former member's own case; or a former member of the Armed Forces (or the former member's counsel) who states that correction of the decisional document will assist the former member in preparing for an administrative or judicial proceeding in which the former member's own discharge will be at issue. In addition, specific decisional document principles from the Settlement Agreement have been incorporated in this section, particularly in § 70.7(d). In order to provide the public with detailed background on these matters, the relevant portions of the Court Order and Settlement Agreement are printed below:

Urban Institute of Antioch College, Inc. v. Secretary of Defense, Civ. No. 76-0530 (D.D.C.) (Order, July 30, 1982)

* * * * *

The Department of Defense shall consider specific complaints that allege that a decisional document or index entry contains a specifically identified violation of the Stipulation of Dismissal (January 31, 1977). Complaints may be submitted by: (1) A former member of the armed forces (or the former member's counsel) with respect to the decisional document in the former member's own discharge review case; and (2) a former member of the armed forces (or the former member's counsel) who states that correction of the decisional document will assist the former member in preparing for an administrative or judicial proceeding in which the former member's own discharge will be at issue. For any decisional document that is determined to violate the Stipulation of Dismissal, a new decisional document shall be prepared which complies with the Stipulation of Dismissal and which applies the discharge review standards in effect at the time the original decisional document was prepared, or, in the alternative, other appropriate corrective action may be taken. Any new decisional document prepared under this provision shall be indexed and made available to the applicant, the applicant's counsel (if any), and the public in accordance with the Stipulation of Dismissal. If corrective action is required with respect to a decisional document that was prepared as a result of an initial record review under the Special Discharge Review Program or under the re-review program mandated by Pub. L. 95-126, the applicant and counsel shall be notified of the right to request a *de novo* hearing under the discharge review standards in effect at the time the original decisional document was prepared * * *.

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Urban Institute of Antioch College, Inc. v. Secretary of Defense, Civ. No. 76-0530 (D.D.C.) (Settlement Agreement, July 30, 1982)

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With respect to each decisional document issued on or after the effective date of the amendments required by the proposed Court Order pertaining to the preparation of decisional documents, defendants shall inform the applicant (and counsel, if any) of the availability of the complaint process.

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Urban Institute of Antioch College, Inc. v. Secretary of Defense, Civ. No. 76-0530 (D.D.C.) (Settlement Agreement, July 30, 1982) (Annex to the Settlement Agreement concerning the Government's obligations in discharge review matters related to the Urban Law Litigation)

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Introduction

The primary source of the decisional document and index entry provisions in DoD Directive 1332.28 is the Stipulation of Dismissal in *Urban Law Institute of Antioch College v. Secretary of Defense*, Civ. No. 76-530 (January 31, 1977). In addition, the Department of Defense has undertaken various obligations with respect to decisional

documents and index entries in correspondence with the plaintiffs and matter filed with the Court in the *Urban Law* case. A list of these documents is set forth in Part IV of this Annex.

Part I of this Annex contains significant principles of current applicability derived from the correspondence between the parties, and filings with the Court. Material that does not refer to a source or that is listed as "Additional guidance" contains related explanatory matter added during preparation of this Annex. Parts II and III contain Model Statements that were prepared during 1977.

In some of the material referenced in Part I, the defendants have taken the position that a certain type of DRB response is sufficient under the Stipulation. The parties have agreed, however, that such a response would not suffice for decisional documents prepared after a specified date (or that a different type of response must be provided). This approach will permit the parties to avoid further litigation and to resolve these matters expeditiously by reaching a compromise between the plaintiffs' position (that the DRB response in question violated the Stipulation) and the defendants' position (that the DRB response in question did not violate the Stipulation).

This Annex concerns current decisional document and index entry aspects of the discharge review program and does not include aspects of the correspondence or court filings that pertain to other matters. The listing of matters in this Annex represents an attempt by the parties to locate in one place the significant obligations incurred by the Department of Defense with respect to decisional documents and index entries as part of the *Urban Law* litigation. The listing of such matters does not preclude reference to other aspects of these documents (or to related correspondence from plaintiffs) if necessary to resolve matters under the grievance procedure established by paragraph 1 of the *Stipulation of Dismissal* or under the complaint procedure established under the Court's Orders in the *Urban Law* case.

This Annex will serve as guidance for the development of rules governing the preparation of decisional documents and index entries. It will also serve as guidance in resolving matters arising under the complaint procedure established by the Court's Order in the *Urban Law* case.

Annex B, Part I

Significant Principles of Current Interest Derived From Documents Related to the Urban Law Litigation

1. *The application for review.*—1–1. The following guidance will apply in proceedings held on or after the effective date of the amendments required by the proposed Court Order pertaining to the preparation of decisional documents: The DRB shall not request or instruct an applicant to amend or withdraw any matter submitted by the applicant. Any amendment or withdrawal of an issue submitted by an applicant shall be confirmed in writing by the applicant. Nothing in this provision:

(A) Limits the DRB's authority to question an applicant as to the meaning of such matter;

(B) Precludes the DRB from developing decisional issues based upon such questions;

(C) Prevents the applicant from amending or withdrawing such matter any time prior to when the DRB closes the review process for deliberation; or

(D) Prevents the DRB from presenting an applicant with a list of proposed decisional issues and written information concerning the right of the applicant to add to, amend, or withdraw the applicant's submission. The written information will note that the applicant's decision to take such action (or to decline to do so) will not be used against the applicant in the consideration of the case.

1–2. Decisional document No. ND–77–02404 (July 20, 1977) does not meet the requirements of the Stipulation of Dismissal for the following reason. A review of the record of the hearing shows that a brief with 20 contentions was submitted by counsel for the applicant. The Board reworded a number of contentions and eliminated others. The record indicates that counsel attempted to preserve his ability to challenge the Board's rewording and elimination of contentions. Because the applicant did not consent to the change, the Board should have addressed the contentions submitted by counsel for the applicant. (Source: Letter dated 25 April 1980, paragraph B.3.)

Additional guidance: In the case of any decisional document issued on or after the effective date of the amendments required by the proposed Court Order pertaining to the preparation of decisional documents, any change in wording of an applicant's issue which is effected in violation of the principles set forth in section 1–1. of this Annex constitutes an error requiring corective action. With respect to a decisional document issued before that date, corrective action will be taken only when there has been a complaint by the applicant or counsel with respect to the applicant's own decisional document and it is determined that the wording was changed or the issue was omitted without the applicant's consent.

1–3. The Department of Defense may require applicants to set forth issues on DD Form 293 or such other form as may be designated by the Department of Defense. If the applicant makes an additional written submission, such as a brief, in support of the application, the applicant may incorporate by reference specific issues set forth in the written submission in accordance with the guidance on the Form. The reference shall be specific enough for the DRB to identify clearly the matter being submitted as an issue. At a minimum, it shall identify the page, paragraph, and sentence incorporated. Because it is to the applicant's benefit to bring such issues to the DRB's attention as early as possible in the review, applicants who submit a brief are strongly urged to set forth all such issues as a separate item at the beginning of the brief. If it reasonably appears that the applicant inadvertently has failed expressly to incorporate an issue which the applicant clearly identifies as an issue to be addressed by the DRB, the DRB shall respond to such an issue under section 4–1.a., below.

2. *Matters other than decisional issues or items submitted as issues by the applicant.*—2–1. If there are references in the decisional document to matters not raised by the applicant and not otherwise relied upon in the decision, there is no requirement under the Stipulation that such matters be accompanied by a statement of findings, conclusions, or reasons. (Source: Matter filed by DoD on 4 August 1979, page 15, Paragraph B.2., which referred to decisional document No. ND–77–02806).

Additional guidance: In order to enhance the clarity of decisional documents and limit the potential for complaints in this regard, the decisional document should not address matters other than issues relied upon in the decision or raised by the applicant.

2–2. The Stipulation requires only that those facts that are essential to the decision be listed in the decisional document. The requirement for listing all 12 specific facts from the military record was not established until March 29, 1978, in DoD Directive 1332.28. Decisional documents issued prior to that date are sufficient if they meet the requirements of the Stipulation. In this case, the majority provided an express conclusion (upgrade the discharge to fully honorable), findings upon that conclusion (absence of derogatory information and a clear disciplinary record), and reasons for that conclusion (compliance with the desire of the President to review discharges in the spirit of mercy and compassion and the absence of aggravating factors). Decisional document No. ND–77–02806 contains a statement of findings, conclusions, and reasons that provides the applicant and the public with clear guidance as to the considerations used by the Board in reaching the decision. (Source: Matter filed by DoD on 4 August 1979, page 15, paragraph B.3.)

2–3. No specific principle was set forth in paragraph A.7. of the letter dated 25 April 1980, which referred to decisional document No. AD–77–10689 (March 9, 1978). The following additional guidance is derived from a review of the decisional document: When the DRB discusses an aspect of the service record not raised as an issue by the applicant, and the issue is not a basis for the DRB's decision, the DRB is not required to discuss the reasons for declining to list that aspect of the service record as an issue.

2–4. Decisional document No. AD–7X–10920 (August 11, 1977) understated the length of the applicant's AWOL. In addition, the document erroneously listed the Conduct and Efficiency Ratings as "None," erroneously omitting two periods of "unsatisfactory" ratings. Because neither of these errors affected the DRB's findings, conclusions, or reasons on DRB or applicant issues, there was no violation of the Stipulation. The complaint was returned to the DRB to correct the factual errors in the decisional document. (Source: Letter dated April 25, 1980, paragraph A.2.)

3. *Response to supporting material.*—3–1. No specific principle was discussed in paragraph B.6. of the letter dated 25 April 1980, which referred to decisional document No. ND–7X–03887A (February 27, 1978). The following additional guidance is derived from

a review of the decisional document: When an applicant submits a brief that contains material in support of a proposed conclusion on an issue, the DRB is not required to address each aspect of the supporting material in the brief. However, the decisional document should permit the applicant to understand the DRB's position on the issue and provide reviewing authorities with an explanation that is sufficient to permit review of the merits of the DRB's decision.

3–2. When an applicant submits specific issues and subsequently makes a statement before the DRB that contains matter in support of that issue, it is not necessary to list such supporting matter as a separate issue. This principle is based on Example No. 8 of the 31 January 1977 Model Statements (Part III, below). With respect to decisional documents prepared on or after the effective date of the amendments required by the proposed Court Order pertaining to the preparation of decisional documents, this principle shall be applied in conjunction with the decisional document principles set forth in section 1–1. and 3–1., above.

4. *General requirements with respect to items submitted as issues by the applicant.*—4–1. In the case pertaining to decisional document No. AD–77–01759, the applicant contended that there was "error in failure to follow the proper procedures during period of my disenrollment." The DRB responded to the applicant's contention by stating that "the applicant's record and his testimony neither completely refutes nor substantiates this contention." In the portion of the applicant's brief pertaining to this contention, the applicant specifically identified four separate types of errors in the procedures followed during his disenrollment. In the circumstances of this case, the DRB's failure to state its findings, conclusions and reasons for each of the four types of errors violated the Stipulation, as did the DRB's failure to state its conclusions as to whether there was error in any of the four areas. (Source: Matter filed by DoD on 4 August 1979, pages 1–2, paragraph B.1.)

Additional guidance: a. In most circumstances, the Stipulation requires the DRB to reach the merits of issues submitted by applicants when the DRB does not grant the full relief requested. The following guidance applies with respect to all decisional documents issued on or after the effective date of the amendments required by the proposed Court Order pertaining to the preparation of decisional documents:

(1) The DRB may state that it disagrees with the conclusion on the issue submitted by the applicant; in this circumstance, the DRB shall address it as a decisional issue providing a basis for denial of relief.

(2) The DRB may state that it is not necessary to determine whether the DRB agrees with the applicant's position because even if the DRB agreed with the applicant, other specified decisional issues preclude granting relief.

(3) The DRB may state that the issue submitted by the applicant does not set forth an issue upon which it grants relief. The DRB will provide a brief explanation for this position. When the applicant indicates that the issue is to be considered in conjunction with other specified issues, the explanation will address all such specified issues.

(4) The DRB may state that there is a full response to the issue submitted by the applicant under a different specified decisional issue. This response may be used only when one issue clearly duplicates another or the issue clearly requires discussion in conjunction with another issue.

(5) The DRB may state that the applicant's issue, which consists of a citation to a decision without setting forth any principles and facts from the decision that the applicant states are relevant to the applicant's case, does not provide sufficient specificity for a DRB response.

(6) The DRB may state that it cannot respond to an item submitted by the applicant as an issue because the meaning is unclear. An item submitted as an issue is unclear if it cannot be understood by a reasonable person familiar with the discharge review process after a review of the materials considered under Section C. of Enclosure 2, DoD Directive 1332.28.

(7) The DRB may state that it cannot respond to an item submitted by the applicant as an issue because it is not specific. Such a submission is not specific if a reasonable person familiar with the discharge review process, after a review of the materials considered under paragraph C. of Enclosure 2, DoD Directive 1332.28, could not determine the relationship between the applicant's submission and the particular circumstances of the case. This response may be used only if the submission is expressed in such general terms that no other response is applicable. For example, if the DRB disagrees with the applicant as to the relevance of matters set forth in the submission, the DRB normally will set forth the nature of the disagreement as provided in section 4–1.a.(1), above, or reject the applicant's position as provided in sections 4–1.a.(2) through 4–1.a.(4), above. If the applicant's submission is so general that none of those provisions is applicable, then the DRB may state that it cannot respond because the item is not specific.

For all decisional documents issued before the effective date of such amendments, failure to respond to an issue raised by an applicant constitutes error unless it reasonably may be inferred from the record that one of the exceptions listed in sections 4–1.a.(2) through 4–1.a.(7) is applicable.

b. Under the proposed amendments to the DoD Directive, if the applicant in a case similar to Doc. No. AD–77–01759 lists as an issue on the Form provided by DoD "Error in failure to follow proper procedures during my period of disenrollment," clearly identifies this issue in a brief (*e.g.*, by use of a numbered heading), and directs the DRB's attention in the brief to four clearly identified procedural errors that must be resolved in order to determine this issue (*e.g.*, by use of numbered headings) the DRB is not relieved of the obligation to consider the four procedural violations. Instead, the guidance in section 3–1, above, is applicable (i.e., the decisional document should permit the applicant to understand the DRB's position on the issue and should provide reviewing authorities with an explanation that is sufficient to permit review of the merits of the DRB's decision). In such circumstances, if the DRB responds to the issue under section 4–1.a.(1), above (disagreeing with the applicant's position) the DRB's response would involve individual consideration of all four procedural violations. The DRB would be required to address each of the cited procedural violations by determining with respect to each whether there was a violation, to give reasons for this conclusion, and to set forth the findings of fact upon which the conclusion was based. If, however, the DRB denied relief on other grounds (e.g., that other issues precluded granting relief, or that the alleged violations did not concern matters upon which the DRB grants relief), then an appropriate response could be given under section 4–1.a. (2) or (3).

4–2. If the decisional document supports a basis for not addressing an issue raised by the applicant (*e.g.*, if it is apparent that resolving the issue in the applicant's favor would not warrant an upgrade), there is no requirement in the Stipulation that the decisional document explain why the DRB did not address the issue. This principle is based on Example No. 2 of the 31 January 1977 Model Statements (Part III., below). With respect to decisional documents prepared on or after the effective date of the amendments required by the proposed Court Order pertaining to the preparation of decisional documents, a response shall be provided in accordance with the decisional document principles set forth in section 4–1., above.

4–3. Under the Stipulation, a contention must be stated specifically. Although a numerical reference to the regulation alleged to have been violated is not necessarily required, the context of the regulation or a description of the procedures alleged to have been violated normally must be set forth in order to inform the DRB adequately of the basis for the applicant's position. Depending on the circumstances of the case, a general contention that "proper procedures were not followed" may result in a determination that the contention is not specifically stated.

4–4. No specific principle was discussed in paragraph A.4. of the letter of 25 April 1980, which referred to decisional document No. AD–77–11126 (January 25, 1978). The following additional guidance is derived from a review of the decisional document:

a. An applicant who received a discharge in lieu of court-martial made a general contention that he "would not have received a punitive discharge had he elected to take a court-martial." The DRB responded that the applicant could have received a punitive discharge in a trial by court-martial under the provisions of the Manual for Courts-Martial. This is sufficient under the Stipulation, but see section 4–4.c., below.

b. A different situation arises if the applicant, in the material presented to the DRB in support of the issue, recites specific factors that allegedly would have made it unlikely that a punitive discharge would have been awarded in a court-martial, and contends that it is inequitable to sustain a less than honorable administrative discharge in such circumstances. In that case, the DRB

must respond to the specific factors in terms of their relationship to the criteria for an administrative discharge.

c. The following will apply to all decisional documents issued on or after the effective date of the amendments required by the proposed Court Order pertaining to the preparation of decisional documents: When an applicant makes a general contention that he would not have received a punitive discharge had he elected to take a court-martial, and the DRB does not grant the full change in discharge requested by the applicant, the DRB may, depending on the circumstances of the case—

(1) State that it is not necessary to determine whether the DRB agrees with the applicant's position, because even if the DRB agreed with the applicant, other specified issues preclude granting relief (*e.g.*, reject the applicant's position on the grounds that even if true with respect to a punitive discharge, the administrative discharge was appropriate in view of specified factors present in the case);

(2) Disagree with the conclusion proposed by the applicant (*e.g.*, reject the applicant's position on the grounds that the individual probably would have received a punitive discharge, giving specific findings and reasons upon which this conclusion is based); or

(3) Respond that the applicant's issue is not specifically stated (*e.g.*, note that the applicant did not specify the factors that would have affected issuance of a punitive discharge, and such factors could not be discerned after a review of the materials considered under Section C of Enclosure 2, DoD Directive 1332.28).

5. *General requirements with respect to decisional issues.—5–1.* There is no requirement under the Stipulation to separately identify and label material as "findings," "conclusions," or "reasons."

5–2. There is no requirement under the Stipulation to describe standards or procedures contained in regulations referenced in the decisional document when the context could be understood by a reasonable person familiar with the discharge review process. For example, in Sample No. 1 of the 20 July 1977 Model Statements (Part II., below), the decisional document refers to "the special criteria" without specifying the content of those criteria. Similarly, it refers to the "one-third" rule in an ADRB memorandum without explaining that rule. As a matter of good practice, however, when addressing an issue related to a regulation, the decisional document should provide a brief description of the relevant portion of the regulation.

5–3. Decisional document No. AD–77–11038 (October 25, 1977) does not meet the requirements of the Stipulation of Dismissal. The applicant contended that he should have been upgraded on the basis of alcoholism, his service in Vietnam, and his Bronze Star. The Board found that alcoholism was present and that he had served in Vietnam and earned a Bronze Star, and upgraded his General Discharge to Honorable on the basis of "normal criteria." The document suggests that the upgrade was based on alcoholism, service in Vietnam, and the Bronze Star, but the index number refers only to alcoholism. This ambiguity is a defect in the document. (Source: Letter dated 25 April 1980, paragraph A.3.)

5–4. In decisional document No. ND–77–01842 (October 11, 1977), the DRB raised the issue of failure to separate the individual expeditiously and upgraded the discharge based on "the overall circumstances of the case." This does not meet the requirements of the Stipulation because it does not provide a sufficiently specific description of the circumstances that were relevant in this case. (Source: Letter of 25 April 1980, paragraph B.11.)

5–5. In decisional document No. AD–77–01759 (October 12, 1977), the DRB determined that failure to follow regulations in events leading to the discharge proceeding constituted a mitigating factor warranting an upgrade in the applicant's discharge, but the decisional document did not describe the specific procedural violations that formed the basis for granting relief. This did not meet the requirements of the Stipulation. (Source: Letter dated 25 April 1980, paragraph A.1.)

5–6. The Stipulation of dismissal (31 January 1977) refers to issue of fact, law, or discretion.

a. The following definitions explain these terms:

1. *Issue of fact:* A matter that involves determination of the existence or occurrence of an event or circumstance.

2. *Issue of law:* A matter that involves determination of the applicability or validity of a rule, statute, or constitutional provision, or other source of law, including matter that requires a determination as to whether, under the circumstances of the case, action by military authorities was arbitrary, capricious, or an abuse of discretion.

3. *Issue of discretion:* A matter, other than issue of fact or law, that is addressed to the authority of the DRB to change a discharge.

b. The Stipulation of Dismissal does not require applicants or the Discharge Review Boards to identify matters expressly as issues of fact, law, or discretion. The Department of Defense may implement the requirement to address issues of fact, law, or discretion by using applicable terms in the standards for discharge review.

6. *Matters concerning a change in discharge.—6–1.* In decisional document No. ND–77–00108 (December 16, 1977), the DRB upgraded a discharge based upon a finding that the applicant was issued an "inappropriate" conduct and performance grade, but failed to explain why the grade was inappropriate. This does not meet the requirements of the Stipulation. (Source: Letter of 25 April 1980, paragraph B.11.)

6–2. In decisional document No. AD–77–01759 the applicant raised an issue based upon error in failure to follow regulations in processing a conscientious objector application while in ROTC. The DRB found that the evidence of record supported the contention. The DRB stated that a review of applicable regulations revealed that the Professor of Military Science did not follow the procedures outlined in processing the applicant's request for conscientious objector status, and the DRB considered this to be a mitigating factor which led the applicant to commit the offense which ultimately led to his separation. The DRB's statement is not in compliance with the Stipulation because it does not inform the applicant of the specific procedural violations that formed the basis for granting relief. (Source: Matter filed by DoD on 4 August 1979, Page 6, incorporating Page 5, Paragraph B.1.)

Note.—This case provides an example as to when a decisional document may be defective even though there was no prejudice to the applicant. In addition to informing the applicant, the decisional document serves to inform the public, particularly former members of the armed forces, of the basis for the DRBs' decisions.

7. *Matters related to decisions granting a partial change in discharge.—7–1.* When a case is reviewed upon request of an applicant, and the DRB upgrades the discharge to "General," the DRB must provide reasons why it did not upgrade to "Honorable" unless the applicant expressly requests lesser relief. (Source: Letter of 25 April 1980, paragraphs A.8.—A.9., concerning decisional document Nos. AD–77–10692 (November 29, 1977) and AD–7X–10735 (August 17, 1977)).

Additional guidance. This requirement applies to all requests for corrective action submitted by an applicant with respect to his or her decisional document. In all other cases, this requirement applies to decisional documents issued on or after November 9, 1978.

7–2. No specific principle was discussed in paragraph B.29. of the letter dated 25 April 1980, which referred to decisional document No. MD–77–01690 (April 1, 1977). The following additional guidance is derived from a review of the decisional document: When a discharge is upgraded to General in a review on the DRB's own motion, there is no requirement to explain why the discharge was not upgraded to Honorable.

7–3. When the DRB upgrades to General, its explanation for not upgrading to Honorable may consist of reference to adverse matter from the applicant's military record. This principle is based on Example No. 1 of the 31 January 1977 Model Statement (Part III., below).

8. *Findings of fact.*—8–1. There is no requirement under the Stipulation to provide reasons for uncontested findings. For example, in the 20 July 1977 Model Statements (Part II., below), the findings as to ratings, age, education, and aptitude scores were listed with no reason given for reliance on the service record. Similarly, no reasons were given in Sample No. 1 for the findings that the applicant was intoxicated at the time of the crime and that he was influenced by older codefendants. The foregoing applies to decisional documents prepared on or before the effective date of the amendments to DoD Directive 1332.28 required by the proposed Court Order. With respect to decisional documents prepared after that date, the following guidance applies with respect to an uncontested issue of fact that forms the basis for a grant or denial of a change in discharge: the decisional document shall list the specific source of information relied upon in reaching the conclusion, except when the information

is listed in the portion of the decisional document that summarizes the service record.

8–2. When the applicant raises a factual issue on a matter that would have resulted in greater relief than that granted by the DRB if resolved in the applicant's favor, the DRB must resolve the factual issue and provide reasons for its conclusion. For example, in Sample No. 6 of the 20 July 1977 Model Statements (Part II, below), the applicant contended that he had received excellent ratings for a certain period of time, but the evidence was in conflict. The DRB resolved the issue by describing the conflicting evidence and by giving reasons for its determination that the evidence of "fair" ratings was more credible. In this case, there was no need to separately state reasons for findings and reasons for the conclusions; the "conclusion" constituted a finding of fact, and the DRB's reasons for the conclusion also constituted reasons for the findings that supported the conclusion.

8–3. Decisional document No. ND–7X–02596A (Nov. 29, 1977) (discussed in paragraph B.7. of the letter dated 25 April 1980) involved a contention by the applicant that "the discharge was improper and inequitable because the GOS request was coerced and the waiver of rights tainted by improper advice, coercion and confinement." The following guidance applies to decisional documents issued on or after the effective date of the amendments to DoD Directive 1332.28 required by the proposed Court Order: If relief in a similar case is denied in whole or in part on the basis of an issue of fact that is resolved after consideration of contradictory evidence in the record (including information cited by the applicant or otherwise identified by a member of the DRB), the decisional document shall set forth the conflicting evidence and explain why the information relied upon was more persuasive than the information that was rejected. If the presumption of regularity is cited as the basis for rejecting such information, the decisional document shall: (1) Set forth the basis for applying the presumption of regularity, and (2) explain why the contradictory evidence was insufficient to overcome the presumption. In an appropriate case, the explanation as to why the contradictory evidence was insufficient to overcome the presumption of regularity may consist of a statement that the applicant failed to provide sufficient corroborating evidence, or that the DRB did not find the applicant's testimony to be sufficiently credible to overcome the presumption. Therefore, if the DRB responds to such an issue by citing the presumption of regularity as a basis for its determination that there was no improper advice, the decisional document must cite the evidence in conflict (*e.g.*,) the evidence in support of the presumption and the contradictory evidence) and provide and explanation as to why the contradictory evidence is insufficient to overcome the presumption.

8–4. In the case pertaining to decisional document No. AD–77–01759 (discussed in the Matter filed by DoD on 4 Aug. 1979), the applicant presented the following issue: "Error in failure to follow proper procedures during period of any disenrollment." His brief discussed the "Failure to Timely Notify [the Applicant] of Final Decision on Disenrollment," and he testified at a DRB hearing that he did not receive written notification of the ROTC retention boards' decision to disenroll him until one year after the ROTC retention board hearing was held. The DRB responded:

> The contention, as stated, can neither be refuted nor supported by the documentation and testimony provided by the applicant. Based upon the presumption of regularity in government operations, the Board concludes [sic] that the contention does not provide a basis for relief.

Under the guidance set forth in section 8–3., above, this response would not suffice with respect to documents issued after the effective date of the amendments required by the proposed Court Order pertaining to the preparation of decisional documents. Under the new guidance, if the DRB determined in this example that the applicant did receive such written notice in a timely manner, and the reason for this determination was the presumption of regularity, a statement of the reasons for this determination must consist of more than a citation to the presumption of regularity. This is because the DRB relied on the presumption of regularity after consideration of contradictory evidence in the record (the applicant's testimony that he did not receive written notification until one year after the ROTC retention board hearing was held). In order to comply with the new guidance, the decisional document must set forth the evidence in conflict and explain why the contradictory evidence was insufficient to overcome the presumption.

8–5. The substantive rules of discharge review expressed in Department of Defense rules permit a board to resolve a factual dispute based upon a presumption of regularity in governmental affairs absent substantial credible evidence to rebut the presumption. For example, if an applicant contends that specific procedures were not followed, and the DRB concludes that there was no error requiring a change in discharge, the DRB could use the following findings and reasons to support its conclusion: (1) It could rely upon specific evidence of record (*e.g.*, that a form concerning the procedure in question was completely proper); or (2) the DRB could conclude that there was no evidence in the record sufficient to refute or support the contention (*e.g.*, where no specific form concerning the procedure is required and the other relevant documents are in proper order). In either case, the DRB could rely upon the presumption of regularity as the reason for its findings and conclusion. Whether such reliance would be correct in any case would be a matter of substantive law beyond the scope of the Stipulation or decisional document principles. (Source: Matter filed by DoD on 4 August 1979, page 3, paragraph B.2.e.)

Additional guidance: a. For decisional documents issued on or after the effective date of the amendments required by the proposed Court Order pertaining to the preparation of decisional documents, the guidance in section 8–3, above, applies to use of the presumption of regularity.

b. The foregoing applies only when the DRB relies on the presumption of regularity. In many cases, the DRB will be able to resolve factual disputes on the basis of the evidence of record without any reliance on the presumption of regularity. The decision whether to use the presumption, however, is a substantive matter that does not fall within the requirements of the Stipulation or the decisional document principles of this Annex.

8–6. In an appropriate case, the DRB may conclude that there is no error with respect to a specific procedure, base that conclusion upon a finding that relevant documents are in proper order, and cite the presumption of regularity as the reason for its findings and conclusion. (Source: Matter filed by DoD on 4 August 1979, page 4, paragraph B.2.f.)

8–7. Decisional document No. AD–7X–20162 (December 14, 1977) does not meet the requirements of the Stipulation of Dismissal for the following reasons. The applicant contended that his conscientious objector application should have been granted because even if the reasons given by the Conscientious Objector Review Board (CORB) were true, they did not provide a legally sufficient basis-in-fact for finding that he was not a sincere conscientious objector. He contended that accordingly, he should have been discharged as a conscientious objector prior to his AWOL. The Discharge Review Board (DRB) found that his application had been approved at Fort Lewis but disapproved by the Department of the Army Conscientious Objector Review Board. The DRB described the reasons cited by the CORB for denying the application. The DRB then described the accused's AWOL, his unsuccessful attempt to obtain a federal court order to prevent his shipment to Vietnam, and stated that the procedures followed during processing the conscientious objector application were correct and the denial of the request for discharge was appropriate based on the evidence in hand. The decisional document is defective because it does not set forth the findings and reasons upon which the DRB based its conclusion that the CORB's decision was appropriate in view of the evidence in hand. The decisional document did not meet the requirements of the Stipulation because it is unclear whether the DRB concluded that: (1) The discharge should not be changed on the basis of the presumption of regularity; or (2) in the opinion of the DRB, the evidence constituted a legally sufficient basis for the denial of the request for discharge; and if (2), the findings and reasons upon which such a conclusion was based. (Source: Letter dated 25 April 1980).

Additional guidance: If the DRB decided the case on the basis of the presumption of regularity despite the applicant's presentation of evidence to the contrary, (*e.g.*, it rejected the applicant's statement of facts in whole or in part), the DRB would have to explain why it did not find the applicant's evidence sufficient to overcome the presumption.

8–8. In decisional document No. ND–77–02504 (February 9, 1978), the DRB reviewed a discharge by courtmartial in which the applicant made specific contentions about the providency of a guilty plea, but it cannot be determined whether the DRB upheld the discharge on the basis of a presumption of

regularity or whether the DRB made a separate determination as to the providency of the plea. Because of this ambiguity, the decisional document does not meet the requirements of the Stipulation. (Source: Letter dated 25 April 1980, paragraph B.2.)

Additional guidance: If, under the amendments required by the proposed Court Order pertaining to the preparation of decisional documents, the DRB upholds the discharge in such a case on the grounds that the record has not been corrected by the appropriate organization, the decisional document shall contain a statement to that effect.

8–9. No specific principle was discussed in paragraph B.9. of the letter dated 25 April 1980, which referred to decisional document No. MD–77–03891 (January 18, 1978). The following additional guidance is derived from a review of the decisional document: When an applicant's issue is a general allegation that "medical problems should have led to a discharge for disability," but the applicant's submissions (*e.g.*, brief or testimony) do not cite specific fact in support of the allegation (*e.g.*, showing that medical officers violated regulations or abused discretion in declining to recommend discharge for disability), the DRB may respond to the allegation by noting that the contention is not specific. (See section 4–1.a.(7)).

8–10. No specific principle was discussed in paragraph B.14. of the letter dated 25 April 1980, which referred to decisional document No. MD–77–02469 (September 9, 1977). The following additional guidance is derived from a review of the decisional document: When a complaint is submitted with respect to a decisional document issued before the effective date of the amendments required by the proposed Court Order pertaining to the preparation of decisional documents, and the complaint concerns the adequacy of the DRB's use of the presumption of regularity, or words having a similar import, corrective action will be required only if a reasonable person familiar with the discharge review process could not understand the basis for relying on the presumption. With respect to decisional documents issued on or after the effective date of the amendments to the Directive, use of the presumption of regularity must be in accordance with the requirements set forth in section 8–3., above.

8–11. In the case pertaining to decisional document No. ND–76–01396 (March 10, 1977), the applicant claimed that the psychiatric evaluation in the case did not meet regulatory requirements, and the DRB rejected this position on the grounds that the evaluation was sufficient. The DRB did not cite the presumption of regularity or otherwise provide reasons in support of the finding that the evaluation was sufficient. The Secretarial Reviewing Authority adopted the DRB's statement without providing the necessary reasons for the finding. Without such reasons, the statement violated the Stipulation. (Source: Letter dated 25 April 1980, paragraph B.22.)

8–12. The letter dated 15 July 1977 also made the following observation:

As a general rule, the Stipulation does not require the DRB's to list enumerated findings that specific facts do not exist in particular applicants' cases so long as the decisional documents have findings of the relevant facts that do exist and upon which the decision is based and a general finding that no other relevant facts are present. If the applicant has made specific contentions or a factual dispute is evident, more extensive findings and reasons will be necessary.

The foregoing applies to all decisional documents issued prior to the effective date of the amendments required by the proposed Court Order pertaining to the preparation of decisional documents. The Department of Defense will issue specific guidance concerning factual matters in decisional documents issued on or after the effective date of the amendments.

8–13. When the DRB makes a factual finding based upon the testimony of a witness, there is no requirement to provide reasons for such findings in the absence of contradictory evidence in the record or a contention to the contrary by the applicant. This principle is based on the 31 January 1977 Model Statements (Part II., below).

8–14. There is no requirement to list the source of information that is routinely derived from a military record. This principle is based on the 31 January 1977 Model Statements (Part III, below). With respect to decisional documents prepared on or after the effective date the amendments required by the proposed Court Order pertaining to the preparation of decisional documents, the following guidance applies: For each finding of fact that provides a basis for a decisional issue, the decisional document shall list the specific source of information relied upon. This may include the presumption or regularity in appropriate cases. If the information is listed in the service record portion of the decisional document, a citation is not required.

8–15. When the DRB grants relief on the basis of an applicant's testimony, even when that testimony contradicts other aspects of the record of the discharge proceedings, there is no requirement that the DRB give reasons for believing the applicant's version. This principle is based on Example No. 5 of the 31 January 1977 Model Statements (Part III., below).

8–16. When the DRB concludes that relief is warranted on the basis of the "overall record," the DRB may list the factors in the record that were considered without further explanation as to the significance of such factors. This principle is based on Example No. 5 of the 31 January 1977 Model Statements (Part III., below).

8–17. When the disposition of an issue depends on a findings of facts, and the only evidence in favor of the applicant is the applicant's testimony, the DRB may reject the applicant's position by explaining that the evidence raised by the applicant was insufficient in view of the regularity of the record. This principle is based on Example No. 6 of the 31 January 1977 Model Statements (Part III, below). With respect to decisional documents prepared on or after the effective date the amendments to DoD Directive 1332.28 required by the proposed Court Order, this principle shall be applied in conjunction with the guidance in section 8–3., above.

8–18. When an applicant raises an issue of fact but fails to cite any evidence in support of the issue, the DRB may reject the applicant's position, and state as a reason that there is insufficient evidence to evaluate the merits of the issue raised by the applicant. This principle is based on Example No. 7 of the 31 January 1977 Model Statement (Part III., below).

9. *Citation of prior decisions.*—9–1. The Department of Defense takes the following position with respect to the effect of prior DRB decisions on subsequent cases: Under DRB standards of review, no factors may be established which require automatic change or denial of a change in discharge. Neither a DRB nor the Secretary of the Military Department concerned shall be bound by any methodology of weighting of the factors in reaching a determination. In each case, the DRB or the Secretary of the Military Department concerned shall give full, fair, and impartial considerations to all applicable factors prior to reaching a decision. The primary function of the DRB is to exercise its discretion on issues of equity by reviewing the individual merits of each application on a case-by-case basis. Prior decisions in which the DRB exercised its discretion to change a discharge based on issues of equity (including the factors cited in such decisions or the weight given to factors in such decisions) do not bind the DRB in its review of subsequent cases because no two cases present the same issues of equity. Plaintiffs take the following position: The DRBs, like other federal agencies, are required by fundamental principles of administrative law and due process to adjudicate similarly situated cases in a similar manner. Plaintiffs further take the position that this principle requires that when an applicant cites a prior DRB decision in an issue and claims that the DRB should grant an upgrade in his case because the facts are similar to those in the cited case, the DRB, if it denies relief, must cite differing facts, differing standards, changes in policy, or reasons for disavowing the prior decision. The Department of Defense does not agree that the DRBs must respond in the manner stated by plaintiffs when an applicant cites a case involving an issue of equity because no two cases present the same issues of equity. The Department of Defense also does not agree that its policies are insufficient to meet any applicable requirements with respect to responding to citation of prior cases. The parties agree, however, that this disagreement involves a matter of substantive law that is beyond the scope of the Stipulation of Dismissal, this Agreement, and the Court's Orders in this case.

a. In the context of the position of the Department of Defense, the following applies when the DRB rejects an applicant's issue that clearly and specifically cites a prior DRB decision and sets forth issues from the prior decision that the applicant believes to be relevant to his case:

(1) If the applicant's issue contends that the DRB is required as a matter of law to follow a prior decision by setting forth an issue of law from the prior decision and describing its relationship to the applicant's case, this issue

shall be addressed under the decisional document principles in subsections 4–1.a.(1), 4–1.a.(2), or 4–1a.(4), above.

(2) If the applicant sets forth issues of equity contained in a prior DRB decision, describes the relationship to the applicant's case, and contends that the DRB is required as a matter of law to follow the prior case, the decisional document may note that the DRB is not bound by its discretionary decisions in prior cases under the substantive standards applicable to the DRB. However, the issues cited by the applicant, and the description of the relationship of the principles to the applicant's case, shall be addressed as issues of equity under the decisional document principles in subsections 4–1.a.(1), 4–1.a.(2), or 4–1.a.(4), above. Nothing in this Settlement Agreement requires the DRB to cite differing facts, differing standards, changes in policy, or reasons for disavowing the prior decision.

b. If there is a final, authoritative judicial decision requiring that prior decisions of a Discharge Review Board cited by an applicant must be distinguished in the manner stated by the plaintiffs in the sixth and seventh sentences of section 9–1, above, nothing in this Agreement precludes a grievance under paragraph 2 of the Stipulation of Dismissal (January 31, 1977) asking that appropriate corrective action be taken with respect to complaints filed on or after the date this Agreement is approved alleging such a failure to distinguish prior decisions of the Discharge Review Board.

9–2. Decisional document No. ND–77–02595 (February 9, 1978) does not meet the requirements of the Stipulation of Dismissal for the following reasons: The applicant contended that his discharge should have been upgraded because a cited NDRB case demonstrated that it was an abuse of discretion for the applicant to have received a Bad-Conduct Discharge under the circumstances described in the contention. The Board stated that there were distinguishing factors but cited none. The Stipulation does not require that the Board give any degree of precedential value to a decision in a prior case. However, when an applicant contends that a discharge should be upgraded and sets forth specific aspects of the applicant's case that are similar to specific aspects of an earlier case in which the Board granted such relief, the Board, if it rejects such a contention by stating that there were distinguishing factors, must set forth those factors. (Source: Letter dated 25 April 1980, paragraph B.13.) See subsection 9–1., above, regarding appropriate responses in such circumstances.

9–3. The question as to whether the DRBs must apply the doctrine of *stare decisis* is beyond the scope of the Stipulation. (Source: Letter dated 25 August 1977, page 1.)

10. *Issues of Law.*—10–1. When the applicant challenges the propriety of his discharge by contending that the criminal conviction upon which the discharge was based was illegal, the DRB may respond by indicating that it does not grant relief based upon such issues (*e.g.*, because the responsibility for correcting the record rests with another organization). This principle is based on Example No. 9 of the 31 January 1977 Model Statements (Part III., below). With respect to decisional documents prepared on or after the effective date the amendments required by the proposed Court Order pertaining to the preparation of decisional documents, this principle shall be applied in conjunction with the following guidance: If the DRB rejects the applicant's challenge to a criminal conviction on the basis of propriety standards, nothing in the Settlement Agreement precludes a DRB from considering the issue on its own motion on equitable grounds. See section 8, above.

10–2. When a regulation requires a particular result absent "exceptional circumstances" and the applicant does not raise an issue as to the presence of specific circumstances, the DRB may state that there were no exceptional circumstances, and is not required to provide further reasons for that conclusion. This principle is based on Example No. 10 of the 31 January 1977 Model Statement (Part III., below).

10–3. No specific principle was discussed in paragraph B.8. of the letter dated 25 April 1980, which referred to decisional document No. ND–7X–01759A (January 24, 1978). The following additional guidance, which is derived from a review of the decisional document, applies to all decisional documents issued on or after the effective date of the amendments required by the proposed Court Order pertaining to the preparation of decisional documents: When an applicant's issue contains a general allegation that a certain course of action violated his constitutional rights, the DRB may respond in appropriate cases by noting that the action was consistent with statutory or regulatory authority, and by citing the presumption of constitutionality that attaches to statutes and regulations. If, on the other hand, the applicant makes a specific challenge to the constitutionality of the action by challenging the application of a statute of regulation in a particular set of circumstances, it is not sufficient to respond solely by citing the presumption of constitutionality of the statute or regulation when the applicant is not challenging the constitutionality of the statute or regulation. Instead, the response must address the specific circumstances of the case.

11. *Issues of discretion.*—11–1. When the DRB balances mitigating factors against aggravating factors as the reason for a conclusion, the Stipulation does not require the statement of reasons to set forth the specific factors that were balanced if such factors are otherwise apparent on the face of the decisional document. The foregoing applies to decisional documents prepared prior to the effective date of the amendments required by the proposed Court Order pertaining to the preparation of decisional documents. With respect to decisional documents prepared after that date, the statements addressing decisional issues in such a case will list or refer to the factors supporting the conclusion.

11–2. When the DRB concludes that aggravating factors outweigh mitigating factors (or vice versa), the DRB must set forth reasons such as the seriousness of the offense, specific circumstances surrounding the offense, number of offenses, lack of mitigating circumstances, or similar factors. The DRB is not required, however, to explain why it relied on any such factors unless the applicability or weight of such factor is expressly raised as an issue by the applicant.

11–3. In decisional document No. MD–7X–01715 (June 2, 1977), the DRB denied relief on the grounds that the discharge was just and equitable, and that mitigating factors did not justify upgrading the discharge in view of the military record of performance and conduct. Because the decisional document did not describe the negative factors in the military record upon which the DRB's statement was based, it did not meet the requirements of the Stipulation. (Source: Letter dated 25 April 1980, paragraph B.19.)

11–4. In decisional document No. ND–7X–02596A (November 29, 1977), the applicant contended that failure to provide an opportunity to rebut prejudicial information rendered his discharge inequitable. The DRB's response—that the member was discharged in lieu of trial by court-martial—merely described the action taken and was not responsive to the contention, thereby violating the Stipulation. (Source: Letter dated 25 April 1980, paragraph B.7.).

12. *Pub. L. No. 95–126 and SDRP cases.*—12–1. Decisional documents, including those issued under Pub. L. No. 95–126, must contain a statement of findings, conclusions, and reasons that complies with paragraph 5(A)(1) of the Stipulation.

12–2. A decision under the Act of October 8, 1977, Pub. L. No. 95–126, 91 Stat. 1106, as to whether a discharge would have been upgraded under the standards set forth in DoD Directive 1332.28, must contain a statement of findings, conclusions, and reasons with respect to that determination. (Source: Letter of 25 April 1980, concerning the following decisional documents that did not meet the requirements of the Stipulation: Nos. ND–7X–00878 (May 1, 1978); ND–7X–00982 (July 11, 1978); ND–7X–00851 (July 18, 1978); ND–7X–00833 (July 7, 1978); ND–7X–00826 (July 7, 1978); ND–7X–00812 (July 7, 1978); ND–7X–00322 (July 11, 1978); ND–7X–00319 (November 30, 1977).)

Additional guidance. The decisional document in cases prepared under Pub. L. No. 95–126 must address issues previously raised by the DRB or the applicant during review of the same case during the SDRP only insofar as required by the following guidance:

(1) When the DRB bases its decision upon issues previously considered during the SDRP, the new decisional document under Pub. L. No. 95–126 must address those issues;

(2) If, during consideration of the case under Pub. L. No. 95–126, the applicant presents issues previously considered during the SDRP, the new decisional document must address those issues; and

(3) If a decisional document concerning an initial record review under Pub. L. No. 95–126 is otherwise defective and corrective action is taken after a request by the applicant for a priority review under the procedure for corrective action in such cases required by the proposed Court Order, the new decisional document will address all issues previously

raised by the applicant during the SDRP. *See* section 12–3., below.

12–3. The following, which is derived from information provided by the Navy in paragraph 19 of Attachment 4 of the 31 January 1978 Answer to plaintiffs' interrogatories, applies to complaints about decisional documents issued by the Navy after an initial record review under the Pub. L. No. 95–126 re-review program: The decisional documents will be reviewed for compliance with the Stipulation and requirements of DoD Directive 1332.28 applicable at the time the decisional document was issued. In reviewing such decisional documents for compliance, the issues of fact, law, or discretion raised by the applicant in accordance with Stipulation Paragraph 5A(1)(e) while the case was considered pursuant to the Special Discharge Review Program will be deemed to be issues of fact, law, or discretion raised by the applicant in accordance with Stipulation Paragraph 5A(1)(e) for purposes of Pub. L. No. 95–126 review.

12–4. Individualized statements of findings, conclusions, and reasons are required in SDRP documents. These statements should be addressed in light of the differing nature of the SDRP program from the DRBs' standard function. (Source: Letter dated June 16, 1977, page 2.)

12–5. Additional guidance on SDRP cases is contained in Part II. of this Annex.

13. *The Secretarial Reviewing Authority.*—13–1. The Stipulation does not require the Secretarial Reviewing Authority (SRA) to state reasons for not adopting positions taken by the Board. The Stipulation requires only that the decisionmaker issue a statement of findings, conclusions, and reasons on issues upon which the decision is based, including factors required to be considered by regulations applicable for determination of the discharge where such factors are a basis for denial of the relief requested by the applicant. The SRA also must address all other issues raised by the applicant which would warrant greater relief than granted if resolved in the applicant's favor.

The SRA is free to disregard the majority or the minority or both in cases reviewed by the SRA. So long as the decisional document provides a statement of the findings, conclusions, and reasons for the SRA's decision, and so long as the SRA addresses the issues raised by the applicant in accordance with the Stipulation, the SRA, for example, can decide the case without regard to whether a given issue was raised by either the majority or the minority. If the majority fails to address issues required by the Stipulation, then the SRA errs if he adopts such a defective statement. If the majority's decisional document is adequate, then the Secretary's adoption is proper. (Source: Matter filed by DoD on 4 August 1979, Pages 8, 10, 11, which referred to decisional document No. ND–77–01737).

Additional guidance. The foregoing applies with respect to decisional documents issued before the effective date of the amendments required by the proposed Court Order pertaining to the preparation of decisional documents. With respect to decisional documents issued on or after that date, the guidance in sections 13–2. through 13–4., below, is applicable.

13–2. Under the Stipulation, there is no requirement for a statement of minority views or a minority report. A minority report is a recommendation that the SRA reject the conclusions of the majority in whole or in part. It is DoD's intention to eliminate the Minority Report at this time. If a Minority Report is authorized in the future, any such report adopted by the SRA shall contain the following information:

a. The Minority's recommendation as to whether there should be a change in the character of or reason for discharge (or both).

b. The specific changes that should be made, if any.

c. A proposed set of decisional issues for consideration by the SRA, as follows:

(1) For each decisional issue prepared by the majority with which the minority disagrees, the minority shall prepare an alternative statement under the principles governing decisional issues. This statement shall include the reasons for the minority's disagreement with the majority.

(2) If the minority recommends that the SRA base the decision in whole or in part on issues not addressed by the majority, the minority shall list and discuss such issues in accordance with the principles governing decisional issues.

d. If the minority disagrees with the majority's responses to other matters submitted as issues by the applicant, the minority shall prepare alternative responses under the principles governing responses to items submitted as issues by applicants.

13–3. There is no requirement that the President submit a recommendation when a case is forwarded to the SRA. If such a recommendation is authorized, however, any such recommendation adopted by the SRA shall contain the following information:

a. The President's views as to whether there should be a change in the character of or reason for discharge (or both). If the President recommends such a change, the particular change to be made shall be specified.

b.The recommendation may state that the President has adopted the decisional document prepared by the majority. The following applies only if a formal minority report is authorized:

(1) If the majority has not prepared a response to the issues raised in the minority report, the President shall respond to the minority report in the following cases:

(a) When the case will be transmitted to the SRA to resolve a conflict between the minority and the majority report when required by DoD or the military department concerned.

(b) When the minority report recommends relief that is more favorable to the applicant than that proposed by the majority.

(2) When The President is required to respond to issues raised in the minority report, the following requirements apply:

(a) With respect to each issue set forth in the minority report, the recommendation shall state whether the President agrees or disagrees with the position of the minority.

(b) With respect to each issue in which the SRA disagrees with the minority report, the recommendation shall set forth the President's reasons for rejecting the minority's position. If the majority has provided such reasons, the President may adopt the views of the majority.

b. If a minority report is authorized, the recommendation may state that the President has adopted the minority report.

c. If the President adopts only in part the decisional document prepared by the DRB (or the minority report, if any), the recommendation shall cite the specific statements adopted. To the extent that the President modifies a statement that is adopted in part, the recommendation shall set forth the modification.

d. The recommendation shall set forth the following to the extent not adopted in whole or in part from the majority or the minority report (if any).

(1) The issues on which the President's recommendation is based. Each such decisional issue shall be addressed by the President.

(2) The President's response to items submitted as issues by the applicant.

(3) Reasons for rejecting the conclusions of the majority or the minority with respect to issues which, if resolved in the applicant's favor, would have resulted in greater relief for the applicant than that afforded by the DRB President's recommendation. Such issues shall be addressed under decisional document principles applicable to rejection of an applicant's issues.

13–4. There is nothing in the Stipulation of Dismissal or subsequent proceedings in the *Urban Law* case that requires the SRA to:

(1) Take action in any case or group of cases;

(2) Obtain a formal report from the Minority, the DRB President, or any other official;

(3) Provide the applicant with the opportunity to rebut matter forwarded to the SRA.

a. If an opportunity to rebut is provided as a matter of policy, the rebuttal is limited to matter in opposition to the position of the majority, minority, or DRB President; or in the case of an upgrade, matter in support of the decision. The rebuttal must address clearly and specifically issues raised by the applicant in the proceeding before the DRB or by the majority, the minority report (if any), or the DRB President.

b. The Addendum shall set forth the SRA's decision as to whether there will be a change in the character of or reason for discharge (or both); if the SRA concludes that a change is warranted, the particular change to be made shall be specified. If the SRA adopts the decision recommended by the DRB or DRB President (or minority report if authorized as a matter of policy), the decision shall consist of a reference to the matter adopted.

c. The Addendum shall set forth the SRA's position on decisional issues, issues submitted by an applicant, and issues raised by the majority and the DRB President (or minority report if authorized as a matter of policy) in accordance with the following guidance.

1. The Addendum may state that the SRA has adopted the DRB President's recommendation.

2. The Addendum may state that the SRA has adopted the decisional document prepared by the majority. The following applies only if a formal minority report is authorized:

(a) If the majority has not prepared a response to the issues raised in the minority report, the SRA shall respond to the minority report under subparagraph (b), below, in the following cases:

(1) When the case is reviewed by the SRA to resolve a conflict between the minority and the majority under guidance established by DoD or the Military Department.

(2) When the minority report recommends relief that is more favorable to the applicant than that proposed by the majority.

(b) When the SRA is required to respond to the issues raised in the minority report, the following guidance is applicable:

(1) With respect to each issue set forth in the minority report, the Addendum shall state whether the SRA agrees or disagrees with the position of the minority.

(2) For each issue in which the SRA disagrees with the minority report, the Addendum shall set forth the SRA's reasons for rejecting the minority's position. If the majority has provided such reasons, the SRA may adopt the views of the majority.

3. If a minority report is authorized, the Addendum may state that the SRA has adopted the minority report. If the majority or the DRB President recommended relief greater than that proposed in the minority report, the SRA shall respond under subsection 5., below.

4. If the SRA adopts part of the decisional document prepared by the DRB, the minority report (if authorized) or the recommendation of the DRB President, the Addendum shall cite the specific statement adopted. To the extent that the SRA modifies a statement that is adopted, the Addendum shall set forth the modification.

5. The Addendum shall set forth the following to the extent not adopted in whole or in part from the majority, the minority report (if authorized), or the DRB President:

(a) A list of the issues on which the SRA's decision is based. Each such decisional issue shall be addressed by the SRA. This includes reasons for rejecting the conclusion of the majority, the minority report (if authorized), or the DRB President with respect to issues which, if resolved in the applicant's favor, would have resulted in greater relief for the applicant than that afforded by the SRA's decision.

(b) The SRA's response to items submitted as issues by the applicant.

