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Federal Register

Wednesday
September 15, 1982

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Federal Maritime Commission
National Labor Relations Board

Air Carriers
Civil Aeronautics Board

Authority Delegations (Government Agencies)
Interstate Commerce Commission

Employee Benefit Plans
Pension Benefit Guaranty Corporation

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Maritime Carriers
Federal Maritime Commission

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Federal Energy Regulatory Commission

Nuclear Power Plants and Reactors
Nuclear Regulatory Commission

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

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Presidential Documents

Title 3—

The President

Proclamation 4964 of September 13, 1982

National P.T.A. Membership Month, 1982

By the President of the United States of America

A Proclamation

Our best research shows that both the supportive atmosphere parents create at home and the high expectations of motivated teachers will find positive expression in the academic achievements of students.

Within our parent-teacher associations across the Nation, the combined concern of parents and teachers focuses on encouraging excellence in the education of our children. The National Parent Teacher Association, representing over twenty-nine thousand State and local units with more than six million active members, is a volunteer organization that has made substantial contributions to that goal. The ultimate beneficiary is the Nation itself, through enhanced student achievement and a citizenry better prepared for its future.

In recognition of the important contributions made by the National P.T.A., the Congress by joint resolution (Public Law 97–154) has requested the President to issue an appropriate proclamation recognizing October 1982 as "National P.T.A. Membership Month."

NOW, THEREFORE, I, RONALD REAGAN, President of the United States of America, do hereby proclaim the month of October 1982 as "National P.T.A. Membership Month." I invite the Governors of the States and the Commonwealth of Puerto Rico, the officials of other areas subject to the jurisdiction of the United States, and the American people to join me in recognizing and encouraging the efforts of the National P.T.A. on behalf of our children, and to observe such month with appropriate ceremonies and activities.

IN WITNESS WHEREOF, I have hereunto set my hand this 13th. day of Sept., in the year of our Lord nineteen hundred and eighty-two, and of the Independence of the United States of America the two hundred and seventh.

Ronald Reagan

[FR Doc. 82–25513
Filed 9–13–82; 4:24 pm]
Billing code 3195–01–M

Presidential Documents

Proclamation 4965 of September 13, 1982

National Employ the Handicapped Week, 1982

By the President of the United States of America

A Proclamation

People throughout our country are working to increase education, training, employment, accessible housing, and recreational opportunities for our disabled citizens.

Of these objectives, employment is one of the most important. To lead more successful lives, disabled Americans must be part of the work force. Progress has been made; many more employers are hiring these quality workers. These employers are part of the growing number who realize they are not "giving" someone a job, but increasing the value of their company or business by hiring a dedicated, skilled employee.

Despite these advances, employment of disabled men and women lags behind that of the general working-age population. There is an urgent need for the private sector to take the lead in offering jobs that provide individual dignity and enable disabled men and women to support their families. There is also a need for state and local governments to employ fresh approaches and renewed energy in cooperation with the private sector to expand handicapped employment opportunities, and for the Federal government to streamline regulations in order to afford maximum benefit for handicapped persons with a minimum of administrative burden.

We need to affirm the dignity and worth of all people in our society, whether or not they suffer from physical or mental disabilities, and we must firmly reject attitudes that deny the worth of handicapped individuals.

Congress has called for the designation of the first full week in October each year as National Employ the Handicapped Week (36 U.S.C. 155). This special week is a time for all Americans to renew our dedication to meeting the goal of increased opportunities for disabled citizens.

NOW, THEREFORE, I, RONALD REAGAN, President of the United States of America, do hereby designate the week beginning October 3, 1982, as National Employ the Handicapped Week.

I urge all governors, mayors, other public officials, leaders in business and labor, and private citizens to help meet the challenge of the future by ensuring that disabled people have the opportunity to participate fully in the economic life of the Nation.

IN WITNESS WHEREOF, I have hereunto set my hand this 13th. day of Sept., in the year of our Lord nineteen hundred and eighty-two, and of the Independence of the United States of America the two hundred and seventh.

Ronald Reagan

[FR Doc. 82-25514
Filed 9-13-82; 4:25 pm]
Billing code 3195-01-M

Presidential Documents

Proclamation 4966 of September 13, 1982

National Hospice Week, 1982

By the President of the United States of America

A Proclamation

The hospice concept is rapidly becoming a part of the Nation's health care system. To direct the Nation's attention to the value of hospice care, the Congress, by joint resolution approved May 24, 1982 (S.J. Res. 170, Public Law 97–182), requested that the President proclaim the week of November 7 through November 14, 1982, as National Hospice Week.

Hospice provides a humanitarian way for a terminally ill patient to approach death with dignity, in relative comfort in a supportive atmosphere, and surrounded by family members. Its most important element is concern for patients and their families. Hospice advocates personal care and concern, living comfortably until death, the absence of pain, maintenance of personal control, and the close fellowship of the family unit.

NOW, THEREFORE, I, RONALD REAGAN, President of the United States of America, do hereby proclaim the week beginning November 7, 1982, as National Hospice Week. I urge all citizens, government agencies, the medical community, and appropriate private organizations to observe the week with forums, programs, and activities designed to encourage national recognition and support for the hospice care concept.

IN WITNESS WHEREOF, I have hereunto set my hand this 13th. day of Sept., in the year of our Lord nineteen hundred and eighty-two, and of the Independence of the United States of America the two hundred and seventh.

Ronald Reagan

[FR Doc. 82-25516
Filed 9-13-82; 4:37 pm]
Billing code 3195-01-M

Presidential Documents

Proclamation 4967 of September 13, 1982

American Education Week, 1982

By the President of the United States of America

A Proclamation

The wisdom and foresight of our Founding Fathers set in motion the greatness of America and the personal liberties we enjoy today. These blessings have thrived because of the valaue succeeding generations have placed on knowledge and education. For this reason alone, few matters are as critical to the future of our country than the continued success of our educational system.

Part of our national strength is the fact that parents have the right to oversee their children's education. While our states provide public schools and state and local educators assist parents in achieving educational goals, it is clearly the right and duty of parents to supervise these functions. Our tax system should ensure that effective parental choice in education is not the preserve of only the wealthy.

The timely theme for American Education Week this year is "A Strong Nation Needs Strong Schools." Every American should take this theme to heart and give renewed support to our schools, be they public, private, or synagogue or church-affiliated. Strong community support results in effective schools. Effective schools help assure that our democratic society will flourish.

NOW, THEREFORE, I, RONALD REAGAN, President of the United States of America, do hereby designate the week beginning November 14, 1982, and the second week of November of each succeeding year, as American Education Week.

IN WITNESS WHEREOF, I have hereunto set my hand this 13th. day of Sept., in the year of our Lord nineteen hundred and eighty-two, and of the Independence of the United States of America the two hundred and seventh.

Ronald Reagan

[FR Doc. 82-25517
Filed 9-13-82: 4:38 pm]
Billing code 3195-01-M

Presidential Documents

Executive Order 12382 of September 13, 1982

President's National Security Telecommunications Advisory Committee

By the authority vested in me as President by the Constitution of the United States of America, and in order to establish, in accordance with the provisions of the Federal Advisory Committee Act, as amended (5 U.S.C. App. I), an advisory committee on National Security Telecommunications, it is hereby ordered as follows:

Section 1. *Establishment.* (a) There is established the President's National Security Telecommunications Advisory Committee which shall be composed of no more than 30 members. These members shall have particular knowledge and expertise in the field of telecommunications and represent elements of the Nation's telecommunications industry. Members of the Committee shall be appointed by the President.

(b) The President shall annually designate a Chairman and a Vice Chairman from among the members of the Committee.

(c) To assist the Committee in carrying out its functions, the Committee may establish appropriate subcommittees or working groups composed, in whole or in part, of individuals who are not members of the Committee.

Sec. 2. *Functions.* (a) The Committee shall provide to the President, among other things, information and advice from the perspective of the telecommunications industry with respect to the implementation of Presidential Directive 53 (PD/NSC–53), National Security Telecommunications Policy.

(b) The Committee shall provide information and advice to the President regarding the feasibility of implementing specific measures to improve the telecommunications aspects of our national security posture.

(c) The Committee shall provide technical information and advice in the identification and solution of problems which the Committee considers will affect national security telecommunications capability.

(d) In the performance of its advisory duties, the Committee shall conduct reviews and assessments of the effectiveness of the implementation of PD/NSC–53, National Security Telecommunications Policy.

(e) The Committee shall periodically report on matters in this Section to the President and to the Secretary of Defense in his capacity as Executive Agent for the National Communications System.

Sec. 3. *Administration.* (a) The heads of Executive agencies shall, to the extent permitted by law, provide the Committee such information with respect to national security telecommunications matters as it may require for the purpose of carrying out its functions. Information supplied to the Committee shall not, to the extent permitted by law, be available for public inspection.

(b) Members of the Committee shall serve without any compensation for their work on the Committee. However, to the extent permitted by law, they shall be entitled to travel expenses, including per diem in lieu of subsistence.

(c) Any expenses of the Committee shall, to the extent permitted by law, be paid from funds available to the Secretary of Defense.

Sec. 4. *General.* (a) Notwithstanding any other Executive Order, the functions of the President under the Federal Advisory Committee Act, as amended (5

U.S.C. App. I), except that of reporting annually to the Congress, which are applicable to the Committee, shall be performed by the Secretary of Defense, in accord with guidelines and procedures established by the Administrator of General Services.

(b) In accordance with the Federal Advisory Committee Act, as amended, the Committee shall terminate on December 31, 1982, unless sooner extended.

Ronald Reagan

THE WHITE HOUSE,
September 13, 1982.

[FR Doc. 82-25518
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Billing code 3195-01-M

Rules and Regulations

Federal Register
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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

Agricultural Marketing Service

7 CFR Part 52

United States Standards for Grades of Grapefruit Juice

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: The purpose of this final rule is to revise the voluntary U.S. Standards for Grades of Grapefruit Juice. The final rule was developed by the United States Department of Agriculture (USDA) at the request of major segments of the citrus industry. This final rule would revise the voluntary grade standards to: (1) Establish a minimum Brix requirement for sweetened or unsweetened grapefruit juice, grapefruit juice from concentrate, and dehydrated grapefruit juice, (2) establish a minimum soluble grapefruit solids requirement for sweetened frozen concentrated grapefruit juice; and (3) preclude the use of sweetener(s) in concentrated grapefruit juice for manufacturing. Minor editorial changes have also been incorporated. Its effect will be to improve the standards and promote orderly and efficient marketing of grapefruit juice.

EFFECTIVE DATE: October 15, 1982.

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

Note.—Compliance with the provisions of these standards shall not excuse failure to comply with the provision of the Federal Food, Drug, and Cosmetic Act, or with applicable State laws and regulations.

SUPPLEMENTARY INFORMATION: Eddie F. Kimbrell, Deputy Administrator, Commodity Services, Agricultural Marketing Service, has determined that this final rule is not major. It will not result in an annual effect on the economy of $100 million or more. There will be no major increase in cost or prices for consumers; individual industries; Federal, State, or local government agencies; or geographic regions. It will not result in significant adverse effects on competition, employment, investments, productivity, innovations, or the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

Eddie F. Kimbrell, Deputy Administrator, Commodity Services, Agricultural Marketing Service, has determined that this final rule will not have a significant economic impact on a substantial number of small entities, as defined in the Regulatory Flexibility Act, Pub. L. 96-354 (5 U.S.C. 601), because this reflects current marketing practices.

It is found that it is impracticable and contrary to the public interest to give preliminary notice, engage in public rulemaking, and postpone the effective date of the rule in that: (1) There is insufficient time between the date when information became available upon which the changes incorporated in this revision are based and the date necessary to effectuate the final rule; (2) the citrus processing season of the 1982 crop is expected to begin in October, and it is intended that this final rule be applicable to this crop; and (3) the major segments of the citrus industry have requested that the changes incorporated in this revision be put in effect as soon as possible. Therefore, this final rule will be effective thirty days after publication in the **Federal Register** (5 U.S.C. 533).

The United States Standards for Grades of Grapefruit Juice were revised effective September 17, 1981. The standards cite the soluble solids requirement in the Food and Drug Administration (FDA) Standards of Identity for Grapefruit Juice as the minimum requirement for degrees Brix in both grapefruit juice and grapefruit juice from concentrate. FDA stayed the soluble solids requirement in the standards of identity on June 4, 1982. The grade standards in effect before the 1981 revision provided a minimum Brix requirement. This final rule provides a minimum soluble grapefruit solids requirement of 9 percent for sweetened or unsweetened grapefruit juice, grapefruit juice from concentrate, and dehydrated grapefruit juice. The soluble grapefruit solids requirement in the FDA standards of identity was 9 percent. Current industry practice uses this as a minimum for soluble grapefruit solids in grapefruit juice, grapefruit juice from concentrate, and dehydrated grapefruit juice. The rule would also provide a minimum requirement of 11.5 degrees Brix for the finished sweetened product for grapefruit juice, grapefruit juice from concentrate and dehydrated grapefruit juice.

A minimum soluble grapefruit solids requirement is not provided in the current standards for sweetened frozen concentrated grapefruit juice. The citrus industry has requested a minimum soluble grapefruit solids of 38 percent in sweetened frozen concentrated grapefruit juice to assure adequate natural grapefruit soluble solids in the finished (sweetened) product. The final rule would provide a minimum grapefruit soluble solids requirement of 38 percent for the sweetened frozen concentrated grapefruit juice before the addition of sweetener(s).

The final rule would preclude the use of sweetener(s) in concentrated grapefruit for manufacturing. Most concentrated grapefruit juice for manufacturing is used in the manufacture of grapefruit juice from concentrate. Practically all the grapefruit juice from concentrate is packed without sweeteners, but sweeteners may be added. Sweetened grapefruit juice from concentrate has a minimum soluble grapefruit solids requirement, exclusive of sweetener(s). Precluding sweeteners in concentrated grapefruit juice for manufacturing would allow the product to be used in both sweetened and unsweetened grapefruit juice from concentrate.

List of Subjects in 7 CFR Part 52

Processed fruits and vegetables, Food grades and standards.

PART 52—PROCESSED FRUITS AND VEGETABLES, PROCESSED PRODUCTS THEREOF, AND CERTAIN OTHER PROCESSED FOOD PRODUCTS

Accordingly the United States Standards for Grades of Grapefruit Juice (7 CFR 52.1221 and 52.1228) is amended as follows:

1. Section 52.1221(d) is revised to read as follows:

Subpart—United States Standards for Grades of Grapefruit Juice

§ 52.1221 Product description.

* * * * *

(d) "Concentrated grapefruit juice for manufacturing" is the product processed by concentrating and preserving by physical means the product represented as defined in the Standards of Identity for Grapefruit Juice (21 CFR 146.132), issued under the Federal Food, Drug, and Cosmetic Act. The finished product may not contain any additives except that cold-pressed oil to standardize flavor, and chemical perservatives permissible under provisions of the Federal Food, Drug, and Cosmetic Act may have been added.

* * * * *

2. Section 52.1228 is revised to read as follows:

§ 52.1228 Requirements for grades.

TABLE I.—GRAPEFRUIT JUICE

Factors	Grade A	Grade B
Quality:		
Appearance	Fresh grapefruit juice	Fails grade A.
Coagulation	None	Slight.
Color	Good	Reasonably good.
Defects	Practically free	Reasonably free.
Flavor	Good	Reasonably good.
Score points	Minimum —90	Minimum —80.

	Unsweetened	Sweetened	Unsweetened	Sweetened
Analytical:				
Brix: Minimum	9.0°	11.5°	9.0°	11.5°
Soluble grapefruit solids, exclusive of sweeteners (percent by weight of finished product): Minimum		9.0		9.0
Brix-acid ratio:				
Minimum	8.0:1	9.0:1	7.0:1	9.0:1
Maximum	14.0:1	14.0:1	None	None
Free and suspended pulp (percent by volume): Maximum	10		15	
Recoverable oil (percent by volume): Maximum	0.020		0.025	

TABLE II.—GRAPEFRUIT JUICE FROM CONCENTRATE

Factors	Grade A	Grade B
Appearance	Fresh grapefruit juice	Fails grade A.
Coagulation	None	Slight.
Color	Good	Reasonably good.
Defects	Practically free	Reasonably free.
Flavor	Good	Reasonably good.
Score points	Minimum —90	Minimum —80.

	Unsweetened	Sweetened	Unsweetened	Sweetened
Analytical:				
Brix: Minimum	9.0°	11.5°	9.0°	11.5°
Soluble grapefruit solids, exclusive of sweeteners (percent by weight of finished product): Minimum		9.0		9.0
Brix-acid ratio:				
Minimum	8.0:1	9.0:1	7.0:1	9.0:1
Maximum	14.0:1	14.0:1	None	None
Free and suspended pulp (percent by volume): Maximum	10		15	
Recoverable oil (percent by volume): Maximum	0.020		0.025	

TABLE III.—FROZEN CONCENTRATED GRAPEFRUIT JUICE

Factors	Grade A		Grade B	
Quality:[1]				
Appearance	Fresh grapefruit juice		Fails grade A.	
Color	Good		Reasonably good.	
Defects	Practically free		Reasonably free.	
Flavor	Good		Reasonably good.	
Reconstitution	Reconstitutes properly		Reconstitutes properly.	
Score points	Minimum −90		Minimum −80.	
	Unsweetened	Sweetened	Unsweetened	Sweetened
Analytical:				
Brix value of concentrate:				
Minimum	38.0°	38.0°	38.0°	38.0°
Maximum	42.0°	48.0°	42.0°	48.0°
Soluble grapefruit solids, exclusive of sweeteners (percent by weight of finished product): Minimum		38.0		38.0
Brix value-acid ratio:				
Minimum	9.0:1	10.0:1	7.0:1	8.0:1
Maximum	14.0:1	13.0:1	16.0:1	13.0:1
Reconstituted Juice:				
Free and suspended pulp (percent by volume): Maximum	10.0		10.0	
Recoverable oil (percent by volume): Maximum	0.020		0.020	
Seeds and portions of seeds:				
Pass through round perforations—3.2 mm (0.125 in)	(3)		(3)	
Fail to pass through round perforations—3.2 mm (0.125 in) Practically none				

[1] Reconstituted prior to grading.
[2] Slightly detract
[3] Materially detract

TABLE IV.—CONCENTRATED GRAPEFRUIT JUICE FOR MANUFACTURING

Factors	Grade A	Grade B
Quality:[1]		
Color	Good	Reasonably good.
Defects	Practically free	Reasonably free.
Flavor	Good	Reasonably good.
Gelation (concentrate state)	Slightly	Materially.
Reconstitution	Reconstitutes properly.	
Score points	Minimum −90	Minimum −80.
Analytical:		
Brix value-acid ratio: Minimum	6.0:1	5.5:1
Free and suspended pulp (percent by volume—reconstituted juice): Maximum.	10	12

[1] Reconstituted prior to grading.

TABLE V.—DEHYDRATED GRAPEFRUIT JUICE

Factors	Grade A		Grade B	
Quality:[1]				
Appearance	Fresh grapefruit juice		Fails grade A.	
Color	Good		Reasonably good.	
Defects	Practically free		Reasonably free.	
Flavor	Good		Reasonably good.	
Reconstitution	Reconstitutes properly.			
Score points	Minimum −90		Minimum −80.	
	Unsweetened	Sweetened	Unsweetened	Sweetened
Analytical:				
Brix: Minimum	9.0°	11.5°	9.0°	11.5°
Soluble grapefruit solids, exclusive of sweeteners (percent by weight of finished product): Minimum		9.0		9.0
Brix-acid ratio:				
Minimum	8.0:1	9.0:1	7.0:1	9.0:1
Maximum	14.0:1	14.0:1	None	None
Recoverable oil (percent by volume): Maximum	0.020		0.025	

[1] Reconstituted prior to grading.

* * * * * * *

Done at Washington, D.C., on September 8, 1982.

Eddie F. Kimbrell,

Deputy Administrator, Commodity Services.

[FR Doc. 82-25097 Filed 9-14-82; 8:45 am]

BILLING CODE 3410-02-M

NUCLEAR REGULATORY COMMISSION

10 CFR Part 2

Commission Review Procedures for Power Reactor Construction Permits and Operating Licenses; Immediate Effectiveness Rule

AGENCY: Nuclear Regulatory Commission.

ACTION: Interpretative rule.

SUMMARY: The Nuclear Regulatory Commission is amending its so-called "immediate effectiveness rule" to clarify the weight of authority to be accorded Commission effectiveness decisions by its Licensing and Appeal Boards conducting subsequent reviews of stay requests or of the merits of applications for construction permits or operating licenses. The Commission confirms its intention that, absent express instructions to the contrary, no statement made in the course of its effectiveness determination is to be given any weight by the Licensing or Appeal Boards in their review of stay requests or of the merits of the license or permit applications.

EFFECTIVE DATE: September 15, 1982.

FOR FURTHER INFORMATION CONTACT: Richard A. Parrish, Office of the General Counsel, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555, (202) 634-3224.

SUPPLEMENTARY INFORMATION: Pursuant to 10 CFR 2.764, the Commission conducts an informal review of each Atomic Safety and Licensing Board decision that authorizes the Director of NRC's Office of Nuclear Reactor Regulation to issue a construction permit or a full power operating license for a nuclear power reactor. The purpose of this informal Commission review is to determine whether significant safety issues exist that warrant staying the effectiveness of the Licensing Board decision, in effect withholding the permit or license, pending the appellate review of the merits of the Licensing Board decision by the Atomic Safety and Licensing Appeal Board or the Commission. The Commission's effectiveness review was never intended to be a detailed, formal review of the record developed before the Licensing Board. Rather, this informal and expedited review focuses upon significant issues of public health and safety, especially those related to regulatory developments subsequent to the accident at Three Mile Island. The effectiveness review was intended to be

conducted entirely separate from review of any stay requests filed under 10 CFR 2.788 and formal appellate review under 10 CFR 2.762 and 2.786.

In the recent review of a Licensing Board decision that authorized the issuance of a full-power operating license for the McGuire Nuclear Station, the Appeal Board questioned what role an intervening Commission effectiveness decision should play in the Appeal Board's review of the merits of the Licensing Board decision. *Duke Power Company* (William B. McGuire Nuclear Station, Units 1 and 2), ALAB-669, 15 NRC 453, 485–486 (March 30, 1982). The Commission had allowed the Licensing Board decision to become effective, thereby authorizing issuance of the license in question, but had attached conditions to the license as a result of its effectiveness review. CLI-81-15, 14 NRC 1 (1981). The rule currently provides that the Commission's effectiveness review is without prejudice to subsequent reviews of the Appeal Board and the Commission. 10 CFR 2.764(f)(2)(v). However, the rule also provides that the Commission may give instructions as to the future handling of the proceeding, including furnishing policy guidance with respect to particular issues. 10 CFR 2.764 (f)(2)(iv).

The Commission has decided to provide the following clarifying guidance regarding the relevance of Commission effectiveness decisions to subsequent Licensing and Appeal Board reviews of stay requests or the merits of license or permit applications. Unless the Commission otherwise explicitly so directs in its immediate effectiveness determination, no statement made in the course of the opinion or statement reflecting that determination is to be given any weight by the Appeal Board in its consideration of either a stay motion under 10 CFR 2.788 or an appeal on the merits under 10 CFR 2.762 or by the Licensing Board in any subsequent formal adjudicatory proceedings.

This amendment to the immediate effectiveness rule clarifies the Commission's original intent regarding the weight to be accorded the Commission's effectiveness decisions. It does not affect the parties' rights of participation in adjudicatory licensing proceedings. Nor does it affect the method or standards of review employed by the Commission in conducting its effectiveness review, the availability of stays pursuant to 10 CFR 2.788, or the subsequent Appeal Board and Commission review of the merits of Licensing Board decisions. Because this amendment is an interpretative rule, the Commission has determined to forego notice and comment procedures of the Administrative Procedure Act (5 U.S.C. 553) and make it effective upon publication in the **Federal Register.**

Separate Views of Commissioner Roberts

I believe the Commission's action in adopting this rule on immediate effectiveness is premature. I believe the Commission's recent decision to vote twice (once on contested issues in the licensing proceeding, a second time on uncontested issues) prior to issuing a license is also premature. Both of these decisions were made by the Commission prior to receipt of recommendations from the Regulatory Reform Task Force. This group was established by the Commission to review Part 2 of the Commission's Rules and to make recommendations indicating how the licensing process might be made consistent and efficient. Rather than wait for these recommendations, the Commission has made several piecemeal changes in existing regulations and internal Commission procedures, such as the two described above. This would seem to make the job of the Regulatory Reform Task Force more difficult as the rules and process it is reviewing are changing while it reviews them. Further, such action seems shortsighted as the Commission may adopt rules in the future, based on the Task Force's recommendations, which change the rules and internal procedures being adopted now.

Regulatory Flexibility Certification

In accordance with the Regulatory Flexibility Act of 1980, 5 U.S.C. 605(b), the Commission hereby certifies this rule will not have a significant economic impact on a substantial number of small entities. The rule clarifies the Commission's Rules of Practice by describing the weight of authority to be accorded the Commission's effectiveness decisions.

Paperwork Reduction Act Statement

This final rule contains no new or amended recordkeeping, reporting, or application requirement or any type of information collection requirement subject to the Paperwork Reduction Act (Pub. L. 96–511).

Pursuant to the Atomic Energy Act of 1954, as amended, the Energy Reorganization Act of 1974, as amended, and section 553 of Title 5 of the United States Code, the following amendment to Title 10, Chapter I, Code of Federal Regulations, Part 2, is published as a document subject to codification.

List of Subjects in 10 CFR Part 2

Administrative practice and procedure, Antitrust, Byproduct material, Classified information, Environmental protection, Nuclear materials, Nuclear power plants and reactors, Penalty, Sex discrimination, Source material, Special nuclear material, Waste treatment and disposal.

The authority citation for this document is:

Authority: Sec. 161, Pub. L. 83–703, 68 Stat. 948, as amended (42 U.S.C. 2201).

PART 2—RULES OF PRACTICE FOR DOMESTIC LICENSING PROCEEDINGS

In § 2.764 the section heading is revised, paragraph (f)(2)(v) is removed and paragraph (g) is added to read as follows:

§ 2.764 Immediate effectiveness of initial decision directing issuance or amendment of construction permit or operating license.

* * * * *

(g) Unless the Commission otherwise explicitly so directs in its immediate effectiveness determination, no comment made in the course of the opinion or statement reflecting that determination is to be given any weight by the Atomic Safety and Licensing Board or Appeal Board in its consideration of either a stay motion pursuant to § 2.788(e) or an appeal on the merits pursuant to §§ 2.762 and 2.785, or in any subsequent formal adjudication. The Commission's effectiveness determination is entirely without prejudice to such consideration in subsequent proceedings.

Dated at Washington, D.C., this 9th day of September, 1982.

For the Nuclear Regulatory Commission.

Samuel J. Chilk,

Secretary of the Commission.

[FR Doc. 82-25347 Filed 9-14-82; 8:45 am]

BILLING CODE 7590-01-M

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10 CFR Part 50

Emergency Planning and Preparedness; Correction

AGENCY: Nuclear Regulatory Commission.

ACTION: Final rule; correction.

SUMMARY: This document corrects a recently published final rule concerning emergency preparedness exercises. This correction is necessary to reinsert a footnote inadvertantly omitted in the document published July 13, 1982 (47 FR 30232).

FOR FURTHER INFORMATION CONTACT: Michael T. Jamgochian, Human Factors Branch, Office of Nuclear Regulatory Research, U.S. Nuclear Regulatory Commission, Washington, DC 20555, Telephone: (301) 443–5942.

The following corrections are made in the document published on July 13, 1982 (47 FR 30232) amending 10 CFR 50.47:

1. On Page 30236, column one, footnote number 1 was inadvertantly omitted from the revised introductory text of § 50.47(b). The footnote reference should appear directly after the introductory text of paragraph (b). Footnote 1 reads as follows:

These standards are addressed by specific criteria in NUREG–0654; FEMA–REP–1 entitled "Criteria for Preparation and Evaluation of Radiological Emergency Response Plans and Preparedness in support of Nuclear Power Plants—for Interim Use and Comment" January 1980.

Dated at Bethesda, Maryland this 25th day of August 1982.

For the Nuclear Regulatory Commission.

William J. Dircks,

Executive Director for Operations.

[FR Doc. 82–25346 Filed 9–14–82; 8:45 am]

BILLING CODE 7590–01–M

CIVIL AERONAUTICS BOARD

14 CFR Part 231

[Regulation ER–1298; Econ. Reg. Amdt. No. 7; Docket 40717]

Transportation of Mail; Mail Schedules; Elimination of Schedule Filing

AGENCY: Civil Aeronautics Board.

ACTION: Final rule.

SUMMARY: The CAB eliminates requirements that airlines file flight schedules with the government, because airlines' voluntary publication in the *Official Airline Guide* satisfies the need for this information.

DATES:

Adopted: August 27, 1982.

Effective: September 15, 1982.

FOR FURTHER INFORMATION CONTACT: Jack Calloway, Office of the Comptroller, Civil Aeronautics Board, 1825 Connecticut Avenue, N.W., Washington, D.C. 20428; 202–673–6042.

SUPPLEMENTARY INFORMATION: The first sentence of section 405(b) of the Federal Aviation Act requires each U.S. air carrier to file with the Board and the Postal Service a statement of the points that it is authorized to serve and all its schedules and schedule changes involving those points. The Board's rule implementing this statutory provision, except for commuter air carriers, is found at 14 CFR Part 231. Commuters are exempted from section 405(b) by §298.10 of the air taxi rule (14 CFR Part 298), but file schedules in accordance with the simpler provisions of § 298.60. Certificated carriers, for their small-aircraft operations, have the option under § 298.99(a) of filing schedules in accordance with either scheme.

In the Airline Deregulation Act of 1978, Pub. L. 95–504, Congress added a new section 1601 to the Federal Aviation Act to provide for the termination of some Board functions and the transfer of others. In particular, section 1601(a)(1)(G) terminated the schedule-filing requirements of the first sentence of section 405(b) for domestic passenger transportation, effective December 31, 1981. In ER–1279, 47 FR 137, January 5, 1982, the Board amended Part 231 to reflect this change. The Board interpreted the statutory change as covering not only passenger service but also combination service (passengers and cargo on the same aircraft). The Board also noted that in 14 CFR Part 291 it had already exempted carriers from schedule filing for domestic cargo-only service, except for service that is wholly within Alaska or wholly within Hawaii. The amendment in ER–1279, therefore, added a new provision to Part 231 limiting the applicability of the part to foreign air transportation and to cargo-only air transportation within Alaska or Hawaii. A corresponding amendment of § 298.99(a) for the small-aircraft operations of certificated carriers was made by ER–1278, 47 FR 604, January 6, 1982. The Board did not make a similar amendment of the commuter schedule-filing requirement in § 298.60 at that time, however, because it concluded that notice and comment were necessary.

In notice of proposed rulemaking EDR–442 (47 FR 23949; June 2, 1982; Docket 40717), the Board concluded that its need for flight schedule information, not only from commuters but from all carriers, is satisfied by the carriers' voluntary submission of their schedules to the *Official Airline Guide*, which is published in the private sector. In order to eliminate unnecessary regulatory burdens and further the purposes of the Paperwork Reduction Act, Pub. L. 96–511, therefore, the Board proposed to eliminate all remaining requirements that air carriers file flight schedules under Part 231 or 298.

This proposal encompassed all interstate, overseas, and foreign air transportation of passengers property, and mail. The amendment of Part 231 would eliminate the existing rule and replace it with an exemption from the first sentence of section 405(b) of the Act. The corresponding amendment of Part 298 would remove § 298.60 for commuters and § 298.99(a) for the small-aircraft operations of certificated carriers.

Comments on the proposal were filed by Delta Air Lines, Trans World Airlines, the Regional Airline Association, and the U.S. Postal Service. The carriers all supported the proposal, agreeing with the Board that routine filing of flight schedules is no longer necessary. The Postal Service expressed concern that, under the Board's proposal, dispatchers of military mail might not have ready access to flight schedules at military installations at overseas and foreign points. But it concluded that postal needs in this respect would be met by cooperation with the Department of Defense, carriers' interest in carrying mail, and, if necessary, a rule that could be issued under Postal Service authority that is independent of section 405(b). It therefore stated that it had no objection to the Board's proposal.

For the reasons discussed above and in light of the comments, the Board has decided to eliminate all remaining flight schedule filing requirements from Parts 231 and 298 as proposed. This rule amends Part 231 and ER–1299, issued at the same time, amends Part 298. Because these amendments relieve restrictions and create no additional burdens, the Board finds that they may become effective less than 30 days after publication in the **Federal Register.**

As it noted in EDR–442, the Board remains concerned that it have advance notice of a carrier's plans to terminate service in a limited-designation international market, in order to facilitate replacement service. Neither the OAG nor the general schedules filed under Part 231 provide enough lead time, however, and the Board has proposed to establish a separate, specialized reporting requirement to this end, PDR–80, 47 FR 36433, August 20, 1982.

Regulatory Flexibility Act

In accordance with 5 U.S.C. 605(b), as added by the Regulatory Flexibility Act, Pub. L. 96–534, the Board certifies that this rule will not have a significant economic impact on a substantial number of small entities. The effect of the rule is to climinate a reporting requirement that for small air carriers is already minor.

List of Subjects in 14 CFR Part 231

Air carriers, Postal Service, Reporting requirements.

The Rule

Accordingly, the Civil Aeronautics Board retitles and revises 14 CFR Part 231, *Transportation of Mail; Mail Schedules*, to read:

PART 231—EXEMPTION FROM SCHEDULE FILING

Sec.
231.1 Applicability.
231.2 Exemption.

Authority: Secs. 204, 405, 1601, Pub. L. 85–726, as amended, 72 Stat. 743, 760, 92 Stat. 1744; 49 U.S.C. 1324, 1375, 1551.

§ 231.1 Applicability.

This part applies to all air carriers.

§ 231.2 Exemption

Air carriers are hereby exempted from the requirements of the first sentence of section 405(b) of the Act.

[Note.—The first sentence of section 405(b) reads as follows: "Each air carrier shall, from time to time, file with the Board and the Postmaster General a statement showing the points between which such air carrier is authorized to engage in air transportation, and all schedules, and all changes therein, of aircraft regularly operated by the carrier between such points, setting forth in respect of each such schedule the points served thereby and the time of arrival and departure of each such point."]

By the Civil Aeronautics Board.

Phyllis T. Kaylor,

Secretary.

[FR Doc. 82-25373 Filed 9-14-82; 8:45 am]

BILLING CODE 6320-01-M

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14 CFR Part 298

[Regulation ER-1299; Econ. Reg. Amdt. No. 23; Docket 40717]

Exemptions for Air Taxi Operations; Elimination of Schedule Filing

AGENCY: Civil Aeronautics Board.

ACTION: Final rule.

SUMMARY: The CAB eliminates requirements that airlines file flight schedules with the government, because airlines' voluntary publication in the Official Airline Guide satisfies the need for this information. Supplementary information about this action appears in ER-1298, issued along with this rule.

DATES:

Adopted: August 27, 1982.

Effective: September 15, 1982.

FOR FURTHER INFORMATION CONTACT: Jack M. Calloway, Office of the Comptroller, Civil Aeronautics Board, 1825 Connecticut Avenue, N.W., Washington, D.C. 20428; 202–673–6042.

List of Subjects in 14 CFR Part 298

Air carriers, Postal Service, Reporting requirements.

Accordingly, the Civil Aeronautics Board amends 14 CFR Part 298, *Exemptions for Air Taxi Operations*, as follows:

1. The authority for Part 298 is:

Authority: Secs. 101(3), 204, 401, 404, 407, 416, 418, 419, Pub. L. 85–726, as amended, 72 Stat. 737, 743, 754, 760, 766, 771, 91 Stat. 1284, 92 Stat. 1732; 49 U.S.C. 1301, 1324, 1371, 1374, 1377, 1386, 1388, 1389.

§ 298.6 [Removed]

2. Section 298.60, *Filing of flight schedules by commuter air carriers*, is removed and reserved.

§ 298.99 [Amended]

3. In Subpart I, *Air Taxi Operations by Certificated Carriers*, paragraph (a) of § 298.99, *Scope of filing and reporting requirements*, is removed and reserved.

By the Civil Aeronautics Board.

Phyllis T. Kaylor,

Secretary.

[FR Doc. 82-25374 Filed 9-14-82; 8:45 am]

BILLING CODE 6320-01-M

DEPARTMENT OF COMMERCE

International Trade Administration

15 CFR Parts 371, 373, 376, 379, 385, 386, and 399

Foreign Policy Export Controls Revised and Confirmed as a Final Rule

AGENCY: International Trade Administration, Commerce.

ACTION: Final rule.

SUMMARY: This rule revises foreign policy export controls in light of public comments and confirms as a final rule certain foreign policy export controls that were continued and modified effective March 1, 1982.

DATE: These rules are adopted as final rules effective September 15, 1982.

FOR FURTHER INFORMATION CONTACT: Archie Andrews, Director, Exporters' Service Staff, Office of Export Administration, U.S. Department of Commerce, 14th Street and Pennsylvania Avenue NW., Washington, D.C. 20230 (Telephone: (202) 377–4811).

SUPPLEMENTARY INFORMATION:

Public Comments

Based on both internal review of the March 1, 1982 revision of foreign policy controls and comments received from the Congress, industry, the public, and other agencies, the Export Administration Regulations have been modified to remove inconsistencies and provide more effective control.

Eight public comments were received in response to the changes made effective March 1, 1982 (47 FR 9201, March 4, 1982). One letter opposed any reduction in the former controls toward South Africa, while another protested continuing any special South African controls. The remaining six comments suggested specific changes in the regulations.

One comment agreed with changes in controls affecting international terrorism and urged that the interim regulations be made final.

Three commented on medical exports to the South African military and policy, seeking clarification of whether certain medical items still require validated licenses. Another noted ambiguous wording on use of U.S. origin parts or components in § 385.4(a)(4).

One comment included a comprehensive analysis of the South African regulations. It questioned the clarity of the "know or have reason to know" and "for use by or for" criteria, noted that technical data related to items now available to the police or military is still subject to embargo and that policy on servicing such equipment is not clear, suggested that certifications required from foreign consignees under the Distribution License be discontinued, and pointed out some technical inconsistencies.

The regulatory revisions outlined below incorporate many of the changes requested by the public comments. They also include clarification of the status of exports to ARMSCOR subsidiaries in South Africa. The "know or have reason to know" standard in the South African regulations has not been changed. Other provisions of the Export Administration Regulations use this same standard and consideration of a change to the South African regulations will be reserved for an overall review of the standard.

Regulatory Revisions

Regulations that continued and modified foreign policy export controls were published in interim form effective March 1, 1982 (47 FR 9201, March 4, 1982). These rules are now confirmed as final rules except for 15 CFR 385.4(e) and 15 CFR 385.2(c). These sections were modified on March 16 (47 FR 11247) and June 24 (47 FR 27250) respectively and their adoption in final form will be delayed pending receipt and review of public comments.

The final rules include the following new revisions:

The regulations are revised to permit servicing of goods that may now be

exported to the South African military and police under general license or that are authorized for sale to the military and police. They also permit accompanying manuals to be provided for such goods.

The list of South African government entities enforcing apartheid is expanded by adding administrative bodies of the various "Homelands" that carry out similar functions, and the definition of military and police entities is clarified to specify operating subsidiaries of ARMSCOR.

Technical changes are made to Supplement No. 1 to Part 373 and selected entries on the Commodity Control List to conform with changes made on March 1.

The regulations affecting the South African military and police are clarified by defining more specifically computers and calculators that may be exported under general license, by noting that medicines and certain medical equipment were placed under general license by the March 1 revision, and by including more specific wording on use of U.S. origin parts, components, and materials.

In response to comments pointing out inconsistencies in items allowed to the South African military and police under general license (e.g., certain word processors but not electric typewriters; some desk top computers but not desks) the Commodity Control List (Supplement No. 1 to § 399.1) is revised to permit general license shipments of goods in entries 6599G and 6999G.

Rulemaking Requirements

In connection with various rulemaking requirements, the Office of Export Administration has determined that:

1. Under section 13(a) of the Export Administration Act of 1979 (Pub. L. 96–72, 50 U.S.C. app. 2401 *et seq.*) ("the Act"), this rule is exempt from the public participation in rulemaking procedures of the Administrative Procedure Act. These regulations were published in interim form with a period for public comment as contemplated by section 13(b) of the Act. This rule addresses those comments and confirms the regulations as a final rule.

2. This rule does not impose an additional burden under the Paperwork Reduction Act of 1980, 44 U.S.C. 3501 *et seq.*

3. This rule is not subject to the requirements of the Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.*

4. This rule is exempt from the provisions of Executive Order 12291 (46 FR 13193, February 19, 1981), "Federal Regulation" because it relates to a foreign affairs function of the United States.

List of Subjects

15 CFR Parts 371, 373, 376, 386, and 399

Exports.

15 CFR Part 379

Exports, Science and technology.

15 CFR Part 385

Communist countries, Exports.

Accordingly, the interim regulations cited below are hereby confirmed as final.

45 FR 1595; January 8, 1980
45 FR 45898; July 8, 1980
46 FR 1258; January 6, 1981
47 FR 144; January 5, 1982
47 FR 609; January 6, 1982
47 FR 9201; March 4, 1982
47 FR 16623; April 19, 1982

The regulations are further amended as set forth below:

PART 371—GENERAL LICENSES

§ 371.2 [Amended]

1. Section 371.2(c)(11) is removed and reserved.

PART 373—SPECIAL LICENSING PROCEDURES

2. Section 373.1 is amended by removing the "or" at the end of paragraph (a)(1)(i); replacing the period with a semicolon and adding "or" at the end of paragraph (a)(1)(ii); and adding a paragraph (a)(1)(iii) and a paragraph (a)(3) to read as follows:

§ 373.1 Introduction.

* * * * *

(a) *Special Limitations.*

(1) * * *

(iii) Export or reexport any computers covered by CCL entry 1565A for delivery to the Department of Cooperation and Development, the Department of Internal Affairs, the Department of Community Development, the Department of Justice, the Department of Manpower Utilization, or administrative bodies of the "Homelands" that carry out similar functions.

* * * * *

(3) The certifications required by paragraph (a)(2) of this section notwithstanding, distributors, service facilities, and authorized foreign manufacturers may service U.S. origin goods owned, controlled, or used by or for military and police entities in the Republic of South Africa and Namibia if the serviced items were authorized for export by a general license or a validated license issued on or after March 1, 1982. Further, they may use commodities received under Distribution Licenses in production abroad for sale to or use by or for military or police entities in the Republic of South Africa and Namibia of commodities that may be exported to such entities under General License *G–DEST.*

* * * * *

Supplement 1 to Part 373 [Amended]

3. Supplement 1 to Part 373 (Commodities Excluded From Certain Special License Procedures) is amended by:

a. Amending entry 1460, 5460, 6460 by removing the word "Iraq".

b. Revising entry 1502 to read:

1502 Police model infrared viewers only.

c. Removing entry 1505 and its footnote.

d. Amending entry 1585 by adding "(1) and (2)" between "(f)" and "and (g)".

e. Revising entry 4585 to read:

4585 Sub-entry (a) only: Photographic equipment, and parts and accessories, n.e.s.

f. Revising entry 5597 to read:

5597 Polygraphs; fingerprint equipment and analyzers; fingerprint cameras and equipment; automated fingerprint and identification retrieval systems (whether or not computerized); psychological testing machines; and specially designed parts and accessories, n.e.s. (entire entry).

g. Revising entry 5680 to read:

5680 Police helmets; leg irons; shackles; handcuffs; thumbcuffs; thumbscrews; and saps. (Entire entry.)

h. Removing entry 1746 and its footnote.

i. Amending entry 4799 by adding "with a net weight of more than 20 grams;" between "(CS)," and "smoke bombs."

j. Revising entry 5999 to read:

5999 Saps; straight jackets; police helmets and shields; and parts and accessories, n.e.s. (Entire entry.)

PART 379—TECHNICAL DATA

4. Section 379.4(e) is amended by redesignating the existing text as paragraph (e)(1), titled *"General Prohibition"*, and adding a paragraph (e)(2) as follows:

§ 379.4 General License GTDRA: Technical Data Under Restriction

* * * * *

(e) *Restrictions Applicable to Republic of South Africa and Namibia.*

(1) *General Prohibition.* * * *

* * * * *

(2) *Exceptions:* Notwithstanding the requirements of paragraph (e)(1) of this section:

(i) Exporters may advise South African recipients of U.S. origin technical data (regardless of when the data was exported from the U.S.) that direct products of such data may be made available to military and police entities *if* such direct products are listed in § 385.4(a)(2) (i) through (v), and

(ii) Technical data may be sent to the Republic of South Africa and Namibia under this General License *GTDR* without written notification to the consignee and may be made available to police or military entities, if it is limited to data in such forms as manuals, instruction sheets, blueprints, or standard operating software, provided they are—

(A) Sent as part of a transaction involving, and directly related to, a commodity authorized for export from the United States, or authorized for reexport, to the same consignee to which the commodity was or will be exported;

(B) Of a type delivered with the commodity in accordance with established business practice;

(C) Necessary to the assembly, installation, maintenance, repair, or operation of the commodity, and

(D) Not related to the production, manufacture, or construction of the commoditiy.

PART 385—SPECIAL COUNTRY POLICIES AND PROVISIONS

5. Paragraph 385.4(a) is amended by revising paragraph (a)(2)(iii); adding a paragraph (a)(2)(v) and adding a reference at the end of paragraph (a)(2)(v), reading as follows:

§ 385.4 Country Group V.

(a) *Republic of South Africa and Namibia* * * *

(2) * * *

(iii) Home electronics and personal communications as defined in CCL entry 1564A II(c) (ii)(22) (b) and (c): Word processors; hand-held stand-alone calculators; electronic copy machines; personal computers; of types *not* identified by a "1" in the "Reason for Control" column of the Commodity Control List (including those calculators and computers that have been qualified for general license shipment under the procedure described in § 376.10(a)(5)); parts n.e.s.; and nonmilitary standard operating and applications software;

(iv) * * *

(v) Commodities included in CCL entries 6599G and 6999G. See paragraph (a)(5) of this section for licensing policy. Supplement No. 2 to Part 385 identifies certain entities, in addition to the military and police forces of South Africa, that are considered to be military and police entities for purposes of this regulation.

* * * * *

6. The first sentence of § 385.4(a)(3) is amended by adding the phrase "or data that may be exported under General License *GTDR* as described in § 379.4(e)(2)" immediately following "*GTDA*" and preceding "where (i)".

7. The second sentence of § 385.4(a)(3) is amended by adding the phrase "subject to the exceptions of § 379.4(e)(2)" immediately following "In addition," and preceding "users in".

8. The first sentence of § 385.4(a)(4) is amended by revising the phrase "used abroad to manufacture or produce" to read "incorporated abroad into."

9. Section 385.4 is amended by revising paragraph (a)(5)(ii), adding paragraphs (a)(5) (vii) and (viii), and revising paragraph (a)(9) to read as follows:

§ 385.4 Country Group V.

(a) *Republic of South Africa and Namibia* * * *

(5) * * *

(ii) Medical supplies and medical equipment (including air ambulances). (Medicines and medical equipment included in § 399.2, Interpretations 24 and 29, may be exported to military and police entities under general license *G-DEST*.);

* * * * *

(vii) Commodities and technical data for the ARMSCOR subsidiaries Atlas Aircraft Corporation, Eloptro (Pyt) Ltd., Kentron (Pty) Ltd., Infoplan Ltd., Lyttleton Engineering works (Pty) Ltd., Naschem (Pty) Ltd., Pretoria Metal Pressings (P.M.P.) (Pty) Ltd., Somchem (Pty) Ltd., Swartklip Products (Pty) Ltd., Telacast (Pty) Ltd., and Musgrave Manufacturers and Distributors if the export would not contribute significantly to military or police functions;

(viii) Parts or software for commodities described in paragraph (a)(2) of this section or approved pursuant to paragraph (a)(5) (i) through (vii) of this section.

* * * * *

(9) A validated license is required for export of computers, as defined in CCL entry 1565A, to the Department of Cooperation and Development, the Department of Internal Affairs, the Department of Community Development, the Department of Justice, the Department of Manpower Utilization, and administrative bodies of the "Homelands" that carry out similar functions. Applications for validated licenses will generally be considered favorably on a case-by-case basis for exports of computers that would not be used to enforce the South African policy of apartheid.

* * * * *

10. Paragraph 1.(a) of Supplement No. 2 to Part 385 is revised to read as follows:

Supplement No. 2—Interpretations

1. * * *

(a) It is the Department's position that the following are police or military entities:

ARMSCOR (Armaments Development and Production Corporation) and its direct manufacturing subsidiaries: Atlas Aircraft Corporation; Eloptro (Pty) Ltd., Kentron (Pty) Ltd., Infoplan Ltd., Lyttleton Engineering works (Pty) Ltd., Naschem (Pty) Ltd., Pretoria Metal Pressings (P.M.P.) (Pty) Ltd., Somchem (Pty) Ltd., Swartklip Products (Pty) Ltd., Telacast (Pty) Ltd., and Musgrave Manufacturers and Distributors.

Department of Prisons

Bureau of State Security

South African Railways Police Force

* * * * *

PART 386—EXPORT CLEARANCE

§ 386.61 [Amended]

11. The footnote [3a] to the last sentence of § 386.6(a)(2) is revised to read as follows:

* * * * *

PART 399—COMMODITY CONTROL LIST AND RELATED MATTERS

§ 399.1 [Amended]

12. § 399.1(g)(3) is amended by removing the word "Iraq," in the fourth sentence, and adding two new sentences between the existing fifth and sixth sentences to read:

* * * * *

(g) * * *

(3) * * * All entries having a "V" in the "Validated License Required" column are controlled for foreign policy reasons to military and police entities of

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[3a] The final sentence referring to military and police use may be omitted if the commodity being exported is excepted by § 385.4(a)(2) (i) through (v), or is being shipped pursuant to a validated export license that specifically permits delivery to military or police entities.

the Republic of South Africa and Namibia. All entries having either a "Y" or "U.S.S.R." in the "Validated License Required" column are controlled to the U.S.S.R. for foreign policy reasons as set forth in § 385.2 and § 390.8.

Supplement 1—[Amended]

13. The Commodity Control List (Supp. No. 1 to § 399.1) is amended as follows:

a. CCL entry 1502A is amended by revising the "GLV $ value Limits T&V" column from "O" to "500" and revising footnote 3 to that entry to read "The GLV $ value limit for police-model infrared viewers is applicable only to Austria, Belgium, Denmark, France, the Federal Republic of Germany (including West Berlin), Greece, Iceland, Italy, Japan, Luxembourg, the Netherlands, New Zealand, Norway, Portugal, Turkey, and the United Kingdom."

b. CCL entry 1505A is amended by revising the "GLV $ value Limits T&V" from "O" to "500" and removing the footnote.

c. CCL entry 1565A is amended by revising footnote 3 in the "Reason for Control" column to read: "Foreign policy export controls apply to computer equipment destined for the Department of Cooperation and Development, the Department of Internal Affairs, the Department of Community Development, the Department of Justice, the Department of Manpower Utilization, and administrative bodies of the "Homelands" that carry out similar functions in the Republic of South Africa and Namibia."

d. CCL entry 1585A is amended by removing footnote 3 relating to GVL $ Value Limits.

e. CCL entry 4585B is amended by removing footnote 4 relating to GLV $ Value Limits.

f. CCL entry 6599G is amended by removing footnote 4 relating to South Africa and Namibia.

g. CCL entry 1746A is amended by removing footnote 4 relating to GLV $ Value Limits.

h. CCL entry 6999G is amended by removing footnote 5 relating to South Africa and Namibia.

(Secs. 4, 6, 13, 15, and 21, Pub. L. 96–72, 93 Stat. 503, 50 U.S.C. app. 2401 *et seq*; Executive Order No. 12214 (45 FR 29783, May 6, 1980))

Dated: August 19, 1982.

Bohdan Denysyk,

Deputy Assistant Secretary for Export Administration.

[FR Doc. 82-25370 Filed 9-14-82; 8:45 am]

BILLING CODE 3510-25-M

PENSION BENEFIT GUARANTY CORPORATION

29 CFR Part 2619

Valuation of Plan Benefits in Non-Multiemployer Plans; Amendment Adopting Additional PBGC Rates

AGENCY: Pension Benefit Guaranty Corporation.

ACTION: Final rule.

SUMMARY: This amendment to the regulation on Valuation of Plan Benefits in Non-Multiemployer Plans contains the interest rates and factors for the period beginning October 1, 1982. The interest rates and factors are to be used to value benefits provided under terminating non-multiemployer pension plans covered by Title IV of the Employee Retirement Income Security Act of 1974, (the "Act").

The valuation of plan benefits is necessary because under section 4041 of the Act, the Pension Benefit Guaranty Corporation ("PBGC") and the plan administrator must determine whether a terminating pension plan has sufficient assets to pay all guaranteed benefits provided under the plan. If the assets are insufficient, the PBGC will pay the guaranteed benefits under the plan termination insurance program established under Title IV.

The interest rates and factors set forth in Appendix B to Part 2619 are adjusted periodically to reflect changes in financial and annuity markets. This amendment adopts the rates and factors applicable to plans that terminate on or after October 1, 1982, and enables the PBGC and plan administrators to value the benefits provided under those plans. These rates and factors will remain in effect until PBGC publishes an amendment revising them.

EFFECTIVE DATE: October 1, 1982.

FOR FURTHER INFORMATION CONTACT: Ms. Renae Hubbard, Special Counsel, Office of the General Counsel, Pension Benefit Guaranty Corporation, 2020 K Street, N.W., Washington, D.C. 20006, 202–254–4895.

SUPPLEMENTARY INFORMATION: On January 28, 1981, the Pension Benefit Guaranty Corporation (the "PBGC") issued a final regulation (46 FR 9492 *et seq.*) establishing the methods for valuing plan benefits of terminating non-multiemployer plans covered under Title IV of the Employee Retirement Income Security Act of 1974, 29 U.S.C. 1001 *et seq.* (1976), *as amended by* the Multiemployer Pension Plan Amendments Act of 1980, Pub. L. No. 96–364, 94 Stat. 1208 (the "Act"). That regulation, 29 CFR Part 2610, was recodified as 29 CFR Part 2619 on June 24, 1981, effective June 29, 1981 (46 FR 32574). That regulation contains a number of formulas for valuing different types of benefits. In addition, Appendix B to the regulation sets forth the various interest rates and factors that are to be used in the formulas. Because these rates and factors are intended to reflect current conditions in the financial and annuity markets, it is necessary to update the rates and factors periodically.

When first published, Appendix B contained interest rates and factors to be used to value benefits in plans that terminated on or after September 2, 1974, but before October 1, 1975. Subsequently, the PBGC adopted additional rates and factors for valuing benefits in plans that terminated on or after October 1, 1975, but before August 1, 1982. (29 CFR 2619 (1981), 46 FR 36693, 46 FR 45761, 46 FR 50788, 46 FR 55958, 46 FR 61084, 47 FR 2313, 47 FR 6426, 47 FR 20761.)

On July 15, 1982, the PBGC last published rates for plans that terminate on or after August 1, 1982 (47 FR 30757). At this time, changes in the financial and annuity markets have necessitated a decrease in the rates used by the PBGC to value benefits. Accordingly, this amendment changes the rates in Appendix B to add a set of interest rates and factors for plans that terminate on or after October 1, 1982. These rates and factors will remain in effect until such time as PBGC publishes another amendment which changes the rates.

Generally, the rates will be in effect for at least one month. If the rates are to be changed, PBGC will publish an amendment in the **Federal Register**, normally by the 15th of the month prior to the month for which the new rates will be effective. If no change is to be made, no amendment will be published, and the current rates will remain in effect until further notice.

Because the Multiemployer Pension Plan Amendments Act of 1980 established a new insurance program for multiemployer plans, we note that the rates and factors contained in Appendix B to Part 2619 are applicable to non-multiemployer plans only.

The PBGC has determined that notice and public comment on this amendment are impracticable and contrary to the public interest. This determination is based on the need to determine and issue new interest rates and factors promptly, so that the rates can reflect, as accurately as possible, current market conditions. The PBGC has found that the public interest is best served by issuing the rates and factors on a

prospective basis so that plans may be able to calculate the value of plan benefits before submitting a notice of intent to terminate. Also, plans will be able to predict employer liability more accurately prior to plan termination. Moreover, because of the need to provide immediate guidance for the valuation of benefits under plans that will terminate on or after October 1, 1982, and because no adjustment by ongoing plans is required by this amendment, the PBGC finds that good cause exists for making the rates set forth in this amendment to the final regulation effective less than 30 days after publication.

The PBGC has determined that this is not a "major rule" under the criteria set forth in Executive Order 12291, February 17, 1981 (46 FR 13193) because it will not result in an annual effect on the economy of $100 million or more, a major increase in costs for consumers or individual industries, or significant adverse effects on competition, employment, investment, productivity, innovation or competition.

List of Subjects in 29 CFR Part 2619

Employee benefit plans, Pension insurance, Pensions.

PART 2619—VALUATION OF PLAN BENEFITS IN NONMULTIEMPLOYER PLANS

In consideration of the foregoing, Part 2619 of Chapter XXVI, Title 29, Code of Federal Regulations, is hereby amended as follows:

1. The authority citation for Part 2619 is as follows:

Authority: Secs. 4002(b)(3), 4041(b), 4044, 4062(b)(1)(A), Pub. L. 93-406, 88 Stat. 1004, 1020, 1025-27, 1029 (1974) as amended by Secs. 403(l), 403(d), and 402(a)(7), Pub. L. 96-364, 94 Stat. 1302, 1301, 1299 (1980) (29 U.S.C. 1302, 1341, 1344, 1362).

Appendix B [Amended]

2. Rate Set 35 of Appendix B is revised and Rate Set 36 of Appendix B is added to read as follows:

Appendix B—Interest Rates and Quantities Used To Value Immediate and Deferred Annuities

In the table that follows, the immediate annuity rate is used to value immediate annuities, to compute the quantity "G_v" for deferred annuities and to value both portions of a refund annuity. An interest rate of 5% shall be used to value death benefits other than the decreasing term insurance portion of a refund annuity. For deferred annuities, k_1, k_2, k_3, n_1 and n_2 are defined in § 2619.45.