(c) If the full relief requested is not granted by the SRA, the issues referenced in (a) and (b) above, shall be addressed in accordance with the principles in section 4–1.a., above.

d. The following applies only if an opportunity to submit rebuttal material is authorized:

1. If the SRA grants the full change in discharge requested (or greater relief) that fact shall be noted, the decisional issues shall be addressed and no further response to the rebuttal is required.

2. If the SRA does not grant the full change in discharge requested (or a more favorable change), the Addendum shall list each issue in rebuttal submitted by an applicant under rules established by DoD, and shall set forth the response of the SRA under the following guidance:

(a) If the SRA rejects an issue in rebuttal, the SRA may respond in accordance with the principles in section 4–1.a, above.

(b) If the matter adopted by the SRA provides a basis for rejecting the rebuttal material, the SRA may note that fact and cite the specific matter adopted that responds to the issue in rebuttal.

(c) If the matter submitted by the applicant does not contain rebuttal material, that fact shall be noted.

14. *Other aspects of the decisional document.*—14–1. Decisional Document No. MD–77–01439 (March 15, 1977) did not note the specific regulatory authority under which the member was discharged. This violated the Stipulation. (Source: Letter dated 25 April 1980, paragraph B.23.)

15. *The Index and the Reading Room.*—15–1. The term "index" includes all the quarterly indexes. (Source: Letter dated 5 October 1978, page 3, paragraph 9.) The index shall include the terminology contained in DoD Directive 1332.28 and in any amendments thereto.

15–2. The index shall be maintained in selected permanent locations throughout the United States. This ensures reasonable availability to applicants at least 30 days before a traveling panel review. A list of these locations shall be published in the **Federal Register.** The index shall also be made available at sites selected for traveling panels or hearing examinations for such periods as the DRB or a hearing examiner is present and in operation. An applicant who has requested a traveling panel review or a hearing examination shall be advised in the notice of such review of permanent index locations.

15–3. A notice containing the location, hours of operation, and similar types of information regarding the reading room will be published in the **Federal Register.** (Source: Letter dated 25 August 1977, attachment, paragraph 1.d.)

15–4. The Department of Defense provides copies of decisional documents to individuals and organizations outside the Washington, D.C. area in response to requests for such documents. The Department of Defense shall continue this policy and shall endeavor to respond to such requests in a timely manner. The timeliness of such responses may be affected by factors such as the length of a request, the volume of other pending requests, and the impact of other responsibilities of the staff assigned to such duties. Nothing in the Stipulation of Dismissal, this Agreement, or the Court's Order in this case addresses the question of whether a fee may be charged for such documents, and the parties agree that such question is beyond the scope of this case. The manual that accompanies the Index of Decisions shall notify the public that if applicant indicates that a review is scheduled for a specific date, a priority effort will be made to provide requested decisional documents before that date. The individual will be advised at the earliest possible time if that cannot be accomplished.

16. *Complaints concerning decisional documents and index entries.*—16–1. DoD shall consider specific complaints in accordance with the proposed Court Order.

16–2. Paragraph 5 of the Letter dated 5 October 1978 describes the relationship between the military departments and the Office of the Secretary of Defense with respect to the complaint procedure, and provides that a complainant will obtain either the corrective action requested from the military department or will receive an explanation from the Office of the Assistant Secretary of Defense (MRA&L) as to why the corrective action requested was not taken.

16–3. Paragraph 6 notes that the Department of Defense has pledged a good faith effort to respond to complaints under the grievance procedure in a timely fashion. (Source: Letter dated 5 October 1978, Page 3.)

Additional guidance: The Department of Defense will establish priorities and processing goals to ensure timely processing of complaints. The Department of Defense notes that the timeliness of responses will depend upon reasonable use of the complaint process in accordance with the following considerations. The discharge review boards were established for the benefit of former members of the armed forces. The complaint process can aid such persons most effectively if it is used by former members of the armed forces when necessary to obtain correction of their own decisional documents or to prepare for discharge reviews. If a substantial number of complaints submitted by others interferes with the ability of the DRBs to process applications for discharge review in a timely fashion, the Department of Defense will adjust the processing goals to ensure that the system operates to the primary advantage of applicants. Plaintiffs do not object to these general principles, but expect that they will be administered in a reasonable manner.

16–4. The following guidance concerns the complaint process:

a. When a complaint concerns a specific issue in the applicant's own discharge review, the complaint review process shall involve a review of all the evidence that was before the DRB or SRA, including the testimony and written submissions of the applicant, to determine whether the issue was submitted, and if so, whether it was addressed adequately with respect to the Stipulation of Dismissal and other applicable provisions of this Annex.

b. With respect to all other complaints about specific issues, the complaint review process may be based solely on the decisional document, except when the complainant demonstrates that: (1) facts present in the review in question raise a reasonable likelihood of a violation of the Stipulation of Dismissal or the requirements established by this Settlement Agreement or the Court in this case; and (2) a reasonable person, familiar with the discharge review process, could resolve the complaint only after a review of the evidence that was before the DRB or SRA.

c. In order to protect the privacy rights of applicants and other persons, identifying details are removed from decisional documents prior to submission to the Reading Room. In order to enable DoD to locate the personnel records in such cases when the underlying record must be examined under section 16–4.b., DoD will maintain a means of relating the docket number of a case in the Reading Room to the name of the applicant in that case. This system shall be used solely for DoD's internal use (*e.g.*, to locate the records that were used in the discharge review), and shall not be disclosed to the public. A system presently exists for readily relating Army and Navy cases decided on or after April 1, 1977 to the names of applicants; a system presently exists for readily relating Air Force cases decided on or after May 1, 1981 to the names of applicants. A means of identifying names of applicants in these cases will be maintained by DoD. If a complaint concerns a decisional document issued by the Air Force prior to May 1, 1981 in which a review of the underlying records would be required under section 16–4.b., above, the review may be based solely on the decisional document when the complaint does not identify the name of applicant in the case.

d. The following additional requirements apply to complaints about modification of an applicant's issue or the failure to list or address an applicant's issue:

(1) When the complaint is submitted by the applicant, and the record of the hearing is ambiguous on the question of whether there was a meeting of the minds between the applicant and the DRB as to modification or omission of the issue, the ambiguity will be resolved in favor of the applicant.

(2) When a complaint is submitted by a person other than the applicant, it must set forth facts (other than the mere omission or modification of an issue) demonstrating a reasonable likelihood that the issue was modified or omitted without the applicant's consent.

(3) When the complaint is rejected on the basis of the presumption of regularity, the response to the complaint must set forth the reasons why the evidence submitted by the complainant was not sufficient to overcome the presumption.

e. This section supercedes the following matter:

(1) Paragraph B.1. of the Letter dated 25 April 1980, concerning decisional document No. 77–01549 (September 15, 1977).

(2) Paragraph B.2.d. of the Matter filed by DoD on 4 August 1980.

(3) Paragraph 2.9 of the Answer to Plaintiffs' Second Interrogatories to Defendants (2 March 1979).

16–5. An apparent defect on the face of a decisional document does not necessarily mean that there has been a violation of the Stipulation. For example, there may be cases in which a block has been checked on a decisional document indicating that the applicant submitted issues, but the decisional document does not address any applicant issues. When there is no record that such issues were submitted, and there is no complaint from the applicant or counsel demonstrating that specific issues were submitted to the DRB, it may be presumed that no such issues were submitted. (Source: Letter dated 25 April 1980 concerning decisional document No. ND–7X–06003 (October 27, 1977)).

16–6. A corrected decisional document created by amending a decisional document in response to a complaint will be based upon the complete record before the DRB (or the SRA) at the time of the original defective statement was issued, including, if available, a transcript, tape recording, videotape or other record of a hearing, if any. The new decisional document will be indexed under categories relevant to the new statements. (Source: Letter dated 5 October 1978, page 3, paragraph 9.)

16–7. Complaints shall be considered under the following standards:

a. A complaint by an applicant with respect to the decisional document issued in the applicant's own discharge review shall be considered under the Stipulation of Dismissal, other decisional document requirements applicable at the time the document was issued, and the principles in this Annex, subject to any limitations set forth therein with respect to dates of applicability. If the authority empowered to take corrective action has a reasonable doubt as to whether a decisional document meets specific requirements of the Stipulation or other applicable rules, the complaint shall be resolved in the applicant's favor.

b. With respect to any decisional document issued after the effective date of the amendments to DoD Directive 1332.28 regarding the submission of issues on DD Form 293, a complaint alleging failure of the DRB to address adequately matter not submitted on DD Form 293 or expressly incorporated therein will be resolved in the complainant's favor only if the failure to address the issue was arbitrary, capricious, or an abuse of discretion.

c. With respect to all other complaints, the standard shall be whether a reasonable person familiar with the discharge review process could understand the basis for the decision, including the disposition of issues raised by the applicant. This standard is designed to ensure that the complaint process will not be burdened with the need to correct minor errors in the preparation of decisional documents.

16–8. For those new statements of findings, conclusions, and reasons that are prepared by a military department in response to a complaint to the Department of Defense and that are not reviewed by the Department of Defense, the Department of Defense shall review on a quarterly basis enough of a sample of such new statements to ensure that such new statements comply with the Stipulation of Dismissal.

16–9. If corrective action is required in response to a complaint, it shall be taken in accordance with the following:

a. If a complaint concerns the decisional document in the complainant's own discharge review case, appropriate corrective action consists of amending the decisional document or providing the complainant with an opportunity for a new discharge review. An amended decisional document will be provided if the applicant requests that form of corrective action.

b. If a complaint concerns a decisional document involving an initial record review under the Special Discharge Review Program or the Pub. L. No. 95–126 re-review program, appropriate corrective action consists of—

(1) Amending the decisional document; or

(2) Notifying the applicant and counsel, if any, of the opportunity to obtain a priority review using the letter set forth at Annex A of the Settlement Agreement.

When the Discharge Review Board takes corrective action under this provision by amending a decisional document, it shall notify the applicant and counsel, if any, of the opportunity to request a *de novo* review under the Special Discharge Review Program or under the Pub. L. No. 95–126 re-review program, as appropriate.

c. Except for cases falling under paragraph 2, if a complaint concerns a decisional document in which the applicant received an Honorable Discharge as well as the full relief requested, if any with respect to the reason for discharge, appropriate corrective action consists of amending the decisional document.

d. In all other cases, appropriate corrective action consists of amending the decisional document or providing the applicant with the opportunity for a new review, except that an amended decisional document will be provided when the complainant expressly requests that form of corrective action.

e. An amended decisional document is one that reflects a determination as to what the Discharge Review Board panel (or Secretarial Reviewing Authority) that prepared the defective decisional document would have entered on the decisional document to support its decision in this case. The action of the amending authority does not necessarily reflect substantive agreement with the decision of the original Discharge Review Board panel (or Secretarial Reviewing Authority) on the merits of the case. When an amended decisional document is required under paragraphs (2) or (4) and the necessary records cannot be located, a notation as to that effect will be made on the decisional document, the applicant and counsel, if any, will be afforded an opportunity for a new review, and the complainant will be informed of the action. When an amended decisional document is requested under paragraph (3) and the necessary records cannot be located, a notation to that effect will be made on the decisional document, and the complainant will be informed that the situation precludes further action.

f. An applicant who is afforded an opportunity to request a new review shall be provided with 45 days to make the request.

Annex B, Part II.—Model Statements Contained in the Memorandum to the Secretaries of the Military Departments From the General Counsel (July 20, 1977)

The model statements attached to the memorandum were based upon hypothetical facts and conclusions and did not represent actual resolution of the substantive issues discussed therein. The model statements assumed that the 12 facts from the service record (now in Section D.2 of Enclosure 2, DoD Directive 1332.28) were listed elsewhere

in the decisional document, that information about conduct and efficiency ratings included the length of time covered by each rating, and, with respect to Model Statements 1–5, that the applicant expressly requested an Honorable Discharge.

Model Statements 1–4 pertain to decisions under the Special Discharge Review Program (SDRP). The five paragraph format in Model Statement 1–4 reflects the factors that the DRB was required to consider as part of the SDRP program, as set forth on DD Form 2067:

- Whether the applicant met the "primary" SDRP criteria for an upgrade.
- Assuming that the applicant met the primary criteria, whether there were any compelling reasons contrary to the presumption that an upgrade was warranted.
- Whether the applicant met the secondary criteria warranting an upgrade.
- Whether, in light of the total circumstances of the case, an upgrade was warranted.
- The conclusion.

Because the DRBs are not required to consider these factors in normal review cases, Model Statements 1–4 do not necessarily reflect factors upon which decisions are made in normal reviews. The issues raised by the hypothetical applications, as set forth in Model Statements 1–5, are derived from the plaintiffs' letter of July 15, 1977. The six Model Statements set forth below reflect decisional document requirements applicable on 20 July 1977. To the extent that these Statements are used as a standard in reviewing complaints about documents issued after that date, the Model Statements should be considered in conjunction with other requirements in effect at the time the document under review was issued, as reflected in this Annex and applicable regulations. Principles based on the Model Statements are set forth in Part I of this Annex, sections 5–1, 5–2, 8–1, 8–2, 11–1, and 11–2.

Model Statements

Sample No. 1 (SDRP)

a. Issue raised by applicant: Applicant claims to meet criteria for the SDRP.

b. Findings, Conclusions and Reasons. (1) The applicant does not meet any of the special criteria. While he was discharged after having served 26 months, the fact that his conduct and efficiency ratings for 10 of those months were unsatisfactory precludes the determination that he had a satisfactory record for 24 months prior to discharge. While the applicant had satisfactory ratings for the first 16 months, the unsatisfactory ratings cannot be discounted as attributable solely to the civil conviction and replaced with better ratings pursuant to the one-third rule set forth in Army DRB Memorandum 20 April 1977 since the applicant also was twice convicted by Special Court Martial of assault and battery during this period.[1]

(2) There are compelling reasons to the contrary in that discharge was based upon a civil conviction for auto theft, for which he was sentenced to six months in jail.

(3) The applicant meets the secondary criteria for the following reasons: he was 20 years old at discharge, had completed the 8th grade and had an aptitude score of 30 (AFQT). In addition, there were contributing circumstances in that he was intoxicated at the time of the crime and was influenced to commit the crime by two co-defendants who were much older than he and who were given much stiffer sentences.

(4) The total circumstances do not warrant relief because the seriousness of the crime of auto theft outweighs the mitigating factors in this case.[2]

Sample No. 2 (SDRP)

a. Issue raised by the applicant: Applicant claims to meet criteria for the SDRP.

b. Findings, Conclusions and Reasons. (1) The applicant meets the primary criteria in that he received a Silver Star during combat in Vietnam and he received an Honorable Discharge after he completed an earlier three-year enlistment beginning in 1968.

(2) There are no compelling reasons to the contrary. None of the incidents that resulted in his discharge (AWOLs of 15, 18 and 20 days, disrespect to an NCO and failure to obey an order) would have subjected applicant to criminal prosecution had they occurred in a civilian environment.

(3) The applicant meets the secondary criteria for the following reasons: he was 22 years old at discharge, he had served a previous tour of duty of 3 years and was in the 19th month of his second enlistment, and he had an aptitude score of 45 (AFQT).

(4) The total circumstances warrant relief for the following reasons: while the applicant has 3 Article 15s (15-day AWOL, disrespect to an NCO and failure to obey an order) and two minor court-martial convictions (20-day AWOL and an 18-day AWOL), these are outweighed by the three years of honorable service during his first tour of duty, including 11 months in Vietnam, and the mitigating factors related to his age, general aptitude, and overall length of service.

(5) The applicant's discharge is changed to Honorable. Upgrade to General is required pursuant to the Special Discharge Review Program; further upgrade to Honorable is warranted for the reasons in paragraph 4 above.

Sample No. 3 (SDRP)

a. Issues raised by the applicant: Applicant claims to meet the criteria for the SDRP.

b. Findings, Conclusions and Reasons. (1) The applicant meets the primary criteria in that he received an honorable discharge after being drafted in 1967 and completing his two-year tour of duty. The cut on his right arm resulting in five stitches while performing base sentry duty does not constitute a wound received in combat within the meaning of the second criterion. Criteria one does not apply since the Combat Infantry Badge received does not constitute a military decoration for the purpose of this program. The applicant did not satisfactorily complete an assignment in Southeast Asia because he was discharged during that tour. The discharge was in lieu of court-martial for two incidents of failure to obey an order and one incident of AWOL for 31 days. These three incidents, together with conduct and efficiency ratings of "unsatisfactory" during the last 5 months of the 26 months of service during this enlistment preclude application of criteria 6, pursuant to the rule relating to final rating periods set forth in Army DRB Memorandum 20 April 1977. Also pursuant to this Memorandum, the 24 months served in applicant's first tour cannot be counted since applicant was credited with a "prior Honorable Discharge" for this period.

(2) There are no compelling reasons to the contrary. The two incidents of failure to obey an order and the AWOL would not have resulted in prosecution if committed in a civilian environment.

(3) The applicant meets the secondary criteria since he entered the service upon a waiver of normally applicable entrance standards (applicant had a pre-service conviction for possession of marijuana at age 19) and possible personal problems may have contributed to the acts leading to discharge. (The applicant filed an affidavit of a psychiatrist who treated him subsequent to the discharge, indicating that applicant's psychotic state led to the acts which resulted in discharge.)

(4) The total circumstances warrant upgrade to a general discharge. This is mandated by the presence of a prior honorable discharge. However, an upgrade to honorable is unwarranted because of the frequent disciplinary problems [2 Articles 15s for failure to repair, a summary court-martial conviction for failure to obey an order, and Article 15 for disrespect to an NCO, and 2 Article 15s for AWOL (10 and 20 days)], in addition to the events resulting in discharge. Further, applicant's age (25), aptitude (AFQT–70), education (two years of college) and prior excellent service during first enlistment indicate an ability to perform in a manner better than that demonstrated by his record.

Sample No. 4 (SDRP)

a. The applicant requested an Honorable Discharge but submitted no contentions.

b. *Findings, Conclusions and Reasons.* (1) The applicant meets the primary criteria in that he had a satisfactory record of service for 24 months prior to discharge. His conduct and efficiency ratings were: 2 months—"excellent"; 2 months—"good"; last 22 months—"fair." He had one Article 15 for a 10-day AWOL during the 16th month of service. He also had a 5-day AWOL.[3]

[1] When application of primary criteria involves a question of judgment, as in calculating 24 months satisfactory service in this model, the Board must state its reasons for deciding whether or not the criteria apply. [Footnote in letter of 20 July 1977].

[2] The Board may actually have denied relief because of the circumstances surrounding the offense or because of other criminal acts, rather than the seriousness of the offense of auto theft. If this were true in the instant case, the model would be inadequate in that findings, conclusions and reasons were not made on factors upon which the Board relied. [Footnote in letter of 20 July 1977].

[3] At least for the Army DRB, findings and reasons must normally be made on "primary criteria" even for an applicant who is eligible to apply under the SDRP and who already has a General Discharge, since "[t]he greater the number of primary (special) considerations [that exist] * * *, the greater the

(2) There are no compelling reasons to the contrary.

(3) No mitigating factors were found to be present.

(4) The total circumstances do not warrant relief. Presence of one of the primary criteria does not mandate an upgrade to Honorable. The overall service record does not warrant upgrade because of the less than "excellent" conduct and efficiency ratings for 24 of the 26 months of service. The applicant's AFQT score of 50 and the fact that he had a high school diploma indicate that his duty performance did not match his capabilities.

(5) Therefore, relief is denied.

Sample No. 5

a. Issues raised by the applicant: My discharge was too harsh for the offense I committed.

b. Findings, Conclusions and Reasons. The applicant enlisted in October 1973 for three years; he was discharged in April 1975 in lieu of court-martial for an AWOL from 23 December 1974–March 1975; was 23 at time of enlistment; served for 17 months; was AWOL for 57 days in addition to the period that resulted in discharge; conduct and efficiency ratings were as follows: 4 months—excellent; 6 months—good; 8 months—unsatisfactory; highest rank achieved was E–3; no awards and decorations; AFQT score—35; completed 10th grade of school; received two Article 15s, one for a 10-day AWOL in August 1974 and the other for a 20-day AWOL in October 1974. Applicant's discharge should be upgraded to General because it was too harsh in light of applicant's overall record of service. An Honorable Discharge is not warranted because of the periods of AWOL and the unsatisfactory conduct and efficiency ratings during the last 8 months.

Sample No. 6

a. Issues raised by the applicant. (1) My overall record merits a General Discharge.

(2) I deserve a General Discharge because I had two prior periods of service, one in the National Guard, for which I received Honorable Discharges.

(3) My conduct and efficiency ratings were excellent for the first 11 months of my last enlistment.

b. Findings, Conclusions and Reasons. Applicant enlisted for three years on 25 July 1974. He was 24 at the time. Had a previous enlistment which was terminated after 6 months with an Honorable Discharge; served in National Guard for 12 months prior to the enlistment resulting in an Undesirable Discharge, receiving an Honorable Discharge from the National Guard. Served 14 months of the last enlistment with 34 days lost; achieved rank of E–5, had no awards or decorations; had college diploma (BA); received one Article 15 for Failure to Report, August, 1975; conduct and efficiency ratings were excellent for the first 3 months, fair for the next 8 months and unsatisfactory for the last three months. Applicant resigned in lieu of court-martial for a 34-day AWOL. He was counseled regarding the severity of this offense and advised that it could lead to a BCD if he were court-martialed. With regard to the conduct and efficiency ratings for the 4th-11th months, there is a conflict of evidence. The applicant has submitted an affidavit stating that he recalls receiving notice that his ratings for that period were both "excellent"; the DA Form 20 confirms this. However, The Commanding Officer's report, prepared in support of this recommendation to the convening authority that the applicant receive an Undesirable Discharge, lists the ratings for this period as "fair." The Board concludes that the latter constitutes more credible evidence since it was prepared by the officer who made the ratings in question and because the applicant did not contest any inaccuracy in the Report before the convening authority approved his Undesirable Discharge.[4]

The applicant's overall record does not merit a General Discharge because of the seriousness of the offense that resulted in his discharge, lack of mitigating circumstances surrounding that incident, and "fair" or "unsatisfactory" efficiency ratings during 12 of the 15 months during that enlistment. The fact that that applicant received an Honorable Discharge for prior periods of service does not entitle him to a General Discharge for the last period of service because of the above factors.

Annex B, Part III.—Model Statements Contained in Annex A of the Stipulation of Dismissal (January 31, 1977)

The thirteen Model Statements set forth below reflect decisional document requirements applicable on 1 April 1977. To the extent that these Statements are used as a standard in reviewing complaints about decisional documents issued after that date, the Model Statements should be considered in conjunction with other requirements in effect at the time the document under review was issued, as reflected in this Annex and applicable regulations. Principles based on the Model Statements are set forth in Part I of this Annex, sections 3–2, 4–2, 7–3, 8–13 through 8–18, 10–1, and 10–2.

Model Statements

Example No. 1

a. *List of Issues Raised by Applicant.*[5] (1) Applicant's discharge was based solely on one charge of sale of marijuana, from which the applicant made no profit.

(2) Since applicant's overall service record was honorable, his discharge should be upgraded.

b. *Sample Findings, Conclusions and Reasons.* Applicant was undesirably discharged UP par. ———, AR ———, on May 1, 1971, in lieu of court-martial for selling 4 ounces of marijuana. He testified fully and honestly and was closely questioned by the Board. He stated that he was immature when he began using marijuana during basic training because "everyone else did." He stated that he bought 4 ounces of marijuana for his own personal use but later became afraid of being caught and sold it to a friend who asked him for it for the same price that he had paid for it. Applicant states that this was the only time he ever sold drugs. The Board finds that there was only one instance of drug sale which was not for profit nor with the intent of being a dealer of drugs. The Board concludes that this should be treated as a possession case, not sale. The Board concludes that due to these facts, applicant's discharge should be recharacterized to general discharge for the convenience of the government. The Laird Memorandum applies; however, characterization of the discharge as for drug abuse would be unjust. The applicant's average conduct and efficiency ratings of fair do not merit an honorable discharge.

Example No.2

a. *List of Issues Raised by Applicant.* (1) Applicant's last conduct rating, which brought his final average below that needed for an honorable discharge, should not be counted, thereby entitling the applicant to an honorable discharge because:

(a) the rating was caused by the racial prejudice of applicant's last commanding officer; and

(b) the rating was a "disqualifying rating" (for an honorable discharge) prepared without a brief explanation of the reasons for the rating, as required by the regulations.

b. *Sample Findings, Conclusions and Reasons.* Applicant was given a general discharge at his ETS UP par. ——— Bupersman.

Even without his last conduct rating, applicant had a general court-martial conviction during the enlistment in question, and pursuant to par. ——— Bupersman, this disqualifies him from an honorable discharge.[6]

Example No. 3

a. *List of Issues Raise by Applicant.* (1) Applicant qualifies for Laird memo treatment even though his resignation in lieu of trial was for sale of drugs because applicant was merely an agent and not a seller.

(2) Applicant's overall record of service merits an honorable discharge.

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qualification for upgrade to fully honorable * * * 11 April 1977 Army DRB memorandum containing guidelines for the DoD Discharge Review Program (Special), at p. 13. [Footnote in letter of 20 July 1977].

[4] Conclusory statements of reasons for the Board's findings and conclusions do not suffice. The inadequacy of conclusory language applies to the reasons the Board must prepare for concluding that an applicant's contention is with or without merit. If an applicant contends that regulation X was violated because of certain facts, a Board statement that "regulation X was not violated" is conclusory and not an adequate reason for the Board's rejection of this contention. Also, if an Applicant specifies an issue of fact, like "my commanding officer was racially prejudiced against me," and presents evidence through testimony or written submissions to support his contention, a Board statement that "insufficient evidence has been presented by applicant to substantiate his claim" is conclusory and inadequate to explain the reasons for the Board's conclusion that this contention is without merit. [Footnote in letter of 20 July 1977].

[5] These are sample issues which might be listed on a form by the applicant in accordance with Paragraph 5A(1)(e) of the stipulation. [Footnote taken from the Stipulation of Dismissal, Annex A].

[6] Explanatory Note.—The Board need not address the issues raised by the applicant because the Board concluded, as is implicit here, that even if applicant's claims were true, no further relief would be granted. See Paragraph 5A(1)(d)(III) of the stipulation. [Footnote taken from the Stipulation of Dismissal, Annex A].

b. *Sample Findings, Conclusions and Reasons.* Applicant was discharged UP par. ———, AR ——— on May 1, 1971, in lieu of trial for sale of marijuana.

After careful review of the record and listening to the forthright testimony of the applicant as to the circumstances surrounding the commission of the offense, the Board concludes that the Laird memo applies as this was a mere transfer of drugs and not a sale. The applicant was asked by another serviceman if he could get him some marijuana. The applicant got him some from an acquaintance in the barracks. He did not make any profit in the transaction and never sold drugs for profit at any other time. Therefore, the Laird memo applies.

The applicant was on his second entlistment and served two tours of duty in Vietnam being critically wounded on his second tour.

The Board concludes that since applicant's record was unblemished, except for the offense in question, and in light of the excellent Vietnam service, applicant's discharge should be upgraded to fully honorable.

Example No. 4

a. *List of Issues Presented by Applicant.* (1) AR 635–200, Ch. 10, p. 1 requires charges be referred to a "BCD special court-martial" before a request for resignation can be considered. Since this was not done in applicant's case, applicant's request for a UD in lieu of trial was improperly accepted.

b. *Sample Findings, Conclusions and Reasons.* Applicant was awarded a UD after requesting resignation for the good of the service, UP par. 10–1, AR 635–200 in lieu of trial for assaulting an NCO on August 16, 1969. The Board rejects the applicant's contention of regulatory error and finds the discharge was proper.

Ch. 10 applies to individuals "whose conduct has rendered him triable by court-martial under circumstances which could lead to a bad conduct discharge." Applicant reads this to require that charges actually be referred to a special court-martial authorized to impose a BCD. We find that this is not required. Rather, the word "could" suggests only that the underlying offense be of such gravity to *allow for* a BCD, regardless of whether a BCD is actually authorized. Any ambiguity in the regulation was cleared up by Ch. 25, Apr. 1972 which clarifies the intent of Ch. 10 by stating "regardless of whether the charges are referred to a court-martial, and regardless of the type of court-martial to which the charges may be referred."

Example No. 5

a. *List of Issues Raised by Applicant.* (1) Applicant's UD for unfitness/homosexuality was based on (a) an alleged incident which never occurred and (b) his admission of pre-service homosexual acts which was improperly considered under *Harmon v. Brucker* and DoD Directive 1332.14.

(2) Applicant's admission of pre-service acts was coerced by investigative agents and therefore cannot be considered.

(3) Applicant's overall service record merits an honorable discharge.

b. *Sample Findings, Conclusions and Reasons.* Applicant's UD for unfitness/homosexuality UP par. ———, AR ———, on May 1, 1971, was based on two factors: (1) allegations that he made homosexual advances to a fellow serviceman; and (2) admission of pre-service homosexual acts. Applicant testified that he waived his rights to an in-service hearing because he was afraid of embarrassment, not because he was guilty of the allegations. Applicant denied under interrogation and again before this Board having made the alleged in-service advances. There was no other corroboration to the other serviceman's claims. The Board finds that the applicant did not make the in-service advances alleged.

The pre-service acts admitted to should not have been considered in characterizing his discharge under DoD Directive 1332.14. Applicant's overall record shows 2½ years in the service. The only disciplinary actions were two Article 15's in the first six months of service. The board concludes that his overall service record merits an honorable discharge for convenience of the government.

Example No. 6

a. *List of Issues Raised by Applicant.* (1) Applicant was not eligible for enlistment but was enlisted through recruiter misconduct. His enlistment is therefore void under *U.S. v. Catlow* and *U.S. v. Russo* and the military had no jurisdiction to try him for any of the offenses which resulted in his discharge for frequent involvement.

(2) Applicant should be given an honorable discharge for erroneous enlistment.

b. *Sample Findings, Conclusions and Reasons.* The applicant was discharged for unfitness/frequent involvement UP par. ———, AR ———, on May 1, 1972. He had 3 Article 15s and 1 summary court-martial during his first 6 months. His pre-service life was marked by expulsion from high school and several juvenile offenses which would have made him ineligible for enlistment under par. ———.

The only direct evidence presented by the applicant to substantiate his discharge of recruiter misconduct is the applicant's testimony that he told the recruiter about his arrest record and the recruiter told him not to mention it on the enlistment forms.

The Board concludes that the mere testimony of the applicant is insufficient to warrant a finding of recruiter misconduct because:

(1) There is nothing in the record which even suggests any misconduct on the part of the recruiter.

(2) The record shows the recruiter followed all procedures mandated by regulations, including requesting and receiving clearances from law enforcement agencies.

The Board concludes that no change in discharge is warranted.

Example No. 7

a. *List of Issues Raised by Applicant.* Applicant claimed he was discharged for the good of the service for a 30-day AWOL, but that his mother was in the hospital and he had to go home.

b. *Sample Findings, Conclusions and Reasons.* Applicant was discharged in lieu of court-martial for AWOL on June 13, 1973 pursuant to AR ———. Neither applicant nor counsel appeared for the hearing. No evidence was presented.

The Board concludes that there is insuffienct evidence to evaluate the merits of applicant's alleged mitigating factors. The Board after examining the record, finds the discharge was procedurally proper and equitable UP par. ———, AR ——— and no change is warranted.

Example No. 8

a. *List of Issues Raised by Applicant.* (1) Applicant should have been discharged for unsuitability because he had a character and behavior disorder which made him unable to conform to military life.

(2) The processing of applicant's discharge was improper because the statements applicant submitted on his behalf were never forwarded through the chain of command to the convening authority.

b. *Sample Findings, Reasons and Conclusions.* Applicant was discharged for unfitness/frequent involvement UP par. ——— of AR ———, on May 1, 1972, for 5 AWOLs, ranging from 2 days to 20 days in length. Applicant testified that he was immature, and had psychological problems which prevented him from adapting to the strict military life. His counsel stated that he should have been given a discharge for unsuitability.

He testified that his AWOLs were in the same patterns: He would always be trying his hardest but would somehow "mess up" on his job—clerk typist.

An officer would tell him he was not doing well and he would get so upset that he just had to "get out." After he calmed down, he would come back and try again.

The Board finds that the applicant had no character and behavior disorder and no other psychological or other problems which made him unable to perform or which caused his AWOLs. He was examined by a psychiatrist who found no personality disorders and submits no further psychiatric evidence. Applicant was 20 years old when he volunteered. He was a high school graduate with no history of problems in school or with civilian authorities. He had held a steady job as a stockroom clerk. His AFQT score put him in CAT II. He scored 112 on clerical test and had requested a clerical MOS which he received. He testified that he didn't tell the military psychiatrist, his C.O. or anyone else that he had trouble accomplishing his job. When asked why he went AWOL, he would tell his superiors, "because I wanted to." He never asked for extra help on his job or requested a different MOS. His post-service record shows no problems with people in authority or with holding a job.

Applicant's second contention is that although he waived his right to a hearing, he submitted mitigating statements on his behalf so he would not get a UD, but his C.O. never forwarded them. The Board finds that the evidence does not support this contention. The waiver form in the record shows that "I do not wish to submit statements in my behalf." Although applicant states he checked that he did want to submit statements, he does not deny his signature at the bottom of the form or his initials above

the word "do" which is crossed out. He cannot remember who he gave the statement to or when. Furthermore, applicant states that the statement requested a general discharge because a UD would hurt him in later life. He did not offer any explanation for the AWOLs in his alleged statement.

The Board concludes that no change in the characterization of or reason for discharge is warranted.

Example No. 9

a. *List of Issues Raised by Applicant.* (1) Applicant's UD for misconduct, based on a civil conviction which was the result of an illegal search and seizure and ineffective assistance of counsel.

(2) Applicant's overall military record merits an honorable discharge.

b. *Sample Findings, Conclusions and Reasons.* Applicant was discharged UP par. ——— of AR ——— on May 1, 1972 after pleading guilty to petty larceny in a civilian court after being charged with grand larceny. Although applicant's counsel presented extensive legal arguments on the validity of the conviction, the Board concludes that the civilian courts would have been the proper place to determine the merits of this contention. Since no appeal was ever taken, the Board accepts the civilian court conviction as conclusive as to the attack on the conviction.

The Board finds the discharge was proper and equitable. Although the service record would merit an honorable discharge, but for the civil conviction, Par. ———, AR ———, presumed a UD for a civil conviction unless exceptional circumstances were present. The Board finds no exceptional circumstances.

Example No. 10

a. *List of Issues Raised by Applicant.* (1) Applicant's UD for frequent involvement was for a series of 4 petty offenses which occurred over a three year period. Applicant's overall record therefore merits an honorable discharge as no pattern of misbehavior was present.

(2) Applicant's discharge is void because he was not given an opportunity for a rehabilitative transfer as required by regulations; therefore, his discharge is void and his record must be evaluated without considering anything after the time of the wrongful denial of transfer.

b. *Sample Findings, Conclusions and Reasons.* Applicant was discharged under par. ——— Bupersman on May 1, 1972, for unfitness/frequent involvement for 4 offenses: 2 Article 15s for failure to repair during basic training, and two Articles 15s in the last month of service—one for failure to get a haircut, the other for being 2 hours late after leave.

The Board concludes that this is not frequent involvement under par. ——— Bupersman. The acts are all minor offenses, occurring 2½ years apart which do not amount to a pattern of poor behavior. Applicant's discharge will be changed to convenience of the government. A general discharge is warranted because applicant's average conduct and efficiency ratings for the three years are 2.6 and 2.8 respectively. Under regulations, this is not sufficient for an honorable discharge. There is no suggestion by applicant that any of these ratings were unfair or improper.

Applicant states that a transfer should have been made because his C.O. didn't like him and give him the two Article 15s for no reason. The Board finds this to be without merit. Applicant admits he was guilty of the offenses. Applicant could point to no other events where the C.O. treated him unfairly. The discharge authority had no reason to believe a rehabilitative transfer was warranted and properly waived it pursuant to par. ——— Bupersman, as applicant told his C.O. he did not desire to serve any further in the Navy.

Example No. 11

a. *List of Issues Raised by Applicant.* (1) The applicant was discharged for homosexuality, but he was not a homosexual. His confession of homosexual acts was made after his life was threatened after it was discovered that he had been an informer.

(2) Applicant's overall record of uniformly excellent conduct and efficiency ratings merits an honorable discharge.

b. *Sample Findings, Conclusions and Reasons.* The applicant was discharged for unfitness/homosexual acts UP par. ——— AR ——— on May 1, 1972.

The Board concludes that the discharge should be changed to honorable for convenience of the government.

The applicant testified that he was never a homosexual and never committed any homosexual acts. After extremely close questioning, the Board finds this to be true.

The Board concludes that he falsely admitted to homosexual acts to ensure his safety and that the command made insufficient efforts to protect him. Therefore, his character of service should be recharacterized to honorable as his record otherwise merits an honorable discharge UP par. ——— AR ———.

Example No. 12

a. *List of Issues Raised by Applicant.* (1) Applicant's UD for voluntary admission of homosexuality was unfair. Applicant's record merited an honorable discharge for his homosexuality in no way interfered with his performance of duties.

(2) Applicant's discharge for homosexual acts was unconstitutional and he should be reinstated.

b. *Sample Findings, Conclusions and Reasons.* Applicant voluntarily came forward and revealed his homosexuality and stated he intended to continue engaging in homosexual acts. Applicant was discharged after 3 years of service for unfitness/homosexuality, UP par. ——— AR ——— on May 1, 1972.

The Board concludes that the discharge was proper as required by par. ——— AR ———. Further, this board has no power to reinstate and therefore does not reach the constitutional question. However, in view of the following factors, the Board concludes the discharge should be recharacterized to honorable.

(1) Applicant's record reveals no disciplinary actions against him and his conduct and efficiency ratings were consistently excellent.

(2) The applicant was apparently not trying to escape his enlistment contract for four years' service.

(3) All of the homosexual acts were discreet, did not involve minors, and had no effect on the applicant's or any other person's military service.

Example No. 13

a. *List of Issues Raised by Applicant.* (1) Applicant should have been discharged as medically unfit for reasons EPTS. His two-month AWOL was to get medical treatment after authorities refused to either discharge or treat him and therefore should not be held against him.

b. *Sample Findings, Conclusions and Reasons.* Applicant was discharged in lieu of court-martial for a 2-month AWOL, UP par. ———, Marcorpsman ———, on May 1, 1972. The record reflects that applicant was found medically unfit for duty and recommended for discharge for medical reasons on October 15, 1971. Applicant testified that he went AWOL November 1, 1971, because "nothing was happening" on his discharge and he was sick. Applicant provided documentary evidence that he sought and received medical help while AWOL.

The Board concludes that the AWOL was unjustified and applicant should have waited for his discharge to be processed. Two weeks is not an unreasonable delay.

However, the Board finds that applicant's discharge was not properly processed in accordance with Marcorpsman 6002 (17) as the commanding officer did not mention the fact that the applicant had been previously recommended for discharge as medically unfit in his recommendations to the discharge authority. Therefore, applicant's discharge should be changed to one under honorable conditions for convenience of the government. Because his service record shows a 25-day unjustified AWOL, and conduct and proficiency ratings of only fair, we conclude a general discharge was warranted.

Annex B. Part IV, List of Documents Related to the Urban Law Litigation Containing Significant Principles of Current Interest Related to the Discharge Review Boards

1. *25 April 1980: Letter from Department of Defense to Plaintiffs' Counsel under the Court Order of 13 March 1980.* The letter of 25 April 1980 contains the views of the Department of Defense on certain decisional documents. It was prepared pursuant to the Court Order of 13 March 1980 (which required DoD to review each of the decisional documents listed in plaintiffs' First Interrogatories (Dec. 22, 1978, items 6–9)), and superseded the documents dated 13 March 1979 and 22 December 1978, which were provided to plaintiffs' counsel for purposes of obtaining their views. Key provisions of current applicability are summarized in Part I of this Annex, sections 1–1, 1–2, 2–3, 2–4, 3–1, 3–3, 4–4, 5–3, 5–4, 5–5, 6–1, 7–1, 7–2, 8–3, 8–6 through 8–11, 9–1, 9–2, 10–3, 11–3, 11–4, 12–2, 14–1, 16–4, and 16–5.

2. *4 August 1979: Matter filed by DoD in the Urban Law Litigation.* In 1979, the parties agreed to a procedure for expressing views as to the meaning of the Stipulation with respect

to specified decisional documents. The document of 4 August 1979 was entitled "Defendant's Response to Plaintiffs' First Statement Pursuant to the April 25, 1979 Stipulation," and was filed in response to matter submitted by the plaintiffs on July 16, 1979. Key provisions of current applicability are summarized in Part I of this Annex, sections 2–1, 2–2, 4–1, 6–2, 8–4, 8–5, 8–6, 13–1, and 16–4.

3. *2 March 1979: Answer to Plaintiffs' Second Interrogatories to Defendants.* The interrogatories were served on February 1, 1979 as part of the *Urban Law* litigation. The Answer was signed by the Special Assistant for Legal and Selected Policy Matters, Office of the Deputy Assistant Secretary of Defense (Military Personnel Policy) on 2 March 1979. Key provisions of current applicability are summarized in Part I of this Annex, sections 16–4 and 16–7.

4. *31 January 1979: Answers to Plaintiffs' Interrogatories to Defendants.* The interrogatories were served on the government on December 22, 1978 as part of the *Urban Law* litigation. The Answer was signed by the Special Assistant for Legal and Selected Policy Matters, Office of the Deputy Assistant Secretary of Defense (Military Personnel Policy), on 31 January 1979. Key provisions of current applicability are summarized in Part I of this Annex, section 12–3.

5. *9 November 1978: Court Order in the Urban Law Litigation.* In this Order, which will be rescinded by the proposed Court Order, the relief granted by the Court on 23 August 1978 (section 7, below) was made final, a number of interim measures were ordered, and the requirement for a quarterly review of documents revised by the military departments during the complaint process was established. See Part I, section 16–8.

6. *5 October 1978: Letter from the U.S. Attorney to Plaintiffs' Counsel.* On October 2, 1978, plaintiffs in the *Urban Law* case wrote the U.S. Attorney a letter containing a number of questions about the procedure for compliance with the Court's order of August 23, 1978. A response was provided by the U.S. Attorney's Office on 5 October 1978. Key provisions of current applicability are summarized in Part I of this Annex, sections 16–1 through 16–3.

7. *23 August 1978: Court Order in the Urban Law Litigation.* The Court Order dated 23 August 1978 was issued after court proceedings resulting from a complaint filed by plaintiffs on August 11, 1978, concerning the adequacy of the government's compliance with the Stipulation. A number of interim measures were ordered, and several requirements of current applicability were established. This Order will be rescinded by the proposed Court Order. Key provisions of current applicability are summarized in Part I of this Annex, sections 12–1, 15–2, and 16–1.

8. *25 May 1978: Letter from DoD to Plaintiffs' Counsel.* The letter dated 25 May 1978 was provided in response to a grievance letter submitted by the Plaintiffs on April 28, 1978. Paragraph A of the letter refers to the requirement in DoD Directive 1332.28 for a verbatim listing of the applicant's contentions and issues.

9. *25 August 1977: Letter from DoD to Plaintiffs' Counsel.* The letter dated 25 August 1977 contains DoD's final response to matters raised in correspondence from the plaintiffs dated May 17, June 10, 1977; July 11, 1977; and July 22, 1977. Key provisions of current applicability are summarized in Part I of this Annex, sections 9–3 and 15–3.

10. *20 July 1977: Memorandum to the Secretaries of the Military Departments from the General Counsel.* The Memorandum dated 20 July 1977 was developed after discussions with the plaintiffs concerning their correspondence of May 17, 1977; June 10, 1977; and July 11, 1977. The cover memorandum recommended that 12 factors from the service record be included in the decisional document. This recommendation did not become a formal requirement until DoD Directive 1332.28 was adopted on March 29, 1978. The Memorandum also contained 6 model statements, set forth in Part II of this Annex. Principles derived from the Model Statements are set forth in Part I of this Annex, sections 5–1, 5–2, 8–1, 8–2, 11–1, and 11–2.

11. *15 July 1977: Letter from DoD to Plaintiffs' Counsel.* The letter dated 15 July 1977 transmitted proposed model statements that were subsequently revised as set forth in Part II of this Annex (document dated 20 July 1977). Key provisions of current applicability are summarized in Part I of this Annex, section 8–12.

12. *June 16, 1977: Letter from DoD to Plaintiffs' Counsel.* This letter contained DoD's initial response to plaintiffs' grievance letters of May 17, 1977 and June 10, 1977. Most of the material involved changes to the initial implementing regulations issued by the military department under the Stipulation. Because much of the material in the letter dated June 16, 1977 was incorporated in the initial version of DoD Directive 1332.28 issued on March 29, 1978, the provisions are not summarized in this Annex. The letter of June 16, 1977 should be consulted, however, prior to amending DoD Directive 1332.28. An item of current applicability is summarized in Part I of this Annex, section 12–4.

13. *31 January 1977: The Stipulation of Dismissal.* The Stipulation of Dismissal contains specific requirements with respect to preparation and publication of the index and decisional documents. These matters are made applicable to the DRBs through DoD Directive 1332.28, which also establishes further requirements for the preparation of decisional documents. Because the requirements of the Stipulation of Dismissal have been incorporated in DoD Directive 1332.28, issued on March 29, 1973, the provisions are not summarized here. The Stipulation of Dismissal should be consulted, however, prior to amending DoD Directive 1332.28. The Stipulation also contained thirteen Model Statements, which are set forth in Part III of this Annex. Principles of current applicability derived from the Model Statements are set forth in Part I of this Annex, sections 3–2, 4–2, 7–3, 8–13 through 8–18, 10–1, and 10–2.

List of Subjects in 32 CFR Part 70

Military personnel, Discharge Review Boards, administrative practice and procedures.

Accordingly, 32 CFR Part 70 is revised to read as follows:

PART 70—DISCHARGE REVIEW BOARD (DRB) PROCEDURES AND STANDARDS

Sec.

70.1 Reissuance and purpose.
70.2 Applicability.
70.3 Definitions.
70.4 Responsibilities.
70.5 Procedures.
70.6 Information requirements.
70.7 Effective date and implementation.
70.8 Discharge review procedures.
70.9 Discharge review standards.
70.10 Complaints concerning decisional documents and index entries.
70.11 DoD semiannual report.

Authority.—Title 10, U.S.C. 1553, and title 38, U.S.C. 101 and 3103, as amended.

§ 70.1 Reissuance and purpose.

This part is reissued and:

(a) Establishes uniform policies, procedures, and standards for the review of discharges or dismissals under 10 U.S.C. 1553.

(b) Provides guidelines for discharge review by application or on motion of a DRB, and the conduct of discharge reviews and standards to be applied in such reviews which are designed to ensure historically consistent uniformity in execution of this function, as required under Pub. L. 95–126.

(c) Assigns responsibility for administering the program.

(d) Makes provisions for public inspection, copying, and distribution of DRB documents through the Armed Forces Discharge Review/Correction Board Reading Room.

(e) Establishes procedures for the preparation of decisional documents and index entries.

(f) Provides guidance for processing complaints concerning decisional documents and index entries.

§ 70.2 Applicability.

The provisions of this Part 70 apply to the Office of the Secretary of Defense (OSD) and the Military Departments. The terms, "Military Services," and "Armed Forces," as used herein, refer to the Army, Navy, Air Force and Marine Corps.

§ 70.3 Definitions.

(a) *Applicant.* A former member of the Armed Forces who has been discharged or dismissed administratively in accordance with Military Department regulations or by sentence of a court-martial (other than a general court-martial) and under statutory regulatory provisions whose application is

accepted by the DRB concerned or whose case is heard on the DRB's own motion. If the former member is deceased or incompetent, the term "applicant" includes the surviving spouse, next-of-kin, or legal representative who is acting on behalf of the former member. When the term "applicant" is used in §§ 70.8 through 70.10, it includes the applicant's counsel or representative, except that the counsel or representative may not submit an application for review, waive the applicant's right to be present at a hearing, or terminate a review without providing the DRB an appropriate power of attorney or other written consent of the applicant.

(b) *Complainant.* A former member of the Armed Forces (or the former member's counsel) who submits a complaint under § 70.10 with respect to the decisional document issued in the former member's own case; or a former member of the Armed Forces (or the former member's counsel) who submits a complaint under § 70.10 stating that correction of the decisional document will assist the former member in preparing for an administrative or judicial proceeding in which the former member's own discharge will be at issue.

(c) *Counsel or Representative.* An individual or agency designated by the applicant who agrees to represent the applicant in a case before the DRB. It includes, but is not limited to: a lawyer who is a member of the bar of a federal court or of the highest court of a state; an accredited representative designated by an organization recognized by the Administrator of Veterans Affairs; a representative from a state agency concerned with veterans affairs; and representatives from private organizations or local government agencies.

(d) *Discharge.* A general term used in this Directive that includes dismissal and separation or release from active or inactive military status, and actions that accomplish a complete severance of all military status. This term also includes the assignment of a reason for such discharge and characterization of service (32 CFR Part 41).

(e) *Discharge Review.* The process by which the reason for separation, the procedures followed in accomplishing separation, and the characterization of service are evaluated. This includes determinations made under the provisions of 38 U.S.C. 3103(e)(2).

(f) *Discharge Review Board (DRB).* An administrative board constituted by the Secretary of the Military Department concerned and vested with discretionary authority to review discharges and dismissals under the provisions of 10 U.S.C. 1553. It may be configured as one main element or two or more elements as designated by the Secretary concerned.

(g) *DRB Panel.* An element of a DRB, consisting of five members, authorized by the Secretary concerned to review discharges and dismissals.

(h) *DRB Traveling or Regional Panel.* A DRB panel that conducts discharge reviews in a location outside the National Capital Region (NCR).

(i) *Hearing.* A review involving an appearance before the DRB by the applicant or on the applicant's behalf by a counsel or representative.

(j) *Hearing Examination.* The process by which a designated officer of a DRB prepares a presentation for consideration by a DRB in accordance with regulations prescribed by the Secretary concerned.

(k) *National Capital Region (NCR).* The District of Columbia; Prince Georges and Montgomery Counties in Maryland; Arlington, Fairfax, Loudoun, and Prince William Counties in Virginia; and all cities and towns included within the outer boundaries of the foregoing counties.

(l) *President, DRB.* A person designated by the Secretary concerned and responsible for the supervision of the discharge review function and other duties as assigned.

§ 70.4 Responsibilities.

(a) The *Secretaries of the Military Departments* have the authority for final decision and the responsibility for the operation for their respective discharge review programs under 10 U.S.C. 1553.

(b) The *Assistant Secretary of Defense (Manpower, Reserve Affairs, and Logistics)* (ASD(MRA&L)) shall:

(1) Resolve all issues concerning DRBs that cannot be resolved among the Military Departments.

(2) Ensure uniformity among the Military Departments in the rights afforded applicants in discharge reviews.

(3) Modify or supplement the enclosures to this Part.

(4) Maintain the index of decisions and provide for timely modification of index categories to reflect changes in discharge review policies, procedures, and standards issued by the OSD and the Military Departments.

(c) The *Secretary of the Army*, as the designated administrative focal point for DRB matters, shall:

(1) Effect necessary coordination with other governmental agencies regarding continuing applicability of this Part and resolve administrative procedures relating thereto.

(2) Review suggested modifications to this Part, including implementing documents; monitor the implementing documents of the Military Departments; resolve differences, when practicable; recommend specific changes; provide supporting rationale to the ASD(MRA&L) for decision; and include appropriate documentation through the Office of the ASD(MRA&L) and the OSD Federal Register liaison officer to effect publication in the **Federal Register.**

(3) Maintain the DD Form 293, "Application for Review of Discharge or Separation from the Armed Forces of the United States," and republish as necessary with appropriate coordination of the other Military Departments and the Office of Management and Budget.

(4) Respond to all inquiries from private individuals, organizations, or public officials with regard to DRB matters. When the specific Military Service can be identified, refer such correspondence to the appropriate DRB for response or designate an appropriate activity to perform this task.

(5) Provide overall guidance and supervision to the Armed Forces Discharge Review/Correction Board Reading Room with staff augmentation, as required, by the Departments of the Navy and Air Force.

(6) Ensure that notice of the location, hours of operation, and similar types of information regarding the Reading Room is published in the **Federal Register.**

§ 70.5 Procedures.

(a) Discharge review procedures are prescribed in § 70.8.

(b) Discharge Review Standards are prescribed in § 70.9 and constitute the basic guidelines for the determination whether to grant or deny relief in a discharge review.

(c) Complaint Procedures about decisional documents are prescribed in § 70.10.

§ 70.6 Information requirements.

(a) *Reporting Requirements.* (1) The reporting requirement prescribed in § 70.8(n) is assigned Report Control Symbol DD-M(SA)1489.

(2) All reports must be consistent with DoD Directive 5000.11, "Data Elements and Data Codes Standardization Program," December 7, 1964.

(b) *Use of Standard Data Elements.* The data requirements prescribed by this Part shall be consistent with DoD 5000.12-M, "DoD Manual for Standard Data Elements," December 1981. Any reference to a date should appear as (YYMMDD), while any name entry should appear as (Last name, first name, middle initial).

§ 70.7 Effective date and implementation.

This part is effective immediately for the purpose of preparing implementing documents. DoD Directive 1332.28, March 29, 1978, is officially canceled, effective November 27, 1982. This part applies to all discharge review proceedings conducted on or after November 27, 1982. § 70.10 applies to all complaint proceedings conducted on or after September 28, 1982. Final action on complaints shall not be taken until September 28, 1982, unless earlier corrective action is requested expressly by the applicant (or the applicant's counsel) whose case is the subject of the decisional document. If earlier corrective action is requested, it shall be taken in accordance with § 70.10.

§ 70.8 Discharge review procedures.

(a) *Application for review.* (1) *General.* Applications shall be submitted to the appropriate DRB on DD Form 293, "Application for Review of Discharge or Separation from the Armed Forces of the United States," with such other statements, affidavits, or documentation as desired. It is to the applicant's advantage to submit such documents with the application or within 60 days thereafter in order to permit a thorough screening of the case. The DD Form 293 is available at most DoD installations and regional offices of the Veterans Administration, or by writing to: DA Military Review Boards Agency, Attention: SFBA (Reading Room), Room 1E520, The Pentagon, Washington, D.C. 20310.

(2) *Timing.* A motion or request for review must be made within 15 years after the date of discharge or dismissal.

(3) *Applicant's responsibilities.* An applicant may request a change in the character of or reason for discharge (or both).

(i) *Character of discharge.* Block 5 of DD Form 293 provides an applicant an opportunity to request a specific change in character of discharge (for example, General Discharge to Honorable Discharge; Other than Honorable Discharge to General or Honorable Discharge). A request for review from an applicant who does not have an Honorable Discharge will be treated as a request for a change to an Honorable Discharge unless the applicant requests a specific change to another character of discharge.

(ii) *Reason for discharge.* Block 5 of DD Form 293 provides an applicant an opportunity to request a specific change in the reason for discharge. If an applicant does not request a specific change in the reason for discharge, the DRB will presume that the request for review does not involve a request for change in the reason for discharge. Under its responsibility to examine the propriety and equity of an applicant's discharge, the DRB will change the reason for discharge if such a change is warranted.

(iii) The applicant must ensure that issues submitted to the DRB are consistent with the request for change in discharge set forth in block 5 of the DD Form 293. If an ambiguity is created by a difference between an applicant's issue and the request in block 5, the DRB will respond to the issue in the context of the action requested in block 5. In the case of a hearing, the DRB will attempt to resolve the ambiguity under paragraph (a)(5) of this section.

(4) *Request for consideration of specific issues.* An applicant may request the DRB to consider specific issues which, in the opinion of the applicant, form a basis for changing the character of or reason for discharge, or both. In addition to the guidance set forth in this section, applicants should consult the other sections in this part (particularly paragraphs (c)(d), and (e) of this section and § 70.9 and § 70.10 before submitting issues for consideration by the DRB.

(i) *Submission of issues on DD Form 293.* Issues must be provided to the DRB on DD Form 293 before the DRB closes the review process for deliberation.

(A) *Issues must be clear and specific.* An issue must be stated clearly and specifically in order to enable the DRB to understand the nature of the issue and its relationship to the applicant's discharge.

(B) *Separate listing of issues.* Each issue submitted by an applicant should be listed separately. Submission of a separate statement for each issue provides the best means of ensuring that the full import of the issue is conveyed to the DRB.

(C) *Use of DD Form 293.* DD Form 293 provides applicants with a standard format for submitting issues to the DRB, and its use:

(*1*) Provides a means for an applicant to set forth clearly and specifically those matters that, in the opinion of the applicant, provide a basis for changing the discharge;

(*2*) Assists the DRB in focusing on those matters considered to be important by an applicant;

(*3*) Assists the DRB in distinguishing between a matter submitted by an applicant in the expectation that it will be treated as a decisional issue under paragraph (e) of this section, and those matters submitted simply as background or supporting materials;

(*4*) Provides the applicant with greater rights in the event that the applicant later submits a complaint under § 70.10(d)(1)(iii) concerning the decisional document;

(*5*) Reduces the potential for disagreement as to the content of an applicant's issue.

(D) *Incorporation by reference.* If the applicant makes an additional written submission, such as a brief, in support of the application, the applicant may incorporate by reference specific issues set forth in the written submission in accordance with the guidance on DD Form 293. The reference shall be specific enough for the DRB to identify clearly the matter being submitted as an issue. At a minimum, it shall identify the page, paragraph, and sentence incorporated. Because it is to the applicant's benefit to bring such issues to the DRB's attention as early as possible in the review, applicants who submit a brief are strongly urged to set forth all such issues as a separate item at the beginning of the brief. If it reasonably appears that the applicant inadvertently has failed expressly to incorporate an issue which the applicant clearly identifies as an issue to be addressed by the DRB, the DRB shall respond to such an issue under paragraphs (d) and (e) of this section.

(E) *Effective date of the new Form DD 293.* With respect to applications received before November 27, 1982, the DRB shall consider issues clearly and specifically stated in accordance with the rules in effect at the time of submission. With respect to applications received on or after November 27, 1982, if the applicant submits an obsolete DD Form 293, the DRB shall accept the application, but shall provide the applicant with a copy of the new form and advise the applicant that it will only respond to issues submitted on the new form in accordance with this Part.

(ii) *Relationship of issues to character of or reason for discharge.* If the application applies to both character of and reason for discharge, the applicant is encouraged, but not required, to identify the issue as applying to the character of or reason for discharge (or both). Unless the issue is directed at the reason for discharge expressly or by necessary implication, the DRB will presume that it applies solely to the character of discharge.

(iii) *Relationship of issues to the standards for discharge review.* The DRB reviews discharges on the basis of issues of propriety and equity. The standards used by the DRB are set forth in § 70.9. The applicant is encouraged to review those standards before submitting any issue upon which the

applicant believes a change in discharge should be based.

(A) *Issues concerning the equity of the discharge.* An issue of equity is a matter that involves a determination whether a discharge should by changed under the equity standards of § 70.9. This includes any issue, submitted by the applicant in accordance with paragraph (a)(4)(i) of this section, that is addressed to the discretionary authority of the DRB.

(B) *Issues concerning the propriety of a discharge.* An issue of propriety is a matter that involves a determination whether a discharge should be changed under the propriety standards of § 70.9. This includes an applicant's issue, submitted in accordance with paragraph (a)(4)(i) of this section, in which the applicant's position is that the discharge must be changed because of an error in the discharge pertaining to a regulation, statute, constitutional provision, or other source of law (including a matter that requires a determination whether, under the circumstances of the case, action by military authorities was arbitrary, capricious, or an abuse of discretion). Although a numerical reference to the regulation or other sources of law alleged to have been violated is not necessarily required, the context of the regulation or a description of the procedures alleged to have been violated normally must be set forth in order to inform the DRB adequately of the basis for the applicant's position.

(C) *The applicant's identification of an issue.* The applicant is encouraged, but not required, to identify an issue as pertaining to the propriety or the equity to the discharge. This will assist the DRB in assessing the relationship of the issue to propriety or equity under paragraph (e)(1)(iii) of this section.

(iv) *Citation of matter from decisions.* The primary function of the DRB involves the exercise of dicretion on a case-by-case basis. See § 70.9(b)(3). Applicants are not required to cite prior decisions as the basis for a change in discharge. If the applicant wishes to bring the DRB's attention to a prior decision as background or illustrative material, the citation should be placed in a brief or other supporting documents. If, however, it is the applicant's intention to submit an issue that sets forth specific principles and facts from a specific cited decision, the following requirements apply with respect to applications received on or after November 27, 1982.

(A) The issue must be set forth or expressly incorporated in the "Applicant's Issue" portion of DD Form 293.

(B) If an applicant's issue cites a prior decision (of the DRB, another Board, an agency, or a court), the applicant shall describe the specific principles and facts that are contained in the prior decision and explain the relevance of cited matter to the applicant's case.

(C) To ensure timely consideration of principles cited from unpublished opinions (including decisions maintained by the Armed Forces Discharge Review Board/Corrective Board Reading Room), applicants must provide the DRB with copies of such decisions or of the relevant portion of the treatise, manual, or similar source in which the principles were discussed. At the applicant's request, such materials will be returned.

(D) If the applicant fails to comply with the requirements in paragraphs (a)(4)(iv) (A), (B), and (C), the decisional document shall note the defect, and shall respond to the issue without regard to the citation.

(5) *Identification by the DRB of issues submitted by an applicant.* The applicant's issues shall be identified in accordance with this section after a review of the materials noted under paragraph (c)(4), is made.

(i) *Issues on DD Form 293.* The DRB shall consider all items submitted as issues by an applicant on DD Form 293 (or incorporated therein) in accordance with paragraph (a)(4)(i). With respect to applications submitted before November 27, 1982, the DRB shall consider all issues clearly and specifically stated in accordance with the rules in effect at the time of the submission.

(ii) *Amendment of issues.* The DRB shall not request or instruct an applicant to amend or withdraw any matter submitted by the applicant. Any amendment or withdrawal of an issue by an applicant shall be confirmed in writing by the applicant. Nothing in this provision:

(A) Limits the DRB's authority to question an applicant as to the meaning of such matter;

(B) Precludes the DRB from developing decisional issues based upon such questions;

(C) Prevents the applicant from amending or withdrawing such matter any time before the DRB closes the review process for deliberation; or

(D) Prevents the DRB from presenting an applicant with a list of proposed decisional issues and written information concerning the right of the applicant to add to, amend, or withdraw the applicant's submission. The written information will state that the applicant's decision to take such action (or decline to do so) will not be used against the applicant in the consideration of the case.

(iii) *Additional issues identified during a hearing.* The following additional procedure shall be used during a hearing in order to promote the DRB's understanding of an applicant's presentation. If, before closing the case for deliberation, the DRB believes that an applicant has presented an issue not listed on DD Form 293, the DRB may so inform the applicant, and the applicant may submit the issue in writing or add additional written issues at that time. This does not preclude the DRB from developing its own decisional issues.

(6) *Notification of possible bar to benefits.* Written notification shall be made to each applicant whose record indicates a reason for discharge that bars receipt of benefits under 38 U.S.C. 3103(a). This notification will advise the applicant that separate action by the Board for Correction of Military or Naval Records or the Veterans Administration may confer eligibility for VA benefits. Regarding the bar to benefits based upon the 180 days consecutive unauthorized absence, the following applies:

(i) Such absence must have been included as part of the basis for the applicant's discharge under other than honorable conditions.

(ii) Such absence is computed without regard to the applicant's normal or adjusted expiration of term of service.

(b) *Conduct of reviews.* (1) *Members.* As designated by the Secretary concerned, the DRB and its panels, if any, shall consist of five members. One member of the DRB shall be designated as the president and may serve as a presiding officer. Other officers may be designated to serve as presiding officers for DRB panels under regulations prescribed by the Secretary concerned.

(2) *Locations.* Reviews by a DRB will be conducted in the NCR and such other locations as designated by the Secretary concerned.

(3) *Types of review.* An applicant, upon request, is entitled to:

(i) *Record review.* A review of the application, available service records, and additional documents (if any) submitted by the applicant.

(ii) *Hearing.* A review involving an appearance before the DRB by the applicant or counsel or representative (or both).

(4) *Applicant's expenses.* Unless otherwise specified by law or regulation, expenses incurred by the applicant, witnesses, counsel or representative will not be paid by the Department of Defense.

(5) *Withdrawal of application.* An applicant shall be permitted to withdraw an application without prejudice at any time before the scheduled review.

(6) *Failure to appear at a hearing or respond to a scheduling notice.*

(i) Except as otherwise authorized by the Secretary concerned, further opportunity for a hearing shall not be made available in the following circumstances to an applicant who has requested a hearing:

(A) When the applicant has been sent a letter containing the month and location of a proposed hearing and fails to make a timely response; or

(B) When the applicant, after being notified by letter of the time and place of the hearing, fails to appear at the appointed time, either in person or by representative, without having made a prior, timely request for a continuation, postponement, or withdrawal.

(ii) In such cases, the applicant shall be deemed to have waived the right to a hearing, and the DRB shall complete its review of the discharge. Further request for a hearing shall not be granted unless the applicant can demonstrate that the failure to appear or respond was due to circumstances beyond the applicant's control.

(7) *Continuance and postponements.* (i) A continuance of a discharge review hearing may be authorized by the president of the DRB or presiding officer of the panel concerned, provided that such continuance is of reasonable duration and is essential to achieving a full and fair hearing. When a proposal for continuance is indefinite, the pending application shall be returned to the applicant with the option to resubmit when the case is fully ready for review.

(ii) Postponements of scheduled reviews normally shall not be permitted other than for demonstrated good and sufficient reason set forth by the applicant in a timely manner, or for the convenience of the government.

(8) *Reconsideration.* A discharge review shall not be subject to reconsideration except:

(i) When the only previous consideration of the case was on the motion of the DRB;

(ii) When the original discharge review did not involve a hearing and a hearing is now desired, and the provisions of paragraph (b)(6) of this section do not apply;

(iii) When changes in discharge policy are announced after an earlier review of an applicant's discharge, and the new policy is made expressly retroactive;

(iv) When the DRB determines that policies and procedures under which the applicant was discharged differ in material respects from policies and procedures currently applicable on a Service-wide basis to discharges of the type under consideration, provided that such changes in policies or procedures represent a substantial enhancement of the rights afforded a respondent in such proceedings;

(v) When an individual is to be represented by a counsel or representative, and was not so represented in any previous consideration of the case by the DRB;

(vi) When the case was not previously considered under uniform standards published pursuant to Pub. L. 95–126 and such application is made within 15 years after the date of discharge; or

(vii) On the basis of presentation of new, substantial, relevant evidence not available to the applicant at the time of the original review. The decision whether evidence offered by an applicant in support of a request for reconsideration is in fact new, substantial, relevant, and was not available to the applicant at the time of the original review will be based on a comparison of such evidence with the evidence considered in the previous discharge review. If this comparison shows that the evidence submitted would have had a probable effect on matters concerning the propriety or equity of the discharge, the request for reconsideration shall be granted.

(9) *Availability of records and documents.* (i) Before applying for discharge review, potential applicants or their designated representatives may obtain copies of their military personnel records by submitting a General Services Administration Standard Form 180, "Request Pertaining to Military Records," to the National Personnel Records Center (NPRC), 9700 Page Boulevard, St. Louis, MO 62132. Once the application for discharge review (DD Form 293) is submitted, an applicant's military records are forwarded to the DRBs where they cannot be reproduced. Submission of a request for an applicant's military records, including a request under the Freedom of Information Act (32 CFR Part 286) or Privacy Act (32 CFR Part 286a) after the DD Form 293 has been submitted, shall result automatically in the temporary suspension of processing of the application for discharge review until the requested records are sent to an appropriate location for copying, are copied, and are returned to the headquarters of the DRB. Processing of the application shall then be resumed at whatever stage of the discharge review process is practicable. Applicants are encouraged to submit any request for their military records before applying for discharge review rather than after submitting DD Form 293, to avoid delays in processing of applications and scheduling of reviews. Applicants and their counsel also may examine their military personnel records at the site of their scheduled review before the hearing. DRBs shall notify applicants of the dates the records are available for examination in their standard scheduling information.

(ii) If the DRB is not authorized to provide copies of documents that are under the cognizance of another government department, office, or activity, applications for such information must be made by the applicant to the cognizant authority. The DRB shall advise the applicant of the mailing address of the government department, office, or activity to which the request should be submitted.

(iii) If the official records relevant to the discharge review are not available at the agency having custody of the records, the applicant shall be so notified and requested to provide such information and documents as may be desired in support of the request for discharge review. A period of not less than 30 days shall be allowed for such documents to be submitted. At the expiration of this period, the review may be conducted with information available to the DRB.

(iv) A DRB may take steps to obtain additional evidence that is relevant to the discharge under consideration beyond that found in the official military records or submitted by the applicant, if a review of available evidence suggests that it would be incomplete without the additional information, or when the applicant presents testimony or documents that require additional information to evaluate properly. Such information shall be made available to the applicant, upon request, with appropriate modifications regarding classified material.

(A) In any case heard on request of an applicant, the DRB shall provide the applicant and counsel or representative, if any, at a reasonable time before initiating the decision process, a notice of the availability of all regulations and documents to be considered in the discharge review, except for documents in the official personnel or medical records and any documents submitted by the applicant. The DRB shall also notify the applicant or counsel or representative: (*1*) Of the right to examine such documents or to be provided with copies of the documents upon request; (*2*) of the date by which such requests must be received; and (*3*) of the opportunity to respond within a

reasonable period of time to be set by the DRB.

(B) When necessary to acquaint the applicant with the substance of a classified document, the classifying authority, on the request of the DRB, shall prepare a summary of or an extract from the document, deleting all references to sources of information and other matters, the disclosure of which, in the opinion of the classifying authority, would be detrimental to the national security interests of the United States. Should preparation of such summary be deemed impracticable by the classifying authority, information from the classified sources shall not be considered by the DRB in its review of the case.

(v) Regulations of a Military Department may be obtained at many installations under the jurisdiction of the Military Department concerned or by writing to the following address: DA Military Review Boards Agency, Attention: SFBA (Reading Room), Room 1E520, Washington, D.C. 20310.

(10) *Recorder/Secretary or Assistant.* Such a person shall be designated to assist in the functioning of each DRB in accordance with the procedures prescribed by the Secretary of the Military Department concerned.

(11) *Hearings.* Hearings (including hearing examinations) that are conducted shall recognize the rights of the individual to privacy. Accordingly, presence at hearings of individuals other than those required shall be limited to persons authorized by the Secretary concerned or expressly requested by the applicant, subject to reasonable limitations based upon available space. If, in the opinion of the presiding officer, the presence of other individuals could be prejudicial to the interests of the applicant or the government, hearings may be held in closed session.

(12) *Evidence and testimony.* (i) The DRB may consider any evidence obtained in accordance with this part.

(ii) Formal rules of evidence shall not be applied in DRB proceedings. The presiding officer shall rule on matters of procedure and shall ensure that reasonable bounds of relevancy and materiality are maintained in the taking of evidence and presentation of witnesses.

(iii) Applicants undergoing hearings shall be permitted to make sworn or unsworn statements, if they so desire, or to introduce witnesses, documents, or other information on their behalf, at no expense to the Department of Defense.

(iv) Applicants may also make oral or written arguments personally or through counsel or representatives.

(v) Applicants who present sworn or unsworn statements and witnesses may be questioned by the DRB. All testimony shall be taken under oath or affirmation unless the applicant specifically requests to make an unsworn statement.

(vi) There is a presumption of regularity in the conduct of governmental affairs. This presumption can be applied in any review unless there is substantial credible evidence to rebut the presumption.

(c) *Decision process.* (1) The DRB or the DRB panel, as appropriate, shall meet in plenary session to review discharges and exercise its discretion on a case-by-case basis in applying the standards set forth in § 70.9.

(2) The presiding officer is responsible for the conduct of the discharge review. The presiding officer shall convene, recess, and adjourn the DRB panel as appropriate and shall maintain an atmosphere of dignity and decorum at all times.

(3) Each DRB member shall act under oath or affirmation requiring careful, objective consideration of the application. DRB members are responsible for eliciting all facts necessary for a full and fair hearing. They shall consider all information presented to them by the applicant. In addition, they shall consider available Military Service and health records, together with other records that may be in the files of the Military Department concerned and relevant to the issues before the DRB, and any other evidence obtained in accordance with this Part.

(4) The DRB shall identify and address issues after a review of the following material obtained and presented in accordance with this part and the implementing instructions of the DRB: Available official records, documentary evidence submitted by or on behalf of an applicant, presentation of a hearing examination, testimony by or on behalf of an applicant, oral or written arguments presented by or on behalf of an applicant, and any other relevant evidence.

(5) If an applicant who has requested a hearing does not respond to a notification letter or does not appear for a scheduled hearing, the DRB may complete the review on the basis of material previously submitted.

(6) *Application of standards.* (i) When a DRB determines that an applicant's discharge was improper (§ 70.9(b)), the DRB will determine which reason for discharge should have been assigned based upon the facts and circumstances before the discharge authority, including the Service regulations governing reasons for discharge at the time the applicant was discharged. Unless it is also determined that the discharge was inequitable (§ 70.9(c)), the provisions as to characterization in the regulation under which the applicant should have been discharged will be considered in determining whether further relief is warranted.

(ii) When the DRB determines that an applicant's discharge was inequitable (see § 70.9(c)), any change will be based on the evaluation of the applicant's overall record of service and relevant regulations of the Military Service of which the applicant was a member.

(7) Voting shall be conducted in closed session, a majority of the five members' votes constituting the DRB decision. Voting procedures shall be prescribed by the Secretary of the Military Department concerned.

(8) Details of closed session deliberations of a DRB are privileged information and shall not be divulged.

(9) There is no requirement for a statement of minority views in the event of a split vote. The minority, however, may submit a brief statement of its views under procedures established by the Secretary concerned.

(10) DRBs may request advisory opinions from staff officers of their Military Departments. These opinions are advisory in nature and are not binding on the DRB in its decision-making process.

(11) The preliminary determinations required by 38 U.S.C. 3103(e) shall be made upon majority vote of the DRB concerned on an expedited basis. Such determination shall be based upon the standards set forth in § 70.9 of this part.

(12) *The DRB shall:* Address items submitted as issues by the applicant under paragraph (d) of this section;

(ii) Address decisional issues under paragraph (e) of this section; and

(iii) Prepare a decisional document in accordance with paragraph (h) of this section.

(d) *Response to items submitted as issues by the applicant.* (1) *General guidance.* (i) If an issue submitted by an applicant contains two or more clearly separate issues, the DRB should respond to each issue under the guidance of this paragraph as if it had been set forth separately by the applicant.

(ii) If an applicant uses a "building block" approach (that is, setting forth a series of conclusions on issues that lead to a single conclusion purportedly warranting a change in the applicant's discharge), normally there should be a separate response to each issue.

(iii) Nothing in this paragraph precludes the DRB from making a single response to multiple issues when such action would enhance the clarity of the

decisional document, but such response must reflect an adequate response to each separate issue.

(2) *Decisional issues.* An item submitted as an issue by an applicant in accordance with this part shall be addressed as a decisional issue under paragraph (e), in the following circumstances:

(i) When the DRB decides that a change in discharge should be granted, and the DRB bases its decision in whole or in part on the applicant's issue; or

(ii) When the DRB does not provide the applicant with the full change in discharge requested, and the decision is based in whole or in part on the DRB's disagreement on the merits with an issue submitted by the applicant.

(3) *Response to items not addressed as decisional issues.* (i) If the applicant receives the full change in discharge requested (or a more favorable change), that fact shall be noted and the basis shall be addressed as a decisional issue. No further response is required to other issues submitted by the applicant.

(ii) If the applicant does not receive the full change in discharge requested with respect to either the character of or reason for discharge (or both), the DRB shall address the items submitted by the applicant under paragraph (e) of this section (decisional issues) unless one of the following responses is applicable:

(A) *Duplicate issues.* The DRB may state that there is a full response to the issue submitted by the applicant under a specified decisional issue. This response may be used only when one issue clearly duplicates another or the issue clearly requires discussion in conjunction with another issue.

(B) *Citations without principles and facts.* The DRB may state that the applicant's issue, which consists of a citation to a decision without setting forth any principles and facts from the decision that the applicant states are relevant to the applicant's case, does not comply with the requirements of paragraph (a)(4)(iv)(A).

(C) *Unclear issues.* The DRB may state that it cannot respond to an item submitted by the applicant as an issue because the meaning of the item is unclear. An issue is unclear if it cannot be understood by a reasonable person familiar with the discharge review process after a review of the materials considered under paragraph (c)(4) of this section.

(D) *Nonspecific issues.* The DRB may state that it cannot respond to an item submitted by the applicant as an issue because it is not specific. A submission is considered not specific if a reasonable person familiar with the discharge review process after a review of the materials considered under paragraph (c)(4) of this section, cannot determine the relationship between the applicant's submission and the particular circumstances of the case. This response may be used only if the submission is expressed in such general terms that no other response is applicable. For example, if the DRB disagrees with the applicant as to the relevance of matters set forth in the submission, the DRB normally will set forth the nature of the disagreement under the guidance in paragraph (e) of this section, with respect to decisional issues, or it will reject the applicant's position on the basis of paragraphs (d)(3)(ii)(A) or (d)(3)(ii)(B) of this section. If the applicant's submission is so general that none of those provisions is applicable, then the DRB may state that it cannot respond because the item is not specific.

(e) *Decisional issues.* (1) *General.* Under the guidance in this section, the decisional document shall discuss the issues that provide a basis for the decision whether there should be a change in the character of or reason for discharge. In order to enhance clarity, the DRB should not address matters other than issues relied upon in the decision or raised by the applicant.

(i) *Partial change.* When the decision changes a discharge, but does not provide the applicant with the full change in discharge requested, the decisional document shall address both the issues upon which change is granted and the issues upon which the DRB denies the full change requested.

(ii) *Relationship of issue to character of or reason for discharge.* Generally, the decisional document should specify whether a decisional issue applies to the character of or reason for discharge (or both), but it is not required to do so.

(iii) *Relationship of an issue to propriety or equity.* (A) If an applicant identifies an issue as pertaining to both propriety and equity, the DRB will consider it under both standards.

(B) If an applicant identifies an issue as pertaining to the propriety of the discharge (for example, by citing a propriety standard or otherwise claiming that a change in discharge is required as a matter of law), the DRB shall consider the issue solely as a matter of propriety. Except as provided in paragraph (e)(1)(iii)(D) of this section, the DRB is not required to consider such an issue under the equity standards.

(C) If the applicant's issue contends that the DRB is required as a matter of law to follow a prior decision by setting forth an issue of propriety from the prior decision and describing its relationship to the applicant's case, the issue shall be considered under the propriety standards and addressed under paragraphs (e)(2) or (e)(3) of this section.

(D) If the applicant's issue sets forth principles of equity contained in a prior DRB decision, describes the relationship to the applicant's case, and contends that the DRB is required as a matter of law to follow the prior case, the decisional document shall note that the DRB is not bound by its discretionary decisions in prior cases under the standards in § 70.9. However, the principles cited by the applicant, and the description of the relationship of the principles to the applicant's case, shall be considered under the equity standards and addressed under paragraphs (e)(5) or (e)(6) of this section.

(E) If the applicant's issue cannot be identified as a matter of propriety or equity, the DRB shall address it as an issue of equity.

(2) *Change of discharge: issues of propriety.* If a change in the discharge is warranted under the propriety standards in § 70.9 the decisional document shall state that conclusion and list the errors of expressly retroactive changes in policy that provide a basis for the conclusion. The decisional document shall cite the facts in the record that demonstrate the relevance of the error or change in policy to the applicant's case. If the change in discharge does not constitute the full change requested by the applicant, the reasons for not granting the full change shall be addressed under the guidance in paragraph (e)((3) or (e)(6) of this section.

(3) *Denial of the full change requested: issues of propriety.* (i) If the decision rejects the applicant's position on an issue of propriety, or if it is otherwise decided on the basis of an issue of propriety that the full change in discharge requested by the applicant is not warranted, the decisional document shall note that conclusion.

(ii) The decisional document shall list reasons for its conclusion on each issue of propriety under the following guidance:

(A) If a reason is based in whole or in part upon a regulation, statute, constitutional provision, judicial determination, or other source of law, the DRB shall cite the pertinent source of law and the facts in the record that demonstrate the relevance of the source of law to the particular circumstances in the case.

(B) If a reason is based in whole or in part on a determination as to the occurrence or nonoccurrence of an event or circumstance, including a factor required by applicable Service regulations to be considered for

determination of the character of and reason for the applicant's discharge, the DRB shall make a finding of fact for each such event or circumstance.

(*1*) For each such finding, the decisional document shall list the specific source of the information relied upon. This may include the presumption of regularity in appropriate cases. If the information is listed in the service record section of the decisional document, a citation is not required.

(*2*) If a finding of fact is made after consideration of contradictory evidence in the record (including information cited by the applicant or otherwise identified by members of the DRB), the decisional document shall set forth the conflicting evidence, set forth the basis for relying on the presumption of regularity, and explain why the information relied upon was more persuasive than the information that was rejected. If the presumption of regularity is cited as the basis for rejecting such information, the decisional document shall explain why the contradictory evidence was insufficient to overcome the presumption. In an appropriate case, the explanation as to why the contradictory evidence was insufficient to overcome the presumption of regularity may consist of a statement that the applicant failed to provide sufficient corroborating evidence, or that the DRB did not find the applicant's testimony to be sufficiently credible to overcome the presumption.

(C) If the DRB disagrees with the position of the applicant on an issue of propriety, the following guidance applies in addition to the guidance in paragraph (e)(3)(ii) (A) and (B) of this section:

(*1*) The DRB may reject the applicant's position by explaining why it disagrees with the principles set forth in the applicant's issue (including principles derived from cases cited by the applicant in accordance with paragraph (e)(4)(iv) of this section).

(*2*) The DRB may reject the applicant's position by explaining why the principles set forth in the applicant's issue (including principles derived from cases cited by the applicant in accordance with paragraph (a)(4)(iv) of this section) are not relevant to the applicant's case.

(*3*) The DRB may reject an applicant's position by stating that the applicant's issue of propriety is not a matter upon which the DRB grants a change in discharge, and by providing an explanation for this position. When the applicant indicates that the issue is to be considered in conjunction with one or more other specified issues, the explanation will address all such specified issues.

(*4*) The DRB may reject the applicant's position on the grounds that other specified factors in the case preclude granting relief, regardless of whether the DRB agreed with the applicant's position.

(*5*) If the applicant takes the position that the discharge must be changed because of an alleged error in a record associated with the discharge, and the record has not been corrected by the organization with primary responsibility for corrective action, the DRB may respond that it will presume the validity of the record in the absence of such corrective action. If the organization empowered to correct the record is within the Department of Defense, the DRB should provide the applicant with a brief description of the procedures for requesting correction of the record. If the DRB on its own motion cites this issue as a decisional issue on the basis of equity, it shall address the issue under paragraph (d)(5) or (d)(6) of this section.

(*6*) When an applicant's issue contains a general allegation that a certain course of action violated his or her constitutional rights, the DRB may respond in appropriate cases by noting that the action was consistent with statutory or regulatory authority, and by citing the presumption of constitutionality that attaches to statutes and regulations. If, on the other hand, the applicant makes a specific challenge to the constitutionality of the action by challenging the application of a statute or regulation in a particular set of circumstances, it is not sufficient to respond solely by citing the presumption of constitutionality of the statute or regulation when the applicant is not challenging the constitutionality of the statute or regulation. Instead, the response must address the specific circumstances of the case.

(4) *Denial of the full change in discharge requested when propriety is not at issue.* If the applicant has not submitted an issue of propriety and the DRB has not otherwise relied upon an issue of propriety to change the discharge, the decisional document shall contain a statement to that effect. The DRB is not required to provide any further discussion as to the propriety of the discharge.

(5) *Change of discharge: issues of equity.* If the DRB concludes that a change in the discharge is warranted under the equity standards in § 70.9 the decisional document shall list each issue of equity upon which this conclusion is based. The DRB shall cite the facts in the record that demonstrate the relevance of the issue to the applicant's case. If the change in discharge does not constitute the full change requested by the applicant, the reasons for not giving the full change requested shall be discussed under the guidance in paragraph (e)(6) of this section.

(6) *Denial of the full change in discharge requested: issues of equity.* (i) If the DRB rejects the applicant's position on an issue of equity, or if the decision otherwise provides less than the full change in discharge requested by the applicant, the decisional document shall note that conclusion.

(ii) The DRB shall list reasons for its conclusion on each issue of equity under the following guidance:

(A) If a reason is based in whole or in part upon a regulation, statute, constitutional provision, judicial determination, or other source of law, the DRB shall cite the pertinent source of law and the facts in the record that demonstrate the relevance of the source of law to the exercise of discretion on the issue of equity in the applicant's case.

(B) If a reason is based in whole or in part on a determination as to the occurrence or nonoccurrence of an event or circumstance, including a factor required by applicable Service regulations to be considered for determination of the character of and reason for the applicant's discharge, the DRB shall make a finding of fact for each such event or circumstance.

(*1*) For each such finding, the decisional document shall list the specific source of the information relied upon. This may include the presumption of regularity in appropriate cases. If the information is listed in the service record section of the decisional document, a citation is not required.

(*2*) If a finding of fact is made after consideration of contradictory evidence in the record (including information cited by the applicant or otherwise identified by members of the DRB), the decisional document shall set forth the conflicting evidence, set forth the basis for relying on the presumption of regularity, and explain why the information relied upon was more persuasive than the information that was rejected. If the presumption of regularity is cited as the basis for rejecting such information, the decisional document shall explain why the contradictory evidence was insufficient to overcome the presumption. In an appropriate case, the explanation as to why the contradictory evidence was insufficient to overcome the presumption of regularity may consist of a statement that the applicant

failed to provide sufficient corroborating evidence, or that the DRB did not find the applicant's testimony to be sufficiently credible to overcome the presumption.

(C) If the DRB disagrees with the position of the applicant on an issue of equity, the following guidance applies in addition to the guidance in paragraph (e)(6)(ii)(A) and (B) of this section:

(*1*) The DRB may reject the applicant's position by explaining why it disagrees with the principles set forth in the applicant's issue (including principles derived from cases cited by the applicant in accordance with paragraph (a)(4)(iv) of this section).

(*2*) The DRB may reject the applicant's position by explaining why the principles set forth in the applicant's issue (including principles derived from cases cited by the applicant) are not relevant to the applicant's case.

(*3*) The DRB may reject an applicant's position by explaining why the applicant's issue is not a matter upon which the DRB grants a change in discharge as a matter of equity. When the applicant indicates that the issue is to be considered in conjunction with other specified issues, the explanation will address all such specified issues.

(*4*) The DRB may reject the applicant's position on the grounds that other specified factors in the case preclude granting relief, regardless of whether the DRB agreed with the applicant's position.

(*5*) If the applicant takes the position that the discharge should be changed as a matter of equity because of an alleged error in a record associated with the discharge, and the record has not been corrected by the organization with primary responsibility for corrective action, the DRB may respond that it will presume the validity of the record in the absence of such corrective action. However, the DRB will consider whether it should exercise its equitable powers to change the discharge on the basis of the alleged error. If it declines to do so, it shall explain why the applicant's position did not provide a sufficient basis for the change in the discharge requested by the applicant.

(D) When the DRB concludes that aggravating factors outweigh mitigating factors, the DRB must set forth reasons such as the seriousness of the offense, specific circumstances surrounding the offense, number of offenses, lack of mitigating circumstances, or similar factors. The DRB is not required, however, to explain why it relied on any such factors unless the applicability or weight of such a factor is expressly raised as an issue by the applicant.

(E) If the applicant has not submitted any issues and the DRB has not otherwise relied upon an issue of equity for a change in discharge, the decisional document shall contain a statement to that effect, and shall note that the major factors upon which the discharge was based are set forth in the service record portion of the decisional document.

(f) *The recommendation of the DRB President.* (1) *General.* The president of the DRB may forward cases for consideration by the Secretarial Reviewing Authority (SRA) under rules established by the Secretary concerned. There is no requirement that the President submit a recommendation when a case is forwarded to the SRA. If the president makes a recommendation with respect to the character of or reason for discharge, however, the recommendation shall be prepared under the guidance in paragraph (f)(2) of this section.

(2) *Format for recommendation.* If a recommendation is provided, it shall contain the president's views whether there should be a change in the character of or reason for dischage (or both). If the president recommends such a change, the particular change to be made shall be specified. The recommendation shall set forth the president's position on decisional issues and issues submitted by the applicant under the following guidance:

(i) *Adoption of the DRB's decisional document.* The recommendation may state that the president has adopted the decisional document prepared by the majority. The president shall ensure that the decisional document meets the requirements of this section.

(ii) *Adoption of the specific statements from the majority.* If the President adopts the views of the majority only in part, the recommendation shall cite the specific matter adopted from the majority. If the president modifies a statement submitted by the majority, the recommendation shall set forth the modification.

(iii) *Response to issues not included in matter adopted from the majority.* The recommendation shall set forth the following if not adopted in whole or in part from the majority:

(A) The issues on which the president's recommendation is based. Each such decisional issue shall be addressed by the president under paragraph (e) of this section.

(B) The president's response to items submitted as issues by the applicant under paragraph (d) of this section.

(C) Reasons for rejecting the conslusions of the majority with respect to decisional issues which, if resolved in the applicant's favor, would have resulted in greater relief for the applicant than that afforded by the president's recommendation. Suh issues shall be addressed under the principles in paragraph (e) of this section.

(g) *Secretarial reviewing authority (SRA).*— (1) *Review by the SRA.* The Secretarial Reviewing Authority (SRA) is the Secretary concerned or the official to whom Secretary's discharge review authority has been delegated.

(i) The SRA may review the following types of cases before issuance of the final notification of a decision:

(A) Any specific case in which the SRA has an interest.

(B) Any specific case that the president of the DRB believes is of significant interest to the SRA.

(ii) Cases reviewed by the SRA shall be considered under the standards set forth in § 70.9.

(2) *Processing the decisional document.* (i) The decisional document shall be transmitted by the DRB president under paragraph (e) of this section.

(ii) The following guidance applies to cases that have been forwarded to the SRA except for cases reviewed on the DRB's own motion without the participation of the applicant or the applicant's counsel:

(A) The applicant and counsel or representative, if any, shall be provided with a copy of the proposed decisional document, including the DRB president's recommendation to the SRA, if any. Classified information shall be summarized.

(B) The applicant shall be provided with a reasonable period of time, but not less than 25 days, to submit to the SRA a rebuttal. An issue in rebuttal consists of a clear and specific statement by the applicant in support of or in opposition to the statements of the DRB or DRB president on decisional issues and other clear and specific issues that were submitted by the applicant in accordance with paragraph (a)(4)(i) of this section. The rebuttal shall be based solely on matters in the record before when the DRB closed the case for deliberation or in the president's recommendation.

(3) *Review of the decisional document.* If corrections in the decisional document are required, the decisional document shall be returned to the DRB for corrective action. The corrected decisional document shall be sent to the applicant (and counsel, if any), but a further opportunity for rebuttal is not required unless the correction produces a different result or includes a substantial change in the

discussion by the DRB (or DRB president) of the issues raised by the majority or the applicant.

(4) *The Addendum of the SRA.* The decision of the SRA shall be in writing and shall be appended as an addendum to the decisional document under the guidance in this subsection.

(i) *The SRA's decision.* The addendum shall set forth the SRA's decision whether there will be a change in the character of or reason for discharge (or both); if the SRA concludes that a change is warranted, the particular change to be made shall be specified. If the SRA adopts the decision recommended by the DRB or the DRB president, the decisional document shall contain a reference to the matter adopted.

(ii) *Discussion of issues.* In support of the SRA's decision, the addendum shall set forth the SRA's position on decisional issues, items submitted as issues by an applicant in accordance with paragraph (a)(4)(i) of this section, and issues raised by the DRB and the DRB president in accordance with the following guidance:

(A) *Adoption of the DRB president's recommendation.* The addendum may state that the SRA has adopted the DRB president's recommendation.

(B) *Adoption of the DRB's proposed decisional document.* The addendum may state that the SRA has adopted the proposed decisional document prepared by the DRB.

(C) *Adoption of specific statements from the majority or the DRB president.* If the SRA adopts the views of the DRB or the DRB president only in part, the addendum shall cite the specific statements adopted. If the SRA modifies a statement submitted by the DRB or the DRB president, the addendum shall set forth the modification.

(D) *Response to issues not included in matter adopted from the DRB or the DRB president.* The addendum shall set forth the following if not adopted in whole or in part from the DRB or the DRB president:

(*1*) A list of the issues on which the SRA's decision is based. Each such decisional issue shall be addressed by the SRA under paragraph (e) of this section. This includes reasons for rejecting the conclusion of the DRB or the DRB president with respect to decisional issues which, if resolved in the applicant's favor, would have resulted in change to the discharge more favorable to the applicant than that afforded by the SRA's decision. Such issues shall be addressed under the principles in paragraph (e) of this section.

(*2*) The SRA's response to items submitted as issues by the applicant under paragraph (d) of this section.

(iii) *Response to the rebuttal.* (A) If the SRA grants the full change in discharge requested by the applicant (or a more favorable change), that fact shall be noted, the decisional issues shall be addressed under paragraph (e) of this section, and no further response to the rebuttal is required.

(B) If the SRA does not grant the full change in discharge requested by the applicant (or a more favorable change), the addendum shall list each issue in rebuttal submitted by an applicant in accordance with this section, and shall set forth the response of the SRA under the following guidance:

(*1*) If the SRA rejects an issue in rebuttal, the SRA may respond in accordance with the principles in paragraph (e) of this section.

(*2*) If the matter adopted by the SRA provides a basis for the SRA's rejection of the rebuttal material, the SRA may note that fact and cite the specific matter adopted that responds to the issue in rebuttal.

(*3*) If the matter submitted by the applicant does not meet the requirements for rebuttal material in paragraph (b)(2)(ii)(B) of this section.

(iv) *Index entries.* Appropriate index entries shall be prepared for the SRA's actions for matters that are not adopted from the DRB's proposed decisional document.

(h) *The decisional document.* A decisional document shall be prepared for each review. At a minimum, this document shall contain:

(1) The circumstances and character of the applicant's service as extracted from available service records, including health records, and information provided by other Government authorities or the applicant, such as, but not limited to:

(i) Information concerning the discharge at issue in the review, including:

(A) Date (YYMMDD) of discharge.

(B) Character of discharge.

(C) Reason for discharge.

(D) The specific regulatory authority under which the discharge was issued.

(ii) Date (YYMMDD) of enlistment.

(iii) Period of enlistment.

(iv) Age at enlistment.

(v) Length of service.

(vi) Periods of unauthorized absence.

(vii) Conduct and efficiency ratings (numerical or narrative).

(viii) Highest rank received.

(ix) Awards and decorations.

(x) Educational level.

(xi) Aptitude test scores.

(xii) Incidents of punishment pursuant to Article 15, Uniform Code of Military Justice (including nature and date (YYMMDD) of offense or punishment).

(xiii) Convictions by court-martial.

(xiv) Prior military service and type of discharge received.

(2) A list of the type of documents submitted by or on behalf of the applicant (including a written brief, letters of recommendation, affidavits concerning the circumstances of the discharge, or other documentary evidence), if any.

(3) A statement whether the applicant testified, and a list of the type of witnesses, if any, who testified on behalf of the applicant.

(4) A notation whether the application pertained to the character of discharge, the reason for discharge, or both.

(5) The DRB's conclusions on the following:

(i) Whether the character of or reason for discharge should be changed.

(ii) The specific changes to be made, if any.

(6) A list of the items submitted as issues on DD Form 293 or expressly incorporated therein and such other items submitted as issues by the applicant that are identified as inadvertently omitted under paragraph (a)(4)(i)(D) of this section. If the issues are listed verbatim on DD Form 293, a copy of the relevant portion of the Form may be attached. Issues that have been withdrawn or modified with the consent of the applicant need not be listed.

(7) The response to the items submitted as issues by the applicant under the guidance in paragraph (d) of this section.

(8) A list of decisional issues and a discussion of such issues under the guidance in paragraph (e) of this section.

(9) Minority views, if any, when authorized under rules of the Military Department concerned.

(10) The recommendation of the DRB president when required by paragraph (f) of this section.

(11) The addendum of the SRA when required by paragraph (g) of this section.

(12) Advisory opinions, including those containing factual information, when such opinions have been relied upon for final decision or have been accepted as a basis for rejecting any of the applicant's issues. Such advisory opinions or relevant portions thereof that are not fully set forth in the discussion of decisional issues or otherwise in response to items submitted as issues by the application shall be incorporated by reference. A copy of opinions incorporated by reference shall be appended to the

decision and included in the record of proceedings.

(13) A record of the voting, including:

(i) The number of votes for the DRB's decision and the number of votes in the minority, if any.

(ii) The DRB member's names (last name, first name, M.I.) and votes. The copy provided to the applicant may substitute a statement that the names and votes will be made available to the applicant at the applicant's request.

(14) Index entries for each decisional issue under appropriate categories listed in the index of decisions.

(15) An authentication of the document by an appropriate official.

(i) *Issuance of decisions following discharge review.* The applicant and counsel or representative, if any, shall be provided with a copy of the decisional document and of any further action in review. The applicant (and counsel, if any) shall be notified of the availability of the complaint process under § 70.10. Final notification of decisions shall be issued to the applicant with a copy to the counsel or representative, if any, and to the Military Service concerned.

(1) Notification to applicants, with copies to counsel or representatives, shall normally be made through the U.S. Postal Service. Such notification shall consist of a notification of decision, together with a copy of the decisional document.

(2) Notification to the Military Services shall be for the purpose of appropriate action and inclusion of review matter in personnel records. Such notification shall bear appropriate certification of completeness and accuracy.

(3) Actions on review by superior authority, when occurring, shall be provided to the applicant and counsel or representative in the same manner as the notification of the review decision.

(j) *Record of DRB proceedings.* (1) When the proceedings in any review have been concluded, a record thereof will be prepared. Records may include written records, electromagnetic records, videotape recordings, or a combination thereof.

(2) At a minimum, the record will include the following:

(i) The application for review;

(ii) A record of the testimony in verbatim, summarized, or recorded form at the option of the DRB concerned;

(iii) Documentary evidence or copies thereof, considered by the DRB other than the Military Service record;

(iv) Briefs and arguments submitted by or on behalf of the applicant;

(v) Advisory opinions considered by the DRB, if any;

(vi) The findings, conclusions, and reasons developed by the DRB;

(vii) Notification of the DRB's decision to the cognizant custodian of the applicant's records, or reference to the notification document;

(viii) Minority reports, if any;

(ix) A copy of the decisional document.

(k) *Final disposition of the record of proceedings.* The original record of proceedings and all appendices thereto, shall in all cases be incorporated in the Military Service record of the applicant and the Service record shall be returned to the custody of the appropriate records holding facility. Other copies shall be filed and disposed of in accordance with appropriate Military Service regulations.

(l) *Availability of Discharge Review Board documents for inspection and copying.* (1) A copy of the decisional document prepared in accordance with paragraph (d) of this section shall be made available for public inspection and copying promptly after a notice of final decision is sent to the applicant.

(2) To prevent a clearly unwarranted invasion of personal privacy, identifying details of the applicant and other persons will be deleted from documents made available for public inspection and copying.

(i) Names, addresses, social security numbers, and Military Service numbers must be deleted. Written justification shall be made for all other deletions and shall be available for public inspection.

(ii) Each DRB shall ensure that there is a means for relating a decisional document number to the name of the applicant to permit retrieval of the applicant's records when required in processing a complaint under § 70.10.

(3) Any other privileged or classified material contained in or appended to any documents required by this Part to be furnished the applicant and counsel or representative or made available for public inspection and copying may be deleted therefrom only if a written statement of the basis for the deletions is provided the applicant and counsel or representative and made available for public inspection. It is not intended that the statement be so detailed as to reveal the nature of the withheld material.

(4) DRB documents made available for public inspection and copying shall be located in the Armed Forces Discharge Review/Correction Board Reading Room. The documents shall be indexed in a usable and concise form so as to enable the public, and those who represent applicants before the DRBs, to isolate from all these decisions that are indexed, those cases that may be similar to an applicant's case and that indicate the circumstances under or reasons for (or both) which the DRB or the Secretary concerned granted or denied relief.

(i) The reading file index shall include, in addition to any other items determined by the DRB, the case number, the date, character of, reason and authority for the discharge. It shall also include the decisions of the DRB and reviewing authority, if any, and the issues addressed in the statement of findings, conclusions, and reasons.

(ii) The index shall be maintained at selected permanent locations throughout the United States. This ensures reasonable availability to applicants at least 30 days before a traveling panel review. A list of these locations shall be published in the **Federal Register** by the Department of the Army. The index shall also be made available at sites selected for traveling panels or hearing examinations for such periods as the DRB or a hearing examiner is present and in operation. An applicant who has requested a traveling panel review or a hearing examination shall be advised in the notice of such review of the permanent index locations.

(iii) The Armed Forces Discharge Review/Correction Board Reading Room shall publish indexes quarterly for all DRBs. All DRBs shall be responsible for timely submission to the Reading Room of individual case information required for update of the indexes. In addition, all DRBs shall be responsible for submission of new index categories based upon published changes in policy, procedures, or standards. These indexes shall be available for public inspection or purchase (or both) at the Reading Room. When the DRB has accepted an application, information concerning the availability of the index shall be provided in the DRB's response to the application.

(iv) Copies of decisional documents will be provided to individuals or organizations outside the NCR in response to written requests for such documents. Although the Reading Room shall try to make timely responses to such requests, certain factors such as the length of a request, the volume of other pending requests, and the impact of other responsibilities of the staff assigned to such duties may cause some delays. A fee may be charged for such documents under appropriate DoD and Department of the Army directives and regulations. The manual that accompanies the index of decisions shall notify the public that if an applicant indicates that a review is scheduled for a specific date, an effort will be made to provide requested decisional documents before that date.

The individual or organization will be advised if that cannot be accomplished.

(v) Correspondence relating to matters under the cognizance of the Reading Room (including requests for purchase of indexes) shall be addressed to: DA Military Review Boards Agency, Attention: SFBA (Reading Room), Room 1E520, The Pentagon, Washington, D.C. 20310.

(m) *Privacy Act Information.* Information protected under the Privacy Act is involved in the discharge review functions. The provisions of 32 CFR Part 286a shall be observed throughout the processing of a request for review of discharge or dismissal.

(n) *Information requirement.* Each Military Department shall provide the Deputy Assistant Secretary of Defense (Military Personnel and Force Management) DASD (MP&FM), Office of the ASD (MRA&L), with a semiannual report of discharge review actions in accordance with § 70.11.

§ 70.9 Discharge review standards.

(a) *Objective of review.* The objective of a discharge review is to examine the propriety and equity of the applicant's discharge and to effect changes, if necessary. The standards of review and the underlying factors that aid in determining whether the standards are met shall be historically consistent with criteria for determining honorable service. No factors shall be established that require automatic change or denial of a change in discharge. Neither a DRB nor the Secretary of the Military Department concerned shall be bound by any methodology of weighting of the factors in reaching a determination. In each case, the DRB or the Secretary of the Military Department concerned shall give full, fair, and impartial considerations to all applicable factors before reaching a decision. An applicant may not rceive a less favorable discharge than that issued at the time of separation. This does not preclude correction of clerical errors.

(b) *Propriety.* (1) A discharge shall be deemed proper unless, in the course of discharge review, it is determined that:

(i) There exists an error of fact, law, procedure, or discretion associated with the discharge at the time of issuance; and that the rights of the applicant were prejudiced thereby (such error shall constitute prejudicial error if there is substantial doubt that the discharge would have remained the same if the error had not been made); or

(ii) A change in policy by the Military Service of which the applicant was a member, made expressly retroactive to the type of discharge under consideration, requires a change in the discharge.

(2) When a record associated with the discharge at the time of issuance involves a matter in which the primary responsibility for corrective action rests with another organization (for example, another Board, agency, or court), the DRB will recognize an error only to the extent that the error has been corrected by the organization with primary responsibility for correcting the record.

(3) The primary function of the DRB is to exercise its discretion on issues of equity by reviewing the individual merits of each application on a case-by-case basis. Prior decisions in which the DRB exercised its discretion to change a discharge based on issues of equity (including the factors cited in such decisions or the weight given to factors in such decisions) do not bind the DRB in its review of subsequent cases because no two cases present the same issues of equity.

(4) The following applies to applicants who received less than fully Honorable administrative discharges because of their civilian misconduct while in an inactive reserve component and who were discharged or had their discharge reviewed on or after April 20, 1971: the DRB shall either recharacterize the discharge to Honorable without any additional proceedings or additional proceedings shall be conducted in accordance with the Court's Order of December 3, 1981, in *Wood v. Secretary of Defense* to determine whether proper grounds exist for the issuance of a less than Honorable discharge, taking into account that;

(i) An Other than Honorable (formerly undesirable) Discharge for an inactive reservist can only be based upon civilian misconduct found to have affected directly the performance of military duties;

(ii) A General Discharge for an inactive reservist can only be based upon civilian misconduct found to have had an adverse impact on the overall effectiveness of the military, including military morale and efficiency.

(c) *Equity.* A discharge shall be deemed to be equitable unless:

(1) In the course of a discharge review, it is determined that the policies and procedures under which the applicant was discharged differ in material respects from policies and procedures currently applicable on a Service-wide basis to discharges of the type under consideration provided that:

(i) Current policies or procedures represent a substantial enhancement of the rights afforded a respondent in such proceedings; and

(ii) There is substantial doubt that the applicant would have received the same discharge if relevant current policies and procedures had been available to the applicant at the time of the discharge proceedings under consideration.

(2) At the time of issuance, the discharge was inconsistent with standards of discipline in the Military Service of which the applicant was a member.

(3) In the course of a discharge review, it is determined that relief is warranted based upon consideration of the applicant's service record and other evidence presented to the DRB viewed in conjunction with the factors listed in this section and the regulations under which the applicant was discharged, even though the discharge was determined to have been otherwise equitable and proper at the time of issuance. Areas of consideration include, but are not limited to:

(i) Quality of service, as evidenced by factors such as:

(A) Service history, including date of enlistment, period of enlistment, highest rank achieved, conduct or efficiency ratings (numerical or narrative);

(B) Awards and decorations;

(C) Letters of commendation or reprimand;

(D) Combat service;

(E) Wounds received in action;

(F) Records of promotions and demotions;

(G) Level of responsibility at which the applicant served;

(H) Other acts of merit that may not have resulted in a formal recognition through an award or commendation;

(I) Length of service during the service period which is the subject of the discharge review;

(J) Prior military service and type of discharge received or outstanding postservice conduct to the extent that such matters provide a basis for a more thorough understanding of the performance of the applicant during the period of service which is the subject of the discharge review;

(K) Convictions by court-martial;

(L) Records of nonjudicial punishment;

(M) Convictions by civil authorities while a member of the Service, reflected in the discharge proceedings or otherwise noted in military service records;

(N) Records of periods of unauthorized absence;

(O) Records relating to a discharge instead of court-martial.