Rate set	For plans with a valuation date		Immediate annuity rate	Deferred annuities				
	On or after	And before		k_1	k_2	k_3	n_1	n_2
* * *	*	*	*	*	*	*	*	
35	8-1-82	10-1-82	11.00	1.1025	1.0900	1.0400	7	8
36	10-1-82		10.75	1.1000	1.0875	1.0400	7	8

Edwin M. Jones,

Executive Director, Pension Benefit Guaranty Corporation.

[FR Doc. 82-25021 Filed 9-14-82; 8:45 am]

BILLING CODE 7708-01-M

DEPARTMENT OF DEFENSE

32 CFR Parts 1-39

[DAC 76-37]

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 76-37. Some of the changes include solicitation response time; Indirect Cost Monitoring Office (ICMO); excess and near-excess currency countries; evaluation of bids for multiple awards, relocation costs; procedures for using the Accounting Classification Reference Numbers (ACRNs); reporting country of origin of foreign components of products manufactured in the United States; criticality designators; Appendix I, Material Inspection and Receiving Report; changes to Appendix N; property system survey; survey and statistical sampling; and editorial corrections.

EFFECTIVE DATE: August 5, 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 76-37

This document contains amendments to the Defense Acquisition Regulation in the form of replacement pages which were included in DAC 76-37, issued August 5, 1982. The following is a summary of the amendments:

Solicitation Response Time. A change is made to DAR 3-107 to apply to negotiated procurements the same guidance (2-202.1) pertaining to bidding response time as applied to acquisition by formal advertising.

Indirect Cost Monitoring Office (ICMO). DAR 3-1402 and 3-1403 are revised to clarify the reporting requirements for the Defense Contract Audit Agency (DCAA). Also, DAR 3-1406 is revised to include representation of other Federal agencies at ICMO Working Group meetings. Change of address for the ICMO is included in 3-1402(d).

Excess and Near-Excess Currency Countries. DAR 6-1109 is revised to transfer the Country of Egypt from the list of countries in which the Department of the Treasury holds excess foreign currency, to the list of countries in which near-excess foreign currency is held. This action reflects guidance issued by OMB Bulletin No. 82-2, dated October 9, 1981.

Evaluation of Bids for Multiple Awards. DAR 7-2003.23(b) is revised to raise the evaluation factor from $100 to $250, as a result of inflation.

Relocation Costs. DAR 15-205.25 is revised to recognize changes in the cost of relocating contactors' employees due to economic factors and changes in industry and Government practices. Related changes have been made to 15-205.3(b)(3) and 15-205.33(d).

Procedures for Using the Accounting Classification Reference Numbers (ACRNs). DAR 16-104.4 and 20-308.3 have been changed to permit a contracting officer to cite accounting classification reference numbers (ACRNs) on Standard Form 30 in lieu of long-line accounting classification numbers.

Reporting Country of Origin of Foreign Components of Products Manufactured in the United States. DAR 21–113.1, Item 7A, is added to provide language necessary to include a data element to the DD Form 350 pertaining to country or origin of foreign components of products manufactured in the United States. This new language in 21–113.1 makes possible use of this data element without modification to the DD Form 350 or the generation of new codes.

Criticality Designators. DAR 25–103 is revised to correct the omission of language which limits the number of contracts to which the Criticality Designator A applies. Also corrected is the number for the pertinent DoD Directive, i.e., DoDD 4410.6 in lieu of DoDD 4410.5.

Appendix I, Material Inspection and Receiving Report. Appendix I, paragraph I–301(b), Block 19, has been revised to require that all DD 250s issued on FMS requirements must show actual or estimated prices. Appendix I–401 is amended to reflect correct addresses for special distribution instructions. Changes to I–702, inadvertently omitted from DAC No. 76–31, dated 30 October 1981, are included in this document.

Changes to Appendix N. Changes to Appendix N are included to reflect correct addresses for certain activities of the Defense Logistics Agency.

Property System Survey. Paragraph 3–402.5 of Supplement 3 is revised to provide clarification of the reporting requirement when performing "limited surveillance" of contractors' property control systems.

Survey and Statistical Sampling. Annex II to Supplement 3 is revised to provide a new sampling plan that would allow the Government a minimum confidence of 90% of rejecting lots having 10% or more defectives. (It should be noted that DAR Manuals and Supplements are not included in the CFR.)

Editorial Corrections. 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 August 5, 1982.

How to Use Replacement Pages

Reproduced at the end of this document are replacement pages from DAC 76–37. The number at the top of each page (for example, 1:39), 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	
Table of sections and parts	1 through 9.
1–322.1	1:40.
1–322.3	1:48.
1–322.4	1:49.
1–322.6	1:49.
1–322.8	1:50.
1–506.2	1:87.
1–704.4 (footing)	1:122–E.
1–706.1	1:141.
1–905.4 (footing)	1:164.
1–1505	1:200.
1–2302.3	1:230.
2–201	2:7.
3–107	3:2.
	3:78–A, 3:79 (no changes).
	3:79–A removed.
3–807.7	3:130.
3–1204.1	3:182.
3–1401	3:194.
3–1402	3:195, 3:196.
3–1403	3:196.
3–1406	3:199.
6–1109	6:48.
Volume II	
Section VII, table of contents	1 through 43.
7–602.53 (deleted) (reserved)	7:298.
7–608.24 (deleted)	7:342–A removed.
7–902.34 (deleted) (reserved)	7:390.
7–1703.7 (deleted)	7:440.
7–2003.23	7:507.
7–2300	7:539.
8–705.1	8:42.
8–705.2	8:42.
Section X, table of contents	2 and 3.
15–201.3	15:8.
15–201.6	15:9.
15–205.25	15:29, 15:29–A.
	15:29–B, 15:30.
15–205.33	15:33–A.
15–205.50 (footing)	15:52.
Volume III	
16–104.3	16:11.
16–104.4	16:13.
16–303	16:16.
Section XX, table of contents	3.
20–308.3	20:23, 20:24.
21–113.1	21:9, 21:10.
	21:29 (no change).
	21:30 removed.
25–103	25:2–A.
Appendix A (paragraph 2)	A:7.
F–200.731–1	F187.
	F188 removed.
F–200.1155r	F206.
I–301	I:11.
I–401	I:21.
I–702	I:28.
Appendix N	N:106, N:107, N:110, N:114, N:115.

Changes to DAR Supplement No. 3—not in CFR:

S3–402.3, pages S3:11 and S3:12
Annex II, pages S3:29

M. S. Healy,

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

September 9, 1982.

BILLING CODE 3810–01–M

DEFENSE ACQUISITION CIRCULAR

5 AUGUST 1982 NUMBER 76-37

This Defense Acquisition Circular is issued by direction of the Secretary of Defense pursuant to the authority contained in 5 U.S. Code 301, 10 U.S. Code 2202, DoD Directive 5000.35, and DAR (ASPR) 1-106.

Unless otherwise specified, all DAR and other directive material contained in this Defense Acquisition Circular is effective upon receipt in accordance with DAR 1-106.2(d).

Reproduction authorized.

SPECIAL NOTE: All replacement pages furnished with Defense Acquisition Circulars (whether or not identified by specific items) are replacement pages for the 1976 edition of DAR (ASPR).

CONTENTS

ITEM	TITLE	PAGE
I	Solicitation Response Time	3
II	Indirect Cost Monitoring Office (ICMO)	3
III	Excess and Near-Excess Currency Countries	3
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DAC #76-37 5 AUGUST 1982

ITEM I SOLICITATION RESPONSE TIME

A change is made to DAR 3-107 to apply to negotiated procurements the same guidance (2-202.1) pertaining to bidding response time as applies to acquisition by formal advertising.

Replacement page: 3:2.

ITEM II INDIRECT COST MONITORING OFFICE (ICMO)

Defense Acquisition Circular No. 76-30, dated 30 September 1981, issued coverage with respect to the organization and function of the Indirect Cost Monitoring Office (ICMO) and its role in the DoD procurement process. DAR 3-1402 and 3-1403 are revised to clarify the reporting requirements for the Defense Contract Audit Agency (DCAA). Also, DAR 3-1406 is revised to include representation of other Federal agencies at ICMO Working Group meetings. (Please note change of address shown in 3-1402(d).)

Replacement pages: 3:194 through 3:196 and 3:199.

ITEM III EXCESS AND NEAR-EXCESS CURRENCY COUNTRIES

DAR 6-1109 is revised to transfer the Country of Egypt from the list of countries in which the Department of the Treasury holds excess foreign currency, to the list of countries in which near-excess foreign currency is held. This action reflects guidance issued by OMB Bulletin No. 82-2, dated October 9, 1981.

Replacement page: 6:48.

ITEM IV EVALUATION OF BIDS FOR MULTIPLE AWARDS

DAR 7-2003.23(b) is revised to raise the evaluation factor from $100 to $250, as a result of inflation.

Replacement page: 7:507.

ITEM V RELOCATION COSTS

DAR 15-205.25 is revised to recognize changes in the cost of relocating contractors' employees due to economic factors and changes in industry and Government practices. The limitation for costs covering the transition period has been increased to 60 days for the employee and 45 days for the spouse and dependents. The limitation on the allowability of closing costs on the residence owned by transferred employee, combined with the continuing costs of ownership, has been increased to 14% of the sales price of the property sold. Concerning the costs incident to acquiring a home in a new location, an overall limitation of 5% of the new residence purchase price has been established. Payments to newly hired employees for the purchase or sale of residences are now treated in the same manner as payments to current employees. Further, payments to employees for mortgage interest and rental differential payments, as well as mortgage interest payments on vacated residences, are recognized as allowable costs, subject to stated limitations. The prior restriction placing a limitation on the costs of cancelling unexpired leases has been eliminated. With respect to miscellaneous expense incident to relocation, the flat limitation has been raised to $1,000. Related changes have been made to 15-201.3(b)(3) and 15-205.33(d).

Replacement pages: 15:8, 15:29 through 15:29-B, 15:30 and 15:33-A.

ITEM VI PROCEDURES FOR USING THE ACCOUNTING CLASSIFICATION REFERENCE NUMBERS (ACRNs)

DAR 16-104.4 and 22-308.3 have been changed to permit a contracting officer to cite accounting classification reference numbers (ACRNs) on Standard Forms 30 in lieu of long-line accounting classification numbers.

Replacement pages: 16:13, 20:23 and 20:24.

DAC #76-37 5 AUGUST 1982

ITEM VII REPORTING COUNTRY OF ORIGIN OF FOREIGN COMPONENTS OF PRODUCTS MANUFACTURED IN THE UNITED STATES

DAR 21-113.1, Item 7A, is added to provide language necessary to include a data element to the DD Form 350 pertaining to country of origin of foreign components of products manufactured in the United States. This new language in 21-113.1 makes possible use of this data element without modification to the DD Form 350 or the generation of new codes.

Replacement page: 21:9 and 21:10.

ITEM VIII CRITICALITY DESIGNATORS

DAR 25-103 is revised to correct the omission of language which limits the number of contracts to which the Criticality Designator A applies. Also corrected is the number for the pertinent DoD Directive, i.e., DoDD 4410.6 in lieu of DoDD 4410.5.

Replacement page: 25:2-A.

ITEM IX APPENDIX I, MATERIAL INSPECTION AND RECEIVING REPORT

Appendix I, paragraph I-301(b), Block 19, has been revised to require that all DD 250s issued on FMS requirements must show actual or estimated prices. Appendix I-401 is amended to reflect correct addresses for special distribution instructions.

Replacement pages: I:11 and I:21.

ITEM X CORRECTION TO DAC #76-31
(MATERIAL INSPECTION AND RECEIVING REPORT)

Defense Acquisition Circular No. 76-31 (Item XV), dated 30 October 1981, issued changes to Appendix I to clarify instructions for preparation of DD Form 250-1. Changes to I-702, inadvertently omitted from the DAC, are included in this DAC.

Replacement page: I:28.

ITEM XI CHANGES TO APPENDIX N

Changes to Appendix N are included to reflect correct addresses for certain activities of the Defense Logistics Agency.

Replacement pages: N:106, N:107, N:110, N:114 and N:115.

ITEM XII PROPERTY SYSTEM SURVEY

Paragraph 3-402.5 of Supplement 3 is revised to provide clarification of the reporting requirement when performing "limited surveillance" of contractors' property control systems.

Replacement pages: S3:11 and S3:12.

ITEM XIII SURVEY AND STATISTICAL SAMPLING

Annex II to Supplement 3 is revised to provide a new sampling plan that would allow the Government a minimum confidence of 90% of rejecting lots having 10% or more defectives.

Replacement page: S3:29.

(NOTE: Supplements to the DAR are not part of the DAR subscription. They are published separately and are available for purchase from the U.S. Government Printing Office.)

DAC #76-37 5 AUGUST 1982

ITEM XIV EDITORIAL CORRECTIONS

The following listed pages include corrections to typographical errors, administrative oversight, or other editorial changes. (It is noted that revised DD Form 1155r, dated 81 AUG, is included in Appendix F; also, DD Form 782, which was canceled 27 May 1981, is deleted from Appendix F.)

Replacement pages: Table of Sections and Parts (preceding Section I), pages 1 through 9; 1:40, 1:48, 1:49, 1:50, 1:87, 1:122-E, 1:141, 1:164, 1:200, 1:230, 2:7, 3:78-A, 3:79 (remove 3:79-A), 3:130, 3:182; Table of Contents, Section VII, pages 1 through 43; 7:298, (remove 7:342-A), 7:390, 7:440, 7:539, 8:42; Table of Contents, Section X, pages 2 and 3; 15:9, 15:52, 16:11, 16:16; Table of Contents, Section XX, page 3; 21:29 (21:30 deleted), A:7, F187 (F188 deleted), and F206.

TABLE OF SECTIONS AND PARTS

Section I—General Provisions
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Reference to ASPR Manuals and Supplements: (See Note below*)
ASPR Manual for Contract Pricing (*ASPM No. 1*) (15 Sep 75)
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DAR Supplement No. 1 — Contractor Purchasing System Review (CSPR) Program (DARS *No. 1*) (31 Mar 82)
ASPR Supplement No. 2 — Contract File Maintenance, Closeout, and Disposition (*ASPS No. 2*) (1 Apr 70)
ASPR Supplement No. 3 — Property Administration (*ASPS No. 3*) (1 Oct 75)
ASPR Supplement No. 4 — Procedures for Submission of Applications To Be Placed on Research and Development Bidders Mailing Lists (*ASPS No. 4*) (1 Apr 68)
ASPR Supplement No. 5 — Procurement of Utility Services (*ASPS No. 5*) (1 Oct 74)

* NOTE: Manuals and Supplements to the DAR are not included in the DAR subscription. They are published separately and are available for purchase from the U. S. Government Printing Office.

GENERAL PROVISIONS

1-322 Multiyear Contracting.
1-322.1 General.

(a) Description of Procedure. Multiyear contracting is a method of acquiring for DoD planned requirements for up to a 5-year period (4 years in the case of maintenance and operation of family housing), without having total funds available at time of award. Multiyear contract quantities are budgeted for and financed in accordance with the applicable program year as reflected in the DoD Five-Year Defense Program. This method may be used for either competitive or noncompetitive contracting. With respect to competitive contracting, award may be based on price only or price and other factors considered. (See 1-322.4(a)(2)). The contractor is protected against loss resulting from cancellation by contract provisions allowing reimbursement of unrecovered nonrecurring costs included in prices for canceled items. However, the cancellation ceiling for any contract may not be in excess of $5 million unless the Congress, in advance, approves such a cancellation ceiling.

(b) Policy. Contracts awarded under this multiyear procedure shall be firm fixed price or fixed price with provisions for economic price adjustment. Use of multiyear contracting is encouraged to take advantage of one or more of the following:

(i) lower costs;
(ii) enhancement of standardization;
(iii) reduction of administrative burden in the placement and administration of contracts;
(iv) substantial continuity of production or performance, thus avoiding annual startup costs, preproduction testing costs, make-ready expenses, and phaseout costs;
(v) stabilization of work forces;
(vi) avoidance of the need for establishing and "proving out" quality control techniques and procedures for a new contract each year;
(vii) broadening the competitive base with opportunity for participation by firms not otherwise willing or able to compete for lesser quantities, particularly in cases involving high startup costs; and
(viii) implementation of the Industrial Preparedness Program for planned items with planned producers.

(c) Use.
(1) The multiyear contracting method should be used

when it is determined that:

(i) the Government need for the supplies or services being acquired over the period of the contract is reasonably firm and continuing; and

(ii) such a contract will serve the best interests of the Government by encouraging effective competition or promoting economies in performance and operation.

(2) Prior to use of the multiyear method in the case of noncompetitive contracting, the head of the contracting activity or his designee must determine that (i) changes to an extent that would have a major impact on contract price, e.g., design and specification changes or changes in production methods, are not expected to occur, and (ii) the item is expected to be obtainable only from a sole source during the entire multiyear period.

(3) Prior to the use of the multiyear contracting method in the case of items regularly manufactured and offered for sale in substantial quantities in the commercial market, the head of the contracting activity or his designee must determine that the criteria in (c)(1) are met, significant benefits or cost savings would result, and either (A) the quantities to be acquired by the Government represent a substantial portion of the total market and would require special manufacturing runs for all or substantially all of the Government's requirements, or (B) the items to be acquired require repair parts support and are not susceptible to significant changes on a periodic basis.

(d) Limitations. Multiyear contracts for supplies and services shall not be used:

(1) When funds covering the acquisition are limited by statute for obligation during the fiscal year in which the contract is executed (but see 1-322.6, Multiyear Contracting of Services under Public Law 90-378, for multiyear contracting of specified service outside the 48 contiguous States and District of Columbia; and 1-322.7, for multiyear contracting of supplies and services for the maintenance and operation of family housing under Public Law 91-142).

(2) To obtain requirements which are in excess of the Five-Year Defense Program.

(3) In the case of services, until a written determination has been made that (i) there will be a continuing requirement for the services and incidental supplies, consonant with current plans for the proposed contract period; (ii) the furnishing of such services and incidental supplies will

(h) In the event of a cancellation, the contractor is entitled to payment as consideration therefor in accordance with the terms of the applicable Cancellation of Items clause (see 1-322.5) in an amount not to exceed the cancellation ceiling.

(i) The schedule shall contain a provision limiting the payment obligation of the Government to a monetary amount, there described as being available for contract performance. Such amount for the first program year requirements shall be inserted by the contracting officer upon award of the contract and shall be modified for successive program years upon availability of funds for those years.

(j) In the event the contract is terminated in whole for the convenience of the Government, including items subject to cancellation, the Government's obligation shall not exceed the amount set forth in the schedule as available for contract performance, plus the applicable amount established as the cancellation ceiling.

1-322.3 Evaluation.

(a) Evaluation of offers in a multiyear acquisition involves not only determination of the lowest overall evaluated cost to the Government for both alternatives, the multiyear acquisition and the first program year acquisition; it also involves the comparison of the cost of buying the total requirement in successive independent acquisitions. All the factors to be considered for the various evaluations involved shall be set forth in the solicitation.

(b) In the event the Government determines prior to award that only the first program year quantities are actually required, only the offers on the first program year requirements will be evaluated. When the solicitation does not permit the submission of prices on a single year basis, the single year requirement will be resolicited.

(c) The cancellation ceiling shall not be a factor for evaluation. Unless Government administrative costs incident to annual contracting methods and contract administration can be reasonably established and supported, they shall not be used as a factor for evaluation. When administrative costs are to be used in evaluation, the dollar amount to be used shall be stated in the solicitation.

(d) In the case of supplies, delivery destinations may be unknown for certain quantities due to the extended duration of contract performance. Such cases shall be handled in accordance with 19-208.4.

(e) When Government production and research property is provided pursuant to Section XIII, Part 3, the use of such

property may be on a rent-free basis under the policies contained in Section XIII, Part 5. In this event, the solicitation shall set forth a detailed description of the procedure to be followed and the factors to be considered, in accordance with Section XIII, Part 5, for the elimination of competitive advantage. The amount added for evaluation to each offeror's unit price for the first program year requirement shall also be added to his unit price for the multiyear requirements.

(f) When the solicitation requires the submission of prices on the first program year requirements in accordance with 1-322.2(a)(2)(i), bids or offers which submit prices on the multiyear requirements only shall be rejected as nonresponsive.

(g) When the solicitation provides for submission of prices only for the total multiyear quantity in accordance with 1-322.2(a)(3)(i), submission of prices for a single year quantity will be disregarded for any purpose but will not render the bid or offer nonresponsive as to any alternate multiyear submission by the same bidder or offeror.

(h) To determine the lowest evaluated unit price, compare the lowest evaluated bid or offer on the first program year alternative against the lowest evaluated bid or offer on the multiyear alternative, as follows:

(1) Multiply the evaluated unit price for each item of the lowest evaluated bid or offer on the first program year alternative times the total number of units of that item required by the multiyear alternative. Then,

(2) Take the sum of these products, for all the items, plus the dollar amount of any administrative costs of the Government that are to be used in the evaluation. Finally,

(3) Compare this result against the total evaluated price of the lowest bid or offer on the multiyear alternative.

(i) Where the multiyear acquisition is being competed on a basis other than price alone, the solicitation shall advise of the relative importance of the evaluation factors.

1-322.4 Award.

(a) Except as provided in (b) and (c) below, award shall be made:

(1) On the basis of the lowest evaluated unit price determined in accordance with 1-322.3, whether that price is on a single year basis or a multiyear basis; or

(2) To that offeror submitting the proposal most advantageous to the Government, price and other evaluation factors considered,where the acquisition is on the basis of price and other factors.

(b) If, when competition was anticipated, only one

responsive bid or offer is received on the multiyear requirements from a responsible bidder or offeror, award shall be made only with the advance approval of the chief of the contracting office.

(c) In no event shall award be made at an unreasonable price (see 2-404.2 and 3-801).

(d) In the case of noncompetitive acquisitions, awards shall be made only if a detailed review of the cost and technical proposals supports the determination made under 1-322.1(c)(ii), and significant benefits or cost savings will result from multiyear acquisition.

1-322.5 Clauses. The clauses in 7-104.47 (a) and (b) shall be included in all supply contracts under the multiyear contracting method and the clauses in 7-1903.33(a) and (b) shall be included in all contracts for the contracting of services under the multiyear contracting method, except as provided in 1-322.6 and 1-322.7.

1-322.6 Multiyear Contracting of Services Under Public Law 90-378.

(a) Under Public Law 90-378 (10 U.S.C. 2306(g)), the Department of Defense is authorized to enter into multiyear acquisitions for the following listed services, to be performed outside the 48 contiguous States and the District of Columbia, to obtain requirements which are not in excess of the Five-Year Defense Program and for which funds are limited by statute for obligation during the fiscal year in which the contract is executed:

(i) operation, maintenance, and support of facilities and installations;

(ii) maintenance or modification of aircraft, ships, vehicles, and other highly complex military equipment;

(iii) specialized training necessitating high quality instructor skills (for example, pilot and other aircrew members; foreign language training); and

(iv) base services (for example, ground maintenance; in-plane refueling; bus transportation; refuse collection and disposal).

However, such acquisitions shall be entered into for no more than a 5-year period and only when such acquisitions are consistent with the policies of and satisfy the requirements set forth in 1-322.1 through 1-322.5 (except as provided in (b) and (c) below). The performance years specified in the schedule shall not extend beyond the end of any fiscal year (1 October - 30 September).

(b) Since acquisitions under this authority are limited for execution on a fiscal year basis, references to "program year" throughout 1-322.6 shall be considered to mean "fiscal year."

(c) Clauses. The clauses in 7-1903.33(c) and (d) shall be included in all service contracts for the acquisition of services under this paragraph 1-322.6 on a multiyear basis.

1-322.7 Multiyear Acquisition of Supplies and Services Under Public Law 91-142.

(a) General. Under Section 512 of Public Law 91-142, the Department of Defense is authorized to enter into contracts for periods of no more than 4 years for supplies and services required for the maintenance and operation of family housing for which funds would otherwise be available only within the fiscal year for which appropriated. Such acquisitions shall be entered into only when they are consistent with the policies and satisfy the requirements set forth in 1-322.1 through 1-322.5 (except as provided in (b) and (c) below). The performance years specified in the schedule shall not extend beyond the end of any fiscal year (1 October - 30 September).

(b) Limitations. Since acquisitions under this authority are limited for execution on a fiscal year basis, references to "program year" throughout 1-322.6 shall be considered to mean "fiscal year."

(c) Clauses. The clauses in 7-1903.33(c) and (d) shall be included in all contracts for the acquisition of supplies or services under this paragraph 1-322.7 on a multiyear basis.

1-322.8 Multiyear Acquisition Using Modified Requirements-Type Contracts.

(a) Description of Procedure. Competitive multiyear acquisition of supplies and/or services may be conducted using a requirements-type contract, modified from the 3-409.2 type as described below. This type of contract will only be used when anticipated annual requirements, expressed as the Best Estimated Quantity (BEQ), can be projected with reasonable certainty. Under this method, a firm fixed price or fixed price with provisions for economic price adjustment contract is awarded for specified supplies and/or services up to a designated maximum quantity with orders placed on an as-required basis during the multiyear period. Contracts awarded on the first program year requirements only will not include provision for cancellation charges. The modified requirements-type contract differs from the 3-409.2 requirements-type contract in the following respects:

(1) Contract quantities anticipated to be acquired

1-505.5 *Fees for Information.* Contingent fees paid for "information" leading to obtaining a Government contract or contracts are included in the prohibition and, accordingly, are in breach of the covenant unless the agent qualifies under the exception as a bona fide employee or a bona fide established commercial or selling agency maintained by the contractor for the purpose of securing business.

1-506 Representation and Agreement Required From Prospective Contractors.

1-506.1 *General.* Except as provided in 1-506.3, each Department shall inquire of and secure a written representation from prospective contractors as to whether they have employed or retained any company or person (other than a full-time employee working solely for the prospective contractor) to solicit or secure the contract, and shall secure a written agreement to furnish information relating thereto as required by the contracting officer. When the SF 33 is not used, the clause in 7-2002.1 shall be included in the solicitation. The Contractor's Statement of Contingent or Other Fees (Standard Form 119) shall be used without deviation when either part of the inquiry provided in 7-2002.1 is answered in the affirmative. The form shall also be used without deviation in any other case when a Department desires to obtain such information. When further information is required, it may be obtained in any appropriate manner. Normally, submission of the form shall be required only of successful bidders and offerors, and contractors. (However, for Foreign Military Sales, see 6-1305.4.)

1-506.2 *Interpretation of the Representation.*

(a) For the purpose of the representation and agreement required from the prospective contractor, as described in 1-506.1, the definition of "bona fide employee" is as specified in 1-505.3.

(b) The fact that the prospective contractor retains a person who does not devote his full time solely to the prospective contractor does not necessarily mean that the relationship involved is in violation of the covenant against contingent fees or that there is any stigma attached to the contractor-agent relationship. It does mean, however, that the prospective contractor must fill out the representation in the affirmative and, as required, furnish information with respect to such employment or retainer.

(c) If the representation would otherwise be answered in the affirmative the fact that the person employed or retained by the bidder or offeror or contractor is an attorney, or a public relations consultant, or has any other special or professional title, does not permit answering in the negative.

1-506.3 *Exceptions.* The inquiry and agreement specified in 1-506.1 need not be made and submission of Standard Form 119 need not be requested in connection with the following:

(i) any advertised contract in which the aggregate amount involved does not exceed $25,000;

(ii) any negotiated contract in which the aggregate amount involved does not exceed $10,000;

(iii) any negotiated contract for perishable subsistence supplies in which the aggregate amount involved does not exceed $25,000;

(iv) any contract for services which are required to be performed by an individual contractor in person under Government supervision and paid for on a time basis;

(v) any contract for public utility services furnished by a public utility company where the utility company's rates for the services furnished are subject to regulation by Federal, State, or other regulatory body and the public utility company is the sole source of supply;

(vi) contracts to be made in foreign countries; and

(vii) any other contracts, individually or by class, designated by the Secretary. (Reports of any such exceptions shall be filed promptly with the Administrator of General Services.)

1-507 Sales Commissions and Contingent Fees on Foreign Military Sales. See 6-1305.

1-508 Enforcement.

1-508.1 *General.* Each Department shall take the necessary steps to assure that the indicated proposed contractor has furnished a representation (negative or affirmative) and agreement required by 1-506.1.

(a) If the indicated proposed contractor makes such representation in the negative, such representation may be accepted and award made or offer accepted.

(b) If the indicated proposed contractor makes such representation in the affirmative, a completed Standard Form 119, in duplicate, shall be requested from him. In the case of formal advertising, the making of an award in accordance with established procedure of the Department concerned need not be delayed pending receipt of the form. In the case of negotiation, if the proposed contractor makes such representation in the affirmative, he shall be required to file a completed Standard Form 119, or the statement in lieu of the form, prior to acceptance of the offer or execution of the contract, unless the Chief of the Purchasing Office considers that the interest of the Government will be prejudiced by the suspension of negotiations pending receipt and consideration of an executed Standard Form 119.

(c) If the indicated proposed contractor fails to furnish the representation and agreement as required by 1-506.1, such failure shall be considered a minor informality and, prior to award, he shall be afforded a further opportunity to furnish such representation and agreement. A refusal or failure to furnish the representation and agreement after such opportunity has been afforded shall require rejection of the bid or offer.

1-508.2 *Failure or Refusal to Furnish Standard Form 119.* If the successful bidder or offeror or the contractor, upon request, refuses or fails to furnish a completed Standard Form 119, or a statement in lieu thereof, as provided in 1-506.1 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 the contract has been awarded or bid or offer accepted, determine what action shall be taken, such as making an independent investigation or considering the eligibility of the contractor as a future contractor.

1-508.3 *Misrepresentations or Violations of the Covenant Against Contingent Fees.* In case of misrepresentation concerning contingent fees, or violation or breach of the covenant against contingent fees, or some other relevant im-

(xxvi) advise and assist contracting officers in discharging their responsibilities by:

(A) monitoring and reviewing contractor performance to determine compliance with small and disadvantaged small business subcontracting plans;

(B) developing and maintaining records and reports that reflect such compliance or noncompliance.

1-704.4 *Small Business Technical Advisor.*

(a) A Small Business Technical Advisor (SBTA) appointed pursuant to 1-702(e) shall be a full-time employee of the contracting activity and shall be well qualified, technically trained, and familiar with the supplies or services acquired at the activity.

(b) The principal duty of this advisor shall be to assist the SBA Procurement Center Representative in his duties and functions relating to Sections 8 and 15 of the Small Business Act. Providing such assistance shall take precedence over any other collateral duties that may be the responsibility of the SBTA.

joint determinations shall be used as the basis for set-asides. SBA recommendations for set-asides will be limited to those proposed acquisitions over $2,500 and not reserved for small business under the procedures of 1-702(c) which, after review by the small business specialist or the contracting officer, have been determined by either party not to meet the criteria for total or partial restriction to small business concerns.

(f) Once a product or service has been acquired successfully by a contracting office on the basis of a small business set-aside, all future requirements of that office for that particular product or service not subject to simplified small purchase procedures shall be acquired on the basis of a repetitive set-aside. This procedure will be followed unless the contracting officer determines that there is not 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. Withdrawal of a repetitive set-aside will be in accordance with 1-706.3.

(g) If a proposed small business set-aside is estimated to exceed $1,000,000 in value and a bond is required, the contracting officer shall, to the extent practicable, place contracts so as to allow more than one concern to perform the work.

(h) To provide for SBA consideration of individual set-asides at the request of its representative, the contracting office shall make available to him for review at the office (to the extent that he has been granted security clearance) all proposed classified and unclassified acquisitions expected to exceed $2,500 on which unilateral set-asides have not been made by the contracting officer or otherwise reserved for small business under the procedures of 1-702(c).

(i) In addition to individual acquisition set-asides, classes of current and future acquisitions, or portions thereof, of selected items or services may be set aside for exclusive small business participation. The determination to make a class set-aside may be either unilateral or joint. Unilateral set-asides regardless of value will normally be initiated by the contracting officer, but may also be initiated by recommendation of the small business specialist. Class set-asides may be recommended by the SBA representative for only those items or services on which unilateral class set-asides have not previously been made by the contracting officer. The determination to make a class set-aside shall not depend on the existence of a current acquisition if future acquisitions can be clearly

foreseen. Class set-asides shall apply only to the contracting office making or participating in the agreement. A class set-aside agreement should specifically identify the items or services subject thereto. Copies of each class set-aside agreement shall be retained at the contracting office. Any class of acquisitions proposed to be totally set aside shall satisfy the requirements of 1-706.5. The set-aside determination for any class of acquisitions proposed to be partially set aside shall specify that it does not apply to any individual acquisition not severable into two or more economic production runs or reasonable lots.

(j) None of the following is, in itself, sufficient cause for not making a set-aside:

(i) a large percentage of previous acquisitions of the item has been placed with small business concerns;

(ii) the item is on an established planning list under the Industrial Preparedness Program, except that a total set-aside shall not be authorized when one or more large business Planned Emergency Producers of the item desires to participate in the acquisition (but see 1-706.6 as to partial set-asides);

(iii) the item is on a Qualified Products List, except that a total set-aside shall not be authorized when the products of one or more large businesses are on the Qualified Products List unless it has been confirmed that none of such large businesses desires to participate in the acquisition (but see 1-706.6 as to partial set-asides);

(iv) a period of less than 30 days from date of issuance of solicitations is prescribed for the submission of offers;

(v) the acquisition is classified;

(vi) small business concerns are considered to be receiving a fair proportion of total contracts for supplies or services;

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(ii) *From the prospective contractor*—including representation and other information contained in or attached to bids and proposals; replies to questionnaires; financial data, such as balance sheets, profit and loss statements, cash forecasts, financial history of the contractor and affiliated concerns; current and past production records; personnel records; and lists of tools, equipment, and facilities; written statements or commitments concerning financial assistance and subcontracting arrangements; and analyses of operational control procedures. Where it is considered necessary by the contracting officer to prevent practices prejudicial to fair and open competition or for other reasons, prospective contractors may be required to submit affidavits concerning their ability to meet any of the minimum standards set forth in 1-903, and company ownership and control (see 2-201(a)B(ii) and (b)(xvii)).

(iii) *Existing information within the Department of Defense*—including records on file and knowledge of personnel within the purchasing office making the procurement, other purchasing offices, related activities, contract administration offices, audit activities, and offices concerned with contract financing.

(iv) *Publications*—including credit ratings, trade and financial journals, business directories and registers.

(v) *Other sources*—including suppliers, subcontractors and customers of the prospective contractor; banks and financial companies; commercial credit agencies; Government departments and agencies; purchasing and trade associations; better business bureaus and chambers of commerce.

1-905.4 *Pre-Award Surveys.*

(a) *General.* A pre-award survey is an evaluation by a contract administration office of a prospective contractor's capability to perform under the terms of a proposed contract. Such evaluation shall be used by the contracting officer in determining the prospective contractor's responsibility. The evaluation may be accomplished by use of (i) data on hand, (ii) data from another Government agency or commercial source, (iii) an on-site inspection of plant and facilities to be used for performance on the proposed contract, or (iv) any combination of the above. Pre-award surveys shall be conducted in accordance with Appendix K, Pre-Award Survey Procedures.

(b) *Circumstances Under Which Performed.* A pre-award survey shall be required when the information available to the purchasing office is not sufficient to enable the contracting officer to make a determination regarding the responsibility of a Prospective Contractor (but see (c) below). The contracting officer shall request a pre-award survey on Pre-Award Survey of Offeror-General (DD Form 1524) (see F-200.1524) in the detail commensurate with the dollar value and complexity of the procurement. A pre-award survey should not be requested for a procurement valued at $25,000 or less, except where risk associated with any factor is judged by the contracting officer to warrant the cost of a pre-award survey, or where the case requires referral to the SBA for possible Certificate of Competency action, in accordance with 1-705.4. If during the performance of a

pre-award survey, the applicable contract administration activity conducting the survey discovers that the small business being surveyed has received preferential treatment on an ongoing contract in accordance with Section 8a of the Small Business Act, or has received an SBA Certificate of Competency during the last 12 months, the appropriate SBA field office shall be contacted and its advice sought prior to making an affirmative recommendation on the responsibility of the contractor. In requesting a pre-award survey, the contracting officer shall call to the attention of the contract administration office any factors which should receive special emphasis and state whether the purchasing office will participate in the survey (see Appendix K-203.1(b). The factors selected by the contracting officer shall be applicable to all firms responding to the solicitation and shall be considered in all pre-award surveys performed for the same solicitation. In the absence of specific instructions from the purchasing office, the scope of the pre-award survey shall be determined by the contract administration office and a normal time frame of seven working days after receipt of request shall be allowed for conducting the survey and submitting the report, recognizing that in unusual circumstances exception from the normal time frame may be requested.

(c) *Workload and Financial Capacity.* Regardless of the apparent sufficiency of information available to the purchasing office indicating responsibility with respect to the standards set forth in 1-903.1(i) and (ii), in procurements which are significant either in dollar value or in the critical nature of the requirement, consideration shall be given to requesting the contract administration office to verify information regarding current workload and financial capacity.

(d) *Walsh-Healey Public Contracts Act Eligibility Determination.* The contracting officer shall accept the representation by the offeror that the firm is either a manufacturer or regular dealer pursuant to the requirements of the Walsh-Healey Public Contracts Act (Section XII, Part 6) unless—

(i) the contracting officer has knowledge that raises the question of the validity of the representation;

(ii) a protest has been lodged pursuant to 12-604;

(iii) the offeror in line for contract award has not previously been awarded a contract subject to the Act by the individual acquisition office; or

(iv) a preaward investigation or survey of such offeror's operations is otherwise made to determine the technical and production capability, plant facilities and equipment, and subcontracting and labor resources of such offeror.

Where these conditions exist, the PCO shall determine the Walsh-Healey Act eligibility status of the offeror, based on available evidence, including preaward surveys, experience of other acquisition offices, information available from the cognizant contract administration office or information provided directly by the offeror.

bility of a "buy-in" (1–311). This determination shall be based on factors such as, but not limited to, substantial startup or phase-in costs, superior technical ability resulting from performance of the initial contract, and long preproduction lead time for a new producer. In such cases, the solicitation shall contain an *Evaluation of Options* provision substantially as set forth in 7–2003.11(b).

(d) The option quantity may be considered in the evaluation for award of a fixed-price incentive contract if the determination in 1–1504(c) has been made before issuance of the solicitation, and if the solicitation (i) specifies a cost-sharing arrangement applicable to all proposals, and (ii) specifies that the ceiling price and target profit for the basic and option quantities are to be based on stated percentages of the offeror's target cost. These percentages shall be set forth in the solicitation and shall be applicable to all proposals. In such cases, the *Evaluation of Options* provision in 7–2003.11(c) shall be inserted in the solicitation.

1–1505 Exercise of Options.

(a) The exercise of an option by the Government requires the contracting officer's written notification to the contractor within the time period specified in the contract.

(b) When the contract provides for economic price adjustment and the contractor requests revision of price pursuant to such provision, or the provision applies only to the option quantity, the effect of economic price adjustment on prices under the option must be ascertained before the option is exercised.

(c) Options should be exercised only if it is determined that:

(i) funds are available;

(ii) the requirement covered by the option fulfills an existing need of the Government. A Foreign Military Sales (FMS) commitment undertaken by the United States Government on behalf of a foreign country constitutes such need. However, in the latter case, the contract shall expressly provide for the Government's right to exercise the option for FMS purposes (see 1–1503(e) and 6–1309); and

(iii) the exercise of the option is the most advantageous method of fulfilling the Government's need, price, and factors in (e) and (f) below considered.

(d) Insofar as price is concerned, the determination under (c)(iii) above shall be made on the basis of one of the following.

(1) A new solicitation fails to produce a better price than that offered by the option. If the contracting officer anticipates that the option price will be the best price available, he should not use this method of testing the market but should use one of the methods in (2), (3), or (4) below.

(2) An informal investigation of prices, or other examination of the market, indicates clearly that a better price than that offered by the option cannot be obtained (see 1–309).

(3) The time between the award of the contract containing the option and the exercise of the option is so short that it indicates the option price is the lowest price obtainable, considering such factors as market stability and a comparison of the time since award with the usual duration of contracts for such supplies or services.

(4) Established prices are readily ascertainable and clearly indicate that a new solicitation can obviously serve no useful purpose.

(e) The determination under (c)(iii) above should, among other things, take into account the Government's need for continuity of operations and potential costs to the Government of disrupting operations, including the cost of relocating necessary Government-furnished equipment (as, for example, in certain repair and overhaul contracts for aircraft or other complex equipment).

(f) Insofar as factors other than price were considered for award of an originally negotiated procurement (see 3–501(b)(3)Sec. M(i)), and are therefore for consideration in exercising the option, the determination under (c)(iii) above shall be made on the basis of one of the following.

(1) A new solicitation fails to produce a more advantageous offer than that offered by the option. If the contracting officer anticipates that the option will be the most advantageous offer, he should not use this method of testing the market but should use one of the methods in (2) or (3) below.

(2) An informal investigation of the market indicates clearly that a more advantageous offer than that offered by the option cannot be obtained, and that a new solicitation would obviously serve no useful purpose (see 1–309).

(3) The time between the award of the contract containing the option and the exercise of the option is so short that it indicates clearly that the option is the most advantageous offer obtainable, considering such factors as changes in relative technical merit of the contractor and competitors, market stability, and a comparison of the time since award with the usual duration of contracts for such supplies or services.

(g) When it has been determined that an option may properly be exercised in accordance with the principles set forth herein, such determination shall be set forth in writing and made a part of the contract file. Written notification to the contractor of the exercise of the option and any contract modification resulting therefrom shall cite the option clause contained in the original contract as authority for the procurement of the option quantity; and no citation under 10 U.S.C. 2304(a) is required. Reporting, however, shall be in accordance with the instructions applicable to DD Form 350 (Individual Procurement Action Report).

1–1506 Examples of Option Clauses. Examples of Option clauses are set forth in 7–104.27 and 7–1903.22.

Part 16—Reserved

For Novation coverage, see Section XXVI, Part 4.

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event of war or national emergency, and to keep current defense programs on schedule, it is a statutory requirement and national policy to require contractors to use industrial priority ratings and allotment authority to support military procurement (see 1–307).

Part 23—Environmental Protection

1–2300 Scope of Part. This Part sets forth policies and procedures for carrying out the requirements of the Clean Air Act, as amended (42 U.S.C. 1857 et seq., as amended by Public Law 91–604), The Federal Water Pollution Control Act (33 U.S.C. 1251 et seq. as amended by Public Law 92–500) Executive Order 11738 and the related regulations of the Environmental Protection Agency (EPA) (40 CFR Part 15).

1–2301 Policy.

(a) Executive Order 11738 provides in Section 1 that "It is the policy of the Federal Government to improve and enhance environmental quality. In furtherance of that policy, the program prescribed in this Order is instituted to assure that each Federal agency empowered to enter into contracts for the procurement of goods, materials, or services and each Federal agency empowered to extend Federal assistance by way of grant, loan, or contract shall undertake such procurement and assistance activities in a manner that will result in effective enforcement of the Clean Air Act (hereinafter referred to as the 'Air Act') and the Federal Water Pollution Control Act (hereinafter referred to as the 'Water Act')."

(b) Except as provided in 1–2302.4, purchasing offices shall not enter into, renew, or extend any contract for the procurement of goods, materials, or services or extend Federal financial assistance to a firm proposing to use in the performance thereof a facility which is listed in the EPA List of Violating Facilities, pursuant to 40 CFR Part 15.20 as a violating facility under either the Air Act or the Water Act.

1–2302 Administration and Enforcement.

1–2302.1 *Solicitation Provision.* The provision set forth in 7–2003.71 shall be included in each solicitation except those involving small purchases (Section III, Part 6).

1–2302.2 *Clause.* Unless exempted pursuant to 1–2302.4, the clause in 7–103.29 shall be included in all contracts except those involving small purchases (Section III, Part 6).

1–2302.3 *Compliance Responsibilities.* The primary responsibility for ensuring compliance with Federal, State or local environmental control laws and any rules, regulations, standards or guidelines issued pursuant thereto rests with those agencies, such as the Environmental Protection Agency, charged with this responsibility under the various laws concerned. When, however, any condition in any facility being used in the performance of a nonexempt contract, which involves noncompliance with clean air or water standards comes to the attention of the contracting officer in the performance of his regular duties, he shall notify the appropriate Secretary or his designee in accordance with Departmental procedures. The Secretary or his designee shall promptly transmit such reports to the Director, Office of Federal Activities, EPA.

(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 an affidavit concerning his affiliation with other concerns. To accomplish the foregoing, the provision in 7-2003.12 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;

SECTION III

PROCUREMENT BY NEGOTIATION

Part 1—Use of Negotiation

3–100 Scope of Part. This Part deals with the nature and use of negotiation as distinguished from formal advertising, and with limitations upon that use.

3–101 General.

(a) Pursuant to the authority of 10 U.S.C. 2304(a), procurement may be effected by negotiation under any one of the exceptions (1) through (17) set forth in Part 2 of this Section. However, procurement shall be made by formal advertising when such method is feasible and practicable, even though existing conditions and circumstances would otherwise satisfy the requirements of Part 2 of this Section.

(b) When supplies or services are to be procured by negotiation, offers shall be solicited from the maximum number of qualified sources consistent with the nature and requirements of the supplies or services to be procured.

(c) No contract shall be entered into as a result of negotiation unless a business clearance or approval as is prescribed by applicable Departmental procedures has been obtained.

(d) Negotiated procurements shall be on a competitive basis to the maximum practical extent. When a proposed procurement appears to be necessarily noncompetitive, the contracting officer is responsible not only for assuring that competitive procurement is not feasible, but also for acting whenever possible to avoid the need for subsequent noncompetitive procurements. This action should include both examination of the reasons for the procurement being noncompetitive and steps to foster competitive conditions for subsequent procurements, particularly as to the availability of complete and accurate data, reasonableness of delivery requirements (1–305.2(a)), and possible breakout of components for competitive procurement. Except for procurement of electric power or energy, gas (natural or manufactured), water, or other utility services, and procurement of educational services from nonprofit institutions, contracts in excess of $10,000 shall not be negotiated on a noncompetitive basis without prior review at a level higher than the contracting officer to assure compliance with this subparagraph.

3–102 Reserved.

3–103 Records and Reports of Negotiated Contracts. In addition to the records and reports described in 1–308, 3–211.4, and 3–216.4, each Department is required to maintain a record of the total value of all contracts negotiated by it during each fiscal year under each of the circumstances permitting negotiation enumerated in Section III, Part 2. These records, and reports based thereon, are maintained through the Department of Defense Procurement reporting system described in 1–110 and Section XXI, Part 1.

3–104 Aid to Small Business and Minority Concerns in Negotiated Procurements. When negotiation is conducted, consideration shall be given to the size

and minority status of the business concerns, and when subcontracting is consistent with the best interests of the Government, the extensive use of subcontractors shall be a favorable factor. See Section I, Part 7, and 1–322.

3–105 Aid to Labor Surplus Area Concerns in Negotiated Procurements. When negotiation is conducted, consideration shall be given as to whether the prospective supplier is a labor surplus area concern. See Section I, Part 8.

3–106 Presolicitation Notices and Conferences.

3–106.1 *General.* This Part describes a procedure which may be used as a preliminary step to negotiated procurements where the cost of preparing a formal solicitation and response would be substantial for both the Government and industry. This procedure is designed to develop sources for procurement; permit the Government to solicit for preliminary information based on a general description of the supplies or services involved; permit prospective offerors to submit proposals without undue expenditure of effort, time, and money; and to explain complicated specifications and requirements to interested firms. The presolicitation conference shall not be used as a method for prequalification of offerors, and may be used only when approved at a level higher than the contracting officer.

3–106.2 *Presolicitation Procedure.*

(a) When a presolicitation notice is used it shall be prepared by the contracting officer and forwarded to all known potential offerors. It shall at least request an expression of interest in the contemplated procurement and shall designate a time for submission of responses. In cases of complex procurement, it may also request information pertaining to management, engineering, and production capabilities. Each notice shall define as explicitly as possible the information to be furnished by the offeror and shall indicate whether it is contemplated that the presolicitation notice will be followed by a conference and a formal solicitation. Detailed drawings, specifications, or plans shall not normally be included in a presolicitation notice. The presolicitation notice shall be synopsized in accordance with 1–1003. See 1–309 for solicitations for informational or planning purposes; 2–205.6 for pre-invitation notices in formally advertised procurements; and 2–207 and 3–504 for pre-bid and pre-proposal conferences, respectively.

(b) All of those responding to the presolicitation notice shall be advised of the details of any pending presolicitation conference. The presolicitation conference shall be conducted by procurement personnel, and attended by technical and legal personnel as appropriate. All prospective offerors attending the conference shall be furnished copies of the solicitation, unless they decline to participate in the procurement. If it is determined to proceed with the procurement without a conference, those responding to the presolicitation notice shall be furnished a formal solicitation, except those who decline to participate. In addition, a copy of the solicitation shall be furnished to any prospective offeror who requests one (but see 1–603 and 1–609.7).

(c) All prospective contractors shall be furnished identical information in connection with the proposed procurement. Care shall be taken to safeguard any information received in confidence. (See 1–1004.)

3–107 Offeror Response Time. The guidance in 2–202.1 shall be applied to negotiated procurements.

(i) When the acquisition is not reserved, quotations based on supplying foreign end products shall be evaluated in accordance with the procedures in 6-104.4.

3–604 Competition and Price Reasonableness.

3–604.1 *Purchases Not in Excess of $500.* Small purchases not exceeding $500 may be accomplished without securing competitive quotations if the prices are considered to be reasonable. Such purchases shall be distributed equitably among qualified suppliers. When practical, a quotation will be solicited from other than the previous supplier prior to placing a repeat order. The administrative cost of verifying the reasonableness of the price of purchases not in excess of $500 may more than offset potential savings in detecting instances of overpricing; therefore, action to verify the reasonableness of the price need be taken only when the buyer or contracting officer suspects or has information (e.g., comparison to previous price paid, personal knowledge of the item involved) to indicate that the price may not be reasonable. In some cases, e.g., first buy of new items, action to verify may also be required to determine whether or not the price is reasonable.

3–604.2 *Purchases in Excess of $500.*

(a) Solicitation of quotations from a reasonable number of qualified sources of supply shall be made to assure that the procurement is to the advantage of the Government, price and other factors considered, including the administrative cost of the purchase. Generally, solicitation shall be limited to three suppliers and, to the maximum extent possible, shall be restricted to the local trade area of either

the purchasing or the receiving activity. If practicable, two sources not included in the previous solicitation should be requested to furnish quotations. Quotations should generally be solicited orally except for construction contracts in excess of $2,000. Written solicitations should be used when (i) the suppliers are located outside the local area, (ii) special specifications are involved, (iii) a large number of line items are included in a single proposed procurement, or (iv) obtaining oral quotations is not considered economical or possible.

(b) Reasonableness of a proposed price should be based on competitive quotations. If only one response is received, or the price variance between multiple responses reflects lack of adequate competition, a statement shall be included in the contract file setting forth the basis of the determination of fair and reasonable price. This determination may be based on a comparison of the proposed price with prices found reasonable on previous purchases, current price lists, catalogs, advertisements, similar items in a related industry, value analysis, the contracting officer's personal knowledge of the item being procured, or any other means. Written records of solicitation may be limited to notes or abstracts to show vendor or vendors contacted, prices, delivery, and any other informal historical data. If a separate form is used for documentation of price reasonableness, DD Form 1784, Small Purchase Pricing Memorandum, shall be used (see 16–813). If this form is not used, the price reasonableness statement shall be based on one or more of the criteria set forth on the form. In any case, the contracting officer should gain as much knowledge as practicable of the physical and material characteristics and intended use of the item to be purchased. When only one source is solicited, an additional notation must be made to explain the absence of competition, except for procurement of utility services available only from one source or of educational services from nonprofit institutions. Notification to unsuccessful suppliers shall be given only if requested.

(c) Occasionally an item can be obtained only from a supplier who quotes a minimum order price or quantity, which either unreasonably exceeds stated quantity requirements, or results in an unreasonable price for the quantities required. If practicable before placing the order the requiring activity should be informed in such cases of all facts regarding the quotation and requested to confirm or alter its requirement for the item or items under consideration. The file shall be documented to support the final action taken.

3–605 Blanket Purchase Agreement (BPA).

3–605.1 *General.* A blanket purchase agreement is a simplified method of filling anticipated repetitive needs for small quantities of supplies or services by establishing "charge accounts" with qualified sources of supply (see 12–302, 12–602.1 and 12–1001). Blanket purchase agreements are designed to reduce administrative costs in accomplishing small purchases by eliminating the need for issuing individual purchase documents.

3–605.2 *Limitation on Use.* A blanket purchase agreement may not be used when a call exceeds $10,000 except that BPA calls for subsistence are unlimited as to dollar value. The *Examination of Records by Comptroller General* clause in 7–104.15 and the *Listing of Employment Openings* clause in 7–103.27 shall be included in agreements for subsistence items which do not limit the dollar value of individual calls to less than $10,000.

3–605.3 *Establishment of Blanket Purchase Agreements.*

(a) *Alternate Sources.* To the extent practicable, blanket purchase agreements for items of the same type should be placed concurrently with more than one supplier. All competitive sources should be given an equal opportunity to furnish supplies or services under such agreements.

(b) *Form.*

(1) Except as provided in (2) below, blanket purchase agreements shall be prepared and issued on DD Form 1155 (Order for Supplies or Services/Request for Quotations). Either the "General Provisions," DD Form 1155r, or the "Reverse of Order for Supplies or Services/Request for Quotations—Foreign," DD Form 1155r–1, as applicable, shall be used. Other applicable provisions of the blanket purchase agreement shall be set forth on the Standard Form 36 (Continuation Sheet) or on a blank sheet of paper, including the following:

(i) the Contract Work Hours and Safety Standards Act—Overtime Compensation clause in 7–103.16(a) shall be added unless it is reasonably anticipated that the aggregate of the total dollar amounts of orders to be placed thereunder will be $2,500 or less;

(ii) where the agreement is for the intended purchase of services covered by the Service Contract Act of 1965, as amended, the clause in 7–1903.41(a) or (b) shall be substituted for Clause 16 of the General Provisions and the procedures in 12–1005 complied with, unless it is reasonably anticipated that the aggregate of the total dollar amounts of orders to be placed thereunder will be $2,500 or less;

(iii) where the agreement is for the intended purchase of supplies, the Walsh-Healey Public Contracts Act clause in 7–103.17 shall be added, unless the agreement limits the aggregate total of orders to be placed thereunder to $10,000; and

(iv) where the agreement is for the intended purchase of supplies, the applicable equal opportunity clause in 7–103.18 shall be added.

(2) Blanket purchase agreements issued by the Defense Personnel Support Center may be prepared on its form "Order for Subsistence."

(c) *Numbering.* Enter the Procurement Instrument Identification (PII) number as prescribed in Section XX, Part 2.

(d) *Accounting Data.* Blanket purchase agreements need not cite any accounting data so that purchases utilizing different appropriation data may be made under the same agreement.

(e) *Negotiation Authority.* The Schedule of each agreement shall be annotated as follows:

> The issuance of individual calls under this blanket purchase agreement will be made under the authority of 10 U.S.C 2304(a)(1), 10 U.S.C. 2304(a)(3), 10 U.S.C. 2304(a)(6), or 10 U.S.C. 2304(a)(17).

If for the purchase of subsistence:

> The issuance of individual calls under this blanket purchase agreement will be made under the authority of 10 U.S.C. 2304(a)(1), 10 U.S.C. 2304(a)(3), 10 U.S.C. 2304(a)(6), 10 U.S.C. 2304(a)(9), or 10 U.S.C. 2304(a)(17).

This annotation shall not be duplicated on forms used to document individual calls, although the specific authority for the call may be cited therein.

(b) *Established Catalog or Market Prices of Commercial Items Sold in Substantial Quantities to the General Public.*

(1) In order for a given price to qualify as a catalog or market price for exemption from the requirements of Public Laws 87–653 or 91–379, the price must either be, or be based on, an established catalog or market price of commercial items, sold in substantial quantities, to the general public. Application of this exemption requires analysis on a case-by-case basis. In making the judgment that the exemption applies, the various elements of the criteria must be considered and a price must meet all these conditions.

(2) The following criteria should be applied to determine whether an item falls within the scope of this exemption:

a. "*Established Catalog Price.*" This is a price included in a catalog, price list, schedule, or other form that is regularly maintained by the manufacturer or vendor, is either published or otherwise available for inspection by customers, and states prices at which sales are currently, or were last, made to a significant number of buyers constituting the general public.

b. "*Established Market Price.*" This is a current price, established in the usual and ordinary course of trade between buyers and sellers free to bargain, which can be substantiated from sources independent of the manufacturer or vendor.

c. "*Commercial Item.*" This is an item, including both supplies and services, of a class or kind which is used regularly for other than Government purposes, and is sold or traded in the course of conducting normal business operations.

d. "*Sold in Substantial Quantities.*"

(i) Commercial items meet this criterion when the facts or circumstances support a reasonable conclusion that the quantities regularly sold are sufficient to constitute a real commercial market for the supplies or services. Nominal quantities, such as models, specimens, samples, and prototype or experimental units, cannot be considered as meeting this requirement. Services are sold in substantial quantities if they are customarily provided by the contractor, with personnel regularly employed, and with equipment, if any is necessary, regularly maintained, solely or principally for the purpose of providing such services. There must be a sufficient number of commercial buyers so that their purchases establish an ascertainable going price for the service.

(ii) DD Form 633–7, "*Claim for Exemption from Submission of Certified Cost or Pricing Data,*" establishes three categories of sales: Category A - sales to the U. S. Government or to contractors for U. S. Government use; Category B - sales to the general public at catalog prices; and, Category C - sales to the general public at other than catalog prices. Although substantial quantity cannot be defined precisely, sales to the general public normally are regarded as substantial if all the following criteria are met: Category B and C sales are not negligible in themselves and total 55% or more of the total Category A, B and C sales; and Category B

sales total 75% or more of the total of Category B and C sales. If Category B and C sales total less than 35% of the total of Category A, B, and C sales, or Category B sales are less than 55% of the total of Category B and C sales, the contracting officer should rarely grant an exemption. When percentages fall between those stated above, the contracting officer should make an analysis before granting an exemption.

e. "*The General Public.*" An item meets this criterion when it is sold(i) to other than the Government (including FMS); (ii) to other than affiliates of the seller or (iii) for end use by other than the Government (including FMS).

(3) A price may be considered to be "based on" established catalog or market prices of commercial items sold in substantial quantities to the general public if the item being purchased is sufficiently similar to such a commercial item to permit the difference between the prices of the items to be identified and justified without resort to cost analysis. In addition, cost or pricing data may be requested, if necessary, where there is such a disparity between the quantity being procured and the quantity for which there is such a catalog or market price that pricing cannot reasonably be accomplished by comparing the two. Where an item is substantially similar to a commercial item for which there is an established catalog or market price at which substantial quantities are sold to the general public, but the offered price of the former is not considered to be "based on" the price of the latter, any requirement for cost or pricing data should be limited to that pertaining to the differences between the items if this limitation is consistent with assuring reasonableness of the pricing result. In determining exemptions, it is the item under consideration that must meet the test. The ultimate objective is to achieve fair and reasonable prices for items bought. Altered terms, minor configuration changes, extra inspection requirements, or quantity differences are adequate reasons for pricing items differently from catalog or market prices.

(4) The Form DD 633-7, "*Claim for Exemption from Submission of Certified Cost or Pricing Data*", was designed to provide the information necessary to determine an item's exemption from the requirement to submit and certify cost or pricing data. (It also can be used to determine exemption from the requirements arising out of Public Law 91-379 relating to cost accounting standards.) However, the contracting officer may dispense with a DD Form 633-7 when:

a. Within the past year, the contractor or subcontractor has claimed exemption for the same or similar item and the Government has acted favorably on that claim. In this case, the contractor may reference or submit a copy of the prior submission and indicate the Government's action. Note 3 of DD Form 633-7 states the details of this alternative.

b. In anticipation of repetitive procurements of a catalog item, the PCO or the cognizant ACO has made special arrangements for submission of the exemption claim. The submission need not be on a DD Form 633-7, but shall include any data required by the form and include or incorporate by reference all the applicable definitions, representations and rights included in the form. Government approval of the exemption claim shall set forth the effective period, usually not more than one year, and require the contractor to furnish any later information

thresholds, he will be required to follow consistently the disclosed practices for those contracts awarded during a period in which he was obligated to submit a Disclosure Statement(s). A change to such practices may be proposed by either the contractor or the Government and negotiated by the contractor and his CAS cognizant ACO.

3-1204 Contract Clauses.

3-1204.1 Prime Contracts and Solicitations.

(a) The clauses in 7-104.83(a)(1) and (b) shall be inserted in all negotiated solicitations and contracts exceeding $100,000, except the following:

(i) when the price is based on established catalog or market prices of commercial items sold in substantial quantities to the general public, or is set by law or regulations. Catalog or market price exemption is determined to exist even though the award is made on the basis of adequate competition. It is the offeror's responsibility to request and to provide justification for a catalog or market price exemption. In providing such justification, the offeror shall (A) indicate in his proposal, and in any changes in his offered price, that the proposed price is based on an established catalog or market price of a commercial item sold in substantial quantities to the general public, rather than derived from the stimulus of competition which may be present in the particular procurement; and (B) complete and submit a DD Form 633-7 or otherwise furnish the necessary information in accordance with 3-807.7(b) However, the procuring activity must make a determination whether or not the exemption applies in each case;

(ii) contracts awarded to an offeror who has certified he is a small business concern pursuant to 1-702(d);

(iii) contracts awarded to an educational institution subject to cost principles in Section XV, Part 3, except for contracts to be performed by a federally funded research and development center operated by such an institution;

(iv) contracts with contractors who are eligible for and have elected to use modified contract coverage under Part 332 of Appendix O (see (b) below);

(v) contracts which are executed and performed in their entirety outside the United States, its territories and possessions;

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(vi) contracts with a foreign government or an agency or instrumentality of such government; and

(vii) contracts for which the Cost Accounting Standards Board has approved other waivers of exemptions pursuant to 331.30 of Appendix O.

(A) The Cost Accounting Standards Board has provided for the exemption of contracts of $500,000 or less under certain circumstances. Paragraph 331.30(b)(8) of Appendix O prescribes the circumstances under which such an exemption is applicable. In order to effectively administer the requirements of that paragraph, the solicitation notice 7-2003.67(b) shall be inserted in all solicitations requiring the inclusion of the solicitation notice in 7-2003.67(a).

(B) Contracts and subcontracts with foreign concerns are exempt from the requirements of Cost Accounting Standard 403 and all subsequent standards. This exemption does not relieve foreign concerns of any obligation to comply with CAS 401, CAS 402 or disclosure requirements.

(b) With respect to (a)(iv) and vii) above, the clauses in 7-104.83(a)(2) and (b) shall be inserted in--

(i) all negotiated solicitations which are likely to result in a negotiated contract exceeding $100,000, unless otherwise exempt in accordance with 3-1204.1 (a),

(ii) all such contracts with a foreign concern, and

(iii) all such contracts exceeding $100,000 but under $10,000,000 when the offeror certifies he is eligible for and elects to use modified contract coverage under provisions of Part 332 of Appendix O (see (a)(iv) above).

In order to effectively administer the exemption in (iii) above, the solicitation notice in 7-2003.67(c) shall be inserted in all solicitations requiring the inclusion of the solicitation notice in 7-2003.67(a).

(c) When a contract contains the Administration of Cost Accounting Standards clause (7-104.83(b)), there is a requirement that a flow of information relative to CAS-covered subcontract(s) awarded under a CAS-covered prime contract be transmitted from the contractor placing the CAS-covered subcontract, at whatever tier, to his Cost Accounting Standards cognizant ACO and, subsequently, through Government channels, to the ACO cognizant of the subcontractor receiving the order. When the ACO is advised by the contractor of such an award, he will forward, within 10 days, the information required of the contractor in 7-104.83(b)(e) to the contract administration office (CAO) having Cost Accounting Standards cognizance. (See 3-1208.)

3-1301.5 *Limitations.* If substantially all activities necessary to get an asset ready for its intended use are discontinued, cost of money shall not be capitalized for the period of discontinuance, except when such discontinuance arises out of causes beyond the control and without the fault or negligence of the contractor.

3-1301.6 *Preaward Capital Employed Application.* An offset to the profit objectives as set forth in 3-808.7 is not required for CAS 417 cost of money.

Part 14—Indirect Cost Monitoring Office

3-1400 Scope of Part. This Part deals with the organization and function of the Indirect Cost Monitoring Office (ICMO) and its role in the DoD procurement process.

3-1401 General. The Indirect Cost Monitoring Office (ICMO), under the direction of the Assistant Deputy Under Secretary of Defense for Acquisition, Office of the Under Secretary of Defense, Research and Engineering, is responsible for assuring uniform application of contracting policies and consistent treatment of cost allowability, including independent research and development/bid and proposal (IR&D/B&P) costs, and for promoting timely and equitable settlement of overhead and advance agreements for IR&D/B&P costs. The function of the ICMO will include:

(i) maintaining a data bank concerning Section XV cost principles;

(ii) maintaining a liaison with DCAA to achieve maximum consistency between negotiation decisions and audit decisions as to contracting officer determined and audit determined final overhead rates;

(iii) attending, after coordination with the Departments, selected negotiations of final overhead rates to act as an observer/advisor, as appropriate, and to identify problem areas requiring policy change;

(iv) monitoring the negotiation of advance agreements for IR&D/B&P in order to assure maximum uniformity and consistency, and maintaining an awareness of matters that may require policy change;

(v) recommending to the Assistant Deputy Under Secretary of Defense for Acquisition (ADUSD(A)), OUSD(R&E), policy changes as needed;

(vi) monitoring establishment of CACO's and the conduct of contracting officer determination assignments in accordance with established criteria. The responsibility and authority for establishing the positions and designation of the individual to perform the function remains with the cognizant Department;

(vii) maintaining a master list of contractor locations and responsible activities where final overhead rates are contracting officer determined and negotiated advance agreements for IR&D and B&P costs are required by Public Law 91-441;

(viii) providing advice in resolving disagreements between CACO's and ACO's designated by different Departments and assigned final overhead determination responsibilities within a corporation or business enterprise;

(ix) reviewing proposed changes relative to the assignments for negotiation of IR&D/B&P advance agreements, and making appropriate recommendations to the Assistant Deputy Under Secretary of Defense for Acquisition (ADUSD(A)), OUSD(R&E).

3-1402 Master List Reports.

(a) The Departments shall furnish the following reports to the ICMO:

(i) a report submitted within 10 working days after the close of each fiscal quarter shall list newly acquired or recently transferred contractors, as well as those business entities that no longer exist due to reorganizations, mergers or consolidations. This report is covered by RCS DD-DR&E(Q)1556.

(ii) a report submitted within 30 days after the close of the fiscal year ending 30 September 1980 and every 2 years thereafter, listing the contractors for which each Department has cognizance for final overhead rates. This report is covered by RCS DD-DR&E(B)1557.

(b) The reports required in (a) above shall include as a minimum:

(i) contractor's name, location(s) (i.e., mailing address, specifically: street address, city, state, zip code), and fiscal year ending date (YYMMDD);

(ii) Department of cognizant ACO and location by assigned negotiation unit (including ACO name (last name, first, middle initial), mailing address (street address, city, state, zip code) and telephone number);

(iii) Department of CACO and location (including CACO name (last name, first, middle initial), mailing address (street address, city, state, zip code) and telephone number);

(iv) whether contractor has advance agreement for Independent Research and Development (IR&D) and Bid and Proposal (B&P) costs and, if so, the cognizant negotiating activity;

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(v) the most recent year for which the contractor's final overhead rates have been completed.

(c) DCAA will submit a report within 30 days after the close of the fiscal year ending 30 September 1980 and every 2 years thereafter, listing the contractors on the audit-determined basis of overhead rate settlement. This report is covered by RCS DD-DR&E(B)1557.

(d) All reports and correspondence to the ICMO shall be addressed to:

Indirect Cost Monitoring Office (ICMO)
OUSDR&E(AM)(CPF)
Room 3D 1082, Pentagon
Washington, DC 20301

3-1403 Status and Completion Reports. The ICMO shall maintain a current listing of the status of open overhead negotiations together with a record of ultimate resolutions and rationale for significant items of questioned costs. The following two reports from the field will provide the basis for this information.

(a) *Report on Status of Open Overhead Negotiations.* The Departments shall submit a report on the status of open overhead negotiations to the ICMO semi-annually for which a *Report of Completed Overhead Negotiation*, as described in (b) below, has not been filed. The report on the status of open overhead negotiations shall include the following information:

(i) ending date (YYMMDD) of the period being reported upon;
(ii) contractor name, location (i.e., mailing address, specifically: street address, city, state, zip code), and negotiation unit;
(iii) information setting forth which of the steps in DAR 3-705(b) have been completed in which open years;
(iv) any explanatory comments considered appropriate.

This report is covered by RCS DD-DR&E(SA)1558.

(b) *Report of Completed Overhead Negotiation.* This report will serve to tell the ICMO that a particular overhead agreement has been negotiated and that all of the steps required by DAR 3-705(b) have been completed. The Departments shall send the *Report of Completed Overhead Negotiation* to the ICMO within 30 days after the overhead

the determination of overhead rates. The data bank will be a compilation of materials furnished by DoD and participating DoD components, which material may contain confidential business data that must be protected in accordance with applicable law and regulation (see 1-329.3(c)(4)). Such material shall include ICMO Working Group papers, selected findings of the ICMO reporting systems, Departmental policy and guidance statements and special topical reports, and other appropriate material.

3-1405 Guidance Papers.

(a) The ICMO guidance papers are issued to provide criteria for Government field personnel to use in the resolution of identified problems. The criteria set forth in the guidance paper shall be used for purposes of establishing a basis for the resolution of the subject issues. In the final settlement, the contracting officer and cognizant DCAA auditor are still responsible for exercising their best judgment in such a manner to protect the best interest of the Government on each individual issue.

(b) Proposed guidance papers will be coordinated with representatives of the ICMO Working Group as indicated in 3-1406. The coordinated guidance paper, along with Departmental and DCAA positions, will be presented to the Assistant Deputy Under Secretary of Defense for Acquisition (ADUSD(A)), OUSD(R&E), for approval and publication as appropriate.

3-1406 ICMO Working Group. The Working Group shall consist of representatives of each Military Department, DLA/DCAS, and DCAA. Representatives of OUSD(R&E)(ADUSD(A)) and OASD(C)(DASD(Audit)) will participate as consultants. Representatives of other Federal agencies (NASA, GSA, etc., will be invited to attend meetings and to participate in Working Group functions. The Working Group shall be chaired by the ICMO designee. It shall meet at the call of the Chairman to coordinate actions and perform research. The Chairman shall specify task assignments, establish cases and assign case numbers, make case assignments to Working Group members, determine case priorities, and issue resulting guidance papers. Projects which require expenditure of significant DoD resources shall be approved by the ADUSD(A), OUSD(R&E), prior to initiation.

50 percent regardless of the U.S. dollar cost of the contract;

(ii) the lowest responsive U.S. dollar offer exceeds $50,000; or

(iii) the lowest responsive offer in near-excess foreign currency exceeds the lowest responsive offer in U.S. dollars.

(b) The contracting officer shall refer the case expeditiously describing, as a minimum, the acquisition involved; the number of offers received in each currency category; the lowest responsive offer in U.S. dollars; the date or dates the offers will expire; and recommending the offer, if any, that should be accepted.

(c) The Secretaries of the Military Departments, the Under Secretary of Defense for Research and Engineering, the Directors of Defense Agencies, and the Assistant Secretary of Defense (Comptroller), or their designees, shall determine whether a proposed acquisition described in (a) above shall be made payable in U.S.-owned foreign currency or in U.S. dollars.

6-1107 Determinations of Nonfeasibility and Contract Certifications.

(a) At the time of award, the contracting officer shall determine whether payment in U.S.-owned foreign currency is feasible.

(b) When the contracting officer determines that it is not feasible under one of the criteria in 6-1108 to use U.S.-owned foreign currency for payment of a contract, he shall execute a Contract Certification in the following format.

CONTRACT CERTIFICATION

I hereby certify that it is not feasible to make payment under this contract in the country of _____ in the amount of $_____ from U.S.-owned foreign currency for the reason stated. (Cite the applicable criterion.)

(Signature)_____

(Typed Name and Title of Contracting Officer _____)

(c) When U.S.-owned foreign currency and U.S. dollars are combined for payment of a contract, the dollar amount shown in the Contract Certification shall be that amount which is to be paid in U.S. dollars.

(d) The original and one copy of each Contract Certification shall be furnished to the disbursing officer designated to make payments under the contract; and one signed copy shall be filed with the contract. Other distribution may be made in accordance with departmental instructions.

6-1108 Criteria for Nonfeasibility Determinations. The following criteria shall be used in determining that payment of contracts in whole or in part in U.S.-owned foreign currency is not feasible:

(i) The Department of the Treasury is not holding excess or near-excess foreign currency in the country concerned.

(ii) The contract is to be awarded in a foreign country where there is U.S.-owned foreign currency but where a treaty,

executive agreement, or law of the country concerned requires payments to be made in U.S. dollars.

(iii) Responsive offers require payment in U.S. dollars in whole or in part.

(iv) The only responsive offers received require payment entirely in U.S. dollars.

(v) The acquisition is for a compelling need and of such urgency that serious injury to the U.S. Government would likely be incurred if payment in excess or near-excess foreign currency were to be insisted upon.

(vi) Offers in excess or near-excess foreign currency were unreasonably overpriced in relation to the U.S. dollar cost or the normal local foreign currency cost to non-Department of Defense users of the same or similar items or services and payment in United States dollars has been authorized by the proper authority under 6-1106.3(c).

6-1109 Excess and Near-Excess Currency Countries.

(a) The Department of the Treasury holds excess foreign currency in the following countries.

Country	*Currency*
Burma	Kyat
Guinea	Franc
India	Rupee
Pakistan	Rupee

(b) The Department of the Treasury holds near-excess foreign currency in the following countries.

Country	*Currency*
Egypt	Pound
Morocco	Dirham
Poland	Zloty
Taiwan	Taiwan Dollar
Tunisia	Dinar
Yugoslavia	Dinar

(c) Changes in the currency position of the countries in which excess and near-excess foreign currency is held are disseminated periodically by the Departments to their disbursing officers.

6-1110 Contracts With Domestic Concerns. The clause in 7-104.66 shall be included in any contract with a domestic concern (see 6-001.7(a)) when the contracting officer anticipates the contract will be performed in any U.S.-owned foreign currency country.

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Part 23—Automatic Data Processing (ADP) Contracting

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(2) If the VECP is not accepted, the Contracting Officer shall provide the Contractor written notification fully explaining the reasons for rejection. The Contractor may withdraw, in whole or in part, any VECP not accepted by the Government within the period specified in the VECP. The Contracting Officer may require that the Contractor provide written notification before undertaking significant expenditures for VECP effort.

(e) *Acceptance.* Any VECP may be accepted in whole or in part by the Contracting Officer's award of a modification to this contract citing this clause. The Contracting Officer may accept the VECP, even though an agreement on price reduction has not been reached, by issuing the Contractor a notice to proceed with the change. Until a notice to proceed is issued or a contract modification applies a VECP to this contract, the Contractor shall perform in accordance with the existing contract. The Contracting Officer's decision to accept all or part of any VECP shall be final and not subject to the Disputes clause.

(f) *Sharing.*

(1) Rates. The Contractor's share of savings is determined by subtracting Government costs from instant contract savings and multiplying the result by 55 percent for fixed-price contracts and 25 percent for cost-reimbursement contracts.

(2) Payment. Payment of any share due the Contractor for use of a VECP on this contract shall be authorized by a modification to this contract to:

(i) accept the VECP;

(ii) reduce the contract price or estimated cost by the amount of instant contract savings; and

(iii) provide the Contractor's share of savings by adding the amount calculated in (f)(1) to the contract price or fee.

(g) *Subcontracts.* The Contractor shall include appropriate VE clauses in any subcontract of $50,000 or more and may include them in subcontracts of lesser value. To compute any adjustment in the contract price under paragraph (f), the Contractor's VECP development and implementation costs shall include any subcontractor's development and implementation costs that clearly result from the VECP, but shall exclude any VE incentive payments to subcontractors. The Contractor may choose any

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arrangement for subcontractor VE incentive payments, *provided* that these payments are not made from the Government's share of the savings resulting from the VECP.

(h) *Data.* The Contractor may restrict the Government's right to use any part of a VECP or the supporting data by marking the following legend on the affected parts:

> "These data, furnished under the Value Engineering-Incentive--Construction clause of Contract _____, shall not be disclosed outside the Government or duplicated, used, or disclosed, in whole or in part, for any purpose other than to evaluate a VECP submitted under the clause. This restriction does not limit the Government's right to use information contained in these data if it has been obtained or is otherwise available from the Contractor or from another source without limitations."

If a VECP is accepted, the Contractor hereby grants the Government unlimited rights in the VECP and supporting data, except that, with respect to data qualifying and submitted as limited rights technical data, the Government shall have the rights specified in the contract modification implementing the VECP and shall appropriately mark the data.

(End of clause)

7-602.51 *Affirmative Action for Handicapped Workers.* Insert the clause in 7-103.28.

7-602.52 *Clean Air and Water.* In accordance with 1-2302.2, insert the clause in 7-103.29.

7-602.53 *Reserved.*

7-602.54 *Shop Drawings.*

(a) Insert the following clause, with the appropriate additions in (b) and (c) below.

SHOP DRAWINGS (1976 OCT)

(a) The term "*shop drawings*" includes drawings, diagrams, layouts, schematics, descriptive literature, illustrations, schedules, performance and test data, and similar materials furnished by the Contractor to explain in detail specific portions of the work required by the contract.

(b) If this contract requires shop drawings, the Contractor shall coordinate all such drawings, and review them for accuracy, completeness, and compliance with contract requirements and shall indicate his approval thereon as evidence of such coordination and review. Shop drawings submitted to the Contracting Officer without evidence of the Contractor's approval may be

(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 such change requires an increase or decrease in any hourly rate or in the ceiling price provided for in this contract, or in 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 in (1) ceiling price, (2) hourly rates, (3) delivery schedule, and (4) in such other provisions of the contract as may be so affected, and the contract shall be modified in writing accordingly. Any equitable adjustment shall be accomplished in the same manner as if such changes were directed under the "Changes" clause of this contract.

7-902.4 *Priorities, Allocations and Allotments.* In accordance with 1-307.2, insert the clause in 7-104.18.

7-902.5 *Buy American Act.* In accordance with 7-104.3, insert the clause therein.

7-902.6 *Notice to the Government of Labor Disputes.* In accordance with 7-104.4, insert the clause therein.

7-902.7 *Filing of Patent Applications.* In accordance with 9-106, insert the clause in 7-104.6.

7-902.8 *Patent Rights.* In accordance with 9-701, insert the appropriate clause in 7-302.23.

7-902.9 *Rights in Data.* In accordance with 7-104.9, insert the appropriate clause, or clauses, therein.

7-902.10 *Alterations in Contract.* When required, insert the clause in 7-105.1(a).

7-902.11 *Limitation on Withholding of Payments.* In accordance with 7-104.21, insert the clause therein.

7-902.12 *Communist Areas.* In accordance with 6-403. insert the clause in 7-103.15.

7-902.13 *Flight Risks.* In accordance with 10-504, if the contract is for development, production, modification, maintenance, or overhaul of aircraft, or if it otherwise involves furnishing of aircraft to the contractor by the Government, include the clause from 7-204.21, but substitute the paragraph (c) below for paragraph (c) of the clause in 7-204.21.

(c) If any aircraft is damaged, lost, or destroyed, during flight, and if the amount of such damage, loss, or destruction exceeds one hundred thousand dollars ($100,000) or twenty percent (20%) of the ceiling price of this contract, whichever is less, and if the Contractor is not liable for the damage, loss, or destruction pursuant to the "Government Property" clause of this contract together with paragraph (a) above, then an equitable adjustment for any resulting repair, restoration, or replacement that is required under this contract shall be made in the ceiling price, hourly rate, delivery or performance date, or all of them and the contract shall be modified in writing accordingly; *provided*, in determining the amount of adjustment in the hourly rate that is equitable, any faults of the Contractor, his employees, or any subcontractor which materially contributed to the damage, loss, or destruction shall be taken into consideration. Failure to agree on any adjustment shall be a dispute concerning a question of fact within the meaning of the "Disputes" clause of this contract.

7-902.14 *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.

7-902.15 *Royalty Information.* In accordance with 9-110(d), insert the clause in 7-104.8(a).

7-902.16 *Right of First Refusal for Employment Openings.* In accordance with 4-1202, insert the clause in 7-104.104.

7-902.17 *Interest.* In accordance with E-620 and E-621, insert the clause in 7-104.39.

7-902.18 *Price Reduction for Defective Cost or Pricing Data.* Insert the clause in 7-104.29(a).

7-902.19 *Limitation of Liability.* In accordance with 1-330(b), insert the appropriate clause in 7-104.45.

7-902.20 *Subcontractor Cost and Pricing Data.* Insert the clause in 7-104.42(a).

7-902.21 *Order of Precedence.* In accordance with 3-501(b)Sec.C(xxxi), insert the clause in 7-2003.41.

7-902.22 *Duty-Free Entry.* In accordance with 6-603.2, insert the clause in 7-104.31.

7-902.23 *United States Products and Services (Balance of Payments Program).* In accordance with Section VI, Part 8, insert the clause in 7-2003.53.

7-902.24 *Identification of Expenditures in the United States.* In accordance with Section VI, Part 8, insert the clause in 7-104.58.

7-902.25 *Material Inspection and Receiving Report.* Insert the clause in 7-104.62 except in negotiated subsistence procurements and contracts for tanker/barge shipments of bulk petroleum products.

7-902.26 *Insurance.* In accordance with 10-405, insert the clause in 7-104.65.

7-902.27 *Use of Excess and Near-Excess Currency.* In accordance with 6-1110, insert the clause in 7-104.66.

7-902.28 *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.

7-902.29 *Safety Precautions for Ammunition and Explosives.* In accordance with 7-104.79, insert the clause therein.

7-902.30 *Notice of Radioactive Materials.* In accordance with 7-104.80, insert the clause therein.

7-902.31 *Procurement of Miniature and Instrument Ball Bearings.* In accordance with 1-2207.3, insert the clause in 7-104.38.

7-902.32 *Management Systems Requirements.* In accordance with 16-827.1, insert the clause in 7-104.50.

7-902.33 *Aircraft, Missile, and Space Vehicle Accident Reporting and Investigation.* In accordance with 7-104.81, insert the clause therein.

7-902.34 *Reserved.*

7-1702.17 *Rights in Data.* In accordance with 7-104.9, insert the appropriate clause, or clauses, therein.

7-1702.18 *Cost Accounting Standards.* In accordance with 3-1204, insert the clauses in 7-104.83.

7-1702.19 *Privacy Act.* In accordance with 1-327.1, insert the clause in 7-104.96.

7-1702.20 *Preference for Domestic Specialty Metals.* In accordance with 7-104.93, insert the applicable clause therein.

7-1702.21 *Exclusionary Policies and Practices of Foreign Governments.* In accordance with 6-1312, insert the clause in 7-104.97.

7-1702.22 *Reserved.*

7-1702.23 *Limitation on Sales Commissions and Fees for Foreign Governments.* In accordance with 6-1305.6, insert the clause in 7-104.107.

7-1702.24 *Right of First Refusal for Employment Openings.* In accordance with 4-1202, insert the clause in 7-104.104.

7-1703 Clauses To Be Used When Special Construction Charges Are Expected. Insert the following clauses in contracts with common carriers whenever it is expected that in order to secure the services and facilities it will be necessary for the Government to reimburse the contractor for, or to assume a contingent termination liability for, all or part of the costs of constructing or providing the facilities or equipment. If the necessity of paying such charges or of assuming such a liability arises subsequent to the execution of the contract, these clauses shall be included in the contract by supplemental agreement. With the exception of the clauses prescribed by 7-1703.1 and 7-1703.2, the clauses prescribed by this paragraph may be varied to meet specific requirements of an appropriate governmental regulatory body or when the basic intent is not changed.

7-1703.1 *Labor Standards for Construction Work.* Except as provided in 18-703.3 and 18-703.4 when the special construction involves construction (as defined in 18-101.1) of a public building or public work, and under 12-106 the construction labor standards are applicable (see 22-1010.2), insert the clause in 7-705.5.

7-1703.2 *Buy American — Construction Contracts.* In accordance with 7-602.20 and 7-602.24, insert the clauses therein whenever the contract involves construction (as defined in 18-101.1).

7-1703.3 *Special Construction and Equipment Charges.*

SPECIAL CONSTRUCTION AND EQUIPMENT CHARGES (1971 APR)

(a) Except to the extent provided in the clause of this contract entitled "Cancellation or Termination of Orders," the Government shall not directly reimburse the Contractor for charges based on the cost of constructing any facilities or providing any equipment unless such direct reimbursement is specifically authorized by the Contracting Officer. If, at any time, facilities or equipment for which the Government has directly reimbursed the Contractor in whole or in part are discontinued, the Contractor shall allow the Government such credit as may be appropriate for the value of the facilities or equipment attributable to the Government's contribution. The value of the facilities and equipment shall be determined on the basis of the foreseeable reuse of the facilities and equipment by the Contractor at the time their use is discontinued or on the basis of the net salvage value, whichever is greater. The Contractor shall promptly pay the Government the amount of any such credit.

(b) The amount of any direct special construction charge shall not exceed the actual costs to the Contractor, properly allocable to the services to be provided to the Government, of specially constructing or providing the facilities or equipment involved. In no event shall the amount of any direct special construction charge include costs incurred by the Contractor which are covered by a cancellation or termination liability or by the Contractor's recurring or other nonrecurring charges. The Contractor represents that in establishing his recurring charges for the services, facilities and equipment involved, he has not included in his rate base any costs for which he has been reimbursed by the Government and that depreciation charges are based only on the cost of facilities and equipment paid by the Contractor and not reimbursed by the Government. If, due to circumstances beyond the control and without the fault of the Contractor, it becomes necessary for the Contractor to incur costs for the replacement of any facilities or equipment for which direct special construction charges were assumed by the Government or for which the Contractor was reimbursed by the Government beyond that provided as a part of the Contractor's recurring charges, the Government shall assume such costs or reimburse the Contractor for such replacement costs at rates mutually acceptable to both the Government and the Contractor. Prior to incurring such costs, the Government shall have the right to terminate such service in accordance with the clause entitled "Cancellation or Termination of Orders."

(End of clause)

7–1703.4 *Title to Communication Facilities and Equipment.*

TITLE TO COMMUNICATION FACILITIES AND EQUIPMENT (1971 APR)

Notwithstanding payment by the Government of any of the Contractor's costs of constructing communication facilities and equipment, title to all contractor furnished facilities and equipment used in providing communication services ordered under this contract shall remain in the Contractor except as may be specifically provided in a CSA issued and accepted hereunder, and the Contractor shall operate and maintain all such communication facilities and equipment.

(End of clause)

7–1703.5 *Subcontracts.* In accordance with the requirements of 23–201, insert an appropriate clause entitled Subcontracts.

7–1703.6 *Equal Opportunity Pre-Award Clearance of Subcontracts.* In accordance with 23–201.4, insert the clause in 7–104.22.

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)(3)Sec.M(i), insert the following provision.

EVALUATION OF OFFERS FOR MULTIPLE AWARDS (1982 AUG)

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 $250 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.

Part 23—Automatic Data Processing (ADP) Contracting

7-2300 Scope of Part. In accordance with 4-1104.15, this Part sets forth additional uniform contract clauses for use in connection with automatic data processing (ADP) contracting when procurement authority is delegated by GSA. (See Section IV, Part 11.)

7-2301 Reserved.

7-2302 Clauses to Use When Applicable.

7-2302.1 *Limitation of Liability.* The following clause shall be used in all solicitations and contracts for ADPE, software, ADP maintenance services, ADP supplies, and certain other contractual ADP support services unless the contracting officer determines that a higher degree of protection is in the best interest of the Government.

WARRANTY EXCLUSION AND LIMITATION OF DAMAGES (1981 MAY)

Except as expressly set forth in writing in this agreement, or except as provided in the clause entitled "Commitments, Warranties, and Representations," if applicable, and except for the implied warranty of merchantability, there are no warranties expressed or implied. In no event will the Contractor be liable to the Government for consequential damages as defined in the Uniform Commercial Code, Section 2-715, in effect in the District of Columbia as of January 1, 1973; i.e., consequential damages resulting from the seller's breach include:

(a) Any loss resulting from general or particular requirements and needs of which the seller at the time of contracting had reason to know and which could not reasonably be prevented by cover or otherwise; and

(b) Injury to person or property proximately resulting from any breach of warranty.

(End of clause)

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CONTRACT CLAUSES AND SOLICITATION PROVISIONS

7-2302.2 *Contractor Representation.* The following clause shall be used in all solicitations and contracts for ADPE when the Government's requirement is set forth in the form of a data system specification and the value of the contract is expected to exceed $100,000.

CONTRACTOR REPRESENTATION (1981 MAY)

Unless the Contractor expressly states otherwise in his proposal, where functional requirements are expressly stated as part of the requirements of this solicitation, the Contractor, by responding, represents that in its opinion the system proposed is capable of meeting those requirements. However, once the functions have been demonstrated or put to use on the delivered system, Contractor responsibility under this clause ceases. In the event of any inconsistency between the detailed specifications and the functional specification contained in the solicitation, the former will control.

(End of clause)

TERMINATION OF CONTRACTS

(II) in the event of the termination of this contract for the default of the Seller, the total fee payable shall be such proportionate part of the fee (or, if this contract calls for articles of different types, of such part of the fee as is reasonably allocable to the type of article under consideration) as the total number of articles delivered to and accepted by the Buyer bears to the total number of articles of a like kind called for by this contract;

if the amount determined under this subparagraph (i) is less than the total payment theretofore made to the Seller, the Seller shall repay to the Buyer the excess amount; or

(ii) if the settlement includes only the fee, the amount thereof will be determined in accordance with subparagraph (i)(D) above.

(f) In arriving at the amount due the Seller under this clause there shall be deducted (i) all unliquidated advance or other payments theretofore made to the Seller, applicable to the terminated portion of this contract, (ii) any claim which the Buyer may have against the Seller 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 Seller or sold pursuant to the provisions of this clause and not otherwise recovered by or credited to the Buyer.

(g) 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 Seller and the Buyer, and such adjustment shall be evidenced by an amendment to this contract.

(h) The Buyer 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 Seller in connection with the terminated portion of the contract whenever in the opinion of the Buyer the aggregate of such payments shall be within the amount to which the Seller 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 Seller to the Buyer 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 Seller to the date on which such excess is repaid to the Buyer; *provided*, however, that no interest shall be charged with respect to any such excess payment attributable to a reduction in the Seller's claim by reason of retention or other disposition of termination inventory until ten (10) days after the date of such retention or disposition, or such later date as determined by the Buyer by reason of the circumstances.

(End of clause)

8-704 Research and Development Contracts with Educational and Other Nonprofit Institutions.

8-704.1 *Termination Clause.*

(a) The clause in 7-302.10(b) shall be used in any contract for experimental, developmental, or research work (whether fixed price or cost reimbursement type) with an educational institution when such contract is placed on a no-fee or no-profit basis except that in the case of organizations other than educational institutions, paragraph (d) shall be deleted and the paragraph in 7-302.10(c) shall be used.

(b) The clause in 7-302.10(c) shall be used in contracts with a nonprofit organization other than an educational institution.

8-704.2 *Suggested Clause for Subcontracts.* The clause in 7-302.10(b), suitably altered to indicate the relationship between the prime contractor and subcontractor, is suggested for use in subcontracts placed with educational or nonprofit institutions; *provided*, such subcontracts incorporate, or are negotiated on the basis of, the cost principles set forth in Section XV; and *provided further*, such subcontracts are placed on the no-fee or no-profit basis.

TERMINATION OF CONTRACTS

8–705 Short Form Termination Clauses for Fixed-Price Type Contracts.

8–705.1 *Supply and Service Contracts.*

(a) To facilitate the handling of purchases under fixed-price supply or service contracts not to exceed $10,000, the short form termination clause in 7–103.21(a) is authorized for use in lieu of any other clause providing for termination for the convenience of the Government; *provided*, such contracts obligate the Government to order or otherwise to be liable for a minimum quantity.

(b) To facilitate the obtaining of services where it can reasonably be determined that the kind and volume of service required would not, in the event of termination for convenience of the Government, present a basis for a termination claim other than for services rendered (such as, but not limited to, most contracts for rental of unreserved garage space, meals for inductees, or laundry and drycleaning services), the short form termination clause in 7–1902.16(b) is authorized for use in such service contracts, regardless of dollar value, in lieu of any other clause providing for termination for the convenience of the Government.

(c) Where DD 1155 is utilized for purchases not in excess of $10,000 and the additional general provisions are incorporated, clause 17 of that form shall be used in lieu of those specified in (a) and (b) above.

8–705.2 *Construction Contracts.* Generally, there is no need for a termination clause in construction contracts not in excess of $10,000. However, when the contracting officer determines that a termination clause should be included in such a contract, the clause in 7–602.29(b) shall be used, except where DD Form 1155 is utilized, clause 17 of that form shall be used in lieu of the clause in 7–602.29(b).

8–705.3 *Reserved.*

8–706 Subcontract Termination Clause. The following termination clause is suggested for use in fixed-price subcontracts.

TERMINATION (1974 APR)

(a) The performance of work under this contract may be terminated, in whole or from time to time in part, by the buyer in accordance with this clause. Termination of work hereunder shall be effected by delivery to the seller of a Notice of Termination specifying the extent to which performance of work under the contract is terminated, and date upon which such termination becomes effective.

(b) After receipt of a Notice of Termination and except as otherwise directed by the buyer, the seller 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 portions of the work under the contract as may not be terminated;

(iii) terminate all orders and subcontracts to the extent that they relate to the performance of any work terminated by the Notice of Termination;

(iv) assign to the buyer, in the manner, and to the extent directed by the buyer all of the right, title and interest of his seller under the orders or subcontracts so terminated;

(v) settle all outstanding liabilities and all claims arising out of such termination of orders and subcontracts subject to the approval or ratification of the buyer 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 in the manner, to the extent, and at the times directed by the buyer (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

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Part 2—Contracts with Commercial Organizations

15–201 Basic Considerations.

15–201.1 *Composition of Total Cost.* The total cost of a contract is the sum of the allowable direct and indirect costs allocable to the contract, incurred or to be incurred, less any allocable credits. In ascertaining what constitutes costs, any generally accepted method of determining or estimating costs that is equitable under the circumstances may be used, including standard costs properly adjusted for applicable variances.

15–201.2 *Factors Affecting Allowability of Costs.* Factors to be considered in determining the allowability of individual items of cost include (i) reasonableness, (ii) allocability, (iii) standards promulgated by the Cost Accounting Standards Board, if applicable, otherwise, generally accepted accounting principles and practices appropriate to the particular circumstances, and (iv) any limitations or exclusions set forth in this Part 2, or otherwise included in the contract as to types or amounts of cost items. (But see 15–201.3(b)(4).) When a contractor has disclosed his accounting practices in accordance with Cost Accounting Standards Board Rules, Regulations, and Standards and any such practices are inconsistent with any of the provisions of this Part 2, costs resulting from such inconsistent practices shall not be allowed in excess of the amount that would have resulted from the use of practices consistent with this Part 2.

15–201.3 *Definition of Reasonableness.*

(a) *General.* A cost is reasonable if, in its nature or amount, it does not exceed that which would be incurred by an ordinarily prudent person in the conduct of competitive business. The question of the reasonableness of specific costs must be scrutinized with particular care in connection with firms or separate divisions thereof which may not be subject to effective competitive restraints. What is reasonable depends upon a variety of considerations and circumstances involving both the nature and amount of the cost in question. In determining the reasonableness of a given cost, consideration shall be given to—

(i) whether the cost is of a type generally recognized as ordinary and necessary for the conduct of the contractor's business or the performance of the contract;

(ii) the restraints or requirements imposed by such factors as generally accepted sound business practices, arm's length bargaining, Federal and State laws and regulations, and contract terms and specifications;

(iii) the action that a prudent business man would take in the circumstances, considering his responsibilities to the owners of the business, his employees, his customers, the Government and the public at large; and

(iv) significant deviations from the established practices of the contractor which may unjustifiably increase the contract costs.

(b) *Application of "Contractor Weighted Average Share in Cost Risk" (CWAS).*

(1) The cost principles contained in 15–205, or in certain cases their subparagraphs, carry either a "(CWAS)" or a "(CWAS-NA)" indicator. Those cost principles or subparagraphs subject to CWAS are preceded by the indicator

"(CWAS)" and those to which CWAS is not applicable are preceded by the indicator "(CWAS-NA)". In all cases where cost reasonableness is not determined under CWAS because of its express inapplicability, the determination will be made in accordance with (a) above. For CWAS qualified contractors, costs subject to those cost principles or subparagraphs designated "(CWAS)" will be presumed reasonable.

(2) The determination of cost reasonableness will be made in accordance with (a) above in all cases where the contractor could not qualify or does not choose to qualify under CWAS.

(3) The application of the CWAS applicable principles in 15–205 to indirect costs incurred in a profit center with CWAS qualification shall be determined in accordance with this subparagraph. Such costs shall be considered reasonable as to nature and amount, notwithstanding any specific limitations or exclusions based on standards of reasonableness contained in 15–205. For example, compensation for personal services (15–205.6(a)) shall be considered reasonable without regard to compensation paid by other firms (15–205.6(a)(2)). In addition, there are costs that are considered unallowable under 15–205 because they exceed a stated criteria of reasonableness. These criteria do not apply to indirect costs incurred in a profit center with CWAS qualification and the reasonableness of such costs shall not be questioned. For example, losses from a contractor's food and dormitory operations would be allowable notwithstanding the criteria in 15–205.10(c), or costs of idle facilities would be allowable notwithstanding the requirements of 15–205.12(b). Similarly, specific cost limitations, such as the 60-day and 45-day limitations on advanced trip time for relocated employees (15–205.25(a)(2)) or the 156-hour limitation for compensation for part-time training (15–205.44(b)(v)) shall not apply to cost incurred in a profit center with CWAS qualification. Also, any requirement in 15–205 for contracting officer approval or instructions as a prerequisite to the allowability of certain cost (*e.g.*, 15–205.22(e)(2)) shall not apply.

(4) Questions involving the charging off of assets or setting up of other than normal year-end accruals or reserves will be considered to be questions of allocability or accounting practices rather than reasonableness.

(5) If the profit center incurs costs (*e.g.*, travel, relocation, personnel compensation) on the basis of prescribed corporate-wide policy uniformly applied to all profit centers, consideration should be given to the corporate CWAS qualification in determining the reasonableness of such locally incurred costs.

(6) The CWAS qualification for the company shall be used in testing the reasonableness of corporate type expenses which are allocated to the profit centers. If the contractor has intermediate management organizations, such as Groups, the CWAS qualification for such intermediate management organizations shall be applicable to the expenses allocated by such intermediate organizations to the profit centers.

(7) Indirect costs incurred in cost centers which are applied to specific contracts without relation to total profit center operations may be eliminated by the ACO from the application of CWAS.

15-201.4 *Definition of Allocability.* A cost is allocable if it is assignable or chargeable to one or more cost objectives (see 15-109(e)) in accordance with the relative benefits received or other equitable relationship. Subject to the foregoing, a cost is allocable to a Government contract if it:

(i) is incurred specifically for the contract;

(ii) benefits both the contract and other work, or both Government work and other work, and can be distributed to them in reasonable proportion to the benefits received; or

(iii) is necessary to the overall operation of the business, although a direct relationship to any particular cost objective cannot be shown.

15-201.5 *Credits.* The applicable portion of any income, rebate, allowance, and other credit relating to any allowable cost, received by or accruing to the contractor, shall be credited to the Government either as a cost reduction or by cash refund, as appropriate.

15-201.6 *Accounting for Unallowable Costs.*

(a) Application of CAS 405. The provisions of CAS 405, *Accounting for Unallowable Costs*, are incorporated herein in their entirety and are applicable to all contracts to which this Part 2 applies. Unallowable costs shall be identified using procedures as contemplated by 3-809(c)(6).

(b) Directly Associated Costs.

(1) A directly associated cost is any cost which is generated solely as a result of the incurrence of another cost, and would not have been incurred had the other cost not been incurred. When an unallowable cost is incurred, the directly associated costs are also unallowable.

(2) If a directly associated cost is included in a cost pool which is allocated over a base that includes the unallowable cost with which it is associated, the directly associated cost shall remain in the cost pool. Since the unallowable cost will attract its allocable share of costs from the cost pool, no further action is required to assure disallowance of the directly associated cost. In all other cases the directly associated costs, if material in amount, must be purged from the cost pool as unallowable costs.

(3) In determining the materiality of a directly associated cost, consideration should be given to the significance of (i) the actual dollar amount, (ii) the cumulative effect of all directly associated costs in a cost pool, or (iii) the ultimate effect on the cost of Government contracts.

(4) Salary expenses of employees who participate in activities which generate unallowable costs shall be treated as directly associated costs to the extent of the time spent on the prescribed activity provided the costs are material in accordance with (3) above (except when such salary expenses are, themselves, unallowable). The time spent in

cost for commercial work of the contractor or any division, subsidiary or affiliate of the contractor under a common control, allowance may be at a price when:

(i) it is or is based on an "established catalog or market price of commercial items sold in substantial quantities to the general public" in accordance with 3-807.7(b); or

(ii) it is the result of "adequate price competition" in accordance with 3-807.7, and is the price at which an award was made to the affiliated organization after obtaining quotations on an equal basis from such organization and one or more outside sources which normally produce the item or its equivalent in significant quantity;

provided that in either case:

(1) the price is not in excess of the transferor's current sales price to his most favored customer (including any division, subsidiary or affiliate of the contractor under a common control) for a like quantity under comparable conditions, and

(2) the price is not determined to be unreasonable by the contracting officer.

The price determined in accordance with (i) above should be adjusted, when appropriate, to reflect the quantities being procured and may be adjusted upward or downward to reflect the actual cost of any modifications necessary because of contract requirements.

15-205.23 *Organization Costs.* (CWAS-NA)

(a) Except as provided in (b) below, expenditures in connection with (i) planning or executing the organization or reorganization of the corporate structure of a business, including mergers and acquisitions, or (ii) raising capital (net worth plus long-term liabilities), are unallowable. Such expenditures include but are not limited to incorporation fees and costs of attorneys, accountants, brokers, promoters and organizers, management consultants and investment counsellors, whether or not employees of the contractor. Unallowable "reorganization" costs include the cost of any change in the contractor's financial structure, excluding administrative costs of short-term borrowings for working capital, resulting in alterations in the rights and interests of security holders whether or not additional capital is raised.

(b) The cost of the activities primarily designed for the purposes of providing compensation will not be considered organizational costs subject to this Part, but will be governed by 15-205.6. These activities include the acquisition of stock for (i) executive bonuses, (ii) employee savings plans, and (iii) employee stock ownership plans.

15-205.24 *Other Business Expenses.* (CWAS) Included in this item are such recurring expenses as registry and transfer charges resulting from changes in ownership of securities issued by the contractor, cost of shareholders' meetings, normal proxy solicitations, preparation and publication of reports to shareholders, preparation and submission of required reports and forms to taxing and other regulatory bodies; and incidental costs of directors and committee meetings. The above and similar costs are allowable when allocated on an equitable basis.

15-205.25 *Relocation Costs.*

(a) (CWAS) Relocation costs are costs incident to the permanent change of duty assignment (for an indefinite period or for a stated

period of not less than 12 months) of an existing employee or upon recruitment of a new employee. The following types of costs are allowable as noted, subject to paragraphs (b), (c), and (d) below.

(1) Costs of travel of the employee and members of his immediate family (see 15-205.46) and transportation of his household and personal effects to the new location.

(2) Costs of finding a new home, such as advance trips by employees and spouses to locate living quarters, and temporary lodging during the transition periods, not exceeding separate cumulative totals of 60 days for employees and 45 days for spouses and dependents, including advance trip time.

(3) Closing costs (i.e., brokerage fees, legal fees, appraisal fees, points, finance charges, etc.) incident to the disposition of actual residence owned by the employee when notified of transfer; *Provided* that closing costs when added to the continuing costs described in (a)(6) below shall not exceed 14% of the sales price of the property sold.

(4) Other necessary and reasonable miscellaneous expenses incident to relocation, such as disconnecting and connecting household appliances; automobile registration; drivers license and use taxes; cutting and fitting rugs, draperies, and curtains; forfeited utility fees and deposits; and purchase of insurance against damage to or loss of personal property while in transit.

(5) Costs incident to the acquisition of a home in a new location, except that these costs will not be allowable for existing employees or newly recruited employees who prior to the relocation were not homeowners and the total costs shall not exceed 5% of the purchase price of the new home.

(6) Continuing costs of ownership of the vacant former actual residence being sold, such as maintenance of building and grounds (exclusive of fixing up expenses), utilities, taxes, property insurance, mortgage interest, etc., after settlement date or lease date of new permanent residence; *Provided* that when added to the closing costs described in (a)(3) above, the costs shall not exceed 14% of the sales price of the property sold.

(7) Mortgage interest differential payments, except that these costs are not allowable for existing or newly recruited employees who prior to the relocation were not homeowners, and the total payments are limited to an amount determined as follows:

(i) difference between the mortgage interest rates of the old and new residences times the current balance of the old mortgage times 3 years; and

(ii) when mortgage differential payments are made on a lump sum basis and the employee leaves or is transferred again in less than 3 years, the amount initially recognized shall be proportionately adjusted to reflect payments only for the actual time of the relocation.

(8) Rental differential payments covering situations where relocated employees retain ownership of a vacated home in the old location and rent at the new location. The rented quarters at the new location must be comparable to those vacated, and the allowable differential payments may not exceed the actual rental costs for the new home, less the fair market rent for the vacated home times 3 years.

(9) Cost of canceling an unexpired lease.

(b) (CWAS) The costs described in (a) above must also meet the following criteria to be considered allowable.

(1) The move is for the benefit of the employer.

(2) Reimbursement must be in accordance with an established policy or practice that is consistently followed by the employer, and is designed to motivate employees to relocate promptly and economically.

(3) The costs are not otherwise unallowable under the provisions of 15-205.33, or any other paragraph of Part 2 (see 15-107 as related to large-scale contractor relocation).

(4) Amounts to be reimbursed shall not exceed the employee's actual expenses, except that for miscellaneous costs of the type discussed in (a)(4), a flat amount, not to exceed $1,000, may be allowed in lieu of actual costs.

(c) (CWAS-NA) The following types of costs are not allowable:

(1) Loss on sale of a home.

(2) Costs incident to the acquisition of a home in a new location as follows:

(i) real estate brokers fees and commissions;

(ii) costs of litigation;

(iii) real and personal property insurance against damage or loss of property;
(iv) mortgage life insurance;
(v) owner's title policy insurance when such insurance was not previously carried by the employee on the old residence (however, cost of a mortgage title policy is allowable); and
(vi) property taxes and operating or maintenance costs.

(3) Payments for employee's income taxes or FICA (social security taxes) incident to reimbursed relocation costs.

(4) Payments for job counseling and placement assistance to employee spouses and dependents who were not employees of the contractor at the old location.

(5) Costs incident to furnishing equity or nonequity loans to employees or making arrangements with lenders for employees to obtain lower-than-market rate mortgage loans.

(d) (CWAS-NA) If relocation costs for an employee have been allowed either as an allocable indirect or direct cost, and the employee resigns within 12 months for reasons within the employee's control, the contractor shall refund or credit the relocation costs to the Government.

lowable to the extent that such costs are incurred pursuant to a well managed recruitment program. When the contractor uses employment agencies, costs not in excess of standard commercial rates for such services are allowable.

(b) Cost of help-wanted advertising is unallowable if the advertising:

(1) is for other than for personnel required for the performance of obligations under a defense contract (see 15-205.1); (CWAS-NA)

(2) does not describe specific positions or classes of positions; (CWAS-NA)

(3) is excessive in relation to the number and importance of the positions, or in relation to the practices of the industry; (CWAS)

(4) includes material that is not relevant for recruitment purposes, such as extensive illustrations or descriptions of the company's products or capabilities; (CWAS-NA)

(5) is designed to "pirate" personnel from another defense contractor; (CWAS-NA) and

(6) includes color (in publications). (CWAS)

(c) (CWAS-NA) Costs of excessive salaries, fringe benefits and special emoluments that have been offered to prospective employees, designed to "pirate" personnel from another defense contractor, or in excess of the standard practices in the industry, are unallowable.

(d) (CWAS-NA) Relocation costs incurred incident to recruitment of new employees are subject to 15-205.25. However, costs of travel to an overseas location shall be considered travel costs in accordance with 15-205.46 and not relocation costs for the purpose of this subparagraph, if (i) dependents are not permitted at that location for any reason, and (ii) such costs do not include costs of transporting household goods.

15-205.34 *Rental Costs (Including Sale and Leaseback of Property).* (CWAS)

(a) This paragraph 15-205.34 is applicable to the cost of renting or leasing property, real and personal, acquired under "operating leases" as defined in Statement of Financial Accounting Standards No. 13 (FAS-13), Accounting for Leases, promulgated by the Financial Accounting Standards Board (FASB), except automatic data processing equipment (ADPE). (See 15-205.48.) Compliance with 15-205.9(j) requires that assets acquired by means of "capital leases" as defined in the aforementioned (FAS-13) shall be treated as purchased assets; *i.e.*, be capitalized and the capitalized value of such assets be distributed over their useful lives as depreciation charges (but see (f) below).

[The next page is 15:36.]

(b) Rental costs under operating leases are allowable to the extent that the rates are reasonable at the time of the decision to lease in light of such factors as rental costs of comparable property, if any, and market conditions in the area, the type, life expectancy, condition, and value of property leased, alternatives available, and other provisions of the agreement.

(c) Rental costs under a sale and leaseback arrangement shall be allowable only up to that amount the contractor would be allowed had he retained title to the property.

(d) Charges in the nature of rent between any divisions, subsidiaries, or organization under common control are allowable to the extent such charges do not exceed the normal costs of ownership, such as depreciation, taxes, insurance, facilities capital cost of money, and maintenance (excluding interest or other unallowable costs pursuant to Section XV); *provided* that no part of such costs shall duplicate any other allowed costs. However, rental cost of personal property, which is leased from any division, subsidiary, or affiliate of the contractor under common control, which has an established practice of leasing the same or similar property to unaffiliated lessees shall be allowed in accordance with (b) above.

(e) The allowability of rental costs under unexpired leases in connection with terminations is treated in 15-205.42(e).

(f) Rental costs under leases entered into prior to March 1, 1970, are allowable for the remaining term of the lease (excluding options not exercised prior to March 1, 1970) to the extent they would have been allowable under 15-205.34 dated January 1, 1969.

15-205.35 *Independent Research and Development Costs.*

(a) *Definitions.* A contractor's independent research and development effort (IR&D) is that technical effort which is not sponsored by, or required in performance of, a contract or grant and which consists of projects falling within the following three areas: (i) basic and applied research, (ii) development, and (iii) systems and other concept formulation studies. IR&D effort shall not include technical effort expended in the development and preparation of technical data specifically to support the submission of a bid or proposal. For the purposes of this paragraph:

the duration of the function can be determined. Technological life may be used by the contractor if he can demonstrate that existing facilities must be replaced because of:

(i) specific program objectives or contract requirements which cannot be accomplished with the existing facilities;

(ii) cost reductions which will produce identifiable savings in production or overhead costs;

(iii) increase in workload volume which cannot be accomplished efficiently by modifying or augmenting existing facilities; or

(iv) consistent pattern of capacity operation (2 1/2-3 shifts) on existing facilities.

Technological advances per se will not justify replacement of existing facilities before the end of their physical life if such existing facilities will be able to satisfy future requirements or demands.

(2) In estimating the least cost to the Government for such useful life, the cumulative costs that would be allowed if the contractor owned the property should be compared with cumulative costs that would be allowed under any of the various types of leasing arrangements available. For the purposes of this comparison, the costs of ADPE exclude interest or other unallowable costs pursuant to Section XV, Part 2; they include but are not limited to the costs of operation, maintenance, insurance, depreciation, facilities capital cost of money, rental, and the cost of machine services, as applicable.

(d)(1) Except as provided in (3) below, the contractor's justification, under (b)(1) above, of his leasing decisions shall consist of but is not limited to the following supporting data, prepared prior to acquisition:

(i) analysis of utilization of existing ADPE;

(ii) application of the criteria in (b) above;

(iii) specific objectives or requirements, generally in the form of a data system study and data system specification;

(iv) solicitation of proposals from qualified sources based on the data system specification; and

(v) proposals received in response to the solicitation, and reasons for selection of the equipment chosen and for the decision to lease.

(2) Except as provided in (3) below, the contractor's annual justification, under (b)(2) above, of his decision to retain or change his existing ADPE capability and the need to continue leasing that capability shall consist of but is not limited to current data as specified in (i) through (iii) above.

(3) When a contractor's prospective ADPE lease cost equals or exceeds the thresholds specified in 15-205.48(b)(2)(iii), data in support of the initial decision to lease, under (b)(1) above, shall be furnished in accordance with 3-1100.3. If the total cost of leasing ADPE in a single plant, division, or cost center exceeds $500,000 per year, and 50% or more of the total leasing cost is allocated to Government contracts requiring the negotiation or determination of costs, data in support of the annual justification, under (b)(2) above, for retention or change of existing ADPE capability and the need to continue leasing that capability shall also be furnished in accordance with 3-1100.3.

15-205.49 *Deferred Research and Development Costs* (CWAS-NA). As used herein, research and development refers to the type of technical effort which is described in 15-205.35(a) but which is sponsored by, or required in performance of, a contract or grant. Research and development costs (including amounts capitalized) which were incurred prior to the award of a particular contract are unallowable except when allowable as precontract costs (see 15-205.30). In addition, when costs are incurred in excess of either the price of a contract or amount of a grant for research and development effort, such excess may not be allocated as a cost to any other Government contract (see 15-205.19).

15-205.50 *Cost of Money* (CWAS-NA).

(a) *Facilities Capital Cost of Money.*

(1) Facilities capital cost of money (Cost of Capital Committed to Facilities) is an imputed cost determined by applying a cost of money rate to facilities capital employed in support of Defense contracts. A cost of money rate is derived from a common source and uniformly imputed to all contractors. Capital employed is determined without regard to its source as between equity or borrowed capital. The resulting cost of money is an imputed cost and is not a form of interest on borrowings as discussed in 15-205.17.

(2) Facilities capital cost of money is allowable cost *provided* (i) the contractor's capital investment is measured, allocated to contracts, and costed in accordance with 3-1300, and (ii) the contractor maintains adequate records to demonstrate compliance with item (i).

(3) Cost of money for facilities capital need not be entered on the company's books of account. However, a memorandum entry of the cost shall be made. All relevant schedules, cost data and other data necessary to fully support the entry shall be maintained in a manner to permit audit and verification.

(4) Cost of money which is calculated, allocated and documented in accordance with these regulations shall be deemed an "incurred cost" for cost reimbursement purposes pursuant to the payment provisions of applicable cost type contracts. See E-509.5 re: applicability of cost of money for progress payment purposes under fixed-price contracts.

(b) *Cost of Money as an Element of the Cost of Capital Assets Under Construction.*

(1) Cost of money as an element of the cost of capital assets under construction is an imputed cost determined by applying a cost of money rate to the investment in tangible and intangible capital assets while they are being constructed, fabricated, or developed for a contractor's own use. The source of the investment for capital assets being constructed, whether equity or borrowed capital, is not considered in this cost of money determination.