(ii) Capability to serve, as evidenced by factors such as:

(A) *Total capabilities.* This includes an evaluation of matters, such as age, educational level, and aptitude scores. Consideration may also be given whether the individual met normal military standards of acceptability for military service and similar indicators of an individual's ability to serve satisfactorily, as well as ability to adjust to military service.

(B) *Family and Personal Problems.* This includes matters in extenuation or mitigation of the reason for discharge that may have affected the applicant's ability to serve satisfactorily.

(C) *Arbitrary or capricious action.* This includes actions by individuals in authority that constitute a clear abuse of such authority and that, although not amounting to prejudicial error, may have contributed to the decision to discharge or to the characterization of service.

(D) *Discrimination.* This includes unauthorized acts as documented by records or other evidence.

§ 70.10 Complaints concerning decisional documents and index entries.

(a) *General.* (1) The procedures in this section—are established for the sole purpose of ensuring that decisional documents and index entries issued by the DRBs of the Military Departments comply with the decisional document and index entry principles of this Part.

(2) This section may be modified or supplemented by the DASD(MP&FM).

(3) The following persons may submit complaints:

(i) A former member of the Armed Forces (or the former member's counsel) with respect to the decisional document issued in the former member's own case; and

(ii) A former member of the Armed Forces (or the former member's counsel) who states that correction of the decisional document will assist the former member in preparing for an administrative or judicial proceeding in which the former member's own discharge will be at issue.

(4) The Department of Defense is committed to processing of complaints within the priorities and processing goals set forth in paragraph (d)(1)(iii) of this section. This commitment, however, is conditioned upon reasonable use of the complaint process under the following considerations. The DRBs were established for the benefit of former members of the Armed Forces. The complaint process can aid such persons most effectively if it is used by former members of the Armed Forces when necessary to obtain correction of their own decisional documents or to prepare for discharge reviews. If a substantial number of complaints submitted by others interferes with the ability of the DRBs to process applications for discharge review in a timely fashion, the Department of Defense will adjust the processing goals to ensure that the system operates to the primary advantage of applicants.

(5) The DASD(MP&FM) is the final authority with respect to action on such correspondence.

(b) *The Joint Service Review Activity (JSRA).* A three member JSRA consisting of one judge advocate from each Military Department shall advise the DASD(MP&FM). The operations of the JSRA shall be coordinated by a full-time administrative director, who shall serve as recorder during meetings of the JSRA. The members and the administrative director shall serve at the direction of the DASD(MP&FM).

(c) *Classification and control of correspondence.* (1) *Address of the JSRA.* Correspondence with the OSD concerning decisional documents or index entries issued by the DRBs shall be addressed as follows: Joint Service Review Activity, OASD(MRA&L) (MP&FM), Washington, D.C. 20301.

(2) *Docketing.* All such correspondence shall be controlled by the administrative director through the use of a uniform docketing procedure.

(3) *Classification.* Correspondence shall be reviewed by the administrative director and categorized either as a complaint or an inquiry in accordance with the following:

(i) *Complaints.* A complaint is any correspondence in which it is alleged that a decisional document issued by a DRB or SRA contains a specifically identified violation of the Stipulation of Dismissal, Settlement Agreement, or related Orders in the *Urban Law* case or the decisional document or index entry principles of this Directive. A complainant who alleges error with respect to a decisional document issued to another person is encouraged to set forth specifically the grounds for determining that a reasonable person familiar with the discharge review process cannot understand the basis for the decision. *See* paragraph (d)(1)(i)(B) of this section.

(ii) *Inquiries.* An inquiry is any correspondence other than a complaint.

(d) *Review of complaints.* (1) *Guidance.* The following guidance applies to review of complaints:

(i) *Standards.* Complaints shall be considered under the following standards:

(A) *The applicant's case.* A complaint by an applicant with respect to the decisional document issued in the applicant's own discharge review shall be considered under the Stipulation of Dismissal in the *Urban Law* case and other decisional document requirements applicable at the time the document was issued, including those contained in the Settlement Agreement and related Orders, subject to any limitations set forth therein with respect to dates of applicability. If the authority empowered to take corrective action has a reasonable doubt whether a decisional document meets applicable requirements of the *Urban Law* case or other applicable rules, the complaint shall be resolved in the applicant's favor.

(B) *Other cases.* With respect to all other complaints, the standard shall be whether a reasonable person familiar with the discharge review process can understand the basis for the decision, including the disposition of issues raised by the applicant. This standard is designed to ensure that the complaint process is not burdened with the need to correct minor errors in the preparation of decisional documents.

(ii) *Use of DD Form 293.* With respect to any decisional document issued on or after November 27, 1982, a complaint alleging failure of the DRB to address adequately matter not submitted on DD Form 293 or expressly incorporated therein will be resolved in the complainant's favor only if the failure to address the issue was arbitrary, capricious, or an abuse of discretion.

(iii) *Scope of review.* When a complaint concerns a specific issue in the applicant's own discharge review, the complaint review process shall involve a review of all the evidence that was before the DRB or SRA, including the testimony and written submissions of the applicant, to determine whether the issue was submitted, and if so, whether it was addressed adequately with respect to the Stipulation of Dismissal, Settlement Agreement, or related Orders in the *Urban Law* case and other applicable provisions of this Directive. With respect to all other complaints about specific issues, the complaint review process may be based solely on the decisional document, except when the complainant demonstrates that facts present in the review in question raise a reasonable likelihood of a violation of applicable provisions of the Stipulation of Dismissal and a reasonable person, familiar with the discharge review process, could resolve the complaint only after a review of the evidence that was before the DRB.

(iv) *Allegations pertaining to an applicant's submission.* The following additional requirements apply to complaints about modification of an

applicant's issue or the failure to list or address an applicant's issue:

(A) When the complaint is submitted by the applicant, and the record of the hearing is ambiguous on the question whether there was a meeting of minds between the applicant and the DRB as to modification or omission of the issue, the ambiguity will be resolved in favor of the applicant.

(B) When the complaint is submitted by a person other than the applicant, it must set forth facts (other than the mere omission or modification of an issue) demonstrating a reasonable likelihood that the issue was omitted or modified without the applicant's consent.

(C) When the complaint is rejected on the basis of the presumption of regularity, the response to the complaint must be set forth the reasons why the evidence submitted by the complainant was not sufficient to overcome the presumption.

(D) With respect to decisional documents issued on or after the effective date of the amendments to §70.8, any change in wording of an applicant's issue which is effected in violation of the principles set forth in § 70.8(a)(5)(iii) constitutes an error requiring corrective action. With respect to a decisional document issued before that date, corrective action will be taken only when there has been a complaint by the applicant or counsel with respect to the applicant's own decisional document and it is determined that the wording was changed or the issue was omitted without the applicant's consent.

(E) If there are references in the decisional document to matters not raised by the applicant and not otherwises relied upon in the decision, there is no requirement under the *Urban Law* case that such matters be accompanied by a statement of findings, conclusions, or reasons. For example, when the DRB discusses an aspect of the service record not raised as an issue by the applicant, and the issue is not a basis for the DRB's decision, the DRB is not required to discuss the reasons for declining to list that aspect of the service record as an issue.

(v) *Guidance as to other types of complaints.* The following guidance governs other specified types of complaints:

(A) The Stipulation of Dismissal requires only that those facts that are essential to the decision be listed in the decisional document. The requirement for listing specified facts from the military record was not established until March 29, 1978, in 32 CFR Part 70 Decisional documents issued prior to that date are sufficient if they meet the requirements of the Stipulation.

(B) When an applicant submits a brief that contains material in support of a proposed conclusion on an issue, the DRB is not required to address each aspect of the supporting material in the brief. However, the decisional document should permit the applicant to understand the DRB's position on the issue and provide reviewing authorities with an explanation that is sufficient to permit review of the DRB's decision. When an applicant submits specific issues and later makes a statement before the DRB that contains matter in support of that issue, it is not necessary to list such supporting matter as a separate issue.

(C) For all decisional documents issued before November 27, 1982, failure to respond to an issue raised by an applicant constitutes error unless it reasonably may be inferred from the record that the DRB response relied on one of the exceptions listed in § 70.8(d)(3)(ii); (e)(3)(ii)(C) (*3*) through (*4*) and (e)(6)(ii)(C) (*3*) through (*4*). If the decisional document supports a basis for not addressing an issue raised by the applicant (for example, if it is apparent that resolving the issue in the applicant's favor would not warrant an upgrade), there is no requirement in the Stipulation of Dismissal that the decisional document explain why the DRB did not address the issue. With respect to decisional documents issued on or after November 27, 1982, a response shall be prepared in accordance with the decisional document principles set forth in § 70.8.

(D) When a case is reviewed upon request of an applicant, and the DRB upgrades the discharge to "General," the DRB must provide reasons why it did not upgrade to "Honorable" unless the applicant expressly requests lesser relief. This requirement applies to all requests for corrective action submitted by an applicant with respect to his or her decisional document. In all other cases, this requirement applies to decisional documents issued on or after November 9, 1978. When the DRB upgrades to General, its explanation for not upgrading to Honorable may consist of reference to adverse matter from the applicant's military record. When a discharge is upgraded to General in a review on the DRB's own motion, there is no requirement to explain why the discharge was not upgraded to Honorable.

(E) There is no requirement under the Stipulation of Dismissal to provide reasons for uncontested findings. The foregoing applies to decisional documents issued before November 27, 1982. With respect to decisional documents issued on or after that date, the following guidance applies with respect to an uncontested issue of fact that forms the basis for a grant or denial of a change in discharge: the decisional document shall list the specific source of information relied upon in reaching the conclusion, except when the information is listed in the portion of the decisional document that summarizes the service record.

(F) The requirements of § 70.8(e)(3)(ii)(B)(*2*) and (e)(6)(ii)(B)(*2*) with respect to explaining use of the presumption of regularity apply only to decisional documents issued on or after November 27, 1982. When a complaint concerning a decisional document issued before that date addresses the adequacy of the DRB's use of the presumption of regularity, or words having a similar import, corrective action will be required only if a reasonable person familiar with the discharge review process can not understand the basis for relying on the presumption.

(G) When the DRB balances mitigrating factors against aggravating factors as the reason for a conclusion, the Stipulation of Dismissal does not require the statement of reasons to set forth the specific factors that were balanced if such factors are otherwise apparent on the fact of the decisional document. The foregoing applies to decisional documents prepared before November 27, 1982. With respect to decisional documents prepared after that date, the statements addressing decisional issues in such a case will list or refer to the factors supporting the conclusion in accordance with § 70.8(e)(6)(ii).

(vi) *Documents that were the subject of a prior complaint.* The following applies to a complaint concerning a decisional document that has been the subject of prior complaints:

(A) If the complaint concerns a decisional document that was the subject of a prior complaint in which action was completed, the complainant will be informed of the substance and disposition of the prior complaint, and will be further informed that no additional action will be taken unless the complainant within 30 days demonstrates that the prior disposition did not produce a decisional document that comports with the requirements of paragraph (d)(1)(i)(A) of this section.

(B) If the complaint concerns a decisional document that is the subject of a pending complaint, the complainant will be informed that he or she will be provided with the results of the pending complaint.

(C) These limitations do not apply to the initial complaint submitted on or after the effective date of the amendments to this section by an applicant with respect to his or her own decisional document.

(2) *Duties of the administrative director.* The administrative director shall take the following actions:

(i) Acknowledge receipt of the complaint;

(ii) Assign a docket number and note the date of receipt; and

(iii) Forward the complaint to the Military Department concerned, except that the case may be forwarded directly to the DASD (MP&FM) when the administrative director makes an initial determination that corrective action is not required.

(3) *Administrative processing.* The following guidance applies to administrative processing of complaints:

(i) Complaints normally shall be processed on a first-in/first-out basis, subject to the availability of records, pending discharge review actions, and the following priorities:

(A) The first priority category consists of cases in which (*1*) there is a pending discharge review and the complainant is the applicant; and (*2*) the complainant sets forth the relevance of the complaint to the complainant's pending discharge review application.

(B) The second priority category consists of requests for correction of the decisional document in the complainant's own discharge review case.

(C) The third priority category consists of complaints submitted by former members of the Armed Forces (or their counsel) who state that the complaint is submitted to assist the former member's submission of an application for review.

(D) The fourth priority category consists of other complaints in which the complainant demonstrates that correction of the decisional document will substantially enhance the ability of applicants to present a significant issue to the DRBs.

(E) The fifth priority category consists of all other cases.

(ii) Complainants who request consideration in a priority category shall set forth in the complaint the facts that give rise to the claim of placement in the requested category. If the complaint is relevent to a pending discharge review in which the complainant is applicant or counsel, the scheduled date of the review should be specified.

(iii) The administrative director is responsible for monitoring compliance with the following processing goals:

(A) The administrative director normally shall forward correspondence to the Military Department concerned within 3 days after the date of receipt specified in the docket number. Correspondence forwarded directly to the DASD(MP&FM) under paragraph (d)(2)(iii) of this section, normally shall be transmitted within 7 days after the date of receipt.

(B) The Military Department normally shall request the necessary records within 5 working days after the date of receipt from the administrative director. The Military Department normally shall complete action under paragraph (d)(4) of this section within 45 days after receipt of all necessary records. If action by the Military Department is required under paragraph (d)(9) of this section, normally it shall be completed within 45 days after action is taken by the DASD(MP&FM).

(C) The JSRA normally shall complete action under paragraph (d)(7) of this section at the first monthly meeting held during any period commencing 10 days after the administrative director receives the action of the Military Department under paragraph (d)(5) of this section.

(D) The DASD(MP&FM) normally shall complete action under paragraph (d)(8) of this section within 30 days after action is taken by the JSRA under paragraph (d)(7) of this section or by the administrative director under paragraph (d)(2)(iii) of this section.

(E) If action is not completed within the overall processing goals specified in this paragraph, the complainant shall be notified of the reason for the delay by the administrative director and shall be provided with an approximate date for completion of the action.

(iv) If the complaints are submitted in any 30 day period with respect to more than 50 decisional documents, the administrative director shall adjust the processing goals in light of the number of complaints and discharge review applications pending before the DRBs.

(v) At the end of each month, the administrative director shall send each Military Department a list of complaints, if any, in which action has not been completed within 60 days of the docket date. The Military Department shall inform the administrative director of the status of each case.

(4) *Review of complaints by the Military Departments.* The Military Department shall review the complaint under the following guidance:

(i) *Rejection of complaint.* If the Military Department determines that all the allegations contained in the complaint are not specific or have no merit, it shall address the allegations using the format at attachment 1 (Review of Complaint).

(ii) *Partial agreement.* If the Military Department determines that some of the allegations contained in the complaint are not specific or have no merit and that some of the allegations contained in the complaint have merit, it shall address the allegations using the format at attachment 1 and its DRB shall take appropriate corrective action in accordance with paragraph (d)(4)(v) of this section.

(iii) *Full agreement.* If the Military Department determines that all of the allegations contained in the complaint have merit, its DRB shall take appropriate corrective action in accordance with paragraph (d)(4)(v) of this section.

(iv) *Other defects.* If, during the course of its review, the Military Department notes any other defects in the decisional document or index entries (under the applicable requirements of the *Urban Law* case or under this Part) the DRB shall take appropriate corrective action under paragraph (d)(4)(v) of this section. This does not establish a requirement for the Military Department to review a complaint for any purpose other than to determine whether the allegations contained in the complaint are specific and have merit; rather, it simply provides a format for the Military Department to address other defects noted during the course of processing the complaint.

(v) *Appropriate corrective action.* The following procedures govern appropriate corrective action:

(A) If a complaint concerns the decisional document in the complainant's own discharge review case, appropriate corrective action consists of amending the decisional document or providing the complainant with an opportunity for a new discharge review. An amended decisional document will be provided if the applicant requests that form of corrective action.

(B) If a complaint concerns a decisional document involving an initial record review under the Special Discharge Review Program or the Pub. L. 95–126 rereview program, appropriate corrective action consists of (*1*) amending the decisional document; or (*2*) notifying the applicant and counsel, if any, of the opportunity to obtain a priority review using the letter provided at attachment 7. When the DRB takes corrective action under this provision by amending a decisional document, it shall notify the applicant and counsel, if any, of the opportunity to request a *de novo* review under the Special Discharge

Review Program or under Pub. L. 95–126 rereview program, as appropriate.

(C) When corrective action is taken with respect to a decisional document in cases prepared under Pub. L. 95–126 the DRB must address issues previously raised by the DRB or the applicant during review of the same case during the SDRP only insofar as required by the following guidance:

(*1*) When the DRB bases its decision upon issues previously considered during the SDRP, the new decisional document under Pub. L. 95–126 must address those issues;

(*2*) If, during consideration of the case under Pub. L. 95–126 the applicant presents issues previously considered during the SDRP, the new decisional document must address those issues; and

(*3*) If a decisional document concerning an initial record review under is otherwise defective and corrective action is taken after a request by the applicant for a priority review in response to the letter at attachment 7, the new decisional document will address all issues previously raised by the applicant during the SDRP.

(D) Except for cases falling under paragraph (d)(4)(v)(B) of this section, if a complaint concerns a decisional document in which the applicant received an Honorable Discharge and the full relief requested, if any, with respect to the reason for discharge, appropriate corrective action consists of amending the decisional document.

(E) In all other cases, appropriate corrective action consists of amending the decisional document or providing the applicant with the opportunity for a new review, except that an amended decisional document will be provided when the complainant expressly requests that form of corrective action.

(vi) *Amended decisional documents.* One that reflects a determination by a DRB panel (or the SRA) as to what the DRB panel (or SRA) that prepared the defective decisional document would have entered on the decisional document to support its decision in this case.

(A) The action of the amending authority does not necessarily reflect substantive agreement with the decision of the original DRB panel (or SRA) on the merits of the case.

(B) A corrected decisional document created by amending a decisional document in response to a complaint will be based upon the complete record before the DRB (or the SRA) at the time of the original defective statement was issued, including, if available, a transcript, tape recording, videotape or other record of a hearing, if any. The new decisional document will be indexed under categories relevant to the new statements.

(C) When an amended decisional document is required under paragraph (d)(4)(v)(A) and (d)(4)(v)(D) of this section and the necessary records cannot be located, a notation to that effect will be made on the decisional document, and the applicant and counsel, if any, will be afforded an opportunity for a new review, and the complainant will be informed of the action.

(D) When an amended decisional document is requested under paragraph (d)(4)(v)(C) and the necessary records cannot be located, a notation to that effect will be made on the decisional document, and the complainant will be informed that the situation precludes further action.

(vii) *Time limit for requesting a new review.* An applicant who is afforded an opportunity to request a new review may do so within 45 days.

(viii) *Interim notification.* When the Military Department determines that some or all of the allegations contained in the complaint are not specific or have no merit but its DRB takes corrective action under paragraphs (d)(4)(ii) or (d)(4)(iv) of this section, the DRB's notification to the applicant and counsel, if any, and to the complainant, if other than the applicant or counsel, should include the following or similar wording: "This is in partial response to (your)/(a) complaint to the Office of the Assistant Secretary of Defense (Manpower, Reserve Affairs, and Logistics) dated ———— concerning ———— Discharge Review Board decisional document ————. A final response to (your)/(the) complaint, which has been returned to the Office of the Assistant Secretary of Defense (Manpower, Reserve Affairs, and Logistics) for further review, will be provided to you in the near future."

(ix) *Final notification.* When the Discharge Review Board takes corrective action under paragraphs (d)(4)(iii) and (d)(9) of this section ———— its notification to the applicant and counsel, if any, and to the complainant, if other than the applicant or counsel, should include the following or similar wording: "This is in response to (your)/(a) complaint to the Office of the Assistant Secretary of Defense (Manpower, Reserve Affairs, and Logistics) dated ———— concerning ———— Discharge Review Board decisional document ————.

(5) *Transmittal to the administrative director.* The Military Department shall return the complaint to the administrative Director with a copy of the decisional document and, when applicable, any of the following documents:

(i) The "Review of Complaint."

(ii) A copy of the amendment to the decisional document and the accompanying transmittal letter or letters to the applicant and counsel, if any, and to the complainant, if other than the applicant or counsel.

(iii) A copy of the notification to the applicant and counsel, if any, of the opportunity to request a new review, and a copy of the notification to the complainant, if other than the applicant or counsel, that the applicant has been authorized a new review.

(6) *Review by the administrative director.* The administrative director shall review the complaint and accompanying documents to ensure the following:

(i) If the Military Department determined that any of the allegations contained in the complaint are not specific or have no merit, the JSRA shall review the complaint and accompanying documents. The JSRA shall address the allegations using the format at attachment 2 (Review of and Recommended Action on Complaint) and shall note any other defects in the decisional document or index entries not previously noted by the Military Department. This does not establish a requirement for the JSRA to review such complaints for any purpose other than to address the allegations contained in the complaint; rather, it simply provides a format for the JSRA to address other defects noted in the course of processing the complaint.

(ii) If the Military Department determined that all of the allegations contained in the complaint have merit and its DRB amended the decisional document, the amended decisional document shall be subject to review by the JSRA on a sample basis each quarter using the format at attachment 3 (Review of any Recommendation on Amended Decisional Document).

(iii) If the Military Department determined that all of the allegations contained in the complaint have merit and its DRB notified the applicant and counsel, if any, of the opportunity to request a new review, review of such corrective action is not required.

(*7*) *Review by the JSRA.* The JSRA shall meet for the purpose of conducting the reviews required in paragraphs (d)(6)(i), (d)(6)(ii), and (d)(9)(iii)(A) of this section. The Administrative director shall call meetings once a month, if necessary, or more frequently depending upon the number of matters before the JSRA. Matters before the JSRA shall be

presented to the members by the recorder. Each member shall have one vote in determining matters before the JSRA, a majority vote of the members determining all matters. Determinations of the JSRA shall be reported to the DASD(MP&FM) as JSRA recommendations using the prescribed format. If a JSRA recommendation is not unanimous, the minority member may prepare a separate recommendation for consideration by the DASD(MP&FM) using the same format. Alternatively, the minority member may indicate "dissent" next to his signature on the JSRA recommendation.

(8) *Review by the DASD(MP&FM).* The DASD(MP&FM) shall review all recommendations of the JSRA and the administrative director as follows:

(i) The DASD(MP&FM) shall review complaints using the format at Attachment 4 (Review of and Action on Complaint). The DASD(MP&FM) is the final authority in determining whether the allegations contained in a complaint are specific and have merit. If the DASD(MP&FM) determines that no further action by the Military Department is warranted, the complainant and the Military Department shall be so informed. If the DASD(MP&FM) determines that further action by the Military Department is required, the Military Department shall be directed to ensure that appropriate corrective action is taken by its DRB and the complainant shall be provided an appropriate interim response.

(ii) The DASD(MP&FM) shall review amended decisional documents using the format at attachment 5 (Review of and Action on Amended Decisional Document). The DASD(MP&FM) is the final authority in determining whether an amended decisional document complies with applicable requirements of the *Urban Law* case and, when applicable, this Directive. If the DASD(MP&FM) determines that no further corrective action by the Military Department is warranted, the Military Department shall be so informed. If the DASD(MP&FM) determines that further corrective action by the Military Department is required, the Military Department shall be directed to ensure that appropriate corrective action is taken by its DRB.

(iii) It is noted that any violation of applicable requirements of the *Urban Law* case is also a violation of this part. However, certain requirements under this part are not requirements under the *Urban Law* case. If the allegations contained in a complaint are determined to have merit or if an amended decisional document is determined to be defective on the basis of one of these additional requirements under this part the DASD(MP&FM) determination shall reflect this fact.

(9) *Further action by the Military Department.* (i) With respect to a determination by the DASD (MP&FM) that further action by the Military Department is required, its DRB shall take appropriate corrective action in accordance with paragraph (d)(4) of this section.

(ii) The Military Department shall provide the administrative director with the following documents when relevant to corrective action taken in accordance with paragraph (d)(4) of this section:

(A) A copy of the amendment to the decisional document and the accompanying transmittal letter or letters to the applicant and counsel, if any, and to the complainant, if other than the applicant or counsel.

(B) A copy of the notification to the applicant and counsel, if any, of the opportunity to request a new review, and a copy of the notification to the complainant, if other than the applicant or counsel, that the applicant has been authorized a new review.

(iii) The administrative director shall review the documents relevant to corrective action taken in accordance with paragraph (d)(4) of this section, and ensure the following:

(A) If the DRB amended the decisional document, the amended decisional document shall be subject to review by the JSRA on a sample basis each quarter using the format at attachment 3 (Review of and Recommended Action on Amended Decisional Document).

(B) If the DRB notified the applicant and counsel, if any, of the opportunity to request a new review, review of such corrective action is not required.

(10) *Documents required by the JSRA or DASD (MP&FM).* Upon request, the Military Department shall provide the administrative director with other documents required by the JSRA or the DASD (MP&FM) in the conduct of their reviews.

(e) *Responses to inquiries.* The following procedures shall be used in processing inquiries:

(1) The administrative director shall assign a docket number to the inquiry.

(2) The administrative director shall forward the inquiry to the Military Department concerned.

(3) The Military Department shall prepare a response to the inquiry and provide the administrative director with a copy of the response.

(4) The Military Department's response shall include the following or similar wording: "This is in response to your inquiry to the Office of the Assistant Secretary of Defense (Manpower, Reserve Affairs, and Logistics) dated ——— concerning ———."

(f) *Indexing.* The DRB concerned shall reindex all amended decisional documents and shall provide copies of the amendments to the decisional documents to the Armed Forces Discharge Review/Correction Board Reading Room.

(g) *Disposition of documents.* The administrative director is responsible for the disposition of all Military Department, DRB, JSRA, and DASD (MP&FM) documents relevant to processing complaints and inquiries.

(h) *Referral by the General Counsel, Department of Defense.* The Stipulation of Dismissal permits *Urban Law* plaintiffs to submit complaints to the General Counsel, DoD, for comment. The General Counsel, DoD, may refer such complaints to the Military Department concerned or to the JSRA for initial comment.

(i) *Decisional document and index entry principles.* The DASD (MP&FM) shall identify significant principles concerning the preparation of decisional documents and index entries as derived from decisions under this section and other opinions of the Office of General Counsel, DoD. This review shall be completed not later than October 1 and April 1 of each year, or more frequently if deemed appropriate by the DASD (MP&FM). The significant principles identified in the review shall be coordinated as proposed as amendments to the sections of this Part.

(j) *Implementation of amendments.* The following governs the processing of any correspondence that is docketed prior to the effective date of amendments to this section except as otherwise provided in such amendments:

(1) Any further action on the correspondence shall be taken in accordance with the amendments; and

(2) No revision of any action taken prior to the effective date of such amendments is required.

Attachment 1—Review of Complaint

Military Department:

Decisional Document Number:

Name of Complainant:

Docket Number:

Date of this Review:

1. Specific allegation(s) noted:

2. With respect in support of the conclusion, enter the following information:

a. Conclusion whether corrective action is required.

b. Reasons in support of the conclusion, including findings of fact upon which the conclusion is based.

3. Other defects noted in the decisional document or index entries: (Authentication)

Attachment 2—Joint Service Review Activity

Office of the Assistant Secretary of Defense (Manpower, Reserve Affairs, and Logistics)

Review by the Joint Service Review Activity

Military Department:

Decisional Document Number:

Name of Complainant:

Name of Applicant:

Docket Number:

Date of this Review:

1. The Military Department's "Review of Complaint" is attached as enclosure 1.

2. Specific Allegations: See Part 1 of Military Department's "Review of Complaint" (enclosure 1).

3. Specific allegation(s) not noted by the Military Department:

4. With respect to each allegation, enter the following information:

a. Conclusion as to whether corrective action is required.

b. Reasons in support of the conclusion, including findings of fact upon which conclusion is based.

Note.—If JSRA agrees with the Military Departments, the JSRA may respond by entering a statement of adoption.

5. Other defects in the decisional document or index entries not noted by the Military Departments:

6. *Recommendation:*

[ ] The complainant and the Military Department should be informed that no further action on the complaint is warranted.

[ ] The Military Department should be directed to take corrective action consistent with the above comments.

Army Member, JSRA
Air Force Member, JSRA
Navy Member, JSRA
Recorder, JSRA

Attachment 3—Joint Service Review Activity

Office of the Assistant Secretary of Defense (Manpower, Reserve Affairs, and Logistics)

Review of Amended Decisional Document (Quarterly Review)

Military Department:

Decisional Document Number:

Name of Complainant:

Name of Applicant:

Docket Number:

Date of this Review:

Recommendation:

[ ] The amended decisional document complies with the requirements of the Stipulation of Dismissal and, when applicable, DoD Directive 1332.28. The Military Department should be informed that no further corrective action is warranted.

[ ] The amended decisional document does not comply with the Stipulation of Dismissal or DoD Directive 1332.28 as noted herein. The Military Department should be directed to ensure that corrective action consistent with the defects noted is taken by its Discharge Review Board.

Army Member, JSRA
Air Force Member, JSRA
Navy Member, JSRA
Recorder, JSRA

Yes	No	NA	Item	Source
☐	☐	☐	1. Date of discharge	1. DoD Directive 1332.28, enclosure 3, subsection H.1.; Stipulation (Jan. 31, 1977) para. 5.A.(1)(d)(i) (reference (1)).
☐	☐	☐	a. Date of discharge	
☐	☐	☐	b. Character of discharge	
☐	☐	☐	c. Reason for discharge	
☐	☐	☐	d. Specific regulatory authority under which discharge was issued	
☐	☐	☐	2. *Service data.* (This requirement applies only in conjunction with Military Department Implementation of General Counsel, DoD, letter dated July 20, 1977, or to discharge reviews conducted on or after March 29, 1978.).	2. DoD Directive 1332.28, enclosure 3, subsection H.1.; Annex B, (June ——, 1982) para. 2-2 (reference (1)).
☐	☐	☐	a. Date of enlistment	
☐	☐	☐	b. Period of enlistment	
☐	☐	☐	c. Age at enlistment	
☐	☐	☐	d. Length of service	
☐	☐	☐	e. Periods of unauthorized absence*	
☐	☐	☐	f. Conduct and efficiency ratings (numerical and narrative)*	
☐	☐	☐	g. Highest rank achieved	
☐	☐	☐	h. Awards and decorations*	
☐	☐	☐	i. Educational level	
☐	☐	☐	j. Aptitude test scores	
☐	☐	☐	k. Art. 15s (including nature and date of offense or punishment)*	
☐	☐	☐	l. Convictions by court-martial*	
☐	☐	☐	m. Prior military service and type of discharge(s) received*	
☐	☐	☐	*3. Reference to materials presented by applicant.* (This requirement applies only to discharge reviews conducted on or after March 29, 1978.).	3. DoD Directive 1332.28, enclosure 3, subsection H.2.; H.3.
☐	☐	☐	a. Written brief*	
☐	☐	☐	b. Documentary evidence*	
☐	☐	☐	c. Testimony*	
☐	☐	☐	4. *Items submitted as issues.* (See issues worksheet)	4. DoD Directive 1332.28, enclosure 3, subsection H.6.
☐	☐	☐	5. *Conclusions.* The decisional document must indicate clearly the DRB's conclusion concerning:.	5. Dod Directive 1332.28, enclosure 3, subsection H.5.; Stipulation (Jan. 31, 1977), paragraph 5.A.(1)(d)(iv) (reference (1)).
☐	☐	☐	a. Determination of whether a discharge upgraded under SDRP would have been upgraded under DoD Directive 1332.28. (This applies only to mandatory reviews under P.L. 95-126 or Special Discharge Review Program (SDRP).	
☐	☐	☐	b. Character of discharge, when applicable[1]	
☐	☐	☐	c. Reason for discharge, when applicable[2]	
☐	☐	☐	6. *Reasons for conclusions.* The decisional document must list and discuss the items submitted as issues by the applicant; and list and discuss the decisional issues providing the basis for the DRB's conclusion concerning:.	6. DoD Directive 1332.28, enclosure 3, subsection H.7., H.8.; Stipulation (Jan. 31, 1977) para. 5.A.(1)(d)(v) (reference (1)).
☐	☐	☐	a. Whether a discharge upgraded under the SDRP would have been upgraded under DoD Directive 1332.28. (This applies only to mandatory rereviews under P.L. 95-126 or SDRP reviews.).	
☐	☐	☐	b. Character of discharge, where applicable[1]	
☐	☐	☐	c. Reason for discharge, where applicable[2]	
☐	☐	☐	7. *Advisory opinions**	7. DoD Directive 1332.28, enclosure 3, subsection H.12., Stipulation (Jan. 31, 1977) para. 5.A.(1)(f) (reference (1)).
☐	☐	☐	8. *Recommendation of DRB President*	8. DoD Directive 1332.28, enclosure 3, subsection H.12., Stipulation (Jan. 31, 1977) para. 5.A.(1)(g) (reference (1)).
☐	☐	☐	9. *A record of voting*	9. DoD Directive 1332.28, enclosure 3, subsection H.13., Stipulation (Jan. 31, 1977) para. 5.A.(3) (reference (1)).

Yes	No	NA	Item	Source
☐	☐	☐	10. *Indexing of decisional document*	10. DoD Directive 1332.28, enclosure 3, subsection H.14., Stipulation (Jan. 31, 1977) para. 5.A.(5)(a) (reference (1)).
☐	☐	☐	11. *Authentication of decisional document.* (This requirement applies only to discharge reviews conducted on or after March 29, 1978.)	11. DoD Directive 1332.28, enclosure 3, subsection H.15.
☐	☐	☐	12. *Other*	12. As appropriate.

Explanation of items marked "No."

Key:
Yes: The decisional document meets the requirements of the Stipulation of Dismissal and, when applicable, DoD Directive 1332.28.
No: The decisional document does not meet the requirements of the Stipulation of Dismissal or DoD Directive 1332.28.
NA: Not applicable.

*Items marked by an asterisk do not necessarily pertain to each review. If the decisional document contains no reference to such an item, NA shall be indicated. When there is a specific complaint with respect to an item, the underlying discharge review record shall be examined to address the complaint.
[1] In this instance "when applicable" means all reviews except:
a. Mandatory rereviews under P.L. 95-126 or SDRP reviews.
b. Reviews in which the applicant requested only a change in the reason for discharge and the DRB did not raise the character of discharge as a decisional issue.
[2] In this instance "when applicable" means all reviews in which:
a. The applicant requested a change in the reason for discharge.
b. The DRB raised the reason for discharge as a decisional issue.
c. A change in the reason for discharge is a necessary component of a change in the character of discharge.

ATTACHMENT 4.—ISSUES WORKSHEETS[1]

	Listed	Addressed	Corrective action required
A. Decisional issues providing a basis for the conclusion regarding a change in the character of or reason for discharge. (DoD Directive 1332.28, enclosure 3, subsection D.2:)			
1.	☐	☐	☐
2.	☐	☐	☐
3.	☐	☐	☐
B. Items submitted as issues by the applicant that are not identified as decisional issues. (DoD Directive 1332.28, enclosure 3, subsection D.3):			
1.	☐	☐	☐
2.	☐	☐	☐
3.	☐	☐	☐
C. Remarks:			

[1] This review may be made based upon the decisional document without reference to the underlying discharge review record except as follows: if there is an allegation that a specific contention made by the applicant to the DRB was not addressed by the DRB. In such a case, the complaint review process shall involve a review of all the evidence that was before the DRB, including the testimony and written submissions of the applicant, to determine whether the contention was made, and if so, whether it was addressed adequately with respect to the Stipulation of Dismissal and, when applicable, DoD Directive 1332.28.
This review may be based upon the decisional document without reference to the regulation governing the discharge in question except as follows: if there is a specific complaint that the DRB failed to address a specific factor required by applicable regulations to be considered for determination of the character of and reason for the discharge in question [where such factors are a basis for denial of any of the relief requested by the applicant]. (The material in brackets pertains only to discharge reviews conducted on or before March 28, 1978.)

Attachments 5—Office of the Assistant Secretary of Defense (Manpower, Reserve Affairs, and Logistics)

Review of Complaint (DASD(MP&FM))

Military Department:

Decisional Document Number:

Name of Complainant:

Name of Applicant:

Docket Number:

Date of this Review:

1. Each allegation is addressed as follows:
a. Allegation.
b. Conclusion whether corrective action is required.
c. Reasons in support of the conclusion, including findngs of fact upon which the conclusion is based.

Note.—If the DASD(MP&FM) agrees with the JSRA, he may respond by entering a statement of adoption.

2. Other defects noted in the decisional document or index entries:

3. *Determinations:*

[ ] No further action on the complaint is warranted.

[ ] Corrective action consistent with the above comments is required.

Deputy Assistant Secretary of Defense (Military Personnel & Force Management)

Attachment 6—Office of the Assistant Secretary of Defense (Manpower, Reserve Affairs, and Logistics)

Review of Amended Decisional Document [DASD (MP&FM)]

Military Department:

Decisional Document Number:

Name of Complainant:

Name of Applicant:

Docket Number:

Date of this Review:

Recommendation:

[ ] The amended decisional document complies with the requirements of the Stipulation of Dismissal and, when applicable, DoD Directive 1332.28. No further corrective action is warranted.

[ ] The amended decisional document does not comply with the Stipulation of Dismissal or DoD Directive 1332.28 as noted herein. Further corrective action is required consistent with the defects noted in the attachment.

Deputy Assistant Secretary of Defense (Military Personnel & Force Management)

Remarks:

Attachment 7

Dear ———:

It has been determined that the decisional document issued in your case by the (Army) (Navy) (Air Force) Discharge Review Board during the (Special Discharge Review Program) (rereview program under Pub. L. No. 95-126) should be reissued to improve the clarity of the statement of findings, conclusions, and reasons for the decision in your case.

In order to obtain a new decisional document you may elect one of the following options to receive a new review under the (Special Discharge Review Program) (rereview program mandated by Pub. L. No. 95-126):

1. You may request a new review, including a personal appearance hearing if you so desire, by responding on or before the suspense date noted at the top of this letter. Taking this action will provide you with a priority review before all other classes of cases.

2. You may request correction of the original decisional document issued to you by responding on or before the suspense date noted at the top of this letter. After you receive a corrected decisional document, you will be entitled to request a new review, including a personal appearance hearing if you so desire. If you request correction of the original decisional document, you will not receive priority processing in terms of correcting your decisional document or providing you with a new review; instead, your case will be handled in accordance with standard processing procedures, which may mean a delay of several months or more.

If you do not respond by the suspense date noted at the top of this letter, no action will be taken. If you subsequently submit a complaint about this decisional document, it will be processed in accordance with standard procedures.

To ensure prompt and accurate processing of your request, please fill out the form below, cut it off at the dotted line, and return it to the Discharge Review Board of the Military Department in which you served at the address listed at the top of this letter. Check only one:

[ ] I request a new review of my case on a priority basis. I am requesting this priority review rather than requesting correction of the decisional document previously issued to

me. I have enclosed DD Form 293 as an application for my new review.

[ ] I request correction of the decisional document previously issued to me. I understand that this does not entitle me to priority action in correcting my decisional document. I also understand that I will be able to obtain a further review of my case upon my request after receiving the corrected decisional document, but that such a review will not be held on a priority basis.

Dates _____

Signatures _____

Printed Name and Address

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§ 70.11 DOD semiannual report.

(a) Semiannual reports will be submitted by the 20th of April and October for the preceding 6-month reporting period (October 1 through March 31 and April 1 through September 30).

(b) The reporting period will be inclusive from the first through the last days of each reporting period.

(c) The report will contain four parts:

(1) *Part 1.* Regular Cases.

(2) *Part 2.* Reconsideration of President Ford's Memorandum of January 19, 1977, and Special Discharge Review Program Cases.

(3) *Part 3.* Cases Heard under Pub. L. 95–126 by waiver of 10 U.S.C. 1553, with regard to the statute of limitations.

(4) *Part 4.* Total Cases Heard.

Semiannual DRB Report—RCS DD-M(SA) 1489; Summary of Statistics for Discharge Review Board (FY)

[Sample format]

Name of board	Nonpersonal appearance			Personal appearance			Total		
	Applied	Number approved	Percent approved	Applied	Number approved	Percent approved	Applied	Number approved	Percent approved
.....	.....	.....	.....	.....	.....	.....	.....	.....	.....

Note:
Identify numbers separately for traveling panels, regional panels, or hearing examiners, as appropriate.
Use of additional footnotes to clarify or amplify the statistics being reported is encouraged.

August 19, 1982.

M. S. Healy,

OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 82-23283 Filed 8-25-82; 8:45 am]

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federal register

Thursday
August 26, 1982

Part IV

Department of Transportation

Federal Aviation Administration

Rotorcraft Regulatory Review Program
Notice No. 2

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Parts 1, 27, 29, and 91

[Docket No. 23266; Notice No. 82-12]

Rotorcraft Regulatory Review Program Notice No. 2

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This notice is the second of a series of notices that proposes to adopt new or amended airworthiness, operation, and maintenance standards for rotorcraft. This particular notice proposes changes to Parts 1, 27, 29, and 91 and deals primarily with flight and systems requirements for rotocraft. A previous notice covered the applicability of rotorcraft certification, instrument flight rules (IFR) certification, and the certification of anti-icing and de-icing equipment. Subsequent notices will cover rotorcraft powerplants, airframes, and operations and maintenance. This notice is based on a number of proposals discussed at the Rotorcraft Regulatory Review Conference held December 10–14, 1979, in New Orleans, LA, and the Rotorcraft Regulatory Review Meeting held August 18–20, 1980, in Washington, D.C. These proposals arise out of the phenomenal growth of the rotorcraft industry and the recognition by both government and industry that updated safety standards are needed. These proposals attempt to recognize the need for a high level of safety in the design requirements for rotorcraft while removing existing burdens by recognizing the unique characteristics and capabilities of rotorcraft.

DATES: Comments must be received on or before December 27, 1982.

ADDRESS: Comments on this proposal may be mailed in duplicate to: Federal Aviation Administration, Office of the Chief Counsel, Attn: Rules Docket (AGC–204), Docket No. 23266; 800 Independence Avenue, SW., Washington, D.C. 20591, or delivered in duplicate to: Room 916, 800 Independence Avenue, SW., Washington, D.C. 20591. Comments delivered must be marked: Docket No. 23266. Comments may be inspected at Room 916 between 8:30 a.m. and 5:00 p.m.

FOR FURTHER INFORMATION CONTACT: Jim S. Honaker, Regulations Program Management (ASW–111), Aircraft Certification Division, Southwest Region, P.O. Box 1689, Ft. Worth, Texas 76101, telephone (817) 624–4911.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rules by submitting such written data, views, or arguments as they may desire. Comments relating to the environmental, energy, or economic impact that might result from adopting the proposals contained in this notice are invited. Communications should identify the regulatory docket or notice number and be submitted in duplicate to the address above. All communications received on or before the date specified above will be considered by the Administrator before taking action on the proposed rule. The proposals contained in this notice may be changed in light of the comments received. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket. Commenters wishing to have the FAA acknowledge receipt of their comments submitted in response to this notice must submit with those comments a self-addressed, stamped postcard on which the following statement is made: "Comments on Docket No. 23266." The postcard will be dated, time stamped, and returned to the commenter.

For convenience, each proposal in this notice is numbered separately. When submitting comments, please refer to proposals by these numbers and by the section to which they relate.

Availability of This Notice

Any person may obtain a copy of this notice of proposed rulemaking (NPRM) by submitting a request to the Federal Aviation Administration, Office of Public Affairs, Attention: Public Information Center, APA–430, 800 Independence Avenue SW., Washington, D.C. 20591, or by calling (202) 426–8058. Communications must identify the notice number of this NPRM. Persons interested in being placed on a mailing list for future NPRMs should request a copy of Advisory Circular No. 11–2, Notice of Proposed Rulemaking Distribution System, which describes the application procedures.

Background

On January 5, 1979, the FAA gave notice of its Rotorcraft Regulatory Review Program and invited all interested persons to submit proposals for consideration during its forthcoming Rotorcraft Regulatory Review Conference (Notice 79–1; 43 FR 23925). In that notice, the FAA announced that it would prepare a conference agenda containing a compilation of the proposals submitted and other information on the conference arrangements.

In Notice 79–1A, published March 2, 1979, the FAA extended the period for submission of proposals relating to Notice 79–1 to May 31, 1979. This action was in response to a Helicopter Association of America (HAA) letter dated February 12, 1979, which stated that they did not have sufficient manpower to translate the grassroots comments into constructive proposals and justifications within the time allotted. This action was further supported by a letter from the United Kingdom Civil Aviation Authority (CAA) dated February 14, 1979, which stated that staffing limitations prevented anything more than a broad survey of the proposals. They requested an extension of 90 days.

In light of these comments, the FAA concluded that it was in the public interest to encourage a thorough review of the regulations and that good cause existed for extending the date for submitting proposals.

The FAA received 613 proposals in response to Notice 79–1, of which 569 were placed on the conference agenda. The remaining 44 were excluded because they fell outside the scope of the review program or for other reasons outlined in Notice 79–1. A separate printing of six other proposals inadvertently omitted from the compilation was distributed at the conference.

On October 22, 1979, the FAA announced that the Rotorcraft Regulatory Review Conference would be held in New Orleans, Louisiana, December 10–14, 1979, and that the conference agenda and compilation of proposals were available (Notice 79–1B; 43 FR 60747).

On November 23, 1979, the FAA announced a change in the agenda for the Rotorcraft Regulatory Review Conference to divide the specialty areas into three separate sessions rather than four (Notice 79–1C; 43 FR 67136). Over 155 persons attended the conference with convened on December 10, 1979, remaining in session until each proposal had been discussed. A transcript of those discussions has been placed in Docket 18689. This document is of only limited use, however, due to the poor quality of the transcription.

On March 24, 1980, the FAA received a letter from the Helicopter Association of America and the Aerospace Industries Association of America, Inc., requesting a meeting to present material to the FAA in an effort to assure themselves that the industry logic was understood by the Rotorcraft Review Team. The FAA gave careful consideration to the request and determined it would be in the best interest of all concerned to provide the requested meeting. The FAA also felt that all interested persons should be afforded the same opportunity to listen to and comment on the industry logic. Accordingly, Notice 79–1D (44 FR 43202; June 26, 1980) announced a Rotorcraft Regulatory Review Meeting which was held August 18–20, 1980, in Washington, D.C. A copy of the transcript has been placed in Docket 18689.

The FAA plans for the Rotorcraft Regulatory Review Program entail publication of six notices of proposed rulemaking. The first notice included proposals dealing with the applicability sections of Parts 27 and 29 of the Federal Aviation Regulations (FAR), plus IFR certification and icing criteria. This second notice covers flight and systems proposals. The third, fourth, and fifth notices will cover powerplant, airframe, and operations and maintenance proposals, respectively. The final notice, if needed, will serve as a clean up notice to encompass all proposals not previously acted upon. Although the notices are being developed concurrently, they will not necessarily appear in the order proposed.

Assumption

To proceed with the remainder of the rotorcraft notices, the FAA must make an assumption concerning the first notice. Notice No. 1 dealt with applicability. It proposed to limit Part 27 certificated rotorcraft to less than 10 passengers, remove the 20,000-pound weight limit of Part 29 Category B rotorcraft, remove height-velocity as an operating limit for Category B, and require new rotorcraft with 10 or more passenger seats to be certificated as Category A under Part 29.

In developing proposed rules for this and subsequent notices, the FAA is proceeding under the assumption that something similar to the applicability proposal in Notice No. 1 will be adopted into a final rule. However, this assumption is not binding. The FAA made the assumption in an effort to provide a direction for proposals in subsequent notices dealing with flight, systems, powerplants, airframes, operations, and maintenance. In formulating responses to these proposals, commenters who do not agree with the FAA's assumptions are invited to make and articulate their own assumptions and to comment based on those assumptions. Some commenters may even wish to proceed under the theory that the applicability will remain unchanged.

The Proposals

Notice No. 2 deals primarily with the certification rules in Parts 27 and 29 and a related section in Part 91, all of which apply to rotorcraft performance, flight characteristics, systems, and equipment. In addition, a number of conference proposals are presented at the end of this notice which the FAA proposes to withdraw for the reasons stated. This notice is part of the ongoing regulatory program of the FAA to upgrade certification standards for rotorcraft consistent with the advancing state-of-the-art of aircraft and aircraft engines

Economic Impact

Introduction

Incremental cost or savings estimates are judged to be the maximum economic impact per certification for the average size, production run, and service utilization of a newly certificated Part 27 or Part 29 rotorcraft. Impacts associated with changes to the operating regulations are assumed to accrue as soon as the changes become effective. Other major assumptions and factors utilized to develop impact estimates and to assign costs or savings for those requirements in this NPRM which could have an economic impact are shown in Table 1, General and Specific Estimating Assumptions and Factors. The FAA invites public comments about these assumptions or any uncertainties involved with their usage.

A large number of the proposed regulatory changes contained in this notice are determined to have a negligible or no technical impact and, consequently, a negligible or no economic impact. Many of these proposed changes are either editorial or clarifying in nature. In addition, some proposals incorporate into regulations what has become current industry or FAA certification practice and procedure. No estimates of specific costs or savings are made for these groups of proposals and the changes are not discussed in this economic evaluation.

Table 1.—General and Specific Estimating Assumptions and Factors

General Factors

1. One-time certification cost estimates are the maximum amount for an average-sized Part 27 or Part 29 rotorcraft.

2. A 3-year development period is assumed.

3. One-time design, test, and demonstration costs are assigned to and distributed over the development period based on the likely incidence of costs.

4. Production begins during the first year after the final development year.

Annual production	Part 27 rotorcraft	Part 29 rotorcraft
First year	100	50
Second year	200	100
Third year	200	100
Total	500	250

5. Increases or decreases in rotorcraft weight are valued at $400 per pound per unit produced.

6. Increases or decreases in aircraft payload are valued at $400 per pound per rotorcraft per year.

7. Costs for design, development, or analysis are based on the number of engineering hours required. An estimate of $50 per hour is used which represents fully allocated costs and includes a provision for incidental support and/or materials.

8. Flight test costs are based on an estimate of $5,000 per hour for Part 27 rotorcraft and $10,000 per hour for Part 29 rotorcraft.

Specific Factors

1. Factors for the development of an electric motor to provide a means to determine full control authority before flight also include additional costs of $100,000 per certification for design, testing, and demonstration; production costs of $10,000 per aircraft; and a weight penalty of 20 pounds for each rotorcraft produced under a design incorporating powered flight controls. This results in a cost impact of $5.2 million for the first three production years. A possible alternative is the use of a hydraulic accumulator which would range from $1.5 milluon to $4 million total cost incurred for the first three production years (§ 29.671).

2. Development of a maximum allowable airspeed indicator for Category A rotorcraft is estimated to require 3,000 hours and $150,000 in costs for design and development, production costs of $2,000 per rotorcraft, equipmented weight of 3 pounds, and recurring maintenance cost of 10 percent of system acquisition costs for each year after the acquisition (§ 29.1303).

Six changes proposed in this notice are determined to have economic impact, but the impact is not considered to be major under the criteria prescribed by Executive Order 12291. For purposes of the Regulatory Flexibility Act, the FAA has determined that the proposed rules will not have a significant economic impact on a substantial

number of small entities. A listing of benefits, a table of costs and savings, and the impacts on small business entities for each of the changes having an economic impact follow.

Benefits

The following benefits are likely to accrue should the proposals contained in this notice be adopted. Two proposed changes, one removing height-velocity as an operating limitation (§ 27.79) and one involving static longitudinal stability (§ 29.175), would provide savings to manufacturers and could result in price reductions for operators who purchase rotorcraft in the future. Adopting the proposals also would provide the following unquantifiable benefits:

(a) More up-to-date design standards for new rotorcraft and certification standards in line with increased rotorcraft capabilities derived from new technology would enhance rotorcraft utilization and increase operating capabilities without a detriment to safety standards (proposed changes to Parts 27 and 29);

(b) The proposed change to § 29.761 would require that a means be available to verify full control authority for all powered control systems. The development of the helicopter industry has been typified by a gradual increase in the size, speed, load capacity, and technical sophistication of rotorcraft. In recent years, however, the accelerated trend in utilizing rotorcraft in a vast array of commercial and industrial applications and the increasing complexity and mass of modern control systems has given rise to a need to update safety standards for transport category rotorcraft. Earlier helicopter models were typically smaller and lighter. Command control authority was usually achieved by verifying the control quadrant through unassisted mechanical manipulation of the flight controls. The weight and complexity of boosted control systems in future generations of transport helicopters will render unassisted checkout procedures ineffective. By providing a means for pilots to verify proper rigging of controls before flight, full control authority is assured by ascertaining before flight that no mechanical bind, improper servo adjustment resulting from faulty maintenance, or presence of a foreign object in the control mechanism will impair safety. The verification of full control authority will enhance the safety of rotorcraft operations in the event of occurrence of an unusual flight condition such as engine failure, hardover, or downwind hover in strong, gusty winds.

In examining the accident record for Part 29 helicopters for the nine years from 1972 to 1980, 13 accidents were found related to control system failure. The total current dollar loss associated with these accidents is estimated to be $6,681,000. Factors cited as contributing causes in these accidents included loose fitting, improper maintenance, failure of flight boost hydraulic systems, and excessive wear-play in the control quadrant, etc. It should be noted that aircraft involved in these accidents were equipped with means of verifying full control authority. It is not known, however, if prior to departure, a command control authority verification was performed. It is conceivable, judging from the nature of the control system failures cited, that the execution of a command authority verification procedure may have detected a potential control system failure prior to flight. It is likely that problems associated with control system failures will be compounded without a control command capability. On the basis of the $514,000 average cost of the control system failure accidents analyzed, the proposed certification rule would have to prevent two control system failure accidents over the five years following its adoption for it to justify its costs.

As discussed elsewhere, the anticipated larger passenger capacity of future rotorcraft and increased commercial operations of helicopters will invariably cause an increase in the risk exposure to life and property. In the absence of a means to verify full control authority, the control systems failure accident losses can be expected to increase.

It is impossible to determine how many accidents may have been prevented by having the capability to perform a full control authority check. In recognizing that control system accidents are likely to increase without this capability on future rotorcraft, the FAA is attempting to avert accidents before they occur.

The objective of the proposed change to § 29.1303 is to bolster the safety level of future large transport category helicopters by providing the pilot with automated visual and aural indicators of excessive speed in aircraft that do not provide an unmistakable warning of overspeed. The method employed to stay within the never-exceed (V_{NE}) operating limit of former design model rotorcraft varies depending on the size and capability of specific aircraft. In small helicopters, those with limited lift and speed capabilities, V_{NE} has traditionally been set by the manufacturer as an absolute limit not to be exceeded under any operating condition. In larger rotorcraft, however, V_{NE} can vary with weight, horsepower, inside air temperature, Mach number, engine and rotor speed, center of gravity, and other factors. In heavier and more powerful rotorcraft, the determination of speed limitation requires the computation of the aircraft. Currently the pilot is responsible for computing the interaction of the flight variables comprising V_{NE}.

Most current generation rotorcraft provide an unmistakable physical warning when V_{NE} is exceeded. When entering an overspeed condition, rotorcraft vibrations of other cues warn the pilot of the unsafe mode of operation. Because of improved aerodynamic design, some recent design rotorcraft do not provide obvious warning of an overspeed condition. The absence of a natural indication of overspeed in modern as well as future helicopters may decrease the safety level of transport category rotorcraft.

Speed exceeding V_{NE} is not listed as a cause of accidents or a contributing factor in the National Transportation Safety Board files. An examination of the safety record of Part 29 helicopters for the nine years from 1972 to 1980 revealed there were 36 accidents involving airframe/main and tail rotor failures. Fatigue failures were cited in 19 of these accidents estimated to have current dollar cost of $37.4 million and an average cost of $2.0 million. Other contributing factors included excessive wear, friction wear, excessive pressure and vibrations. It has not been possible, using the available accident data to identify and isolate those accidents in which excessive speed was the major reason for component failure and thusly the primary cause of the accident. Research, however, has established that the cummulative effect of repetitive overspeed on airframe and dynamic components causes increased stress, fatigue and eventually failure of the component. It is known that stress levels in rotorcraft components typically increase rapidly at high speeds and that overspeed conditions accelerate fatigue damage to critical components. Equally, the destabilizing effects resulting from advancing blade tip mach effects could produce loss of rotor control or other grave consequences in overspeed flight conditions. Thus, it is likely that excessive speed has been a contributing factor in accidents, even with aircraft which provide a discernible warning of overspeed.

It can, therefore, be assumed that in the absence of a natural indication of overspeed condition, the rate of V_{NE}

related helicopter accidents is likely to increase as pilots inadvertently exceed speed limitations. On the basis of the $2.0 million average cost of fatigue failure accidents subject to this analysis, the proposed certification rule would have to prevent less than one accident to justify its costs.

Also of considerable importance as a safety concern is the removal of the pilot from the sequence of events required to determine V_{NE} for any given stage of a flight. Relieving the pilot of the burden of calculating V_{NE} will allow greater concentration to be dedicated to the operation of a more demanding aircraft in an increasingly complex environment. The reduction of pilot workload is viewed as critical to the enhancement of safety. Another important consideration is the need to reduce the possibility of pilot error involved in calculating V_{NE}.

Additionally, these considerations must be examined against a background of growing commercial rotorcraft operation. Increasing use of large helicopters transporting significantly higher passenger loads invariably causes increased risk exposure to life and property. The anticipated trend in future transport rotorcraft operation, coupled with advanced aerodynamic design and a congested airspace indicate a need to increase the safety of future helicopters.

(d) An increased level of safety for lightning protection would be realized in the future from proposed changes to § 27.610 and 29.610.

(e) Seven other proposals are relieving from present requirement §§ 27.1309(c), 27.1519, 27.1559, 29.855, 29.1323, 29.1325, and 29.1559.

The FAA invites public comment about the benefits to be expected from the proposals contained in this notice.

Costs and Savings

Comments are invited relating to the economic impact evaluations of all the proposed rule changes shown below in Table 2, Costs and Savings of Changes Having Economic Impacts, and specific comments are requested for some proposals as indicated by reference footnotes in the Principle Reason(s) column opposite the proposed rule changes.

TABLE 2.—COST AND SAVINGS OF CHANGES HAVING ECONOMIC IMPACTS

Proposal	Cost (savings)	Principal reason(s)
§ 27.79 Limiting Height-Speed Envelope	($50 thousand per certification)	Reduction of flight testing by 10 hours.
§ 29.671 Control Systems: General	$5.2 million total incurred for first 3 production years	Addition of motor to allow full control movement prior to flight.[1]
§ 27.610 Lightning Protection	Cost impact undetermined	Request industry comments to estimate design and testing cost of lightning protection for new composite materials, and digital avionics and flight control systems.
§ 29.610 Lightning Protection	Cost impact undetermined	Request industry comments to estimate design and testing cost of lightning protection for new composite materials, and digital avionics and flight control systems.
§ 29.175 Demonstration of Static Longitudinal Stability.	($50 thousand per certification)	Reduction of flight testing by 5 hours.
§ 29.1303 Flight and Navigation Instruments.	$1.1 million total incurred for first 3 production years, including maintenance costs.	Provision and installation of maximum allowable airspeed indicating system.[2]

[1] Comments are requested regarding the feasibility of any alternative system, e.g., through the use of an accumulator (see item 1, Specific Factors, Table 1) and its associated costs which would allow compliance with this proposal.

[2] The cost estimate is based on instrumentation developed by one manufacturer to provide V_{NE} measurement and warning capability and to perform a power assurance check. The costs shown here are those attributable to the V_{NE} indicator and V_{NE} overspeed warning device. The cost shown should provide an instrument that meets all safety aspects and gives a true speed measurement under all factors which can cause V_{NE} to vary. Comments are requested regarding the feasibility of any alternative type of system and its associated costs which would allow compliance with this proposal.

The costs and savings of changes having economic impact are estimates of the maximum economic impact per certification for the average size, production run, and service utilization of a newly certificated Part 27 or Part 29 rotorcraft. A broader helicopter industry perspective regarding the provisions which impose new certification costs can be illustrated by comparing the percentage increases in additional design, capital, and operating costs due to the requirements imposed by this NPRM. Based on industry experience with the Sikorsky S-76, the FAA estimates that each increase is relatively small and is not expected to exceed 1.0 percent. Table 3 lists the percentage increases in design, capital, and operating costs for the cost-imposing regulations shown in Table 2. Table 4 summarizes the benefits and costs and shows favorable benefit/cost ratios.

TABLE 3.—PERCENTAGE INCREASE IN COSTS FOR REQUIREMENTS IMPOSED BY ROTORCRAFT REGULATORY REVIEW PROGRAM NOTICE NO. 2

Proposed change	Total base cost estimates[1]			Percentage increase in cost imposed by requirement		
	Design	Capital	Operating	Design	Capital	Operating
§ 29.671 Control Systems Motors—Unlimited number of control cycles	100.0	2.225	0.880	0.1	0.4	1.0
Accumulator—Limited number of control cycles:						
Small Helicopter	100.0	2.225	0.880	0.1	0.09	0.3
Large Helicopter	100.0	2.225	0.880	0.1	0.3	0.9
§ 27.610 Lightning Protection	50.0	NA	NA	(2)		
§ 29.610 Lightning Protection	100.0	NA	NA	(2)		
§ 29.1303 Maximum Airspeed Indicator	100.0	2.225	0.880	0.15	0.08	0.2

[1] Estimates in these columns are costs to design, develop, produce, and operate Part 27 or 29 rotorcraft in the absence of the regulatory changes proposed in this notice. (In millions of dollars.)

[2] Cost undetermined.

NA = Not applicable

TABLE 4.—SUMMARY OF BENEFITS AND COSTS, ROTORCRAFT REGULATORY REVIEW PROGRAM; NOTICE NO. 2

Proposal	Benefits [1]	Costs [1]	B/C Ratio [1]
§ 27.79 Limiting Height Envelope.	$50,000 savings per certification, enhanced operational flexibility.	Negligible	>1.
§ 29.671 Control Systems General.	Enhanced safety; by prevention of control system failure or malfunction accidents.	$1.2 to $5.2 M	>1 if at least two control system failure accidents are prevented.
§ 27.610 Lightning Protection.	Protection from lightning strikes	Undetermined, comment requested.	NA.
§ 29.610 Lightning Protection.	Protection from lightning strikes	Undetermined, comment requested.	NA.
§ 29.175 Demonstration of Static Longitudinal Stability.	$50,000 savings per certification	Negligible	>1.
§ 29.1303 Flight and Navigation Instruments.	Maintain adequate level of safety by preventing fatigue failure accidents.	$1.1M	>1 even if only one fatigue accident of less than average severity is prevented.

[1] Per certification.

Regulatory Flexibility Determination

The FAA has determined that under the criteria of the Regulatory Flexibility Act (RFA) the proposed rule, at promulgation, will not have a significant economic impact on a substantial number of small entities.

The RFA requires agencies to especially review rules which may have a "significant economic impact on a substantial number of small entities." The RFA indicates that the term "small business" may be defined by agencies after proper public notice, or the Small Business Administration (SBA) definition shall be used. Since the FAA has not adopted its own definition, SBA's is used here; namely, that a small helicopter manufacturer is one having fewer than 1,500 employees.

The regulation directly affects the costs only of manufacturers of large helicopters which would be certificated under Part 29. There are currently only three such firms: Boeing (Vertol Division), Sikorsky (a division of United Industries), and Bell (a division of Textron). All of these firms are subsidiaries of very large enterprises and, even as separate entities, would exceed the employment limits set for small entities.

Thus, the proposed changes to Part 29 do not directly affect any small entities. The FAA was unable to determine what the cost of meeting the lightning protection requirements of proposed § 27.610 would be. However, the FAA assures that the cost of certification of a Part 27 helicopter is already so large, on the order of $50 million, that this provision would also not affect any small entities.

Assuming, for the sake of argument, that the concerns of the RFA also cover "potential" competitors, the agency should look at small helicopter manufacturers which would potentially enter the large helicopter market in the future. This change to the certification rules for large helicopters is not perceived to raise any barrier to entry into this market, for a small manufacturer. Also, certification costs are considered a recoverable cost, and thus should not lessen profits of firms.

List of Subjects

14 CFR Part 1

Airmen flights, Balloons, Parachutes, Aircraft pilots, Pilots, Transportation, Agreements, Kites, Air safety, Safety, Aviation safety, Air transportation, Air carriers, Aircraft, Airports, Airplanes, Helicopters, Rotorcraft, Heliports.

14 CFR Part 27

Air transportation, Aircraft, Aviation safety, Safety, Tires, Rotorcraft

14 CFR Part 29

Air transportation, Aircraft, Aviation safety, Safety, Rotorcraft

14 CFR Part 91

Air carriers, Aviation safety, Safety, Aircraft, Aircraft pilots, Air traffic control, Liquor, Narcotics, Pilots, Airspace, Air transportation, Cargo, Smoking, Airports, Airworthiness directives and standards

The Proposed Amendments

Acordingly, it is proposed to amend Parts 1, 27, 29, and 91 of the Federal Aviation Regulations (14 CFR Parts 1, 27, 29, and 91) as follows:

PART 1—DEFINITIONS AND ABBREVIATIONS

2–1. By amending § 1.1 by adding the definitions of "Climbout speed" and "Takeoff safety speed" after the definitions of "Clearway" and "Takeoff power," respectively, to read as follows:

§ 1.1 General definitions.

* * * * *

"Climbout speed", with respect to rotorcraft, means a reference airspeed which results in a flight path clear of the height-velocity diagram during initial climbout. This airspeed is determined from the rotorcraft flight manual.

* * * * *

"Takeoff safety speed" means a reference airspeed obtained after lift-off at which the required one-engine-inoperative climb performance can be achieved. This airspeed is determined from the aircraft flight manual.

* * * * *

Explanation: The proposed definitions define speeds which are referenced in portions of the certification rules, used in certification testing, and published in rotorcraft flight manuals. These definitions will clarify existing rules such as § 29.59(c) and proposed rules such as §§ 27.1585(a)(1) and 29.1587(b)(1). The definition of "Takeoff safety speed" is intended to apply to both fixed-wing and rotary-wing aircraft.

2–2. By amending § 1.2 to add a definition for "V_{TOSS}" to read as follows:

§ 1.2 Abbreviations and symbols.

* * * * *

"V_{TOSS}" means takeoff safety speed for Category A rotorcraft.

* * * * *

Explanation: This is a companion proposal to proposed § 1.1. It proposes adoption of a symbol which has long been used to represent takeoff safety speed for rotorcraft. See proposed § 1.1 for further explanation.

PART 27—AIRWORTHINESS STANDARDS: NORMAL CATEGORY ROTORCRAFT

§ 27.21 [Amended]

2–3. By removing the paragraph designator "(a)" in § 27.21(a); by changing the paragraph designators (a)(1) and (a)(2) to (a) and (b) respectively; and by removing § 27.21(b).

Explanation: This proposal would delete the requirement to show the controllability, stability, and trim of the rotorcraft for each altitude up to the maximum expected in operation. A related proposal to change § 27.141 would incorporate this requirement and it would, therefore, be redundant if left in § 27.21. The remaining requirements of § 27.21 would be renumbered for continuity. A substantively identical change is proposed for § 29.21.

See the explanation for proposed revision to § 27.141.

2–4. By revising § 27.45(f) to read as follows:

§ 27.45 General.

* * * * *

(f) For turbine-engine-powered rotocraft, a means must be provided to permit the pilot to determine prior to take off that each engine is capable of developing the power necessary to achieve the applicable rotorcraft performance prescribed in this Subpart.

Explanation: See explanation for proposed § 29.45.

2–5. By adding a new § 27.71 to read as follows:

§ 27.71 Glide performance.

For single-engine helicopters and multiengine helicopters that do not meet the Category A engine isolation requirements of Part 29 of this chapter, the minimum rate of descent airspeed and the best angle-of-glide airspeed must be determined in autorotation at—

(a) Maximum weight; and

(b) Rotor speed(s) selected by the applicant.

Explanation: For helicopters which do not have prolonged flight capability following an engine failure, crews must be aware of the helicopter's autorotative performance. Data on the minimum rate of descent airspeed and best angle-of-glide airspeed in autorotation is essential for assisting the pilot in best managing altitude and airspeed to reach a desired landing site. This requirement would generate the necessary data which would be incorporated in appropriate portions of the rotorcraft flight manual by proposed changes to §§ 27.1585 and 27.1587. This information also enhances compliance with rules regarding the overwater operation of aircraft within gliding distance of shore, such as § 135.183(a). This information is routinely obtained during flight test programs for current rotorcraft and adopting this proposal will not impose added cost or burden to the manufacturer. Proposed § 27.71 provides consistency with an existing requirement for Part 29 Category B helicopters in § 29.71.

The airspeed information in § 27.1585 would provide quick reference information to the pilot for use in the event of an unplanned autorotation. The information in § 27.1587 would provide more detailed information for performance and flight planning.

Ref: Proposals 16, 148, 150, 410, and 412; Committees I and II.

2–6. By revising § 27.79(a)(2) to read as follows:

§ 27.79 Limiting height-speed envelope.

(a)* * *

(2) Weight, from the maximum weight (at sea level) to the lesser weight selected by the applicant for each altitude covered by paragraph (a)(1) of this section. For helicopters, the weight at altitudes above sea level may not be less than the maximum weight or the highest weight allowing hovering out of ground effect, whichever is lower.

* * * * *

Explanation: Lighter, more powerful engines have enlarged the flight envelope for operation of small helicopters near the ground at high elevations. While appropriate height-velocity (HV) information is still necessary for proper operation of the rotorcraft in these conditions, it is no longer considered to be a necessary operating limitation. Accordingly, this proposal would, in conjunction with the proposed § 27.1519, remove HV as a limitation and would revise the minimum required weight on HV diagrams for altitudes above sea level.

Current § 27.1519 requires that each weight less than the highest weight allowing hovering in ground effect be established as an operating limitation (see related proposal for § 27.1519). This revision to § 27.79(a)(2) is needed in conjunction with the deletion of § 27.1519(b) to retain a correlation between the published HV information and the performance capabilities of the helicopter.

By changing the reference from "in ground effect" (IGE) to "out of ground effect" (OGE), this requirement would be less restrictive on the manufacturer than existing § 27.1519(b) and could reduce the manufacturer's required HV demonstration weight by approximately 15 percent at altitudes above sea level. This reduction will allow increased utility of small rotorcraft while still maintaining an appropriate safety level. The proposed § 27.1519 removes HV as a limitation but retains it as performance information.

Several commenters at the conference felt the HV concept should be discontinued and that engine failure testing along the takeoff profile would provide a sufficient level of safety. They proposed a recommended takeoff flight path for engine failure testing and for flight manual information to the pilot. The FAA cannot agree with these comments. Conducting engine failure testing only along a recommended or optimum flight path could lead to conditions where satisfactory landing could not be accomplished other than along the optimum profile. Operating conditions frequently require flight profiles other than the optimum. The HV diagram provides useful information for conducting such operations. Constraining engine failure testing only to an optimum profile would result in a significantly lower level of safety than currently exists for small rotorcraft. Providing an optimum takeoff profile is highly desirable. Current § 27.1587(b)(2) requires that "any pertinent information concerning the takeoff procedure" be included in the flight manual. There is nothing in the current rule which inhibits detailed definition of the optimum takeoff profile. To the contrary, such action is encouraged. For conditions of low speed and low altitude, HV information provides the pilot a useful source of background information to aid in flight operations. For these reasons, HV is being retained in Part 27 as information to the pilot.

One commenter proposed extrapolating HV by analytical methods. The FAA does not concur since HV performance previously has not been predicted accurately for certification over varying ambient conditions. On the contrary, HV tests at high altitude are approached with considerable caution and conservatism because HV weight capabilities cannot be satisfactorily predicted over large altitude bands. Extrapolation of HV capability is not considered to be within the current state-of-the-art and is not being proposed.

This proposal would provide HV conditions as necessary performance information to the pilot. It would introduce a concept for helicopters which requires weight/altitude combinations consistent with the OGE hover performance capability of the helicopter.

The phrase "highest weight allowing hover out of ground effect" is intended to require HV demonstration weights corresponding to standard-day OGE hover capability at density altitudes above sea level.

Ref: Proposals 19, 20, 21, 22, and 23; Committee I.

2–7. By revising the introductory text and subparagraph (1) of § 27.141(a) to read as follows:

§ 27.141 General.

* * * * *

(a) Except as specifically required in the applicable section, meet the flight characteristics requirements of this subpart—

(1) At the altitudes and temperatures expected in operation;

* * * * *

Explanation: This proposal would amend § 27.141(a) to simplify wording and make it clear that the general flight characteristics requirements of § 27.141 apply to all flight characteristics sections, including new §§ 27.151 and 27.177. This proposal would not alter the

requirements of current § 27.141(a), but would allow future rule changes in the flight characteristics portion of Subpart B without requiring corresponding changes to § 27.141(a) each time a section is added or deleted.

This proposal would also alter the wording of § 27.141(a)(1) slightly to incorporate temperature accountability into the flight characteristics requirements. This change provides the necessary framework to address rotor blade tip mach number effects at cold temperatures in determining compliance with the flight characteristics requirements.

This change would implement current FAA policy in regard to assessing the effects of rotor blade tip mach number which can lead to unstable flight conditions, particularly at high forward speeds. See related proposal for § 27.1505. This change also makes current § 27.21(b) redundant and allows deletion of that entire subparagraph. A substantively identical change is proposed for § 29.141(a).

Ref: Proposals 24, 26, 181, 182, 574, 575; Committee I.

2–8. By amending § 27.143 by removing the word "and" in subparagraph (c)(2); by inserting "; and" at the end of (c)(3); and by adding a new subparagraph (c)(4) to read as follows:

§ 27.143 Controllability and maneuverability.

* * * * *

(c) * * *

(4) Altitude, from standard sea level conditions to the maximum altitude capability of the rotorcraft or 7,000 feet, whichever is less.

* * * * *

Explanation: This proposal would introduce a requirement to demonstrate satisfactory controllability near the ground in winds of at least 17 knots at altitudes up to and including 7,000 feet. If the maximum altitude capability of the helicopter for operations near the ground was less than 7,000 feet, it would be required to demonstrate the 17-knot capability only to its maximum operating altitude. This change is proposed in conjunction with a related change to the flight manual section. Standardized application of the existing requirements of § 27.143(c) has been difficult. This proposal would add a specific requirement to demonstrate controllability near the ground. The proposed wording is consistent with the capabilities of helicopters recently certified under the Part 27 wording. Specifying a maximum demonstration altitude of 7,000 feet is considered relieving from the current requirement. The overall effect of this proposed change, however, is judged to have no significant economic impact.

A large majority of helicopter operations near the ground are conducted at or below 7,000-feet density altitude. Operations at higher density altitudes are considered a specialized application of helicopters for which the crew must have special information and knowledge of the capabilities of the aircraft. This specialized information would be revised by proposed § 27.1587(a)(2)(ii). These proposals are consistent with the altitude criteria and philosophy for current height-velocity requirements. Safety is maintained by the proposed § 27.1587(a)(2)(ii) which would require that appropriate information be provided to the pilot for determining controllability in winds at altitudes above 7,000 feet whenever performance information for those altitudes is provided.

Ref: Proposals 28 and 30; Committee I.

2–9. By adding a new § 27.151 to read as follows:

§ 27.151 Flight controls.

(a) Longitudinal, lateral, directional, and collective controls shall not exhibit excessive breakout force, friction, or preload.

(b) Control system forces and free play shall not inhibit a smooth, direct rotorcraft response to control system input.

Explanation: This proposal would specify certain control system design characteristics considered essential to prevent certification of flight control systems with unacceptable mechanical characteristics. It would preclude control system combinations such as excessive friction and breakout force. The proposal received considerable support at the conference and is as submitted by the proponent with only minor changes. A substantively identical requirement is also proposed in § 29.151.

Ref: Proposals 33 and 188; Committee I.

2–10. By revising § 27.161(a) to read as follows:

§ 27.161 Trim control.

* * * * *

(a) Must trim any steady longitudinal, lateral, and collective control forces to zero in level flight at any appropriate speed; and

* * * * *

Explanation: This proposal would add a requirement for collective trim during level flight conditions. An FAA proposal presented at the conference suggested added requirements for collective and directional trim in level flight and for longitudinal, lateral, and collective trim in a hover. Upon consideration of the conference discussions, however, it is the FAA's judgement that hovering flight is a hands-on flight condition for which a trim requirement is not warranted. Trim systems are needed for conditions requiring momentary release of flight controls. No appreciable increase in safety would result from a capability to release flight controls in a hover. For similar reasons, a directional trim requirement for VFR cruise conditions would not result in an increased safety level because the pilot must be located continuously at the controls and typically has no need to use the feet for other purposes. Introducing the ability to release directional controls by incorporating a directional trim requirement may allow a small reduction in pilot workload and some added pilot comfort. However, since safety benefits for VFR flight are questionable, the FAA has withdrawn consideration, for all additional trim requirements, but the collective trim requirement, for level flight.

During cruise flight, controls operated by the pilot's hands present a quite different situation. Rotorcraft controls must be designed to allow periodic movement of the pilot's hands from primary flight controls to perform other cockpit duties. The pilot has many tasks to perform with each hand during sustained forward flight conditions, and without a trim capability flight controls can move when released. This could result in serious flight path deviations as readily for movement of collective control as for cyclic control. Therefore, a requirement for collective trim capability during cruise flight conditions is proposed. Due to these safety aspects, all recently certified models incorporate collective trim capability. As such, this proposal imposes no added burden for design, but would specify and clarify a minimum requirement for safety.

This revision would provide the capability to release the collective control during typical cruise flight conditions without unwanted collective control motions and resulting flight path deviations. A substantively identical change is also proposed for § 29.161(a).

Ref: Proposals 234 and 189; Committee I.

2–11. By revising § 27.173 to read as follows:

§ 27.173 Static longitudinal stability.

(a) The longitudinal control must be designed so that a rearward movement of the control is necessary to obtain a speed less than the trim speed, and a forward movement of the control is necessary to obtain a speed more than the trim speed.

(b) With the throttle and collective pitch held constant during the maneuvers specified in §§ 27.175 (a) through (c), the slope of the control position versus speed curve must be positive throughout the full range of altitude for which certification is requested.

(c) During the maneuver specified in § 27.175(d), the longitudinal control position versus speed curve may have a negative slope within the specified speed range if the negative motion is not greater than 10 percent of total control travel.

Explanation: Several conference proposals pertaining to §§ 27.173 and 27.175 and the corresponding Part 29 sections recommend changes in stability criteria. This proposal would eliminate the apparent inconsistency between existing §§ 27.173(b) and 27.175(d) in regard to power setting and required level of longitudinal static stability in a hover. Also, § 27.173 is restructured for brevity.

Portions of §§ 27.173(a) (1) and (2) which duplicated the rotor r.p.m. and rigging conditions of the § 27.141 general requirement would be deleted. This would eliminate redundancy in the wording of § 27.173.

The 1-inch negative stick travel limitation in § 27.173(c) would be replaced by a 10 percent limitation. For existing designs, the two requirements are approximately equal. For future considerations, such as fly-by-wire controls and side arm controllers, the 10 percent tolerance would be a more appropriate minimum standard since 1 inch of travel could conceivably represent 50 percent of total control travel. Such a standard would allow a grossly unstable hover condition and, for this reason, the 1-inch control travel requirement of § 27.173(b) has been changed to 10 percent of total control travel in the proposal. Total control travel is intended to mean stop-to-stop. References to "'stick" in the current regulation would be changed to "control" to provide a more inclusive wording.

A proposal to allow 10 percent cyclic control reversals during climb, cruise, and descent was presented at the conference. Allowing negative cyclic position gradients for these conditions would result in a significant reduction in the minimum safety standard for rotorcraft and is not proposed.

This proposal does not substantively change the existing requirement. The revision is needed to clarify wording and eliminate inconsistent cross references to § 27.175(d). This proposal would help eliminate confusion in interpreting and applying this section during rotorcraft type certification. A substantively identical revision is proposed for § 29.173.

Ref: Proposals 37, 38, 40, 192, and 194; Committee I.

2–12. By revising §27.175(d) to read as follows:

§27.175 Demonstration of static longitudinal stability.

* * * * *

(d) *Hovering.* For helicopters, the longitudinal cyclic control must operate with the sense and direction of motion prescribed in § 27.173 between the maximum approved rearward speed and a forward speed of 17 knots with—

(1) Critical weight;

(2) Critical center of gravity;

(3) Power required to maintain an approximately constant height in ground effect;

(4) The landing gear extended; and

(5) The helicopter trimmed for hovering.

Explanation: This proposal would change the hovering requirement of § 27.175(d) to provide wording consistent with the proposed revision to § 27.173. No other substantive changes are incorporated in the revised language of § 27.175(d).

Several other conference proposals regarding § 27.175(d) were considered but are not being adopted in this notice. One proposal would have deleted the requirement for stability beyond V_{NE} in autorotation when autorotation V_{NE} is established in accordance with § 27.1505(c). The proponent argued that a stability requirement which exceeds a limit is excessively restrictive.

Static longitudinal stability requirements exist for climb, cruise, and autorotation. Although important, no state requirement exists for stability in low-power, high-speed descent. In the past, designs incorporating positive longitudinal stability in cruise and high-speed autorotation have also shown acceptable longitudinal characteristics at the in-between condition of low-power descent. Lacking a requirement for low-power descent, it is therefore important to retain the speed requirement in autorotation at a high value. There is a high probability of encountering speeds betwen V_{NE} (power-off) and V_{NE} (power-on) during low-power, high-speed descents. Retaining § 27.175(c) in its current form will help to assure acceptable handling qualities during low-power descent at speeds above V_{NE} (power-off). (Also see the explanation for proposed § 27.173.)

Ref: Proposals 39 and 40; Committee I.

2–13. By adding a new § 27.177 to read as follows:

§ 27.177 Static directional stability.

Static directional stability must be positive with throttle and collective controls held constant during the conditions specified in §§ 27.175 (a) and (b). This must be shown by steadily increasing directional control deflection for sideslip angles up to ±10° from trim. Sufficient pilot cues must accompany steady sideslip to assure safe operation.

Explanation: This proposal would add a requirement for directional stability to the existing flight characteristics requirements of Subpart B. It resulted from a conference proposal to incorporate direcitonal stability, dihedral effect, and spiral stability characteristics into the rotorcraft requirement.

Several industry representatives voiced objections to the dihedral effect and spiral stability portions of the proposal. Static directional stability, however, is necessary during forward flight conditions for safe control of aircraft and has been provided in virtually all civil rotorcraft to date. Directional stability is not only necessary to assure a minimum stability and control characteristic, but to inhibit exceeding sideslip limits in the event of directional gust disturbances. Sufficient pilot cues must accompany sideslip to alert pilots when approaching sideslip limits.

For Part 27, static directional stability is proposed for climb and cruise flight conditions. For Part 29, a higher level of safety is proposed by incorporating the requirement for climb, cruise, and autorotation. For Category A, some relief is provided in the autorotational requirement through a corresponding change to the static longitudinal stability requirement of § 29.157. While positive static directional stability is necessary to provide satisfactory handling qualities throughout normal VFR flight conditions, sufficient justification has not been presented to show that positive dihedral stability and positive spiral stability provide significant increases in safety for VFR flight in rotorcraft. Accordingly, dihedral stability and spiral stability requirements are not being proposed.

The directional stability requirement would prevent design of a rotocraft with unstable directional response during conventional forward flight conditions. A substantively identical change is also proposed for § 29.177.

Ref: Proposals 41 and 196; Committee I.

2–14. By adding a new § 27.610 to read as follows:

§ 27.610 Lightning protection.

(a) The rotorcraft must be protected against catastrophic effects from lightning.

(b) For metallic components, compliance with paragraph (a) of this section may be shown by—

(1) Electrically bonding the components properly to the airframe; or

(2) Designing the components so that a strike will not endanger the rotorcraft.

(c) For nonmetallic components, compliance with paragraph (a) of this section may be shown by—

(1) Designing the components to minimize the effect of a strike; or

(2) Incorporating acceptable means of diverting the resulting electrical current so as not to endanger the rotorcraft.

Explanation: This proposal would require lightning protection against rotorcraft structural or system failures equivalent to that required for airplanes and would also require protection from lightning strikes for the sophisticated electrical/electronic controls now being introduced in rotorcraft. When the lightning protection provisions were incorporated in Part 23 by Amendment 23–7, it was stated "The notice proposed to add a new § 23.581 to require lightning protection of the airplane structure." The designation of that amendment was changed to § 23.867 because it is a design and construction requirement and thus should be included in Subpart D of Part 23. It is proposed to incorporate this rule as § 27.610 rather than § 27.581 for the same reason. In Parts 27 and 29, it more properly fits as §§ 27.610 and 29.610 within Subpart D.

As was also cited in Amendment 23–7, service experience has established that lightning strikes occur most frequently along frontal patterns and squall lines in VFR conditions. Research by numerous technical groups studying lightning has disclosed that stikes occur both in VFR and IFR conditions. Evidence of lightning strikes in rotorcraft is not well documented and accident statistics which could conceivably be related to lightning encounters lack sufficient detail for conclusive decision. The FAA specifically solicits additional data and results of service experience with lightning in response to this notice. The utilization of composite materials in forthcoming primary and secondary surface designs will result in less shielding from lightning. Additionally, there is increasing use of digital equipment in flight control systems and avionics. Due to their low operating currents, the components of digital equipment can be inadvertently programmed or rendered completely inoperative by the high currents induced during lightning strikes. Therefore, consideration must be given to these conditions in assessing a safe level of reliability in both IFR and VFR operations. The FAA seeks specific comments on the economic impact of this proposal. (See the related proposal for § 27.1309.)

The proposed §§ 27.610 (a), (b), and (c) are substantively identical to §§ 23.867 and 25.581. A substantively identical change is also proposed for § 29.610.

Ref: Proposals 61, 62, 218, 219, and 220; Committee I.

2–15. By adding a new § 27.672 to read as follows:

§ 27.672 Stability augmentation, automatic, and power-operated systems.

If the functioning of stability augmentation or other automatic or power-operated systems is necessary to show compliance with the flight characteristics requirements of this Part, such systems must comply with § 29.671 of this Part and the following:

(a) A warning which is clearly distinguishable to the pilot under expected flight conditions without requiring the pilot's attention must be provided for any failure in the stability augmentation system or in any other automatic or power-operated system which could result in an unsafe condition if the pilot was unaware of the failure. Warning systems must not activate the control systems.

(b) The design of the stability augmentation system or of any other automatic or power-operated system must allow initial counteraction of failures without requiring exceptional pilot skill or strength by overriding the failure by movement of the flight controls in the normal sense and deactivating the failed system.

(c) It must be shown that after any single failure of the stability augmentation system or any other automatic or power-operated system—

(1) The rotorcraft is safely controllable when the failure or malfunction occurs at any speed or altitude within the approved operating limitations;

(2) The controllability and maneuverability requirements of this Part are met within a practical operational flight envelope (for example, speed, altitude, normal acceleration, and rotorcraft configurations) which is described in the Rotorcraft Flight Manual; and

(3) The trim and stability characteristics are not impaired below a level needed to permit continued safe flight and landing.

Explanation: See the explanation for proposed § 29.672.

2–16. By adding a new § 27.673 to read as follows:

§ 27.673 Primary flight controls.

Primary flight controls are those used by the pilot for immediate control of pitch, roll, yaw, and vertical motion of the motorcraft.

Explanation: A proposed change to § 27.1555 excludes primary flight controls from the control marking requirements of § 27.1555. Since the term "primary flight controls" is not presently defined, this proposal is developed for that purpose. This proposal is clarifying in nature and would impose no economic impact if adopted.

Proposed § 27.673 defines primary flight controls similar to that of § 23.673. A substantively identical proposal is provided for § 29.673.

Ref: Proposals 69, 138, 235; Committee II.

2–17. By adding a new § 27.729 to read as follows:

§ 27.729 Retracting mechanism.

For rotorcraft with retractable landing gear, the following apply:

(a) *Loads.* The landing gear, retracting mechanism, wheel well doors, and supporting structure must be designed for—

(1) The loads occurring in any maneuvering condition with the gear retracted;

(2) The combined friction, inertia, and air loads occurring during retraction and extension at any airspeed up to the design maximum landing gear operating speed; and

(3) The flight loads, including those in yawed flight, occurring with the gear extended at any airspeed up to the design maximum landing gear extended speed.

(b) *Landing gear lock.* A positive means must be provided to keep the gear extended.

(c) *Emergency operation.* When other than manual power is used to operate the gear, emergency means must be provided for extending the gear in the event of—

(1) Any reasonably probable failure in the normal retraction system; or

(2) The failure of any single source of hydraulic, electric, or equivalent energy.

(d) *Operation tests.* The proper functioning of the retracting mechanism must be shown by operation tests.

(e) *Position indicator.* There must be a means to indicate to the pilot when the gear is secured in the extreme positions.

(f) *Control.* The location and operation of the retraction control must meet the requirements of §§ 27.777 and 27.779.

(g) *Landing gear warning.* An aural or equally effective landing gear warning device must be provided that functions continuously when the rotorcraft is in a normal landing mode and the landing gear is not fully extended and locked. A manual shutoff capability must be provided for the warning device and the warning system must automatically reset when the rotorcraft is no longer in the landing mode.

Explanation: The proposal would add a new § 27.729 substantively identical to proposed § 29.729 setting forth design criteria for landing gear retracting mechanisms in Part 27, and the use of components. Currently, there are no requirements for landing gear retracting mechanisms in Part 27, and the ue of these mechanisms is envisioned for future Part 27 designs. Therefore, it is appropriate to propose requirements for landing gear retracting mechanisms in § 27.729 at this time. It was the concensus at the conference that these rules are appropriate for Part 27 rotorcraft. For an explanation of § 27.729(g), see the explanation for proposed § 29.729.

Ref: Proposal 73; Committee I.

2–18. By revising the introductory paragraph to § 27.735 to read as follows:

§ 27.735 Brakes.

For rotorcraft with wheel-type landing gear, a braking device must be installed that is—

* * * * *

Explanation: This revision would clarify a potential misinterpretation in the applicability of § 27.735 but would make no substantive change. At the conference, industry identified a problem with the existing wording of this section. It was indicated that the section had been applied to a skid-type landing gear system when the intent was that it should apply only to wheel-type systems.

A substantively identical revision is proposed for § 29.735.

Ref: Proposal 74; Committee I.

2–19. By adding a new § 27.779 to read as follows:

§ 27.779 Motion and effect of cockpit controls.

Cockpit controls must be designed so that they operate in accordance with the following movements and actuation:

(a) Flight controls, including the collective pitch control, must operate with a sense of motion which corresponds to the effect on the rotorcraft;

(b) Twist grip engine power controls must be designed so that, for lefthand operation, the motion of the pilot's hand is clockwise to increase power when the hand is viewed from the edge containing the index finger. Other engine power controls, excluding the collective control, must operate with a forward motion to increase power; and

(c) Landing gear controls must operate downward to extend the landing gear.

Explanation: This proposal would add a new § 27.779 which standardizes requirements for direction of motion for flight controls, engine power controls, and landing gear controls. Where possible, direction of control motion is designated to provide consistency with resultant aircraft motions. This proposal is intended to establish a minimum level of standardization where safety can be jeopardized by improper control movement. It is expected to minimize the possibility of improper control movement, and resulting unsafe flight conditions, due to nonstandard cockpit controls. This is particularly important where flightcrews are operating different models or types of aircraft. This has been long recognized in the fixed-wing certification rules, Parts 23 and 25, which contain requirements for motion and effect of cockpit controls. This proposal, along with a companion proposal for Part 29, would add appropriate requirements for rotorcraft.

Section 27.779(b) is written for left-hand, twist-grip power controls only, as there are no other types of continuously modulated throttle controls in present designs or anticipated in future designs. This proposed requirement does not preclude other types of modulated throttle control.

A substantively identical requirement is contained in proposed § 29.779.

Ref: Proposals 76, 240, and 243; Committee I.

2-20. By revising the title and § 27.785 to read as follows:

§ 27.785 Seats, berths, safety belts, and harnesses.

(a) Each seat, berth, safety belt, harness, and adjacent part of the rotorcraft, at each station designated for occupancy during takeoff and landing, must be free of potentially injurious objects, sharp edges, protuberances, and hard surfaces, and must be designed so that a person making proper use of these facilities will not suffer serious injury in an emergency landing as a result of the inertia forces specified in § 27.561.

(b) Each occupant must be protected from head injury by—

(1) For each crewmember seat and each seat beside a crewmember front seat, a safety belt and harness that will prevent the head from contacting any injurious object;

(2) For each seat not covered under subparagraph (b)(1):

(i) A safety belt plus the absence of injurious objects within striking radius of the head; or

(ii) A safety belt plus an energy-absorbing rest that will support the arms, shoulders, head, and spine.

(c) Each pilot's seat must have a combined safety belt and shoulder harness with a single-point release that permits the pilot, when seated with safety belt and shoulder harness fastened, to perform all of the pilot's necessary functions. There must be a means to secure belts and harnesses, when not in use, to prevent interference with the operation of the rotorcraft and with rapid egress in an emergency.

(d) If seat backs do not have a firm handhold, there must be hand grips or rails along each aisle to let the occupants steady themselves while using the aisle in moderately rough air.

(e) Each projecting object that could injure persons seated or moving about in the rotorcraft in normal flight must be padded.

(f) Each seat and its supporting structure must be designed for an occupant weight of 170 pounds, considering the maximun load factors, inertia forces, and reactions between the occupant, seat, and safety belt or harness corresponding with the applicable flight and ground-load conditions, including the emergency landing conditions of § 27.561. In addition—

(1) Each pilot seat must be designed for the reactions resulting from the application of the pilot forces prescribed in § 27.397; and

(2) The inertia forces prescribed in § 27.561 must be multiplied by a factor of 1.33 in determining the strength of the attachment of—

(i) Each seat to the structure; and

(ii) Each safety belt or harness to the seat or structure.

(g) When safety belt and shoulder harness are combined, the rated strength of the safety belt and shoulder harness may not be less than that corresponding to the inertia forces specified in § 27.561, considering an occupant weight of at least 170 pounds, considering the dimensional characteristics of the restraint system installation and using a distribution of at least 60 percent load to the safety belt and at least 60 percent load to the shoulder harness. If the safety belt is capable of being used without the shoulder harness, the inertia forces specified must be met by the safety belt alone.

(h) When a headrest is used, the headrest and its supporting structure must be designed to resist the inertia forces specified in § 27.561, with a 1.33

fitting factor and a head weight of at least 13 pounds.

Explanation: See the explanation for proposed § 29.785.

§ 27.807 [Amended]

2–21. By amending § 27.807(a) by removing the last sentence.

Explanation: This proposal would delete the requirement to provide additional emergency exits when the total seating capacity of the rotorcraft is more than 15. The FAA is not aware of any normal category rotorcraft with a total seating capacity greater than nine. Rotorcraft under 6,000 pounds with more than 15 people are not foreseen. This provision therefore is not needed.

2–22. By removing the italicized words "Functioning and reliability" in § 27.1309(a), by revising paragraph (b), and by adding new paragraphs (c) and (d) to read as follows:

§ 27.1309 Equipment, systems, and installations.

* * * * *

(b) The equipment, systems, and installations of a multiengine rotorcraft must be designed to prevent hazards to the rotorcraft in the event of a probable malfunction or failure.

(c) The equipment systems, and installations of single-engine rotorcraft must be designed to minimize hazards to the rotorcraft in the event of a probable malfunction or failure.

(d) In showing compliance with paragraphs (a), (b), and (c) of this section, the effects of lightning strikes on the rotorcraft must be considered.

Explanation: This proposal would relax equipment, systems, and installations design requirements for single-engine rotorcraft. It also would require that all rotorcraft equipment, systems, and installations designs consider the effects of lightning strikes on the rotorcraft.

Section 27.1309 currently requires that all rotorcraft equipment, systems, and installations be designed to *prevent* hazards to the rotorcraft if they malfunction or fail. This proposal would continue the requirement that multiengine rotorcraft must prevent hazards in case of a probable malfunction or failure. Single-engine rotorcraft would have to be designed to *minimize* hazards in case of a probable malfunction or failure.

A majority of Part 27 rotorcraft are single-engine rotorcraft and designs for those models are currently required to prevent hazards under probable failure conditions. The FAA is not aware of any justification for more stringent equipment, systems, and installation requirements for single-engine rotorcraft. It is therefore proposed to provide relief for the large majority of small rotorcraft designs consistent with the currently provided for airplanes in § 23.1309. The proposed wording for §§ 27.1309 (b) and (c) is consistent with Part 23.

Proposed § 27.1309(d) would require that equipment, systems, and installations necessary for continued safe flight and landing perform their intended functions after a lightning strike on the rotorcraft. The intent of the proposal is to assure that the effects of lightning strikes will be considered druing the design and certification of rotorcraft. For a more detailed explanation of the need to consider lightning effects on rotorcraft, see the explanation for proposed § 27.610.

Ref: Proposal 126; Committee II.

2–23. By adding a new § 27.1329 to read as follows:

§ 27.1329 Automatic pilot system.

(a) Each automatic pilot system must be designed so that the automatic pilot can—

(1) Be sufficiently overpowered by one pilot to allow control of the rotorcraft; and

(2) Be readily and positively disengaged by each pilot to prevent it from interfering with control of the rotorcraft.

(b) Unless there is automatic synchronization, each system must have a means to readily indicate to the pilot the alignment of the actuating device in relation to the control system it operates.

(c) Each manually operated control for the system's operation must be readily accessible to the pilots.

(d) The system must be designed and adjusted so that, within the range of adjustment available to the pilot, it cannot produce hazardous loads on the rotorcraft, or create hazardous deviations in the flight path, under any flight condition appropriate to its use, either during normal operation or in the event of a malfunction, assuming that corrective action begins within a reasonable period of time.

(e) If the system integrates signals from auxiliary controls or furnishes signals for operation of other equipment, there must be positive interlocks and sequencing of engagement to prevent improper operation.

Explanation: This proposal would establish requirements in Part 27 for automatic pilot systems where none now exist. The FAA currently uses criteria substantially equivalent to that specified in Part 29 for Part 27 autopilot installations. One proponent at the conference recommended adopting substantially identical requirements for Parts 27 and 29. The FAA agrees with this recommendation since this is the current practice and since similar automatic pilot systems will be used on rotorcraft certificated under both parts. Discussions at the conference supported this concept. See the related explanation for the proposed change to § 29.1329.

Ref: Proposal 128; Committee II.

§ 27.1413 [Amended]

2–24. By amending § 27.1413 by removing paragraphs (a) and (b), and the paragraph designator "(c)" only of paragraph (c).

Explanation: This proposal would eliminate redundant requirements that would result from the proposed revision of § 27.785. A proposed change to that section would make it substantively identical to § 29.785, for consistency between parts. This would result in the proposed § 27.785 containing the requirements now in §§ 27.1413 (a) and (b) pertaining to safety belt strength and attachment. For a more detailed explanation see the explanation for proposed § 29.785.

2–25. By amending § 27.1505 by removing the word "or" at the end of paragraph (a)(2)(i); by removing the period from the end of paragraph (a)(2)(ii), and adding "; or" in its place; and by adding a new paragraph (a)(2)(iii) to read as follows:

§ 27.1505 Never-exceed speed.

(a) * * *

(2) * * *

(iii) 0.9 times the maximum speed substantiated for advancing blade tip mach number effects.

* * * * *

Explanation: Several conference proposals address the need to consider rotor blade tip mach number effects in establishing never-exceed speed (V_{NE}). This proposal would incorporate tip mach number considerations into the limit speed determination for rotorcraft. Rotor blade tip mach limits are being applied in current rotorcraft certification programs and this change serves to incorporate existing policy into the current rule. Since it incorporates existing policy, this proposal adds no cost to certification or operation of rotorcraft. This change is needed to assure limit speeds which inhibit large shock wave formation and loss of stability when operating in cold temperatures. The 0.9 safety margin is consistent with requirements in existing § 27.1505 for establishing limit speeds. A related requirement is proposed for § 29.1505.

Ref: Proposals 133 and 390; Committee I.

§ 27.1519 [Amended]

2–26. By deleting § 27.1519(b) and by removing the paragraph "(a)" designation from § 27.1519(a).

Explanation: This proposal would delete the in-ground-effect (IGE) hover weight limitation imposed by height-velocity (HV) constraints. Related proposals would provide appropriate information to the pilot to allow the pilot to determine if the helicopter is at a weight which would permit a safe landing in terms of HV considerations. It would also establish an appropriate minimum weight for construction of the HV diagram at high altitudes. These proposals are needed to implement and fully standardize the HV policy for Part 27 helicopters. Increased utility with adequate safety constraints is expected.

The present § 27.1519(b) may in some cases impose the HV envelope as a limitation in Part 27, when it is intended as performance information in § 27.1587(a)(1). Section 27.1519(b) was incorporated in 1968 by Amendment 27–2 (33 FR 956; January 26, 1968). In adopting § 27.1519(b), the FAA noted that "the value of the envelope as performance information depends entirely on whether the envelope information provides a basis for the pilot to adquately determine the limit of safe operation. For any given altitude, the envelope provides no firm basis for pilot decision making at weights above those at which the envelope is developed for that altitude." The FAA approach at the time was to limit operations to those weights used in establishing the HV diagram. This approach was not consistent with existing § 27.1587(a)(1) which specified HV as a performance requirement, not a limitation. In this regard, it is noted that the HV requirement, § 27.79, recognizes that there may be areas of a flight envelope, that is, above 7,000 feet, in which the helicopter may not be protected by HV constraints.

Also, recognizing the basic philosophy of an improved utility which will result form removing HV constraints as a limitation for Part 27 helicopters, the FAA now proposes to delete the limiting constraints of § 27.1519(b). At the same time, this proposal addresses the previously noted concerns by requiring appropriate performance information in the rotorcraft flight manual and by requiring not less than out-of-ground-effect hover weights for constructing HV diagrams up to density altitudes of 7,000 feet. Refer to the proposal for § 27.79 for additional explanation.

Ref: Proposal 134; Committee II.

2–27. By revising § 27.1525 to read as follows:

§ 27.1525 Kinds of operations.

The kinds of operations (such as VFR, IFR, day, night, or icing) for which the rotorcraft is approved are established by demonstrated compliance with the applicable certification requirements and by the installed equipment.

Explanation: This proposal would change the wording of §§ 27.1525 and 29.1525 to clarify the requirements for approved kinds of operation without affecting the actual certification process. Proposed changes to §§ 27.1525, 27.1583, 29.1525 and 29.1583 were discussed at the conference and were considered in developing this proposal. Current wording in the rule specifies flight characteristics as the basic type certification requirement for kinds of operation. This statement is incomplete. Additional system, airframe, and powerplant design requirements, as specified in respective portions of the certification rule, must be met for approval of various kinds of operations. The revised wording incorporates those engineering requirements as "applicable certification requirements" and lists various examples of kinds of operations. The revised wording is necessary to clarify the certification requirement and to reduce confusion in establishing and defining approved kinds of operations. Adoption of this proposed wording will make revision of §§ 27.1583 and 29.1583 unnecessary. A substantively identical revision is proposed for § 29.1525.

Ref: Proposals 135, 143, 396, and 404; Committee I.

2–28. By revising § 27.1555(a) and adding a new paragraph to read as follows:

§ 27.1555 Control markings.

(a) Each cockpit control, other than primary flight controls and controls whose functions are obvious, must be plainly marked as to its function and method of operation.

* * * * *

(e) For rotorcraft incorporating retractable landing gear, the maximum landing gear operating speed must be displayed as close as practicable to the landing gear control.

Explanation: The proposed revision to § 27.1555(a) would remove flight controls and other obvious control functions from the marking requirements for cockpit controls. As discussed at the conference, problems have occurred with literal interpretation of the present § 27.1555 requirement, particularly by foreign certificating authorities. Present § 27.1555 requires "each" cockpit control to be marked. The proposed change is consistent with Part 25 and provides appropriate relief from the current requirement. The proposed change to § 27.1555(e) would require a placard stating the maximum landing gear operating speed (V_{LO}) in rotorcraft with retractable gear. It would require the placard be installed near the landing gear control to prevent inadvertent extension/retraction of the landing gear at speeds which exceed the structural capability of the landing gear system. This proposal is made in conjunction with a new § 27.729 which incorporates retractable landing gear criteria in Part 27 as a part of this notice. The proposal is similar to current requirements for fixed-wing aircraft. A substantively identical change is proposed for § 29.1555.

Ref: Proposal 138; Committee I.

2–29. By revising § 27.1559 to read as follows:

§ 27.1559 Limitations placard.

There must be a placard in clear view of the pilot that specifies the kinds of operations (such as VFR, IFR, day, night, or icing) for which the rotorcraft is approved.

Explanation: This proposal would remove the requirement for a placard which states that the rotorcraft must comply with the operating limitations contained in the rotorcraft flight and maintenance manuals. The required placard contained over 50 words, was redundant to requirements specified elsewhere in the certification and operating rules, and frequently resulted in utilizing valuable instrument panel space which could be more beneficially utilized for other purposes. Also, cockpit placards are considered primarily for pilot use and use of maintenance manuals is not considered a necessary pilot function. In place of this placard, a new placard specifying approved kinds of operations is proposed. The new placard should typically contain approximately 12 words and should be more adaptable to reduce conflicts in instrument panel displays. Two proposals were submitted to delete the operating limitations placard requirements of §§ 27.1559 and 29.1559. These proposals were favorably considered by both industry and the FAA at the conference, and accordingly the operating limitations placard requirements are being deleted, thereby relieving the industry of a burden and permitting greater utilization of instrument panel space. In addition, a related requirement to specify approved kinds of operations in a manner similar to that for fixed-wing aircraft in Part 23

is considered appropriate for incorporation at this time.

Parts 27 and 29 flight rules were originally designated for VFR flight and no placard requirements for types of operations were included. Recently, several IFR approvals have been granted by the FAA and requests for icing approvals are being considered. One model will soon be approved for multiple types of operations dependent upon configuration. This could lead to considerable confusion and potentially hazardous conditions when pilots transfer among rotocraft of similar appearance which are not approved for similar operating environments. Accordingly, this proposal would modify Part 27 placard requirements to provide a clear and convenient cockpit presentation of approved types of operations in each aircraft. A substantively identical proposal is being offered for § 29.1559.