(2) Cost of money computed on representative investments prior to the contractor's first fiscal year subsequent to December 15, 1980 is not allowable. Cost of money may be capitalized on assets under construction beginning with the contractor's first fiscal year after December 15, 1980. However, amortization of such costs shall first be allowable for

Block No.	*Title and/or Instructions*
	facility, enter in the facility code block the code for that facility, *i.e.*, H8-1/H8-2 code for a non-Government entity or DODAAD code for a Government entity (DODAAD codes shall be used only to indicate "performed at" locations for contracts specifying services at a Government location). If it is known that multiple facilities are involved (*i.e.*, when the work covered by the contract is performed both at the contractor's address and one or more other facilities, or when all the work is to be performed at two or more facilities other than the contractor's address), indicate the codes for all facilities at which work is to be performed, including the contractor's code if work is to be performed at that address, in Section K (Contract Administration Data) and mark the facility code block with "See Schedule." For contracts specifying services which will be performed at a location other than the contractor's address, the locations shall be indicated as required above.
9	*Discount for Prompt Payment*—Percentages will be expressed in whole numbers and decimals; *e.g.*, 3.25%—10 days, 0.50%—20 days.
11	*Ship To / Mark For*—Multiple delivery points shall be shown in Section H of the UCF and this block annotated to that effect. Any "Mark For" in-the-clear and DODAAD or H8-1/H8-2 coded address for ultimate consignee shall be entered in this block.
14	*Accounting and Appropriation Data*—If multiple accounting classifications are applicable, see 20-304.2(b) and (c).
15-20	When the contract does not otherwise contain a UCF table of contents, the UCF table of contents set forth in 2-201(a) and 3-501(b) with the applicable sections checked, shall be set forth immediately below Block 14 so as to replace Blocks 15 through 20, including the headings. Section entries may commence immediately below the table of contents or on the first page of the Continuation Sheet (Standard Form 36). In either event, all provisions shall be located under applicable UCF section headings.
15	*Item No.*—See Section XX, Part 3.
16	*Supplies/Services*—When used as an acceptance, only the item numbers of the solicitation need be set forth. Any modifications made by the offeror to a solicitation which are accepted by the Government will be set forth. When entries in addition to item numbers are set forth, they shall be set forth under appropriate UCF section headings (see 2-201(a) and 3-501(b)) from the applicable solicitation document. A UCF table of contents shall not be set forth when the form is used as an acceptance.
22	If the form is being used as a negotiated bilateral contract pursuant to receipt of quotations on Request for Quotations (Standard Form 18) or informal means, and subsequent negotia-

Block No.	Title and/or Instructions
	tions, if any, the box shall be checked and contractor shall be required to sign this document and return the prescribed number of copies to the issuing office, but see 1–706.6(d)(4), 1–706.7(e)(4) and 1–804.2(c)(4) when the form is being used for an acceptance of an offer for a set-aside portion of a procurement.
26	If this form is being used as an acceptance (award) pursuant to receipt of a firm offer on Solicitation, Offer, and Award (Standard Form 33), the box shall be checked and contractor will not be required to sign this document. When it is being used for acceptance of an offer for the set-aside portion of a procurement (see 1–706.6(d)(4), 1–706.7(e)(4) and 1–804.2(c)(4)) reference to the applicable solicitation and the company's offer letter shall be indicated and copies shall be attached.

16–104.4 *Amendment of Solicitation / Modification of Contract* (*Standard Form 30*). Instructions for block entries are as follows:

Block No.	Title and/or Instructions
1	*Amendment / Modification No.*—See Section XX, Part 2.
2	*Effective Date*—For an amendment of a Solicitation, or for a Change Order or an Administrative Change, the effective date shall be the issue date of such amendment, Change Order, or Administrative Change. For a Supplemental Agreement, the effective date shall be the date agreed to by the contracting parties. See 16–102.2(g).
5	*Issued by*—Insert the name and address of the issuing office. In the Code Block, insert the appropriate DODAAD code for the issuing office. Directly below the address insert: Buyer/Symbol, followed by the appropriate buyer's name and routing symbol. Directly below the Buyer/Symbol insert: Phone: followed by the buyer's phone number and extension.
7	*Contractor Name and Address*—For modifications to a contract or order, enter the contractor's name, address, and code as shown in the original contract or order, unless changed by this or a prior modification.
8	Check the appropriate block and in the corresponding blanks insert number and date of original Solicitation, Contract, or Order.

Block No.	Title and/or Instructions
10	For those awards utilizing an Accounting Classification Reference Number (ACRN) pursuant to ASPR 20–308.1, indicate the impact of the modification on each affected accounting classification by inserting one of the following entries: *ACRN: Net increase $ .....* . *ACRN: Net decrease $ .....* . **NOTE:** Should changes to multiple ACRN's occur on a modification which cannot be placed in Block 10, an asterisk and the words "*See Continuation Sheet*" should be inserted.
12	Amendments or modifications shall be set forth under appropriate UCF section headings from the applicable solicitation or contract document. A UCF table of contents shall not be set forth. Indicate the impact of the modification on the overall total contract price by inserting one of the following entries: *Total contract price increased by $.....* . *Total contract price decreased by $.....* . *Total contract price unchanged.*
13	If the modification is a Change Order (11(a)) or Administrative Change (11(b)), the first box in this block shall be checked, and the contractor's signature will not be required. If the modification is a Supplemental Agreement (11(c)), contractor's signature will be required, the second box shall be checked and the number of copies to be returned to issuing office shall be inserted, but see 1–706.6(d)(3), 1–706.7(e)(3), and 1–804.2(c)(3) when the form is being used for acceptance of an offer for a set-aside portion of a procurement.
17	Contracting Officer's signature is not required when amending a solicitation.

16–104.5 *Request for Quotations* (*Standard Form 18*). Instructions for block entries are as follows (applicable only when UCF is used):

Block No.	Title and/or Instructions
11–16	The UCF table of contents set forth in 2–201(a) and 3–501(b) with the applicable sections checked, shall be set forth immediately below Block 10 so as to replace the word "Schedule" and replace Blocks 11 through 16, including the headings. Section entries may commence immediately below the Table of Contents or they may commence on the first Continuation Sheet (Standard Form 36). In either event, all provisions shall be located under applicable UCF section headings.

Part 2—Additional Forms for Negotiated Contracts

16–200 Scope of Part. This Part describes additional forms for use where appropriate in conjunction with negotiated contracts for supplies or services.

16–201 Reserved.

16–202 Reserved.

16–203 Reserved.

16–204 Reserved.

16–205 General Provisions—Fixed-Price Supply Contracts (Standard Form 32).* Any negotiated contract to which Section VII, Part 1, is applicable will include Standard Form 32. The addition of other clauses set forth in Section VII, Part 1, or of other clauses not inconsistent with DAR, shall be accomplished by including such clauses as "Additional General Provisions" numbered consecutively. The deletion or modification of clauses contained in the "Additional General Provisions" shall be accomplished by appropriate reference or provision in an Alterations in Contract clause. These instructions must be read in conjunction with Section VII, Part 1, to make certain that current clauses are in use at all times.

*For DAR clause substitutions on Standard Form 32, Apr. 1975 edition, and Standard Form 33A, Jan. 1978 edition, see 16–101.

16–206 Contract Pricing Proposal Forms.

16–206.1 General.

(a) The DD Form 633 shall be used, except for negotiated final overhead rates and termination settlements, whenever cost or pricing data (see 3-807.7) is required. The data requirement, in 3-807 and 7-104.42, is in connection with the pricing of contracts, subcontracts (including prospective subcontracts), and changes or modifications to contracts or subcontracts. In accordance with the provisions of 3-807.7(b), the DD Form 633-7 shall be submitted whenever exemption from such cost or pricing data requirements is claimed for contracts or subcontracts by reason of established catalog or market prices (see 3-807.7(b)) or prices set by law or regulation.

(b) The purpose of DD Form 633 is to provide a vehicle whereby the offeror submits to the Government a pricing proposal of estimates and/or incurred costs by contract line item with supporting information, adequately cross-referenced, suitable for detailed analysis. Supporting cost element breakdowns must be obtained for each proposed line item. When more than one contract line item is proposed, summary total amounts, by cost element, covering all proposed line items, should also be obtained.

(c) When Contract Cost Data Reports are required by the purchase request, the contractor shall be required to submit DD Forms 1921 and/or 1921–1 to support the DD Form 633. The DD Forms 1921 shall be prepared in accordance with the Contractor Cost Data Reporting (CCDR) System (Army - AMCP 715–8, Navy - NAVMAT P5241, and Air Force - AFLCP/AFSCP 800–15). The contractor supporting data shall be prepared in such a manner as to support each cost element on the DD Form 1921–1.

(d) DD Form 783 (Royalty Report (Foreign and Domestic)) is approved for use as the separate schedule required by DD Form 633.

16–206.2 *Contract Pricing Proposal Supporting Schedules* may be devised by contracting offices to require such supporting data to the foregoing forms as is considered necessary and reasonable through knowledge of industry, company or commodity practices.

16–207 Reserved.

16–208 Weighted Guidelines Profit/Fee Objective (DD Form 1547).

16–208.1 *General.* Weighted Guidelines Profit/Fee Objective (DD Form 1547) is to be used, as appropriate, to facilitate calculation of the Weighted Guidelines Profit/Fee Objective (see 3–808.2).

16–208.2 *Conditions for Use.* DD Form 1547 may be used in conjunction with the Record of Price Negotiation required by 3–811(b), *provided* that the rationale used in assigning the various rates is fully documented.

PROCUREMENT FORMS

Part 3—Purchase and Delivery Order Forms

16–300 Scope of Part. This Part prescribes forms for use (i) when purchases are authorized or required to be made by the purchase order or imprest fund method, (ii) as delivery orders, and (iii) as order against basic ordering agreements.

16–301 Receipt for Cash—Subvoucher (Standard Form 1165). Standard Form 1165 may be used in connection with procurements by the imprest fund (petty cash) method in accordance with 3–607.

16–302 Purchase Order — Invoice — Voucher (Standard Form 44). Standard Form 44 is authorized for use to accomplish small purchases in accordance with 3–608.9.

16–303 Order for Supplies or Services/Request for Quotations, (DD Forms 1155, 1155r, 1155r–1, and 1155c–1). Order for Supplies or Services/Request for Quotations, DD Form 1155 series, shall be used to accomplish small purchases in accordance with 3–608 and 16–402 and Blanket Purchase Agreements in accordance with 3–605, and may be used to place calls against Blanket Purchase Agreements in accordance with 3–605.5 and orders against basic ordering agreements in accordance with 3–410.2(a).

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Part 8—Correspondence and Visits

20–801 Contract Correspondence 20:34
20–802 Visits to Contractor's Plants 20:34
20–803 Evaluation of Contract Administration Offices 20:34

Part 9—Corporate Administrative Contracting Officer (CACO)

20–901 Scope 20:35
20–902 Policy 20:35
20–903 Assignment 20:35
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Part 10—Monitoring Contractors' Costs

20–1001 Scope 20:37
20–1002 Purpose 20:37
20–1003 Application 20:37
20–1004 Designation of a Cost Monitoring Coordinator 20:37
20–1005 Responsibilities of the Cost Monitoring Coordinator 20:37
20–1006 DCAA Auditor Responsibility 20:39
20–1007 Procedure 20:39

20–308.2 *Criteria for Establishing.* This two position alpha/numeric control code is required for Military Standard Contract Administration Procedures (MILSCAP) processing and may also be used in contracts administered by each Service/Agency. Under MILSCAP, the ACRN is required to associate the Accounting Classification Trailer Record, the Supplies Schedules Data Record and the Services Line Item Data Record with the long line accounting classification. The reference number is also used to associate the various record formats of the Contract Payment Notice as described in Chapter 16 of the MILSCAP Manual, DoD 4105.63–M.

20–308.3 *Procedures for Using the Accounting Classification Reference Number (ACRN).*

(a) The ACRN will be any combination of a two position alpha/numeric code assigned discretely to each accounting classification within each contract. The letters "I" and "O" shall not be used.

(b) This code will be shown as a detached prefix to the long line accounting classification number in the Accounting and Appropriation Data block and/or Section K (Contract Administration Data) of the contract, except that accounting classification numbers included in the contract only for the information of the Transportation Officer for citation on Government bills of lading for shipment at Government expense of items on an f.o.b. origin contract need not be prefixed with an ACRN. In the case of modifications to contracts/orders which have been previously assigned a long line accounting classification number(s), only the ACRN(s) assigned to that number(s) need be shown in the Accounting and Appropriations Data block and/or Continuation Sheet(s) of the modification.

(c) If more than one ACRN is assigned in the contract, the ACRN shall also be shown in the contract Schedule as follows:

(i) The ACRN shall be shown adjacent to the identity code of each "Ship To/Mark For," unless the procedure in (ii) or (iii) below is used. Only one ACRN may be assigned to the same "Ship To/Mark For" within the same contract line or subline item number, except in rare cases when multiple accounting classifications apply to a single unit so the quantity cannot be subdivided to relate to a single accounting classification. In such case, the contract shall provide sufficient information under the heading "Payment Instructions for Multiple Fund Accounting Citations" to permit proper payment and fund accounting;

(ii) If only one accounting classification applies to a subline item, the ACRN may be shown in the Supplies/Services column near the subline item description;

(iii) If only one accounting classification applies to a line item, the ACRN may be shown in the Supplies/Services column near the line item description; and

(iv) The ACRN shall be shown in the contract Schedule in the following manner:

ACR:1D

(v) For cost reimbursement type contracts the provisions of this paragraph (c) do not apply.

(d) The purchasing office executing a contract, basic ordering agreement, or blanket purchase agreement is responsible for control of assignment of ACRNs pertaining thereto. Contract or agreement provisions which provide for the issuance of contract modifications (including provisioned item order modifications), calls, orders, or work requests by organizations other than the purchasing office executing the contract or agreement will contain instructions for ACRN assignment. This may be accomplished by individual assignments as funds are cited, by assignment of blocks of ACRNs to offices authorized to issue contract modifications, calls, orders or work requests or by some other appropriate method. In no case, however, will an ACRN apply to more than one long line accounting classification in a contract. The authority to control ACRN assignment shall not be delegated to another office by the purchasing office issuing the contract or agreement.

20–309 Indefinite Delivery Type Contracts.

(a) When an indefinite delivery type contract includes provisions wherein the price of an item is determined at the time a delivery order is issued based on such factors as the quantity to be ordered, (*e.g.*, 10–99 at $1.00, 100–249 at $.98, and 250 or more at $.95), the FOB provision, the destination, or the type pack required in the delivery order, it shall not be necessary to assign a separate line item number in the indefinite delivery type contract to each price for the same item. Each line or subline item in the individual delivery order, however, shall cite only one of the unit prices in the indefinite delivery type contract.

(b) Except as noted in (a) above, criteria for contract line item assignment (see 20–303) shall be applicable to indefinite delivery type contracts.

21-113.1 *Item 7A (Untitled).* If the product shown in Item 11 is manufactured in the U.S. and 50% or more of the cost of all its components is for foreign components, enter the foreign country code shown in the Department of Defense Procurement Coding Manual, Volume II, of the country providing the greatest part of the foreign components. In all other cases, leave this box blank.

21-113.2 *Item 7B, Reserved.*

21-113.3 *Item 7C, Multiyear Contracting.* Enter Code A if the action is a multiyear contract as defined in 1-322.1(a). Enter Code C if the action is not a multiyear contract.

21-114 Item 8, Subject to Statutory Reqirements.

Code in accordance with the provisions of the contract as follows:
Code A—Subject to Walsh-Healey Act, Manufacturer: Section XII—Part 6.
Code B—Subject to Walsh-Healey Act, Regular Dealer: Section XII—Part 6.
Code C—Subject to Service Contract Act: Section XII—Part 10.
Code E—Subject to Davis-Bacon Act: 18-702.1(a).
Code Z—Not subject to above statutory requirements. Also enter Code Z for orders under contracts awarded by other Federal Agencies for which data are not readily available.

21-115 Item 9, Labor Surplus Area Preference.

(a) *Labor Surplus Area.* See 1-801.2 for definition. The Department of Labor publication "Listing of Eligible Labor Surplus Areas Under Defense Manpower Policy No. 4B and Executive Orders 10582 and 12073" defines all areas classified as labor surplus areas. If Code 2, 3, 6, 7, or 8 is entered, the entry in Item 7 must be a city which on the date of the action is located within a labor surplus area (see 21-113(g)).

(b) *Code 1.* Reserved.

(c) *Code 2.* Partial Labor Surplus Area Set-Aside Preference. (See 1-804.) Enter this code if the action was awarded to a concern in a labor surplus area, wherein preference was given under partial labor surplus set-aside procedures, except if set-aside preference resulted from a combined Small Business/Partial Labor Surplus Set-Aside as set forth in subparagraph (g) below. If Code 2 is entered, Code 1A must be entered in Item 17.

(d) *Code 3.* Labor Surplus Area - Tie Bid Preference. Enter this code if the action was awarded to a concern in a labor surplus area and tie bid preference was given.

(e) *Code 4.* Reserved.

(f) *Code 5.* Not a Labor Surplus Area Preference Award. Enter this code if the action did not involve labor surplus area preference considerations as defined for Codes 2, 3, 6, 7, or 8. Also enter this code if a Labor Surplus Area Set-Aside results in an award under Group 7 to a Small Business concern which is not located in a labor surplus area (see 1-804.2).

(g) *Code 6.* Combined Small Business/Partial Labor Surplus Area Set-Aside (see 1-706.7). Enter this code when reporting the successful labor surplus portion of a combined set-aside. (See 21-102(a)(iv)). If Code 6 is entered, Code 1B or 17A must be entered in Item 17.

(h) *Code 7.* Total Labor Surplus/Small Business Set-Aside Preference. Enter this code when reporting an award that is totally set-aside for labor surplus areas in combination solely with small business firms in such areas, in accordance with

Priority 1 in Section 502(e) of Public Law 95-89. These actions are currently applicable to current awards obligating FY 77 and prior year procurement and research and development funds, and all Military Construction Appropriation funds. If Code 7 is entered, Code 1B or 17A must be entered in Item 17.

(i) *Code 8.* Total Labor Surplus Area Set-Aside Preference. Enter this code when reporting an award that is totally set-aside for labor surplus areas, but with no further preference as to whether it is to be awarded to large or small business firms, in accordance with Priority 4, in Section 502(e) of Public Law 95-89. These actions are currently applicable to current awards obligating FY 77 and prior-year contracting and research and development funds, and all Military Construction Appropriation funds. If Code 8 is used, Code 1A must be entered in Item 17.

(j) *Modifications.* If the action is a modification, the codes will be determined on the basis of the area classification at the time of such modifying action. If a supplemental agreement is used to award the partial labor surplus set-aside portion of a contract to a concern in a labor surplus area which has obtained the non-set-aside portion, separate DD Forms 350 shall be used to report the set-aside and non-set-aside portions (see 1-804.2(d)(2)).

21-115.1 *Item 9A. Affirmative Action Plan.* Enter appropriate Code "1" for *Yes*, "2" for *No*, to indicate whether the contractor certified that an affirmative action plan has been developed and is on file. Where certification is exempted (see 12-806), enter Code "3". Also enter Code "3" for orders under contracts awarded by other Federal Agencies for which data are not readily available.

21-115.2 *Item 9B. Previously Held Contracts.* Enter appropriate Code "1" for *Yes*, "2" for *No*, to indicate whether the contractor certified that there have been previous contracts subject to the written affirmative action program requirements of the rules and regulations of the Secretary of Labor. Enter Code 3 where certification is exempt or for orders under contracts awarded by other Federal Agencies for which data are not readily available.

21-115.3 *Item 9C. Woman Owned Business.* Enter appropriate Code "1" for *Yes*, "2" for *No*, to indicate whether the contractor is a woman owned business or entity. Enter Code 3 if the contractor does not complete this certification (see 7-2003.80) or if the award is an order under contract awarded by another Federal Agency for which data are not readily available.

21-115.4 *Item 9D. Consultant Services.* Enter appropriate Code "1" for *Yes*, "2" for *No*, to indicate whether the award is for consulting type services.

21-116 Item 10A, FSC or Service Code. Enter a Federal Supply Classification, a Research, Development, Test or Evaluation (RDTE) Code, or a Service Code in accordance with Volume I of the Department of Defense Procurement Coding Manual (Section I). Each DD Form 350 must contain a four-digit entry for this item. If more than one classification is applicable to the procurement action, enter the one accounting for the largest dollar volume of procurement.

(a) *Research, Development, Test, and Evaluation.* RDTE is defined in 4-101. Each DD Form 350 action for RDTE shall be assigned a code beginning with the letter "A," in accordance with Section I, Part A of the coding manual, including in general:

$500,000 or more; DD Forms 1499 shall not be prepared for (i) types of pricing with less than aggregate cost and profit of $500,000, (ii) cost-no-fee, or (iii) firm fixed-price without a negotiated cost and profit.

(n) *Item 13, Negotiation Summary.*

(1) Enter dollar amounts applicable to lines a. through f. as proposed by the contractor, the Government's objective, and the negotiated amounts. These entries shall be to the nearest whole dollar; do not show cents, or make entries involving cent positions. For example, $568,035.54 shall be entered as $568,036 and not as $568,036.00; $500,500.49 shall be entered as $500,500.

(2) The dollar entries shall reflect the entire reportable amounts negotiated in the contractual agreement, not merely the portion obligated. Thus, awards contemplating incremental funding shall be reported as total negotiated cost and profit at the time of initial award, not as the amounts initially obligated. However, amounts applicable to options for additional quantities shall be excluded unless the options are exercised. When options are exercised, a report shall be submitted if the amounts meet the dollar threshold of 21-302.

(3) For cost-plus-award-fee (CPAF) contracts, only the base fee shall be reported.

(4) For indefinite delivery-type contracts, the amounts reported shall reflect the best estimate of the annual requirement on the first reportable delivery order.

(5) Enter on line g. the cost of money percentage rate proposed by the contractor, obtained from block 1 of the CASB-CMF form. The objective and negotiated rate will be the cost of money percentage rate used on the DD Form 1861.

(o) *Item 14, Weighted Guidelines Profit Factors (see DD Form 1547).* If weighted guidelines are used, show the measurement base and profit/fee dollars in whole numbers in accordance with (n) above. If the weighted guidelines are not used to develop the prenegotiation profit objective, enter the measurement bases on line a. and complete only lines e., f., and g. The manufacturing guidelines adjustment, line a.(11), shall be completed only for contracts coded A in item 11 and must equal 30 percent of the amount entered on line a.(10). The cost of money adjustment, line e., shall be completed for all contracts coded as B, C, or D in item 11 and must equal the objective amount in item 13.b.

Criticality Designator	*Criteria*
A (cont.)	(iv) for items on which a priority designator 01, 02, 03 or 06* has been assigned based on DoDD 4410.6, Uniform Materiel Movement and Issue Priority System; or
	(v) for nonstocked items which otherwise meet the criteria for Force Activity Designator I and Urgency of Need Designator A as defined in DoDD 4410.6.
B	Contracts not assigned Criticality Designator A, wherein time of delivery is essential:
	(i) to meet user needs for nonstock items;
	(ii) to preclude out-of-stock situations; or
	(iii) to preclude interruption to ongoing Government or contractor production or repair lines.
C	All other contracts which do not qualify under Criticality Designators A or B.

* Criticality designator A shall be used in conjunction with an 06 priority designator only when the contract is for emergency supply of clothing.

2. Notice of Appeal, Contents of

A notice of appeal should indicate that an appeal is being taken and should identify the contract (by number), the department and/or agency involved in the dispute, the decision from which the appeal is taken, and the amount in dispute, if known. The notice of appeal should be signed personally by the appellant (the contractor taking the appeal), or by the appellant's duly authorized representative or attorney. The complaint referred to in Rule 6 may be filed with the notice of appeal, or the appellant may designate the notice of appeal as a complaint, if it otherwise fulfills the requirements of a complaint.

3. Docketing of Appeals

When a notice of appeal in any form has been received by the Board, it shall be docketed promptly. Notice in writing shall be given to the appellant with a copy of these rules, and to the contracting officer.

4. Preparation, Content, Organization, Forwarding, and Status of Appeal File

(a) *Duties of Contracting Officer* - Within 30 days of receipt of an appeal, or notice that an appeal has been filed, the contracting officer shall assemble and transmit to the Board an appeal file consisting of all documents pertinent to the appeal, including:

(1) the decision from which the appeal is taken;

(2) the contract, including pertinent specifications, amendments, plans and drawings;

(3) all correspondence between the parties relevant to the appeal, including the letter or letters of claim in response to which the decision was issued;

(4) transcripts of any testimony taken during the course of proceedings, and affidavits or statements of any witnesses on the matter in dispute made prior to the filing of the notice of appeal with the Board; and

(5) any additional information considered relevant to the appeal.

Within the same time above specified the contracting officer shall furnish the appellant a copy of each document he transmits to the Board, except those in subparagraph (a)(2) above. As to the latter, a list furnished appellant indicating specific contractual documents transmitted will suffice.

(b) *Duties of the Appellant* - Within 30 days after receipt of a copy of the appeal file assembled by the contracting officer, the appellant shall transmit to the Board any documents not contained therein which he considers relevant to the appeal, and furnish two copies of such documents to the government trial attorney.

(c) *Organization of Appeal File* - Documents in the appeal file may be originals or legible facsimiles or authenticated copies, and shall be arranged in chronological order where practicable, numbered sequentially, tabbed, and indexed to identify the contents of the file.

(d) *Lengthy Documents* - Upon request by either party, the Board may waive the requirement to furnish to the other party copies of bulky, lengthy, or out-of-size documents in the appeal file when inclusion would be burdensome. At the time a party files with the Board a document as to which such a waiver has been granted he shall notify the other party that the document or a copy is available for inspection at the offices of the Board or of the party filing same.

(e) *Status of Documents in Appeal File* - Documents contained in the appeal file are considered, without further action by the parties, as part of the record upon which the Board will render its decision. However, a party may object, for reasons stated, to consideration of a particular document or documents reasonably in advance of hearing or, if there is no hearing, of settling the record. If such objection is made, the Board shall remove the document or documents from the appeal file and permit the party offering the document to move its admission as evidence in accordance with Rules 13 and 20.

(f) Notwithstanding the foregoing, the filing of the Rule 4(a) and (b) documents may be dispensed with by the Board either upon request of the appellant in his notice of appeal or thereafter upon stipulation of the parties.

DEPARTMENT OF DEFENSE FORMS

F-200.731-1 *DD Form 731-1: Job Order (Master Contract for Repair and Alteration of Vessels)*

JOB ORDER
(Master Contract for Repair and Alteration of Vessels)

PAGE NO. 1 | NO. OF PAGES

JOB ORDER ISSUED UNDER CONTRACT NO. | REQUISITION NO./PURCHASE AUTHORITY | JOB ORDER NO.

THIS JOB ORDER IS ISSUED PURSUANT TO 10 U.S.C. 2301 ☐ BY ADVERTISING UNDER INVITATION NO. ☐ BY NEGOTIATION UNDER 10 U.S.C. 2304 (a) ( ) | VESSEL (Name or number) | DATE OF ORDER

PER DIEM RATE OF LIQUIDATED DAMAGES, IF ANY $ | AMOUNT $

OFFICE TO MAKE PAYMENT (If other than that designated by master contract) | PLACE OF PERFORMANCE ☐ CONTRACTOR'S PLANT ☐ AS SPECIFIED BELOW OR IN SPECIFICATIONS OR SCHEDULE | COMMENCEMENT DATE

ISSUED BY | COMPLETION DATE

TO: (Contractor and Address) | APPLICABLE SPECIFICATIONS AND/OR SCHEDULE

ACCOUNTING AND APPROPRIATION DATA

An order is hereby placed with you under and pursuant to the provisions of the above numbered contract between you and THE UNITED STATES OF AMERICA to effect the repair, completion, alteration of, or additions to the above named (or numbered) vessel as described in the above numbered specifications and/or schedule. You shall perform the following items at the price or prices specified therefor:

If this job order is issued on a negotiated basis, the Contractor shall execute the following acceptance:

Accepted this _____ day of _____ 19___

_____ CONTRACTOR

By _____ SIGNATURE

_____ TYPED NAME AND TITLE

THE UNITED STATES OF AMERICA

By _____ SIGNATURE

_____ TYPED NAME OF CONTRACTING OFFICER

DD FORM 1 NOV 68 731-1 REPLACES DD FORM 731-1, 1 OCT 58, WHICH MAY BE USED UNTIL 30 SEP 87. GPO 16—07886-1

[The next page is F189.]

DEPARTMENT OF DEFENSE FORMS

F-200.1155 *DD Form 1155: Order for Supplies or Services/Request for Quotations.* See 3-608.1.

CHECKED BOX APPLIES: ☐ ORDER FOR SUPPLIES OR SERVICES ☐ REQUEST FOR QUOTATIONS NO. RETURN COPIES OF THIS QUOTE BY (THIS IS NOT AN ORDER. See DD Form 1155r) | PAGE 1 OF

1. CONTRACT/PURCH ORDER NO. | 2. DELIVERY ORDER NO. | 3. DATE OF ORDER | 4. REQUISITION/PURCH REQUEST NO. | 5. CERTIFIED FOR NATIONAL DEFENSE UNDER DMS REG 1 DO

6. ISSUED BY: CODE | 7. ADMINISTERED BY: (If other than 6) CODE | 8. DELIVERY FOR ☐ DEST ☐ OTHER (See Schedule or other)

9. CONTRACTOR/QUOTER CODE FACILITY CODE | NAME AND ADDRESS | 10. DELIVER TO FOB POINT BY: | 11. CHECK IF ☐ SMALL BUSINESS ☐ MINORITY BUSINESS

12. DISCOUNT TERMS | 13. MAIL INVOICES TO:

14. SHIP TO: CODE | 15. PAYMENT WILL BE MADE BY: CODE | MARK ALL PACKAGES AND PAPERS WITH CONTRACT OR ORDER NUMBER

16. TYPE OF ORDER — DELIVERY: This delivery order is subject to instructions contained on this side of form only and is issued on another Government agency or in accordance with and subject to terms and conditions of above numbered contract.

PURCHASE: Reference your _____, furnish the following on terms specified herein, including, for U. S. purchases, General Provisions of Purchase Order on DD Form 1155r (EXCEPT CLAUSE NO. 13 APPLIES ONLY IF THIS BOX ☐ IS CHECKED, AND NO. 15 IF THIS BOX ☐ IS CHECKED) special provisions _____; and delivery as indicated. This purchase is negotiated under authority of 10 USC 2304(a)(3) or as specified in the schedule if within the U. S., its possessions or Puerto Rico, if otherwise, under 2304(a)(6).

☐ If checked, Additional General Provisions apply. Supplier shall sign "Acceptance" on DD Form 1155r and return _____ copies.

17. ACCOUNTING AND APPROPRIATION DATA/LOCAL USE

18. ITEM NO.	19. SCHEDULE OF SUPPLIES/SERVICES	20. QUANTITY ORDERED/ ACCEPTED*	21. UNIT	22. UNIT PRICE	23. AMOUNT

*If quantity accepted by the Government is same as quantity ordered, indicate by X. If different, enter actual quantity accepted below quantity ordered and encircle.

24. UNITED STATES OF AMERICA BY: _____ CONTRACTING/ORDERING OFFICER

25. TOTAL | 26. DIFFERENCES | 27. INITIALS

28. QUANTITY IN COLUMN 20 HAS BEEN: ☐ INSPECTED ☐ RECEIVED ☐ ACCEPTED, AND CONFORMS TO THE CONTRACT EXCEPT AS NOTED

DATE _____ SIGNATURE OF AUTHORIZED GOVERNMENT REPRESENTATIVE

29. SHIP NO. | 30. D. V. VOUCHER NO. | 31. PAYMENT ☐ PARTIAL ☐ FINAL | COMPLETE ☐ PARTIAL ☐ FINAL | 32. PAID BY | 33. AMOUNT VERIFIED CORRECT FOR

34. I certify this account is correct and proper for payment.

DATE _____ SIGNATURE AND TITLE OF CERTIFYING OFFICER

35. CHECK NUMBER | 36. BILL OF LADING NO.

37. RECEIVED AT | 38. RECEIVED BY | 39. DATE RECEIVED | 40. TOTAL CONTAINERS | 41. S/R ACCOUNT NUMBER | 42. S/R VOUCHER NO.

DD FORM 1 FEB 77 1155 PREVIOUS EDITION IS OBSOLETE. 1

DEPARTMENT OF DEFENSE FORMS

F-200.1155r *DD Form 1155r: General Provisions*

THIS PARAGRAPH APPLIES ONLY TO QUOTATIONS SUBMITTED: Supplies are of domestic origin unless otherwise indicated by quoter. The Government reserves the right to consider quotations or modifications thereof received after the date indicated should such action be in the interest of the Government. This is a request for information and quotations furnished are not offers. When quoting, complete blocks 11, 12, 22, 23, 26. If you are unable to quote, please advise. This request does not commit the Government to pay any cost incurred in preparation or the submission of this quotation or to procure or contract for supplies or services.

GENERAL PROVISIONS

1. INSPECTION AND ACCEPTANCE – Inspection and acceptance will be at destination, unless otherwise provided. Until delivery and acceptance, and after any rejections, risk of loss will be on the Contractor unless loss results from negligence of the United States Government. Notwithstanding the requirements for any Government inspection and test contained in specifications applicable to this contract, except where specialized inspections or tests are specified for performance solely by the Government, the contractor shall perform or have performed the inspections and tests required to substantiate that the supplies and services provided under the contract conform to the drawings, specifications and contract requirements listed herein, including if applicable the technical requirements for the manufacturer part numbers specified herein.

2. VARIATION IN QUANTITY – No variation in the quantity of any item called for by this contract will be accepted unless such variation has been caused by conditions of loading, shipping, or packing, or allowances in manufacturing processes, and then only to the extent, if any, specified elsewhere in this contract.

3. PAYMENTS – Invoices shall be submitted in quadruplicate (one copy shall be marked "Original") unless otherwise specified, and shall contain the following information: Contract or order number, item number, contract description of supplies or services, sizes, quantities, unit prices, and extended totals. Bill of lading number and weight of shipment will be shown for shipments on Government Bills of Lading. Unless otherwise specified, payment will be made on partial delivery accepted by the Government when the amount due on such deliveries so warrants.

4. DISCOUNTS – In connection with any discount offered, time will be computed from date of delivery of the supplies to carrier when acceptance is at the point of origin, or from date of delivery at destination or port of embarkation when delivery and acceptance are at either of those points, or from the date the correct invoice or voucher is received in the office specified by the Government, if the latter is later than date of delivery. Payment is deemed to be made for the purpose of earning the discount on the date of mailing of the Government check.

5. DISPUTES – *(This contract is governed by the Contract Disputes Act of 1978 (Public Law 95-563)(the Act). The Act provides administrative procedures for the submittal, analysis, negotiation, and if necessary, litigation of claims relating to this contract. The parties to this contract must comply with certain time restrictions in rendering of contracting officer decisions on claims and on the appeal of those decisions. Further details on the rights and remedies under the Act may be found in the DAR at 1-314.)*

6. FOREIGN SUPPLIES – This contract is subject to the Buy American Act (41 U.S.C. 10a-d) as implemented by Section VI of the DAR and any restrictions in appropriation acts on the procurement of foreign supplies. The quotation must identify any foreign items to be furnished.

7. CONVICT LABOR – In connection with the performance of work under this contract, the Contractor agrees not to employ any person undergoing sentence of imprisonment except as provided by Public Law 89-176, September 10, 1965 (18 U.S.C. 4082(c)(2)) and Executive Order 11755, December 29, 1973.

8. OFFICIALS NOT TO BENEFIT – No member of or Delegate to Congress or resident commissioner, shall be admitted to any share or part of this contract, or to any benefit that may arise therefrom, but this provision shall not be construed to extend to this contract if made with a corporation for its general benefit.

9. COVENANT AGAINST CONTINGENT FEES – The Contractor warrants that no person or selling agency has been employed or retained to solicit or secure this contract upon an agreement or understanding for a commission, percentage, brokerage, or contingent fee, excepting bona fide employees or bona fide established commercial or selling agencies maintained by the Contractor for the purpose of securing business. For breach or violation of this warranty the Government shall have the right to annul this contract without liability or in its discretion to deduct from the contract price or consideration or otherwise recover, the full amount of such commission, percentage, brokerage or contingent fee.

10. GRATUITIES – (a) The Government may, by written notice to the Contractor, terminate the right of the Contractor to proceed under this contract if it is found after notice and hearing, by the Secretary or his duly authorized representative, that gratuities (in the form of entertainment, gifts or otherwise) were offered or given by the Contractor, or any agent or representative of the Contractor, to any officer or employee of the Government with a view toward securing a contract or securing favorable treatment with respect to the awarding or amending, or the making of any determinations with respect to the performing of such contract, provided, that the existence of the facts upon which the Secretary or his duly authorized representative make such findings shall be in issue and may be reviewed in any competent court. (b) In the event this contract is terminated as provided in paragraph (a) hereof the Government shall be entitled (i) to pursue the same remedies against the Contractor as it could pursue in the event of a breach of the contract by the Contractor and (ii) as a penalty in addition to any other damages to which it may be entitled by law to exemplary damages in an amount (as determined by the Secretary or his duly authorized representative) which shall be not less than three nor more than ten times the costs incurred by the Contractor in providing any such gratuities to any such officer or employee. (c) The rights and remedies of the Government provided in this clause shall not be exclusive and are in addition to any other rights and remedies provided by law or under this contract.

11. CONDITION FOR ASSIGNMENT – This Purchase Order may not be assigned pursuant to the Assignment of Claims Act of 1940, as amended (31 U.S.C. 203, 41 U.S.C. 15), unless and until the supplies have been requested and has accepted this order by executing the Acceptance hereon.

12. COMMERCIAL WARRANTY – The Contractor agrees that the supplies or services furnished under this contract shall be covered by the most favorable commercial warranties the Contractor gives to any customer for such supplies or services and that the rights and remedies provided herein are in addition to and do not limit any rights afforded to the Government by any other clause of this contract.

13. PRIORITIES, ALLOCATIONS, AND ALLOTMENTS – The Contractor shall follow the provisions of DMS Reg. 1 or DPS Reg. 1 and all other applicable regulations and orders of the Bureau of Domestic Commerce in obtaining controlled materials and other products and materials needed to fill this order.

14. FAST PAYMENT PROCEDURE—

(a) *General.* This is a fast payment order. Invoices will be paid on the basis of the Contractor's delivery to a post office, common carrier, or, in shipment by other means, to the point of first receipt by the Government.

(b) *Responsibility for Supplies.* Title to the supplies shall vest in the Government upon delivery to a post office or common carrier for shipment to the specified destination. If shipment is by means other than post office or common carrier, title to the supplies shall vest in the Government upon delivery to the point of first receipt by the Government. Notwithstanding any other provision of the purchase order, the Contractor shall assume all responsibility and risk of loss for supplies (i) not received at destination, (ii) damaged in transit, or (iii) not conforming to purchase requirements. The Contractor shall either replace, repair, or correct such supplies promptly at his expense, provided instructions to do so are furnished by the Contracting Officer within ninety (90) days from the date title to the supplies vests in the Government. (180 days for overseas shipments.)

(c) *Prerequisites of Invoices.*

(1) Upon delivery of supplies to a post office, common carrier, or in shipments by other means, the point of first receipt by the Government, the Contractor shall prepare an invoice in accordance with Clause 3 of the General Provisions of Purchase Order, except that invoices under a blanket purchase agreement shall be prepared in accordance with the provisions of the agreement. All invoices shall also be prominently marked "Fast Pay."

(2) If the purchase price excludes the cost of transportation, the Contractor shall enter the prepaid shipping cost on the invoice as a separate item. The cost of parcel post insurance will not be paid by the Government. If transportation charges are separately stated on the invoice, the Contractor agrees to retain related paid freight bills or other transportation billings paid separately for a period of three (3) years and to furnish such bills to the Government when requested for audit purposes.

(3) In the event this order requires the preparation of a Material Inspection and Receiving Report (DD Form 250), the Contractor has the option of either preparing the DD Form 250 or including the following information on the invoice, in addition to that required in (c)(1) above: (A) a statement in prominent letters "NO DD 250 PREPARED", (B) shipment number, (C) mode of shipment, and (D) at line item level, (i) National Stock Number and/or manufacturer's part number, (ii) unit of measure, (iii) Ship-To-Point, (iv) Mark-For-Point if in contract, and (v) MILSTRIP document number if in contract. When a DD Form 250 is not required, the invoice will include the following information: (i) Ship-To-Point, (ii) Mark-For-Point and MILSTRIP document number if in contract, as well as the information in (c)(i) above. In all cases where no DD Form 250 is prepared, a copy of the invoice will be included in each shipment.

(d) *Certification of Invoice.* The Contractor agrees that the submission of an invoice to the Government for payment is a certification that the supplies for which the Government is being billed have been shipped or delivered in accordance with shipping instructions issued by the ordering officer, in the quantities shown on the invoice, and that such supplies are in the quantity and of the quality designated by the cited purchase order.

OUTER SHIPPING CONTAINERS SHALL BE MARKED "FAST PAY"

15. *(This clause applies if this contract is for services and is not exempted by applicable regulations of the Department of Labor.)*

SERVICE CONTRACT ACT OF 1965 – Except to the extent that an exemption, variation or tolerance would apply pursuant to 29 CFR 4.6 if this were a contract in excess of $2,500, the Contractor and any subcontractor hereunder shall pay all of his employees engaged in performing work on the contract not less than the minimum wage specified under section 6 (a)(1) of the Fair Labor Standards Act of 1938, as amended (normal minimum wage). However, in cases where section 6 (a)(2) of the Fair Labor Standards Act of 1938 is applicable, the rates specified therein will apply. All regulations and interpretations of the Service Contract Act of 1965 expressed in 29 CFR Part 4 are hereby incorporated by reference in this contract.

ADDITIONAL GENERAL PROVISIONS

16. CHANGES – The Contracting Officer may at any time, by a written order, and without notice to the sureties, make changes, within the general scope of this contract, in (i) drawings, designs, or specifications, where the supplies to be furnished are to be specially manufactured for the Government in accordance therewith, (ii) method of shipment or packing and (iii) place of delivery. If any such change causes an increase or decrease in the cost of, or the time required for performance of this contract, whether changed or not changed by any such order, an equitable adjustment shall be made by written modification of this contract. Any claim by the Contractor for adjustment under this clause must be asserted within 30 days from the date of receipt by the Contractor of the notification of change provided that the Contracting Officer, if he decides that the facts justify such action, may receive and act upon any such claim if asserted 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.

17. TERMINATION FOR DEFAULT – The Contracting Officer, by written notice, may terminate this contract, in whole or in part, for failure of the Contractor to perform any of the provisions hereof. In such event, the Contractor shall be liable for damages, including the excess cost of reprocuring similar supplies or services; provided that, if (i) it is determined for any reason that the Contractor was not in default or (ii) the Contractor's failure to perform is without his and his subcontractor's control, fault or negligence, the termination shall be deemed to be a termination for convenience under paragraph 18. As used in this provision the term "subcontractor" and "subcontractors" means subcontractors at any tier.

18. TERMINATION FOR CONVENIENCE – The Contracting Officer, by written notice, may terminate this contract, in whole or in part, when it is in the best interest of the Government. If this contract is for supplies and is so terminated, the Contractor shall be compensated in accordance with Section VII of the Defense Acquisition Regulation in effect on the contract's date. To the extent that this contract is for services and is so terminated, the Government shall be liable only for payments in accordance with the payment provisions of this contract for services rendered prior to the effective date of termination.

19. ASSIGNMENT OF CLAIMS – Claims for monies due or to become due under this contract shall be assigned only pursuant to the Assignment of Claims Act of 1940, as amended (31 U.S.C. 203, 41 U.S.C. 15). However, payments to an assignee of monies under this contract shall not, to the extent provided in said Act, as amended, be subject to reduction or set-off (See Clause 12).

ACCEPTANCE

THE CONTRACTOR HEREBY ACCEPTS THE OFFER REPRESENTED BY THE NUMBERED PURCHASE ORDER AS IT MAY PREVIOUSLY HAVE BEEN OR IS NOW MODIFIED, SUBJECT TO ALL OF THE TERMS AND CONDITIONS SET FORTH, AND AGREES TO PERFORM THE SAME.

NAME OF CONTRACTOR	SIGNATURE	TYPED NAME AND TITLE	DATE SIGNED

DD FORM 1155r 81 AUG — REPLACES EDITION OF 1 MAR 78 WHICH IS OBSOLETE

F-200.1155r

ARMED SERVICES PROCUREMENT REGULATION

MATERIAL INSPECTION AND RECEIVING REPORT

(c) If a replacement shipment is involved, enter below the last digit of the quantity, the letter "A" to designate first replacement, "B" for second replacement, etc. The final shipment indicator "Z" on underrun deliveries shall not be used when a final line item shipment is replaced.

17. QUANTITY SHIP/REC'D
1000
(10)
Z

(d) If the quantity received is the same quantity shipped and all items are in apparent good condition, indicate by a check mark. If different, enter actual quantity received in apparent good condition below quantity shipped and encircle. The receiving activity shall annotate the DD Form 250 stating the reason for the difference.

Block 18—UNIT. Enter the abbreviation of the unit measure as indicated in the contract for payment. Where a second unit of measure is indicated in the contract for purposes other than payment or used for shipping purposes, enter the second unit of measure directly below in parentheses. Authorized abbreviations are listed in MIL-STD-129 (Marking for Shipment and Storage). For example: LB for pound; SH for sheet.

18. UNIT
LB
(SH)

Block 19—UNIT PRICE. The contractor may, at his option, enter unit prices on all MIRR copies, except as a minimum:

(a) On Navy procurements, the two copies of the MIRR addressed to the consignee via mail shall be priced using actual prices or, if not available, estimated prices. When the price is estimated, enter an "E" after the price. Contractors shall make every effort to ensure that actual or estimated prices are entered on the MIRR. However, shipments shall not be delayed solely because required prices are not available.

(b) When the MIRR is used as an invoice, see I-306.

(c) For Clothing and Textile contracts containing a bailment clause, enter the cited Government Furnished Property unit value opposite "GFP UNIT VALUE" entry in Block 16.

(d) All copies of DD 250s for FMS shipments shall be priced using actual, or if not available, estimated prices. When the price is estimated, enter an "E" after the price.

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Block 20—AMOUNT. Enter the extended amount when the unit price is entered in Block 19.

Block 21—PROCUREMENT QUALITY ASSURANCE.

(a) The words "conform to contract" contained in the printed statements in Blocks A and B relate to contract obligations pertaining to quality and to the quantity of the items on the report. The statements shall not be modified. Notes taking exception shall be entered in Block 16 or on attached supporting documents with appropriate block cross reference.

(b) When a shipment is authorized under Alternative Release Procedure, the appropriate contractor signed certificate shall be attached to or included on the top copy of the DD Form 250 copies distributed to the payment office or attached to the CAO copy when contract administration (Block 10 of the DD Form 250) is performed by DCAS.

(c) When contract terms provide for use of Certificate of Conformance and shipment is made under these terms, the contractor shall enter "Certificate of Conformance" in Block 21A on the next line following the PQA and Acceptance statements. The appropriate contractor signed certificate shall be attached to or included on the top copy of the DD Form 250 copies distributed to the payment office or attached to the CAO copy when contract administration (Block 10 of the DD Form 250) is performed by DCAS. When acceptance is at destination, a copy of the signed certificate shall also be attached to or entered on copies of the MIRR sent with shipment.

"A. ORIGIN"

(1) The authorized Government representative shall:

a. Place an "X" when applicable in the appropriate PQA and/or Acceptance box(es) to evidence origin Procurement Quality Assurance and/or Acceptance. When the contract requires PQA at destination in addition to origin PQA, an asterisk shall be entered at the end of the statement and an explanatory note entered in Block 16;

b. Enter the date of signature;

c. Sign; and

d. Enter the typed, stamped, or printed name and office DODAAD code.

(2) When Alternative Release Procedures apply, the contractor or subcontractor shall complete the entries required under (1) a and d above and enter in capital letters "ALTERNATIVE RELEASE PROCEDURE" on the next line following the printed PQA/Acceptance statement. When acceptance is at origin and Contract Administration is performed by an office other than DCAS, the contractor shall furnish the four payment office copies of the MIRR to the Authorized Government Representative for dating and signing of one copy and forwarding of all copies to the payment office. When acceptance is at origin and contract administration is performed by DCAS, the Contract Administration Office copy of the MIRR shall be furnished to the Authorized Government Representative for dating and signing and forwarding to the Contract Administration Office (see I–401, Table 1).

(3) When Fast Pay procedures apply, the contractor or subcontractor shall enter in capital letters "FAST PAY" on the next line following the printed

MATERIAL INSPECTION AND RECEIVING REPORT

TABLE 2—Continued

As Required	*Address*	*Number of Copies*
When consignee is an Air National Guard Activity	**Consignee address (Block 13), ATTN: Property Officer**	**3**
Navy		
Navy Foreign Military Sales/ Military Assistance Program (Grant Aid)	US Navy International Logistics Control Office (NAVILCO) 700 Robins Avenue Philadelphia, PA 19111	2
When typed code (TC) 2T or 7T is shown in Block 16	Aviation Supply Office (ASO) (Code MFA) for aviation-type material 700 Robins Avenue Philadelphia, PA 19111	2
or	and	
When shipment is consigned to another contractor's plant for a Government representative	Ships Parts Control Center (SPCC) (Code 7231) for all other material Mechanicsburg, PA 17055	2
or		
When Block 16 indicates the shipment includes GFP		
Marine Corps		
All shipments consigned to a Marine Corps Activity (excluding aeronautical spares).	**Commandant of the Marine Corps Headquarters, USMC Washington, D. C. 20380**	**1**
	Commanding General, Marine Corps Logistics Base Albany, GA 31704	**3**

Part 5—Preparation of the DD Form 250–1 (LOADING REPORT)

I–501 Instructions. The DD Form 250–1 shall be prepared in accordance with the following instructions when applied to a tanker or barge cargo lifting. Abbreviations may be used where space is limited. The block numbers correspond to those on the form.

Block 1—TANKER/BARGE. Line out "TANKER" or "BARGE" as appropriate and place "X" to indicate loading report.

Block 2—INSPECTION OFFICE. Enter the name and location of the Government office conducting inspection.

Block 3—REPORT NO. Number each form consecutively, starting with number 1, to correspond to the number of shipments made against the contract. In case shipment is made from more than one location against the same contract, follow this numbering system at each location.

Block 4—AGENCY PLACING ORDER ON SHIPPER, CITY, STATE AND/OR LOCAL ADDRESS (loading). Indicate the applicable Government activity.

Block 5—DEPARTMENT. Indicate Military Department owning product being shipped.

Block 6—PRIME CONTRACT OR P.O.NO. Enter the contract or purchase order number.

Block 7—NAME OF PRIME CONTRACTOR, CITY, STATE AND/OR LOCAL ADDRESS (Loading). Enter the name and address of the contractor as shown in the contract.

Block 8—STORAGE CONTRACT. Enter storage contract number if applicable.

Block 9—TERMINAL OR REFINERY SHIPPED FROM, CITY, STATE AND/OR LOCAL ADDRESS. Enter the name and location of the contractor facility from which shipment is made. Also indicate delivery point in this space as either "FOB Origin" or "FOB Destination."

Block 10—ORDER NO. ON SUPPLIER. Enter number of the delivery order, purchase order, subcontract or suborder placed on the supplier.

Block 11—SHIPPED TO: (Receiving Activity, City, State and/or Local Address). Enter the name and geographical address of the consignee as shown on the shipping order.

Block 12—B/L NUMBER. Where applicable, enter the initials and number of the bill of lading. If commercial bill of lading later to be converted to a Government bill of lading is authorized, show "Com. B/L to GB/L."

Block 13—REQN. OR REQUEST NO. Enter number and date if cited in the shipping instructions.

Block 14—CARGO NO. Enter the cargo number furnished by the ordering office.

Block 15—VESSEL. Enter the name of tanker or barge.

Block 16—DRAFT ARRIVAL. Enter the vessel's draft on arrival.

Block 17—DRAFT SAILING. Enter the vessel's draft on completion of loading.

Block 18—PREVIOUS TWO CARGOES. Enter the type of product constituting previous two cargoes.

Block 30—Certification by Government Representative. Line out "LOADED." The Government representative shall date and sign the completed master ditto or all copies of the form to certify inspection and acceptance, as applicable, by the Government. The name of the individual signing the certification as well as the names applied in Blocks 29 and 31 shall be typed or hand lettered on the master or all copies of the form. The signature in Block 30 must agree with the typed or lettered name to be acceptable to the paying office.

Block 31—Certification by Master or Agent. Obtain the signature of the master of the vessel or the vessel's agent. The signature shall be applied to the master ditto or all copies of the form.

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Part 7—Distribution of the DD Form 250–1

I–701 Distribution.

(a) The completed DD Form 250–1 shall be distributed by the Government representative in accordance with Table 3 of this Appendix as may be amended by the provisions of the contract or shipping order.

(b) The contractor shall furnish the Government representative sufficient copies of the completed form to permit the required distribution.

(c) Distribution of the form shall be made as soon as possible but not later than 24 hours following completion of the form.

[See Table 3 on following pages]

I–702 Corrected DD Form 250–1. When errors are made in entries on the form which would affect payment or accountability, corrected copies shall be made. Entries corrected shall be encircled on all copies and the form plainly identified as a "CORRECTED COPY." The statement "Corrections Have Been Verified" shall be entered in Block 26 with the authorized Government representative's dated signature directly below. Distribution of the certified corrected copy shall be made to all recipients of the original distribution.