Ref: Proposals 139 and 401; Committee I.

2–30. By revising § 27.1585(a) and adding a new paragraph (g) to read as follows:

§ 27.1585 Operating procedures.

(a) Parts of the manual containing operating procedures must have information concerning any normal and emergency procedures and other information necessary for safe operation, including takeoff and landing procedures and associated airspeeds. The manual must contain any pertinent information including—

(1) The kind of takeoff surface used in the tests and each appropriate climbout speed; and

(2) The kind of landing surface used in the tests and appropriate approach and glide airspeeds.

* * * * *

(g) The airspeeds and rotor speeds for minimum rate of descent and best glide angle as prescribed in § 27.71 must be provided.

Explanation: The change to paragraph (a) would add operating procedure requirements which had been inappropriately specified in present § 27.1587(b)(2), performance information.

Proposed paragraph (g) would add the requirement for glide and descent speed information generated by proposed § 27.71 and would make this information available to the pilot. The need for this information is noted in the explanation for proposed § 27.71 One conference proposal suggests including the glide and descent airspeeds in § 27.1587. However, it is more appropriate to put the airspeed information in § 27.1585 for quick reference in the event of an unplanned autorotation, and to put the detailed performance information in § 27.1587 for use in performance and flight planning. The proposals have been revised accordingly.

Another conference proposal suggests that height-velocity information be included in § 27.1585, Operating procedures; however, it would be more appropriate in § 27.1587, Performance information, where it is presently required and will be retained.

Ref: Proposals 16, 145, and 150; Committees I and II.

2–31. By removing § 27.1587(b)(2), redesignating paragraph (b)(3) as (b)(2), adding the word "and" after paragraph (a)(2)(iii) and paragraph (b)(1), and by revising paragraph (a)(2)(ii) and adding a new paragraph (a)(2)(iv) to read as follows:

§ 27.1587 Performance information.

(a) * * *

(2) * * *

(ii) The maximum safe wind for operation near the ground. If there are combinations of weight, altitude, and temperature for which performance information is provided, and at which the rotorcraft cannot land and takeoff safely with the maximum wind value, those portions of the operating envelope and the appropriate safe wind conditions shall be identified in the flight manual;

(iii) * * *

(IV) Glide distance as a function of altitude when autorotating at the speeds and conditions for minimum rate of descent and best glide as determined in § 27.71.

* * * * *

Explanation: A proposed change to § 27.143(c)(4) would require demonstating hover controllability in 17-knot winds at altitudes from sea level to the maximum altitude capability of the rotorcraft or to 7,000 feet density altitude, whichever is lower.

If a rotorcraft is certified for hovering with a maximum safe wind condition greater than 17 knots at sea level, there may be a similar wind condition near 7,000 feet at which controllability cannot be shown. There may also be conditions above 7,000 feet in which controllability can be shown only in winds less than 17 knots or from certain azimuths. For both cases, this proposal would provide the maximum safe wind conditions as information to the pilot. If the rotorcraft is capable of operating above 7,000 feet, and if a manufacturer elected to provide performance information for altitudes above 7,000 feet in the flight manual, the proposed § 27.1587(a)(2)(ii) would require flight manual information to identify control capability at those higher altitudes. Safe wind values for hovering are routinely determined during helicopter test programs. This requirement would assure that safe wind information is available to the pilot. Proposed §§ 27.143(c)(4) and 27.1587(a)(2)(ii) are companion proposals. See the explanation for proposed § 27.143(c)(4).

The proposed new § 27.1587(a)(2)(iv) would require incorporating glide data as determined in § 27.71 in the performance section of the rotorcraft flight manual. See the explanation for proposed § 27.71.

Current section 27.1587(b)(2) pertains to operating procedures and should more appropriately be included in the operating procedures section, § 27.1585. See the companion proposal for that section.

A related conference proposal suggests that the maximum wind for starting and stopping the rotors be included in § 27.1587. There is some question as to the safety implications of such a requirement. Such information could be useful, but may not be essential and may not generally be available from Part 27 certification flight test programs. Part 27 programs are characteristically of shorter duration than Part 29 programs, and sufficiently high winds to generate these data may not be encountered. Adopting this proposal for Part 27 rotorcraft could unnecessarily extend the length of Part 27 supplemental and type certification programs. On the other hand, these data are normally collected during the longer duration Part 29 programs and have accordingly been proposed for inclusion in § 29.1587.

Ref: Proposals 28 and 30; Committee 1.

PART 29—AIRWORTHINESS STANDARDS: TRANSPORT CATEGORY ROTORCRAFT

§ 29.21 [Amended]

2–32. By removing the designator "(a)" in §29.21(a); by changing the designators (a)(1) and (a)(2) to (a) and (b) respectively; and by removing § 29.21(b).

Explanation: See the explanation for proposed § 27.21.

2–33. By revising §§ 29.45(b)(2) and (c)(2) and by adding a new paragraph (f) to read as follows:

§29.45 General.

* * * * *

(b) * * *

(2) For the approved range of atmospheric variables.

* * * * *

(c) * * *

(2) The power absorbed by the accessories and services at the limiting values for which certification is requested.

* * * * *

(f) For turbine-engine-powered rotorcraft, a means must be provided to permit the pilot to determine prior to takeoff that each engine is capable of developing the power necessary to achieve the applicable rotorcraft performance prescribed in this subpart.

Explanation: This proposal contains three revisions. The first revision would require compliance with performance requirements throughout the approved range of atmospheric variables in place of a range selected by the applicant. The second revision would incorporate current FAA policy regarding the accountability of accessory losses into transport category rotorcraft performance computations. The third revision would add a preflight power-assurance check procedure requirement that has been required by special condition for all current transport category, turbine-powered rotorcraft. Compliance with this special condition has typically involved flight manual instructions for partial power checks in addition to specifications for actually validating limit power during production acceptance and engine maintenance or replacement activities. Similar methods of compliance are suitable under the proposed rule.

Although the range of atmospheric variables "selected by the applicant" often times becomes the "approved range" of atmospheric variables, a change in the wording of § 29.45(b) is needed to clearly indicate that compliance with the performance requirements of Subpart B are only necessary throughout the final approved range of atmospheric variables and not throughout a range selected by the applicant.

The remainder to this proposal is needed for clarity in interpreting existing § 29.45(c)(2) regarding accountability for power used by accessories and to incorporate the pre-takeoff power-assurance check requirement previously specified in special conditions. The phrase "limiting values" has been added to the power absorption paragraph to make the wording of the proposal consistent with current FAA policy. This change is supported in the proponent's explanation and by discussions at the Rotorcraft Regulatory Review Conference. A substantively identical requirement to that contained in § 29.45(f) is also proposed for § 27.45.

Ref: Proposals 160 and 163; Committee I.

2–34. By revising §§ 29.59(b) and (c) to read as follows:

§ 29.59 Takeoff path: Category A.

* * * * *

(b) The rejected takeoff path must be established with not more than takeoff power on each engine from the start of takeoff to the critical decision point, at which point it is assumed that the critical engine becomes inoperative, and that the rotorcraft is brought to a safe stop.

(c) The takeoff climbout path must be established with not more than takeoff power on each engine from the start of takeoff to the critical decision point, at which point it is assumed that the critical engine becomes inoperative and remains inoperative for the rest of the takeoff. The rotorcraft must be accelerated to achieve the takeoff safety speed at a height not less than 35 feet above the ground and the climbout must be made—

* * * * *

Explanation: A consolidated HAA/AIA proposal was presented at the conference to incorporate changes for Category A certification. This proposed amendment would incorporate portions of that proposal to specify more clearly the power limit for rejected takeoff in § 29.59(b) and remove the implication that a balanced field length is required for Category A takeoff in § 29.59(c). In addition, a reference to operating engines within approval limits in existing § 29.59(b) would be removed because it is considered redundant.

A requirement that the engine made inoperative at critical engine failure speed must remain inoperative throughout the takeoff run was added. A reference to the obstacle clearance height of 35 feet was added to define more clearly the Category A takeoff flight path in § 29.59(c). The phrase "with not more than takeoff power" was incorporated from the original HAA/AIA proposal to recognize the fact that transmission limits and not engine limits ordinarily apply during the initial portion of the Category A takeoff maneuver. The conference proposal to require takeoff and rejected takeoff distances in this section is not included. That requirement is adequately addressed in § 29.51(a).

A reference in the conference proposal to a 3-knot minimum speed for rejection on water is not included. The 3-knot minimum has been incorporated into other parts for determining landing distance on water, but not for accelerate-stop distance. The 3-knot minimum is not generally considered applicable to rotorcraft which can utilize cyclic and collective control to assist in slowing from 3 knots, and accelerate-stop distance would not be materially influenced by including the 3-knot minimum speed on water. For designs which preclude use of cyclic and collective for slowing from 3 knots, the "slow to 3-knot" criterion will be adopted in FAA guidance material.

An engine failure recognition concept similar to that of Part 25 was considered for inclusion in this section. Although the concept has considerable merit for airplanes, it is not incorporated into the transport rotorcraft requirement because the ground distance covered between engine failure speed (V_{EF}) and V_1 is considerably less than for fixed-wing transports. Also, the recognition time for engine failure in rotorcraft is typically less than that for transport fixed-wing aircraft due to immediate yawing cues and inclusion of engine failure warning in transport rotorcraft.

The words "the remaining engines operating within approved operating limitations" in §§ 29.59 (b) and (c) are deleted. This condition is specifically addressed in the general requirement of § 29.51(a).

A continued takeoff requriement is proposed for § 29.59(c) to require that the engine made inoperative at critical engine failure speed must remain inoperative throughout the remainder of the takeoff profile. This limitation was added for consistency with current § 29.51(a)(2). The language of existing § 29.59(c), "by the end of the rejected takeoff distance," which implies the balanced field length concept, is deleted.

In the conference proposal, the HAA argued that balanced field length requirements are impractical and an undue burden on helicopters. The FAA does not agree. For conventional Category A takeoff conditions, the balanced field length concept provides the maximum weight capability for a given takeoff field length and the concept should remain available for use in Category A. This proposal retains the capability for the manufacturer to utilize the balanced field length concept or any other adjustment of the critical engine failure condition. In concert with this revised concept, it is important for the manufacturer to present both rejected takeoff distance obtained under § 29.59(b) and the takeoff distance under § 29.59(c) in a satisfactory manner.

A related proposal for § 29.1587 requiring these data is included in this notice. A 35-foot minimum ground clearance requirement at V_{TOSS} is added to § 29.59(c). The 35-foot clearance has

been applied during past Category A certification programs. The 35-foot reference is added in a manner similar to that of Part 25 for consistency between fixed- and rotary-winged continued takeoff flight path requirements; however, the words "35 feet above the ground" are used instead of "35 feet above the takeoff surface" to remain compatible with an elevated heliport concept which may allow descent below the takeoff surface. See FAA Order 8110.32, Section 37, for additional information regarding the elevated heliport concept.

In summary, this proposal deletes the balanced field length concept as a requirement for Category A takeoff but retains it as an option. It adds a 35-foot altitude requirement at V_{TOSS} for determining takeoff distance. It deletes references to operating engines within limits but adds the requirement that engines made inoperative for determining takeoff performance must remain inoperative throughout the takeoff run. The proposal is needed to provide consistency with Part 25 regarding balanced field length requirements, height at the end of the continued takeoff path, and a requirement for the inoperative engine condition throughout the takeoff run.

This will serve only to clarify these portions of the rule and to standardize the critical engine failure/continued takeoff concept of Part 29 Category A with that of Part 25. It imposes no additional requirements.

Ref: Proposals 165 and 166; Committee I.

2–35. By revising the introductory paragraph of §§ 29.67 (a)(1) and (a)(2) and by revising paragraphs (a)(1)(ii) and (a)(2)(ii) to read as follows:

§ 29.67 Climb: one engine inoperative.

(a) * * *

(1) The steady rate of climb without ground effect must be at least 100 feet per minute for each weight, altitude, and temperature for which takeoff and landing data are to be scheduled, with—

(i) * * *

(ii) The most unfavorable center of gravity;

* * * * *

(2) The steady rate of climb without ground effect must be at least 150 feet per minute, 1,000 feet above the takeoff and landing surfaces for each weight, altitude, and temperature for which takeoff and landing data are to be scheduled, with—

(i) * * *

(ii) The most unfavorable center of gravity;

* * * * *

Explanation: This proposal would clarify the climb requirements of §§ 29.67 (a)(1), and (a)(2) by adding a reference to landing data and landing surface as necessary performance conditions for Category A certification.

Current § 29.67 speaks only to the takeoff condition; however, § 29.77, entitled "Balked landing: Category A," requires that the balked landing condition also be considered when demonstrating compliance with §§ 29.67 (a)(1) and (a)(2). The proposed wording would add no new requirement to the existing rule, but would more clearly indicate that the climb requirements of § 29.67 are required in Category A certification for both takeoff and landing field conditions. The revision would impose no additional burden or cost.

Ref: Proposals 167, 168, and 173; Committee I.

2–36. By adding a new § 29.77(c) to read as follows:

§ 29.77 Balked landing: Category A.

* * * * *

(c) The rotorcraft does not descend below 35 feet above the landing surface in the maneuver described in § 29.77(b).

Explanation: This proposal would add a 35-foot minimum height requirement to further define the Category A balked landing profile of § 29.77. The revision is needed to provide more specific definition of the balked landing maneuver, provide consistency with Category A takeoff safety conditions, and to incorporate existing FAA policy regarding Category A balked landing conditions. By defining a 35-foot minimum altitude in relation to the landing decision point, this revision will result in a critical engine failure concept for landing which provides an equivalent level of safety to that of the Category A takeoff maneuver. This proposal incorporates standard FAA policy applied during previous Category A type certification programs. It adds no new requirement.

Ref: Proposal 173; Committee I.

2–37. By revising the introductory text and subparagraph (1) of § 29.141(a) to read as follows:

§ 29.141 General.

* * * * *

(a) Except as specifically required in the applicable section, meet the flight characteristics requirements of this subpart—

(1) At the approved operating altitudes and temperatures;

* * * * *

Explanation: Regarding the wording change in § 29.141(a), see the explanation for proposed § 27.141. The wording in § 29.141(a)(1) would also be revised slightly to indicate that compliance with the flight characteristics provisions is required at the approved operating altitudes and temperatures. The word "approved" is needed to clarify the intent of this paragraph and to assure flight characteristics are satisfactory at all "approved" altitudes rather than altitudes "normally expected" by an applicant or by the FAA. The need to include temperature accountability in this section is adequately addressed in the explanation for proposed § 27.141.

2–38. By revising § 29.143(c) (1) and (2) and by adding (c)(3) to read as follows:

§ 29.143 Controllability and maneuverability.

* * * * *

(c) * * *

(1) Critical weight;

(2) Critical center of gravity; and

(3) Critical rotor r.p.m.

* * * * *

Explanation: This proposal would correct an obvious inadvertent omission of critical weight as a requirement in establishing controllability in winds. Weight affects power available for control and must therefore be considered. This change would also make § 29.143(c) consistent with § 27.143(c). It imposes no requirement but clarifies a proper engineering practice currently employed.

2–39. By adding a new § 29.151 to read as follows:

§ 29.151 Flight controls.

(a) Longitudinal, lateral, directional, and collective controls shall not exhibit excessive breakout force, friction, or preload.

(b) Control system forces and free play shall not inhibit a smooth, direct rotorcraft response to control system input.

Explanation: See the explanation for proposed § 27.151.

2–40. By revising § 29.161(a) to read as follows:

§ 29.161 Trim control.

* * * * *

(a) Must trim any steady longitudinal, lateral, and collective control forces to zero in level flight at any appropriate speed; and

* * * * *

Explanation: See the explanation for proposed § 27.161.

2–41. By revising § 29.173 to read as follows:

§ 29.173 Static longitudinal stability.

(a) The longitudinal control must be designed so that a rearward movement of the control is necessary to obtain a speed less than the trim speed, and a

forward movement of the control is necessary to obtain a speed more than the trim speed.

(b) With the throttle and collective pitch held constant during the maneuvers specified in §§ 27.175(a) through (c), the slope of the control position versus speed curve must be positive throughout the full range of altitude for which certification is requested.

(c) During the maneuver specified in § 27.175(d), the longitudinal control position versus speed curve may have a negative slope within the specified speed range if the negative motion is not greater than 10 percent of total control travel.

Explanation: See the explanation for proposed § 27.173.

2–42. By revising the introductory paragraph of §§ 29.175(a), and (c), and by revising paragraph (d) to read as follows:

§ 29.175 Demonstration of static longitudinal stability.

(a) *Climb.* Static longitudinal stability must be shown in the climb condition at speeds from 0.85 V_Y or 15 knots below V_Y, whichever is less, to 1.2 V_Y or 15 knots above V_Y, whichever is greater, with—

* * * * *

(c) *Autorotation.* Static longitudinal stability must be shown in autorotation at airspeeds from 0.5 times the speed for minimum rate of descent, or 0.5 times the maximum range glide speed for category A rotorcraft, to V_{NE} or to 1.1 V_{NE} (power-off) if V_{NE} (power-off) is established under § 29.1505(c), and with—

* * * * *

(d) *Hovering.* For helicopters, the longitudinal cyclic control must operate with the sense, direction of motion, and position as prescribed in § 29.173 between the maximum approved rearward speed and a forward speed of 17 knots with—

(1) Critical weight;

(2) Critical center of gravity;

(3) Power required to maintain an approximately constant height in ground effect;

(4) The landing gear extended; and

(5) The helicopter trimmed for hovering.

Explanation: Proposed changes to § 29.175(a) are derived from a conference proposal and are incorporated without substantive change. Revised § 29.175(a) would require static longitudinal stability over the same speed range as early versions of Civil Air Regulations (CAR's) 6 and 7, but over a slightly larger speed range than that required by the current rule. The proposal is needed to assure positive static longitudinal stability over a speed range in climb at least 15 knots either side of V_y. The current rule requires stability over a very narrow speed range in climb for rotorcraft with low values of V_y. It was the consensus at the conference that this increased speed range was appropriate for climb stability demonstration in transport rotorcraft. This revision would upgrade the requirements for transport category rotorcraft and provide an increased level of safety during climb.

Section 29.175(c) has been changed slightly to provide relief for Category A rotorcraft during autorotation. Category A design minimizes the probability of all engine-out autorotation and of power-off operation at low speeds. This change is fully justified in view of increased Category A reliability. Accordingly, the minimum speed required for static longitudinal stability during autorotation in Category A rotorcraft is raised to 0.5 times the speed for maximum range glide. This change also provides the basis for a more realistic static directional stability requirement during autorotation in proposed § 27.177.

Changes to § 29.175(d) are substantively identical to those for proposed § 27.175(d). Additional information regarding proposed changes to this section is contained in the explanation for proposed § 27.175.

Ref: Proposals 194 and 195; Committee I.

2–43. By adding a new § 29.177 to read as follows:

§ 29.177 Static directional stability.

Static directional stability must be positive with throttle and collective controls held constant during the conditions specified in § 29.175(a) through (c). Sideslip angle must increase steadily with directional control deflection for sideslip angles up to ±10° from trim. Sufficient pilot cues must accompany steady sideslip to assure safe operation.

Explanation: See the explanation for proposed §§ 27.177 and 29.175.

2–44. By adding a new § 29.181 to read as follows:

§ 29.181 Dynamic stability: Category A rotorcraft.

Any short period oscillation occurring at any speed from V_Y to V_{NE} must be positively damped with the primary controls free and in a fixed position.

Explanation: At the conference, a proposal to require heavy damping of all dynamic oscillations was considered. The proponent explained, both in the proposal and at the conference, that this requirement was intended primarily as a backup standard for IFR stability augmentation system failure. The FAA has considered this requirement both as an IFR standard and as it applies to transport Category A certification standards, regardless of ambient condition. The FAA considers positive damping for short-period oscillations in forward flight an appropriate minimum safety standard in transport Category A rotorcraft for all types of operations. All recently certified models have met the proposed requirement and adopting this proposal would simply update certification requirements to a current engineering standard.

This proposal would require positive damping and would prevent persistent or divergent short-period oscillations at all operational speeds above V_Y. The proposal is needed to prevent conditions requiring the pilot to actively dampen oscillatory motions during routine conditions of forward flight. Adopting this proposal would result in an increased level of safety appropriate to transport Category A rotorcraft. The requirement is less stringent than the corresponding fixed-wing requirement recognizing the lower level of stability inherent to rotorcraft.

Ref: Proposal 197; Committee I.

2–45. By adding a new § 29.610 to read as follows:

§ 29.610 Lightning protection.

(a) The rotorcraft must be protected against catastrophic effects from lightning.

(b) For metallic components, compliance with paragraph (a) of this section may be shown by—

(1) Electrically bonding the components properly to the airframe; or

(2) Designing the components so that a strike will not endanger the rotorcraft.

(c) For nonmetallic components, compliance with paragraph (a) of this section may be shown by—

(1) Designing the components to minimize the effect of a strike; or

(2) Incorporating acceptable means of diverting the resultung electrical current so as not to endanger the rotorcraft.

Explanation: See the explanation for proposed § 27.610.

2–46. By amending § 29.671 by adding a new paragraph (c) to read as follows:

§ 29.671 General.

* * * * *

(c) A means must be provided to allow full control movement of all primary flight controls prior to flight, or a means must be provided that will allow the pilot to determine that full control authority is available prior to flight.

Explanation: This proposed rule would require that a transport category rotorcraft control system be designed such that its proper functioning could be verified by the pilot before flight. Presently, there is no such requirement.

The need for this design requirement for preflight control checks arose during a recent certification program for a rotorcraft on which all of the primary flight controls were boosted and were not movable during preflight checks without hydraulic power. No means was provided to produce hydraulic power for the flight controls before rotor turn-up. Once the rotor was turning, the controls could be checked, but only in smaller movements. Full travel of the controls would cause the droop stops to be contacted. Small control movement only allowed a check for proper direction of control movement and not a check for full control authority.

Gross control problems may exist if full control authority is not available. These problems may not be detectable during run-up or most normal operations. Should an unusual flight condition occur, such as engine failure, hardover, or downwind hover in strong gusty winds, the use of full control authority might be required. It is essential for the pilot to verify that full control authority is available before flight. This proposed rule would require that transport rotorcraft be designed such that the pilot could verify control authority during preflight. Although the conference proposals addressd both Parts 27 and 29, this proposed requirement is primarily applicable to the higher level of safety of transport category rotorcraft and therefore is being proposed only for Part 29.

Ref: Proposals 69 and 235; Committee II.

2–47. By adding a new § 29.672 to read as follows:

§ 29.672 Stability augmentation, automatic, and power-operated systems.

If the functioning of stability augmentation or other automatic or power-operated systems is necessary to show compliance with the flight characteristics requirements of this Part, such systems must comply with § 29.67 of the Part and the following:

(a) A warning which is clearly distinguishable to the pilot under expected flight conditions without requiring the pilot's attention must be provided for any failure in the stability augmentation systems or in any other automatic or power-operated system which could result in an unsafe condition if the pilot was unaware of the failure. Warning systems must not activate the control systems.

(b) The design of the stability augmentation system or of any other automatic or power-operated system must allow initial counteraction of failures without requiring exceptional pilot skill or strength, by overriding the failure by movement of the flight controls in the normal sense, and the deactivation of the failed system.

(c) It must be shown that after any single failure of the stability augmentation system or any other automatic or power-operated system,—

(1) The rotorcraft is safely controllable when the failure or malfunction occurs at any speed or altitude within the approved operating limitations;

(2) The controllability and maneuveability requirements of this Part are met within a practical operational flight envelope (for example, speed, altitude, normal acceleration, and rotorcraft configurations) which is described in the Rotorcraft Flight Manual; and

(3) The trim and stability characteristics are not impaired below a level needed to allow continued safe flight and landing.

Explanation: This proposal would amend the airworthiness requirements for rotorcraft by providing criteria for approval of those stability augmentation, automatic, and power-operated systems whose performance is essential to flight safty. Present rotorcraft designs are incorporting stability augmentation, automatic, and power-operated systems similar to those of Part 25 airplanes. As in Part 25, the warning system requirement relating to control system activation is not intended to preclude installing tactile warning devices, such as control system shakers, activated independently for other purposes. Thus, proposed § 29.672 is similar to present § 25.672

Although the conference agenda no proposals to add a new § 27.672, it is believed that Part 27 rotorcraft may also incorporate the same systems, and a new § 27.672 is proposed which is substantively identical to proposed § 29.672. These proposals affect only those rotorcraft having stability augmentation, automatic, and power-operated systems, and no added requirements would be experienced on designs not incorprating these systems.

Ref: Proposal 231; Committee I.

2–48. By adding a new § 29.673 to read as follows:

§ 29.673 Primary flight controls.

Primary flight controls are those used by the pilot for immediate control of pitch, roll yaw, and vertical motion of the rotorcraft.

Explanation: A proposed change to § 29.671 would add a new requirement for full control movement or an alternate means of determining full control authority of all primary flight controls before flight. Since the term "primary flight controls" is not presently defined, this proposal has been developed for that purpose. Also see the explanation for proposed § 27.673.

2–49. By amending § 29.729 by adding new introductory text; by replacing the word "*General*" with the word "*Loads*" in paragraph (a); by revising paragraph (f); and by adding a new paragraph (g) to read as follows:

§ 29.729 Retracting mechanism.

For rotorcraft with retractable landing gear, the following apply:

(a) *Loads.* * * *

* * * * *

(f) *Control.* The location and operation of the retraction control must meet the requirements of §§ 29.777 and 29.779.

(g) *Landing gear warning.* An aural or equally effective landing gear warning device must be provided that functions continuously when the rotorcraft is in a normal landing mode and the landing gear is not fully extended and locked. A manual shutoff capability must be provided for the warning device and the warning system must automatically reset when the rotorcraft is no longer in the landing mode.

Explanation: The proposal would add new lead-in wording for § 29.729 to clarify that the section refers only to rotorcraft with retractable landing gear. The proposal would also reference proposed § 29.779 and a landing gear warning requirement for rotorcraft with retractable landing gear.

Both Parts 23 and 25 presently have a landing gear warning requirement. The hazards associated with landing "gear up" are as great for rotorcraft as for airplanes. Defining the "landing configuration" for a rotorcraft is more difficult than for a fixed-wing aircraft (that is, throttle and flap position), therefore, the proposed wording is very general. This would allow a manufacturer to design the warning system that best suits the rotorcraft, its manner of operation, and its normal landing conditions. A similar requirement is contained in proposed § 27.729.

All civil rotorcraft with retractable landing gear currently provide landing gear warning systems and this proposal serves primarily to standardize this minimum level of design. It introduces no new or added burdens for the manufacturer or operator of the rotorcraft.

Ref: Proposal 236; Committee I.

2–50. By revising the introductory paragraph to § 29.735 to read as follows:

§ 29.735 Brakes.

For rotorcraft with wheel-type landing gear, a braking device must be installed that is—

* * * * *

Explanation: See the proposal for § 27.735. Although no proposal was made at the Rotorcraft Conference to revise § 29.735, this section should be clarified in the same manner and for the same reasons as § 27.735.

2–51. By revising § 29.771(b) to read as follows:

§ 29.771 Pilot compartment.

* * * * *

(b) If there is provision for a second pilot, the rotorcraft must be controllable with equal safety from either pilot position. Flight and powerplant controls must be designed to prevent confusion or inadvertent operation when the rotorcraft is piloted from either position;

* * * * *

Explanation: This proposal would modify an existing design requirement for consistency between pilot stations. It would require flight and powerplant controls to be designed in a manner that prevents confusion or inadvertent operation when pilots switch from one pilot position to another. This requirement is needed to prevent design of flight and powerplant control systems which operate in a differing manner or with different sense and direction of motion between pilot stations.

The phrase "with equal safety" in present § 29.771(b) was discussed at the conference. One commenter is concerned that this wording might be interpreted to require identical sets of controls and displays at each pilot position. Wording of this requirement currently in Parts 25, 27, and 29 is identical and has not been a significant source of difficulty or confusion. Adequate precedent has been established for approval of notable differences between pilot seats under this wording and this portion of the rule will be interpreted as before. Another commenter objects to evaluating all cockpit devices when pilots change seats. However, this requirement is intended to address only devices which related directly to safe control of the rotorcraft. For this reason flight and powerplant controls have been specified. Adoption of this proposal would standardize cockpit design for transport category rotorcraft and would serve to enhance the pilot's familiarity with the cockpit environment when pilots change seats.

Ref: Proposal 237; Committee I.

2–52. By adding a new § 29.779 to read as follows:

§ 29.779 Motion and effect of cockpit controls.

Cockpit controls must be designed so that they operate in accordance with the following movements and actuation:

(a) Flight controls, including the collective pitch control, must operate with a sense of motion which corresponds to the effect on the rotorcraft;

(b) Twist grip engine power controls must be designed so that, for lefthand operation, the motion of the pilot's hand is clockwise to increase power when the hand is viewed from the edge containing the index finger. Other engine power controls, excluding the collective control, must operate with a forward motion to increase power; and

(c) Landing gear controls must operate downward to extend the landing gear.

Explanation: See the explanation for proposed § 27.779.

2–53. By revising § 29.785 (a), (b) and (c), and by adding paragraphs (g) and (h) to read as follows:

§ 29.785 Seats, berths, safety belts, and harnesses.

(a) Each seat, berth, safety belt, harness, and adjacent part of the rotorcraft at each station designated for occupancy during takeoff and landing, must be free of potentially injurious objects, sharp edges, protuberances, and hard surfaces, and must be designed so that a person making proper use of these facilities will not suffer serious injury in an emergency landing as a result of the inertia forces specified in § 29.561.

(b) Each occupant must be protected from head injury by—

(1) For each crewmember seat and each seat beside a crewmember front seat, a safety belt and harness that will prevent the head from contacting any injurious object;

(2) For each seat not covered under subparagraph (b)(1):

(i) A safety belt plus the absence of injurious objects within striking radius of the head; or

(ii) A safety belt plus an energy-absorbing rest that will support the arms, shoulders, head, and spine.

(c) Each pilot's seat must have a combined safety belt and shoulder harness with a single-point release that allows the pilot, when seated with safety belt and shoulder harness fastened, to perform all of the pilot's necessary functions. There must be a means to secure belts and harnesses when not in use, to prevent interference with the operation of the rotorcraft and with rapid egress in an emergency.

* * * * *

(g) When safety belt and shoulder harness are combined, the rated strength of the safety belt and shoulder harness may not be less than that corresponding to the inertia forces specified in § 29.561, considering an occupant weight of at least 170 pounds, considering the dimensional characteristics of the restraint system installation, and using a distribution of at least 60 percent load to the safety belt and at least 60 percent load to the shoulder harness. If the safety belt is capable of being used without the shoulder harness, the inertia forces specified must be met by the safety belt alone.

(h) When a headrest is used, the headrest and its supporting structure must be designed to resist the inertia forces specified in § 29.561, with a 1.33 fitting factor and a head weight of at least 13 pounds.

Explanation: This proposal would (1) Establish 170 pounds as the occupant weight for design purposes (in Part 27); (2) require design to give crewmembers freedom of movement with the safety belt and harness in use; (3) require minimum load bearing capability of belts and harnesses when used in combination; (4) establish 13 pounds as the design weight for headrests; and (5) standardize these requirements in Parts 27 and 29.

Several conference proposals were submitted that recommended related changes to §§ 27.785, 27.1413, 29.785, and 29.1413. Due to the scope of these proposals and the difficulty in discussing the individual proposals at the Rotorcraft Review Conference, the Helicopter Association of America and the Aerospace Industries Association prepared a consolidated proposal entitled "HAA/AIA Consolidation of Proposals, 78, 79, 80, 81, and 131 (Part 27), 248, 249, and 250 (Part 29)." The intent of the consolidated proposal was to simplify the discussions and to have identical requirements for seats, safety belts, and harnesses for all rotorcraft. In addition, all of the conference proposals not submitted by HAA/AIA were considered independently. In the subsequent conference discussions, no opposition was expressed to having a consolidated proposal for §§ 27.785 and 29.785.

Two conference proposals recommended changing occupant weight in the design requirements of § 27.785(a) to 170 pounds from the current unspecified weight. The FAA agrees that an occupant's weight of 170 pounds is appropriate for seat design. This weight

has been applied satisfactorily in certification of Parts 23, 25, and 29 aircraft for many years. This notice proposes to adopt a common requirement in §§ 27.785(g) and 29.785(g) for safety belts and shoulder harnesses which is substantively identical to current § 29.785(f). This would accomplish the intent of the conference proposal.

Two conference proposals recommended changing § 27.785(b) to require approval of "each seat, berth, safety belt, and harness." While current § 29.785(b) has a requirement similar to these proposals, the requirement is redundant to the basic requirement that the complete rotorcraft must be approved, including all components, parts, and appliances. Accordingly, rather than adopt the conference proposals, the FAA is proposing to eliminate the redundant requirement of § 29.785(b) and redesignating remaining paragraphs accordingly.

There were several conference proposals dealing with the issue of protection from head injury. These included: 1) Adopting a new §27.785(c) equivalent to §29.785(c) and changing §29.785(c) by incorporating the inertia forces of §29.561(b)(3) as the forces from which the head must be protected; 2) Requiring a shoulder harness for the front seat occupants regardless of what other protective means were provided; 3) Requiring a safety belt or belt and harness for seats other than front seats; 4) Deleting §§29.785(c) (2) and (3) which specify requirements for the absence of injurious objects and providing cushioned supports; and 5) Adding a definition of a "front seat." Incorporating by reference the inertia forces of §§27.561 and 29.561 as the forces from which the head must be protected will provide a level of safety equivalent to the design requirements for personnel restraint. Such requirements are consistent with the current requirements of §§23.785, 25.785, and 29.785.

The conference proposal to delete §29.785(c) (2) and (3) was considered but is not being adopted. Deleting these paragraphs could result in a reduced level of safety should a manufacturer decide not to provide the protection now required; however, the wording of current §29.785(c)(1), (2), and (3) is unclear on whether all seats must have shoulder harnesses. The FAA is proposing to clarify the rule by limiting proposed §29.785(b)(1) to crewmember seats and non-crewmember front seats, and limiting the existing requirements in proposed §§29.785(c) (2) and (3) to seats other than crewmember seats and non-crewmember front seats. Current paragraphs (c) (2) and (3) are redesignated as (b)(2)(i) and (ii), respectively. A definition of "front seat" is considered unnecessary since the wording of the proposed requirement is clarified to minimize misunderstanding of the term. There were no specific comments relative to the shoulder harness requirement at the conference other than a general concern that §§27.785 and 29.785 should be substantively identical.

Several conference proposals recommend a new requirement in §§29.785 and 27.785 that belts and harnesses for flight crewmembers allow the crewmembers freedom of movement to perform all functions necessary for flight operations, and recommend that means be provided to secure each safety belt and harness when not in use. Incorporating such new requirements in §§27.785 and 29.785 would give the same level of safety in rotorcraft as is now required by §§25.785(g), 91.200, and 121.311. Therefore, this notice proposes to add new §§27.785(c) and 29.785(c) similar to §25.785(g).

One conference proposal recommended changing the current §29.785(d) to limit its application to main aisles. No attempt was made to define a main aisle or a secondary aisle, and the FAA can see no reason to differentiate. There was no discussion of this proposal at the conference, and accordingly, it is being rejected for lack of justification. A like rule in Part 25 has been interpreted to refer to seat backs adjacent to each aisle, and a like interpretation would be applied to Part 29.

One conference proposal recommended new requirements in §§27.1413 and 29.1413 for assigning proportionate loads to safety belts and harnesses when used in combination for personnel restraint. The proposal would have required the safety belt to withstand 60 percent of ultimate load required for the combination, and the harness to withstand 40 percent of ultimate load of §29.561(b). In addition, the safety belt would have been required to separately withstand all of the ultimate loads of §29.561(b). Based on review of available literature indicating that weight distributions of the body can vary up to 10 percent among different individuals between the upper and lower body, the FAA has previously administered §29.561 by requiring 60 percent load for the shoulder harness and 60 percent load for the safety belt. As a result of comments at the conference concerning alternative load distribution to the safety belt and shoulder harness, the FAA has again examined the question and has concluded that there is no justification to lessen this criterion. Therefore, the FAA has proposed a 60 percent load factor for the harness and a 60 percent load factor for the safety belt and has located these requirements in §§29.785(g) and 27.785(g) with other related requirements rather than in §§29.1413 and 27.1413. Additionally, the FAA is proposing that if the safety belt is capable of being used independent of the shoulder harness, the safety belt must be able to withstand 100 percent of the ultimate load. This additional requirement would provide restraint protection when a crewmember or a front seat occupant, for some reason, fails to properly use the shoulder harness.

One conference proposal recommended a new requirement that any headrest be designed to withstand 100 pounds ultimate load without failure. Consensus of discussions at the Rotorcraft Review Conference was that the requirement should be stated in terms of the inertia forces of §§27.561 and 29.561 and the head weight of a 95th percentile man. Research of available literature reveals a range of possible head weights with a median weight of 11.5 pounds. This figure, however, does not include any portion of the neck. Data on neck weights provide a median neck weight of 4.3 pounds, and approximately one-third of this weight is included as an additional factor in selecting a total head weight of a least 13 pounds for this proposal. The FAA specifically solicits any additional data in this area. Proposed new §§27.785(h) and 29.785(h) will ensure the level of safety intended by the proponent and the FAA.

Sections 27.1413(c) and 29.1413(b) provide for metal-to-metal latching devices on seat belts. One conference proposal and several commenters at the conference recommended moving these into §§27.785 and 29.785. While there is some logic to such redesignation since this is a design requirement which might be found in Subpart D, the current designation and wording of the latching device requirement is substantially identical in Parts 23, 25, 27, and 29. Therefore, the suggested redesignation is not included in this notice.

The intended effect of this change is to establish a level of safety for rotorcraft seats, berths, safety belts, and harnesses equivalent to that previously established for transport airplanes.

Ref: Proposals 78, 79, 80, 81, 131, 248, 249, 250, and HAA/AIA consolidation of

the proposals at the Rotorcraft Review Meeting; Committee I.

§ 29.811 [Amended]

2–54. By amending § 29.811 by removing paragraphs (f) and (g) and redesignating paragraphs (h) and (i) as paragraphs (f) and (g), respectively.

Explanation: See the explanation for proposed § 29.812.

2–55. By adding a new § 29.812 to read as follows:

§ 29.812 Emergency lighting.

For transport Category A rotorcraft, the following apply:

(a) A source of light, independent of the main lighting system, must be installed to—

(1) Illuminate each passenger emergency exit marking and locating sign; and

(2) Provide enough general lighting in the passenger cabin so that the average illumination, when measured at 40-inch intervals at seat armrest height on the center line of the main passenger aisle, is at least 0.05 foot-candle.

(b) Each light required by paragraph (a) of this section must be operable manually from the flightcrew station and from a point in the passenger compartment that is readily accessible. The cockpit control device must have an "on," "off," and "armed" position so that when armed in the cockpit or passenger compartment station, the lights will either illuminate or remain illuminated upon interruption of the rotocraft's normal electric power.

(c) Exterior emergency lighting must be provided at each emergency exit. The illumination must be not less than 0.05 foot-candle (measured normal to the direction of incident light) for minimum width on the ground surface, with landing gear extended, equal to the width of the emergency exit where an evacuee is likely to make first contact with the ground outside the cabin.

(d) Any means required to assist the occupants in descending to the ground must be illuminated so that the erected assist means is visible from the rotorcraft.

(1) The assist means must be provided with an illumination of not less than 0.03 foot-candle (measured normal to the direction of the incident light) at the ground end of the erected assist means where an evacuee using the established escape route would normally make first contact with the ground, with the rotorcraft in each of the attitudes corresponding to the collapse of one or more legs of the landing gear.

(2) If the emergency lighting subsystem illuminating the assist means is independent of the rotorcraft's main emergency lighting system, it must—

(i) Be automatically activated when the assist means is erected;

(ii) Provide the illumination required by paragraph (d)(1); and

(iii) Not be adversely affected by stowage.

(e) The energy supply to each emergency lighting unit must provide the required level of illumination for at least 10 minutes at the critical ambient conditions after an emergency landing.

(f) If storage batteries are used as the energy supply for the emergency ighting system, they may be recharged from the rotorcraft's main electrical power system: *Provided* the charging circuit is designed to preclude inadvertent battery discharge into charging circuit faults.

Explanation: This proposal would place the new and existing lighting requirements for transport category rotorcraft in § 29.812 as is done in Part 25. Thus, proposed § 29.812(a) and (b) include the intent of present § 29.811(f) and (g) which are deleted. The necessary control requirements for the lights (essentially the same as for present § 25.812(e)) are also in § 29.812(b). Proposed § 29.812 is applicable only to Category A rotorcraft; therefore this change is relieving for Category B rotorcraft. Proposed § 29.812(e) requires 10 minutes of energy supply to the lights (substantively identical to § 25.812(h)) to provide illumination for a sufficient period of time for safe passenger egress. Section 29.812(f) is proposed as an explanatory paragraph and is substantively identical to § 235.812(i).

Transport Category A rotorcraft are now certificated for night operation and may operate commercially in that environment with no requirement for emergency exterior lighting. Passengers flying in transport Category A rotorcraft should be afforded the same level of safety in emergency evacuation at night as passengers flying in transport category airplanes. At the Rotorcraft Review Conference, there was general consensus that emergency exit lighting was needed for transport category rotorcraft, but there was concern about the specific illumination levels identified in conference proposal 264. The Society of Automotive Engineers (SAE) Committee A 20, dealing with the area of aircraft lighting, has indicated that the illumination levels specified in proposal 264 (which are compatible with those of § 25.812(g)(1)) are appropriate for emergency lighting in general, regardless of the type of aircraft. This proposal would provide emergency lighting of sufficient intensity and time to provide passsenger egress after a landing without normal rotorcraft electric power.

Ref: Proposal 264; Committee I.

§ 29.855 [Amended]

2–56. By amending § 29.855(d) by adding the words "or smoke" after the words "detection of fires".

Explanation: This proposal would permit the use of smoke detectors as an alternative means of fire detection in cargo and baggage compartments. The current rule allows only fire detectors. Since cargo fires generate smoke along with the flame, and since smoke is usually detectable well in advance of the actual flames, this proposed alternative provides an equivalent or higher level of safety than is provided by the current rule. In addition, it is relieving to the manufacturer by allowing the use of alternative, less costly means of complying with this rule.

Ref: Proposal 269; Committee I.

2–57. By revising § 29.1303(a) and adding a new paragraph (j) to read as follows:

§ 29.1303 Flight and navigation instruments.

* * * * *

(a) An airspeed indicator. For Category A rotorcraft with V_{NE} less than a speed at which unmistakable pilot cues provide overspeed warning, a mazimum allowable airspeed indicator must br provided. If maximum allowable airspeed varies with weight, altitude, temperature, or r.p.m., the indicator must show that variation.

* * * * *

(j) For Category A rotorcraft, a speed warning device when V_{NE} is less than the speed at which unmistakable overspeed warning is provided by other pilot cues. The speed warning device must give effective aural warning (differing distinctively from aural warnings used for other purposes) to the pilots whenever the indicated speed exceeds V_{NE} plus 3 knots and must operate satisfactorily throughout the approved range of altitudes and temperatures.

Explanation: This proposal would require that Category A rotorcraft have an airspeed indicator which provides maximum allowable airspeed, and a speed warning device when V_{NE} is below a speed at which rotorcraft vibration or other pilot cues provide unmistakable overspeed warning.

One conference proposal recommended requiring a maximum allowable airspeed indicator for those rotorcraft that do not provide unmistakable overspeed warning.

Modern rotorcraft are more complex, operate in a more complex environment, have significantly greater high speed capabilities due to large increases in available power, and give less natural indication of overspeed conditions. All of these factors cause a significantly higher pilot workload which can result in a reduced level of safety. Several commenters at the Rotorcraft Review Conference voiced objections because of the cost of such systems and their belief that a pilot is trained and obligated by regulation to stay within the operating limits of the rotorcraft. The FAA understands these concerns, but has determined from past experience that regulation and training do not necessarily ensure the desired level of safety. A substantial percentage of fatal accidents in rotorcraft result from fatigue-related structural failures. Stress levels in critical rotorcraft components typically increase rapdily at high speeds. Periodic overspeed conditions can result in undetected fatigue damage to critical components not envisioned during structural approval of the design. Warning of overspeed conditions is not currently required in rotorcraft. Additional items of equipment or procedural requirements are frequently necessary for safety even though they may increase the cost of the rotorcraft design and operation. The FAA had the same concerns when these same problems arose with transport airplanes and is applying a similar solution for transport rotorcraft as previously applied to transport airplanes. The solution has worked well to bolster the safety level in transport airplanes and pilot considerations are essentially the same in rotorcraft. The destabilizing effects that result from advancing blade tip mach effects could also produce grave consequences, should a pilot inadvertently exceed V_{NE}.

A speed warning device is being proposed for the same reasons noted in discussions for the maximum allowable airspeed indicator.

This requirement does not affect new Category B designs or rotorcraft that have unmistakable overspeed warning. It affects only those new Category A Designs without natural pilot cues.

Ref: Proposals 351 and 353; Committee II.

2–58. Section 29.1309 is amended by removing the italicized phrase *"Functioning and reliability"* from paragraph (a), by revising paragraphs (b), (c), (d), and (e), and by adding new paragraphs (f), (g) and (h) to read as follows:

§ 29.1309 Equipment, systems, and installations.

(a)* * *

(b) The rotorcraft systems and associated components, considered separately and in relation to other systems, must be designed so that—

(1) For Category B rotorcraft, the equipment, systems, and installations do not cause a hazard to the rotorcraft if they malfunction or fail; or

(2) For Category A rotorcraft—

(i) The occurrence of any failure condition which would prevent the continued safe flight and landing of the rotorcraft is extremely improbable; and

(ii) The occurrence of any other failure conditions which would result in injury to the occupants or reduce the capability of the rotorcraft or the ability of the crew to cope with adverse operating conditions is improbable.

(c) Warning information must be provided to alert the crew to unsafe system operating conditions and to enable them to take appropriate corrective action. Systems, controls, and associated monitoring and warning means must be designed to minimize crew errors which could create additional hazards.

(d) Compliance with the requirements of paragraph (b)(2) of this section must be shown by analysis and, where necessary, by appropriate ground, flight, or simulator tests. The analysis must consider—

(1) Possible modes of failure, including malfunctions and damage from external sources;

(2) The probability of multiple failures and undetected failures;

(3) The resulting effects on the aircraft and occupants, considering the stage of flight and operating conditions; and

(4) The crew warning cues, corrective action required, and the capability of detecting faults.

(e) For Category A rotorcraft, each installation whose functioning is required by this subchapter and which requires a power supply is an "essential load" on the power supply. The power sources and the system must be able to supply the following power loads in probable operating combinations and for probable durations:

(1) Loads connected to the system with the system functioning normally.

(2) Essential loads, after failure of any one prime mover, power converter, or energy storage device.

(3) Essential loads, after failure of—

(i) Any one engine, on rotorcraft with two engines; and

(ii) Any two engines, on rotorcraft with three or more engines.

(f) In determining compliance with paragraphs (e) (2) and (3) of this section, the power loads may be assumed to be reduced under a monitoring procedure consistent with safety in the kinds of operations authorized. Loads not required for controlled flight need not be considered for the two-engine-inoperative condition on rotorcraft with three or more engines.

(g) In showing compliance with paragraphs (a) and (b) of this section with regard to the electrical system and to equipment design and installation, critical environmental conditions must be considered. For electrical generation, distribution, and utilization equipment required by or used in complying with this subchapter, except equipment covered by Technical Standard Orders containing environmental test procedures, the ability to provide continuous, safe service under foreseeable environmental conditions may be shown by environmental tests, design analysis, or reference to previous comparable service experience on other aircraft.

(h) In showing compliance with paragraphs (a) and (b) of this section, the effects of lightning strikes on the rotorcraft must be considered (Ref. § 29.610).

Explanation: The proposed revisions would, with respect to transport category rotorcraft, define and clarify the failure survivability requirements, require warning indication to the crew of system failure conditions, require the consideration of critical environmental conditions, require precertification analysis of the effects of system failures, and require consideration of the effects of lightning strikes.

The wording for these proposals (except for § 29.1309(h)) is patterned after § 25.1309.

Service experience shows that in complex systems consisting of many components, more than one failure can occur during the same flight. Transport Category A rotorcraft are now incorporating such complex systems (for example, fully powered controls) that are difficult to analyze under existing rules. Where the complete loss of system function would be catastrophic, combinations of failures and multiple failures due to common causes must be considered and sufficient reliability, redundancy, and isolation provided to make catastrophic system failures as improbable as failures of the basic airframe. Failures that result in serious degradation of flight characteristics, a large increase in crew workload, or difficult emergency procedures can become hazardous if they occur in

conjunction with adverse operating conditions. The occurrence of such failures should therefore be minimized by providing sufficient reliability or redundancy of the critical system. A comprehensive systematic failure analysis, supported by appropriate tests, is necessary to ensure that safety objectives are met.

Service experience also shows that proper consideration of warning cues and system controls and operating procedures is necessary to minimize crew errors.

The proposed § 29.1309(h) requiring consideration of lightning strikes to the rotorcraft will assure that the requirements of proposed § 29.610 are considered in the failure analyses. Electrical and electronic equipment, especially those utilizing digital technology, are particularly sensitive to electromagnetic energy transients and thus are more susceptible to failures due to lightning strikes. Although there are other proposals in this review relative to lightning strike effects (for example, § 29.610), proposed § 29.1309(h) will ensure that the effects of lightning strikes on the rotorcraft are also considered for system and equipment installations. The explanations for proposals 218, 219 and 220 (see proposed § 29.610) provide further reasoning for requiring lightning strike protection for rotorcraft.

Ref: Proposals 365, 366, 367 and 368; Committee II.

2–59. By revising §§ 29.1323(b)(1), (c), and (d) to read as follows:

§ 29.1323 Airspeed indicating system.

* * * * *

(b) Each system must be calibrated to determine system error, excluding airspeed instrument error. This calibration must be determined—

(1) In level flight at speeds of 20 knots and greater, and over an appropriate range of speeds for flight conditions of climb and autorotation; and

* * * * *

(c) For Category A rotorcraft—

(1) The indication must allow consistent definition of the critical decision point; and

(2) The system error, excluding the airspeed instrument calibration error, may not exceed—

(i) 3 percent or 5 knots, whichever is greater, in level flight at speeds above 80 percent of takeoff safety speed; and

(ii) 10 knots in climb at speeds from 10 knots below takeoff safety speed to 10 knots above V_Y.

(d) For Category B rotorcraft, the system error, excluding the airspeed instrument calibration error, may not exceed 3 percent or 5 knots, whichever is greater, in level flight at speeds above 80 percent of the climbout speed attained at 50 feet when complying with § 29.63.

* * * * *

Explanation: This proposal would revise the airspeed system accuracy requirements to consider Category A and Category B flight profiles instead of differentiation by number of engines and to clarify that the inflight calibration requirements do not include errors within the instrument. This would remove the requirement for multiengine Category B rotorcraft to comply with § 29.1323(c). It also would recognize the increased low-speed accuracy requirements exclusive to the Category A takeoff, landing, and balked landing flight profiles and is consistent with the incorporation of the critical decision point into the airspeed system requirements.

A conference proposal recommended relaxed multiengine airspeed accuracy requirements for both cruise and climb conditions. Relaxed accuracy for climb is justified if a reasonable airspeed system response can be ensured in the Category A takeoff profile during level acceleration from a point below takeoff safety speed throughout the transition to a climb condition at the takeoff safety speed. A 15-knot tolerance suggested in the proposal is not considered adequate to assure reasonable airspeed response during this phase of flight. For this reason, the proponent's accuracy tolerance of 15 knots for climb is not adopted for this proposal. In its place, a tolerance of 10 knots is incorporated and serves to provide necessary relaxation of the current rule. Sections 29.1323 (c) and (d) would be clarified to indicate that accuracy requirements contained in these sections pertain to the airspeed system excluding the instrument. Existing § 29.1323(a) contains the instrument calibration requirements.

The Category A level flight accuracy has been tied to takeoff safety speed in a manner similar to Category B requirements for the purpose of standardizing the concept of level flight airspeed accuracy between categories and to ensure reasonable system response in the Category A takeoff transition discussed here. The Category B airspeed accuracy requirement would be clarified by specific reference to the Category B takeoff and climb-out requirement of § 29.63.

Ref: Proposal 372; Committee II.

2–60. By revising § 29.1325(f) to read as follows:

§ 29.1325 Static pressure and pressure altimeter systems.

* * * * *

(f) Each system must be designed and installed so that an error in indicated pressure altitude, at sea level, with a standard atmosphere, excluding instrument calibration error, does not result in an error of more than ± 30 feet per 100 knots speed.

* * * * *

Explanation: This proposed change to § 29.1325(f) would relax the transport rotorcraft static system accuracy requirements from the present tolerance of ± 30 feet at all airspeeds to ± 30 feet per 100 knots airspeed as currently required for transport airplanes.