APPENDIX N — ACTIVITY ADDRESS NUMBERS

DLA500 TZ YQ	Defense Industrial Supply Center 700 Robbins Avenue Philadelphia, PA 19111
DLA600 UA	Defense Fuel Supply Center Cameron Station, Alexandria, VA 22314
DLA700 UB	Defense Construction Supply Center Columbus, OH 43215
DLA710 YL	Defense Construction Supply Center Commercial Services & Supplies Branch Contracting Division II Columbus, OH 43215
DLA720 YM	Defense Construction Supply Center Wood Products Branch Contracting Division I Columbus, OH 43215
DLA900 UD	Defense Electronics Supply Center 1507 Wilmington Pike Dayton, OH 45444
DLA910	Defense Electronics Supply Center Base Contracting Section 1507 Wilmington Pike Dayton, OH 45444
DLA13H UE	Defense Personnel Support Center Directorate of Subsistence 2800 South 20th Street Philadelphia, PA 19101
DLA8AC UG	DCASMA, Santa Ana 34 Civic Center Plaza PO Box C 12700 Santa Ana, CA 92712
DLA8AG Z3	DCASPRO, Aero Route 7, Box 40 Lake City, FL 32055

DLA8AL
Y1
DCASMA, Atlanta
805 Walker Street
Marietta, GA 30060

DLA8AT
UL
DCASR, Atlanta
805 Walker Street
Marietta, GA 30060

DLA8BA
UN
DCASMA, Birmingham
908 South 20th Street
Birmingham, AL 35256

DLA8BC
UP
DCASMA, Bridgeport
550 South Main Street
Stratford, CT 06497

DLA8BL
Y4
DCASPRO AVCO Lycoming Division
550 South Main Street
Stratford, CT 06497

DLA8BM
UR
DCASMA, Baltimore
300 East Joppa Road
Towson, MD 21204

DLA8BN
US
DCASPRO, Western Electric Co.
204 Graham Hopedale Road
Burlington, NC 27215

DLA8BP
UT
DCASR, Boston
495 Summer Street
Boston, MA 02210

DLA8BS
Y3
DCASMA, Boston
495 Summer Street
Boston, MA 02210

DLA8BT
UU
DCASPRO, Bendix Corp.
Route 46
Teterboro, NJ 07608

DLA8BV
YT
DCASPRO, GE, Burlington
Lakeside Avenue
Burlington, VT 05402

DLA8CD
UZ
DCASMA, Cedar Rapids
4333 Edgewood Road, N.E.
Cedar Rapids, IA 52402

DLA8CH
UY
DCASR, Chicago, O'Hare International Airport
PO Box 66475
Chicago, IL 60666

DLA8CL
VB
DCASR, Cleveland
Anthony J. Celebrezze Fed. Bldg.
1240 East Ninth Street
Cleveland, OH 44199

DLA8CO
X6
DCASPRO Goodyear Aerospace
c/o Goodyear Aerospace Corp.
1210 Massillon Road
Akron, OH 44305

DLA8CN
Y5
DCASMA, Cleveland
Anthony J. Celebrezze Federal Bldg.
1240 East Ninth Street
Cleveland, OH 44199

DLA8CS
VE
DCASPRO, General Dynamics
5001 Kearny Villa Road
PO Box 80847
San Diego, CA 92138

DLA8DA
VG
DCASR, Dallas
500 South Ervay Street
Dallas, TX 75201

DLA8DB
Z7
DCASMA, Dallas
500 South Ervay Street
Dallas, TX 75201

DLA8DC
VH
DCASMA, San Diego
Bldg. 4, AF Plant 19
4297 Pacific Coast Highway
San Diego, CA 92110

DLA8DD
U4
DCASPRO, Rockwell International Corporation
870 Presidential Drive
Richardson, TX 75081

DLA8DM
Y7
DCASMA, Detroit
McNamara Federal Bldg.
477 Michigan Avenue
Detroit, MI 48226

DLA8DN
VK
DCASMA, Denver
701 West Hampden Ave., Suite E-3210
Englewood, CO 81054

DLA8DP
VL
DCASMA, Dayton
c/o Defense Electronics Supply Center, Bldg. 1
1502 Wilmington Pike
Dayton, OH 45401

DLA8EC
YP
DCASMA, Chicago
O'Hara international Airport
6400 N. Manneheim Road
PO Box 66911
Chicago, IL 60666

DLA8FL
VN
DCASPRO, ITT, Defense Space Group
500 Washington Avenue
Nutley, NJ 07110

DLA8FN
VQ
DCASPRO, Northern Ordnance
4800 East River Road
Minneapolis, MN 55421

DLA8FS
VR
DCASPRO, FMC
1125 Coleman Avenue
P.O. Box 367
San Jose, CA 95103

DLA8FT
Y2
DCASPRO, Ford Aeronutronic Div
Admin Bldg, Rm 307, Ford Road
Newport Beach, CA 92660

DLA8GD
YB
DCASPRO, Gould
18901 Euclid Avenue
Cleveland, OH 44117

DLA8GL
VV
DCASPRO, General Electric
1100 Western Ave (27753)
Lynn, MA 01910

DLA8GM
VW
DCASMA, Grand Rapids
Riverview Center Bldg.
678 Front Street, N.W.
Grand Rapids, MI 49504

DLA8GN
VX
DCASMA, Garden City
605 Stewart Avenue
Garden City, LI, NY 11530

DLA8HB
WA
DCASPRO, Hayes
Hayes International Corporation
PO Box 2583
Birmingham, AL 35202

DLA8HC
WB
DCASMA, Hartford
96 Murphy Road
Hartford, CT 06114

DLA8HD
WC
DCASPRO, Singer
1225 McBride Avenue
Little Falls, NJ 07424

DLA8HE
Z2
DCASPRO, Hayes (Dothan)
Napier Field
Dothan, AL 36301

DLA8HM
WD
DCASPRO, Honeywell
2701 Fourth Avenue South
Minneapolis, MN 55408

DLA8HR
Z9
Hawaii Residency (DCASMA-SF)
Federal Building, Room 4115
300 Ala Moana Blvd.
Honolulu, HI 96813

DLA8HU
XG
DCASPRO, Hughes Aircraft Company
Ground Systems Group
Bldg. 600, Mail Station B104
P.O. Box 3310
Fullerton, CA 92634

DLA8JJ
WG
DCASMA, Indianapolis,
Building 1, Finance Center
Fort Benjamin Harrison
Indianapolis, IN 46249

DLA8JK
Z6
DCASPRO, GMC Detroit
Diesel Allison
2001 South Tibbs Avenue
Indianapolis, IN 46241

DLA8LA
WL
DCASR, Los Angeles
11099 South La Cienega Blvd.
PO Box 45011
Los Angeles, CA 90045

DLA8PH
XA
DCASR, Philadelphia
PO Box 7478
Philadelphia, PA 19101

DLA8PL
X3
DCASMA, Philadelphia
PO Box 7699
Philadelphia, PA 19101

DLA8PP
XD
DCASMA, Pittsburgh
1626 South Federal Bldg.
1000 Liberty Avenue
Pittsburgh, PA 15222

DLA8PW
XE
DCASPRO, Ford Aerospace
3939 Fabian Way
Palo Alto, CA 94303

DLA8RB
XF
DCASPRO, Raytheon, Spencer Laboratory
Wayside Avenue
Burlington, MA 01803

DLA8RP
XM
DCASMA, Reading
45 South Front Street
Reading, PA 19602

DLA8RS
X4
DCASPRO, Rocketdyne
6633 Canoga Avenue
Canoga Park, CA 91304

DLA8SA
XN
DCASMA, San Antonio
615 E. Houston
San Antonio, TX 78294

DLA8SD X8	DCASPRO, Sundstrand PO Box 5066 Rockford, IL 61125
DLA8SF XR	DCASMA, San Francisco, 1250 Bayhill Drive San Bruno, CA 94066
DLA8SK XQ	DCASPRO, Singer-Link Kirtland Plant Binghamton, NY 13902
DLA8SL XS	DCASR, St. Louis 1136 Washington Avenue St. Louis, MO 63101
DLA8SN XU	DCASMA, Syracuse U.S. Courthouse & Federal Bldg. Syracuse, NY 13260
DLA8ST X5	DCASMA, St. Louis 1136 Washington Avenue St. Louis, MO 63101
DLA8SW XW	DCASMA, Seattle Bldg. 5D Naval Station Center Seattle, WA 98115

DLA8SY XX	DCASPRO, GTE Products Corporation 360 First Avenue Needham, MA 02194
DLA8TC YF	DCASPRO, Teledyne CAE c/o Teledyne Continental Aviation and Engineering 1330 Laskey Road Toledo, OH 43612
DLA8TE XZ	DCASPRO, Texas Instruments PO Box 226015, MS 256 Dallas, TX 75226
DLA8TO U3	DCASPRO, McDonnell Douglas/Rockwell 2000 North Memorial Drive Tulsa, OK 74115
DLA8VC YC	DCASMA, Van Nuys 6230 Van Nuys Blvd. Van Nuys, CA 91408
DLA8WK YD	DCASMA, Wichita Wichita Mid-Continent Airport Terminal Bldg. Wichita, KS 67209
DLA8WR YH	DCASPRO, Williams International Corporation 2280 West Maple Road Walled Lake, MI 48088
DLA8WS YG	DCASPRO, Westinghouse Hendy Avenue Sunnyvale, CA 94088
DLA8WT Z8	DCASPRO, Grumman Aerospace Corp. Stuart, FL 33494

APPENDIX N — ACTIVITY ADDRESS NUMBERS

DEFENSE CIVIL PREPAREDNESS AGENCY

DCPA01 Procurement Services Division
Defense Civil Preparedness Agency
Washington, DC 20301

DEFENSE MAPPING AGENCY

DMA600 Defense Mapping Agency
Bldg. 56, U.S. Naval Observatory
Washington, DC 20305

DMA650 Director
Defense Mapping Agency
Inter-American Geodedic Survey
Fort Sam Houston, TX 78234

DMA700 Defense Mapping Agency
Aerospace Center
8900 South Broadway
St. Louis, MO 63125

DMA800 Defense Mapping Agency
YZ Hydrographic/Topographic Center
6500 Brooks Lane
Washington, DC 20315

DMA920 Director
DMA Distribution Center
Clearfield, UT 84016

(j) *Scrap and Salvage.* Tests relating to scrap and salvage may be similar to those for materials as outlined in (b) above. However, special attention should be given to:

(i) tracing from credit entries on materials records (showing turn-in to scrap) to corresponding debits to scrap records;

(ii) determining from analysis of consumption of materials over a given period of time that the quantities indicated as being scrapped or spoiled are matched with comparable receipts in the scrap and salvage accounts; and

(iii) determining that when conversions of units of property to pounds of scrap or from estimated to scale weights or to other units of measure are made, the formula for the conversion is shown on the document affected, or is readily available in the approved contractor procedure.

(k) *Analyzing Consumption of Materials.* It shall be determined by both physical examination and analysis of records that quantities consumed are for proper purposes and in reasonable amounts. In analyzing consumption of component parts or other productive materials, unit allowance (equalling amount required per end-item plus normal spoilage) for each line item of materials may be available in the contract, bill of materials, blueprints, or shop drawing of items fabricated, or in cost computations supporting the end-item price. If such unit allowance information is not available, technical personnel may be consulted as to whether quantities consumed are within accepted standards of the industry.

(l) *Testing of Physical Inventories.* The property administrator has the option of conducting his tests of the contractor's physical inventories either during the performance of the inventory or subsequent to its completion. In either event, tests shall evidence physical counts of selected items without knowledge of record balances, verification of the entries on count slips, comparisons with records, preparation of documents necessary to any adjustments required, approval of adjustments, and the referral of lists of adjustments to the property administrator pursuant to B–503.

(m) *Examination of Maintenance Program.* The actions scheduled shall be traced to determine that they are or have been performed and that the actions stated by the contractor's procedures have been included. Also, the records of the maintenance or repair shop or the contractor's purchase orders shall be examined as to causes of breakdowns of equipment to determine whether they were the result of inadequate preventive or routine maintenance.

S3–402.4 *Performing the Survey.*

(a) In performing the survey, the property administrator shall follow the procedures in (b) through (e) below, except that the procedures shall be optional when limited surveillance will be performed.

(b) The lot size shall be estimated. Insofar as possible, lots selected shall consist of current operations of the contractor, *i.e.:*

(i) those transactions (excepting disposition transactions) which have occurred during the last 90 days immediately preceding the date of sampling and the documents recording those actions. (If no transactions. have taken place during the last 90 days, samples will be taken from transactions going back to the last system survey). The lot should encompass the maximum number of units possible within a functional area. For example, transactions pertaining to special tool-

ing, special test equipment, and plant equipment may be combined into a single lot and sampled for their common characteristics. Characteristics that are not common to units sampled shall be extracted for evaluation as a part of a separate lot. Sample sizes shall be selected from the attached table (Annex II);

(ii) articles in the possession or control of the contractor at that time; and

(iii) disposition actions occuring since the last survey was made.

The lot should encompass the maximum number of units possible within a functional area. For example, transactions pertaining to special tooling, special test equipment, and plant equipment may be combined into a single lot and sampled for their common characteristics. Characteristics that are not common to units sampled shall be extracted for evaluation as a part of a separate lot. Sample sizes shall be selected from the attached table (Annex II).

(c) After the examinations are performed and the findings recorded, the findings shall be analyzed and the conclusions and recommendations recorded. Decision as to satisfactory or unsatisfactory conditions shall be made for each lot at the functional area level.

(d) When any category is found to be unsatisfactory during a survey, the property administrator shall determine the effects upon the complete system. All other applicable categories shall be subjected to survey actions in order to ascertain the existence of other defective areas and the full scope of defectiveness in the overall system.

S3-402.5 *Summary.* A formal record shall be prepared by the property administrator at the conclusion of each system survey in the format set forth below.

(i) *Introduction:* contractor's name and address, period of survey, and types of property involved;

(ii) *Method used:* explain method of performing the survey;

(iii) *Conclusions:* state conclusions reached (In event of finding of unsatisfactory categories, functional areas or characteristics, identify the defects found.); and

(iv) *Action required:* state actions, if any, necessary to correct unsatisfactory conditions.

In the case of the satisfactory limited survey conducted under S3-402.1, the property administrator shall not prepare a formal summary record. He shall, however, document the file to indicate when he conducted the survey and that he found the system to be satisfactory. In all other cases, a summary of the system survey shall be forwarded to the contractor. The contractor shall be advised of any unsatisfactory conditions and requested to correct them within the time limitations agreed to during the exit interview. The contractor shall also be advised that failure to correct the unsatisfactory conditions may result in disapproval of his property control system. A copy of the summary shall also be retained in a survey case file, and whenever unsatisfactory conditions have been disclosed, a copy of the summary shall be provided to the administrative contracting officer. When conditions dictate, *i.e.*, indication of significant noncompliance with contract requirements or other continued failures jeopardizing the interest of the Government, the procuring contracting officer shall also be advised in writing.

ANNEX II

DOUBLE SAMPLING PLAN

(90% Confidence of rejecting lots having 10% or more defectives)

Lot Range	Sample Size 1	Accept if Defects in Sample 1 Are	Reject if Defects in Sample 1 Are	Continue With Sample 2 if Defects in Sample 1 Are	Sample Size 2	Accept if Sum of Defects in Samples 1 and 2 Equals or is Less Than	Reject if Sum of Defects in Samples 1 and 2 Equals or Exceeds
1-8	All	0	1	-	-	-	-
19-50	18	0	1	-	-	-	-
51-90	21	0	2	1	21	1	2
91-150	25	0	3	1 or 2	25	2	3
151-400	32	0	4	1, 2 or 3	32	3	4
401-10,000	34	0	4	1, 2 or 3	34	3	4

ANNEX III—TABLE OF RANDOM NUMBERS

Page 1

Line \ Col	(1)	(2)	(3)	(4)	(5)	(6)	(7)	(8)	(9)	(10)	(11)	(12)	(13)	(14)
1	10480	15011	01536	02011	81647	91646	69179	14194	62590	36207	20969	99570	91291	90700
2	22368	46573	25595	85393	30995	89198	27982	53402	93965	34095	52666	19174	39615	99505
3	24130	48360	22527	97865	76393	64809	15179	24830	49340	32081	30680	19655	63348	58629
4	42167	93093	06243	61680	07856	16376	39440	53537	71341	57004	00849	74917	97758	16379
5	37570	39975	81837	16656	06121	91782	60468	81305	49684	60672	14110	06947	01263	54613
6	77921	06907	11008	42751	27756	53498	18602	70659	90655	15053	21916	81825	44394	42880
7	99562	72905	56420	69994	98872	31016	71194	18738	44013	48840	63213	21069	10634	12952
8	96301	91977	05463	07972	18876	20922	94595	56869	69014	60045	18425	84903	42508	32307
9	89579	14342	63661	10281	17453	18103	57740	84378	25331	12566	58678	44947	05585	56941
10	85475	36857	53342	53988	53060	59533	38867	62300	08158	17983	16439	11458	18593	64952
11	28918	69578	88231	33276	70997	79936	56865	05859	90106	31595	01547	85590	91610	78188
12	63553	40961	48235	03427	49626	69445	18663	72695	52180	20847	12234	90511	33703	90322
13	09429	93969	52636	92737	88974	33488	36320	17617	30015	08272	84115	27156	30613	74952
14	10365	61129	87529	85689	48237	52267	67689	93394	01511	26358	85104	20885	89975	89868
15	07119	97336	71048	08178	77233	13916	47564	81056	97735	85977	29372	74461	28551	90707
16	51085	12765	51821	51259	77452	16308	60756	92144	49442	53900	70960	63990	75601	40719
17	02368	21382	52404	60268	89368	19885	55322	44819	01188	65255	64835	44919	05944	55157
18	01011	54092	33362	94904	31273	04146	18594	29852	71585	85030	51132	01915	92747	64951
19	52162	53916	46369	58586	23216	14513	83149	98736	23495	64350	94730	17752	35156	35749
20	07056	97628	33787	09998	42698	06691	76988	13602	51851	46104	88916	19509	25625	58104
21	48663	91245	85828	14346	09172	30168	90229	04734	59193	22178	30421	61666	99904	32812
22	54164	58492	22421	74103	47070	25306	76468	26384	58151	06646	21524	15247	96909	44592
23	32639	32363	05597	24200	13363	38005	94342	28728	35906	06912	17012	64161	18296	22851
24	29334	27001	87637	87308	58731	00256	45834	15398	46557	41135	10367	07684	36188	18510
25	02488	33062	28834	07351	19731	92420	60952	61280	50001	67658	32586	86679	50720	94953
26	81525	72295	04839	96423	24878	82651	66566	14778	76797	14780	13300	87074	79666	95725
27	29676	20591	68086	26432	46901	20849	89768	81536	86645	12659	92259	57102	80428	25280
28	00742	57392	39064	66432	84673	40027	32832	61362	98947	96067	64760	64584	96096	98253
29	05366	04213	25669	26422	44407	44048	37937	63904	45766	66134	75470	66540	34693	90449
30	91921	26418	64117	94305	26766	25940	39972	22209	71500	64568	91402	42416	07844	69618
31	00582	04711	87917	77341	42206	35126	74087	99547	81817	42607	43808	76655	62028	76630
32	00725	69884	62797	56170	86324	88072	76222	36086	84637	93161	76038	65855	77919	88006
33	69011	65795	95876	55293	18988	27354	26575	08625	40801	59920	29841	80150	12777	48501
34	25976	57948	29888	88604	67917	48708	18912	82271	65424	69774	33611	54262	85963	03547
35	09763	83473	73577	12908	30883	18317	28290	35797	05998	41688	34958	37888	38917	88050
36	91567	42595	27958	30134	04024	86385	29880	99730	55536	84855	29080	09250	79656	73211
37	17955	56349	90999	49127	20044	59931	06115	20542	18059	02008	73708	83517	36103	62791
38	46503	18584	18845	49618	02304	51038	20655	58727	28168	15475	56942	53389	20562	87338
39	92157	89634	94824	78171	84610	82834	09922	25417	44137	48413	25555	21246	35509	20468
40	14577	62765	35605	81263	39667	47358	56873	56307	61607	49518	89666	20103	77490	18062
41	98427	07523	33362	64270	01638	92477	66969	98420	04880	45585	46565	04102	46880	45709
42	34914	63976	88720	82765	34476	17032	87589	40836	32427	70002	70663	88863	77775	69348
43	70060	28277	39475	46473	23219	53416	94970	62996	99775	84884	19661	72828	00102	66794
44	53976	54914	06990	67245	68350	82948	11398	42878	80287	88267	47363	46634	06541	97809
45	76072	29515	40980	07391	58745	25774	22987	80059	39911	96189	41151	14282	60697	59583
46	90725	52210	83974	29992	65831	38857	50490	83765	55657	14361	31720	57375	56228	41546
47	64364	67412	33339	31926	14883	24413	59744	92351	97473	89286	35931	04110	23726	51900
48	08962	00358	31662	25388	61642	34072	81249	35648	56891	69352	48373	45578	78547	81788
49	95012	68379	93526	70765	10592	04542	76463	54328	02349	17247	28865	14777	62730	92277
50	15664	10493	20498	38391	91132	21999	59516	81652	27195	48223	46751	22923	32261	85653

ARMED SERVICES PROCUREMENT REGULATION

[FR Doc. 82-25253 Filed 9-14-82; 8:45 am]
BILLING CODE 3810-01-C

POSTAL SERVICE

39 CFR Part 10

International Express Mail Rates to State of Bahrain

AGENCY: Postal Service.

ACTION: Final rule.

SUMMARY: Pursuant to an agreement with the postal administration of Bahrain the Postal Service began International Express Mail Service with Bahrain on August 16, 1982. Interim rate schedules, which became effective when service began, were published in the **Federal Register** for comment and are now being adopted on a permanent basis.

EFFECTIVE DATE: October 15, 1982.

FOR FURTHER INFORMATION CONTACT:

J. Duane Redic, (202) 245–4414.

SUPPLEMENTARY INFORMATION: By a notice published in the **Federal Register** on July 15, 1982, (47 FR 30760), the Postal Service announced that it was proposing to begin International Express Mail Service with Bahrain on August 16, 1982. Comments were invited on published interim rate schedules, which were interim amendments to the International Mail Manual (incorporated by reference in the **Federal Register**, 39 CFR 10.1), and which were to become effective on the date service begins. No comments were received.

Accordingly, the Postal Service is adopting on a permanent basis the interim rate schedules exactly as published in the **Federal Register** of July 15, 1982 (47 FR 30760).

List of Subjects in 39 CFR Part 10

Postal Service, Foreign relations.

A transmittal letter making these changes in the pages of the International Mail Manual will be published and will be transmitted to subscribers automatically. Notice of these changes will be published in the **Federal Register** as provided in 39 CFR 10.3

(39 U.S.C. 401, 404, 407)

W. Allen Sanders,

Associate General Counsel, Office of General Law and Administration.

[FR Doc. 82-25352 Filed 9-14-82; 8:45 am]

BILLING CODE 7710-12-M

FEDERAL MARITIME COMMISSION

46 CFR Part 502

[General Order 16, Amdt. No. 42; Docket No. 82-21]

Improvements in Prehearing and Discovery Procedures

AGENCY: Federal Maritime Commission.

ACTION: Final rules.

SUMMARY: The rules of procedure relating to discovery are revised to require more prompt commencement and completion of discovery, require the establishment of reasonable discovery plans, secure prompt rulings in case of disputes, eliminate time-consuming procedural formalities, provide for protective orders and supplementary responses, and otherwise simplify procedures and promote ease of usage of the rules. This action will simplify and expedite the discovery phase of Commission proceedings.

EFFECTIVE DATE: Effective as to all adjudicatory proceedings under section 22 of the Shipping Act, 1916, which commence thirty (30) days after publication of these rules in the **Federal Register.**

FOR FURTHER INFORMATION CONTACT: Francis C. Hurney, Secretary, Federal Maritime Commission, 1100 L Street NW., Washington, D.C. 20573, (202) 523–5725.

SUPPLEMENTARY INFORMATION: On April 6, 1982, the Commission published a Notice of Proposed Rulemaking in the **Federal Register** (46 FR 14734) which proposed to revise its rules of procedure relating to prehearing discovery promulgated in Subpart L of Part 502 of Title 46 of the Code of Federal Regulations. The proposed revisions were substantial and would effectuate major changes in the existing discovery rules in order to simplify discovery procedures and assist parties in formal Commission proceedings to complete discovery with minimal delay. Thus, under the proposed rules, parties would be required to begin discovery with the filing of their initial pleadings in complaint cases and would be required to complete discovery within 120 days after service of the complaint or after service of the Commission's order initiating a proceeding. Parties would also be required to meet early in the proceeding to plan for the completion of discovery within the required time period. Provision was made for conferences with the presiding officer who would issue such rulings as might be necessary to resolve disputes and enable the discovery plan formulated by the parties to succeed in meeting the required deadlines. The entire discovery procedure would, moreover, be simplified by providing an alternate to the present system whereby discovery is conducted in a series of "waves" and parties must file formal motions seeking compulsory orders whenever disputes occur. Other reforms in discovery procedures were proposed in accordance with the modern federal rules of discovery currently in effect in civil proceedings before the courts, such as the provision for telephonic depositions, for issuance of detailed protective orders, and the requirement that parties furnish supplementary responses under certain circumstances. The Commission also proposed to simplify the present rules dealing with discovery requests directed to persons or documents located in foreign countries by allowing intitial rulings by the presiding officer subject to appeal to or review by the Commission. Finally, the Commission proposed to rearrange and otherwise simplify the form of the rules to promote ease of usage.

Comments to the Notice of Proposed Rulemaking were submitted by the Maritime Administrative Bar Association (MABA), the law firm of Lillick, McHose & Charles, and by Sea-Land Service, Inc., a carrier by water subject to the jurisdiction of the Shipping Act, 1916. All of the commentators support the proposed rules. However, MABA and the Lillick firm propose several changes. These proposed changes are addressed below.

I. Commencement of Discovery

MABA suggests that the proposed rules are not clear regarding what is meant by the commencement of discovery and suggests the addition of a new § 502.201(b)(3), which would provide that the prompt-commencement requirements of § 502.201(b) (1) and (2) would be satisfied when a party undertakes discovery under §§ 502.205 and/or 502.206. MABA further suggests that the new section make clear that the parties may provide for further discovery at the conference of the parties required by § 502.201(d). While the proposed rules require the prompt commencement of discovery, they do not specify which type of discovery a party must utilize or whether a party must utilize all types of discovery at the outset of the proceeding in order to satisfy the rules concerning commencement. Therefore, the Commission agrees that clarification is desirable. However, MABA's proposed § 502.201(b)(3) is too narrowly drawn because it is restricted to interrogatories

(§ 502.205) and requests for production (§ 502.206). The rules, however, cover not only interrogatories and requests for production but depositions and requests for admissions. Furthermore, depositions are a discovery device that may be employed with respect to persons who are not parties to a proceeding. Accordingly, MABA's suggestions will be adopted but its proposed § 502.201(b)(3) will be expanded to include any discovery device including discovery that may commence with respect to persons who are not parties to the proceeding.

II. Establishing a Fixed Date for a Discovery Conference and Otherwise Clarifying the Purpose of That Conference

MABA suggests that proposed § 502.201(d), which would require parties to confer as soon as possible after certain events in order to provide for the completion of discovery within 120 days after service of the complaint or the Commission's order initiating the proceeding, needs clarification and certain improvements. MABA suggests that the parties be required to meet on a definite date, i.e., within 15 days after service of the answer to a complaint or service of discovery requests in a commission-instituted proceeding. MABA also suggests that the rule specify that the parties are under a duty to establish a schedule for the completion of discovery within the prescribed time limit and to resolve disputes to the fullest extent possible by the use of admissions, stipulations and other techniques. Finally, MABA suggests that the proposed rule unnecessarily refers to "attorneys" as well as the parties.

The Commission agrees that the establishment of a date certain would promote the basic purposes of the discovery rule revisions, i.e., simplification and expedition, and that the specification of the duty of the parties to establish a discovery schedule and to utilize available devices to eliminate disputes also serves these purposes. Furthermore, the Commission agrees that the reference to the parties' attorneys is unnecessary in the context of the particular rule. Accordingly, MABA's suggested improvements and clarification will be adopted in the final rule. However, to ensure that the changes that will now be incorporated in the final rule do not contribute to delay, the Commission will specify in the final rule that the establishment of a fixed date should not be construed to preclude the parties from holding an earlier meeting. Finally, provision will be made for the submission of any discovery schedule to the presiding officer so that the presiding officer can monitor the course of the discovery phase of the proceeding and issue rulings when necessary to carry out the purposes of these rules.

III. Proposals To Alter the Discovery Schedule

MABA believes that proposed § 502.201(e) which requires any party unable to complete discovery within the 120-day period to propose an alternate schedule within 60 days after service of the complaint or after the order instituting the proceeding, does not provide sufficient time and suggests a 90-day period instead. MABA states that the parties may not know whether additional time to complete discovery is necessary in such a short period especially if there are clients located overseas and for other reasons. The Lillick firm also comments that the 60-day period is too short and that it fails to account for the possibility that unforeseen events may require an extension of the normal 120-day period for completion of discovery at any time during the 120-day period. The Lillick firm suggests that the presiding officer be authorized to extend that period for good cause shown at any time during that period.

The Commission finds merit to the contention that in some cases involving complicated discovery, parties may not be able to determine within 60 days whether problems will arise subsequently which will prevent them from completing discovery within the prescribed 120-day period and recognizes furthermore that unforeseen events may arise at any time throughout this period. The main purpose of § 502.201(e) was to require the parties to notify the presiding officer promptly if such problems arose which would prevent timely completion of discovery and to propose appropriate alternative schedules for the presiding officer's approval. Rather than select any one point in time for such notification, such as 60 days or 90 days, however, the Commission believes that the purposes of the particular rule in question would be served if the parties were required to submit periodic status reports to the presiding officer on a monthly basis or at such times as the presiding officer may require or circumstances may warrant and concluding on the final day of the discovery schedule. Requests for changes in the schedule can be made by means of such reports. The first such report should be made to the presiding officer not later than 30 days after the parties submit their discovery plan and schedule pursuant to § 502.201(d) unless the presiding officer otherwise directs. However, by permitting parties to submit such reports and to propose alternative schedules when necessary, the Commission does not mean to imply that parties may relax their diligence or may propose alternative schedules for frivolous reasons and therefore will make clear that proposals for changes in discovery schedules must be approved by the presiding officer. Accordingly, the Commission is revising proposed § 502.201(e) to require such status reports to be submitted in the manner described.

IV. Provision for Written Rulings After Completion of Informal Conferences

In order to resolve discovery disputes promptly and at minimal cost, the proposed rules authorize the presiding officer to conduct conferences which may be formal, on-the-record or informal when no reporter is present. See proposed § 502.201(f) and (g). As an example of the latter type conference, the presiding officer may conduct a telephonic conference call, thereby saving considerable time and expense if the parties are located in widely scattered parts of the country. MABA believes that where possible, discovery disputes should be resolved informally by the presiding officer. However, to avoid subsequent misunderstanding and confusion, MABA believes that written rulings are necessary and suggests that the parties should be responsible for submitting within three work days after the conference a joint memorandum upon which the written rulings of the presiding officer can be based, unless the presiding officer grants additional time.

The Commission agrees that informal conferences with the presiding officer by telephone or otherwise can save time and unnecessary expense but that such conferences may be discouraged if no provision for adequate recording of the rulings and for written confirmation is made in the rules. Therefore, the Commission agrees with MABA's suggestion that the parties furnish a joint written memorandum of the rulings made at informal conferences. Of course, if one or more of the parties do not wish to undertake the responsibility of furnishing such a memorandum or if the presiding officer finds that an informal conference would not be suitable in any particular instance, the presiding officer may still summon a formal, on-the-record conference or may require written pleadings to resolve discovery disputes. Accordingly, MABA's suggestions, as incorporated in

its proposed additions to § 502.201(f), will be adopted.

V. Permission To File Written Replies to Discovery Objections

As proposed, the rules provide for written objections to interrogatories and to requests for production of documents. See proposed §§ 502.205(a) and 502.206(b). MABA states that unless there is a provision for the filing of written replies to such objections, each side does not have an equal opportunity to state its case and that the record on which the presiding offficer will rule would not be complete. Also, MABA suggests that written expression of each party's position may also facilitate settlements. Therefore, MABA suggests that proposed §§ 502.205(b) and 502.206(b) be amended by adding language permitting the filing of written replies to objections but with the caveat that such filings shall be permitted only to the extent that the discovery schedule previously established under § 502.201(d) is not delayed.

Although the proposed rules strive for as much simplicity and informality as possible, as seen from the previous discussion in regard to the holding of informal conferences, it is conceivable that there may be occasions when written expressions of positions on both sides of a discovery dispute are necessary to offset any possible disadvantage to a party who is restricted to oral presentation only. Furthermore, a more adequate record may be necessary to assist the presiding officer in reaching a just and reasonable decision in a complicated discovery matter. If the discovery schedule is not disturbed by the filing of an additional pleading, then there are benefits to such a procedure with no corresponding harm. Accordingly, the Commission agrees with MABA's suggestions and they will be adopted.

VI. Specification of Sanctions for Violations of Protective Orders

MABA suggests that the rules should outline specific sanctions for violations of protective orders issued by presiding officers under § 502.201(i) and recommends adoption of a new § 502.210(d) which would authorize sanctions ranging from private warnings to financial penalties and institution of disciplinary proceedings against attorneys and practitioners. MABA concedes that the language of its proposed new rule has not been noticed in the **Federal Register** but contends that the Commission has discretion to adopt the suggested amendments which MABA believes to have a "reasonable nexus" between the rules originally proposed and those finally adopted.

The Commission does not agree that this proceeding is the proper place to consider MABA's proposals. Not only are the suggested amendments well beyond the scope of the notice provided in the **Federal Register** but they impose several, severe sanctions on attorneys and other persons who have had no opportunity to comment and, additionally, raise legal questions as to the extent of the Commission's authority to issue such rules. Accordingly, while the Commission believes that the integrity of its proceedings must be protected and that violations of protective orders are serious matters, which are to be discouraged, the Commission believes that the matter of sanctions must be carefully considered under proper procedures and if further amendments to the rules are believed to be necessary, will institute an appropriate rulemaking proceeding.

Pursuant to the Regulatory Flexibility Act (5 U.S.C. 601 et seq.), the Commission certifies that adoption of the rules herein discussed will not have a significant impact on a substantial number of small entities.

List of Subjects in 46 CFR Part 502

Administrative practice and procedure.

PART 502—RULES OF PRACTICE AND PROCEDURE

Therefore, pursuant to the Administrative Procedure Act (5 U.S.C. 553), sections 22, 27, and 43 of the Shipping Act, 1916 (46 U.S.C. 821, 826, and 841a), the Commission is revising Subpart L of Part 502 of Title 46 CFR to read as follows:

Subpart L—Depositions, Written Interrogatories, and Discovery

Sec.

502.201 General provisions governing discovery.
502.202 Persons before whom depositions may be taken.
502.203 Depositions upon oral examination.
502.204 Depositions upon written interrogatories.
502.205 Interrogatories to parties.
502.206 Production of documents and things and entry upon land for inspection and other purposes.
502.207 Requests for admission.
502.208 Use of discovery procedures directed to Commission staff personnel.
502.209 Use of depositions at hearings.
502.210 Refusal to comply with orders to answer or produce documents; sanctions; enforcement.

Authority: Secs. 22, 27 and 43 (46 U.S.C. 821, 826 and 841a) and 5 U.S.C. 553, unless otherwise noted.

Subpart L—Depositions, Written Interrogatories, and Discovery

§ 502.201 General provisions governing discovery.

(a) *Applicability.* The procedures described in this subpart are available in all adjudicatory proceedings under section 22 of the Shipping Act, 1916. Unless otherwise ordered by the presiding officer, the copy requirements of § 502.118(b)(3)(i) shall be observed.

(b) *Schedule for use.* (1) *Complaint proceedings.* Any party desiring to use the procedures provided in this subpart shall commence doing so at the time it files its initial pleading, e.g., complaint, answer or petition for leave to intervene. Discovery matters accompanying complaints shall be filed with the Secretary of the Commission for service pursuant to § 502.113 of this part.

(2) *Commission instituted proceedings.* All parties desiring to use the procedures provided in this subpart shall commence to do so within 30 days of the service of the Commission's order initiating the proceeding.

(3) *Commencement of discovery.* The requirement to commence discovery under § 502.201(b)(1) and (2) shall be deemed satisfied when a party serves any discovery request under this Subpart upon a party or person from whom a response is deemed necessary by the party commencing discovery. A schedule for further discovery pursuant to this Subpart shall be established at the conference of the parties pursuant to § 502.201(d).

(c) *Completion of discovery.* Discovery shall be completed within 120 days of the service of the complaint or the Commission's order initiating the proceeding.

(d) *Duty of the Parties.* In all proceedings in which the procedures of this Subpart are used, it shall be the duty of the parties to meet or confer within 15 days (1) after service of the answer to a complaint or (2) after service of the discovery requests in a Commission-instituted proceeding: To establish a schedule for the completion of discovery within the 120-day period prescribed in § 502.201(c); to resolve to the fullest extent possible disputes relating to discovery matters; and to expedite, limit, or eliminate discovery by use of admissions, stipulations and other techniques. The schedule shall be submitted to the presiding officer not later than five days after the conference. Nothing in this rule should be construed to preclude the parties from meeting or conferring at an earlier date.

(e) *Submission of status reports and requests to alter schedule.* The parties shall submit status report concerning their progress under the discovery schedule established pursuant to § 502.201(d) not later than 30 days after submission of such schedule to the presiding officer and at 30-day intervals thereafter, concluding on the final day of the discovery schedule, unless the presiding officer otherwise directs. Requests to alter such schedule beyond the 120-day period shall set forth clearly and in detail the reasons why the schedule cannot be met. Such requests may be submitted with the status reports unless an event occurs which makes adherence to the schedule appear to be impossible, in which case the requests shall be submitted promptly after occurrence of such event.

(f) *Conferences.* The presiding officer may at any time order the parties or their attorneys to participate in a conference at which the presiding officer may direct the proper use of the procedures of this subpart or make such orders as may be necessary to resolve disputes with respect to discovery and to prevent delay or undue inconvenience. When a reporter is not present and oral rulings are made at a conference held pursuant to this section or § 502.201(g), the parties shall submit to the presiding officer as soon as possible but within three work days, unless the presiding officer grants additional time, a joint memorandum setting forth their mutual understanding as to each ruling on which they agree and as to each ruling on which their understandings differ, the individual understandings of each party. Thereafter, the presiding officer shall issue a written order setting forth such rulings.

(g) *Resolution of disputes.* After making every reasonable effort to resolve discovery disputes, a party may request a conference or rulings from the presiding officer on such disputes. Such rulings shall be made orally upon the record when feasible and/or by subsequent ruling in writing. If necessary to prevent undue delay or otherwise facilitate conclusion of the proceeding, the presiding officer may order a hearing to commence before the completion of discovery.

(h) *Scope of examination.* Persons and parties may be examined regarding any matter, not privileged, which is relevant to the subject matter involved in the proceeding, whether it relates to the claim or defense of the examining party or to the claim or defense of any other party, including the existence, description, nature, custody, condition, and location of any books, documents, or other tangible things, and the identity and location of persons having knowledge of relevant facts. It is not ground for objection that the testimony will be inadmissible at the hearing if the testimony sought appears reasonably calculated to lead to the discovery of admissible evidence.

(i) *Protective Orders.* Upon motion by a party or by the person from whom discovery is sought, and for good cause shown, the presiding officer may make any order which justice requires to protect a party or person from annoyance, embarrassment, oppression, or undue burden or expense, including one or more of the following: (1) That the discovery not be had: (2) that the discovery may be had only on specified terms and conditions, including a designation of the time or place; (3) that the discovery may be had only by a method of discovery other than that selected by the party seeking discovery; (4) that certain matters not be inquired into, or that the scope of the discovery be limited to certain matters; (5) that discovery may be conducted with no one present except persons designated by the presiding officer; (6) that a deposition after being sealed be opened only by order of the presiding officer; (7) that a trade secret or other confidential research, development, or commercial information not be disclosed or be disclosed only in a designated way; (8) that the parties simultaneously file specified documents or information enclosed in sealed envelopes to be opened as directed by the presiding officer. If the motion for a protective order is denied in whole or in part, the presiding officer may, on such terms and conditions as are just, order that any party or person provide or permit discovery. Rulings under this paragraph shall be issued by the presiding officer at a discovery conference called under § 502.201(f) or, if circumstances warrant, under such other procedure as the presiding officer may establish.

(j) *Supplementation of responses.* A party who has responded to a request for discovery with a response that was complete when made is under no duty to supplement the party's responses to include information thereafter acquired, except as follows:

(1) A party is under a duty seasonably to supplement responses with respect to any question directly addressed to (i) the identity and location of persons having knowledge of discoverable matters, and (ii) the identity of each person expected to be called as an expert witness at a hearing, the subject matter on which such person is expected to testify, and the substance of the testimony.

(2) A party is under a duty seasonably to amend a prior response if the party obtains information upon the basis of which (i) the party knows that the response was incorrect when made, or (ii) the party knows that the response though correct when made is no longer true and the circumstances are such that a failure to amend the response is in substance a knowing concealment.

(3) A duty to supplement responses may be imposed by order of the presiding officer or by agreement of the parties, subject to the time limitations set forth in § 502.201(c) or established under § 502.201(e). (Rule 201.)

§ 502.202 Persons before whom depositions may be taken.

(a) *Within the United States.* Within the United States or within a territory or insular possession subject to the jurisdiction of the United States, depositions shall be taken before an officer authorized to administer oaths under the laws of the United States or of the place where the examination is held.

(b) *In foreign countries.* In a foreign country, depositions may be taken (1) on notice, before a person authorized to administer oaths in the place in which the examination is held, either under the law thereof or under the law of the United States, or (2) before a person commissioned by the Commission, and a person so commissioned shall have the power by virtue of his commission to administer any necessary oath and take testimony, or (3) pursuant to a letter rogatory. A commission or a letter rogatory shall be issued on application and notice and on terms that are just and appropriate. It is not requisite to the issuance of a commission or a letter rogatory that the taking of the deposition in any other manner is impracticable or inconvenient; and both a commission and a letter rogatory may be issued in proper cases. A notice or commission may designate the person before whom the deposition is to be taken either by name or descriptive title. A letter rogatory may be addressed "To the Appropriate Authority in [here name the country]." Evidence obtained in response to a letter rogatory need not be excluded merely for the reason that it is not a verbatim transcript or that the testimony was not taken under oath or for any similar departure from the requirements for depositions taken within the United States under the rules in this subpart. (See 22 CFR 92.49–92.66.)

(c) *Disqualification for interest.* No deposition shall be taken before a person who is a relative or employee or

attorney or counsel of any of the parties, or is a relative or employee of such attorney or counsel, or is financially interested in the action.

(d) *Waiver of objection.* Objection to taking a deposition because of disqualification of the officer before whom it is to be taken is waived unless made before the deposition begins or as soon thereafter as the disqualification becomes known or could be discovered with reasonable diligence.

(e) *Stipulations.* If the parties so stipulate in writing, depositions may be taken before any person, at any time or place, upon any notice, and in any manner and when so taken may be used like other depositions. (Rule 202.)

§ 502.203 Depositions upon oral examination.

(a) *Notice of examination.* A party desiring to take the deposition of any person upon oral examination shall give reasonable notice in writing to such person and to every other party to the action. The notice shall state the time and place for the taking of the deposition and the name and address of each person to be examined if known, or if the name is not known, a general description sufficient to identify the person or the particular class or group to which the person belongs. The notice shall also contain a statement of the matters concerning which each witness will testify. The attendance of witnesses may be compelled by subpena as provided in Subpart I of this part. If a subpena duces tecum is to be served on the person to be examined, the designation of the materials to be produced as set forth in the subpena shall be attached to or included in the notice. All errors and irregularities in the notice or subpena for taking of a deposition are waived unless written objection is promptly served upon the party giving the notice. Examination and cross-examination of deponents may proceed as permitted at the hearing under the provisions of § 502.154.

(b) *Record of examination; oath; objections.* The officer before whom the deposition is to be taken shall put the witness on oath and shall personally, or by someone acting under his direction and in his presence, record the testimony of the witness. The testimony shall be taken stenographically and transcribed unless the parties agree otherwise. All objections made at the time of the examination to the qualifications of the officer taking the deposition, or to the manner of taking it, or to the evidence presented, or to the conduct of any party, and any other objection to the proceedings, shall be noted by the officer upon the deposition. Evidence objected to shall be taken subject to the objections. Objections shall be resolved at a discovery conference called under § 502.201(f) or, if circumstances warrant, by such other procedure as the presiding officer may establish. In lieu of participating in the oral examination, parties served with notice of taking a deposition may transmit written interrogatories to the officer, who shall propound them to the witness and record the answers verbatim. The parties may stipulate or the presiding officer may upon motion order that a deposition be taken by telephone or other reliable device.

(c) *Motion to terminate or limit examination.* At any time during the taking of the deposition, on motion of any party or of the deponent and upon a showing that the examination is being conducted in bad faith or in such manner as unreasonable to annoy, embarrass, or oppress the deponent or party, the presiding officer may order the officer conducting the examination to cease forthwith from taking the deposition, or may limit the scope and manner of the taking of the deposition as provided in paragraph (b) of this section. If the order made terminates the examination, it shall be resumed thereafter only upon the order of the presiding officer. Upon demand of the objecting party or deponent, the taking of the deposition shall be suspended for the time necessary to make a motion for an order. Rulings under this paragraph shall be issued by the presiding officer at a discovery conference called under § 502.201(f) or, if circumstances warrant, by such other procedure as the presiding officer may establish.

(d) *Submission to witness; changes; signing.* When the testimony is fully transcribed, the deposition shall be submitted to the witness for examination and shall be read to or by the witness, unless such examination and reading are waived by the witness and by the parties. Any changes in form or substance which the witness desires to make shall be entered upon the deposition by the officer with a statement of the reasons given by the witness for making them. The deposition shall then be signed by the witness unless the parties by stipulation waive the signing or the witness is ill or cannot be found or refuses to sign. If the deposition is not signed by the witness, the officer shall sign it and state on the record the fact of the waiver or of the illness or absence of the witness or the fact of the refusal to sign together with the reason, if any given therefor; and the deposition may then be used as fully as though signed, unless upon objection, the presiding officer holds that the reasons given for the refusal to sign require rejection of the deposition in whole or in part.

(e) *Certification and filing by officer; copies, notice of filing.* (1) The officer taking the deposition shall certify on the deposition that the witness was duly sworn by the officer and that the deposition is a true record of the testimony given by the witness. The officer shall then securely seal the deposition in an envelope indorsed with the title of the action and marked "Deposition of [here insert name of witness]" and shall promptly file it with the Secretary of the Commission by hand or registered or certified mail.

(2) Interested parties shall make their own arrangements with the officer taking the deposition for copies of the testimony and the exhibits.

(3) The party taking the deposition shall give prompt notice of its filing to all other parties.

(f) *Effect of errors and irregularities.* Errors and irregularities in the manner in which the testimony is transcribed or the deposition is prepared, signed, certified, sealed, indorsed, transmitted, filed, or otherwise dealt with by the officer under this § 502.203 and § 502.204 are waived unless a motion to suppress the deposition or some part thereof is made within ten (10) days of filing. (Rule 203.)

§ 502.204 Depositions upon written interrogatories.

(a) *Serving interrogatories; notice.* A party desiring to take the deposition of any person upon written interrogatories shall serve them upon every other party with a notice stating the name and address of the person who is to answer them and the name or descriptive title and address of the officer before whom the deposition is to be taken. Within 10 days thereafter, a party so served may serve cross interrogatories upon the party proposing to take the deposition. All errors and irregularities in the notice are waived unless written objection is promptly served upon the party giving the notice.

(b) *Officer to take responses and prepare record.* A copy of the notice and copies of all interrogatories served shall be delivered by the party taking the deposition to the officer disignated in the notice, who shall proceed promptly in the manner provided by § 502.205 (c), (e), and (f), to take the testimony of the witness in response to the interrogatories and to prepare, certify, and file or mail the depostion, attaching thereto the copy of the notice and the interrogatories received by him.

(c) *Notice of filing.* When the deposition is filed, the party taking it shall promptly give notice thereof to all other parties. (Rule 204.)

§ 502.205 Interrogatories to parties.

(a) Any party may serve upon any other party written interrogatories to be answered by the party served or, if the party served is a public or private corporation or a partnership or association, by any officer or agent, who shall furnish such information as is available to the party. Any party desiring to serve interrogatories as provided by this section must comply with the applicable provisions of § 502.201 and make service thereof on all parties to the proceeding. Each interrogatory shall be answered separately and fully in writing under oath, unless it is objected to, in which event the reasons for objection shall be stated in lieu of an answer. The answers are to be signed by the person making them, and the objections signed by the attorney making them. The party upon whom the interrogatories have been served shall serve a copy of the answers, and objections if any, on all parties to the proceeding under the schedule established pursuant to § 502.201. The presiding officer, for good cause, may limit service of answers.

(b) *Objections to interrogatories.* All objections to interrogatories shall be resolved at the conference or meeting provided for under § 502.201(f) or, if circumstances warrant, by such other procedure as the presiding officer may establish. Written replies to objections to interrogatories shall be permitted only to the extent that the discovery schedule previously established under section 502.201(d) is not delayed.

(c) *Scope, time, number and use.* Interrogatories may relate to any matters which can be inquired into under § 502.210(h), and the answers may be used to the same extent as provided in § 502.209 for the use of the deposition of a party. Interrogatories may be sought after interrogatories have been answered, but the presiding officer, on motion of the deponent or the party interrogated, may make such protective order as justice may require. The number of interrogatories or of sets of interrogatories to be served is not limited except as justice requires to protect the party from annoyance, expense, embarrassment, or oppression. An interrogatory otherwise proper is not necessarily objectionable merely because an answer to the interrogatory involves an opinion or contention that relates to fact or the application of law to fact, but the presiding officer may order that such an interrogatory need not be answered until after designated discovery has been completed or until a prehearing conference or other later time.

(d) *Option to produce business records.* Where the answer to an interrogatory may be derived or ascertained from the business records of the party upon whom the interrogatory has been served or from an examination, audit or inspection of such business records, or from a compilation, abstract or summary based thereon, and the burden of deriving or ascertaining the answer is substantially the same for the party serving the interrogatory as for the party served, it is a sufficient answer to such interrogatory to specify the records from which the answer may be derived or ascertained and to afford to the party serving the interrogatory reasonable opportunity to examine, audit or inspect such records and to make copies, compilations, abstracts or summaries. (Rule 205.)

§ 502.206 Production of documents and things and entry upon land for inspection and other purposes.

(a) *Scope.* Any party may serve on any other party a request (1) to produce and permit the party making the request, or someone acting on his behalf, to inspect and copy any designated documents (including writings, drawings, graphs, charts, photographs, sound or video recordings, and other data compilations from which information can be obtained, translated, if necessary, by the respondent through detection devices into reasonably usable form), or to inspect and copy, test, or sample any tangible things which constitute or contain matters within the scope of § 502.203(a) and which are in the possession, custody or control of the party upon whom the request is served; or (2) to permit entry upon designated land or other property in the possession or control of the party upon whom the request is served for the purpose of inspection and measuring, surveying, photographing, testing, or sampling the property of any designated object or operation thereon, within the scope of § 502.203(a).

(b) *Procedure.* The request shall set forth the items to be inspected either by individual item or by category, and describe each item and category with reasonable particularity. The request shall specify a reasonable time, place, and manner of making the inspection and performing the related acts. Responses shall be served under the schedule established pursuant to § 502.201. The response shall state, with respect to each item or category, that inspection and related activities will be permitted as requested, unless the request is objected to, in which event the reasons for objection shall be stated. Objections to requests for production of documents shall be resolved at the conference or meeting required under § 502.201(f) or, if circumstances warrant, by such other procedure as the presiding officer may establish. Written replies to objections to requests for production of documents shall be permitted only to the extent that the discovery schedule previously established under section 502.201(d) is not delayed. (Rule 206.)

§ 502.207 Requests for admission.

(a)(1) A party may serve upon any other party a written request for the admission, for purposes of the pending action only, of the truth of any matters within the scope of § 502.203(a) set forth in the request that relate to statements or opinions of fact or of the application of law to fact, including the genuineness of any documents described in the request. Copies of documents shall be served with the request unless they have been or are otherwise furnished or made available for inspection and copying. Any party desiring to serve a request as provided by this section must comply with the applicable provisions of § 502.201.

(2) Each matter of which an admission is requested shall be separately set forth. The matter is admitted unless, within 30 days after service of the request, or within such shorter or longer time as the presiding officer may allow pursuant to § 502.201, the party to whom the request is directed serves upon the party requesting the admission a written answer or objection addressed to the matter, signed by the party or the party's attorney. If objection is made, the reasons therefor shall be stated. The answer shall specifically deny the matter or set forth in detail the reasons why the answering party cannot truthfully admit or deny the matter. A denial shall fairly meet the substance of the requested admission, and when good faith requires that a party qualify the answer or deny only a part of the matter of which an admission is requested, the party shall specify so much of it as is true and qualify or deny the remainder. An answering party may not give lack of information or knowledge as a reason for failure to admit or deny unless the party states that reasonable inquiry has been made and that the information known or readily obtainable is insufficient to enable the party to admit or deny. A party who considers that a matter of which an admission has been requested presents a genuine issue for trial may not, on that ground alone,

object to the request; a party may, subject to the provisions of § 502.207(c) deny the matter or set forth reasons why it cannot be admitted or denied.

(3) The party who has requested the admissions may request rulings on the sufficiency of the answers or objections. Rulings on such requests shall be issued at a conference called under § 502.201(f) or, if circumstances warrant, by such other procedure as the presiding officer may establish. Unless the presiding officer determines that an objection is justified, the presiding officer shall order that an answer be served. If the presiding officer determines that an answer does not comply with the requirements of this rule, the presiding officer may order either that the matter is admitted or that an amended answer be served. The presiding officer may, in lieu of these orders, determine that final dispositon of the request be made at a prehearing conference or at a designated time prior to hearing.

(b) *Effect of admission.* Any matter admitted under this rule is conclusively established unless the presiding officer on motion permits withdrawal or amendment of the admission. The presiding officer may permit withdrawal or amendment when the presentation of the merits of the action will be subserved thereby and the party who obtained the admission fails to satisfy the presiding officer that withrawal or amendment will be prejudicial in maintaining the party's action or defense on the merits. Any admission made by a party under this rule is for the purpose of the pending proceeding only and is not an admission for any other purpose nor may it be used against the party in any other proceeding.

(c) *Expenses on failure to admit.* If a party fails to admit the genuineness of any document or the truth of any matter as requested under § 502.207(a), and if the party requesting the admission thereafter proves the genuineness of the document or the truth of the matter, that party may apply to the presiding officer for an order requiring the other party to pay the reasonable expenses incurred in making that proof, including reasonable attorney's fees. Such application must be made to the presiding officer before issuance of the initial decision in the proceeding. The presiding officer shall make the order unless it is found that (1) the request was held objectionable pursuant to § 502.207(a), or (2) the admission sought was of no substantial importance, or (3) the party failing to admit had reasonable ground to believe that it might prevail on the matter, or (4) there was other good reason for the failure to admit. (Rule 207.)

§ 502.208 Use of discovery procedures directed to commission staff personnel.

(a) Discovery procedures described in §§ 502.202, 502.203, 502.204, 502.205, 502.206, and 502.207, directed to Commission staff personnel shall be permitted and shall be governed by the procedures set forth in those sections except as modified by paragraphs (b) and (c) of this section. All notices to take depositions, written interrogatories, requests for production of documents and other things, requests for admissions, and any motions in connection with the foregoing, shall be served on the Secretary of the Commission.

(b) The General Counsel shall designate an attorney to represent any Commission staff personnel to whom any discovery requests or motions are directed. The attorney so designated shall not thereafter participate in the Commission's decision-making process concerning any issue in the proceeding.

(c) Rulings of the presiding officer issued under § 502.208(a) shall become final rulings of the Commission unless an appeal is filed within ten (10) days after date of issuance of such rulings or unless the Commission on its own motion reverses, modifies, or stays such rulings within twenty (20) days of their issuance. Replies to appeals may be filed within ten (10) days. No motion for leave to appeal is necessary in such instances and no ruling of the presiding officer shall be effective until twenty (20) days from date of issuance unless the Commission otherwise directs. (Rule 208.)

§ 502.209 Use of deposition at hearings.

(a) *General.* At the hearing, any part or all of a deposition, so far as admissible under the rules of evidence, may be used against any party who was present or represented at the taking of the deposition or who had due notice thereof in accordance with any one of the following provisions:

(1) Any deposition may be used by any party for the purpose of contradicting or impeaching the testimony of deponent as a witness.

(2) The deposition of a party or of anyone who at the time of taking the deposition was an officer, director, or duly authorized agent of a public or private corporation, partnership, or association which is a party, may be used by any other party for any purpose.

(3) The deposition of a witness, whether or not a party, may be used by any party for any purpose if the presiding officer finds: (i) That the witness is dead; or (ii) that the witness is out of the United States unless it appears that the absence of the witness was procured by the party offering the depositions; or (iii) that the witness is unable to attend or testify because of age, sickness, infirmity, or imprisonment; or (iv) that the party offering the deposition has been unable to procure the attendance of the witness by subpoena; or (v) upon application and notice, that such exceptional circumstances exist as to make it desirable, in the interest of justice and with due regard to the importance of presenting the testimony of witnesses orally in open hearing, to allow the deposition to be used.

(4) If only part of a deposition is offered in evidence by a party, any other party may require introduction of all of it which is relevant to the part introduced, and any party may introduce any other parts.

(5) Substitution of parties does not affect the right to use depositions previously taken; and, when a proceeding in any hearing has been dismissed and another proceeding involving the same subject matter is afterward brought between the same parties or their representatives or successors in interest, all depositions lawfully taken and duly filed in the former proceeding may be used in the latter as if originally taken therefor.

(b) *Objections to admissibility.* Except as provided in this paragraph, objection may be made at the hearing to receiving in evidence any deposition or part thereof for any reason which would require the exclusion of the evidence if the witness were then present and testifying.

(1) Objections to the competency of a witness or to the competency, relevancy, or materiality of testimony are not waived by failure to make them before or during the taking of the deposition, unless the ground of the objection is one which might have been obviated or removed if presented at that time.

(2) Errors and irregularities occurring at the oral examination in the manner of taking the deposition, in the form of the questions or answers, in the oath or affirmation, or in the conduct of parties and errors of any kind which might be obviated, removed, or cured if promptly presented, are waived unless reasonable objection thereto is made at the taking of the deposition.

(3) Objections to the form of written interrogatories submitted under § 502.204 are waived unless served in writing upon the party propounding them within the time allowed for serving the succeeding cross interrogatories.

(c) *Effect of taking or using depositions.* A party shall not be deemed to make a person its own

witness for any purpose by taking such person's deposition. The introduction in evidence of the deposition or any part thereof for any purpose other than that of contradicting or impeaching the deponent makes the deponent the witness of the party introducing the deposition, but this shall not apply to the use by any other party of a deposition as described in subparagraph (2) of paragraph (a) of this section. At the hearing, any party may rebut any relevant evidence contained in a deposition whether introduced by him or by any other party. (Rule 209.)

§ 502.210 Refusal to comply with orders to answer or produce documents; sanctions; enforcement.

(a) *Sanctions for failure to comply with order.* If a party or an officer or duly authorized agent of a party refuses to obey an order requiring such party to answer designated questions or to produce any document or other thing for inspection, copying or photographing or to permit it to be done, the presiding officer may make such orders in regard to the refusal as are just, and among others the following:

(1) An order that the matters regarding which the order was made or any other designated facts shall be taken to be established for the purposes of the action in accordance with the claim of the party obtaining the order;

(2) An order refusing to allow the disobedient party to support or oppose designated claims or defenses, or prohibiting the disobedient party from introducing designated matters in evidence or an order that with respect to matters regarding which the order was made or any other designated fact, inferences will be drawn adverse to the person or party refusing to obey such order;

(3) An order striking out pleadings or parts thereof, or staying further proceedings until the order is obeyed, or dismissing the action or proceeding or any party thereof, or rendering a judgment by default against the disobedient party.

(b) *Enforcement of orders.* In the event of refusal to obey an order, the affected party or the Commission may apply for enforcement to a district court having jurisdiction of the parties, provided that the affected party seeks court enforcement within 20 days of the date of refusal to obey the order in question. Failure to seek enforcement in timely fashion will result in a waiver of the affected party's rights to enforcement of the subject order.

(c) *Persons and documents located in a foreign country.* Orders of the presiding officer directed to persons or documents located in a foreign country shall become final orders of the Commission unless an appeal to the Commission is filed within ten (10) days after date of issuance of such orders or unless the Commission on its own motion reverses, modifies, or stays such rulings within twenty (20) days of their issuance. Replies to appeals may be filed within ten (10) days. No motion for leave to appeal is necessry in such instances and no orders of the presiding officer shall be effective until twenty (20) days from date of issuance unless the Commission otherwise directs. (Rule 210.)

By the Commission.

Francis C. Hurney,

Secretary.

[FR Doc. 82-25176 Filed 9-14-82; 8:45 am]

BILLING CODE 6730-01-M

INTERSTATE COMMERCE COMMISSION

49 CFR Part 1011

[Ex Parte No. 387 (Sub-No. 205)]

Delegation of Authority To Consider Requests for Short Notice Effectiveness of Rail Transportation Contracts

AGENCY: Interstate Commerce Commission.

ACTION: Final rules.

SUMMARY: The Commission has delegated to its Review Boards the authority to consider and decide certain requests for exemptions to allow railroad transportation contracts to become effective on one day's notice. Approximately 200 of these requests have been decided by the Commission or its Divisions, and there is now clear precedent under the relevant statutory criteria. Accordingly, we have determined that, in the future, these matters should be handled by the Commission's Review Boards, and we are delegating these responsibilities by an appropriate addition to the Code of Federal Regulations.

DATE: The delegation of authority made here shall become effective September 15, 1982.

FOR FURTHER INFORMATION CONTACT:
Douglas Galloway, (202) 275-7278
Tom Smerdon, (202) 275-7277

SUPPLEMENTARY INFORMATION: Under the provisions of 49 U.S.C. 10713(e), a rail transportation contract cannot receive final approval until at least 30 days after it is filed with the Commission. However, upon request, the Commission has granted exemptions from the notice requirement under the authority of 49 U.S.C. 10505 to assist carriers and shippers which require that their contracts become effective more rapidly. While this procedure does not advance the final approval of the contracts by the Commission or affect the rights of parties to protest, it does alleviate hardship caused by delaying the effective date of contracts.

Approximately 200 of these requests have been decided by the Commission or its Divisions, and there is now clear precedent under the relevant statutory criteria. Accordingly, we have determined that, in the future, these matters should be handled by the Commission's Review Boards, and we are delegating these responsibilities by an appropriate addition to the Code of Federal Regulations.

The amendment set forth below is adopted. Additionally, since the actual number of Review Boards is subject to change, and is no longer five as stated at 49 CFR 1011.6(f), we are deleting reference to the Board numbers in that regulation.

Since this rule affects internal Commission procedure, it is issued in final form. Notice and public comment are not required.

This action does not affect significantly the quality of the human environment, the conservation of energy resources, or small entities. This action is one of agency organization, and thus notice and public comment are unnecessary pursuant to 5 U.S.C. 553(b). Since substantive rights will be unaffected, good cause exists for making the rules effective on publication in the **Federal Register** pursuant to 5 U.S.C. 553(d).

(5 U.S.C. 553 and 49 U.S.C. 10301)

List of Subjects in 49 CFR Part 1011

Administration practice and procedure, Authority delegations, Organization and functions.

Decided: September 8, 1982.

By the Commission, Chairman Taylor, Vice Chairman Gilliam, Commissioners Sterrett, Andre, Simmons, and Gradison.

Agatha L. Mergenovich,

Secretary.

PART 1011—COMMISSION ORGANIZATION; DELEGATIONS OF AUTHORITY

49 CFR 1011.6(f) is amended by removing reference to "Nos. 1, 2, 3, 4, and 5" after the term "Review Boards" in the heading and by adding a new subparagraph (7) as follows:

§ 1011.6 Employee Boards.

* * * * *

(f) * * *

(7) Requests for exemptions under 49 U.S.C. 10505 from the 30-day statutory provision of 49 U.S.C. 10713(e) solely to allow rail transportation contracts to become effective on short notice.

* * * * *

[FR Doc. 82-25281 Filed 9-14-82; 8:45 am]

BILLING CODE 7035-01-M

Proposed Rules

Federal Register
Vol. 47, No. 179
Wednesday, September 15, 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.

CIVIL AERONAUTICS BOARD

14 CFR Parts 290 and 299

[EDR-446; Econ. Reg. Docket 40947]

Transfer of Airlift Among Air Carriers in Certain Emergencies; Exemption From Section 408 for Aircraft Acquisitions

Dated: August 26, 1982.

AGENCY: Civil Aeronautics Board.

ACTION: Notice of proposed rulemaking.

SUMMARY: The CAB is asking for comment on a proposed change to a rule granting relief from the statutory requirement for approval of aircraft acquisitions. The proposal would expand the present rule to include all types of aircraft acquisitions involving air carriers by any person. Exemptions for aircraft leases for Civil Reserve Air Fleet operators that are no longer needed would be removed. The proposal is intended to further the goal of the Airline Deregulation Act to treat the airline industry like other industries with respect to the antitrust laws.

DATES:

Comments by: November 15, 1982.

Reply comments by: November 30, 1982.

Comments and other relevant information received after these dates will be considered by the Board only to the extent practicable.

Requests to be put on the Service List by: September 30, 1982.

The Docket Section prepares the Service List and sends it to each person listed, who then serves comments on others on the list.

ADDRESSES: Twenty copies of comments should be sent to Docket 40947, Civil Aeronautics Board, 1825 Connecticut Avenue NW., Washington, D.C. 20428. Individuals may submit their views as consumers without filing multiple copies. Comments may be examined in Room 711, Civil Aeronautics Board, 1825 Connecticut Avenue NW., Washington, D.C., as soon as they are received.

FOR FURTHER INFORMATION CONTACT: David Fuss, Special Authorities Division, Bureau of Domestic Aviation, (202) 673-5088, or Joseph A. Brooks, Office of the General Counsel, (202) 673-5442, Civil Aeronautics Board, 1825 Connecticut Avenue NW., Washington, D.C. 20428.

SUPPLEMENTARY INFORMATION:

Aircraft Acquisitions

Sections 408(a)(2) and (a)(3) of the Federal Aviation Act of 1958, as amended (49 U.S.C. 1378(a)(2), (3)), require that certain types of persons involved in transportation obtain Board approval before purchasing, leasing, or contracting to operate all or a substantial portion of the properties of an air carrier or of a person substantially engaged in the business of aeronautics. The purpose of these provisions is to support the Board's authority to approve or disapprove mergers and control involving air carriers.

Because these statutory provisions could include the lease of even one aircraft when involving an air carrier, thus inhibiting simple transfers of aircraft not involving control of an air carrier, the Board in 14 CFR Part 299 has declined to exercise its jurisdiction over any aircraft transaction that involves not more than 20 percent of the aircraft owner's total aircraft number, market value, and lift capacity. In addition, for transactions involving over 20 percent of the owner's aircraft fleet, the Board has exempted any person other than an indirect air carrier from the statutory approval requirement if the transaction does not involve (1) a purchase or lease from a certificated air carrier, (2) a lease with crew or an interchange agreement, or (3) a purchase or lease under which payment is directly related to the gross revenue or profits resulting from operation of the aircraft.

The notice asks for comment on a proposed change to Part 299 that would exempt indirect air carriers from the statutory approval requirement and eliminate the three exceptions to the exemption.

Most indirect air carriers are now exempt from section 408. Indirect cargo air carriers are exempt as set forth in 14 CFR Part 296. Charter operators are exempt under 14 CFR Part 380. Only Overseas Military Personnel Charter Operators operating under Part 372 and group contractors (contract bulk fare operators) are not exempt from section 408. The Board believes that the risk is small that simple acquisition of aircraft would jeopardize the indirect status of these air carriers, which was the original purpose for excluding them from the exemption. Further, the Board has sufficient means by which to monitor the operation of aircraft by a person holding out to the public as providing direct air transportation, and thereby requiring a certificate or authority from the Board to operate. There apparently is no longer good reason to continue to require indirect air carriers to file for approval of any aircraft acquisition from a direct air carrier or person substantially engaged in the business of aeronautics. The proposal, however, is not intended to relieve any person from the requirements in 14 CFR Part 212 relating to wet leases involving foreign air carriers.

Another and larger question is whether the filing for approval of those aircraft acquisition transactions now excluded from the exemption are needed to enforce the Board's responsibility in section 408 to oversee the concentration of control in the airline industry. Tentatively, the Board believes the answer to be no.

The Board believes that the general antitrust laws combined with its remaining authority under section 408 of the Act are sufficient to protect the public interest with respect to aircraft acquisitions substantial enough to amount to "merger" or "control" transactions. Sections 408(a) (5) and (6), for example, would still preclude acquisitions of control, no matter how structured. Thus, significant anticompetitive aspects of aircraft transactions would remain subject to government supervision. There appears to be no reason to single out certain aircraft transactions for special treatment. The Board believes that the threat of these aircraft transactions subverting the Board's merger and control supervisory authority is slight. For those reasons, the Board proposes to exempt all persons from sections 408 (a)(2) and (a)(3) of the Act, without regard to the type of aircraft transaction involved.

Section 299.5 states that the exemptions in Part 299 do not affect the duties of any persons with respect to aircraft transaction agreements filed

under section 412 of the Act. Since agreement filing is now permissive, the only duties remaining are those under existing agreements filed and approved by the Board. Section 299.5 would be amended by the proposal to reflect this statutory change.

Further, because the proposal would eliminate the exceptions to the exemption in § 299.3, the declination of jurisdiction in § 299.2 for transactions involving less than 20 percent of the seller's or lessor's total number, market value, and lift capacity of aircraft, would become redundant. The proposal would therefore remove § 299.2.

Civil Reserve Air Fleet Exemptions

In 14 CFR Part 290, the Board allows Civil Reserve Air Fleet (CRAF) operations to lease an *equal* number of replacement aircraft with or without crew to replace aircraft used in CRAF operations for 90-day perids from other air carriers without Board approval under sections 408(a)(2) and 412 of the Act. Part 290 further gives an exemption from section 401 (certificate authority) and 403 (tariffs and prices) of the Act to the lessor to operate replacement wet-lease aircraft over the lessee's routes. Those rules were designed to encourage air carriers to enter agreements that would provide for lease and charter of aircraft on a voluntary basis to take care of equipment shortages in emergencies.

Since Part 299 would be expanded by this proposal to allow all aircraft lease/purchase agreements under the Board's jurisdiction without approval under section 408(a)(2), there appears to be no longer a need for the same exemption for replacement aircraft in Part 290. In addition, as explained above the filing of agreements under section 412 is no longer mandatory. Again, the exemption in Part 290 from section 412 appears no longer needed.

The Board further tentatively believes that the exemptions granted to lessor air carriers from sections 401 and 403 to operate replacement aircraft for CRAF operators are no longer necessary. Air carriers may now engage in passenger air transportation (including combination cargo service) on any routes in interstate and overseas air transportation without Board approval of those routes. Under section 418, they operate all-cargo flights in similar fashion in domestic air transportation. In those instances where the air carrier lessor would operate aircraft to be used in intra-Alaskan or intra-Hawaii all-cargo service, or in foreign air transportation between points that it is not authorized to serve, exemptions would be handled on an *ad hoc* basis by the Board.

With respect to the exemptions in Part 290 from section 403 for tariff filings, air carriers chartering aircraft to CRAF operators are already exempt from section 403 by the blanket exemption in 14 CFR Part 221 for charter flights.

For those reasons, this proposal would remove part 290 from the Board's regulations, since it is no longer necessary.

Regulatory Flexibility Act

In accordance with 5 U.S.C. 605(b), as added by the Regulatory Flexibility Act, Pub. L. 96–354, the Board certifies that none of the proposed changes will, if adopted, have a significant economic impact on a substantial number of small entities. Small air carriers, which use only small aircraft, and most indirect air carriers are already exempt from the statutory provisions involved with this rule. For the remaining indirect air carriers, the removal of their exclusion from the exemption would eliminate a minor filing requirement.

List of Subjects in 14 CFR Part 299 and Part 290

Air carriers, Antitrust, and Military air transportation.

Proposed Rule

Accordingly, the Civil Aeronautics Board proposes to amend 14 CFR Chapter II as follows:

PART 299—EXEMPTION FROM SECTION 408 FOR AIRCRAFT ACQUISITIONS

§ 299.1 [Amended]

1. In Part 299, paragraph (b) of § 299.1 would be removed.

§ 299.2 [Removed and Reserved]

2. In Part 299, § 299.2 would be removed and reserved.

3. In Part 299, § 299.3 would be revised to read:

§ 299.3 Exemption.

Any person shall be exempt from sections 408 (a)(2) and (a)(3) of the Act for any purchase, lease, or lease with purchase option of aircraft.

4. In Part 299, paragraph (c) of § 299.5 would be revised to read:

§ 299.5 Effect of exemption.

* * * * *

(c) This rule does not affect any duty that a person may have under the remaining provisions of section 408 or under section 412 with respect to a purchase, lease, or lease with purchase option of aircraft that is contained in an agreement on file and approved by the Board.

5. In Part 299, the table of contents would be amended accordingly.

PART 290—TRANSFER OF AIRCRAFT AMONG AIR CARRIERS IN CERTAIN EMERGENCIES [REMOVED]

6. Part 290 would be removed.

(Secs. 204, 401, 403, 408, 412, and 416, Pub. L. 85–726, as amended, 72 Stat. 743, 754, 767, 770, 771; 49 U.S.C. 1324, 1371, 1373, 1378, 1382, 1386)

By the Civil Aeronautics Board.

Phyllis T. Kaylor,

Secretary.

[FR Doc. 82-25372 Filed 9-14-82; 8:45 am]

BILLING CODE 6320-01-M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

18 CFR Parts 2, 152, 154 156, 157, 284 and 381

[Docket No. RM82-31-000]

Fees Applicable to Natural Gas Pipelines

Issued: September 10, 1982.

AGENCY: Federal Energy Regulatory Commission, DOE.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Federal Energy Regulatory Commission (Commission) is proposing to amend its regulations to establish fees for services and benefits provided by the Commission under its jurisdictional statutes. The Commission is authorized by the Independent Offices Appropriations Act of 1952 (IOAA) to establish fees for services and benefits it provides. The fees are being proposed in a series of proposed rules, each rule relating to a different type of regulated entity or jurisdictional subject area.

This proposed rule would establish fees for services and benefits provided to natural gas pipelines under the Natural Gas Act and related authorities in Part 381 of the Commission's regulations. The rule would require the payment of a fee upon the filing of: (1) An application for authorization under section 7 of the NGA; (2) an application for authorization under sections 311 and 312 of the Natural Gas Policy Act (NGPA); (3) an application for a determination under sections 5 and 25 of the Outer Continental Shelf Lands Act (OCSLA); (4) an application for exemption under section 1(c) of the NGA; (5) an application for a permit under Executive Order 10485 with respect to facilities constructed on the borders of the United States; (6) a

request for relief from curtailment under the NGA or Title IV of the NGPA; (7) a request under the blanket certificate notice and protest procedures; (8) a tariff pertaining to curtailment pursuant to section 4 of the NGA; and (9) an index of entitlements under the NGPA.

DATE: Comments must be submitted to the Secretary of the Commission by November 9, 1982.

ADDRESS: All filings should refer to Docket No. RM82-31 and should be addressed to: Office of the Secretary, Federal Energy Regulatory Commission, 825 North Capitol Street, N.E., Washington, D.C. 20426.

FOR FURTHER INFORMATION CONTACT: Kenneth F. Plumb, Secretary, Room 9310, Federal Energy Regulatory Commission, 825 North Capitol Street NE, Washington, D.C. 20426, (202) 357-8400.

SUPPLEMENTARY INFORMATION:

I. Introduction

The Federal Energy Regulatory Commission (Commission) is proposing to amend its regulations to establish fees for services and benefits provided by the Commission under its jurisdictional statutes. The fees are being proposed in a series of proposed rules, each rule relating to a different type of regulated entity or jurisdictional subject area. By proposing fees in a series of individual rulemakings, the Commission intends to identify clearly each category of fees and to focus public comments. Nevertheless, the proposals are the product of a comprehensive examination of the potential fees associated with all the different functions and services performed by the Commission. The Commission will consider issuing a consolidated final rule establishing fees for all services and benefits.

This proposed rule would establish fees for certain services and benefits provided to natural gas pipelines under the Natural Gas Act (NGA) [1] and related authorities [2] in Part 381 of the Commission's regulations. The rule would require the payment of a fee upon the filing of: (1) an application for authorization under section 7 of the NGA; (2) an application for authorization under sections 311 and 312 of the Natural Gas Policy Act of 1978 (NGPA); (3) an application for a determination under setions 5 and 25 of the Outer Continental Shelf Lands Act (OCSLA); (4) an application for exemption under section 1(c) of the NGA; (5) an application to import or export natural gas under section 3 of the NGA, (6) an application for a permit under Executive Order 10485 with respect to facilities constucted on the borders of the United States; (7) a request for relief from curtailment under the NGA; (8) a request for authorization under the blanket certificate notice and protest procedures;[3] (9) a tariff pertaining to pipeline curtailment pursuant to section 4 of the NGA; and (10) an index of entitlements under section 401 of the NGPA.

The Commission is authorized by the Independent Offices Appropriations Act of 1952 (IOAA) [4] to establish fees for servies and benefits it provides. The IOAA provides in pertinent part:

> [A]ny work, service, publication, report, document, benefit, privilege, authority, use, franchise, license, permit, certificate, registration, or similar thing of value or utility performed, furnished, provided, granted, prepared, or issued by any Federal agency * * * to or for any person * * * shall be self-sustaining to the full extent possible, and the head of each Federal agency is authorized by regulation * * * to prescribe therefore such fee, charge, or price, if any, which he shall determine, in case none exists, or redetermine, in case of an existing one, to be fair and equitable taking into consideration the direct and indirect costs to the Government, value to the recipient, public policy or interest served, and other pertinent facts, and any amounts so determined or redetermined shall be collected and paid into the Treasury as miscellaneous receipts * * *.

The principal agency interpretation of the IOAA is Bureau of the Budget Circular A-25 [5] which states that a fee should be assessed against each identifiable recipient of a measurable unit or amount of Government service or property from which such recipient derives a special benefit.[6]

In accordance with the IOAA and authoritative interpretations of that statute, the Commission, in establishing any fee, must:[7]

A. Identify the service for which the fee is to be assessed;

B. Explain why that particular service benefits an identifiable recipient more than it benefits the general public;

C. Base the fee on as small a category of service as practical; and

D. Demonstrate what direct and indirect costs are incurred by the Commission in rendering the service, and show that those costs are incurred in connection with the service rendered the beneficiary.

II. Discussion

The Commission believes that the fees set forth in this proposed rule would meet the four requirements outlined above.

A. Identification of Services

The categories of services and benefits provided to natural gas pipelines under the NGA and related authorities for which the Commission proposes a fee in this rulemaking are the following:

1. Review of natural gas pipeline certificate applications, including:

(a) Applications under section 7 of the NGA filed in accordance with Parts 156 and 157;

(b) Applications under sections 311 and 312 of the NGPA filed in accordance with §§ 284.107, 284.127, and 284.162;

(c) Applications under sections 5 and 25 of the OCSLA;

(d) Applications under section 1(c) of the NGA filed in accordance with § 152.3;

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[1] 15 U.S.C. 717-717w. This rulemaking supersedes the pending fees rulemaking in Docket No. RM79-63, "Fees Applicable to Natural Gas Pipeline Construction," except with respect to direct billing for the Alaska Natural Gas Transportation System which will be addressed in Docket No. RM79-63. A Notice of Proposed Rulemaking was issued in that docket on August 12, 1981.

[2] Natural Gas Policy Act of 1978, 15 U.S.C. 3301-3432; Executive Order No. 10485, 3 CFR 970 (Comp. 1948-1953); Outer Continental Shelf Lands Act 43 U.S.C. 1331, *et. seq.*

[3] The final rule on Interstate Pipeline Certificates for Routine Transactions, (Docket No. RM81-19) was issued on May 28, 1982; 47 Fed. Reg. 24254, June 4, 1982. This new program establishes simplified procedures for authorizing certain activities undertaken by interstate pipelines which are issued a blanket certificate. Some activities are authorized under a blanket certificate only after a notice and protest procedure.

[4] 31 U.S.C. 483a.

[5] Bureau of the Budget Circular A-25 (September 23, 1959). This interpretation has been quoted by the U.S. Supreme Court as "the proper construction of the act," in FPC V. New England Power Co., 415 U.S. 345, 351 (1974).

[6] Budget Circular A-25 at 1-2:

General Policy. A reasonable charge * * * should be made to each identifiable recipient for a measureable unit or amount of Government service or property from which he derives a special benefit * * *. For example, a special benefit will be considered to accrue and a charge should be imposed when a Government-rendered service:

a. Enables the beneficiary to obtain more immediate or substantial gains or values (which may or may not be measurable in monetary terms) than those which accrue to the general public (*e.g.*, receiving a patent, crop insurance, or a license to carry on a specific business); or

b. Provides business stability or assures public confidence in the business activity of the beneficiary (*e.g.*, certificates of necessity and convenience for airline routes, or safety inspections of craft) * * *.

[7] *See* National Cable Television Association, Inc. v. United States, 415 U.S. 336 (1974); FPC v. New England Power Co., 415 U.S. 345 (1974); Mississippi Power & Light v. NRC, 601 F.2d 223 (5th Cir. 1979), *cert. denied*, 444 U.S. 1102 (1980); National Cable Television Association, Inc. v. FCC, 554 F.2d 1094 (D.C. Cir. 1976); Electronic Industries Association v. FCC, 554 F.2d 1109 (D.C. Cir. 1976); National Association of Broadcasters v. FCC, 554 F.2d 1118 (D.C. Cir. 1976); Capital Cities Communications, Inc. v. FCC, 554 F.2d 1135 (D.C. Cir. 1976).

(e) Applications under section 3 of the NGA filed in accordance with Part 153; and

(f) Applications under Executive Order No. 10485.

2. Review of requests for authorization filed pursuant to the blanket certificate notice and protest procedures in accordance with § 157.205.

3. Review of curtailment filings including:

(a) Requests for relief from curtailment under section 4 of the NGA filed in accordance with § 2.78(b);

(b) Tariff filings pertaining to pipeline curtailment under section 4 of the NGA filed in accordance with Part 154; and

(c) Indices of entitlements filings under section 401 of the NGPA filed in accordance with § 281.204.

In this proposed rulemaking, the Commission is not proposing to charge fees for other actions it takes to implement its responsibilities relating to natural gas pipelines. These actions are discussed in Subsection B of this discussion, in addition to those activities for which a fee is proposed.

B. Special Benefits to Identifiable Recipients

In delineating the services or benefits for which agencies are permitted to charge under the terms of the IOAA, Budget Circular A–25 states that a fee may be charged to an identifiable recipient who derives a special benefit from a Government service.[8] In addition, the circular indicates that a "special benefit" has accrued if the recipient obtains "more immediate or substantial gains or values * * * than those which accrue to the general public."[9] Any fee charged under the IOAA is not rendered invalid because the public may also enjoy incidental benefits which flow from the service provided the recipient by the agency.[10] However, an agency may not charge for its services "when the identification of the ultimate beneficiary is obscure and the service can be considered as benefitting broadly the general public."[11]

The proposed rule complies with these requirements in that the services for which fees would be charged under this rule provide special benefits to the applicants who invoke the Commission's procedures.

Pipeline certificates of the various kinds mentioned above provide the applicant with the authority to engage in activities under section 7 of the Natural Gas Act, such as the construction and operation of a facility for the transportation of natural gas, the abandonment of facilities, the sale of natural gas for resale, and the transportation of natural gas. This authority provides the applicant with a limited entry into a regulated market and provides authorization to take certain actions which would otherwise be prohibited. A pipeline certificate also protects the pipeline's investment because it ensures that the costs of the facility will be deemed prudent by the Commission in subsequent rate proceedings.

In addition, under the Commission's new blanket certificate program,[12] an interstate pipeline that is issued a one-time blanket certificate is automatically authorized to undertake certain activities subject only to specified reporting requirements. The blanket certificate also authorizes certain activities only after the Commission is notified and interested persons given the opportunity to protest. Only interstate pipelines which have been issued a blanket certificate may use these simplified procedures for obtaining authorization for jurisdictional activities.

A pipeline curtailment plan provides the applicant with certainty with respect to the allocation of gas in times of shortage and thereby assists the smooth operation of business in times of emergency. In addition, curtailments and reallocations of gas under an approved curtailment plan in time of shortage has been asserted as a defense to a breach of contract action initiated by gas customers. In certain instances, the Commission may grant relief from curtailment, whereby an applicant is permitted to obtain more gas than would be otherwise allocated under the curtailment plan.

In these certificate cases, the Commission believes that each identifiable applicant for these kinds of Commission services derive more substantial benefits than those benefits accruing to the general public. They are, therefore, the recipients of special benefits from the Commission. The Commission proposes to assess against any individual or entity seeking these services a fee designed to recover the costs associated with providing that service.

As mentioned above, the Commission is not proposing in this rulemaking to establish fees for other actions it takes relating to natural gas pipeline certificates and curtailments. These actions include preliminary and formal enforcement investigations, administrative enforcement litigation and settlement of such litigation, news releases, litigation in the courts, and rulemakings. Generally, the recipients of these services are not readily identifiable.[13]

C. Smallest Practical Unit

In designing a fee schedule, the IOAA requires the Commission to base fees on the smallest unit of a category of service or benefit practical. In remanding fees established by the Federal Communications Commission, the Court of Appeals for the D.C. Circuit set forth the general rule:

> [W]e interpret the statute and the Supreme Court decisions to require reasonable particularization of the basis for the fees, accomplished by an allocation of costs to the smallest unit that is *practical*. In most cases, we expect this unit will be classes of carriers or applicants or grantees or services which the Commission has already singled out for separate treatment in its 1975 fee schedule. Classification is always a difficult problem, involving as it does the drawing of lines; but the solution is not to group dissimilar entities together. The Commission must examine its expenses and set forth the maximum particularization of costs which it conveniently can make, so that the correctness of its actions can be reviewed.
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> Many of the expenses will no doubt separate naturally among classes of carriers and services * * *.[14]

The Commission recognizes that there may be significant differences in the costs incurred for individual filings or applications which are submitted for approval or review. Some filings are more complex or controversial than others or may require more time to process. The Commission is proposing to establish fees based on the narrowest categories of activities sharing common characteristics. Fee categories are generally delineated according to the nature of the service or benefit provided. For example, separate fees are established for pipeline certificate applications and curtailment filings, even though these services are requested by a similar class of applicants. If it is practical to identify

[8] Budget Circular A–25 at 1–2.

[9] *Id.* at 2.

[10] *See* Mississippi Power & Light v. NRC, 601 F.2d 223, 227–28 (5th Cir. 1979), *cert. denied*, 444 U.S. 1102 (1980); Electronic Industries Association v. FCC, 554 F.2d 1109, 1115 (D.C. Cir. 1976).

[11] Budget Circular A–25 at 2, *quoted with approval in* FPC v. New England Power Co., 415 U.S. 345, 350 (1974).

[12] *See* note 3 *supra*.

[13] The Commission, however, is considering, in other rulemakings, fees for declaratory orders under all of its jurisdictional statutes and recovery of the costs of certain rulemakings. In those cases where a fee is proposed, the Commission believes that there are special benefits provided to identifiable recipients.

[14] Electronic Industries Association v. FCC, 554 F.2d 1109, 1116–17 (D.C. Cir. 1976) (emphasis added).

specific units within a general category of service as a basis for allocating the costs incurred by the Commission, a fee applicable to that unit is set forth. For example, the proposed rule establishes separate fees for those pipeline certificate applications and curtailment filings that require an evidentiary hearing and for those that do not.

A fundamental consideration in developing a fee structure under the IOAA is the administrative practicality of establishing fees which relate, not just to categories of services, but also to subcategories of services or even individual agency services. This problem relates to the accessibility of cost data and the expense incurred in collecting the data. The Commission believes it has the authority to establish separate fees for any filing that initiates a proceeding, and any filing that requires the Commission to undertake additional steps in that proceeding, such as requests for rehearing, intervention, or appeals. However, because the time spent in subsequent stages of a proceeding is not separately recorded by the Commission, the Commission does not have data at this time which is detailed enough to permit it to establish a separate fee for each stage of a proceeding. As a result, the Commission is proposing to establish fees for an entire proceeding or application process, broken down solely by whether or not there is a hearing. It nevertheless requests comments on whether fee categories should be established for small classes of applicants, or separate stages of a proceeding and the nature of the data which would be necessary to support such fee categories.

D. Basis of Cost Recovery

1. *Direct and indirect costs included.* The fee schedule proposed by the Commission is designed to account for all types of recoverable costs associated with the processing of the specified applications and filings. The costs attributable to a particular Commission service are not merely the salaries of the employees who review the applications or filings. As the Fifth Circuit observed, in *Mississippi Power and Light* v. *NRC*, employees "must be supplied with working space, heating, lighting, telephone service and secretarial support. Arrangements must be made so that [they are] hired, paid on a regular basis and provided specialized training courses. Those and other costs such as depreciation and interest on plant and capital equipment are all necessarily incurred in the process of reviewing an application."[15] The following descriptions indicate what actual costs are incurred when the Commission supplies the identified services and benefits under the NGA and related authorities.

Pipeline certificate applications and curtailment filings are processed by the Office of General Counsel (OGC) and the Office of Pipeline and Producer Regulation (OPPR). A notice of the application or filing is published in the **Federal Register.** The application or filing is then analyzed for the financial, engineering, economic, legal, gas reserve, deliverability, market, and environmental standpoints. This analysis will determine whether the proposed activity is consistent with the statutory standard of public convenience and necessity. The Environmental Branch of OPPR performs an environmental assessment and prepares an environmental impact statement, if necessary. Finally, OGC reviews the staff recommendation to assure legal sufficiency and a final order is prepared for either issuance by the Director of OPPR under his delegated authority or consideration by the full Commission. In cases where consideration by the Commissioners is required, the proposed order is circulated to all Commission offices for concurrence and comment.

In cases where a genuine issue of material fact is raised, the case is set for hearing before an administrative law judge. In these cases, OGC prepares a hearing order which is considered by the full Commission after review by staff offices. The Office of Regulatory Analysis (ORA) and OPPR participate in all aspects of the hearing. After the administrative law judge issues an initial decision, the parties and staff may file briefs on and opposing exceptions. In such cases, the Office of Opinions and Review (OOR) prepares a formal opinion for the Commission consideration.

Applications for blanket certificates are processed by OPPR, OGC, and the Office of the Chief Accountant (OCA). First, staff verifies that the applicant is an interstate pipeline which has been issued a certificate, other than a limited-jurisdiction certificate, pursuant to section 7 of the Natural Gas Act and which has had rates accepted by the Commission. The application is then analyzed to determine the applicant's ability to comply with the terms and conditions of a blanket certificate. Second, staff evaluates the applicant's outstanding budget-type certificates and effective storage service rate schedules. Finally, OGC reviews the staff recommendation to assure legal sufficiency and a final order is prepared for issuance by the Director of OPPR.

Once a blanket certificate is accepted by an interstate pipeline, that pipeline may also file requests for authorization for certain projects under the blanket certificate notice and protest procedures. Those requests are processed by OPPR and OGC. A notice of the request is published in the **Federal Register.** The request is analyzed from the financial, engineering, economic, legal, gas reserve, deliverability, market, and environmental standpoints. This analysis will also determine whether the proposed activity satisfies the applicable blanket certificate conditions and is consistent with the public convenience and necessity. If interested persons file protests to the request, staff evaluates the issues raised by those protests. If all protests are withdrawn or no protests were filed, and if the certificate holder has complied with all other applicable conditions under the blanket certificate, the certificate holder is authorized to conduct the activity under its blanket certificate. If the protests remain unresolved after a specified period of time, the request for authorization is treated as a standard pipeline certificate application.

2. *Methodology.* The Commission's calculation of the costs incurred to provide each of the services represented by a fee category is directely related to the amount of time the Commission spends providing each of these services. The proposed rule relies on information obtained through the Commission's management information system (MIS), which provides the amount of time spent on all the Commission functions. This data is recorded on a periodic basis. The functions are grouped into categories which represent the Commission's various programs, including gas wellhead pricing, gas pipeline rates, gas pipeline certificates, gas producer certificates, oil pipeline regulation, hydropower regulation, and electric power regulation.

The supervisor in each organizational unit reports through the MIS the amount of time spent by staff on each function, in terms of "work-months". A "work-month" is the unit of work represented by one employee's devotion of 100% of his or her time for one month. With respect to each function, the supervisor records the number of projects initiated (receipts) and completed (completions) in a particular time period, insofar as the nature of the function involves the initiation and completion of projects. Most Commission functions can be measured in terms of the number of projects initiated and completed. In

[15] 601 F.2d at 232.

accordance with Commission practice, most of these projects are generally assigned docket numbers and, for purposes of this discussion, will be referred to as "docketed activities".

Other "support" functions regularly undertaken, with respect to any program, may not be measured in terms of receipts and completions and are not docketed. The nature of these functions makes impractical any measurements in terms of receipts and completions, but staff time is nevertheless spent performing these functions. This time is allocated and reported by unit supervisors.

These support functions will be referred to as "support activities" and can be divided into three categories. First, there are activities that involve general supervision, personnel management, and routine administrative functions such as maintenance of time and leave records, the handling of property and supplies, staff meetings, and the planning and organizing of leave.

Second, support staff responds to requests for information that do not contribute directly to the completion of a docketed activity. Examples include requests for information from the public, from the Congress, from the General Accounting Office, and from other governmental agencies.

Third, support staff establishes or reviews Commission operations and procedures. These activities include work on the Commission budget, management information systems, and program development functions such as special studies or briefings not identified with a docketed activity.

The Commission uses the following method to determine the cost of providing any service or benefit. First, the work-months reported for a specific "docketed" activity are added to a pro-rata share of the work-months reported for the relevant "support" activities.[16] This figure, representing the total number of work-months dedicated to a given function for a year, is divided by the number of completions for that year for the given function. The resulting quotient represents the average number of work-months required to complete each function.

Second, the Commission used the following figures provided by the Office of Program Management to derive the average cost of a work-month, based on the Commission's FY 1982 budget.

Average Annual Salaries and Fringe Benefits (including the overhead for retirement and benefit insurance.)	$37,518
Administrative Overhead For One Year Per Employee (including printing, communication, office space, rent, etc.)	8,468
Contracts for Overhead Services For One Year Per Employee (microfilm, etc.)	2,406
Estimated Average Cost Per Employee for FY 1982	48,392

The total is divided by 12 to yield an average work-month cost of $4,032,67.

Third, in order to determine the cost of the function, the Commission multiplies the average cost per work-month by the average number of work-months required to complete the function.

The Commission proposes to update the fees each year to reflect Commission costs. An updated fee schedule would be published in the **Federal Register** each year. The updated fee would be the product derived by multiplying each fee that is effective for the current fiscal year by the ratio of the average budgeted costs per employee for the next fiscal year to the average budgeted costs per employee for the current fiscal year. An applicant would be obliged to pay either the updated fee or, if the updated fee is not yet effective, the fee that is currently effective at the time of filing.

E. Exceptions to Full-Cost-Recovery

As a general policy, the Commission intends to establish fees which include all the recoverable costs associated with a particular benefit or service provided by the Commission. The Commission recognizes, however, that there may be instances in which a fee has an undesired effect on an applicant or other person requesting a service or benefit or otherwise proves infeasible. In such case, the Commission may exercise discretion to reduce the fee for a category of service. Generally speaking, the Commission does not expect this issue to arise with regard to any service which is necessary to participation in a regulated business and continues to consider the possibility of full-cost recovery for each category of service for which it proposes fees. The Commission specifically requests comments on this fundamental approach.

A primary concern presented by the establishment of fees is to ensure that the benefits and services provided by the Commission under its jurisdictional statutes remain reasonably available to interested persons. Any consideration of whether to establish a less than full-cost-recovery fee under new Part 381 for a category of service would initially depend on a threshold determination that a full-cost-recovery fee may discourage use of the service for which the fee is assessed. If it appears to the Commission that a full-cost-recovery fee would discourage filings or use of Commission services, it would then consider a reduction in the relevant fee. The determination of how far to reduce a fee will depend on four specific factors.

1. *Disproportionate economic burden.* The Commission may reduce the fee by a factor of forty to sixty-five percent, if it is shown that the individuals or entities the Commission expects to predominate in the potential class of payers are of the type on which the full-cost-recovery fee could be expected to impose a disproportionate economic burden. If the Commission service does not pertain to small entities, or involve any particular economic hardship, but would, nevertheless, impose a full-cost-recovery fee that would discourage use of that service, the Commission would be inclined to reduce the fee by a smaller amount, not to exceed fifty percent of the full cost of the service depending upon other considerations which may arise.

2. *Encouraging use of a service.* The Commission may reduce the fee by twenty percent, if the service or procedure involved is of a type that the Commission wishes to encourage or if the Commission prefers that service or procedure to be utilized more often than others which would provide essentially the same benefit.

3. *Use of Commission time.* Related to the consideration of encouraging one service over another is a consideration of whose time and effort is required to provide the particular service. Commission time is more valuable and limited than staff time. Therefore, a reduction of five percent may be made if a service requires only staff time for normal processing, not including appeals to the Commission.

4. *Reduction of processing time.* There may be some services the Commission provides with which the Commission has had little experience. Therefore, its data may not be as indicative of the average costs of providing that service over a longer period of time as its data for the costs of services it has been providing for many years. As the Commission gets more familiar with the processing or review of such application or filing, it may become more efficient, thereby reducing the amount of time required to provide the service, To reflect this possibility, the Commission may reduce the fee by five percent if the service requested is one with which the Commission has had little experience.

[16] The Commission has excluded from its cost calculations those work-months associated with the second category of support activities, because those functions do not constitute part of the cost of providing a special benefit.

III. Fees Proposed

The following table summarizes the average number of work-months (WM's) and average costs incurred in rendering the services for which the Commission proposes fees in this rulemaking: [17]

Service	Total WMs	Total completions	Average No. WMs per completion	Average cost per completion
Review of pipeline certificates (without hearing)	1706.9	781	2.186	$8,815.42
Review of pipeline certificates (with hearing)	737.9	47	15.700	63,312.92
Review of curtailment filings (without hearing)	36	23	1.565	6,311.13
Review of curtailment filings (with hearing)	158.3	27	5.863	23,643.54

The following fees are therefore proposed: [18]

Service	Fee
Pipeline Certificates (without hearing)	$8,800
Pipeline Certificates (with Hearing)	63,300
Requests For Authorization Under The Blanket Certificate Notice And Protest Procedures	[1]8,300
Curtailment Filings (without hearing)	6,300
Curtailment Filings (with hearing)	23,600

[1]Because the Commission's blanket certificate program will not become effective until July 6, 1982, the Commission does not have cost data which is based on experience under that particular program. Therefore, the Commission is basing its proposed fee on staff estimations that the processing will be performed by the same offices and will require approximately the same amount of time as a pipeline certificate proceeding without a hearing. The proposed fee for a request for authorization for certain activities under the notice and protest procedure is $500 less than the proposed fee for a pipeline certificate proceeding without a hearing because, under the blanket certificate notice and protest procedures, no final order is required to be drafted by the staff.

The Commission intends, however, to re-evaluate the fees it proposes for the blanket certificate program in light of actual cost data which is recorded once the program has been implemented.

In the pipeline certificate and curtailment area, a substantial amount of Commission costs are incurred in connection with evidentiary hearings. Unlike many of the other services for which the Commission proposes fees, a significant number of pipeline certificate and curtailment matters are set for hearing. Therefore, in order to be consistent with the policy of full-cost recovery, the proposed fees for pipeline certificate applications and curtailment filings which are set for hearing are designed to recover the average cost to the Commission of any evidentiary hearing.

This proposed rule would require only the person submitting the application or filing to pay the fee which includes the average cost of a hearing, on the theory that the applicant receives a special benefit and that an evidentiary hearing is a necessary part of the process conferring the benefit. In addition, the Commission currently does not have adequate data which allows allocation of costs among parties to a hearing, such as intervenors. Nevertheless, there may be instances where assessing a fee which includes all or part of the costs of a hearing against persons other than the applicant may be a viable approach under the IOAA. The Commission requests comments on this issue.

The Commission's procedues for the payment of the proposed fees related to the blanket certificate program would be as follows. Any person applying for a blanket certificate would be required to pay a one-time $8,800 fee. After accepting a blanket certificate, a certificate holder who requests authorization of certain kinds of projects under the blanket certificate's notice and protest procedures would be required to pay an additional $8,300 fee for each authorization. If protests are filed during the protest period which raise issues that are not resolved during the reconciliation period provided under the blanket certificate procedures, the request becomes a case-specific pipeline certificate proceeding. In these instances, the certificate holder would not be required to pay the additional $8,800 which is normally assessed for any new certificate application. If the proposed activity or project is authorized without an evidentiary hearing, then the certificate holder would not be required to pay any additional charge. However, if the proposed activity is set for an evidentiary hearing, the blanket certificate holder would be required to pay a $54,500 fee, which is the balance of the total $63,300 fee which would be charged for any certificate proceeding set for hearing. The Commission is, however, considering whether to require that the certificate holder pay an additional $500 at the time the request for authorization is converted to a case-specific pipeline certificate proceeding. This would cover the cost of drafting a final order under the regular certificate procedures.

These fees are not reduced according to the factors discussed in Section II. E., above, because these fees are proposed for services which are necessary for participation in a regulated industry and would not therefore discourage use of the service. However, the Commission is proposing procedures whereby the Commission may waive or reduce the fees prescribed by this proposal in specific circumstances. These procedures would give the Commission the discretion to waive or reduce the fees in order to avoid undue economic burden in particular cases. Factors which the Commission may consider in waiving or reducing a fee include the size and financial health of the applicant.

IV. Procedures for Paying Fees

In order to be consistent with the assessment of fees relating to natural gas pipeline certificate applications and curtailment filings, the Commission proposes to amend its current regulations regarding the procedures applicable to each of the applications and filings covered by the proposed fee schedule. The amended procedures would require that a certified check or money order for the appropriate amount, made payable to the United States Treasury, be included with each filing and application.

In addition the proposal provides, in § 381.103(b), that any application or filing which is not accompanied by the appropriate fee would be considered deficient and would not be processed by the Commission. Consistent with this proposed rule, the Commission would consider suspending the processing of an application or the continuation of a hearing if the added amount due for any application set for hearing is not paid as required.

Furthermore, in the areas where the Commission presently charges fees, it follows, with minor exceptions, a policy of no refunds. The Commission expects to apply this no refund practice to all fees proposed in the new series of rulemakings under the IOAA, as well.

V. Direct Billing Alternative

As discussed above, the methodology that would be used to establish the proposed fees is based on the average cost of processing the average filing. The Commission occasionally receives filings which are not representative of these average filings. These filings may be so extensive in scope and present issues of such complexity or difficulty that the Commission must devote an extraordinary amount of time and staff resources to processing them. The

[17]The Commission is placing in the public file for this docket more detailed data relating to the costs incurred by the Commission which form the basis of the proposed fees.

[18]Fees are established by taking actual costs and rounding *down* to:

(1) The nearest $5 increment, if the total cost is $100 or less; and

(2) The nearest $100 increment, if the total cost is more than $100.

standard fees would bear no reasonable relationship to the actual cost of processing these extraordinary filings. Moreover, if the costs of processing these extraordinary filings were included in the average costs associated with average filings, persons submitted average filings would be subsidizing those submitting the extraordinary filings. Therefore, the Commission is proposing that in the case of an extraordinary filing, it would order a direct billing procedure.

Under this direct billing procedure, the Commission would periodically bill the person who submitted the filing for all the direct and indirect costs incurred by the Commission in processing the filing. The filing would then be processed like other filings, but the amount of time and staff resources devoted to processing the filing would be separately recorded and would not be averaged with the time devoted to processing the average filing.

VI. Summary of Proposed Rule

This proposed rule establishes fees for services and benefits provided by the Commission to natural gas pipelines unde the NGA and related authorities in proposed Part 381 of Chapter I of Title 18 of the Code of Federal Regulations.

Proposed §§ 381.101 and 381.102 state the purpose of proposed Part 381 and provide definitions of the words "person", "work year cost", and "filing".

Proposed § 381.103 provides that each filing must be accompanied by the proper fee or that filing will be considered deficient, which could result in rejection of the filing. Section 381.103 also proivdes that if a filing for one service or benefit may be considered as falling within two or more fee categories, the higher or highest of the applicable fees must be paid.

Proposed § 381.104 requires the Commission to publish a revised fee schedule each year to reflect an increase or decrease in costs.

Proposed § 381.105 establishes the method of payment of the proposed fees.

Proposed § 381.106 provides that the Commission may waive or reduce fees if to do so is necessary to prevent an undue economic burden.

Proposed § 381.107 provides that the Commission may order any filing, the processing of which requires an extraordinary amount of time and staff resources, to be assessed fees under a direct billing procedure. Any fees paid under Part 381 upon submission of the filing would be credited against the direct bill.

Sections 381.401, 381.402, and 381.403 affect small producer certificates, large producer certificates and producer rate schedule supplements or rate changes, under the NGA. These fees are proposed in a separate docket.[19]

Proposed § 381.404 establishes a $8,800 fee payable upon the submission of a pipeline certificate application, including a blanket certificate application. If the application is set for a full or limited evidentiary hearing, § 381.404 establishes a $63,300 fee, requiring an additional payment of $54,500, after the application is set for hearing.

Proposed § 381.405 establishes a $8,300 fee payable upon the submission of a request for authorization pursuant to the blanket certificate notice and protest procedures.

Proposed § 381.406 establishes a $6,300 fee payable upon the submission of a curtailment filing. If the filing is set for a full or limited evidentiary hearing, § 381.406 establishes a $23,600 fee, requiring an additional payment of $17,300 after the filing is set for hearing.

In addition, this proposed rule amends the Commission's regulations relating to the above-mentioned categories of service to require each applicant to file the proper fee with each application.

VII. Initial Regulatory Flexibility Analysis

Whenever the Commission is required by section 553 of the Administrative Procedure Act (APA) (5 U.S.C. 553) to publish a general notice of proposed rulemaking, it is also required by section 603 of the Regulatory Flexibility Act (RFA) (5 U.S.C. 601–612) to prepare and make available for public comment an initial regulatory flexibility analysis. The analysis must describe the impact the proposed rule will have on small entities. The broad purpose of the RFA is to ensure more careful and informed agency consideration of rules that may significantly affect small entities and to encourage analyses of these rules as well as the agency's consideration of alternative approaches that may better resolve any unnecessarily costly or adverse effects on small entities.

In this preamble, the Commission presents its reasons for this agency action, its objectives, and the legal basis for this rulemaking. As discussed, the proposed rule would establish a schedule of fees to be paid the Commission for certain benefits it provides. The proposed rule would not impose any reporting, recordkeeping, or compliance requirements.

This rule would affect interstate natural gas pipelines. There are approximately 150 interstate natural gas pipelines in the United States. The Small Business Administration's (SBA) regulations do not establish specific size standards for natural gas pipelines. (*See* 13 CFR Part 121.) Most pipelines, however, especially interstate pipelines, are large businesses. Only about 40 of these could possibly be classified as small entities.[20]

Where a proposal may have significant economic impact on a substantial number of small entities, section 603(c) of the RFA requires the Commission to discuss significant alternatives to the proposal. The Commission has already attempted to minimize any disproportionate burden the proposal would have on pipelines that may be small entities. The proposal contains a provision for waiver or reduction of any fees as needed to avoid imposition of an undue economic burden. The Commission could, of course, consider reducing the fees, or even eliminating the fees with respect to small pipelines. However, in proposing the fees the Commission is also attempting to satisfy the statutory directive of the IOAA to be "self-sustaining to the full extent possible." The Commission believes the rule, as proposed, represents a fair balance that will satisfy the purposes of both the IOAA and the Regulatory Flexibility Act.

VIII. Written Comment Procedures

Interested persons may comment on this proposed rulemaking by submitting data, views, or arguments to the Office of the Secretary, Federal Energy Regulatory Commission, 825 North Capitol Street, N.E., Washington, D.C. 20426, not later than November 9, 1982. Each person submitting a comment should indicate that the comments are being submitted in Docket No. RM82–31–000, and should give reasons, including any supporting data, for any recommendations. Comments should also indicate 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 Commission. All comments will be available for public inspection at the

[19] Notice of Proposed Rulemaking, "Fees Applicable to Producer Matters Under the Natural Gas Act," Docket No. RM82–25, issued May 6, 1982.

[20] For this analysis, small entities are those classified as Class C or Class D natural gas companies, that is, companies earning $25,000 or more per year, but less than $1,000,000. (See 18 CFR Part 201, Uniform System of Accounts Prescribed for Natural Gas Companies Subject to the Provisions of the Natural Gas Act.) In addition, small entities include those companies earning less than $25,000 a year or those which are so new that they cannot yet be classified.

Commission's Office of Public Information, Room 1000, 825 North Capitol Street, N.E., Washington, D.C. during business hours.

(Department of Energy Organization Act, 42 U.S.C. 7101–7; E.O. 12009, 3 CFR 142 (1978) Independent Offices Appropriations Act, 31 U.S.C. 483a)

List of Subjects

18 CFR Part 2

Administrative practice and procedure, Electric power, Environmental Impact Statements, Natural gas, pipelines.

18 CFR Part 152

Natural gas.

18 CFR Part 153

Exports, imports, Natural gas.

18 CFR Part 154

Natural gas.

18 CFR Part 156

Administrative practice and procedure, Natural gas.

18 CFR Part 157

Natural gas.

18 CFR Part 281

Natural gas.

18 CFR Part 284

Continental shelf, Natural gas, Reporting requirements.

18 CFR Part 375

Authority delegations (Government Agencies), Seals and insignia, Sunshine Act.

18 CFR Part 381

General fees.

In consideration of the foregoing, the Commission proposes to amend Chapter I, Title 18 Code of Federal Regulations as set forth below.

By direction of the Commission.

Kenneth F. Plumb,

Secretary.

1. Chapter I, Subchapter W is amended in its table of contents by adding in the appropriate numerical order, a new part and heading, to read as follows:

* * * * *

SUBCHAPTER W—REVISED GENERAL RULES

* * * * *

Part

* * * * *

381 Fees

* * * * *

PART 2—GENERAL POLICY AND INTERPRETATIONS

§ 2.78 [Amended]

2. Section 2.78 is amended in the introductory clause of paragraph (b) by inserting between the words "section" and "and" the phrase ", shall be accompanied by the fee prescribed by Part 381 of this chapter,".

§ 2.79 [Amended]

3. Section 2.79 is amended in the introductory clause of paragraph (g) by inserting between the words "by" and "the" the phrase "the fee prescribed by Part 381 of this chapter, and".

PART 152—APPLICATION FOR EXEMPTION FROM THE PROVISIONS OF THE NATURAL GAS ACT PURSUANT TO SECTION 1(c) THEREOF

§ 152.3 [Amended]

4. Section 152.3 is amended in the introductory clause by replacing the phrase "Part 159 of this subchapter" with the phrase "Part 381 of this chapter".

PART 153—APPLICATION FOR AUTHORIZATION TO EXPORT OR IMPORT NATURAL GAS

§ 153.3 [Amended]

5. Section 153.3 is amended in the introductory clause by replacing the phrase "Part 159 of this subchapter" with the phrase "Part 381 of this chapter".

§ 153.11 [Amended]

6. Section 153.11 is amended in the third sentence of the introductory paragraph by replacing the phrase "Part 159 of this subchapter" with the phrase "Part 381 of this chapter".

PART 154—RATE SCHEDULES AND TARIFFS

§ 154.21 [Amended]

7. Section 154.21 is amended in the first sentence by deleting the comma between the words "part" and "and" and inserting in lieu thereof the phrase "accompanied by the fee prescribed by Part 381 of this chapter.".

PART 156—APPLICATIONS FOR ORDERS UNDER SECTION 7(a) OF THE NATURAL GAS ACT

§ 156.3 [Amended]

8. Section 156.3 is amended in the introductory clause of paragraph (b) by replacing the phrase "Part 159 of this subchapter" with the phrase "Part 381 of this chapter".

PART 157—APPLICATIONS FOR CERTIFICATES OF PUBLIC CONVENIENCE AND NECESSITY AND FOR ORDERS PERMITTING AND APPROVING ABANDONMENT UNDER SECTION 7 OF THE NATURAL GAS ACT

§ 157.6 [Amended]

9. Section 157.6 is amended in the introductory clause of paragraph (b) by replacing the phrase "Part 159 of this subchapter" with the phrase "Part 381 of this chapter".

10. Section 157.7 is amended by adding a new paragraph (h) at the end thereof, to read as follows:

§ 157.7 Abbreviated applications.

* * * * *

(h) *Filing fees.* Each application filed in accordance with paragraphs. (b), (c), (d), (e), and (g) of this section must be accompanied by the fee prescribed by Part 381 of this chapter.

§157.103 [Amended]

11. Section 157.103 is amended in the introductory clause by inserting between the words "subpart" and "must" the phrase "must be accompanied by the fee prescribed by Part 381 of this chapter and".

12. Section 157.204 is amended by adding a new paragraph (e) at the end thereof, to read as follows:

§157.204 Application procedure.

* * * * *

(e) Each application for a blanket certificate under this subpart must be accompanied by the fee prescribed by Part 381 of this chapter.

§ 157.205 [Amended]

13. Section 157.205 is amended in paragraph (b) in the first sentence by inserting between the words "Commission" and "an" the phrase, "the fee prescribed by Part 381 of this chapter and".

PART 281—NATURAL GAS CURTAILMENT UNDER THE NATURAL GAS POLICY ACT OF 1978

14. Section 281.204 is amended in paragraph (b) by adding a new subparagraph (4) at the end thereof, to read as follows:

§ 281.204 Tariff filing requirements.

* * * * *

(b) *Index of entitlements.*

* * * * *

(4) *Filing fees.* Each index of entitlements must be accompanied by the fee prescribed by Part 381 of this chapter.

PART 284—CERTAIN SALES AND TRANSPORTATION OF NATURAL GAS UNDER THE NATURAL GAS POLICY ACT OF 1978 AND RELATED AUTHORITIES

15. Section 284.107 is amended by adding a new paragraph (c) at the end thereof, to read as follows:

§ 284.107 Application.

* * * * *

(c) *Filing fees.* Each application must be accompanied by the fee prescribed by Part 381 of this chapter.

16. Section 284.127 is amended by adding a new paragraph (c) at the end thereof, to read as follows:

§ 284.127 Application.

* * * * *

(c) *Filing fees.* Each application must be accompanied by the fee prescribed by Part 381 of this chapter.

§ 284.165 [Amended]

17. Section 284.165 is amended in the first sentence of paragraph (a) by inserting after the phrase "with the Commission," the phrase "accompanied by the fee prescribed by Part 381 of this chapter,".

§ 284.208 [Amended]

18. Section 284.208 is amended in the introductory clause of paragraph (b) by inserting between the words "subpart" and "shall" the phrase "must be accompanied by the fee prescribed by Part 381 of this chapter and".

§ 284.221 [Amended]

19. Section 284.221 is amended in the introductory clause of paragraph (c) by inserting between the words "certificates" and "shall" the phrase "must be accompanied by the fee prescribed by Part 381 of this chapter and".

§ 284.222 [Amended]

20. Section 284.222 is amended in the introductory clause of paragraph (c) by inserting between the words "certificates" and "shall" the phrase "must be accompanied by the fee prescribed by Part 381 of this chapter and".

21. Subchapter W is amended by adding a new Part 381 to read as follows:

SUBCHAPTER W—REVISED GENERAL RULES

* * * * *

PART 381—FEES

Subpart A—General Provisions

Sec.
381.101 Purpose.
381.102 Definitions.
381.103 Filings.
381.104 Annual adjustment of fees.
381.105 Method of payment.
381.106 Reductions and waivers.
381.107 Direct billing.

Subpart B—Fees Applicable to General Functions

381.201 Declaratory orders.
381.202 Interpretations by the office of the chief accountant.
381.203 Review of DOE denials of adjustment.
381.204 Review of DOE remedial orders.

Subpart C—Fees Applicable to the Natural Gas Policy Act of 1978

381.301 Adjustments.
381.302 Well-category determinations.
381.303 Initial reports for title III transactions.
381.304 Extension reports for title III transactions.
381.305 Interpretations by the office of the general counsel.

Subpart D—Fees Applicable to the Natural Gas Act and Related Authorities

381.401 Blanket small producer certificates.
381.402 Producer certificates of public convenience and necessity.
381.403 Producer rate schedules.
381.404 Pipeline certificate applications.
381.405 Requests for authorization under the blanket certificate notice and protest procedures.
381.406 Curtailment filings.
381.407 Amendment.

Subpart E—Fees Applicable to the Federal Power Act [Reserved]

Subpart F—Fees Applicable to the Public Utility Regulatory Policies Act of 1978 [Reserved]

Subpart G—Fees Applicable to the Interstate Commerce Act [Reserved]

Authority: Department of Energy Organization Act, 42 U.S.C. 7101–7352; E.O. 12009, 3 CFR 442 (1978); Independent Offices Appropriations Act, 31 U.S.C. 483a.

Subpart A—General Provisions

§ 381.101 Purpose.

The purpose of this part is to set forth the fees that the Commission has established for services and benefits provided by the Commission.

§ 381.102 Definitions.

For purposes of this part, the following definitions apply.

(a) "Person" means any person, group, association, organization, partnership, corporation, or business, except those engaged in the transaction of official business of the Government.

(b) "Work year cost" means the ratio of the Commission's budgeted expenses during any given fiscal year to the authorized staff level for that fiscal year.

(c) "Filing" means any application, petition, request, or motion submitted to the Commission in connection with any of the services or benefits for which a fee is established in this part.

§ 381.103 Filings.

(a) *Submittal of fees.* Except as provided in § 381.106, a fee in the amount set forth in this part must accompany each filing for which a fee has been established.

(b) *Deficiencies.* (1) Any filing which is not accompanied by either the fee established for that filing or a request for reduction or waiver in accordance with § 381.106 is deficient.

(2) The Secretary will inform any person who submits a deficient filing that:

(i) Such filing will be rejected, unless the appropriate fee is submitted within a specified time;

(ii) The Commission will not process any filing which is deficient under this paragraph; and

(iii) The date of filing will be deemed the date on which the Commission receives the appropriate fee.

(3) This provision does not preclude a determination that a filing is deficient for any other reason.

(c) *Choice of two fees.* If a filing for one service or benefit may be considered as falling within two or more categories of service for which a fee is established, that filing must be accompanied by the higher or highest of the applicable fees.

§ 381.104 Annual adjustment of fees.

(a) *Update and publication.* Beginning in fiscal year 1983, fees established in this part are updated annually, in accordance with this section. Updated fees and published in the **Federal Register** and as an appendix to this part.

(b) *Payment of updated fees.* Any person who, after fiscal year 1982, submits a filing for which a fee is established in this part must pay the updated fee under this section or, if the fee has not been updated at the time of the filing, the currently effective fee.

(c) *Formula.* The fee applicable to a fee category in each fiscal year is the fee for the previous fiscal year for that category, multiplied by the ratio of the work year cost for the fiscal year for which the fee is determined to the work year cost for the previous fiscal year. The fee is rounded down to the nearest five dollar increment.

(d) *Effective date of fee.* Any fee updated under this section becomes effective on the thirtieth day after publication in the **Federal Register** of the revised appendices to this part, or the first day of the fiscal year for which the fee is updated, whichever is later.

§ 381.105 Method of payment.

Fee payments must be made by certified check or money order payable to the Treasurer of the United States.

§ 381.106 Reductions and waivers.

(a) *When to request.* At the time that a filing is submitted to the Commission the applicant may request a waiver or reduction of the fee prescribed in this part.

(b) *Basis.* The applicant must show that waiver or reduction of the fee is necessary to prevent undue economic burden on the applicant.

(c) *Commission action.* The Commission or its delegatee will notify the applicant within 21 days of the decision to grant or deny the request for waiver or reduction. The filing will not be processed until disposition of the waiver request.

§ 381.107 Direct billing.

(a) *Applicability.* If a filing presents issues of fact or law, procedural difficulty, or technical complexity, which require an extraordinary amount of Commission time and effort to be devoted to processing that filing, the Commission will institute a direct billing procedure for that filing. Fees assessed by a direct billing procedure in accordance with this section will supersede the fees established in this part for the appropriate category of service.