Conference proposal 373 would have allowed an error of not more than ± 60 feet in the level flight speed range from 0 knots fo 0.9 V_H. The arguments for that proposal include: (1) The fact that there is an unsteady flow field around helicopters which results in static system inaccuracies; and (2) the difficulty of demonstrating that the system is within the tolerances makes such demonstration very costly. Proposal 373 also recommended that the ± 30 feet be retained for IFR but ± 60 feet be permitted for VFR.

Based on FAA pilot evaluation and operational experience, the ± 30 feet tolerance is the largest tolerance that can be allowed safely for the type of operations typically conducted at speeds below 100 knots in IFR and night VFR conditions. However, the FAA recognizes that operations typically conducted at airspeeds above 100 knots with transport rotorcraft in IFR and night VFR conditions do not require systems more accurate than the systems in transport airplanes operating in those same environments. Therefore, proposed § 29.1325(f) would relax those tolerances to be substantially identical to tolerances in § 25.1325(e).

Ref: Proposal 373; Committee II.

2–61. By amending § 29.1329 by revising paragraph (a) and adding a new paragraph (e) to read as follows:

§ 29.1329 Automatic pilot system.

(a) Each automatic pilot system must be designed so that the automatic pilot can—

(1) Be sufficiently overpowered by one pilot to allow control of the rotorcraft; and

(2) Be readily and positively disengaged by each pilot to prevent it from interfering with the control of the rotorcraft.

* * * * *

(e) If the automatic pilot integrates signals from auxiliary controls or

furnishes signals for operation of other equipment, there must be positive interlocks and sequencing of engagement to prevent improper operation.

Explanation: This proposal would clarify the design requirements for autopilots used in transport category rotorcraft and would add requirements for autopilots when interconnecting them with other systems.

One proposal at the conference recommended deleting current § 29.1329(a)(2), adding a new requirement for quick-release controls on both cyclic controls, and adding a new requirement equivalent to § 25.1325(g). Considerable opposition was expressed at the conference to requiring quick releases on the cyclic controls and to delete § 29.1329(a)(2).

Rearranging the order of §§ 29.1329(a)(1) and (2) for clarity, making the requirements of both paragraphs (1) and (2) mandatory by replacing "or" with "and," and requiring a disconnect capability for malfunctioning systems to prevent them from further interference with control of the rotorcraft would result in an acceptable level of safety. The word "quickly" would be changed to "readily" because "quickly" has been associated with emergency disconnects on transport airplane control wheels. What is intended in rotorcraft is for the pilot to be able to control the rotorcraft by first overpowering a malfunctioning system, then disconnecting it. In addition, similar requirements to those of § 25.1329(g) which have demonstrated an acceptable level of safety in transport airplanes are proposed in § 29.1329(e) since the same complex systems used in Part 25 airplanes are also being used in rotorcraft.

Ref: Proposal 374; Committee II.

2–62. By revising § 29.1331(a)(3) to read as follows:

§ 29.1331 Instruments using a power supply.

* * * * *

(a) * * *

(3) A visual means integral with each instrument to indicate when the power adequate to sustain proper instrument performance is not being supplied. The power must be measured at or near the point where it enters the instrument. For electrical instruments, the power is considered to be adequate when the voltage is within the approved limits; and

* * * * *

Explanation: This proposed revision would modify an existing rule which requires a power adequacy indicator for each required flight instrument. It further defines the point at which required power measurements must be made. The intent of the proposal is to provide a more positive indication of inadequate instrument power which, if undetected, could cause a pilot to make improper control movements and, in turn, could lead to a hazardous situation for the rotorcraft. Proposed § 29.1331(a)(3) is substantively identical to present § 25.1331(a)(1) and would bring transport category rotorcraft up to the standard now required of other transport category aircraft. Instruments with integral power adequacy indicators have been state-of-the-art for many years.

Three other modifications were also proposed. These modifications are not being incorporated into this notice for the following reasons:

(1) One modification proposed to change the applicability of § 29.1331 from "each required flight instrument" to "each instrument required by § 29.1303." Service experience has shown that only required flight instruments need to have power adequacy indicators. Such is the case for other transport category aircraft as required by § 25.1303(b). Not all of the instruments listed in § 29.1303 are required flight instruments.

(2) Another modification proposed to define the word "instrument" as used in this section. The definition for "instrument" is adequately given in § 1.1 and justification for additional definition was not given.

(3) The third modification would have deleted current § 29.1331(b) relative to failures and faults in instruments due to suggested redundancy in § 29.1309. The conference proposal alleged that § 29.1309 adequately addresses all failure concerns of instrument power supplies. Section 29.1309 speaks to preventing hazards to the rotorcraft after a system failure, whereas § 29.1331(b) is concerned more specifically with the failure of a flight instrument causing the failure of a power supply. Section 29.1331(b) is necessary for clarity.

Ref: Proposal 375; Committee II.

2–63. By revising § 29.1333 to read as follows:

§ 29.1333 Instrument systems.

For systems that operate the required flight instruments which are located at each pilot's station—

(a) Only the required flight instruments for the first pilot may be connected to that operating system;

(b) The equipment, systems, and installations must be designed so that one display of the information essential to the safety of flight which is provided by the flight instruments remains available to a pilot, without additional crewmember action, after any single failure or combination of failures that is not shown to be extremely improbable; and

(c) Additional instruments, systems, or equipment may not be connected to the operating system for a second pilot unless provisions are made to ensure the continued normal functioning of the required flight instruments in the event of any malfunction of the additional instruments, systems, or equipment which is not shown to be extremely improbable.

Explanation: This proposal would revise the requirements for instrument systems to reflect the increased complexity of instrumentation available, used, and necessary for transport rotorcraft to operate safely in the extreme range of operations environments to which they are now routinely exposed.

Two conference proposals recommended changes to § 29.1333. One of the proposals would have increased the level of safety for transport rotorcraft instrument systems by amending § 29.1333 to be substantively identical to §25.1333. The other proposal would have relaxed the requirements of § 29.1333(a) by allowing additional equipment to be connected to the first pilot's required flight instruments.

The standard of design for transport rotorcraft instrument systems should be equivalent to that in transport airplanes. Differences in rotorcraft and airplane operating environment, crew workload, and crew responsibilities preclude identical instrument system requirements from resulting in equivalent levels of safety. However, the requirements of § 25.1333, when revised for rotorcraft to reflect these differences, remain equivalent in intent, thereby resulting in an equivalent standard of design for rotorcraft.

Therefore, it is proposed to amend § 29.1333 to incorporate the requirements of § 25.1333. The first pilot's instrument system (or only pilot's instrument system in a single-pilot approved rotorcraft) must not be degraded by permitting peripheral systems to be connected to it. In addition, equipment must not be connected to operating systems for the second pilot's required instruments unless it is extremely improbable that failure of such additional equipment would affect that operating system.

Ref: Proposals 376 and 377; Committee II.

2–63. By revising § 29.1355(b) to read as follows:

§ 29.1355 Distribution system.

* * * * *

(b) If two independent sources of electrical power for particular equipment or systems are required by this chapter, in the event of the failure of one power source for such equipment or system, another power source (including its separate feeder) must be provided automatically or be manually selectable to maintain equipment or system operation.

Explanation: This proposal would require Category B rotorcraft to meet the same electrical power source standards for required equipment and systems as are required for Category A rotorcraft. It further proposes wording as to the manner in which electrical power is maintained under fault conditions. The intent of the proposal is to provide two independent electrical power sources for essential load circuits for transport category rotorcraft. This is necessary since the present § 29.1355(b) is not explicit as to the manner in which independent power supplies will maintain power under fault conditions. The proposed § 29.1355(b) is identical to that in present § 25.1355(b). The proposed change would improve the wording of the rule and would provide a more consistent application among all transport category aircraft.

Ref: Proposal 384; Committee II.

2–65. By revising § 29.1357 (b), (d), and (e) and by adding a new paragraph to read as follows:

§ 29.1357 Circuit protective devices.

* * * * *

(b) The protective and control devices in the generating system must be designed to de-energize and disconnect faulty power sources and power transmission equipment from their associated buses with sufficient rapidity to provide protection from hazardous overvoltage and other malfunctioning.

* * * * *

(d) If the ability to reset a circuit breaker or replace a fuse is essential to safety in flight, that circuit breaker or fuse must be located and identified so that it can be readily reset or replaced in flight.

(e) Each essential load must have individual circuit protection. However, individual protection for each circuit in an essential load system (such as each position light circuit in a system) is not required.

* * * * *

(g) Automatic reset circuit breakers may be used as integral protectors for electrical equipment provided there is circuit protection for the cable supplying power to the equipment.

Explanation: This proposal would revise § 29.1357 by requiring Category B rotorcraft to have the overvoltage protection now required for Category A rotorcraft, by clarifying that all parts of a single essential system may be protected by the same circuit protective device, and by specifically stating under what circumstances automatic reset circuit breakers may be used. The intent of this action is to provide the same level of safety for all transport category aircraft through identical wording and, thus, a more consistent interpretation of requirements in this section of the rules. The other proposed changes clarify the intent of the present rule and restate in regulatory form what has been the policy for many years with regard to the use of automatic reset circuit breakers. The proposal changes the wording of existing § 29.1357(e) slightly for clarity and incorporates additional language of the parallel portion of § 25.1357.

A related conference proposal would have incorporated explanatory material specifying that fuses and circuit breakers associated with the control of electrical power supplies or distribution buses that supply essential equipment are considered to be essential in flight. While the intent of the proposal is valid, the principal is already incorporated in other sections such as § 29.1309 and 29.1331.

Ref: Proposal 385; Committee II.

2–66. By removing the word "or" at the end of § 29.1505(a)(2)(i); by removing the period from the end of § 29.1505(a)(ii) and adding"; or" in its place; and by adding a new § 29.1505(a)(2)(iii) to read as follows:

§ 29.1505 Never-exceed speed.

(a)* * *

(2)* * *

(iii) 0.9 times the maximum speed substantiated for advancing blade tip mach number effects under critical altitude conditions.

* * * * *

Explanation: This proposed amendment would require consideration of mach limiting conditions in establishing V_{NE} and would require substantiating critical mach number effects throughout the altitude capabilities of the rotorcraft. An FAA conference proposal and a later HAA/AIA rewrite proposed considering blade tip mach number effects in establishing never-exceed speed (V_{NE}). This feature is being applied in current rotorcraft certification programs and adopting this proposal would add no cost to future programs. The 0.9 safety margin is retained to be consistent with other certification requirements regarding limit speeds. The term "critical altitude" is inserted in place of "knees of the envelope" in the conference proposal because the "knee" of an airspeed limit envelope is not always the critical condition for test. Also , the term "critical altitude" incorporates the concept of "engine critical altitude" (the maximum altitude at which the engine is capable of producing rated power) as a probable condition for critical tip mach number effects. This proposal incorporates current FAA policy for substantiating mach effects. Proposed § 29.1505(a)(2)(iii) differs slightly from proposed § 27.1505(a)(2)(iii). The phrase "critical altitude conditions" in the Part 29 proposal would require a more thorough substantiation of mach effects for transport rotorcraft throughout the approved altitude range and is appropriate for the higher level of safety inherent in transport category. See discussion concerning the related proposal for § 27.1505.

Ref: Proposal 390; Committee I.

2–67. By revising § 29.1525 to read as follows:

§ 29.1525 Kinds of operations.

The kinds of operations (such as VFR, IFR, day, night, or icing) for which the rotorcraft is approved are established by demonstrated compliance with the applicable certification requirements and by the installed equipment.

Explanation: See the explanation for proposed § 27.1525.

2–68. By revising § 29.1555(a) and adding a new paragraph (e) to read as follows:

§29.1555 Control markings.

(a) Each cockpit control, other than primary flight controls and controls whose function are obvious, must be plainly marked as to its function and method of operation.

* * * * *

(e) For rotorcraft incorporating retractable landing gear, the maximum landing gear operating speed must be displayed as close as practicable to the landing gear control.

Explanation: See explanation for proposed § 27.1555.

2–69. By revising § 29.1559 to read as follows:

§29.1559 Limitations placard.

There must be a placard in clear view of the pilot that specifies the kinds of operations (such as VFR, IFR, day, night, or icing) for which the rotorcraft is approved.

Explanation: See explanation for proposed § 27.1559.

2–70. By adding § 29.1583 (g) and (i) to read as follows:

§ 29.1583 Operating limitations.

* * * * *

(g) *Maximum allowable wind.* For Category A rotorcraft, the maximum allowable wind for safe operation near the ground must be furnished.

* * * * *

(i) *Ambient temperature.* Maximum and minimum ambient temperature limitations must be furnished.

Explanation: This proposal implements an existing practice by specifying ambient temperature as an operating limitation. The proposal also adds the maximum allowable wind for safe operation near the ground as a limitation for transport Category A rotorcraft. This provision would, in effect, limit takeoff, landing, and in ground effect maneuvers for Category A rotorcraft to the maximum wind value demonstrated during tests. In no case could this value be less than 17 knots as specified in § 29.143(c). The FAA considers the 17-knot controllability requirement an appropriate minimum safety requirement for Category A rotorcraft. The pilot of a transport Category A helicopter should reasonably expect to be able to initiate or terminate flight with 17 knots of wind from any direction without losing control of the rotorcraft. The regulations have specified a minimum 17-knot controllability requirement for many years. This proposal would add the requirement that the wind value be placed in the Flight Manual as a limitation for Category A rotorcraft. Wind direction and magnitude can change rapidly and wind currents around structures can cause a significant change in direction from that reported by a control tower. For these reasons, a full 360° wind azimuth capability to at least 17 knots is an appropriate minimum standard. If a higher wind value were tested and certified, that higher value would be entered in the manual as a limitation. Maximum safe wind as shown in the manual could vary from a maximum value to the minimum 17-knot value for varying weight, altitude, and temperature conditions.

One conference proposal would have incorporated maximum safe wind for hovering as an operating limitation for all transport category rotorcraft. In roles envisioned for utility rotorcraft and those carrying less than 10 passengers, takeoffs and landings are frequently conducted from sites where wind information is not readily obtainable. To require this wind information as an operating limitation for Category B is impractical.

The Category A concept as proposed for large passenger-carrying applications in Rotorcraft Regulatory Review Notice 80–25 would institute a concept for dispatching Category A rotorcraft similar to that for fixed-wing transport aircraft. Under such an operating concept, allowable dispatch weights, speeds, and wind conditions could be provided for the crew. This information would allow dispatch in terms of weight, altitude, temperature, and possibly wind azimuth, for varying surface winds. In general, wind information would be available at points of arrival and dispatch. It is appropriate to limit the operation of transport Category A rotorcraft to those wind conditions for which full accountability has been demonstrated. The wording of this requirement is intended to allow a certain amount of flexibility. For example, the maximum safe value for all azimuths could be a limitation for operating around buildings and other obstructions, and the maximum safe wind for takeoff along a published departure azimuth could be very high with the added constraint that air taxi and takeoff must be conducted in a direction within 30° of the prevailing wind. A minimum 17-knot capability for all azimuths could continue to be required.

A related proposal for § 29.1587 would remove the maximum allowable wind for safe operation from the Category A performance information section, but would add the maximum demonstrated wind for starting and stopping the rotors to the performance information section for both Categories A and B. This change would also make Category A and Part 25 compatible in requiring surface wind and ambient temperature as operating limitations.

Ref: Proposal 405; Committee II.

2–71. By adding a new § 29.1585(g) to read as follows:

§ 29.1585 Operating procedures.

* * * * *

(g) For Category B rotorcraft, the airspeeds and corresponding rotor speeds for minimum rate of descent and best glide angle as prescribed in § 29.71 must be provided.

Explanation: See the explanation for proposed § 29.1587.

Ref: Proposals 410 and 412; Committee II.

2–72. Section 29.1587 is amended by revising the introductory paragraph, by removing the word "and" from the end of paragraphs (a)(3) and (b)(5); by redesignating paragraph (b)(6) as (b)(8), by revising paragraphs (a)(4) and (b)(4), by adding new paragraphs (a)(5), (a)(6), (b)(6) and (b)(7); and by amending paragraph (b)(1) to read as follows:

§ 29.1587 Performance information.

Flight manual performance information which exceeds any operating limitation may not be presented. The following must be provided:

(a) * * *

(4) The maximum demonstrated wind for starting and stopping the rotors;

(5) The rejected takeoff distance determined under § 29.59(b) and the takeoff distance determined under § 29.59(c). These distances must be considered in establishing takeoff field length requirements; and

(6) The landing data determined under §§ 29.75 and 29.77. These data must be used in establishing landing field length requirements.

(b) * * *

(1) The takeoff distance and the climbout speed together with the pertinent information * * *

* * * * *

(4) The maximum demonstrated wind for starting and stopping the rotors and for operation near the ground;

* * * * *

(6) Glide distance as a function of altitude when autorotating at the speeds and conditions for minimum rate of descent and best glide angle, as determined in § 29.71;

(7) Maximum safe wind for hover operations out of ground effect if hover performance for that condition is provided; and

* * * * *

Explanation: This proposal contains a number of separate changes. A restriction is proposed at the beginning of this section to prevent presentation of performance information which exceeds an operating limitation and which might, as a result, mislead a pilot into exceeding limitations.

Paragraph (a)(4) of this section would be revised to delete the requirement to show the maximum allowable wind for safe operation near the ground. This requirement would be transferred to the operating limitations section. See the related proposal for § 29.1583 for an explanation. In place of showing the maximum allowable wind for safe operation near the ground, a requirement would be added to paragraph (a)(4) to show the maximum demonstrated wind for starting and stopping the rotors. This requirement would also be added for Category B in paragraph (b)(4). As agreed at the conference, including this information would be beneficial in preventing

damage to helicopters without the need to conduct additional extensive testing.

The new paragraphs (a)(5) and (a)(6) would add stated requirements for Category A takeoff and landing distances in the flight manual. This formalizes an existing policy. The distances obtained in both §§ 29.59 (b) and (c) must be presented in the flight manual as it is necessary to utilize the greater of these distances in computing field length requirements. One proponent suggests limiting the determination of landing distance to § 29.75; however, § 29.77, Balked landing, must also be considered, as the landing decision point established in § 29.77 can affect the required distances. Accordingly, references to both §§ 29.75 and 29.77 are included in proposed § 29.1587(a)(6).

The nomenclature in paragraph (b)(1) would be corrected by changing the wording from "takeoff safety airspeed" to "climbout speed" to avoid confusion with the actual takeoff safety speed which applies only to Category A rotorcraft. Definitions of these airspeeds are proposed for § 1.1.

The present § 29.71 requires generation of angle of glide and related airspeed information during autorotation. This is necessary to enable the pilot to best manage available altitude and airspeed to reach a desired landing site. The proposed new paragraph (b)(6) would simply require this information to be presented in the Rotorcraft Flight Manual. A related proposal for § 29.1585 would require the pertinent airspeed information in the operating procedures section for quick reference in the event of an unplanned autorotation. The proposed § 29.1587(b)(6) would provide more detailed information for use in performance and flight planning.

New paragraph (b)(7) would require that the maximum safe wind for hover out of ground effect (OGE) be shown in the Rotorcraft Flight Manual if hover performance for that condition is provided. Manufacturers frequently elect to provide hover OGE performance information although it is not currently required. In this case, however, it would be necessary to know the maximum winds in which a pilot can safely control the helicopter in an OGE hover condition. Proposed paragraph (b)(7), accordingly, would provide that wind information.

Ref: Proposals 16, 147, 165, 166, 408, 410, 411, 412; Committees I and II.

2–73. By amending § 91.31 by revising the title and paragraph (a) and by deleting paragraph (e) as follows:

§ 91.31 Civil aircraft flight manual, marking, and placard requirements.

(a) Except as provided in paragraph (d) of this section, no person may operate a civil aircraft without complying with the operating limitations specified in the Approved Airplane or Rotorcraft Flight Manual, markings, and placards, as prescribed by the certificating authority of the country of registry.

* * * * *

Explanation: Two proposals were submitted to delete the operating limitations placard requirements of §§ 27.1559 and 29.1559. These proposals were supported by both industry and the FAA at the conference. It was noted during review that no specific requirement to operate per the limitations section of the Flight Manual exists elsewhere in the rules. For that reason this requirement is incorporated by specific reference to the Flight manual in § 91.31(a). Paragraph (e) would be deleted because the limitations that were listed are more appropriately required by the applicable certification rule. Some inconsistencies were noted in § 91.31(e): (1) Maneuvering flight load factors and height-velocity envelope are not required as limitations for small rotorcraft. (2) Minimum crew, kinds of operations, and maximum operating altitude are not required as limitations for older small fixed-wing aircraft. The specific content of flight manual limitations sections is more properly addressed in current certification rules and in the existing certification rules for previously type certificated models. The additional requirements of existing § 91.31(e) are considered to be adequately addressed in § 91.31 (a) and (b). The entire section would be retitled to more accurately reflect the subject and text of the section. The overall effect of this proposal is relieving by removing an incorrect and unneeded section of the operating rule. See the explanation for proposed §§ 27.1559 and 29.1559.

Ref: Proposals 139 and 401; Committee I.

Appendix—Miscellaneous Proposals Removed From Further Consideration The Rotorcraft Regulatory Review Program

Based on the FAA's review of the discussions at the Rotorcraft Regulatory Review Conference and the information submitted by interested persons, the following proposals considered at the conference are removed from further consideration for the reasons set forth in the following:

14 CFR (FAR section)	Proposal No.	Proponent
27.73	17	HAA and AIA.
133.47	18	DGAC France.
27.143	29	A.E.C.M.A.
27.161	35	HAA and AIA.
27.1401	129	HAA and AIA.
27.1401	130	Atlantic Aviation Corporation.
27.1505	132	HAA and AIA.
27.1529	136	FAA.
27.1581	141	A.E.C.M.A.
27.1583	144	A.E.C.M.A.
27.1585	145	A.E.C.M.A.
29.21	157	A.E.C.M.A.
29.33	158	HAA and AIA.
29.53	164	A.E.C.M.A.
29.73	170	HAA and AIA.
29.73	171	DGAC France.
29.141	179	HAA and AIA.
29.143	185	A.E.C.M.A.
29.143	186	A.E.C.M.A.
29.601	221	CAA (UK).
29.729	236	CAA (UK).
29.777	241	CAA (UK).
29.777	242	CAA (UK).
29.1303	352	Air Line Pilots Association.
29.1309	364	CAA (UK).
29.1351	379	CAA (UK).
29.1351	380	HAA and AIA.
29.1351	381	Aerospatiale—Helicopter Division.
29.1353	382	CAA (UK).
29.1383	386	CAA (UK).
29.1401	387	HAA and AIA.
29.1401	388	Atlantic Aviation Corporation.
29.1413	389	HAA and AIA.
29.1507	391	CAA (UK).
29.1517	392	Bell Helicopter Textron.
29.1529	397	FAA.
29.1582	403	A.E.C.M.A.
29.1585	407	A.E.C.M.A.

Proposals 17 and 170. These proposals would have amended §§ 27.73(a)(1)(iii) and 29.79 to specify a 1-foot skid height instead of a "height consistent with normal takeoff procedures" for compliance with the hover performance requirements for small helicopters. Under the current regulation, the hover height is established so that helicopters in a power-limited hover condition can transition to forward flight over a reasonably level surface without contacting the ground. The proposed standard, however, would not assure this capability and an abrupt and potentially catastrophic contact with the surface could result. Based on the foregoing, this proposal would not provide an appropriate minimum safety standard.

The special capability of rolling takeoffs in wheeled rotorcraft is recognized and is being considered for additional rulemaking.

Proposals 18 and 171. These proposals would have required hover performance information for out of ground effect conditions in small helicopters. This is a requirement which is needed only for special purposes. Thus, a requirement for this information would constitute an undue burden on helicopter manufacturers. Adequate provision exists under § 133.47 of the external-load operating rule to require this information where needed.

Proposals 29 and 185. These proposals would add hover, autorotation, and vertical flight maneuvers as specific conditions for controllability and maneuverability in rotorcraft under the provisions of §§ 27.143(a) and 29.143(a). Flight characteristics

requirements for autorotation and hover in a transport category helicopter are adequately covered under §§ 29.141 and 29.143(c). Additional controllability and stability requirements for those conditions are contained throughtout the flight characteristics portion of the rule. The reference to vertical flight in the proposal is not clearly described. There is no known requirement for vertical flight in either normal or transport category rotorcraft certification rules. For vertical takeoffs, such as a Cateogry A vertical takeoff, sudden lowering of the collective as contained in these proposals is considered an excessive maneuver. This proposal would not materially affect safety or the method in which the standards are applied.

Proposal 35. This joint HAA/AIA conference proposal would change the cyclic trim requirement to "approximately zero." Trim is by definition a zero force, hand-off condition. Use of term "approximately zero" would introduce confusion and unneeded subjectivity into the administration of this rule.

Proposals 129, 130, 387, 388. These conference proposals would have amended §§ 27.1401 and 29.1401 to permit the use of either white or red anticollision lights on Parts 27 and 29 rotorcraft rather than the presently required red light.

Sections 23.1401 and 25.1401 permit the use of either white or red anticollission lights of 400 candlepower (cp) intensity, whereas §§ 27.1401 and 29.1401 require only 150 cp but specify red lights. The conspicuity of red light, due to the physiological make-up of the human eye, has been determined to be significantly greater than that of white light of the same intensity. Additionally, a survey of the literature indicates that in several evaluations by groups of pilots, both military and civil, a red light was preferred because it produced less objectionable light backscatter from the rotors. No additional justification was presented by the proponent or by commenters at the conference and the FAA has found no independent justification for the proposal.

Proposal 132. HAA/AIS proposes to exempt external-load operations from compliance with the airspeed limit requirements of § 27.1505(a). This condition is currently addressed in aircraft flight manuals or supplements associated with engineering approvals of cargo hooks. The provision more properly belongs in the Part 133 operating rule and will be considered there.

Proposals 136 and 397. These proposals would have amended §§ 27.1529 and 29.1529 by adding specific requirements that a Rotorcraft Maintenance Manual be acceptable to the Administrator and that it include all information essential for proper maintenance. This issue was addressed in Airworthiness Review Program Amendment No. 8A: Aircraft, Engine and Propeller Airworthiness and Procedural Amendments (45 FR 60154; September 11, 1980).

Proposal 141. This conference proposal would have given manufacturers an option to provide an operator's handbook instead of a Rotorcraft Flight Manual. This proposal would proliferate rather than reduce the number of ways information can be provided. The Rotorcraft Flight Manual remains the primary source of essential information for flightcrews and there is no need to establish another source.

Proposal 144. This proposal would add requirements for establishing a maximum wind for starting the rotor and specifying temperature limits in the operating limitations section of the Rotocraft Flight Manual for small rotorcraft. The maximum wind condition for starting the rotor is proposed for Part 29, but is considered an unnecessary burden for small rotorcraft certification testing which may involve only one site and a few days of testing. This requirement could significantly affect the length of the test program for small rotorcraft and is not proposed. Presentation of ambient temperature limits is adequately addressed by current FAA policy, procedures, and regulations for small rotorcraft. For example, ambient temperature limits for engine operation are adequately addressed in § 27.1583(b). Rotorcraft performance data are not presented for ambient conditions outside the limits of ambient temperature for which that performance has been substantiated. This concept provides adequate definition of ambient temperature conditions for which small rotorcraft have been substantiated and additional requirements are not proposed.

Proposals 145 and 407. These conference proposals would have put the limiting height-speed envelope in the operating procedures section of the flight manual. The envelope itself is not a procedure and for this reason should not be required as an item in the procedures section.

Proposal 157. This conference proposal would have added in allowable range of loading conditions and ambient conditions for conducting flight tests. Acceptable tolerances for flight tests should be specified in appropriate guidance material or flight test documents and should not become regulatory. Acceptable flight test tolerances will be specified in a forthcoming transport helicopter certification guide.

Proposal 158. This conference proposal would have deleted the requirement for a device to manually silence the rotor r.p.m. audio warning for certain highly reliable rotor r.p.m. audio warning system. Even highly reliable devices which incorporate sophisticated design features to preclude nuisance warnings should incorporate manual silencing. Manual silencing is required during sustained failure or training conditions, such as light-weight autorotation, to facilitate communication or eliminate distraction once the warning has served its purpose. Other operational conditions could require operation at partial power (r.p.m.) for sustained periods during which the pilot may want to silence the audio warning. The present requirement is considered appropriate.

Proposal 164. This conference proposal would have introduced the concept of defining the Category A takeoff critical decision point as a function of time. A critical decision point and guaranteed takeoff/climbout flight path are based on an energy concept. The critical decision point, accordingly, is and must be defined by a specific energy level which, is based on parameters of speed and altitude. The use of time alone in defining the critical decision point assumes a rate of increase in the energy level during the acceleration segment which may or may not be achieved. Attainment of speed and altitude at the critical decision point guarantees continued takeoff capability in the event of engine failure. Time may not.

If, for any reason, an acceleration segment based on time did not produce the required energy level, an engine failure at the critical decision point could lead to an unsuccessful attempt to continue the takeoff and a resultant high-speed contact with the ground. For these reasons, the concept of a decision point based solely on time must be approached with extreme caution and is not proposed at this time.

Proposal 179. This conference proposal would have introduced aircraft simulator modeling as an acceptable means of complying with the flight characteristics requirements in transport category rotorcraft. The concept of demonstrating compliance with flight requirements through the use of computer modeling has not been demonstrated to yield an equivalent level of safety to that produced by flight testing the actual vehicle. The concept is premature for regulatory action and is not proposed at this time.

Proposal 186. This proposal would have allowed approval of takeoff and landing maneuvers for transport category rotorcraft for which less than a 17-knot wind capability has been shown. The 17-knot limit of § 29.143(c) is intended as a limit for takeoff, landing, and in ground effect maneuvers. A lower level of safety is not appropriate for transport category rotorcraft and the current rule has demonstrated an appropriate level of safety.

Proposal 221. This conference proposal would have added to § 29.601 a requirement for a failure analysis of the rotorcraft to show that no single failure or malfunction, or probable combination of failures, would jeopardize the safe operation of the rotorcraft. The intent of this proposal is to require a general and comprehensive fault analysis covering the whole rotorcraft in an equivalent manner to aircraft covered by § 25.1309. This proposal is contrary to FAA attempts to cover similar subjects with parallel rules throughout Parts 23, 25, 27 and 29 to the extent practicable. In addition, the general subject presented in this conference proposal is addressed in conference proposals 364–368 which are discussed under § 29.1309.

Proposal 236. This proposal would have revised § 29.729(b) to require a positive means to secure the landing gear and doors in the correct retracted position unless it is established that inadvertent movement out of that position will not adversely affect safe operation of the rotorcraft. The intent of this proposal was to prevent hazard to the rotorcraft from inadvertent movement of the gear/doors from the retracted position. Service history has not revealed a safety hazard resulting from the present rule, and the FAA can find no reason to impose the additional requirement.

Proposal 241. This proposal would have required certain cockpit controls to maintain chosen settings without subsequent attention from the crew. This design requirement is adequately reflected in §§ 29.141(d) and 29.1301. Thus, this proposal would be reduntant.

Proposal 242. This proposal would have required a showing by the applicant for a type certificate that control system failures are extremely improbable. Compliance with such a requirement is normally accomplished by an extensive failure effects analysis. The current requirements in Subpart D of Part 29 for control systems accomplish the proponent's intended effect and establish the desired level of safety through specific design requirements for the simple control systems and by requiring that failures be extremely improbable for complex power boosted and power-operated control systems. This proposed change is therefore unnecessary.

Proposal 352. This proposal concerning instrument requirements did not address current rules and the intended effect has already been incorporated by other rulemaking.

Proposal 364. This proposal would have required that "essential systems and equipment" remain functioning for the time necessary to allow a safe emergency landing in the event of failure of all engines. "Essential systems" is defined as all systems required by the airworthiness rules. All such systems are not required for emergency landing following failure of all engines. Section 29.143 requires controllability with engines failed, and § 29.695 requires control systems to have a backup power source that would allow continued safe flight and landing with all engines failed. Current requirements of §§ 29.143 and 29.695 are considered adequate to assure controlled flight to a safe landing.

Proposal 379. This revision to § 29.1351(b)(2) would have required that electrical power be provided to those services necessary to safely complete the flight. Proposed changes to § 29.1309 accomplish the proponent's desired result and this proposal is redundant.

Proposal 380. This proposed revision to § 29.1351(b)(6) would have reworded the requirement for power-quantity indicators to require such indicators only when they are essential for the safe operation of the power supply system. The present rule is equivalent to the related requirements in Part 25. It is worded to accomplish the intended purpose without dictating design and does not rule out new technological advancement. Under the present rule, an applicant for a type certificate can use means other than power quantity indicators so long as the intended effect of the rule is accomplished.

Proposal 381. This proposed revision of § 29.1351(d) would have specified that the certification testing for rotorcraft operation without normal electrical power be limited to stabilize flight or autorotation. The purpose of the current rule is to ensure continued safe flight for a limited time if total electrical system failure occurs, regardless of whether the aircraft is in stabilized flight, autorotation, or an inadvertent upset. The limited time, 5 minutes, is intended to allow the pilot to return the electrical system to service for continued safe flight and ultimate safe landing. The current rule is identical in substance to the requirement of Part 25, which has been administered successfully for many years.

Proposal 382. The revisions proposed for § 29.1353(a), (b), and (c)(5) would have specified that 1) there be no hazardous effects upon the rotorcraft due to electrical interference; 2) damage to essential circuits be minimized in the events of faults in any cable, not just heavy current-carrying cables; and 3) the hazardous effects from failed nickel cadmium batteries of all kinds must be prevented. The hazardous effects of electrical interference are already considered in §§ 29.1301 and 29.1309. Section 29.1353(b) is presently worded identically to § 25.1353(b) and adequate justification to change the rule is not presented.

Proposal 386. This revision of § 29.1383(b) would have required installing a landing light whose beam could be adjusted in the longitudinal and lateral planes. The proponent states that the ability to adjust the light beam is considered essential to provide adequate lighting over a wide enough area for night operations. Present rules require adequate light for night operations including hovering and landing. Adjustable light beams are one method by which this may be accomplished, but the use of adjustable light should not be mandated. Manufacturers should be provided with the freedom to efficiently design the best system to meet the intent of the rule.

Proposal 389. This proposal would have moved the metal-to-metal seat belt latching device requirement from § 29.1413 to § 29.785. Identically worded requirements for metal-to-metal latching devices are now in §§ 23.1413, 25.1413, 27.1413, and 29.1413. The section numbers are uniform in Parts 23, 25, 27, and 29 and a change could result in possible confusion.

Proposal 391. This proposal would have introduced the concept of a normal operating speed limit in transport rotorcraft for which V_H exceeds $0.9V_{NE}$. The normal operating speed limit would represent a maximum allowable speed for cruise flight. Even though the concept has merit, the problem is being addressed in another proposal which would require overspeed indication and warning in § 29.1303 to alert the pilot of excursions beyond V_{NE}. Also, during certification programs, the FAA conducts tests for longitudinal static stability to $1.1V_{NE}$ and a portion of the flight spectrum for structural substantiation includes excursions to $1.1V_{NE}$. The overspeed warning concept should prevent inadvertent overshoots and allow safe cruise capability up to and including V_{NE} without reducing the flight envelope or further complicating the airspeed presentation with an additional limit.

Proposal 392. This proposal would have allowed operation of transport category rotorcraft at some conditions for which hover controllability in 17-knot winds cannot be shown, provided certain operational conditions are met. These operational conditions include the availability of wind indicating equipment; takeoffs so as to avoid critical azimuths; 20-knot forward speed for landing; and demonstrating satisfactory control in the noncritical wind azimuths. The FAA considers the 17-knot controllability requirement an appropriate minimum safety requirement for transport category rotorcraft. The pilot of a transport helicopter should reasonably expect to be able to initiate or terminate flight to a hover condition with 17 knots of wind from any direction without losing control of the rotorcraft. With winds of 17 knots and below, wind direction and magnitude can change rapidly and wind currents around buildings can cause a significant change in direction from that reported by a control tower. For these reasons, a full 360° wind azimuth capability to at least 17 knots is the minimum standard the FAA considers appropriate for certification of transport category helicopters in the hover condition.

Proposal 403. This proposal would have required certain general information and systems descriptive information to be included in the Rotorcraft Flight Manual. Presently, a great deal of this information is presented in the form of training aids and training manuals which are easily restructured or revised to suit training programs. Rotorcraft Flight Manuals must currently contain information to safely operate the rotorcraft. To require additional nonessential general or systems descriptive information in the rotorcraft flight manual is not justified on the basis of safety.

(Secs. 313(a), 601, 603, 604, Federal Aviation Act of 1958 (49 U.S.C. 1354(a), 1421, 1423, 1424); sec. 6(c) Department of Transportation Act (49 U.S.C. 1655(c)))

Note.—The FAA has determined that this document involves proposed regulations which are not considered to be major under the procedures and criteria prescribed by Executive Order 12291 or significant under Department of Transportation Regulatory Policies and Procedures (44 FR 11034; February 26, 1979). A copy of the draft evaluation prepared for this action is contained in the regulatory docket. A copy of it may be obtained from the person identified as the contact for further information. For the reasons stated above and in the regulatory evaluation, I certify that this regulation will not have a significant economic impact on a substantial number of small entities.

Issued in Ft. Worth, Texas, on April 29, 1982.

F. E. Whitfield,

Acting Director, Southwest Region.

[FR Doc. 82-23387 Filed 8-25-82; 8:45 am]

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federal register

Thursday
August 26, 1982

Part V

Department of Health and Human Services

Office of the Secretary
Office of Human Development Services

Model Act for the Adoption of Children With Special Needs; Correction

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Office of the Secretary

Office of Human Development Services

Model Act for the Adoption of Children With Special Needs

AGENCY: Office of Human Development Services (HDS), HHS.

ACTION: Model Act for the Adoption of Children With Special Needs; Corrections.

SUMMARY: The "Model Act for the Adoption of Children With Special Needs" was published in final in the **Federal Register** on October 8, 1981 (46 FR 50022). We are making changes to this model state legislation to bring the Model Act into agreement with provisions of Title IV–E of the Social Security Act, "Federal Payments for Foster Care and Adoption Assistance", and to correct technical errors.

DATES: There is no "effective date" necessary as this is model legislation.

ADDRESS: For further information please write to: Warren Master, Deputy Commissioner, Administration for Children, Youth and Families, P.O. Box 1182, Washington, D.C. 20013.

SUPPLEMENTARY INFORMATION:

I. Change last sentence of Section 402(c) "Means test."

Section 402(c) of the "Model Act for the adoption of Children With Special Needs" provides for use of an income eligibility test (means test) in determinning eligibility for general adoption assistance to cover expenses unrelated to the child's special needs or the adoption process. The legislative history of section 473(a)(1) of Title IV–E of the Social Security Act indicates a Congressional intent that there be no means test. The sole eligibility requirement related to the prospective adoptive parent is that the parent adopt an eligible child. The amount of adoption assistance payment, however, is to be determined through agreement between the adoptive parents and the agency (as set forth in section of 473(a)(2) Title IV–E of the Social Security Act) based on the circumstances of the adopting parents and the needs of the child being adopted.

Therefore, we wish to correct the last sentence of section 302(c), last column on page 50037 and first column, page 50038 of the **Federal Register** as follows:

Delete: "An income eligibility test shall be applied in determining the eligibility for general adoption assistance to cover expenses unrelated to the child's special needs or the adoption process."

Replace with: "The circumstances of the adopting parents and the needs of the child being adopted shall be taken into consideration in determining the amount of the adoption assistance payment."

II. Change the last sentence of Section 403(a) and delete the first paragraph of Commentary to Section 403.

Section 403(a) and Commentary to Section 403 of the Model Act for the Adoption of Children With Special Needs provides for the adoption assistance agreement to be completed within one year after the final decree of adoption. Section 475(3) of Title IV–E of the Social Security Act provides for the signing (completion) of the adoption agreement by the prospective adoptive parent and the State (or local agency) prior to or concurrent with the final or interlocutory decree of adoption. Therefore, we wish to correct the last sentence of Section 403(a) of the model, found in the middle column on page 50038 as follows:

Delete: "* * * within one year after the final decree of adoption."

Replace with: "before or concurrent with the final or interlocutory decree of adoption."

Also, the Commentary to Section 403, middle column, page 50038, should be changed as follows:

Delete: "It is anticipated that in virtually all cases, the adoption assistance agreement will be completed prior to the final decree of adoption. However, there may be unusual circumstances which would justify an exception to this general rule."

III. Delete references to birth parents in Section 107(a)(1) and (2) and add a paragraph to the Commentary to Section 107.

Section 107(a)(1) and (2) prohibits agencies from charging fees for services to birth parents of special needs children. It is not certain that a special need exists in a particular child until certification of that child for adoption assistance is completed. Since services to birth precede certification for adoption assistance for the child, fees to birth parents should not be prohibited.

In addition, we wish to clarify that voluntary donations to an agency should not be prohibited. However, the provision of quality of services may not depend upon the making of a donation.

Therefore, we wish to correct Section 107(a)(1), line 3, after the word "agency", middle column of page 50026 as follows:

Add: "* * * and who have been certified eligible for adoption assistance in accordance with Section 402(a),"

Also, Section 107(a)(1) line 4, middle comumn, page 50026 should be changed as follows:

Delete: "* * * birth or"

Also, Commentary to Section 107, last column on page 50026 should be changed as follows:

Delete: * * * "their birth parents".

Also, Commentary to Section 107, last column on page 50026 should have added as follows:

Add: "The proscription of fees does not bar voluntary donations to agencies. The provision or quality of services may not depend in any way on the making of a donation.

IV. Delete reference to birth parents to the Commentary to Section 101

To be in agreement with the changes in Section 107(a)(1) and (2) the reference to prohibiting fees to be charged to birth parents is to be deleted. Therefore, we wish to correct line 10 of the last paragraph of the Commentary to Secction 101, last column on page 50023 as follows:

Delete: "birth and"

V. Change Section 403 and delete the paragraph that is now Section 403(e)

Section 403(e) of the Model Act should be amended to clarify that the state which is a party to the adoption assistance agreement continues to be responsible for provision of adoption assistance when a certified child moves from one state to another. Therefore, we wish to change the language of Section 403(e), middle of the last column on page 50038, as follows:

Delete: "A child who is a resident of another State when eligible for assistance is certified by that State shall be considered certified and eligible to receive assistance by this State upon becoming a resident of this State, subject to the annual recertification requirement of this section. The domicile or residence of the adoptive parents at the time of application for adoption, placement, legal decree of adoption, or thereafter shall not affect the certification of a child who has been certified as eligible for adoption assistance by this State."

Replace with: "The Adoption Assistance Agreement shall remain in effect regardless of the State of which the adoptive parents are residents at any given time. The State which is a party to the Agreement shall remain responsible for provision of adoption

assistance pursuant to the Agreement in cases where the adoptive parents and child move to another State while the Agreement is effective."

VI. Add a phrase to Commentary to Section 103

A phrase was inadvertently omitted from the commentary. Therefore, substitute the following phrase for that found on page 50025, in the Commentary to Section 103 middle column, line 5.

Substitute: "The fact of termination of parental rights as a first step in the adoption process should help determine what course of action is best for a child. If there are gounds for terminating parental rights, such a proceeding should be initiated without delay."

VII. Change a date in Commentary to Section 401

The date on which the New York legislature passed the first adoption subsidy act is incorrect. Therefore, on page 50037, middle column commentary to Section 401, 2nd paragraph, line 10,

Change: "1978" to "1968".

Dated: June 8, 1982

Dorcas R. Hardy,

Assistant Secretary for Human Development Services.

Approved: August 16, 1982.

Richard S. Schweiker,

Secretary.

For the reasons set forth in the Preamble, the following changes to the "Model Act for the Adoption of Children With Special Needs" are made:

1. *Changes to Section 402(c)*

Section 402(c) is amended as follows:

Section 402. Eligibility for Adoption Assistance

(a) *Requirements for eligibility.* Any child with special needs is potentially eligible for adoption assistance who is the responsibility of an agency, legally free for adoption, and not likely to be adopted by reason of one or more special needs, such as:

(1) Physical or mental disability,

(2) Emotional disturbance,

(3) Recognized high risk of physical or mental disease,

(4) Age,

(5) Sibling relationship, or

(6) Racial or ethnic factors.

(b) *Certification of unconditional eligibility.* A child who is potentially eligible for adoption assistance pursuant to subsection (a) hereof must be certified as eligible by the State adoption administration. Any child who meets one or more of the requirements of subsection (a) of this section shall be certified as unconditionally eligible after reasonable efforts to find an appropriate adoptive family who would adopt the child without adoption assistance have proved unsuccessful, except that when the child has developed significant emotional ties with his foster parents who seek to adopt him, no such efforts are required.

(c) *Means test.* There shall be no income eligibility test (means test) for the prospective adoptive parent(s) of a special needs child certified under subsection (b) of this section in determining eligibility for adoption assistance to cover medical and other expenses which are related to the child's special needs, or to cover expenses related to the adoption process, such as the legal and court costs of adoption. The circumstances of the adopting parents and the needs of the child being adopted shall be taken into consideration in determining the amount of the adoption assistance payments.

(d) *Notification of eligibility.* Any agency or person who has physical custody of a child with special needs shall be notified in writing when the child is certified as eligible for adoption assistance.

* * * * *

2. *Change to Section 403(a) and Commentary to Section 403*

a. Section 403(a) is amended as follows:

Section 403. Adoption Assistance Agreement

(a) *Requirements of assistance agreement; when assistance payments may begin.* Before any adoption assistance payments may be made to the prospective adoptive parents who have been determined to be eligible for adoption assistance, there must be a written agreement between the parent(s) entering into the assisted adoption and the State adoption administration through its designated agency. This agreement must be completed before or concurrent with the final or interlocutory decree of adoption.

(1) Adoption assistance in individual cases may commence with the adoptive placement, or at the appropriate time after the interlocutory or final decree of adoption, and will vary with the needs of the child as well as the availability of other resources to meet the child's needs.

(2) The assistance may be for special services only or for money payments, and either for a limited period or for a long term, or for any combination of foregoing. The amount of the time limited or long-term adoption assistance may in no case exceed that which would be allowable from time to time for such child under foster family care, or in the case of a special service the reasonable fee for the service rendered.

(b) *Annual certification of eligibility.* When adoption assistance is for more than one year, the adoptive parents shall present an annual certification that:

(1) The adopted child remains under their care; and

(2) The conditions which caused the child to be certified as eligible for adoption assistance continue to exist.

(c) *Continuing special need required for certification.* For the purpose of the annual recertification, the special need(s) which caused the child to be certified shall be deemed to continue to exist if the child was certified as eligible.

(1) Subsections (a)(1) or (1)(2) of Section 402 of this Act, and the physical or mental disability or emotional disturbance has not been corrected; or

(2) Subsection (1)(3) of Section 402 of this Act, and the recognized high risk of

* * * * *

b. Commentary to Section 403 is amended as follows:

Commentary to Section 403

Subsection (a)

Assistance signed—as early as the time agreeable is signed—as early as the time of placement or after an interlocatory of final decree has been issued. Adoption assistance may be made available for costs related to the adoption proceeds, such as legal and court cost of adoption, other costs incidental to adoption placement or costs for medical treatment or other needs.

Time-limited assistance is designed to help with expenses of integrating the child into the family or to provide funds for a specific short-term service. Long-term adoption assistance is designed for children who cannot be adopted unless their long-term financial needs are met by subside. The ceiling on the subsidy to accord with foster family allowances is based on current practice in a majority of the States. One objective of the adoption assistance program is to

* * * * *

3. *Changes to Section 107 and Commentary to Section 107*

a. Section 107 is amended as follows:

Section 107. Fees

(a) *Charging of fees prohibited.* No agency, public or voluntary, shall charge fees:

(1) For adoption services to children with special needs who are the responsibility of an agency and who have been certified eligible for adoption assistance in accordance with Section

402(a) or to the prospective adoptive parents of such children;

(2) For postadoption services to the adoptive family of any such certified child with special needs who, immediately prior to adoption, was the responsibility of an agency.

(b) *Reimbursement of expenses.* The State adoption administration shall reimburse voluntary agencies which provide adoption or postadoption services to persons to whom fees may not be charged pursuant to subsection (a) hereto. Such reimbursement shall not exceed the actual cost of services provided, and shall be in accordance with purchase of service rates established by the State adoption administration.

(c) *Penalty for illegal fees.* Any person, agency, association, or corporation who gives, requests, receives, or accepts payment of cash or other consideration in violation of this Section 107 shall be guilty of [misdemeanor].

b. Commentary to Section 107 is amended as follows:

Commentary to Section 107

The Preamble to the Model Act establishes the principles that adoption is a service to children, and that children with special needs should not be denied the benefits of family life. In keeping with this philosophy, the Model Act abolishes fees for services to these children and their prospective adoptive families. By their nature, fees may act as deterrents to families who seek to adopt a chid; they may erect psychological or very real financial barriers to families, thereby reducing the chances a child has to be adopted.

A primary purpose of the Model Act is to remove barriers to the adoption of special needs children awaiting adoption. Proscription of feers for services to or on behalf of these children removes one of the obstacles to their adoption.

The financial burden for the extension of adoption services is transferred back to the State through the requirement that it reimbures voluntary agencies. Implementation of the philosophy of the Mode. Act demands that comprehensive services be available at no cost if the thousands of special needs children awaiting adoption are to be place with permanent families. Legislators debating enactment families. Legislators debating enactment of the Model Act, when weighing the benefits against the potential for increased costs, should consider the potential for continued (and perhaps even increased) costs to the State of not enacting this provision: the expense of keeping a special needs child in foster care, including social and medical services, or the expense of a child re-entering the foster care system if an adoption breaks down because the necessary postadoption, any financial argument must be balanced against the social benefits of securing permanent homes for the waiting children.

The proscription of fees does not bar voluntary donations to agencies. The provision or quality of services may not depend in any way upon the making of a donation.

4. *Changes to Commentary to Section 101*

Commentary to Section 101 is amended as follows:

Title I—General Provisions

Section 101. Policy and Purposes

(a) *Philosophy of Act.* It is the policy of this State to encourage the adoption of children with special needs who are without permanent families and who would benefit by adoption. Although there are qualified persons seeking to adopt special needs children, many such children remain in institutions or foster homes because of legal and other barriers to their placement in permanent adoptive homes. It is the intention of this State to facilitate the elimination of such barriers to adoption and to promote the provision of stable and loving family environment of special needs children who are without permanent families.

(b) *Purposes of Act.* The purposes of this Act are to provide adoption services without cost to each child with special needs in the State who needs such services; and

(1) To provide procedures and services which will safeguard and promote the interests of each child with special needs who is in need of adoption and which will protect the rights of all parties concerned;

(2) To provide legal procedures for promptly terminating parental rights after the birth parents have been provided or offered appropriate services and cannot or choose not to care for their special needs child;

(3) To establish a system which will identify each special needs child who is in need of adoption services, and which will monitor and assure that such services are provided;

(4) To identify persons willing to assume the responsibilities and accept the privileges of parenthood, and to encourage them to apply their parenting skills and desires on behalf of children with special needs who are in need of adoption:

(5) To provide financial assistance to make possible the adoption of any child with special needs;

(6) To assure that any reimbursement paid to any agency placing a special needs child for adoption is reasonable and does not exceed the cost of the services provided.

(c) *Construction.* The provisions of this Act shall be liberally construed to effectuate the purposes thereof.

Commentary to Section 101

The purpose of the Model Act for the Adoption of Children with Special Needs, hereafter referred to as the Model Act, address a number of serious problems in the delivery of adoption services by the States.

Many children with special needs who need adoption services are not receiving them. A primary purpose of the Act is to assure that adoption services are provided to these children, whether in institutional, foster, or other substitute care—formal or informal, public or voluntary. Often children with special needs to do not receive services because of State or agency failure to identify such children as adoptable. Such failure may be due to the lack of adequate case review or to obstacles which could be removed through legal or other action, particularly the termination of parental rights, or through interstate efforts to recruit adoptive parents for children formerly viewed as unadoptable. The identification of children with special needs in need of adoption, removal of obstacles to their adoption, and vigorous recruitment of appropriate adoptive families are all express purposes of the Act.

The costs associated with adopting a child with special needs may constitute a further obstacle to adoption. The Act provides for a financial subsidy to persons who adopt special needs children. In addition, the Model Act prohibits the charging of fees by agencies. Voluntary agencies who provide services to children with special needs and their adoptive parents will be reimbursed for these services by the State, since they receive no direct public support. *See* Model Act section 107 (hereinafter cited as M.A.)

5. *Changes to Section 403*

Section 403 is amended as follows:

Section 403. Adoption Assistance Agreement

(a) *Requirements of assistance agreement; when assistance payments may begin.* Before any adoption assistance payments may be made to the prospective adoptive parents who have been determined to be eligible for

adoption assistance, there must be a written agreement between the parent(s) entering into the assisted adoption and the State adoption administration through its designated agency. This agreement must be completed within one year after the final decree of adoption.

(1) Adoption assistance in individual cases may commence with the adoptive placement, or at the appropriate time after the interlocutory or final decree of adoption, and will vary with the needs of the child as well as the availability of other resources to meet the child's needs.

(2) The assistance may be for special services only or for money payments, and either for a limited period or for a long term, or for any combination of the foregoing. The amount of the time-limited or long-term adoption assistance may in no case exceed that which would be allowable from time to time for such child under foster family care, or in the case of a special service, the reasonable fee for the service rendered.

(b) *Annual certification of eligibility.* When adoption assistance is for more than one year, the adoptive parents shall present an annual certification that:

(1) The adopted child remains under their care; and

(2) The conditions which caused the child to be certified as eligible for adoption assistance continue to exist.

(c) *Continuing special need required for certification.* For the purpose of the annual recertification, the special need(s) which caused the child to be certified shall be deemed to continue to exist if the child was certified as eligible pursuant to:

(1) Subsections (a)(1) or (a)(2) of Section 402 of this Act, and the physical or mental disability or emotional disturbance has not been corrected; or

(2) Subsection (a)(3) of Section 402 of this Act, and the recognized high risk of physical or mental disease continues to exist; or

(3) Subsections (a)(4), (a)(5), or (a)(6) of Section 402 of this Act.

(d) *Duration of assistance; modification.* The adoption assistance agreement shall be continued in accordance with its terms but only so long as the adopted child is the legal dependent of the adoptive parents and the child's condition continues, except that in the absence of other appropriate resources provided by law and in accordance with regulations issued pursuant to this Act, it may be continued after the adopted child reaches majority. Termination of modification of the assistance agreement may be requested by the adoptive parents at any time.

(e) *Certification not affected by adoptive parents' residence or change of child's residence.* The Adoption Assistance Agreement shall remain in effect regardless of the State of which the adoptive parents are residents at any given time. The State which is a party to the Agreement shall remain responsible for provision of adoption assistance pursuant to the Agreement in cases where the adoptive parents and child move to another State while the agreement is effective.

6. *Changes to Commentary to Section 103.*

Commentary to Section 103 is amended as follows:

Section 103. Who May Be Adopted: Who May Place a Special Needs Child For Adoption

(a) *Who may be adopted.* Any minor who has been characterized a child with special needs may be adopted if the requirements of this Act are met, and such minor has not living parent or the parental rights of all living parents and of any putative father of such minor have been terminated according to the laws of this State or of another jurisdiction. Nothing in this Act shall be deemed to establish any new rights of putative fathers beyond those rights otherwise established under existing law.

(b) *Who may place a special needs child for adoption.* A special needs child may be placed for adoption by an agency only.

Commentary to Section 103

This section sets forth the principle that termination of parental rights should in every case precede a court decree of adoption. Because parental rights are terminated prior to adjudication of the adoption petition, the only consent required for a child's adoption under the Model Act is that if the guardian of the child's person or of an agency empowered to consent to the adiption of a special needs child following a formal relinquishment by the child's parent. It should be noted that although the termination of parental rights is a precondition to adoption, this provision does not make termination contingent upon the availability of an adoptive home.

There are three major reasaons for bifucating the adoption process. A twoStep adoption process provides the most beneficial framework for agency efforts on behalf of the children with special needs who have been in the foster care system for too long. Many of these children have been considered ineligible for adoption because their parents while not effectively exercising custodial rights of parental responsibilities, nonetheless refuse to consent to their adoption. The fact of termination of parental rights as a first step in the adoption process should help to determine what course of action is best for a child. If there are grounds for terminating parental rights, such a proceeding should be initiated without delay. In addition, when termination of parental rights can be accomplished prior to placement of the special needs child for adoption, the child and potential adoptive parents will benefit from knowing that the child is legally free for adoption.

7. *Changes to Commentary to Section 401*

Commentary to Section 401 is amended as follows:

Title IV. Adoption Assistance For Children With Special Needs

Section 401. Purpose and Administration

The State adoption administration shall establish an ongoing program of adoption assistance payments to make possible the adoption of every child with special needs who might not be adopted without financial assistance.

Commentary to Section 401

Adoption assistance may be viewed as a new program financed in part with Federal financial participation, or it may be seen as a continuation of a State's existing adoption subsidy program since some children with special needs may not be eligible for assistance payments matched with Federal funds. In such cases adoption assistance and services under this title may be funded from State foster care appropriations or other States sources.

The concept of adoption assistance for children with special needs is not new, although until the 1970's the idea was slow to gain acceptance in the face of the traditional idea that an adoptive family should assume full responsibility for the needs of the adoptee. Since the first adoption subsidy act was passed by the New York State Legislature in 1968 forty-nine States and two jurisdictions have enacted legislation to subsidize adoptions. The purpose of these laws is to provide financial assistance to assure the adoption of children whose handicap, age, minority background, or sibling group membership might otherwise prevent their placement and adoption.

It has been shown that the assistance concept can facilitate the adoption of children with special needs, and at the same time save communities a sizable portion of the expenditures which would

* * * * *

[FR Doc. 82-23459 Filed 8-25-82: 8:45 am]
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federal register

Thursday
August 26, 1982

Part VI

Department of Health and Human Services

Health Care Financing Administration

Professional Standards Review; Organizations (PSRO); Hospital Review

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Care Financing Administration

42 CFR Part 466

Professional Standards Review; Professional Standards Review Organizations (PSRO); Hospital Review

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

ACTION: Final regulation.

SUMMARY: This regulation revises § 466.10(c) of 42 CFR Part 466 on PSRO hospital review. Section 466.10(c), entitled "Effect of PSRO determination on services incident to hospitalization," currently provides that PSRO certification of a patient's admission or continued stay constitutes approval of all health care services provided or proposed to be provided during the certified stay unless the PSRO specifically reviews and disapproves a particular service. Likewise, this section provides that a PSRO adverse determination on a hospital admission or continued stay constitutes disapproval of all services incident to the patient's stay unless the PSRO specifically reviews and approves a particular service.

This section is being revised to provide that PSRO medical necessity determinations regarding ancillary and physician services incident to hospitalizations are conclusive for payment only after the PSRO has assumed responsibility for review of these services. This revision will clarify that review of inpatient ancillary and physician services by the Medicare intermediary or carrier must continue if the PSRO has not assumed responsibility for the review of such services. The revision also provides that a PSRO can make an adverse determination on an inpatient ancillary or physician service only if the PSRO has performed a review of the particular service.

DATE: These regulations are effective September 27, 1982.

FOR FURTHER INFORMATION CONTACT: Patricia A. Booth, (301) 594–5033.

Background

Establishment of Professional Standards Review Organizations (PSROs) was mandated by Congress in the 1972 Amendments to the Social Security Act (Pub. L. 92–603). The purpose of the PSRO program is to assure that health care services and items for which payment may be made in whole or in part under the Medicare program (Title XVIII of the Act) are medically necessary; conform to appropriate professional standards; and are delivered in the most effective, efficient, and economical manner possible consistent with quality care. Final regulations published in the **Federal Register** on June 4, 1979 (44 FR 32074) set forth a system of PSRO hospital review designed to achieve the purposes of the program. Section 466.10(c) of those regulations provides that PSRO certification of a patient's admission or continued stay in a hospital constitutes approval of all health care services provided or proposed to be provided during the certified stay unless the PSRO specifically reviews and disapproves a particular service. Likewise, this section provides that a PSRO's adverse determination on a hospital admission or continued stay constitutes disapproval of all services incident to the patient's stay unless the PSRO specifically reviews and approves a particular service. The phrase "services incident to hospitalization" refers to the ancillary and physician services delivered during a hospital stay.

Subsequent to the publication of the final PSRO hospital review regulations, PSROs and Medicare fiscal intermediaries and carriers expressed concern over the implementation of § 466.10(c) and, in particular, whether many PSROs currently have the resources to adequately implement the review of ancillary and physician services. In addition, by specifying that a PSRO determination on a hospital stay applies to all services incident to that hospitalization, § 466.10(c) appears to preclude the Medicare intermediaries and carriers from continuing to conduct claims review of inpatient ancillary or physician services, even when a PSRO has not assumed responsibility for review of these health care services. This contradicts the provisions of the PSRO statute and regulations which require that any review duties and functions not assumed by the PSRO are to be performed by the Medicare intermediaries and carriers in the manner otherwise provided for under the Social Security Act (Sections 1153 and 1154(b) of the Act; 42 CFR 463.28).

When the PSRO hospital review regulations were issued, it was anticipated that PSROs would assume responsibility for review of the health care services incident to hospitalization either simultaneously with the assumption of responsibility for review of admissions and continued stays or shortly thereafter. Changes within the PSRO program, primarily financial limitations, have forced PSROs to concentrate efforts on modifying admission and continued stay review activities to meet budget ceilings while still achieving the objectives of review. As a result, PSRO review of ancillary and physician services has not expanded as rapidly as anticipated.

PSRO assumption of review of these services was limited by PSRO funding and the now recognized complexity of establishing the necessary administrative mechanisms for linking PSRO determinations to the payment of physician and ancillary claims. HCFA does not want to preclude Medicare intermediary and carrier review of claims for inpatient ancillary and physician services, when the PSRO has not assumed review of these health services and is not likely to do so in the immediate future.

It has also become apparent that there is confusion about whether physician services related to surgical procedures or other major medical procedures are considered physician services incident to hospitalization. PSROs are required by the June 4, 1979 PSRO Hospital Review regulations to reivew the medical necessity of elective surgery and elective major procedures performed on hospitalized Medicare patients. The medical necessity for services of a physician in the performance of a major elective procedure is indistinguishable from the medical necessity for the procedure itself. Such physician services should be distinguished from the "services of physicians incident to hospitalization" which may include hospital visits, consultations, and the physicians' component of ancillary services. The PSRO assumes responsibility for the review of physician services rendered in the performance of major elective procedures when it assumes authority for hospital medical necessity/level of care review. It may, however, defer exercising its review authority for "incident to hospitalization services" until it is prepared to assume these responsibilities.

In addition, objections have been made concerning the automatic adverse determination requirements of § 466.10(c)(2). The specific question that has been asked is whether that section requires a PSRO to perform review of the services provided in conjunction with a hospital stay that is disapproved. As currently written, it might be assumed that the PSRO did not have to review the ancillary and physicians services related to a disapproved stay in order for those services to be disapproved. It was not HCFA's intent to permit a PSRO to make an adverse

determination without performing a review of the services. Permitting the PSRO to make an adverse determination without a review of the services would be inconsistent with the intent of the PSRO statute and the hospital review regulations. In addition, adverse determinations made without the review of the particular services would be inequitable to beneficiaries, because there would be no factual or other basis upon which a beneficiary could appeal the denial.

Summary of the Regulation

This regulation amends 42 CFR Part 466 by revising § 466.10(c), entitled "Effect of PSRO determinations on services incident to hospitalization," to provide that PSRO medical necessity determinations regarding the ancillary and physician services incident to hospitalizations are conclusive for payment only after the PSRO has assumed responsibility for review of these health services. This amendment makes clear that the Medicare intermediaries and carriers may continue to perform review activities that were ongoing prior to the publication of the final PSRO hospital review regulations on June 4, 1979. The revision will also provide that the PSRO must review and disapprove the particular service in order for a PSRO to make an adverse determination on a service incident to a disapproved hospitalization. This change will ensure that PSRO adverse determinations on ancillary and physician services occur only if the PSRO has reviewed the particular services.

This revision will also apply to review activities approved under 42 CFR § 466.15, including automatic certification programs. Automatic certifications of hospital admissions and continued stays do not apply to the ancillary and physician services provided in conjunction with those hospitalizations until the PSRO assumes responsibility for review of these incident health care services. Once a PSRO has assumed the review responsibility for a service incident to hospitalization, it can determine whether an automatic certification of a hospital stay shall also apply to the ancillary or physician services.

All PSRO functions must be performed in accordance with a formal plan approved by HCFA. Any changes in PSRO functions must be submitted in an amendment to the formal plan. The assumption of review of inpatient ancillary and physician services is considered a change in PSRO functions. Consequently, an amendment to the formal plan must be submitted to HCFA for approval. The revision to §466.10(c) reiterates this requirement by providing that assumption of review of services incident to hospitalization must be pursuant to a plan approved by the Secretary under 42 CFR 462.6(b)(6) or 462.6(c)(1).

When the Medicare intermediary or carrier maintains the responsibility for the medical necessity review of inpatient ancillary or physician services, any reviews and appeals of intermediary or carrier decisions shall be performed as provided for under Sections 1842(b)(3)(C) and 1869(b) of the Act. Review and appeals as provided for under Section 1159 (a) and (b) of the Act are not applicable until the PSRO assumes responsibility for review of the services. HCFA recognizes, for example, that in the case where the PSRO has assumed only the responsibility for review of hospital admissions and continued stays, a PSRO adverse determination on the need for continued hospital care and a medical necessity denial by the carrier for physician services delivered during the same hospital stay would require that two separate appeal processes be conducted for medical necessity issues related to a single case. The same facts concerning the patient's medical needs may play a role in both the PSRO and carrier decisions. While this obviously poses an inconvenience, the provisions of the Social Security Act are such that separate appeal processes are required. Once the PSRO assumes review of the inpatient ancillary and physician services, all reviews and appeals of medical necessity decisions are to be conducted under the provisions of the PSRO statute. It should be noted, however, that even when PSRO responsibility for all hospital review is assumed, appeals on issues outside of PSRO jurisdiction, such as eligibility and the amount of payment, still must be handled through the Medicare intermediary or carrier appeals processes.

Waiver of Notice of Proposed Rulemaking

We have determined that good cause exists for publication of this rule without a notice and comment period. A notice and comment period for this regulation would be contrary to the public interest because of the immediate need to ensure that payment under the Medicare program is made only for health care services that are medically necessary. The Social Security Act and the PSRO regulations require that intermediaries and carriers be responsible for ensuring review of services for medical necessity until the PSRO assumes such review (Sections 1153, and 1154(b) of the Act; 42 CFR 463.28). The current PSRO hospital review regulations could be interpreted to prohibit review of any inpatient ancillary and physician services by intermediaries and carriers once a PSRO assumes some, but not all, aspects of hospital review. PSROs and Medicare intermediaries and carriers are aware of the ambiguity in the existing regulations and are uncertain of their responsibility to conduct review. Situations are occurring in which the PSRO has not assumed review for certain services furnished during hospitalization. Since it is unclear whether Medicare intermediaries and carriers are responsible for such review, the Department has no sure mechanism for denying payment for services that are not medically necessary. The revised regulations must be issued as quickly as possible to eliminate uncertainty and to ensure that the review of inpatient ancillary and physician services is performed and, when necessary, payment denied.

Impact of Executive Order 12291 and Regulatory Flexibility Act

The Secretary has determined, in accordance with Executive Order 12291, that the final rule does not constitute a "major rule" because it will not: have an annual effect on the economy of $100 million or more; result in a major increase in costs or prices for consumers, any industries, any governmental agencies, or any geographic regions; or have significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or import markets.

As a result of this regulation, it is not expected that there will be substantial increases or decreases in the present expenditure levels for claims review by the Medicare intermediaries and carriers or for allowable claims to the Medicare program.

The Secretary certifies, pursuant to Section 605(b) of the Regulatory Flexibility Act (Pub. L. 96–354), that the regulation will not have a significant economic impact on a substantial number of small entities. The reason for the Secretary's negative certification is that although PSROs and hospitals are considered small entities, this regulation will not have a significant economic impact upon them.

List of Subjects in 42 CFR Part 466[1]

Appeals, Delegation, Denials, Grant-in-Aid program—health, Health care, Health facilities, Health professions, Hospitals, Hospital review, Norms/criteria/standards, Physicians, Professional Standards Review Organizations (PSRO), Reconsiderations.

PART 466—PSRO HOSPITAL REVIEW

42 CFR 466.10 is amended by revising paragraph (c) to read as follows:

§ 466.10 General requirements for concurrent review.

* * * * *

(c) *Effect of PSRO determination on services incident to hospitalization.* (1) Once a PSRO has assumed responsibility for the review of a health care service incident to hospitalization pursuant to a plan approved by the Secretary under 42 CFR 462.6(b)(6) or 462.6(c)(1), a PSRO certification of a patient's admission or continued stay will constitute approval of that health care service unless the PSRO specifically reviews and disapproves the particular service. A PSRO adverse determination of a patient's admission or continued stay will not constitute disapproval of a health care service provided, or proposed to be provided, during the patient's hospital stay unless the PSRO specifically reviews and disapproves the particular service.

(2) If a PSRO has not assumed responsibility for the review of services incident to hospitalization, then this function shall be performed in the manner and to the extent otherwise provided for under the Act.

* * * * *

(Secs. 1102, 1153, 1154, and 1155 of the Social Security Act (42 U.S.C. 1302, 1320c–2, 1320c–3, and 1320c–4)).

(Catalog of Federal Domestic Assistance Programs No. 13.714—Medical Assistance Programs; 13.773 Medicare-Hospital Insurance; 13.774 Medicare-Supplementary Medical Insurance.

Dated: March 29, 1982.

Carolyne K. Davis,

Administrator, Health Care Financing Administration.

Approved: June 2, 1982.

Richard S. Schweiker,

Secretary.

[FR Doc. 82-23452 Filed 8-25-82; 8:45 am]

BILLING CODE 4120-03-M

[1] HCFA is providing this list of subjects in compliance with 1 CFR 18.20. That regulation requires agencies to include a list of index terms for each CFR Part published in the **Federal Register** beginning April 1, 1982.

federal register

Thursday
August 26, 1982

Part VII

Office of Management and Budget

Budget Rescissions and Deferrals; Cummulative Report

OFFICE OF MANAGEMENT AND BUDGET

Budget Rescissions and Budget

To The Congress of the United States:

In accordance with the Impoundment Control Act of 1974, I herewith report a new proposal to rescind a total of $2.3 million, a new deferral of $2.7 million, and revisions to two deferrals previously reported increasing the amounts deferred by $4.8 million.

The rescission proposal affects the Board for International Broadcasting. The deferrals affect teh Veterans' Administration, Interstate Commerce Commission and the President's Commission for the Study of Ethical Problems in Medicine and Biomedical and Behavioral Research.

The details of the rescission proposal and the deferrals are contained in the attached reports.

Ronald Reagan.

The White House,
August 23, 1982.

BILLING CODE 3110-01-M

CONTENTS OF SPECIAL MESSAGE
(in thousands of dollars)

Rescission #	Item	Budget Authority
R82-31	Board for International Broadcasting Grants and expenses	2,334
	Subtotal, rescission proposal	2,334

Deferral #	Item	Budget Authority
D82-140A	Veterans Administration Construction, major projects	61,995
D82-252	Interstate Commerce Commission Payments for directed rail service	2,700
D82-221A	President's Commission for the Study of Ethical Problems in Medicine Salaries and expenses	589
	Subtotal, deferrals	65,284
	Total, rescission proposal and deferrals	67,618

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SUMMARY OF SPECIAL MESSAGES
FOR FY 1982
(in thousands of dollars)

	Rescissions	Deferrals
Seventeenth special message		
New items	2,334	2,700
Change to amount previously submitted	---	4,822
Effect of seventeenth special message	2,334	7,522
Previous special messages	7,732,127	8,200,025
Total amount proposed in special messages	7,734,461	8,207,547

1/ This amount represents budget authority except for $20,922 thousand in one general revenue sharing deferral of outlays only (D82-23A).

Rescission Proposal No: R82-31

PROPOSED RESCISSION OF BUDGET AUTHORITY
Report Pursuant to Section 1012 of P.L. 93-344

Agency: Board for International Broadcasting
Bureau:
Appropriation title & symbol:
Grants and Expenses*
9521145

New budget authority (P.L. 97-161): $ 86,519,000 1/
Other budgetary resources: —
Total budgetary resources: 86,519,000
Amount proposed for rescission: $ 2,333,694

OMB identification code: 95-1145-0-1-154
Grant program: ☐ Yes ☒ No

Legal authority (in addition to sec. 1012):
☒ Antideficiency Act
☒ Other 22 U.S.C. 2871-2877

Type of account or fund:
☒ Annual
☐ Multiple-year _____ (expiration date)
☐ No-year

Type of budget authority:
☒ Appropriation
☐ Contract authority
☐ Other _____

Justification: The Board for International Broadcasting is authorized by the Board for International Broadcasting Act of 1973 (22 U.S.C. 2871-2877) to provide assistance to Radio Free Europe/Radio Liberty, Inc. (RFE/RL), a private nonprofit radio broadcasting organization. Section 8(b) of the Act states "The Director of the Office of Management and Budget shall place in reserve and inform the Congress of any amount appropriated under this section which, because of upward fluctuations in foreign currency exchange rates, is in excess of the amount necessary to maintain the budgeted level of operation for RFE/RL, Incorporated."

Public Law No. 97-161 appropriated to the Board for 1982, $86,519,000. The Board, in accordance with regulations established jointly by the Board and the Office of Management and Budget, reported that as of the end of the third quarter of 1982 the net currency exchange gains totaled $2,333,694. Because the funds resulting from these net exchange rate gains are not required to maintain the congressionally approved 1982 operating level of RFE/RL, they are proposed for rescission. This rescission is proposed in accordance with the Antideficiency Act (31 U.S.C. 665).

Estimated Effects: No programmatic effect results from this proposal because the funds resulting from these net exchange rate gains are not required to maintain the congressionally approved 1982 operating level of RFE/RL.

Outlay Effects: (in millions of dollars)

FY 82 Outlay Estimate Without Rescission	FY 82 Outlay Estimate With Rescission	Outlay Savings 1982	1983	1984	1985
86.9	84.6	2.3	---	---	---

1/ In addition, $3,394,674 is not available pursuant to P.L. 94-350.
* This account was the subject of another FY 82 deferral (D82-248).

R82-31

Board for International Broadcasting

Grants and Expenses

Of the funds provided for "Grants and Expenses" for fiscal year 1982 in P.L. 97-161, $2,333,694, are rescinded.

D82-140A

Supplementary Report

Report Pursuant to Section 1014(c) of P.L. 93-344

This report revises Deferral No. D82-140, transmitted to the Congress on October 23, 1981.

This revision reflects a change in the amount deferred as of August 6, 1982 from $57,500,000 to $61,995,000. The deferral increase of $4,495,000 is the result of changes in gravesite sizing and site development requirements at the Indiantown Gap National Cemetary.

Deferral No: D82-140 A

DEFERRAL OF BUDGET AUTHORITY

Report Pursuant to Section 1013 of P.L. 93-344

Agency: Veterans Administration	New budget authority (P.L. 97-101): $378,338,000 *
Bureau:	Other budgetary resources: 780,594,131 *
Appropriation title & symbol: Construction, Major Projects 36X0110 1/	Total budgetary resources: 1,158,932,131 *
	Amount to be deferred: Part of year: $; Entire year: 61,995,000 *
OMB identification code: 36-0110-0-1-703	Legal authority (in addition to sec. 1013): [X] Antideficiency Act * [ ] Other
Grant program: [ ] Yes [X] No	
Type of account or fund: [ ] Annual [ ] Multiple-year (expiration date) [X] No-year	Type of budget authority: [X] Appropriation [ ] Contract authority [ ] Other

* Justification: This account provides funds for the construction and renovation of VA facilities where the project cost exceeds $2 milliion. Amounts shown reflect a decision to defer contract awards through FY 1982 for Chillicothe, Ohio, phased facility replacement, Palo Alto, California surgical addition, East orange, New Jersey, facility renovation and Phase II of the Indiantown Gap National Cemetery. The additional amounts deferred are for site development only. These funds are not required during the remainder of this fiscal year. This action is taken pursuant to the Antideficiency Act (31 U.S.C. 665).

* Estimated Effects: This deferral action may result in the delay of projects while these construction projects are being reevaluated. The additional deferral action will not have any programmatic effects as use of the funds is not anticipated for the duration of the fiscal year.

*Outlay Effect: This deferral action will have the effect of shifting outlays by fiscal year as follows:

-- 1982 into 1983 $7,072,000
-- 1983 into 1984 $32,827,000
-- 1984 into 1985 $42,945,000

* Revised from previous report.

1/ This account was the subject of FY 1982 deferrals D82-140 and D82-141.

Deferral No: D82-252

DEFERRAL OF BUDGET AUTHORITY

Report Pursuant to Section 1013 of P.L. 93-344

Agency: Interstate Commerce Commission	New budget authority (P.L. 97-216): $8,000,000
Bureau:	Other budgetary resources: 619,923
Appropriation title & symbol: Payments for directed rail service 30X0103	Total budgetary resources: 8,619,923
	Amount to be deferred: Part of year: ; Entire year: 2,700,000
OMB identification code: 30-0100-0-1-401	Legal authority (in addition to sec. 1013): [X] Antideficiency Act [ ] Other
Grant program: [ ] Yes [X] No	
Type of account or fund: [ ] Annual [ ] Multiple-year (expiration date) [X] No-year	Type of budget authority: [X] Appropriation [ ] Contract authority [ ] Other

Justification: The Interstate Commerce Commission received $8 million in the Urgent Supplemental Appropriations Act, 1982 to pay existing liabilities incurred by the Kansas City Terminal Railway Co. while performing directed rail service over the lines of the Rock Island Railroad and to continue accounting operations to their conclusion in March 1983. Approximately $5.3 million is needed in FY 1982 to: (1) pay verified existing liabilities of $3.1 million; (2) pay potential liabilities of an additional $1.8 million for withheld retroactive pay increases and vacation pay of employees; and (3) pay an estimated $400,000 in continuing accounting operating costs. The remaining $2.7 million will not be needed until FY 1983. This deferral action is consistent with congressional intent to provide no year funding for this project and is taken under the provisions of the Antideficiency Act (31 U.S.C 665).

Estimated Effects: This deferral action will have no programmatic effect. All existing and potential FY 1982 liabilities of the directed rail carrier will be met and accounting operations will continue.

Outlay Effect: This deferral action will have no effect on FY 1982 outlays.

D82-221A

Supplementary Report

Report Pursuant to Section 1014(c) of P.L. 93-344

This report revises Deferral No. D82-221, transmitted to the Congress on January 22, 1982.

This revision reflects a change in the amount deferred from $262,000 to $589,000. The increase is for amounts needed to cover costs in FY 1983 incurred in the close-out of the Commission.

Deferral No: D82-221A

DEFERRAL OF BUDGET AUTHORITY
Report Pursuant to Section 1013 of P.L. 93-344

Agency President's Commission for the Study of Ethical Problems in Medicine Bureau	New budget authority (P.L. 97-161;97-216) $1,749,000 * Other budgetary resources ____
Appropriation title & symbol Salaries and Expenses 4823800	Total budgetary resources 1,749,000 * Amount to be deferred: Part of year ____ Entire year 589,000 *
OMB identification code: 48-3800-0-1-551	Legal authority (in addition to sec. 1013): ☒ Antideficiency Act ☐ Other ____
Grant program ☐ Yes ☒ No	
Type of account or fund: ☐ Annual ☒ Multiple-year December 31, 1982 (expiration date) ☐ No-year	Type of budget authority: ☒ Appropriation ☐ Contract authority ☐ Other ____

* Justification: The President's Commission for the Study of Ethical Problems in Medicine was established by P.L. 95-622 to study issues such as protection of human subjects of research and definitions of death. The Commission will make a final report of its findings to the President and the Congress upon completion of its study by December 1982. The amount to be deferred, $589,000 is necessary to cover FY 1983 obligations incurred during the close-out of the Commission. This deferral action is taken in accordance with the Antideficiency Act (31 U.S.C. 665).

Estimated Effects: This deferral action has no impact on FY 1982 activity and provides for the availability of FY 1983 funds to close-out the Commission.

Outlay Effect: This deferral has no impact on FY 1982 outlays.

* Revised from previous report.

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federal register

Thursday
August 26, 1982

Part VIII

Department of Health and Human Services

Office of Human Development Services

Native American Programs

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Office of Human Development Services

45 CFR Part 1336

Native American Programs

AGENCY: Office of Human Development Services (HDS), HHS.

ACTION: Proposed rule.

SUMMARY: The Office of Human Development Services is proposing to revise its regulations for the Native American Progams. These changes revise and simplify the appeals process and propose new management and administrative procedures which will reduce reporting and paperwork requirements. These proposals also remove unnecessary provisions and revise the language of the current regulations for clarity.

DATE: Consideration will be given to written comments received by November 24, 1982. Agencies or organizations are requested to submit their comments in duplicate. Comments will be available for public inspection beginning approximately two (2) weeks after publication in Room 5300, 330 Independence Avenue SW., Washington, D.C. on Monday through Friday of each week from 9:00 a.m. to 5:00 p.m. (area code 202/245–7727).

ADDRESS: Address comments to: Commissioner, Administration for Native Americans, Room 5300, HHS (North) Building, 330 Independence Avenue SW, Washington, D.C. 20201.

FOR FURTHER INFORMATION CONTACT: Mr. David Litton, Acting Director, Policy Planning and Budget Division, Administration for Native Americans, Room 5300, HHS (North) Building, 330 Independence Avenue SW., Washington, D.C. 20201, Telephone: (202) 245–7727.

SUPPLEMENTARY INFORMATION: Current regulations for the Administration for Native American (ANA) are codified at 45 CFR Part 1336. The last time the regulations were substantially modified was January 19, 1977. The current regulations, published April 24, 1979 (44 FR 24073), made technical and editorial changes to conform ANA regulations to the Departmental rules on Administration of Grants, 45 CFR Part 74.

We are proposing a number of administrative changes which we believe will improve the management and administration of the program and reduce unnecessary reporting and paperwork burdens. These changes include: an improved appeals process which will utilize the Departmental Grant Appeals Board and provide for a simpler, less expensive, and more objective appeals review procedure; a multi-year planning cycle for some projects thus reducing the volume of paperwork required for annual continuation applications; and a revision of the policy related to waiving the non-Federal matching share. We have also proposed specific criteria for waiving the maintenance of effort requirement and removed unnecessary provisions. We have also revised the organization of the regulations for clarity and deleted provisions that merely repeat the law. The views of the Native American community on these issues were solicited in public meetings and are reflected in these proposed regulations.

The following is a section-by-section summary of the changes we are proposing.

Part 1336—Native American Programs

The purpose of these regulations is to implement the Native American Programs Act (42 U.S.C. 2991–2991h), which is Title VIII of the Head Start, Economic Opportunity and Community Partnership Act of 1974, Pub. L. 93–644, as amended by Pub. L. 95–568 and Pub. L. 97–35.

This Act enables ANA to provide grants and contracts to Indian tribal governments and other organizations serving Indians, Alaskan Natives, and Native Hawaiians, in order to promote economic and social self-sufficiency for Native Americans. Section 803 of the Act provides for financial assistance grants. Section 804 provides for training and technical assistance projects, and Section 805 provides for research, demonstration, and pilot projects in support of the purposes of the Act.

In addition to complying with these regulations, grantees and contractors must comply with the appropriate statutory requirements; with other HHS grants adminstration regulations published in Title 45 of the Code of Federal Regulations; and with provisions of HHS and HDS grants administration manuals.

Subpart A—Definitions

§ 1336.10 Definitions.

This section defines only those terms in the text which require explanation. Consequently, some terms previously defined are deleted and definitions for some terms are revised and some new definitions are added.

The terms whose definitions are revised are "Alaskan Native" and "American Indian." Specific reference to Tsimshian Indians is removed from the definition of Alaskan Native to simplify the definition without changing its meaning. Tsimshian Indians who are Alaskan Natives will continue to be eligible to participate in ANA programs. The definition of "American Indian" is revised to refer to tribe, group, or band, instead of simply to community. This revision is made to be consistent with law and practice. Whenever possible, use of the broader term "Native American" is substituted for Indian, Alaskan Native, and Native Hawaiian.

New definitions included are"recipient", "project period", and "applicant". The term "recipient" replaces the term "grantee" in these proposed regulations in order to include recipients of funds under cooperative agreements, as well as grants. The term "project period" is added to clarify the distinction between the project period and the budget periods into which project periods are divided. The term "applicant" is added to clarify its meaning where it is used in the regulations.

The following terms are deleted because they are not used in the proposed rules or do not need to be defined: Alaskan Native Regional Corporation, Alaskan Native Village, Community or Service Area, Economic Development, Financial Assistance, Governing Body of an Indian Tribe or Alaskan Native Village, Hawaiian Homestead, HDS, Indian Organization, Indian reservation, major disaster, open and public election, responsible HHS official, Secretary and Urban Indian Center.

Subpart B—Purpose of the Native American Program

This subpart will not be revised.

Subpart C—Native American Projects

§ 1336.30 Eligibility.

This section states the general criteria of eligibility for organizations seeking financial assistance from ANA. Specific information on eligibility and types of projects supported is published in Program Announcements in the **Federal Register**. Therefore, the listing of types of projects currently supported and located in 45 CFR 1336.11, 1336.12 and in Subparts D and E of Part 1336 are deleted from these proposed regulations.

§ 1336.31 Project approval procedures.

Current regulations require recipients to submit annual work plans for all projects including continuation projects. In § 1336.31, we propose to require that recipients submit work plans based on

the time period specified by the Commissioner in the program Announcement. Such project periods will vary depending on the scope or purposes of the project. In general, however, work plans may be submitted for longer than one year, thereby reducing the amount of paperwork required.

Section 803 provides for financial assistance to Native American projects directed at social and economic self-sufficiency. A decision will be made on the authorized level of funding for each recipient based upon past performance and the application's conformance with ANA program purposes. A recipient will only be entitled to funds when it receives a formal "Notice of Financial Assistance Awarded". These "Notices" are issued for individual one-year budget periods. ANA anticipates that the revised planning requirement will improve program management and promote longer-range planning for community projects.

§ 1336.32 Grants.

This new section provides additional information regarding budget periods and application requirements.

Subpart D—Evaluation

§ 1336.40 General.

Much of the current regulation in § 1336.40 repeats information contained in the Act and therefore has been deleted from the proposed regulation. This section continues to require recipients to provide sufficient information in performance reports and continuation applications to enable ANA to determine the extent to which recipients meet the ANA project evaluation standards.

Subpart E—Financial Assistance Provisions

§ 1336.50 Financial and administrative requirements.

Section 1336.50(a) lists Departmental regulations that generally apply to all financial assistance awarded by the Department. 45 CFR Parts 86 and 90 have been added to that list.

The current regulation in § 1336.50(b)(1)(i) provides a deviation from 45 CFR 74.62 (formerly 45 CFR 7461(h)(3)) to require annual audits. We propose to withdraw this deviation and to require recipients to comply instead with the Departmental requirement at 45 CFR 74.62 for an organization-wide audit every two years. This will be more economical than the present annual project audit requirement and will place more responsibility on the recipients to maintain adequate financial management systems. The current regulation at § 1336.51 requires the Department to notify State and local officials when financial assistance is provided to organizations located in areas under their jurisdiction. The Department will continue to notify these officials in accordance with the legislation and with OMB Circular A-95. However, we propose to delete the current language in § 1336.51 because it is unnecessary.

Section 1336.50(b)(1) clarifies that recipients may use either cash or in-kind contributions to meet the matching share requirement.

The current regulation at § 1336.52(b) specifies three criteria which make an applicant eligible to request a waiver of the 20% matching share requirement as authorized by Section 803(b) of the Act. These three criteria are written in general non-specific terms and they tend to exclude urban and rural non-reservation recipients from reasonable access to an increase in their Federal share. Currently, the financial inability of the applicant organization to match the Federal share is the essential factor considered by ANA in reviewing requests for waivers. Therefore, we propose to replace the current criteria with requirements providing equitable access to all applicants. The proposed criteria require applicants to provide documentary evidence that they do not have the necessary resources and are unable to obtain them from other funding sources. In addition, ANA must determine that granting a waiver will not compromise other program efforts. Applicants operating in a poverty area or in an area struck by a natural disaster which affects their ability to provide matching funds will continue to receive special consideration if they request a waiver.

Section 803(c) of the Act requires that activities carried out under ANA supported projects be in addition to, and not in substitution for, comparable activities previously carried out without Federal assistance. The Act states that this requirement may be waived in accordance with objective criteria. The proposed § 1336.50(c) establishes the criteria for waiving this "maintenance of effort" requirement.

We propose to add paragraph (e) to § 1336.50 in order to clarify that the purchase of real property is not an allowable cost for ANA funding purposes, since such expenditures are not authorized by the legislation.

Section 1336.50(f) is added to reflect the changes in Federal Management Circular 74-4, as amended (43 FR 50977; November 1, 1978). This Circular states that the portion of salaries and expenses of the Office of the Chief Executive of federally recognized Indian tribes directly attributable to managing and operating programs is an allowable expense under Federal grants and contracts.

Current regulations in § 1336.53(b) outline recipient personnel administration requirements. These will be removed to provide greater flexibility to recipients in managing their program operations. Subsections relating to conflict of interest and nepotism will be removed because these issues are adequately addressed in OMB Circulars A-102 and A-110.

We recognize that these circulars are more limited in scope (i.e., concern procurement requirements) compared to the current regulations which deal with personnel administration generally. However, we believe, based on our experience with the program, that current requirements are unnecessary. We believe that matters concerning conflict of interest and nepotism (apart from those covered in Circulars A-102 and A-110) should be dealt with by local rules and requirements. Further, abuses that may occur that are criminal are covered in other regulations and laws.

§ 1336.51 Project period.

This new section explains that each Notice of Financial Assistance Awarded will specify a project period for which support is intended.

§ 1336.52 Appeals.

The ANA appeals procedure is currently in § 1336.54, which incorporates by reference the Head Start appeals procedures at 45 CFR Part 1303, Subparts A, C, and D.

Those regulations establish procedures for recipient appeals of suspension and termination and of denial of refunding. We believe that this process is costly and complex both for recipients and ANA. For example, in the case of termination or denial of refunding, they provide for a hearing before an administrative law judge, if possible. A stenotype clerk to transcribe the proceedings must be hired. ANA is also required to pay attorney's fees and travel plus travel expenses for two grantee representatives in connection with the hearing. After a lengthy, costly, complex process, the decision of the presiding officer is an initial decision subject to the final decision of the Commissioner. An initial decision may be appealed to the Commissioner, who may sustain or overrule it and issue a final decision.

We are proposing that the HHS Departmental Grant Appeals Board, under the procedures in 45 CFR Part 16, review all ANA recipient appeals of termination, denial of refunding, or suspension for more than 30 days. The Departmental Grant Appeals Board was created specifically for the purpose of resolving disputes between recipients and the Department. This change will provide for appeal above the level of Commissioner, and allows recipients the opportunity to obtain a hearing from an organization independent of ANA.

We propose to remove § 1336.60 because the Indian preference provisions repeat the language of section 7(b) of Public Law 93-638. The law states that Federal contracts or grants to Indian organizations or for the benefit of Indians shall require that preference be given to Indians in training, employment, and the award of subcontracts of subgrants. Those provisions will continue to apply to ANA recipients serving Indians, but need not be repeated in regulations. The Department has proposed rules to implement the law Department-wide (46 FR 51410; October 20, 1982).

Redesignation Table

The following redesignation table is included as an aid to commenters. It shows the sections of the proposed rules that correspond to sections in the current rules:

Current section	Title	Proposed action
Subpart A	Definitions	No change.
1336.1	Definitions	Redesignated 1336.10.
Subpart B	Purpose of the Native American Program.	No change.
1336.5	Program Purpose	Redesignated 1336.20.
Subpart C	Native American Projects.	No change.
1336.10	Eligibility	Redesignated 1336.30.
1336.11	Types of Projects supported.	Removed.
1336.12	Approval of financial assistance.	Removed.
None	Project approval procedures.	Add 1336.31.
None	Grants	Add 1336.32.
Subpart D	Training and Technical Assistance.	Removal.
Subpart E	Research, Demonstration and Pilot Projects.	Removed.
Subpart F	Evaluation	Redesignated Subpart D.
1336.40	General	No change.
Subpart G	Financial Assistance Provisions.	Redesignated Subpart E.
1336.50	General	Removed.
1336.51	Notification of State and local officials.	Removed.
1336.52	Cost sharing and matching.	Removed.
1336.53	Financial and administrative requirements.	Redesignated 1336.50.
None	Project period	Add 1336.51.
1336.54	Appeals	Redesignated 1356.52.
Subpart H	Indian Preference Provisions.	Removed.

Regulatory Flexibility Act

The Secretary certifies, pursuant to the Regulatory Flexibility Act (5 U.S.C. 605(b)) that the regulation proposed in this Notice of Proposed Rulemaking will not have a significant economic impact on a substantial number of small entities. The proposed regulation simplifies and clarifies the current rule and proposes changes to reduce reporting and paperwork requirements.

Executive Order 12291

The proposed rule does not constitute a "major rule" because it only simplifies and clarifies the current rule and proposes changes to reduce reporting and paperwork requirement and, therefore, will not result in:

(1) An annual effect on the economy of $100 million or more;

(2) A major increase in costs or prices for consumers, individual industries, Federal, State or local government agencies, or geographic regions; or

(3) Significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

Paperwork Reduction

Under the Paperwork Reduction Act of 1980, the Department is required to submit to the Office of Management and Budget for approval any recordkeeping and/or reporting requirements imposed on the public.

The Administration for Native Americans anticipates imposing revised specific reporting requirements related to the following sections of this Notice of Proposed Rulemaking:

Subpart	Reporting requirements	Annual burden hours
Subpart C—Native American Projects.	1a. Application for financial assistance Part IV of Standard Form 424 implementing the OMB Circular A-102 process (includes 1 to 3 year work plan for financial assistance).	9,000
	1b. Continuation (renewal) applications (budget request and Project Progress Report; item 3 below).	480
Subpart D—Evaluation 1336.40 General.	2. ANA Evaluation Instrument.	960
	3. Project Progress Report.	1,760

These requirements total 12,200 hours for all ANA recipients. This compares with 15,750 hours currently estimated under standard Departmental grant application and reporting requirements. This reduction is expected to occur as a result of the simplified continuation application process for multi-year projects, and simplified project progress reporting and evaluation requirements.

Description of New Reporting Requirements

A new comprehensive ANA program information evaluation system is scheduled for completion during the latter half of fiscal year 1982. This new system will employ simplified forms which we believe can be prepared by the applicant with minimum time and effort. Data collected at the point of application will be the basis for subsequent evaluation of the projects funded. Narrative project progress reports will be an integral part of this carefully integrated reporting system. Only data for which there is a specific, well-justified need will be collected. Data essential to meeting ANA's legislative mandate to evaluate its program will be determined and collected via user-oriented instruments. The instruments are briefly described below:

Application Instrument will consist mainly of simple tables for presenting essential data on the organizational capabilities of the applicant organization, together with socio-demographic data reflecting the needs, goals, and objectives of the Native American group in terms capable of being evaluated. The instrument will include simplified instructions and step-by-step guidance to enable the applicant organization to delineate its needs and capabilities in terms which will allow a prompt, soundly-based ANA decision as to funding. A narrative section allows the applicant to describe the objectives and activities planned for the project period.

Evaluation Instrument will be designed to guide the grantee through a

process of self-evaluation of accomplishments against goals and objectives specified in the application. Frequency will be one per year.

Project Progress Reports must be prepared twice a year in a narrative format by the grantee on achievement of the objectives funded by ANA for the year.

The clearance packages for the new reporting requirements and financial assistance forms will be transmitted to OMB for approval.

Grantees will not be required to use these forms until they are approved by OMB.

List of Subjects in 45 CFR Part 1336

Administrative practice—HDSO–ANA, Grant programs—Indians, Native Americans, Research.

Dated: June 1, 1982.

Dorcas R. Hardy,

Assistant Secretary for Human Development Services.

Approved: July 30, 1982.

Richard S. Schweiker,

Secretary for Health and Human Services.

For the reasons set out in the preamble, it is proposed that all the current regulations in Part 1336 of Title 45 of the Code of Federal Regulations be removed, and that the following regulations be added to that Part:

PART 1336—NATIVE AMERICAN PROGRAMS

Subpart A—Definitions

Sec.
1336.10 Definitions.

Subpart B—Purpose of the Native American Program

1336.20 Program purpose.

Subpart C—Native American Projects

1336.30 Eligibility.
1336.31 Project approval procedures.
1336.32 Grants.

Subpart D—Evaluation

1336.40 General.

Subpart E—Financial Assistance Provisions

1336.50 Financial and administrative requirements.
1336.51 Project period.
1336.52 Appeals.

Authority: 88 Stat. 2324 (42 U.S.C. 2991, et seq.).

Subpart A—Definitions

§ 1336.10 Definitions.

For the purposes of this Part, unless the context otherwise requires:

Act means the Native American Programs Act of 1974, as amended (42 U.S.C. 2991 et seq.).

Alaskan Native means a person who is an Alaskan Indian, Eskimo, or Aleut, or any combination thereof. The term also includes any person who is regarded as an Alaskan Native by the Alaskan Native Village or group of which he or she claims to be a member and whose father or mother is (or, if deceased, was) regarded as an Alaskan Native by an Alaskan Native Village or group. The term includes any Alaskan Native as so defined, either or both of whose adoptive parents are not Alaskan Natives.

American Indian or Indian means any individual who is a member or a descendant of a member of a North American tribe, band, or other organized group of native people who are indigenous to the Continental United States, or who otherwise have a special relationship with the United States or a State through treaty, agreement, or some other form of recognition. This includes any individual who claims to be an Indian and who is regarded as such by the Indian tribe, group or bank of which he or she claims to be a member.

ANA means the Administration for Native Americans within the Office of Human Development Services.

Applicant means an organization which has applied for financial assistance from ANA.

Budget period means the inteval of time into which a project period is divided for budgetary and funding purposes, and for which a grant is made. A budget period usually lasts one year in a multi-year project period, but it may also coincide with the project period.

Economic and social self-sufficiency means the ability of Native Americans to define and achieve their own economic and social goals.

Indian tribe means a distinct political community of Indians which exercises powers of self-government.

Native American means American Indian, Indian, Native Hawaiian, and Alaskan Native, as defined in this section.

Native Hawaiian means any individual, any of whose ancestors were, prior to 1778, natives of the area which consists of the Hawaiian Islands.

Project period means, for discretionary grants and cooperative agreements, the total time for which the recipient's project or program is approved for support, including any extension, subject to the availability of funds.

Recipient means a public or private nonprofit organization which has applied for financial assistance, and to which financial assistance is awarded under this Act. The term includes grantees and recipients of cooperative agreements.

Subpart B—Purpose of the Native American Programs

§ 1336.20 Program purpose.

The purpose of the Native American Programs authorized by the Native American Programs Act of 1974 is to promote the goal of economic and social self-sufficiency for Native Americans.

Subpart C—Native American Projects

§ 1336.30 Eligibility.

Financial assistance under this subpart may be made to public and private nonprofit agencies, including, but not limited to, governing bodies of Indian tribes on Federal and State reservations; Alaskan Native tribes on Federal and State reservations; Alaskan Native villages and regional corporations established by the Alaska Native Claims Settlement Act; public and nonprofit private agencies serving Native Hawaiians; and Indian organizations in urban or rural non-reservation areas.

§ 1336.31 Project approval procedures.

(a) Each applicant for financial assistance under Section 803 of the Act must submit a work plan that falls within the statutory requirements of the Act and that is consistent with the provisions of OMB Circular A–102, and meets the criteria of program announcements published by ANA in the **Federal Register.** If the proposed project extends beyond one year, a work plan must be submitted for the period of time specified by the Commissioner in the Program Announcement. ANA will determine whether to approve all, part, or none of the requested work plan. Proposed changes to the approved work plan must receive the written approval of ANA prior to implementation by the recipient.

(b) ANA will negotiate the approved project goals, objectives, work plan, and the funding level for each budget period with each recipient.

(c) The evaluation for the purpose of making an approval decision on each proposed work plan will take into account the proposal's conformance with ANA program purposes and the recipient's past performance and accomplishments.

(d) Financial assistance awarded under Section 803 may be renewed by ANA to grantees with acceptable work plans and past performance.

§ 1336.32 Grants.

Generally, financial assistance will be made available for a one-year budget period and subsequent non-competing continuation awards within the same project period will also be for one year. A recipient must submit a separate application to have financial assistance continued for each subsequent year, within the same project period, but it need contain only a budget and a summary progress report.

Subpart D—Evaluation

§ 1336.40 General.

Progress reports and continuation applications must contain sufficient information for ANA to determine the extent to which the recipient meets ANA project evaluation standards. Sufficient information means information adequate to enable ANA to compare the recipient's accomplishments with the goals and activities of the approved work plan and with ANA project evaluation criteria.

Subpart E—Financial Assistance Provisions

§ 1336.50 Financial and administrative requirements.

(a) *General.* The following HHS regulations apply to all grants awarded under this Part:

45 CFR Part 16 Department grant appeals process.

45 CFR Part 46 Protection of human subjects.

45 CFR Part 74 Administration of grants.

45 CFR Part 75 Informal grant appeals procedures (indirect cost rates and other cost allocations).

45 CFR Part 80 Nondiscrimination under programs receiving Federal assistance through the Department of Health and Human Services-Effectuation of Title VI of the Civil Rights Act of 1964.

45 CFR Part 81 Practice and procedure for hearings under Part 80.

45 CFR Part 84 Nondiscrimination on the basis of handicap in federally assisted programs.

45 CFR Part 86 Nondiscrimination on the basis of sex in education programs and activities receiving or benefiting from Federal financial assistance.

45 CFR Part 90 Nondiscrimination on the basis of age in programs or activities receiving Federal financial assistance.

(b) *Cost sharing or matching.*—(1) *Policy.* Recipients of financial assistance under Sections 803, 804, and 805 of the Act are required to provide a matching share of 20 percent of the approved cost of the assisted project. This requirement may be waived in accordance with the criteria in § 1336.50(b)(3). The matching share requirement may be met using either cash or in-kind contributions.

(2) *Application.* If an applicant wishes to request a waiver of the requirement for a 20 percent non-Federal matching share, it must include with its application for funding a written justification that clearly explains why the applicant cannot provide the matching share and how it meets the criteria.

(3) *Criteria.* Both the following criteria must be met for an applicant to be eligible for a waiver of the non-Federal matching requirement:

(i) Applicant lacks the available resources to meet part or all of the non-Federal matching requirement. This must be documented by an institutional audit if available, or a full disclosure of applicant's total assets and liabilities.

(ii) Applicant can document that reasonable efforts to obtain cash or in-kind contributions for the purposes of the project from third parties have been unsuccessful. Evidence of such efforts can include letters from possible sources of funding indicating that the requested resources are not available for that project. The requests must be appropriate to the source in terms of project purpose, applicant eligibility, and reasonability of the request.

(4) *Approval.* For a waiver to be approved, ANA must determine that it will not prevent the award of other grants at levels it believes are desirable for the purposes of the program. Waiver of all or part of the non-Federal share shall apply only to the budget period for which application was made.

(c) *Maintenance of effort.* (1) Applications for financial assistance under this Part shall include either a statement of compliance with the maintenance of effort requirement, contained in Section 803(c) of the Act, or a request for a waiver, in accordance with criteria established in this paragraph.

(2) To be eligible for a waiver of the maintenance of effort requirement, the applicant must demonstrate to ANA that the organization whose funds previously supported the project discontinued its support:

(i) As a result of funding limitations; and

(ii) Not as a result of an adverse evaluation of the project's purpose or the manner in which it was conducted; and

(iii) Not because it was anticipated that Federal funds would replace the original source of project funding.

(3) In addition, the applicant must demonstrate in the request for a waiver that the maintenance of effort requirement would result in insurmountable hardship for the recipient or would otherwise be inconsistent with the purpose of this Part.

(d) *Delegation of project operations.* (1) Each subgrant awarded to a delegate agency must have specific prior approval by ANA. Such delegation shall be formalized by written agreement.

(2) The agreement must specify the activities to be performed by the delegate agency, the time schedule, the policies and procedures to be followed, the dollar limitations, and the costs allowed. The applicant shall submit a budget for each delegate agency as part of its application.

(e) Unallowable costs. ANA funds may not be used by recipients to purchase real property.

(f) Office of Chief Executive. The costs of salaries and expenses of the Office of Chief Executive of a federally recognized Indian tribal government (as defined in § 74.3 of this title) are allowable, provided that such costs exclude any portion of salaries and expenses of the Office of Chief Executive that are a cost of general government and provided they are related to a project assisted under this Part.

§ 1336.51 Project period.

The Notice of Financial Assistance Awarded will specify the period for which support is intended, although the Department makes funding commitments only for one budget period at a time. Financial assistance under Section 803 of the Act may be ongoing, subject to policy decisions and funding limitations.

§ 1336.52 Appeals.

(a) Right to appeal. Recipients whose financial assistance has been suspended or terminated, or whose non-competing continuation applications for refunding have been denied, may appeal such decisions using the procedures described in this section. Denial of an application for refunding means the refusal to fund a non-competing continuation application for a budget period within a previously approved project period.

(b) Suspension, termination, and denial of funding. Procedures for and definitions of suspension and termination of financial assistance are published in 45 CFR 74.110–74.116. Appeals from a denial of refunding will be treated the same procedurally as

appeals of termination of financial assistance. The term "denial of refunding" does not include policy decisions to eliminate one or more activities of an approved project. A decision not to fund an application at the end of the recipients's project period is not a "denial of refunding" and is not subject to appeal.

(c) *Hearings.* (1) A recipient shall be given an initial written notice at least thirty (30) days prior to the suspension or termination of financial assistance except in emergency situations, which occur when Federal property is in imminent danger of dissipation, or when life, health, or safety is endangered. During this period of time, the recipient has the opportunity to show cause to ANA why such action should not be taken.

(2) A recipient who has received final written notice of termination or denial of refunding, or whose financial assistance will be suspended for more than 30 days, or who has other appealable disputes with ANA as provided by 45 CFR Part 16 may request review by the Departmental Grant Appeals Board under the provisions of 45 CFR Part 16.

(3) If a recipient appeals a suspension of more than 30 days which subsequently results in termination of financial assistance, both actions may be considered simultaneously by the Departmental Grant Appeals Board.

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