(b) *Procedures.* (1) If the Commission determines that a filing meets the standards prescribed in paragraph (a), the Commission may order that the full cost of processing the filing be recovered under a direct billing procedure. The Commission will make a direct billing determination under this paragraph not later than one year after the filing is accepted for filing by the Commission.

(2) Direct billing will not be instituted with respect to any filing until the person who submitted the filing is notified that direct billing will be applied to the filing in lieu of the fees established under this part.

(3) Any fee submitted with the filing will be applied, as a credit, to the amount billed directly for processing costs. The Secretary will thereafter periodically bill the person who submitted the filing for the actual direct and indirect costs which are incurred in processing the filing after the Commission orders the direct billing procedure instituted.

Subpart C—Fees applicable to the Natural Gas Policy Act of 1978

§ 381.301 Adjustments [Reserved]

§ 381.302 Well-category determinations [Reserved]

§ 381.303 Initial reports for Title III transactions [Reserved]

§ 381.304 Extension reports for Title III transactions [Reserved]

Subpart D—Fees Applicable to the Natural Gas Act and Related Authorities

§ 381.401 Blanket small producer certificates [Reserved]

§ 381.402 Producer certificates of public convenience and necessity [Reserved]

§ 381.403 Producer rate schedules [Reserved]

§ 381.404 Pipeline certificate applications.

(a) *Definition.* For purposes of this section, "pipeline certificate application" means any application for authorization by any person, other than an independent producer, made pursuant to:

(1) Section 7 of the Natural Gas Act filed in accordance with Parts 2, 156, 157 and 284 of this chapter;

(2) Sections 311 and 312 of the Natural Gas Policy Act of 1978 filed in accordance with §§ 284.107, 284.127, and 284.162 of this chapter;

(3) Sections 5 or 25 of the Outer Continental Shelf Lands Act;

(4) Section 1(c) of the Natural Gas Act filed in accordance with § 152.3 of this chapter;

(5) Section 3 of the Natural Gas Act filed in accordance with Part 153 of this chapter; or

(6) Executive Order No. 10485.

(b) *Fee.* Unless the Commission orders direct billing under § 381.107 or otherwise, the initial fee established for a pipeline certificate application is $8,800.00 for fiscal year 1982 and, for subsequent fiscal years, is the fee established by § 381.104. The fee established for a pipeline certificate application which is set for hearing is $63,300.00 for fiscal year 1982 and, for subsequent fiscal years, is the fee established by § 381.104. The fee filed under this paragraph must be submitted in accordance with Subpart A of this part and, as appropriate, §§ 2.79, 152.3, 153.3, 153.11, 156.3(b), 157.6(b), 157.7, 157.103, 157.204(e), 284.107, 284.127, 284.162, 284.208, 284.221, or 284.222.

(c) *Procedure.* Any person who submits a pipeline certificate application which is set for hearing must pay the difference between the initial fee and the fee established for an application set for hearing, not later than 30 days after the issuance of an order setting the matter for hearing.

(d) *Effective date.* Any pipeline certificate application filed with the Commission prior to the effective date of this section must be accompanied by the fee established by Part 159 of this chapter.

§381.405 Requests under the blanket certificate notice and protest procedures.

The fee established for a request for authorization under the blanket certificate notice and protest procedures is $8,300.00 for fiscal year 1982 and, for subsequent fiscal years, is the fee established by § 381.104. The fee must be submitted in accordance with Subpart A of this part and § 157.205(b).

§ 381.406 Curtailment filings.

(a) *Definition:* For purposes of this section, "curtailment filing" means:

(1) A request for relief from curtailment under the Natural Gas Act, filed in accordance with § 2.78(b) of this chapter.

(2) A tariff filing pertaining to pipeline curtailment under section 4 of the Natural Gas Act, filed in accordance with Part 154 of this chapter; and

(3) An index of entitlements under section 401 of the Natural Gas Policy Act, filed in accordance with § 281.204 of this chapter.

(b) *Fee.* The initial fee for a curtailment filing is $6,300.00 for fiscal year 1982 and, for subsequent fiscal years, is the fee established by § 381.104. The fee for a curtailment filing which is set for hearing is $23,600.00 for fiscal year 1982 and, for subsequent fiscal years, is the fee established by § 381.104. The fee must be submitted in accordance with Subpart A of this part and, as appropriate, §§ 2.78, 154.21, or 281.204.

(c) *Procedure.* Any person who submits a curtailment filing which is set for hearing must pay the difference between the initial fee and the fee established for filing set for hearing, within 30 days after the issuance of an order setting the matter for hearing.

§ 381.407 Amendment.

The fee established for any application to amend an existing pipeline certificate or curtailment plan is the fee established in §§ 381.404 and 381.406 of this part.

Subpart E—Fees Applicable to the Federal Power Act [Reserved]

Subpart F—Fees Applicable to the Public Utility Regulatory Policies Act of 1978 [Reserved]

Subpart G—Fees Applicable to the Interstate Commerce Act [Reserved]

PART 375—THE COMMISSION

22. Section 375.307 is amended by adding a new paragraph (v) at the end thereof, to read as follows:

§ 375.307 Delegations to the Director of the Office of Pipeline and Producer Regulation.

* * * * *

(v) Waive or reduce the fees prescribed in §§ 381.404, 381.405, and 381.406 of this chapter, in accordance with § 381.106 of this chapter.

[FR Doc. 82-25286 Filed 9-14-82; 8:45 am]

BILLING CODE 6717-01-M

DEPARTMENT OF DEFENSE

Office of the Secretary

32 CFR Part 199

[DOD Reg. 6010.8-R, Amendment]

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

AGENCY: Defense.

ACTION: Proposed amendment to rule.

SUMMARY: This proposed rule would amend DOD 6010.8-R (32 CFR Part 199), regarding benefits for the treatment of mental disorders. This amendment is necessary to implement policy decisions of the Secretary of Defense made to improve benefits for Civilian Health and Medical Program of the Uniformed Services (CHAMPUS) beneficiaries in need of such treatment and to improve the Program's ability to monitor the cost and quality of this significant benefit area. The amendment is intended to help assure that the CHAMPUS benefit reflects the generally accepted practices of providers of mental health treatment and that the program is able effectively to fulfill its responsibility for administration of Government funds.

DATE: Written public comments must be received on or before October 14, 1982.

ADDRESS: Office of the Civilian Health and Medical Program of the Uniformed Services (OCHAMPUS), Policy Branch, Aurora, CO 80045.

FOR FURTHER INFORMATION CONTACT: Charles M. Gallegos, Chief, Policy Branch, OCHAMPUS, telephone (303) 361-8608.

SUPPLEMENTARY INFORMATION: In FR Doc. 77-7834, appearing in the **Federal Register** on April 4, 1977 (42 FR 17972), the Office of the Secretary of Defense published its regulation, DOD 6010.8-R, "Implementation of the Civilian Health and Medical Program of the Uniformed Services (CHAMPUS)," as Part 199 of this title.

The treatment of mental disorders is a significant benefit under the CHAMPUS, for reasons which include the fact that the Uniformed Services medical treatment facilities have limited capacity to provide such services. Military dependents and retirees who might have access to the Uniformed Services medical treatment facilities for most of their medical care must more often rely on civilian providers when in need of treatment for psychological and emotional disorders.

Since the publication of the CHAMPUS regulation in 1977, we have identified a number of issues in the program's benefits for the treatment of mental disorders which should be clarified or amended. These modifications are necessary for a variety of reasons: changes in professional practices, areas of the benefit which require closer monitoring of the quality of the services for which the government pays, and areas in which current limitations and requirements are unnecessarily burdensome.

This amendment includes most of the benefit issues which we have had under consideration in the area of the treatment of mental disorders.

Definition of Mental Disorder

We have included in the Regulation a definition of mental disorder which closely conforms to the definition contained in the *Diagnostic and Statistical Manual of Mental Disorders, Third Edition* (DSM-III). CHAMPUS believes that this definition more clearly states the program's intent to cover only conditions which not only cause distress but also interfere with the patient's ability to function in age-appropriate tasks, such as work and school.

Basic Benefit for Treatment of Mental Disorders

In addition to the revised definition of "mental disorder", this amendment will restate, with some changes, the basic benefit for treatment of mental disorders. That section of the Regulation which provides for coverage of the treatment of mental disorders will include a listing of the specific services and the specific categories of providers which are covered. Certain existing restrictions on the length of psychotherapy sessions which will be covered and requirements for review of claims will be modified. We feel the provisions proposed in the amendment more accurately reflect generally accepted professional practice in the treatment of mental disorders.

Residential Treatment Centers

In FR Doc 81-22362, appearing in the **Federal Register** on July 31, 1981 (46 FR 39167), the Secretary of Defense published a notice of proposed rule-making which announced the intention to eliminate residential treatment centers as authorized providers under CHAMPUS. The basis for this proposal was our continued difficulty in monitoring the necessity, costs, and quality of the services provided to CHAMPUS beneficiaries. Because public comment on this proposal supported stronger controls rather than elimination, the Secretary withdrew the notice of proposed rulemaking (46 FR 61299), and agreed to address administrative concerns through strengthened controls.

Accordingly, this proposal includes several provisions related to coverage of the services provided by residential treatment centers. Much of this material reflects long-standing program policies which were addressed in sources other than the Regulation.

The key provisions include:

- The inclusion in the definition of residential treatment centers of the requirements that children admitted for treatment must exhibit a mental disorder, as defined previously, that the children admitted must be in need of a protected, structured environment in order to receive treatment, that the goals of treatment must be to improve the child's ability to function outside of the protected, structured environment, and that treatment must be furnished by qualified, authorized personnel.
- A statement of the minimum requirements for recognition of residential treatment centers as authorized providers: accreditation by the Joint Commission on Accreditation of Hospitals, compliance with CHAMPUS Standards for Residential Treatment Centers, substantial compliance with the Standards for Residential Child Care as developed by the Interstate Consortium on Residential Child Care, and entering into a participation agreement with OCHAMPUS.
- Removal of the requirement for preauthorization of admissions to residential treatment centers.

Treatment of Alcoholism

The Office of the Civilian Health and Medical Program of the Uniformed Services (OCHAMPUS) sponsored a conference of experts in the treatment of alcoholism to advise us on possible modifications to the benefit for treatment of alcoholism. The recommendations provided by the conference as well as the policies of major government and private third party health benefits programs were considered in developing the proposal published here.

The key provisions include:

- Covering the treatment of alcoholism on the basis of a benefit period which would begin with the first day of covered alcoholism treatment and end 365 days later. Beneficiaries would be entitled to three benefit periods in a lifetime.
- Within a benefit period, a beneficiary would be entitled to any or all of the following services provided by a CHAMPUS-authorized alcoholism rehabilitation facility:

Twenty-one days of rehabilitative care—in a residential or day/night care setting.

Sixty outpatient visits.

Fifteen family therapy sessions.

- In order to be recognized as a CHAMPUS-authorized alcoholism rehabilitation facility, providers would have to be accredited by the Joint Commission on Accreditation of Hospitals and would have to enter into a participation agreement with OCHAMPUS.

Standards for Professional Providers

In addition to standards for residential treatment centers and alcoholism rehabilitation facilities, this proposed amendment also includes new or revised standards for CHAMPUS authorization for certain types of providers who treat mental disorders. These standards are based on those of the particular professional organizations for the specific provider category.

The providers for whom new or revised standards are proposed are:

Clinical Psychologists
Psychiatric Nurse Pracititioners
Clinical Social Workers

This proposed amendment also includes several technical and clarifying amendments, both those necessary for conformance with the substantive amendments discussed previously and those which correct inadvertent omissions:

Examples of the latter type include:

- Authority for the Director, OCHAMPUS, to waive the requirement for preauthorization of certain types of care when the care would otherwise be payable except for the failure of the beneficiary to request preauthorization.
- A provision clarifying that those admissions to a course of inpatient care ordered by a CHAMPUS-authorized, non-physician provider may be considered for benefits if the provider is practicing within the scope of his or her state license and the service is otherwise covered.
- Revision of certain material for conformity to the substantive changes proposed in this amendment.

This amendment is being published for proposed rulemaking at the same time it is being coordinated within the Department of Defense, with the Department of Health and Human Services, and with other interested agencies in order that consideration of both internal and external comments and publication of the final rulemaking document can be expedited.

List of Subjects in 32 CFR Part 199

Claims, Handicapped, Health insurance and Military personnel.

Accordingly, it is proposed to amend 32 CFR Chapter I, Part 199 reading as follows:

PART 199—IMPLEMENTATION OF THE CIVILIAN HEALTH AND MEDICAL PROGRAM OF THE UNIFORMED SERVICES

1. In § 199.8, paragraph (b)(14)(i), (18), (35), (57), (77), (102), (104), (137), and (155) are revised to read as follows:

§ 199.8 Definitions.

* * * * *

(b) * * *

(14) *Appropriate Medical Care.* "Appropriate Medical Care" means:

(i) Services performed in connection with the diagnosis or treatment of disease or injury, pregnancy, mental disorder, or well-baby care which are in keeping with the generally accepted norms for medical practice in the United States;

* * * * *

(18) *Basic Program.* "Basic Program" means the primary medical benefits authorized under chapter 55 of title 10, United Stated Code, and set forth in § 199.10 of this part.

* * * * *

(35) *Clinical Psychologist.* "Clinical Psychologist" means a psychologist, certified or licensed at the independent practice level in his or her state, who is duly trained and experienced in the delivery of direct assessment and therapeutic intervention services to individuals with mental disorders and who meets the criteria in § 199.12 of this part.

* * * * *

(57) *DSM–III.* "DSM–III" means the Diagnostic and Statistical Manual of Mental Disorders, Third Edition.

* * * * *

(77) *Hospitals: Psychiatric.* "Psychiatric Hospital" means an institution which is primarily engaged in providing services for the diagnosis and treatment of mental disorders to inpatients.

* * * * *

(102) *Medical.* "Medical" means the generally used term which pertains to the diagnosis and treatment by trained and licensed or certified health professionals of illness, injury, pregnancy, and mental disorder. For purposes of CHAMPUS, the term includes "medical, psychological, surgical and obstetrical" care, condition, or services unless it is specifically stated in this part that a more restrictive meaning is intended.

* * * * *

(104) *Medically or Psychologically Necessary.* "Medically or Psychologically Necessary" means the frequency, extent, and types of medical services and supplies which represent appropriate medical care and which are generally accepted by qualified professionals to be adequate for the diagnosis and treatment of illness, injury, and pregnancy, or for the diagnosis and treatment of mental disorders or for well-baby care.

* * * * *

(137) *Preauthorization.* "Preauthorization" means written preapproval required under this Part for admissions to specified institutions, for specified surgery, for adjunctive dental care and for all services and supplies under the Program for the Handicapped.

* * * * *

(155) *Residential Treatment Center for Children and Adolescents with Mental Disorders (RTC).* "Residential Treatment Center (RTC)" means a facility (or distinct unit of a facility) which involves a total, twenty-four hour, therapeutically planned group living and learning situation where distinct and individualized psychotherapeutic interventions can take place. A residential treatment center is organized and professionally staffed to provide residential treatment of mental disorders to children and adolescents who have sufficient intellectual potential to respond to active psychiatric treatment (i.e., for whom it can reasonably be assumed that treatment of the mental disorder will

result in an improved ability to function outside the residential treatment center), for whom outpatient treatment is not appropriate, and for whom a protected and structured environment is medically of psychologically necessary.

* * * * *

2. In § 199.8, by removing paragraph (b)(147) *Psychiatric Services* and substituting a new paragraph (b)(147) *Psychiatric Nurse Practitioner*, and by removing the language of paragraph (b)(157) *RTC*, and reserving the number designation to read as follows:

* * * * *

(b) * * *

(147) *Psychiatric Nurse Practitioner.* "Psychiatric Nurse Practitioner" means an individual who is a licensed, registered nurse and has at least a master's degree in nursing with a specialization in pyschiatric and mental health nursing and meets the criteria of this part.

* * * * *

(157) [Reserved]

* * * * *

3. In § 199.8, by adding, following paragraph (b)(35) *Clinical Psychologist*, a new paragraph (b)(36) *Clinical Social Worker* and redesignating subsequent definitions; and by adding, following paragraph (b)(107) *Medicare*, a new paragraph (b)(108) *Mental Disorder* and by redesignating subsequent definitions to read as follows:

* * * * *

(b) * * *

(36) *Clinical Social Worker.* "Clinical Social Worker" means an individual who is licensed or certified as a clinical social worker by the jurisdiction where practicing and meets the criteria of § 199.12, of this part.

* * * * *

(108) *Mental Disorder.* "Mental Disorder" means a nervous or mental condition which involves a clinically significant behavioral or psychological syndrome or pattern that occurs in an individual and is associated with a painful symptom (distress) *and* an impairment in functioning in one or more major age-appropriate life activity (disability). A mental disorder involves a behavioral, psychological, or biological dysfunction and not simply social nonconformity.

* * * * *

4. In § 199.10, by revising paragraphs (c)(2)(v), (c)(3)(vi), (c)(3)(ix), and (g)(1), (g)(6), (g)(22), and (g)(44), and by removing the language in paragraphs (g)(32), (g)(45), (g)(48), and (g)(49) and reserving the number designations to read as follows:

§ 199.10 Basic program benefits.

* * * * *

(c) * * *

(2) * * *

(v) *Treatment of Mental Disorders.* "Treatment of Mental Disorders" means individual and group psychotherapy, family and conjoint psychotherapy, drug management, ancillary therapy modalities, and related diagnostic services.

* * * * *

(3) * * *

(vi) *Inpatient Care: Concurrent.* Concurrent inpatient care by more than one individual professional provider is covered if required because of the severity and complexity of the beneficiary's condition, or because the beneficiary has multiple conditions which require treatment by providers of different medical specialties.

* * * * *

(ix) *Treatment of Mental Disorders.* CHAMPUS benefits for the treatment of mental disorders are payable for beneficiaries who are outpatients or who are inpatients of CHAMPUS-authorized general or psychiatric hospitals, residential treatment centers or specialized treatment facilities, as authorized by the Director, OCHAMPUS, or a designee. In order to be covered, treatment of mental disorders must be provided by a qualified, CHAMPUS-authorized provider. Qualified providers are psychiatrists or other physicians; clinical psychologists or psychiatric nurse practitioners; and, under the supervision of a physician, clinical social workers or marriage, family or pastoral counselors.

(*a*) *Covered Services.* CHAMPUS benefits are payable for the following professional services when rendered in the diagnosis or treatment of a covered mental disorder by an authorized, qualified provider practicing within the scope or his or her license. All such services are subject to review, including professional review, for medical or psychological necessity and appropriateness.

(*1*) *Individual Psychotherapy, adult or child.* A covered individual psychotherapy session is no more than 60 minutes in length. An individual psychotherapy session of up to 120 minutes in length may be payable for crisis intervention.

(*2*) *Group Psychotherapy.* A covered group psychotherapy session is no more than 90 minutes in length.

(*3*) *Family or Conjoint Psychotherapy.* A covered family or conjoint psychotherapy session is no more than 90 minutes in length. A family or conjoint psychotherapy session of up to 180 minutes in length may be payable for crisis intervention.

(*4*) *Psychoanalysis.* Subject to specific review for appropriateness by the Director, OCHAMPUS, or a designee.

(*5*) *Ancillary Therapies.* Includes art, music, dance, occupational and other designated ancillary therapies, when included by the attending provider in an approved treatment plan.

(*6*) *Psychological Testing and Assessment.*

(*7*) *Administration of Psychotropic Drugs.* When prescribed by an authorized provider qualified by licensure to prescribe drugs.

(*8*) *Electroconvulsive Treatment.*

(*9*) *Collateral Visits.* Sessions with patient's family or significant others for purposes of information gathering or implementing treatment goals.

(*b*) *Limitations and Review Requirements.*

(*1*) *Outpatient Psychotherapy.* Outpatient psychotherapy is generally limited to a maximum of two psychotherapy sessions per week, in any combination of individual, family, conjoint, or group sessions. Before benefits can be extended for more than two outpatient psychotherapy sessions per week, professional review of the necessity for and appropriateness of more intensive therapy is required.

(*2*) *Inpatient Psychotherapy.* Coverage of inpatient psychotherapy will be decided on the basis of the medical or psychological necessity of the services included in the individual patient's treatment plan. As a general rule, up to five psychotherapy sessions a week by the patient's attending provider would be considered appropriate for an inpatient. Additional sessions per week or more than one type of psychotherapy session performed on the same day (for example, an individual psychotherapy session and a family psychotherapy session on the same day) could be considered for coverage, depending on the necessity for the services. The Director, OCHAMPUS, shall issue specific guidelines for reviewing the medical and psychological necessity of inpatient psychotherapy.

(*c*) *Review of Claims for Treatment of Mental Disorders.* The Director, OCHAMPUS, shall establish and maintain procedures for review, including professional review, of services provided for the treatment of mental disorders.

* * * * *

(g) * * *

(1) *Not Medically or Psychologically Necessary.* Services and supplies which are not medically or psychologically

necessary for the diagnosis or treatment of a covered illness (including mental disorder) or injury, for the diagnosis and treatment of pregnancy or for well-baby care.

* * * * *

(6) *Therapeutic Absences.* Therapeutic absences from an inpatient facility, except when such absences are specifically included in a treatment plan approved by the Director, OCHAMPUS, or a designee.

* * * * *

(22) *Services or Supplies Ordered by a Court or Other Governmental Agency.* Services or supplies, including inpatient stays, directed or agreed to by a court or other governmental agency, *except* those services and supplies which would otherwise qualify for CHAMPUS coverage in the absence of court or governmental agency involvement.

* * * * *

(32) [Reserved]

* * * * *

(44) *Education/Training.* Academic education or vocational training services and supplies.

(45) [Reserved]

* * * * *

(48) [Reserved]

* * * * *

(49) [Reserved]

* * * * *

5. In § 199.10, by revising paragraphs (b)(4)(v) and (b)(4)(vi) to read as follows:

* * * * *

(b) * * *

(4) * * *

(v) *Treatment of mental disorders.* Direct patienty care services performed by qualified, professional staff (as listed in paragraph (c)(3)(ix) of this section, including but not necessarily limited to: Individual, group, and family psychotherapy, ancillary therapies such as art, music and dance therapy, collateral visits with the patient's family and significant others.

* * * * *

(vi) *Other Necessary Medical Care.* Emergency medical services or other authorized medical care may be rendered by the residential treatment center provided it is professionally capable of doing so and meets those standards required by the Director, OCHAMPUS. It is intended, however, that a residential treatment center should primarily render those services and supplies directly related to treatment of the mental disorder that requires the residential care.

* * * * *

6. In § 199.12, by revising paragraph (b)(4)(v) to read as follows:

§ 199.12 Authorized providers.

* * * * *

(b) * * *

(4) * * *

(v) *Residential Treatment Centers.* A residential treatment center "(RTC)" is a facility (or distinct unit of a facility) which involves a total, twenty-four hour, therapeutically planned group living and learning situation where distinct and individualized psychotherapeutic interventions can take place. A residential treatment center is organized and professionally staffed to provide residential treatment of mental disorders to children and adolescents who have sufficient intellectual potential to respond to active psychiatric treatment (i.e., for whom it can reasonably be assumed that treatment of the mental disorder will result in an improved ability to function outside the residential treatment center), for whom outpatient treatment is not appropriate, and for whom a protected and structured environment is medically or psychologically necessary.

(*a*) In order for the services of a residential treatment center to be covered, the residential treatment center must:

(*1*) Be accredited by the Joint Commission on Accreditation of Hospitals under the Commission Standards for Psychiatric Facilities Serving Children and Adolescents; and

(*2*) Be in compliance with the Standards for Residential Child Care, developed by the Interstate Consortium on Residential Child Care, as required by the Director, OCHAMPUS, or a designee.

(*3*) Have entered a participation agreement with OCHAMPUS within which the residential treatment center agrees, in part:

(*i*) To comply with the CHAMPUS Standards for Residential Treatment Centers Serving Children and Adolescents With Mental Disorders, as issued by the Director, OCHAMPUS.

(*ii*) To accept payment for its services based on a reasonable-cost rate acceptable to the Director, OCHAMPUS, or such other method as determined by the Director, OCHAMPUS.

(*iii*) To furnish OCHAMPUS with cost data certified to by an independent audit by an independent accounting firm or other agency as authorized by the Director, OCHAMPUS.

(*iv*) To accept the CHAMPUS-determined rate as payment in full, and to collect from the CHAMPUS beneficiary or the parents of the CHAMPUS beneficiary only those amounts applicable to the patient's cost-share and to services and supplies which are not a benefit of CHAMPUS.

(*v*) To make all reasonable efforts acceptable to the Director, OCHAMPUS, to collect those amounts which represent the beneficiary's liability as defined in § 199.10 of this part.

(*vi*) To permit access by the Director, OCHAMPUS, or a designee, to its clinical, financial, and organizational records.

(*vii*) To comply with the provisions of § 199.14, Double Coverage, of this part, and to submit claims first to all health insurance coverage to which the beneficiary is entitled that is primary payer to CHAMPUS.

(*viii*) To submit claims for services provided to CHAMPUS beneficiaries at least every thirty days. If claims are not submitted at least every thirty days, the residential treatment center agrees not to bill the beneficiary or the beneficiary's family for any amounts disallowed by CHAMPUS.

(*b*) The residential treatment center will not be considered to be a CHAMPUS-authorized provider and CHAMPUS benefits will not be paid for services provided by the residential treatment center until the date the participation agreement is signed by the Director, OCHAMPUS, or a designee.

(*c*) Even though a residential treatment center may qualify as a CHAMPUS-authorized provider and may have entered into a participation agreement with CHAMPUS, payment by CHAMPUS for a particular admission is contingent upon certain conditions:

(*i*) The child seeking admission must be suffering from a mental disorder which meets the diagnostic criteria of the Diagnostic and Statistical Manual of Mental Disorders, III.

(*ii*) The child must meet the criteria for admission to a residential treatment center published by the Director, OCHAMPUS.

(*iii*) The child must be admitted to the residential treatment center upon the recommendation of a psychiatrist or other physician or a clinical psychologist.

(*iv*) The child's treatment plan must be developed under the direction of a psychiatrist or clinical psychologist.

(*v*) All treatment procedures must be performed by or under the direct supervision of a psychiatrist or clinical psychologist.

(*vi*) All direct treatment services must be performed by qualified, professional providers (refer to § 199.10, paragraph (c)(3)(ix).

* * * * *

7. In § 199.10, by revising paragraphs (e)(4) and (g)(41) *Counseling* to read as follows:

§ 199.10 Basic program benefits.

* * * * *

(e) * * *

(4) *Treatment of Alcoholism.* Authorized services include emergency and inpatient hospital care for complications of alcoholism and rehabilitative care and outpatient care in authorized alcohol rehabilitation facilities for the treatment of alcoholism.

(i) *Emergency and Inpatient Hospital Services.* Emergency and inpatient hospital services are authorized when medically necessary. Active medical treatment of the acute phases of alcoholic withdrawl and the stabilization period usually requires no more than seven days of inpatient hospital care per episode. Any case of inpatient care which continues beyond seven days will be subject to prepayment review to determine whether the longer stay is medically necessary for the beneficiary's medical condition.

(ii) *Authorized Alcoholism Treatment.* In order to be authorized, treatment of alcoholism must be provided in an organized alcoholism treatment program by an authorized free-standing or hospital-based alcohol rehabilitation facility. Authorized services consist of any or all of the services listed below. Each eligible CHAMPUS beneficiary is entitled to three alcholism treatment benefit periods in a lifetime. (A benefit period begins with the first date of covered alcoholism treatment and ends 365 days later, regardless of the benefits actually used within the benefit period. Unused benefits cannot be carried over to subsequent benefit periods.) The particular level of treatment must be prescribed by a physician.

(a) Rehabilitative Care. Rehabilitative care in an authorized alcohol rehabilitation facility, whether free-standing or hospital-based, is covered on either a residential or partial care (day or night program) basis. Coverage is limited to no more than 21 days of rehabilitative care in a benefit period.

(b) Outpatient Treatment. Outpatient treatment in an approved alcohol rehabilitation facility, whether free-standing or hospital-based, is authorized for up to 60 visits in a benefit period.

(c) Family Therapy. Family therapy in an approved alcohol rehabilitation facility, whether free-standing or hospital-based, is authorized for up to 15 visits in a benefit period.

(d) Exclusions.

(1) Aversion Therapy. The programmed use of physical measures, such as electric shock, alcohol, or other drugs, as negative reinforcement (aversion therapy) is not covered, even if recommended by a physician.

(2) Domiciliary Settings. Domiciliary facilities, generally referred to as halfway or quarterway houses, are not authorized providers and charges for services provided by these facilities are not covered.

(e) Confidentiality. Any additional information necessary to adjudicate a claim must be requested in compliance with the provisions of Public Law 92-282, which governs the disclosure of medical and other information from the records of patients undergoing treatment of alcoholism. If the beneficiary refuses to authorize the release of medical records necessary to determine benefits on a claim for treatment of alcoholism, the claim will be denied.

* * * * *

(g) * * *

(41) *Counseling.* Counseling services not medically necessary in the treatment of a diagnosed medical condition (e.g., educational counseling, vocational counseling, counseling for socio-economic purposes, etc.) are excluded from coverage under CHAMPUS. Services provided by a marriage and family counselor in the treatment of a diagnosed mental disorder are only authorized as specifically provided in Section 199.12, "Authorized Providers." Services provided by alcoholism rehabilitation counselors are authorized only in a CHAMPUS-approved alcohol rehabilitation facility and only when the costs of the services are included in the facility's CHAMPUS-determined reasonable cost rate.

* * * * *

8. In § 199.12, by adding a new paragraph (b)(4)(viii)(*b*)(*3*) to read as follows:

§ 199.12 Authorized providers.

* * * * *

(b) * * *

(4) * * *

(viii) * * *

(*b*) * * *

(3) Alcohol Rehabilitation Facilities. In order to be authorized under CHAMPUS as a provider of rehabilitative care, outpatient treatment, and family therapy for the treatment of alcoholism, alcohol rehabilitation facilities, both free-standing and units of licensed hospitals, must operate primarily for the purpose of providing alcoholism treatment (on either an outpatient or an inpatient basis) and must meet the following criteria:

(*a*) The course of treatment must be prescribed and supervised by a physician or a CHAMPUS-approved, non-physician provider practicing within the scope of his or hers state license (when medically indicated, the patient must be under the general supervision of a physician during the entire course of treatment).

(*b*) The type and level of care and services provided by the facility must otherwise be authorized by this Part.

(*c*) The facility must meet all licensing and other certification requirements of the jurisdicition in which the facility is located.

(*d*) The facility must be accredited by the Joint Commission on Accreditation of Hospitals or must meet such other requirements as the Director, OCHAMPUS, finds necessary in the interest of the health and safety of individuals who are furnished services by the facility. (*e*) The facility must have entered into a participation agreement with OCHAMPUS within which the facility agrees, in part:

(*1*) To accept payment for its services based on a reasonable-cost rate acceptable to the Director, OCHAMPUS, or such other method as determined by the Director, OCHAMPUS.

(*2*) To furnish OCHAMPUS with cost data certified to by an independent accounting firm, or other agency authorized by the Director, OCHAMPUS.

(*3*) To accept the CHAMPUS-determined rate as payment in full, and to collect from the CHAMPUS beneficiary only those amounts applicable to the patient's cost-share and to services and supplies which are not a beneft of CHAMPUS.

(*4*) To make all reasonable efforts acceptable to the Director, OCHAMPUS, to collect the beneficiary's cost-share.

(*5*) To permit access by the Director, OCHAMPUS, or a designee, to its clinical, financial, and organizational records.

(*6*) To comply with the provisions of section 199.14, Double Coverage, of this part, and to submit claims first to any health insurance coverage to which the beneficiary is entitled that is primary payer to CHAMPUS.

(*f*) The alcoholism rehabilitation facility will not be considered to be a CHAMPUS-authorized provider and CHAMPUS benefits will not be paid for services provided by the alcoholism rehabilitation facility until the date the participation agreement is signed by the Director, OCHAMPUS, or a designee.

* * * * *

9. In § 199.12, by revising paragraphs (a)(6), (b)(4)(ii)(*b*), and (c)(3)(iii)(*a*); by adding a new paragraph (c)(3)(iii)(*e*) and redesignating paragraph (c)(3)(iii)(*e*) as (c)(3)(iii)(*f*); and by adding a new

paragraph (c)(3)(iii)(*f*)(*4*) to read as follows:

* * * * *

(a) * * *

(6) *Physician Required.* Except as may otherwise be specifically provided in this and other sections of this part, in order to be considered for beneifts, medical services and supplies received from any provider (other than a physician, dentist or other allied health professional, as defined in paragraph (C)(3)(iii) of this section) must be at the direction of, prescirbed by, or order by a physician. A course of inpatient care ordered by a CHAMPUS-authorized, nonphysician provider practicing within the scope of his or her license may be considered for benefits.

* * * * *

(b) * * *

(4) * * *

(ii) *Hospitals, Psychiatric.* A psychiatric hospital is an institution which is primarily engaged in providing services for the diagnosis and treatment of mental disorders to inpatients.

(*a*) * * *

(*b*) In order for the services of a psychiatric hospital to be covered, the hospital must comply with the provisions outlined in paragraph (b)(4)(i) of this section. All psychiatric hospitals *must* be accredited by the JCAH in order for their services to be cost-shared under CHAMPUS.

* * * * *

(c) * * *

(3) * * *

(iii) * * *

(*a*) *Clinical Psychologist.* "Clinical psychologist" means an individual who:

(*i*) Is licensed or certified by the state for the independent practice of psychology; and

(*ii*) Prossesses a doctorate degree from a regionally accredited university; and

(*iii*) Has had two years of supervised (or equivalent) clinical experience in health services of which at least one year is postdoctoral and one year (may be the postdoctoral year) is in an organized health service training program; or

(*iv*) Is listed in the National Register of Health Services Providers in Psychology, published by the Council for the National Register of Health Service Providers in Psychology.

* * * * *

(*e*) *Certified Psychiatric Nurse Practitioner.* A certified psychiatric nurse practitioner may provide covered care independent of physician referral and supervision. A certified psychiatric nurse practitioner is an individual who:

(*i*) Is a licensed, registered nurse; and

(*ii*) Has at least a master's degree in nursing with a specialization in psychiatric and mental health nursing; and

(*iii*) Has had at least two years of post-masters degree practice in the field of psychiatric and mental health nursing, including an average of eight hours of direct patient contact per week; or

(*iv*) Is listed in a CHAMPUS-approved, professionally sanctioned listing of clinical specialists in psychiatric and mental health nursing.

* * * * *

(*f*) * * *

(*4*) *Clinical Social Worker.* A clinical social worker is an individual who:

(*i*) is licensed or certified as a clinical social worker by the jurisdiction where practicing; or, if the jurisdiction does not provide for licensure or certification of clinical social workers, is certified by a national professional organization offering certification of clinical social workers; and

(*ii*) has at least a two-year masters degree in social work with an emphasis on clinical practice, from a graduate school of social work accredited by the Council on Social Work Education, National Association of Social Workers; and

(*iii*) has had a minimum of two years or three thousand hours of post-masters degree supervised clinical social work practice under the supervision of a master's level social worker in an appropriate clinical setting, as determined by the Director, OCHAMPUS, or a designee.

* * * * *

10. In § 199.10, by revising paragraphs (b)(1)(ii), and (b)(1)(ii)(*b*), (b)(1)(ii)(*b*)(*iii*), and (b)(1)(ii)(*b*)(*iv*); by removing the example in paragraph (b)(1)(ii)(*d*)(*5*); by removing the NOTE following paragraph (b)(1)(ii)(*d*)(*6*); and by revising paragraph (g)(19) *Preauthorization Required* to read as follows:

§ 199.10 Basic program benefits.

* * * * *

(b) * * *

(1) * * *

(ii) *Preauthorization.* Preauthorization by the Director, OCHAMPUS (or a designee), is required for admissions to skilled nursing facilities. The Director, OCHAMPUS, reserves the right to require preauthorization for admissions to inpatient specialized treatment facilities. The Director, OCHAMPUS, or a designee, may grant an exception to the requirement for preauthorization when the services would otherwise be payable except for the failure to obtain preauthorization.

* * * * *

(*b*) *Admissions to Authorized Institutions Requiring Preauthorization.* When the Director, OCHAMPUS, requires preauthorization to an inpatient specialized treatment facility, the request for preauthorization is processed by OCHAMPUS. If the beneficiary elects to proceed with an admission prior to receiving written authorization from OCHAMPUS, authorization may be requested subsequently. If the stay in the institution is determined to be appropriate under the provisions of this Part, benefits will be extended retroactive to the date of admission to the institution. If the stay is determined not to qualify under the provisions of this Part, benefits will be denied as of the date the care failed to meet the requirements for coverage.

* * * * *

(*iii*) *Approved Treatment Plan.* A request for preauthorization described in paragraph (b)(ii) of this section requires submission of a detailed treatment plan, in accordance with guidelines and procedures issued by the Director, OCHAMPUS.

(*iv*) *Long Term Inpatient Care.* Even in those cases where preauthorization for an inpatient admission is not required, benefits for inpatient stays in excess of thirty days require the approval of the Director, OCHAMPUS, or a designee. By the twentieth inpatient day, the attending provider shall submit to the Director, OCHAMPUS (or a designee), a detailed treatment plan for review and approval. The Director, OCHAMPUS, shall establish and issue such guidelines and procedures as are necessary to implement this requirement.

* * * * *

(g) * * *

(19) *Preauthorization Required.* Services or supplies which require preauthorization if preauthorization was not obtained. Services or supplies which were not provided according to the terms of the preauthorization. If the Director, OCHAMPUS, grants an exception to the requirement for preauthorization, payment may be made.

* * * * *

11. In § 199.11, by revising paragraphs (c)(4)(i) and (c)(4)(ii) to read as follows:

§ 199.11 Program for the handicapped.

* * * * *

(c) * * *

(4) *Application Approval.*

(i) *Authority for Approval.* The Director, OCHAMPUS (or a designee), is vested with the final authority on all applications for coverage under the

Program for the Handicapped. This includes the determination as to the severity of the handicap and the appropriateness of the supplies or services to the handicapping condition for which coverage is requested. The Director, OCHAMPUS (or a designee), will request such information as is deemed necessary to make these determinations before issuing approvals or denials. Failure to supply such information will result in deferral or denial of the application for coverage.

(ii) *Deferral or Denial of Application.* In those situations where a deferred or denied application for coverage under the Program for the Handicapped is subsequently approved, such subsequent approval may be applied retroactively to the date coverage would have been effective had adequate information been provided.

* * * * *

12. In § 199.12, by revising paragraph (b)(1)(i) to read as follows:

§ 199.12 Authorized providers.

* * * * *

(b) * * *

(1) * * *

(i) *Preauthorization.* Preauthorization by the Director, OCHAMPUS (or a designee) is required for admissions to skilled nursing facilities. The Director, OCHAMPUS, reserves the right to require preauthorization for admissions to inpatient specialized treatment facilities. The Director, OCHAMPUS (or a designee), may grant an exception to the requirement for preauthorization in those cases where the services would be payable except for the failure to obtain preauthorization.

* * * * *

13. In § 199.13, by revising paragraphs (f)(1) and (f)(1)(ii) to read as follows:

§ 199.13 Claims submission, review, and payment.

* * * * *

(f) * * *

(1) *Preauthorization Must Be Granted Before Benefits Can Be Extended.* In those situations requiring preauthorization, the request for such preauthorization must be submitted and approved before benefits may be extended, except as provided in paragraphs (b)(1)(ii)(*a*) and (b)(1)(ii)(*b*) of § 199.10. If a claim for services or supplies is submitted without the required preauthorization, no benefits will be paid, unless the Director, OCHAMPUS, has granted, in writing, an exception to the requirement for preauthorization.

* * * * *

(ii) *The Limit on Preauthorization.* Approved preauthorizations are valid for specific periods of time, usually 90 days. If the preauthorized services/supplies are not obtained or commenced within the specified time limit, a new preauthorization is required before benefits may be extended.

* * * * *

14. In § 199.16, by revising paragraph (c)(2)(i)(*a*) to read as follows:

§ 199.16 Appeal and hearing procedures.

* * * * *

(c) * * *

(2) * * *

(i) * * *

(*a*) Whether to approve a preauthorization request for admissions to inpatient specialized treatment facilities, as determined by the Director, OCHAMPUS: for cosmetic, reconstructive, and plastic surgery; and for adjuctive dental care.

* * * * *

(10 U.S.C. 1079, 1086; 5 U.S.C. 301)

M. S. Healy,

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

September 9, 1982.

[FR Doc. 82-25252 Filed 9-14-82; 8:45 am]

BILLING CODE 3810-01-M

VETERANS ADMINISTRATION

38 CFR Part 21

Vocational Rehabilitation Amendments

AGENCY: Veterans Administration.

ACTION: Proposed regulations.

SUMMARY: The Veterans Administration is publishing for public comment proposed regulations to implement provisions of the Veterans' Rehabilitation and Education Admendments of 1980 (Pub. L. 96-466, 38 U.S.C. ch. 31). These revisions, the first since the establishment of the program for veterans of World War II, update, expand and improve the vocational rehabilitation program and help to assure that service-disabled veterans will benefit from the latest concepts and methods developed in the field of rehabilitation. The regulations contained here implement provisions of the law dealing with the process of determining individual eligibility and entitlement, planning of a rehabilitation program, limitations on the duration of a rehabilitation program, and the role of the Vocational Rehabilitation Panel in the rehabilitation process. These regulations will better acquaint eligible veterans, educational institutions and the public at large with the way the provisions will be implemented.

DATES: Comments must be received on or before October 15, 1982. It is proposed that these regulations be made effective on the same dates as the provisions of law on which they are based. Following this principle, regulations generally limiting assistance under chapter 31 and other VA education programs to 48 months (§§ 21.70–21.78) are to be effective October 1, 1980. All other regulations contained herein (§§ 21.50–21.62 and §§ 21.80–21.98) are to be effective April 1, 1980.

ADDRESSES: Interested persons are invited to submit written comments, suggestions, or objections regarding the proposal to the Administrator of Veterans Affairs (271A), 810 Vermont Avenue NW., Washington, DC 20420. All written comments will be available for public inspection at the above address only between the hours of 8:00 a.m. and 4:30 p.m. Monday through Friday (except holidays) until October 25, 1982.

FOR FURTHER INFORMATION CONTACT: Dr. Stephen L. Lemons, Director, Vocational Rehabilitation and Counseling Service (28), Department of Veterans Benefits, (202) 389–3935.

SUPPLEMENTARY INFORMATION: The VA published a portion of the proposed regulations implementing some of the provisions of the Veterans' Rehabilitation and Education Amendments of 1980 in the Federal Register on April 29, 1982 at pages 18382 through 18386. The proposals contained herein constitute an additional portion of the regulations proposed for this purpose. Specifically these regulations contain policy for determining the veteran's eligibility and entitlement to rehabilitation services, initial and extended evaluation, the development of an individualized written rehabilitation plan, the duration of a rehabilitation program, and the role of the Vocational Rehabilitation Panel in the program.

These proposed regulations do not meet the criteria for major rules as contained in Executive Order 12291, Federal Regulation. There will be no new reporting or record-keeping requirements, or other compliance costs, to business or educational institutions caused by this proposal.

The proposal will not affect other agencies. This proposal may induce some veterans to train under chapter 31, United States Code, who would not have done so otherwise. Furthermore, these proposed regulations will affect every veteran who is eligible to train under chapter 31, U.S.C. These effects of the law on veterans do not place the proposed regulations in the category of

major rules and therefore no regulatory analysis is required. These proposed rules will not have an annual effect of $100 million on the economy, create major increases in costs or prices, impose major record-keeping burdens on anyone nor cause major additional costs to recipients of Federal assistance.

The Administrator hereby certifies that these proposed rules will not, if promulgated, have a significant economic impact on a substantial number of small entities as they are defined in the Regulatory Flexibility Act (RFA), 5 U.S.C. 601–612. Pursuant to 5 U.S.C. 605(b), these proposed rules are therefore exempt from the initial and final regulatory flexibility analyses requirements of sections 603 and 604. The reason for this certification is that the proposed rules simply incorporate the requirements of Pub. L. 96–466 for establishing entitlement to assistance and developing comprehensive individual plans incorporating services necessary for individual veterans under the vocational rehabilitation program. These rules will therefore have no significant direct impact on small entities.

Within the overall changes in regulations, current chapter 31 regulatory material has been rewritten to break down lengthy paragraphs into subparagraphs; to give each major subparagraph a heading; and to identify the agency or person responsible for carrying out the actions required by the subparagraph. Legalistic phrases such as "on or after", "prior to", etc. are replaced with plain English words like "after", "before", etc. Regulations which are modified or rescinded are also identified.

List of Subjects in 38 CFR Part 21

Civil rights, Claims, Education, Grant programs, Loan programs, Reporting requirements, Schools, Veterans, Vocational education, Vocational rehabilitation.

Approved: August 27, 1982.

By direction of the administrator.

Everett Alvarez, Jr.,

Deputy Administrator.

PART 21—VOCATIONAL REHABILITATION AND EDUCATION

1. 38 CFR Part 21 is amended by adding new §§ 21.50, 21.51, 21.52, 21.53, 21.57, 21.58, and 21.59 to read as follows:

Initial and Extended Evaluation

Sec.

21.50 Initial evaluation.
21.51 Employment handicap.
21.52 Serious employment handicap.
21.53 Reasonable feasibility of achieving a vocational goal.
21.57 Extended evaluation.
21.58 Redetermination of employment handicap and serious employment handicap.
21.59 Review and appeal of decisions on eligibility and entitlement.

Initial and Extended Evaluation

§ 21.50 Initial evaluation.

(a) Eligibility for initial evaluation. The Veterans Administration shall provide an initial evaluation to each individual who applies for benefits under chapter 31, if the individual is:

(1) A veteran who has a compensable service-connected disability which was incurred in, or aggravated by service on or after September 16, 1940; or

(2) A serviceperson who is hospitalized for a service-connected disability in a hospital over which the Secretary concerned has charge pending discharge or release from active military, naval or air service, and the serviceperson is suffering from a disability which the Veterans Administration has determined will likely be compansable.

(38 U.S.C. 1502(1))

(b) *Purpose.* An initial evaluation will be provided to each individual who meets the conditions of paragraph (a) of this section to:

(1) Determine the existence of an employment handicap;

(2) Determine the basic twelve year period of eligibility;

(3) Determine whether an employment handicap shall be considered a serious employment handicap;

(4) Determine whether the basic twelve-year period of eligiblity is extended for a veteran with a serious employment handicap;

(5) Determine as expeditiously as possible, without an extended evaluation, whether achievement of a vocational goal is reasonably feasible;

(6) Evaluate the ability of the veteran to live and function independently within the veteran's family and community;

(7) Determine if the veteran is eligible for employment services under § 21.47;

(8) Develop information necessary to plan an individual program for a veteran found eligible and entitled to services under chapter 31; and

(9) Assist a veteran who is found ineligible for assistance under chapter 31 to identify other resources and programs for which he or she may be eligible.

(38 U.S.C. 220, 1506(a), 1516)

(c) *Scope of initial evaluation.* The initial evaluation shall include consideration of:

(1) The handicapping effects of the veteran's service-connected disability on employability and independence in daily living;

(2) The veteran's residual physical and mental capabilities which contribute to employability and independence in daily living;

(3) The veteran's ability to function independently in family and community;

(4) Prior assessments of employability by a counseling psychologist;

(5) Assessments authorized to provide additional information necessary for initial evaluation; and

(6) The veteran's personal history including:

(i) Education and training;

(ii) Employment;

(iii) Nonservice-connected disability(ies), and

(iv) Family and community adjustment.

(38 U.S.C. 1506(a))

(d) *Responsibility for initial evaluation.* (1) All determinations regarding the beginning and ending dates of a veteran's basic twelve-year period of eligibility shall be made by appropriate staff of the Adjudication Division,

(2) All other determinations, including extension of the basic twelve year period because of serious employment handicap, and entitlement to assistance under chapter 31 shall be made by appropriate staff of the Vocational Rehabilitation and Counseling Division.

(38 U.S.C. 1515(a))

(e) *Cooperation of the veteran.* The cooperation of the veteran is essential to an initial evaluation. The purpose of the initial evaluation and the steps in the process shall be explained to the veteran and his or her cooperation requested. If the veteran does not cooperate in the initiation or completion of the initial evaluation the counseling psychologist shall make any reasonable effort through counseling to secure the veteran's cooperation. If the veteran's cooperation cannot be secured, the counseling psychologist shall suspend the initial evaluation until such time as the veteran cooperates. The veteran will be informed of any suspension of the initial evaluation, the reasons for this action, and the steps necessary to resume the evaluation.

(38 U.S.C. 1511)

§ 21.51 Employment handicap.

(a) *Importance of decision.* The proper determination of employment handicap is a critical decision for rehabilitation planning and program accountability. To

the extent possible necessary information shall be developed in the course of initial evaluation and the significance of the information under paragraphs (d) and (e) of this section for determining employment handicap shown in each case.

(38 U.S.C. 1502)

(b) *Definition.* The term "employment handicap" means an impairment of the veteran's ability to prepare for, obtain, and retain employment consistent with the veteran's abilities, aptitudes, and interests.

(38 U.S.C. 1501(1))

(c) *Components of employment handicap.* Components of employment handicap include:

(1) *Impairment.* This term means the restrictions on employability caused by:

(i) The veteran's service and nonservice-connected disabilities:

(ii) Deficiencies in education and training;

(iii) Negative attitudes toward the disabled; and

(iv) Other pertinent factors.

(2) *Service-connected disability.* The veteran's service-connected disability need not be the sole or primary cause but it must materially contribute to the impairment described in paragraph (c)(1) of this section. Therefore its effects must be identifiable, measurable, or observable.

(3) *Nonservice-connected disability.* This term includes all physical and mental disabilities which have not been found to be service-connected by the Veterans Administration, including alcoholism and drug abuse. The effects of alcoholism and drug abuse are to be considered in the same manner as other nonservice-connected disabilities in evaluating restrictions on employability. When the manifestations of alcoholism, drug abuse or other nonservice-connected disabilities raise questions as to the reasonable feasibility of a vocational goal for a veteran otherwise entitled to assistance under chapter 31 such questions will be resolved under provisions of § 21.53.

(4) *Consistency with abilities, aptitudes, and interests.* The following points should be considered in determining if the veteran's training and employment are consistent with his or her abilities, aptitudes and interests:

(i) A finding that a veteran is employed in an occupation which is consistent with his or her abilities, aptitudes and interests may not be made if the job does not require reasonably developed skills, except under conditions described in paragraphs (e)(2) and (3), or this section;

(ii) The veteran's residual capacities, as well as limitations arising from the veteran's service and nonservice-connected disabilities are relevant;

(iii) Evidence of the consistency of interests with training and employment may be based on:

(A) The veteran's statements to a Veterans Administration counseling psychologist during initial evaluation or subsequent reevaluation;

(B) The veteran's participation in specific activities; or

(C) Information developed by the Veterans Administration through use of interest inventories.

(38 U.S.C. 1502)

(d) *Determining extent of impairment.* The extent of the veteran's impairment shall be assessed through consideration of factors described in paragraph (c)(1) of this section:

(38 U.S.C. 1502)

(e) *Material contribution of service-connected disability to the impairment.* A finding that the veteran's service-connected disability materially contributes to his or her impairment to employment will be made by assessing the following factors:

(1) *Preparation for employment.* The service-connected condition adversely affects the veteran's current ability to prepare for employment in one or more fields which would otherwise be consistent with the veteran's abilities, aptitudes, and interests. An adverse effect is demonstrated when the physical or psychological results of the service-connected condition:

(i) Impair the veteran's ability to train;

(ii) Prevent or impede access to training facilities; or

(iii) Diminish the veteran's motivation and ability to mobilize his or her energies for education or training.

(2) *Obtaining employment.* The service-connected condition places the veteran at a competitive disadvantage with similarly circumstanced nondisabled persons in obtaining employment. A veteran without reasonably developed specific job skills shall be considered to be at a competitive disadvantage unless evidence of record shows a history of current, stable, continuing employment.

(3) *Retaining employment.* The physical or psychological effects of a service-connected condition adversely affect the veteran's ability to maintain employment which requires reasonably developed skills. This criterion is not met if a veteran though lacking reasonably developed skills, has a history of continuing, stable employment.

(38 U.S.C. 1501(1))

(f) *Determination of employment handicap.* The counseling psychologist may find the veteran has an employment handicap.

(1) An employment handicap which entitles the veteran to assistance under this program exists when all of the following conditions are met:

(i) The veteran has an impairment of employability;

(ii) The veteran's service-connected disability materially contributes to the impairment of employability;

(iii) The veteran has not overcome the effects of the impairment of employability through employment in, or qualification for employment in an occupation consistent with his or her pattern of abilities, aptitudes, and interests.

(2) An employment handicap does not exist when *any* of the following conditions is present:

(i) The veteran's employability is not impaired.

(ii) The veteran's employability is impaired, but his or her service-connected disability does not materially contribute to the impairment of employability.

(iii) The veteran has overcome the effects of the impairment of employability through employment in, or qualification for employment in an occupation and consistent with his or her pattern of abilities, aptitudes and interests.

(38 U.S.C. 1502)

(g) *Eligibility for employment assistance.* If a veteran is not found to have employment handicaps, a separate determination of his or her eligibility for employment assistance will be made under provisions of § 21.47.

(38 U.S.C. 1517)

(h) *Responsibility for determinations.* The determination of an employment handicap and eligibility for employment assistance may only be made by a counseling psychologist in the Vocational Rehabilitation and Counseling Division.

(38 U.S.C. 1506(a))

§ 21.52 Serious employment handicap.

(a) *Requirement of determination of serious employment handicap.* A separate determination whether a serious employment handicap exists shall be made in each case in which an employment handicap is found.

(38 U.S.C. 1506(a))

(b) *Definition.* The term "serious employment handicap" means a

significant impairment of a veteran's ability to prepare for, obtain or retain employment consistent with such veteran's abilities, aptitudes, and interests.

(38 U.S.C. 1501(7))

(c) *Serious employment handicap exists.* A veteran always has a serious employment handicap if he or she has:

(1) A neuropsychiatric service-connected disability rated at thirty percent or more disabling; or

(2) Any other service-connected disability rated at fifty percent or more disabling.

(38 U.S.C. 1506(a))

(d) *Serious employment handicap may exist.* A veteran with a nonneuropsychiatric service-connected disability may be found to have a serious employment handicap even though the disability is rated at thirty or forty percent disabling, when either of the following conditions exists:

(1) The veteran has a prior history of poor adjustment in training and employment, and special efforts will be needed if the veteran is to be rehabilitated; or

(2) The veteran's situation presents special problems due to nonservice-connected disability, family pressures, and a number of special and supportive services are needed to effect rehabilitation.

(38 U.S.C. 1506(a))

(e) *Serious employment handicap normally not found.* A finding of serious employment handicap will normally not be made when a veteran's service-connected disability is rated at less than thirty percent disabling. A finding of serious employment handicap may nevertheless be made when:

(1) The veteran's service-connected disability has caused substantial periods of unemployment or unstable work history;

(2) The veteran has demonstrated a pattern of maladaptive behavior which is shown by a history of withdrawal from society or continuing dependency on government income support programs; and

(3) The Vocational Rehabilitation Panel has reviewed the case under provisions of § 21.62 and forwarded its evaluation to the counseling psychologist.

(38 U.S.C. 1506(a))

(f) *Responsibility for determining serious employment handicap.* A counseling psychologist in the Vocational Rehabilitation and Counseling Division shall make determinations of serious employment handicap.

(38 U.S.C. 1506(a))

§ 21.53 Reasonable feasibility of achieving a vocational goal.

(a) *Requirement.* The Veterans Administration shall determine the reasonable feasibility of achieving a vocational goal in each case in which a veteran had either:

(1) An employment handicap, or

(2) A serious employment handicap.

(38 U.S.C. 1506(a))

(b) *Definition.* The term "vocational goal" means a gainful employment status consistent with the veteran's abilities, aptitudes, and interests.

(38 U.S.C. 1501(8))

(c) *Expeditious determination.* The determination of reasonable feasibility shall be made as expeditiously as possible when necessary information has been developed in the course of initial evaluation. If an extended evaluation is necessary as provided in §21.57 a decision on feasibility shall be made by the end of the extended evaluation. Any reasonable doubt shall be resolved in favor of a finding of feasibility.

(38 U.S.C. 1505(d))

(d) *Vocational goal is reasonably feasible.* Achievement of a vocational goal is reasonably feasible for a veteran with either an employment or a serious employment handicap when the following conditions are met:

(1) Vocational goal(s) has (have) been identified;

(2) The veteran's physical and mental condition permit training for the goal(s) to begin within a reasonable period; and

(3) The veteran:

(i) Possesses the necessary educational skills and background to pursue the vocational goal; or

(ii) Will be provided services by the Veterans Administration to develop such necessary educational skills as part of the program.

(38 U.S.C. 1506(a))

(e) *Criteria for reasonable feasibility not met.* (1) When all of the criteria of paragraph (d) of this section are not met, the Veterans Administration may find that:

(i) A period of extended evaluation is necessary to determine whether achievement of a vocational goal is reasonably feasible,

(ii) Achievement of a vocational goal is infeasible.

(2) A finding that achievement of a vocational goal is infeasible without a period of extended evaluation requires:

(i) Consultation with the Vocational Rehabilitation Panel, and

(ii) Compelling evidence which establishes infeasibility beyond any reasonable doubt.

(38 U.S.C. 1506(b))

(f) *Responsibility for determining the reasonable feasibility of achieving a vocational goal.* A counseling psychologist in the Vocational Rehabilitation and Counseling Division shall determine whether achievement of a vocational goal is reasonably feasible.

(38 U.S.C. 1506(b))

§ 21.57 Extended evaluation.

(a) *Purpose.* The purpose of an extended evaluation is to determine the feasibility of the veteran achieving a vocational goal, when this decision reasonably cannot be made on the basis of information developed during the initial evaluation.

(38 U.S.C. 1506(c))

(b) *Scope of services.* During the extended evaluation, a veteran may be provided:

(1) Diagnostic and evaluative services;

(2) Services to improve his or her ability to attain a vocational goal;

(3) Services to improve his or her ability to live and function independently in the community.

(38 U.S.C. 1504)

(c) *Determination.* The determination of the reasonable feasibility of a vocational goal will be made at the earliest time possible during an extended evaluation, but no later than the end of the period of evaluation or an extension of that period. Any reasonable doubt as to feasibility will be resolved in the veteran's favor.

(1) When a vocational goal is reasonably feasible, an IWRP (Individualized Written Rehabilitation Plan) will be developed as indicated in § 21.82.

(2) When a vocational goal is not reasonably feasible, information developed in the evaluation will be the basis for recommendations and referral to the Vocational Rehabilitation Panel. The Panel will consider the case under provisions of § 21.62(b).

(38 U.S.C. 1506(d))

(d) *Responsibility for determining the need for a period of extended evaluation.* A counseling psychologist in the Vocational Rehabilitation and Counseling Division shall determine whether a period of extended evaluation is needed

(38 U.S.C. 1506(c))

§ 21.58 Redetermination of employment handicap and serious employment handicap.

(a) *Prior to induction into a program.* A determination as to employment handicap, serious employment handicap, or eligibility for a program of employment services will not be changed except for:

(1) Unmistakable error in fact or law; or

(2) New and material evidence which justifies a change.

(38 U.S.C. 1502, 1506)

(b) *After induction into a program.* (1) The Veterans Administration will not redetermine a finding of employment handicap, serious employment handicap, or eligibility for a program of employment services subsequent to the veteran's induction into a program because of a reduction in his or her disability rating, including a reduction to 0 percent;

(2) The Veterans Administration may consider whether a finding of employment handicap should be changed to serious employment handicap when there is an increase in the degree of service-connected disability, or other significant change in the veteran's situation;

(3) A redetermination of employment handicap, serious employment handicap, or eligibility for a program of employment services will be made when there is a clear and unmistakable error of fact or law.

(38 U.S.C. 1502, 1506)

(c) *Following discontinuance or rehabilitation.* A counseling psychologist will redetermine a veteran's entitlement to assistance under chapter 31 following rehabilitation or discontinuance under § 21.190, § 21.194, and § 21.200.

(38 U.S.C. 1502)

§ 21.59 Review and appeal of decisions on eligibility and entitlement.

A veteran may appeal decisions of the Vocational Rehabilitation and Counseling staff on eligibility and entitlement to rehabilitation services to the Board of Veterans Appeals as provided in § 19.3 of Title 38, CFR. However accredited representatives may request administrative review by Central Office prior to filing an appeal to BVA. A case already on appeal to BVA may not be referred to Central Office for administrative review or advisory opinion.

(38 U.S.C. 1507(c))

2. 38 CFR Part 21 is amended by adding new §§ 21.60 and 21.62 to read as follows:

§ 21.60 Vocational Rehabilitation Panel.
§ 21.62 Duties of the Vocational Rehabilitation Panel.

§ 21.60 Vocational rehabilitation panel.

(a) *Establishment of the panel.* A Vocational Rehabilitation Panel will be established at each field station by the station head. The purpose of the Panel is to provide technical assistance in the planning of rehabilitation programs for seriously disabled veterans and dependents. This purpose will be most effectively carried out through use of the services of a wide range of professionals to bring the resources of Veterans Administration and the community to bear on problems presented in the individual case.

(38 U.S.C. 1504(a))

(b) *Composition of the panel.* The Panel will include, but not be limited to the following:

(1) A counseling psychologist in the VR&C (Vocational Rehabilitation and Counseling) Division as the chairperson;

(2) A vocational rehabilitation specialist in VR&C;

(3) A medical consultant from a Veterans Administration Medical Center;

(4) A member of the Social Services staff from a Veterans Administration Medical Center; and

(5) Other specialists from the Veterans Administration, community agencies and organizations participating in individual cases.

(38 U.S.C. 1504(a))

(c) *Appointment to the panel.*

(1) The VR&C (Vocational Rehabilitation and Counseling) Officer may not serve as either chairperson or member of the Panel.

(2) The VR&C Officer will arrange for the participation of nonmedical professional staff in the Panel's meetings.

(38 U.S.C. 1515(a)(2))

(d) *Scope of panel review.* The Panel will review each case which has been referred to it in relation to:

(1) Specific reason for the referral; and

(2) Other problem areas which the Panel identifies in the course of its consideration of the case.

(38 U.S.C. 1504(a))

(e) *Referral.* A case may be referred by the Panel by:

(1) A counseling psychologist in VR&C;

(2) A vocationa rehabilitation specialist in VR&C; or

(3) The VR&C officer.

(38 U.S.C. 1504(a))

(f) *Report.* The Panel must prepare a report on its findings and recommendations in each case. The Panel's recommendations may include specific actions which are warranted on the basis of current information, or may identify additional information needed to provide a sounder basis for planning the veteran's program of rehabilitation.

(38 U.S.C. 1504(a))

§ 21.62 Duties of the vocational rehabilitation panel.

(a) *Consultation requested.* The Panel shall provide technical and consultation services when requested by professional staff of the Vocational Rehabilitation and Counseling Division to:

(1) Assist the staff in planning and carrying out rehabilitation plans for seriously disabled veterans and dependents and

(2) Consider other cases of individuals eligible for, or being provided, assistance under chapters 31, 32, 34, and 35 or title 38, U.S.C. in which interdisciplinary review will be valuable.

(38 U.S.C. 1504(a))

(b) *Consultation required.* The Panel's consideration is required in the following instances:

(1) *Serious employment handicap.* The Panel will review each case in which the counseling psychologist has made a preliminary finding that a veteran with a disability rating of less than thirty precent has a serious employment handicap.

(38 U.S.C. 1506 (a))

(2) *Extended evaluation.* The Panel's review is required for programs of extended evaluation which:

(i) Were originally planned to be completed within 12 months and there is a reasonable expectation that a decision can be reached duing an extension not to exceed six months;

(ii) Are planned for more than 12 but less than 18 months;

(iii) Are planned for more than 18 months.

(38 U.S.C. 1505 (a))

(3) *Infeasibility.* The Panel will review any finding by VR&C staff that a rehabilitation program is infeasible, including:

(i) A finding of infeasibility for vocational rehabilitation based upon information developed in the course of an extended evaluation. The Panel will consider whether medical and other evidence establish infeasibility for

vocational rehabilitation beyond any reasonable doubt.

(38 U.S.C. 1506 (a))

(ii) A finding of infeasibility for independent living through a program of independent living services if it is determined that the veteran's level of independence cannot be measurably improved, or is medically contraindicated at this time.

(38 U.S.C. 1506 (a))

(4) *Discontinuance.* VR&C staff shall refer any case in which discontinuance is being considered for a veteran with a service-connected disability rated fifty perecent or more disabling.

(38 U.S.C. 1504 (a))

(c) *Independent living services.* The Panel has a key responsibility to assure that seriously disabled service-connected veterans who need independent living services to increase their independence in daily living are provided necessary services. In carrying out this responsibility the Panel shall:

(1) Review all cases which come before it to assure that the proposed program of rehabilitation includes those services necessary to increase the veteran's level of independence in vocational pursuits and capacity for functioning in family and community;

(2) Review cases in which a preliminary finding of infeasibility has been made, to evaluate whether such findings are due to failure to include services which could be authorized under chapter 31 to imporve the veteran's functional capacity;

(3) Review all cases in which the counseling psychologist prepares an IILP (Individualized Independent Living Services Program) for participation in the independent living program authorized under chapter 31 as provided in § 21.160 and § 21.162.

(d) *Dependents.* The specific duties of the Panel with respect to dependents are more fully described in § 21.3300, § 21.3301, § 21.3304, § 21.4105, § 21.4276.

(38 U.S.C. 1736, 1740, 1741, 1742, 1743)

3. 38 CFR Part 21 is amended by adding new § 21.70, 21.72, 21.73, 21.74, 21.76, and 21.78 to read as follows:

Duration of Rehabilitation Programs

Sec.

21.70 Vocational rehabilitation.
21.72 Rehabilitation to the point of employability.
21.73 Employment assistance.
21.74 Extended evaluation.
21.76 Independent living.
21.78 Approving more than 48 months of rehabilitation.

Duration of Rehabilitation Programs

§ 21.70 Vocational rehabilitation.

(a) *General.* The goal of a vocational rehabilitation program is to:

(1) Evaluate and improve the veteran's ability to achieve a vocational goal;

(2) Provide services needed to qualify for suitable employment;

(3) Enable the veteran to achieve maximum independence in daily living;

(4) Enable the veteran to become employed in a suitable occupation and to maintain suitable employment.

(38 U.S.C. 1501(9))

(b) *Vocational Rehabilitation Program.* This term includes:

(1) The services that are needed for the accomplishment of the purposes of chapter 31, including such counseling, diagnostic, medical, social, psychological, independent living, economic, educational, vocational, and employment services as are determined by the Veterans Administration to be needed;

(2) In the case of a veteran for whom the achievement of a vocational goal has not been found to be infeasible:

(i) Determining whether a vocational goal is reasonably feasible;

(ii) Improving the veteran's potential to participate in a program of services designed to achieve a vocational goal;

(iii) Assisting the veteran to become, to the maximum extent feasible, employable and to obtain and maintain suitable employment; or

(iv) Enabling the veteran to achieve maximum independence in daily living in those cases where achievement of a vocational goal is not reasonably feasible.

(3) The term also includes the monetary assistance authorized by chapter 31 for a veteran receiving any of the services described in this paragraph.

(38 U.S.C. 1501(9))

(c) *Duration of vocational rehabilitation.* Decisions on the duration of periods named in paragraph (b) of this section are made in the course of development and approval of the Individualized Writen Rehabilitation Plan. However, the duration of a vocational rehabilitation program may not exceed 48 months (or its equivalent when pursued on a part-time basis), except as provided in § 21.78.

(38 U.S.C. 1795, 1505)

§ 21.72 Rehabilitation to the point of employability.

(a) *General.* The period of rehabilitation to the point of employability may include the services needed to:

(1) Evaluate and improve the veteran's ability to undertake training;

(2) Train the veteran to the level generally recognized as necessary for entry into employment in a suitable occupational objective. Where a particular degree, diploma, or certificate is generally necessary for entry into the occupation, e.g., an MSW for social work, the veteran shall be trained to that level.

(38 U.S.C. 1505(b))

(b) *When duration of training may exceed general requirements.*—(1) *Employment handicap.* If the amount of training necessary to qualify for employment in a particular occupation in a geographical area where a veteran lives or will seek employment exceeds the amount generally needed for employment in that occupation, the Veterans Administration will provide, or arrange for the necessary additional training.

(38) U.S.C. 1505(b))

(2) *Serious employment handicap.* The Veterans Administration will assist a veteran with a serious employment handicap to train to a higher level than is usually required to qualify in a particular occupation, when one of the following conditions exist:

(i) The veteran is preparing for a type of work in which he or she will be at a definite disadvantage in competing with nondisabled persons for jobs or business, and the additional training will help to offset the competitive disadvantage;

(ii) The number of feasible occupations are restricted, and additional training will enhance the veteran's employability in an occupation in which employment is feasible.

(iii) The number of employment opportunities within the occupation for which employers will consider the veteran or which would otherwise be available are restricted.

(38 U.S.C. 1505(c))

(c) *Responsibility for estimating duration of training.* (1) The counseling psychologist shall estimate the duration of training and the estimate shall be incorporated in the IWRP (Individualized Written Rehabilitation Plan). When the period of training is estimated to exceed 48 months, the concurrence of the Vocational Rehabilitation and Counseling Officer is required, prior to approving the IWRP, under conditions listed in § 21.78.

(2) The estimated duration of the period of training required to complete an original or amended IWRP may be extended when necessary.

Authorization of an extension is the responsibility of the counseling psychologist, except as provided in paragraph (d) of this section. Any extension which will result in use of more than 48 months of entitlement must meet conditions described in § 21.78.

(38 U.S.C. 1795)

(d) *Extension of training by the vocational rehabilitation specialist.* (1) The VRS (Vocational Rehabilitation Specialist) may authorize an extension of up to six months of the period of vocational rehabilitation training when:

(i) The veteran is in training status under § 21.186.

(ii) The veteran has completed more than half of the prescribed training;

(iii) The veteran is making satisfactory progress;

(iv) The extension is necessary to complete training;

(v) Training can be completed within six months; and

(vi) The extension will not result in use of more than 48 months of entitlement under chapter 31 alone or in combination with other programs identified in § 21.4020(a).

(2) If the conditions listed in paragraph (d)(1) of this section are not met, and an extension is needed to complete the program, the case will be referred to the counseling psychologist for a determination.

(38 U.S.C. 1505(b))

§ 21.73 Employment assistance.

(a) *Duration.* Employment assistance may be provided to the veteran for the period necessary to enable the veteran to secure employment in a suitable occupation, and to adjust in the employment. This period generally shall not exceed 18 months. A veteran may be provided such assistance if he or she:

(1) Has completed the period of rehabilitation to the point of employability, or

(2) Is eligible for employment assistance as provided in § 21.47.

(38 U.S.C. 1505(a))

(b) *Extension.* If a veteran has a serious employment handicap, the basic 18 month period may be extended for a maximum of six months by the case manager if a reasonable likelihood of employment within that additional period exists. Extension of the period beyond 18 months requires the concurrence of the VR&C Officer.

(38 U.S.C. 1505(a))

(c) *Employment assistance not charged against chapter 31 entitlement.* The period of employment assistance provided in paragraph (a) of this section is not charged against the months of entitlement under chapter 31. (see § 21.70).

(38 U.S.C. 1505(b))

§ 21.74 Extended evaluation.

(a) *General.* An extended evaluation may be authorized for the period necessary to determine whether the attainment of a vocational goal is reasonably feasible for the veteran. The services which may be provided during the period of extended evaluation are listed in § 21.57(b).

(b) *Duration.* An extended evaluation may not be for less than two weeks (full or part-time equivalent) nor for more than twelve months, unless a longer period is necessary to determine whether achievement of a vocational goal is reasonably feasible.

(38 U.S.C. 1505(a))

(c) *Approval of the period of an extended evaluation.* (1) The counseling psychologist may approve an initial period of up to 12 months for an extended evaluation.

(2) An additional period of extended evaluation may be approved by the counseling psychologist, if there is reasonable certainty that the feasibility of achieving a vocational goal can be determined during the additional period. The counseling psychologist will obtain technical assistance from the Vocational Rehabilitation Panel in each veteran's case before granting an extension of a period of extended evaluation.

(3) An extension beyond 18 months for additional periods of up to six months each may only be approved by the counseling psychologist if there is substantial certainty that a determination of feasibility may be made within this extended period. The concurrence of Vocational Rehabilitation and Counseling Service is also required for the extension.

(38 U.S.C. 1506(b))

§ 21.76 Independent living.

(a) *General.* A program of independent living services may be authorized to enable the veteran to:

(1) Reach the goals of the program, and

(2) Maintain the newly achieved level of independence in daily living.

(38 U.S.C. 1505(d))

(b) *Period of independent living services.* The duration of an independent living services program may not exceed 24 months unless the counseling psychologist finds, following consultation with the Vocational Rehabilitation Panel, that an additional period of up to six months would enable the veteran to substantially increase his or her level of independence.

(38 U.S.C. 1505(d))

§ 21.78 Approving more than 48 months of rehabilitation.

(a) *General.* Neither the basic period of entitlement which may be authorized for a program of rehabilitation under chapter 31 alone, nor a combination of entitlement of chapter 31 and other programs listed in § 21.4020(a) shall exceed 48 months except as indicated in paragraphs (b) and (c) of this section.

(38 U.S.C. 1795)

(b) *Employment handicap.* A rehabilitation program for a veteran with an employment handicap may only be extended beyond 48 months when:

(1) The veteran previously completed training for a suitable occupation but the veteran's service-connected disability has worsened to the point that he or she is unable to perform the duties of the occupation for which training had been provided, and a period of training in the same or a different field is required. An extension beyond 48 months under chapter 31 alone shall be authorized for this purpose.

(38 U.S.C. 1505(c))

(2) The occupation in which the veteran previously completed training is found to be unsuitable because of the veteran's abilities and employment handicap. An extension beyond 48 months under chapter 31 alone shall be approved for this purpose.

(38 U.S.C. 1505(c)(1))

(3) The veteran previously used entitlement under other programs administered by the Veterans Administration, including chapters 32, 34, or 35 of title 38 U.S.C. and the additional period of assistance to be provided under chapter 31 which the veteran needs to become employable will result in more than 48 months being used under all Veterans Administration education programs. Under these conditions the number of months necessary to complete the program may be authorized under chapter 31, provided that the length of the extension will not result in authorization of more than 48 months under chapter 31 alone.

(38 U.S.C. 1795)

(4) A veteran in an approved chapter 31 program has elected payment of benefits at the chapter 34 educational assistance rate. The 48 month limitation may be exceeded only:

(i) To the extent that the entitlement in excess of 48 months does not exceed the entitlement previously used by the

veteran in a course at the secondary school level under § 21.4235, or

(ii) If the veteran is in a course on a term, quarter, or semester basis which began before the 45 months limitation on chapter 34 entitlement was reached, and completion of the course will be possible by permitting the veteran to complete the training under chapter 31.

(38 U.S.C. 1795)

(5) The assistance to be provided in excess of 48 months consisting only of a period of employment assistance is part of the veteran's program. (see § 21.73).

(38 U.S.C. 1505(b))

(c) *Serious employment handicap.* The duration of a rehabilitation program for a veteran with a serious employment handicap may be extended beyond 48 months under chapter 31 for the number of months necessary to complete a rehabilitation program under the following conditions:

(1) To enable the veteran to complete a period of rehabilitation to the point of employability;

(2) To provide an extended evaluation in cases in which the total period needed for an extended evaluation and for rehabilitation to the point of employability would exceed 48 months;

(3) To provide a program of independent living services, including cases in which achievement of a vocational goal becomes feasible during or following a program of independent living services;

(4) Following rehabilitation to the point of employability:

(i) The veteran has been unable to secure employment in the occupation for which training has been provided despite intensive efforts on the part of the Veterans Administration and the veteran, and a period of retraining or additional training is needed;

(ii) The skills which the veteran developed in training for an occupation in which he or she was employed are no longer adequate to maintain employment in that field and a period of retraining is needed;

(iii) The veteran's service-connected disability has worsened to the point that he or she is unable to perform the duties of the occupation for which the veteran has been trained, and a period of training in the same or different field is required;

(iv) The occupation in which the veteran previously completed training is found to be unsuitable due to the veteran's abilities and employment handicap.

(5) The assistance to be provided in excess of 48 months consists, only of a period of employment assistance. (see § 21.73).

(38 U.S.C. 1505(c)(2))

(d) *Approval of extension beyond 48 months.* All extensions of a rehabilitation program beyond 48 months of total entitlement under all Veterans Administration programs requires the approval of the counseling psychologist and concurrence of the Vocational Rehabilitation and Counseling Officer. Concurrence of the VR&C officer is not required for extension due to provision of employment assistance, except as specified in § 21.73.

(38 U.S.C. 1505(b))

4. 38 CFR Part 21 is amended by adding new §§ 21.80, 21.82, 21.84, 21.86, 21.88, 21.90, 21.92, 21.94, 21.96, and 21.98 to read as follows:

Individualized Written Rehabilitation Plan

Sec.

21.80 Requirement for a rehabilitation plan.
21.82 Completing the plan under chapter 31.
21.84 Individualized written rehabilitation plan.
21.86 Individualized extended evaluation plan.
21.88 Individualized employment assistance plan.
21.90 Individualized independent living plan.
21.92 Preparation of the plan.
21.94 Changing the plan.
21.96 Review of the plan.
21.98 Appeal of disagreement regarding development of, or change in the plan.

Individualized Written Rehabilitation Plan

§ 21.98 Requirement for a rehabilitation plan.

(a) *General.* An IWRP (Individualized Written Rehabilitation Plan) will be developed for each veteran eligible for rehabilitation services under chapter 31. The plan is intended to assist in:

(1) Providing a structure which allows VR&C staff to translate the findings made in the course of the initial evaluation into specific rehabilitation goals and objectives;

(2) Monitoring the veteran's progress in achieving the rehabilitation goals established in the plan;

(3) Assuring the timeliness of assistance by Veterans Administration staff in providing services specified in the plan; and

(4) Evaluating the effectiveness of the planning and delivery of rehabilitation services by VR&C staff.

(38 U.S.C. 1507(a))

(b) *When a plan is prepared.* A plan will be prepared in each case in which a veteran will pursue:

(1) A vocational rehabilitation program, as that term is defined in §21.35(j);

(2) An extended evaluation program;

(3) An independent living services program; or

(4) An employment program.

(38 U.S.C. 1507(a))

(c) *Plan—a generic term.* The term "plan" refers to the IWRP (Individualized Written Rehabilitation Plan) § 21.84, IEEP (Individualized Extended Evaluation Plan) § 21.86, IEAP (Individualized Employment Assistance Plan) § 21.88, and IILP (Individualized Independent Living Plan) § 21.90.

(38 U.S.C. 1507(a))

(d) *Plan not required.* A plan will not be prepared for a veteran who is not eligible for any assistance under chapter 31. Veterans Administration staff with the veteran's assistance and cooperation will utilize information developed in the course of an initial evaluation to assist the veteran to develop alternatives for education and training, independence in daily living, or employment assistance. This assistance should help the veteran in achieving attainable vocational, independent living and employment goals utilizing benefits and services for which the veteran may be eligible under other Veterans Administration or non-Veterans Administration programs.

(38 U.S.C. 220)

§ 21.82 Completing the plan under chapter 31.

(a) *Serious employment handicap.* Each plan for a veteran with a serious employment handicap shall provide for completion of the program provided by the plan under chapter 31. The provisions of § 21.70 and § 21.78 are designed to enable a veteran with a serious employment handicap to pursue and complete a rehabilitation plan under Veterans Administration auspices. These provisions shall be utilized as necessary to accomplish the goals of the plan.

(38 U.S.C. 1505(c), 1507)

(b) *Employment handicap.* A plan for a veteran with an employment handicap that is not a serious employment handicap shall require that the program be completed within 48 months if the veteran is not eligible for an extension as provided in §21.78. When the program provided by the plan cannot be completed under chapter 31 because of limitations imposed by the veteran's termination date or months of remaining entitlement, realistic, comprehensive and detailed arrangements must be made which will enable the veteran to

successfully complete training under other auspices. If an arrangement cannot be made which meets these requirements, the long-range vocational goal of the veteran must be reevaluated, and another vocational goal selected which can be completed using the veteran's remaining chapter 31 resources.

(38 U.S.C. 1507(a))

(c) *Employment assistance when training is not completed under chapter 31.* A plan for employment assistance may be implemented even though the veteran's training has not been or will not be completed under chapter 31.

(38 U.S.C. 1517(a))

§ 21.84 Individualized written rehabilitation plan.

(a) *Purpose.* The purposes of the IWRP (Individualized Written Rehabilitation Plan) are to:

(1) Identify goals and objectives to be achieved by the veteran during the period of rehabilitation services that will lead to the point of employability;

(2) Plan for placement of the veteran in the occupational field for which training and other services will be provided; and

(3) Specify the key services needed by the veteran to achieve the goals and objectives of the plan.

(38 U.S.C. 1507)

(b) *Elements of the Plan.* A plan will include the following:

(1) A statement of long-range rehabilitation goals. Each statement of long-range goals shall include at a minumum:

(i) One vocational goal for a veteran with an employment handicap; or

(ii) One vocational goal and, if applicable, one independent living goal for a veteran with a serious employment handicap.

(2) Intermediate rehabilitation objectives. Intermediate objectives are statements of achievement expected of the veteran to attain the long-range goal. The development of appropriate intermediate objectives is the cornerstone of an effective plan. Intermediate objectives should have the following characteristics:

(i) The activity specified relates to the achievement of the goal;

(ii) The activity specified is definable in terms of observable behavior (e.g., pursuing an A.A. degree);

(iii) The activity has a projected completion date;

(iv) The outcome desired upon completion is measurable (e.g., receiving an A.A. degree).

(3) the specific services to be provided by the Veterans Administration as stated. Counseling shall be included in all plans for a veteran with a serious employment handicap.

(4) The projected starting and completion dates of the planned services and the duration of each service are provided in the plan;

(5) Objective criteria and an evaluation procedure and schedule for determining whether the objectives and goals are being achieved are set forth; and

(6) The name, location, and phone number of the DVB case manager is included.

(38 U.S.C. 1507(a))

§ 21.86 Individualized extended evaluation plan.

(a) *Purpose.* The purpose of an IEEP (Individualized Extended Evaluation Plan) is to identify the services needed for the Veterans Administration to determine the veteran's ability to achieve a vocational goal when this cannot reasonably be determined during the initial evaluation.

(38 U.S.C. 1507)

(b) *Elements of the plan.* An IEEP shall include the same elements as an IWRP except that:

(1) The long-range goal shall be to determine whether achievement of a vocational goal is reasonably feasible;

(2) The intermediate objectives relate to problems or questions which must be resolved for the Veterans Administration to determine the reasonable feasibility of achieving a vocational goal.

(38 U.S.C. 1507(a))

§ 21.88 Individualized employment assistance plan.

(a) *Purpose.* The purpose of the IEAP (Individualized Employment Assistance Plan) is to assure that a comprehensive, thoughtful approach is taken, enabling eligible veterans to secure suitable employment.

(38 U.S.C. 1507)

(b) *Requirement for a plan.* An IEAP (Individualized Employment Assistance Plan) will be prepared:

(1) As part of an IWRP; or

(2) When the veteran is eligible for employment assistance under provision of § 21.47

(38 U.S.C. 1507(a))

(c) *Elements of the plan.* The IEAP shall follow the same structure as the IWRP. Each IEAP will include full utilization of community resources to enable the veteran to:

(1) Secure employment; and

(2) Maintain employment.

(38 U.S.C. 1517)

(d) *Preparation of the IEAP.* Preparation of the IEAP will be completed:

(1) No later than 60 days before the projected end of the period of rehabilitation services leading to the point of employability; or

(2) Following initial evaluation when employment services constitute the whole of the veteran's program under provisions of § 21.47

(38 U.S.C. 1507(a))

§ 21.90 Individualized independent living plan.

(a) *Purpose.* The purpose of the IILP (Individualized Independent Living Plan) is to identify the steps through which a veteran, whose disabilities are so severe that a vocational goal is not feasible, can become more independent in daily living within the family and community.

(38 U.S.C. 1509)

(b) *Elements of the plan.* The IILP shall follow the same structure as the IWRP. The plan will include:

(1) Services which may be provided under chapter 31 to achieve independence in daily living (38 U.S.C. 1504);

(2) Utilization of programs with a demonstrated capacity to provide independent living services for severely handicapped persons (38 U.S.C. 1520 (a));

(3) Services provided under other Veterans Administration and non-Veterans Administration programs needed to achieve the goals of the plan (38 U.S.C. 1507);

(4) Arrangements for maintaining the improved level of independence following completion of the plan (38 U.S.C. 1507 (a)).

§ 21.92 Preparation of the plan.

(a) *General.* The plan will be jointly devloped by Veterans Administration staff and the veteran.

(38 U.S.C. 1507(a))

(b) *Approval of the plan.* The terms and conditions of the plan must be approved and agreed to by the counseling psychologist, the vocational rehabilitation specialist, and the verteran.

(38 U.S.C. 1507(a))

(c) *Implementation of the plan.* The vocational rehabilitation specialist designated as case manager has the primary role in carrying out Veterans

Admistration responsibility for implementaion of the plan.

(38 U.S.C. 1507 (a))

(d) *Responsible staff.* The counseling psychologist has the primary responsibility for the preparation of plans.

(38 U.S.C. 1507(a))

§ 21.94 Changing the plan.

(a) *General.* The veteran, the counseling psychologist or the vocational rehabilitation specialist may request a change in the plan at any time.

(38 U.S.C. 1507(c))

(b) *Long-range goals.* A change in the statement of a long-range goal may only be made following a reevaluation of the veteran's rehabilitation program by the counseling psychologist. A change may be made when:

(1) Achievement of current goal(s) is no longer reasonably feasible; or

(2) The veteran's circumstances have changed or new information has been developed which make rehabilitation more likely if a different long-range goal is established; and

(3) The veteran fully participates and concurs in the change.

(38 U.S.C. 1507(b))

(c) *Intermediate objectives or services.* A change in intermediate objectives or services provided under the plan may be made by the case manager when such change is necessary to carry out the statement of long-range goals. The veteran must concur in the change.

(38 U.S.C. 1507(b))

(d) *Minor changes.* Minor changes in the plan (e.g., changing the date of a scheduled evaluation) by the case manager may be made without the participation and concurrence of the veteran.

(38 U.S.C. 1507(b))

(e) *Changes in duration of the plan.* Any change in the total duration of a veteran's rehabilitation plan is subject to provisions on duration of a rehabilitation program described in §§ 21.70–21.78.

(38 U.S.C. 1507(b))

§21.96 Review of the plan.

(a) *General.* The veteran's progress in reaching the goals of the plan will be reviewed and evaluated as scheduled in the plan by the case manager and the veteran.

(38 U.S.C. 1507(b))

(b) *Comprehensive review required.* The case manager and the veteran will review all of the terms of the plan and the veteran's progress at least every twelve months. On the basis of such review the veteran and the case manager will agree whether the plan should be:

(1) Retained in its current form;

(2) Amended; or

(3) Redeveloped

(38 U.S.C. 1507(b))

§ 21.98 Appeal of disagreement regarding development of, or change in the plan.

(a) *General.* The veteran may request a review of a proposed, original or amended plan when Veterans Administration staff and the veteran do not reach agreement on the terms and conditions of the plan. A veteran who requests a review of the plan must submit a written statement to the case manager which:

(1) Requests a review of the proposed, original, or amended plan; and

(2) Details his or her objections to the terms and conditions of the proposed, original, or amended plan.

(38 U.S.C. 1507(c))

(b) *Review by Vocational Rehabilitation and Counseling Officer.* Upon receipt of the veteran's request for review of the plan, the counseling psychologist or the case manager will forward the request together with relevant comment to the VR&C Officer who will:

(1) Review relevant information; and

(2) Inform the veteran of his or her decision within 90 days.

(38 U.S.C. 1507(c))

(c) *Review by Vocational Rehabilitation and Counseling Service.* The veteran's request shall be reviewed by the Director, Vocational Rehabilitation and Counseling Service in any case in which the Vocational Rehabilitation and Counseling Officer is the case manager. The veteran will be informed of the decision within 90 days.

(38 U.S.C. 1507(c))

(d) *Appeal to the Board of Veterans Appeals.* The veteran may appeal an adverse decision of the Vocational Rehabilitation and Counseling Officer, or the director, Vocational Rehabilitation and Counseling Service to the Board of Veterans Appeals.

(38 U.S.C. 1507(c))

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ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 162

[OPP-30061; FRL 2138-1]

Regulations for the Enforcement of the Federal Insecticide, Fungicide and Rodenticide Act; Proposed Registration, Reregistration and Classification Procedures

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA proposes to revise its regulations on registration procedures to modify the processing of pesticide product labeling and supplemental distribution, to waive the requirement for submission of efficacy data for additional products, and to incorporate improvements in its child-resistant packaging requirements, including a more flexible approach to determining packaging effectiveness. The Agency believes that these revisions would make the registration process more efficient for both the applicant and the Agency, would permit faster introduction of pesticide products into commerce, and would reduce the Agency resources needed to process applications. This should allow the Agency to focus its resources on the essential task of reviewing the safety of pesticide products.

DATE: Written comments on this proposed rule should be submitted on or before November 15, 1982. Identify comments with the notation OPP–30061.

ADDRESS: Submit written comments to: Document Control Officer (TS–793), Office of Pesticides and Toxic Substances, Environmental Protection Agency, Rm. E–409, 401 M. St., SW., Washington, D.C. 20460.

FOR FURTHER INFORMATION CONTACT: Jean M. Frane, Registration Division (TS–767C), Office of Pesticide Programs, Environmental Protection Agency, Rm. 1114, CM#2, 1921 Jefferson Davis Highway, Arlington, VA 22202 (703–557–0592).

SUPPLEMENTARY INFORMATION:

I. Introduction

Under the Federal Insecticide, Fungicide, and Rodenticide Act, as amended ("FIFRA" or "the Act", 7 U.S.C. 136 *et seq.*), EPA has the responsibility for registering all pesticide products distributed in commerce in the United States. Registration is a licensing process under which pesticide products are evaluated

by the Agency to determine whether they meet the statutory standards found in FIFRA Section 3(c)(5) and 3(c)(7). Final regulations governing the procedures by which the Agency would review and approve applications for registration were published in the Federal Register of July 3, 1975 (40 FR 28242, 40 CFR Part 162) ("the 1975 regulations"). Included in those regulations were requirements pertaining to the submission of applications for registration, the data required for evaluation of the nature and effects of the pesticide, the criteria the Agency would use in approving registrations, the labeling requirements for registered pesticide products, and procedures for regulatory functions associated with the registration process, such as classification of pesticides and cancellation of registrations.

Subsequently, on March 9, 1979 (44 FR 13019), the Agency promulgated final regulations (40 CFR 162.16) governing the packaging of pesticide products in child-resistant packaging.

The FIFRA was amended in 1978 to authorize, among other things, the issuance of conditional registrations under FIFRA Section 3(c)(7) and the waiver of efficacy data requirements under FIFRA Section 3(c)(5) at the discretion of the Administrator. Regulations under the 1978 amendment were issued in the Federal Register of May 11, 1979 (44 FR 27932) as 40 CFR 162.18–1 through 162.18–5.

This proposal addresses four specific changes in the Part 162 regulations. The Agency has the authority to implement each of these procedural changes on a case-by-case basis, and in fact has done so in the past. Because these procedural changes have become the rule rather than the exception, the Agency is revising its regulations to reflect the changes. Notices have recently been issued to all registrants announcing the Agency's implementation of certain of these changes on a general basis. If the comments to this proposal offer a persuasive reason to further modify any of these procedures, the Agency may make such changes in its final rule.

No other revisions to Part 162 are being proposed at this time, but the Agency is developing a comprehensive revision of its Part 162 regulations that will clarify and simplify the registration requirements, implement other changes in the registration process that have occured since 1975, and eliminate obsolete or unnecessary provisions. (Refer to the Advance Notice of Proposed Rulemaking issued in the Federal Register of December 26, 1979 (44 FR 76311).) The Agency is proposing these limited revisions in advance of the comprehensive revision because it wishes to reduce regulatory burdens on registrants and achieve registration process efficiencies as soon as possible. When the comprehensive revision is proposed, the specific changes being proposed today will be renumbered to conform to the organization of that proposal.

II. Proposed Revisions

This proposal revises the 1975 regulations in four specific ways, each discussed in the sections below.

1. *Elimination of the requirement for Agency approval of final printed labeling prior to registration.* Current § 162.6(b)(2)(i)(A)(*2*) and (3)(ii)(B) require that an applicant for a new or amended registration submit to the Agency a copy of the final printed labeling before the Agency will approve the application. Final printed labeling is the labeling that will ultimately appear on the product in channels of trade, or a facsimile of this labeling, such as a printer's proof copy. The submission of final printed labeling has been required after preliminary approval of a draft or mock-up label initially submitted by the applicant.

This proposal will eliminate the requirement that the Agency approve final printed labeling before granting a registration or amended registration. The Agency will issue a registration (and assign a registration number) on the basis of its review of the draft labeling. Thus, the registrant will be permitted to distribute and sell his product immediately upon labeling the product in accordance with the Agency's notice of registration. If the Agency's approval notice specifies labeling revisions that must be made, such revisions are conditions of the issuance of the registration, and must be made before distributing the product. The Agency will continue to require that a final printed label be supplied to the Agency before the product is released for shipment, but will not routinely review it nor return it stamped "Approved." If, however, a subsequent review of the final printed labeling reveals that revisions required in the approval notice have not been made, a notice of intent to cancel the registration may be issued under FIFRA Section 6(e). In addition, a pesticide product bearing labeling not approved in conjunction with the registration may be deemed to be misbranded under FIFRA Section 2(q), and may be in violation of FIFRA Section 12(a)(1).

Further, the Agency may reject subsequent applications for amended registration until the draft labeling is brought into compliance with previously stated requirements.

Although the Agency expects and believes that registrants will label their products in accordance with its requirements, it nonetheless reserves the right to require final printed labeling before approving a registration or amended registration if the labeling changes are substantital, or if an applicant has demonstrated a continuing pattern of incorrect labeling, or has previously disregarded labeling requirements. The Agency will audit selected labels for compliance purposes.

2. *Elimination of Agency approval of supplemental registrations for distributor products.* Current § 162.6(b)(4) sets out the procedures that must be followed to obtain a "supplemental" or "distributor" registration. Supplemental registration does not constitute registration of a new product under FIRRA sec. 3, but merely authorizes the distribution of an already registered product under the name and address of a person (the "distributor") other than the registrant. Section 162.6(b)(4) sets out strict conditions under which supplementally registered products may be distributed. Both the registrant and the proposed distributor are required to request the supplemental registration. The Agency must approve each such request, and requires that the distributor product bear an additional identification number to distinguish it from the registered product. Other conditions are also established by § 162.6(b)(4).

Although the Agency establishes the conditions of distribution of a supplementary registered product, the distributor and the registrant generally define the specific rights, obligations and liabilities of a distributorship by contract between them. This is necessary because the registrant will be held responsible if the distributor's product is in violation of the Act.

Under today's proposal, the Agency would no longer approve supplemental registrations. The registrant would be solely responsible for ensuring that his distributor products are in compliance with the requirements of the Act, and the distributor would be considered an agent of the registrant for purposes of enforcement.

In the future, a registrant would be required simply to notify the Agency that a distributor arrangement exists or is contemplated, by submitting the form entitled, "Application for Supplemental Registration of a Distributor Product" (EPA Form 8570–5). The form contains all necessary information for the Agency's recordkeeping purposes.

Distribution and marketing of the distributor product would proceed after submission of the form.

The Agency would continue to assign distributor company numbers to supplemental registrants in those cases where no company number had previously been assigned and to require that this number appear on the label as a suffix to the EPA registration number. The Agency had contemplated proposing to eliminate the requirement for a distributor number because, for the Agency's purposes, other statutory requirements, i.e., FIFRA sections 7 and 8, provide adequate authority to track the production and distribution of distributor products and to take enforcement action. However, since States are now the primary enforcement agents under FIFRA and States have stressed that a unique identifying number on every product, including a supplementally distributed product, is essential for registration, recordkeeping, and enforcement, the Agency is proposing to retain the current requirement for a distributor company number. EPA believes that continuing this requirement should not delay the marketing of new distributor products since the only occasion where distribution would have to await Agency action is where a company has not previously been assigned a company number. Even if a company has not previously supplementally distributed an EPA registered product, it may nonetheless already have a company number by virtue of being a registrant or a registered pesticide-producing establishment. Experience has shown that only about 1100 new company numbers are applied for in a year for purposes of supplemental distribution and that an application for a new company number can be processed in a week.

3. *Expansion of the efficacy data waiver.* As previously discussed, in 1979 the Agency issued regulations implementing several important provisions of the 1978 FIFRA amendments. Among the provisions implemented was the efficacy data waiver authority provided by FIFRA section 3(c)(5). The Agency defined in § 162.18–2(d) the circumstances when efficacy data were required to be submitted as a matter of course. Other requirements that efficacy data be submitted were generally waived.

The Agency now proposes to extend the efficacy data waiver to additional products. As stated in its previous waiver,the Agency's primary mandate under FIFRA is to evaluate the health and safety aspects of pesticides. Experience under the previous waiver policy indicates that there have been few complaints to the Agency of non-efficacious products being marketed, and the Agency is confident that its efficacy data waiver has occasioned little, if any, serious user dissatisfaction.

Those products for which an efficacy data requirement was continued in 1979 were products which, if they lacked efficacy, could potentially have significant public health effects, such as mosquito control products, rodenticides, certain other vertebrate and invertebrate control agents and antimicrobial products. The Agency now believes that because many of the so called "public health" use patterns identified at that time are more of an aesthetic and nuisance problem than one of public health and are in any case adequately covered by other regulatory mechanisms offering assurance that the products are efficacious, and because the efficacy of products for other of these uses is adequately discernible by the user, continued marketing of inefficacious products is unlikely. The public health authorities of states and localities, for example, have the expertise to determine the efficacy of products used for rodent control. Mosquito control districts offer similar expertise with respect to mosquito control products.

The Agency is proposing to extend its current waiver of efficacy data for all uses of pesticides except those where control cannot reasonably be observed or determined by the user and where lack of control would clearly result in adverse health effects. Accordingly, efficacy data would continue to be required for products bearing claims for control of microorganisms posing a threat to human health, such as microorganisms infectious to man, or mycotoxin-producing fungi. All other efficacy data requirements would normally be waived.

The Agency expects and believes that registrants will ensure that their products are efficacious when used in accordance with label directions and commonly accepted practice because FIFRA at section 3(c)(5)(A) requires it and because pesticide producers are aware that they are potentially subject to damage suits by the user community if their products prove ineffective in actual use. Such litigation can be damaging to the company's reputation and future sales. It is in a company's own best interest to continue high quality efficacy data development and to market only products demonstrated to be effective.

Under this proposal, the Agency retains the right to require the submission of efficacy test data or other evidence for any pesticide product, registered or proposed for registration, for which a lack of efficacy has been reported, for evaluation of product benefits when product risks are substantial, or when other factors exist which make submission of such data necessary or desirable to support the presumption that it is efficacious.

Applications to register inefficacious products may be denied, and registrations of inefficacious products already registered may be cancelled or the products themselves may be deemed misbranded. If there is evidence (such as a significant rise in complaints from user groups or the general public) adequate to establish that this regulatory relief policy is being abused, the Agency would reconsider its waiver policy. The Agency is now establishing an efficacy surveillance network in concert with the U.S. Department of the Interior's Fish and Wildlife Laboratory in Denver, Colorado, the National Pest Control Association and the American Hospital Association. Other qualified organizations and individuals are invited to participate.

4. *Revisions in the child-resistant packaging criteria and requirements.* Final regulations establishing the criteria, procedures, and requirements for the use of child-resistant packaging for pesticides were published as § 162.16 in March 1979. Those regulations:

a. Defined the criteria that, if met, would necessitate the use of child-resistant packaging.

b. Established standards for effectiveness and compatibility of child-resistant packaging, based on those of the Consumer Product Safety Commission (CPSC).

c. Required the testing of child-resistant packaging to determine that the standards were met.

d. Required that a registrant certify to the Agency that his packaging met the standards and would continue to meet the standards when in use.

e. Required a registrant to keep records on the child-resistant packaging used and its effectiveness.

The Agency subsequently issued a notice in the **Federal Register** of March 3, 1981 (46 FR 15104), clarifying certain ambiguities and resolving certain difficulties in applying the child-resistant packaging requirements.

Today's proposal would extensively revise the child-resistant packaging requirements of § 162.16. The following changes are proposed:

a. The term "special packaging" would be changed to "child-resistant packaging" throughout.

b. The term "packaging" would be defined to mean the entire package, including the closure and container. Current § 162.16(b)(1) defines "package" to be the immediate container or wrapping in which any pesticide is contained, without clearly specifying that the closure and container together comprise the "package." This lack of specificity is compounded by the ambiguity of current § 162.16(d)(3), which requires that "each size of a design" be tested. The term "each size of a design" could arguably be interpreted to mean either the entire package or only the closure or child-resistant feature of the package. The Agency proposes to make clear that the terms "package," "packaging," and "design" refer to both the closure and the container of the pesticide product. Although the Agency would no longer specify testing as the only method for the registrant to determine the effectiveness of child-resistant packaging (see paragraph 4.d. of this preamble) the registrant would be required to certify that the package met the standards set out in proposed § 162.16(g). A certification submitted in accordance with the current regulations or with the Federal Register Notice of March 3, 1981, would be deemed to be a certification of the "package" under this clarified definition, unless the registrant wished to submit a new certification.

c. Registrants who limit their products to sale, use and storage by "servicepersons" would not be required to use child-resistant packaging. This provision was introduced in the Agency's notice of March 3, 1981, and is being incorporated into the regulations at this time. Under FIFRA section 3(d)(1)(C)(ii), if a package is labeled, "Only for Sale to and Use and Storage by Servicepersons," a pesticide product otherwise subject ot the child-resistant packaging requirements need not be in child-resistant packaging. A "serviceperson" is a person who provides for other people the service of controlling pests, whether for hire or as a function of his job, and may be a pest control operator, a lawn specialist, or a janitor or maintenance person. An individual homeowner is not a "serviceperson." If the product is marketed in channels of trade that could lead to its purchase by other than servicepersons, registrants would be in violation of FIFRA section 12(a)(2)(F), which prohibits making a restricted use pesticide available other than in accordance with the restrictions imposed. Users who are not servicepersons would also be in violation of FIFRA section 12(a)(2)(F). The Agency would encourage registrants to use more specific terms than "serviceperson" on the labeling of products, to help clarify for retailers the legal limitations on the distribution of products.

d. Mandatory testing of each package by the CPSC protocol would be eliminated. Current § 162.16(d)(3) requires effectiveness testing be done in accordance with CPSC protocols. The proposed regulation would permit the registrant to use either testing of his specific product and package or other relevant information concerning the packaging as the basis for his certification to the Agency. The Agency would continue to use the CPSC protocols to judge whether the package meets the effectiveness standards for enforcement purposes. Proposed § 162.16(i)(2) would specify that the registrant must retain a copy of "test data or other scientific evidence" upon which his certification was based. "Other scientific evidence" may be data developed by the manufacturer of the packaging and available to the registrant, documentation that the packaging meets the effectiveness standard because it is included on a CPSC list of child-resistant packaging that has been tested according to the CPSC protocol or may be a scientific judgment or set of measurements that supports a determination that the packaging is in fact child-resistant. The burden of proving that the package is child-resistant would remain, as it is now, on the registrant.

e. An additional provision for exemption is being proposed. The current regulation provides for exemption if the toxicity of the product to test species is not indicative of its toxicity to man, or if child-resistant packaging is not technically feasible. Today's proposal would retain those two provisions, and also add a limited exemption based on economic hardship, which may be granted if the Agency determines that exemption would be in the public interest.

The Agency's experience over the past two years with child-resistant packaging has been that there likely are few products for which child-resistant packaging cannot be obtained or developed. EPA believes that an economic hardship exemption will seldom be sought or granted. Nonetheless, in the interests of regulatory flexibility, the Agency proposes to make available such an exemption for those few products that cannot be reasonably packaged in child-resistant packaging without imposing an extreme economic hardship upon the registrant.

To be considered for such an exemption the registrant would have to provide documentation establishing (1) that no commercially available package could reasonably be used for his product, and (2) that obtaining or producing packaging that would meet the requirements would impose such a severe economic hardship that the continued existence of his business would be threatened. The first criterion would require that the registrant document why existing child-resistant packaging cannot be used for his product. The Agency considers it reasonable for producers to change packaging types and/or sizes to meet the child-resistant packaging requirement. The second criterion would require the registrant to furnish financial information showing that the child-resistant packaging requirement would have a severely detrimental effect on his ability to continue in business. Such financial information, normally would qualify as confidential business information protected from disclosure to the public by FIFRA section 10, unless it was otherwise available to the public. Finally, the Agency would have to determine that, notwithstanding the fact that the two previous criteria had been met, the marketing of the pesticide without child-resistant packaging would be in the public interest.

The Agency solicits comments on the changes proposed in child-resistant packaging requirements, particularly with respect to the need to provide such an exemption.

III. Statutory Review

In accordance with FIFRA section 25, a draft of the comprehensive revisions to 40 CFR Part 162 was submitted to the FIFRA Scientific Advisory Panel (SAP). In a memorandum of October 13, 1981, the SAP waived its review of the comprehensive regulation, which deals with procedural matters.

The document was also submitted to the U.S. Department of Agriculture (USDA), which, by letter of July 2, 1982, submitted the comments discussed below.

The USDA believes that the Agency should continue to require efficacy data for most products, and that waivers should be granted only on a case-by-case basis. USDA therefore opposes further extension of the efficacy data waiver to additional products. EPA has stated in granting the initial efficacy data waiver its reasons for doing so (44

FR 27932, May 11, 1979). The Agency's position at that time was that the marketplace could function effectively to remove ineffective products, and, in the absence of evidence to the contrary, EPA continues to hold that belief. EPA is aware of no serious problems with its existing efficacy data waiver, and therefore no persuasive reason to forego further regulatory relief in this area. The Agency also notes that it retains the right to require submission of efficacy test data or other evidence at its discretion, such as when there is an indication that an inefficacious product is or is sought to be registered.

Second, USDA believes that EPA should continue to review and approve final printed labeling, although they agree that EPA's review need not precede the distribution of the product in commerce. USDA is concerned that elimination of the final printed label review will result in an increase in inadequate or incorrect labeling, and will generally lower the quality of pesticide labeling in the U.S. As stated in the preamble, EPA believes that the pesticide industry is willing and able to assume the responsibility for producing labeling in compliance with Agency requirements without constant oversight by the Agency. Moreover, EPA would point out that this proposal provides for a selective monitoring of final printed labels, and, depending on the seriousness of any deficiency found, the Agency has at its disposal a series of followup actions to help ensure continued compliance. These are clearly stated in the preamble and rule. The Agency is confident that a limited audit program, coupled with discretionary followup actions, will serve to offer needed regulatory relief to the industry and resource savings to the Agency without jeopardizing pesticide label quality.

Finally, the USDA offered the suggestion that the term "aflatoxin" be replaced with "mycotoxin." The Agency has adopted this suggestion.

Copies were also supplied to the Committee on Agriculture of the U.S. House of Representatives and the Committee on Agriculture and Forestry of the U.S. Senate. Comments were received from the House Committee on Agriculture, Subcommittee on Government Operations, Research and Foreign Agriculture. Each of these comments is discussed below, together with the Agency's response.

1. The Agency should not state so categorically that it will not review final printed labels.

EPA response: The Agency does not plan to routinely review final printed labeling and has stated this decision in the preamble so that registrants will be aware of the full import of this change and their greater responsibility in assuring that their products bear accurate labels. Further, EPA believes that the auditing of selected labels will ensure a proper level of compliance.

2. The Agency should reject subsequent applications if previous labeling changes have not been made.

EPA response: EPA wishes to retain the flexibility to choose the appropriate response to evidence of incorrect labeling. The Agency's experience is that occasionally non-compliance is due not to flagrant disregard or ignorance of the registrant but to errors made innocently that escape the scrutiny of the registrant. The Agency does not believe it necessary or desirable to simply reject all future applications without consideration of the circumstances. The Agency's day-to-day dealings with individual registrants allows it to distinguish a registrant with an honest error from another whose label compliance record has been less than acceptable. Where a good faith effort has been made, the registrant should not be penalized unless the magnitude of the error creates serious label discrepancies or could be hazardous if followed by the user. Therefore, EPA has not changed the rule.

3. The Agency should indicate more clearly in the preamble the role of the States in efficacy oversight, and also note the potential liability of registrants whose products are shown to be ineffective.

EPA response: EPA agrees, and has revised the preamble to note these important points.

4. The Agency should retain considerable latitude to require submission of efficacy data whenever necessary, since submission of already developed efficacy data should not be viewed as burdensome to the industry.

EPA response: The Agency clearly states in its preamble that it reserves the right to require evidence of efficacy, but has also included language to this effect in the rule itself [§ 162.18–2(d)(2)(iii)].

5. The Agency should ensure that products exempt from child-resistant packaging requirements because their sale, use and storage is limited to servicepersons do not enter areas where children could have access to them.

EPA response: The serviceperson exemption legally prohibits the access of children because the definition of serviceperson provides that no excess pesticide shall remain at the site of application. The serviceperson must store the material away from the site of application, which should effectively preclude access by children. Furthermore, the Agency's enforcement position is that if a serviceperson-labeled product is found in residential channels of trade, the registrant is in violation of the law. Further action by EPA is beyond the scope of this proposal.

6. The rule should require pesticide containers to conform to CPSC standards and registrants to choose CPSC approved packaging.

EPA response: This comment appears based on the misconception that EPA has somehow relaxed the CPSC standards for packaging. The CPSC standards for child resistance are unchanged in the proposal. EPA's proposal would, however, permit alternative methods of demonstrating that the product meets those standards, such as extrapolation from existing data. EPA's objective is to eliminate duplicative and expensive testing by several registrants for a package that may be identical to another except for size. EPA notes that CPSC does not approve packaging, but merely provides lists of packaging which the manufacturers have indicated meet the CPSC standard for child resistance.

7. The Agency should reconsider its proposed economic hardship exemption. The Subcommittee expressed doubt that a producer's economic viability could hinge on child-resistant packaging. Moreover, the Subcommittee questioned the Agency's reliance on data protected by FIFRA sec. 10 as a basis for an exemption to permit marketing of a product not in child-resistant packaging.

EPA response: The Agency agrees with the Subcommittee that there appear to be few companies for which acquisition of child-resistant packaging would prove a debilitating economic burden. The preamble reflects this belief. However, the Agency has been informed by trade associations, such as the Southern Agricultural Chemcials Association, that in some cases the requirements do pose an economic hardship, for which Agency regulations provide no measure of relief. EPA is, however, soliciting comments on the need for the proposed exemption.

EPA would point out that economic hardship alone does not justify an exemption, even if it could conceivably threaten to put a company out of business. The Agency would also have to make a finding that the marketing of the product in non-child-resistant packaging would be in the public interest. The Agency's rejection of an economic hardship request might reflect a decision that the product was too toxic to permit any marketing in non-child-

resistant packaging. The producer would then have to either package it in child-resistant packaging or stop marketing the product althogether, economic hardship notwithstanding.

With respect to disclosure of data, the Agency will disclose financial data only as permitted by FIFRA section 10. Clearly, however, that section would prohibit disclosure of much of the financial information on which an economic hardship exemption would be based.

IV. Executive Order 12291

Under E.O. 12291, EPA must judge whether a regulation is "major" and therefore subject to the requirement of a Regulatory Impact Analysis. The Agency has determined that this revision of Part 162 is not a major regulation as defined by E.O. 12291.

1. *Efficacy waiver policy.* The extended efficacy waiver policy would reduce the number of efficacy reviews required for reregistration from 11,600 to 6,000. This reduction in the number of reviews is associated with 4,000 insecticide products and 1,600 rodenticide products. The proposed policy would not affect the 6,000 efficacy reviews required for antimicrobial products. For new registrations, the extended efficacy waiver policy would reduce the number of reviews from 1,100 to 500 studies per year.

The direct savings to the pesticide program for the extended efficacy waiver are estimated to be a one-time saving of 14.5 manyears for reregistration, and an annual saving of 2.5 manyears for new registrations. The cost to registrants remains unchanged since efficacy testing is still expected to be carried out to support label claims, but the time to process a registration should be shortened for new registrations affected by the extension of the efficacy data waiver.

2. *Elimination of final printed label review.* Eliminating the final printed label approval would routinely permit marketing of the product 2 to 4 weeks earlier, although in some cases, the figure might be as high as 12 weeks. This saving would affect about 7,500 registrations per year including new chemicals, old chemicals, and amended registrations. The time saving would be very significant for minor amendments or "me too" registrations which constitute the majority of registration actions. For new products that are seasonal in nature, the elimination of an Agency review cycle could, in some cases, mean the difference between being able to market for a use season, or not being able to do so. In addition to the time savings to registrants in marketing products, EPA would save an estimated one manyear in decreased review time.

3. *Elimination of Agency approval of supplemental registrations for distributor products.* The Office of Pesticide Programs processes about 14,000 supplemental distributor applications per year. Eliminating Agency approval saves the program about one manyear and saves the registrant about one month in processing time, the time normally required for approval.

4. *Revisions in child-resistant packaging criteria and requirements.* There are about 7,500 registered pesticide products that meet the criteria for child-resistant packaging. These products are sold in about 3,000 different types of packages, considering closure, package size, material and manufacturer. Most existing package testing has been limited to differences in the closure only.

The incremental cost to test and certify all different package designs not yet tested would be about $16.0 million. Under the proposed revisions, the registrant could certify that his package was child-resistant based on any available test data or other evidence, eliminating the need for further testing in many cases, and thereby reducing testing costs to the registrant and packaging manufacturer. Although the exact number of packages for which existing data would be sufficient to judge child-resistance is not known, the Agency estimates that this revision may save as much as 50 percent of remaining testing costs.

Child-resistant packaging features are estimated to cost 3.0 cents per package, or $1.56 million per year for the industry, assuming 52 million packages. The annual cost would not be changed by this rulemaking. The Agency believes that most products are in compliance, and that the major expenses of production changeover have already been incurred.

This proposal was submitted to the Office of Management and Budget (OMB) for review, as required by Executive Order 12291. Any comments from the OMB to EPA and EPA responses to those comments are available for public inspection at the address given for comments.

V. Review Under Regulatory Flexibility Act

This proposed regulation has been reviewed under the provisions of section 3(a) of the Regulatory Flexibility Act and it has been determined that this proposal does not contain provisions which would have a significant adverse impact on a substantial number of small entities. Since the revisions to 40 CFR Part 162 would reduce paperwork, registration processing times, and compliance costs, the regulations would be beneficial to small businesses. Thus, a detailed Regulatory Felxibility Analysis is not required.

VI. Paperwork Reduction Act

Under the Paperwork Reduction Act, EPA must identify any information collection burdens imposed by the proposed regulation, and must obtain clearance from the OMB for any such collection activities. This proposed revision contains the following information collection requirements, all of which are substantially similar to current requirements:

1. A requirement that registrants submit to the Agency a final printed label after registration, or, occasionally, before registration.

2. A requirement that the registrant notify the Agency of each distributor product that he authorizes to be distributed and sold under another person's name. This information is presently collected through use of an OMB-approved form, "Application for Supplemental Registration of Distributor."

3. A requirement that a registrant subject to the child-resistant packaging provisions of § 162.16 certify to the Agency that this packaging meets the standards set out in the regulation. The manner of the certification is not specified, but a new registrant may choose to certify by simply checking a box on an OMB-approved form, "Application for Registration," which requests the applicant to identify whether his product will be in child-resistant packaging.

4. To the extent that a registrant seeks an exemption from the requirement of child-resistant packaging, submission of information identifying the product(s) involved, and supporting documentation for the request.

The information provisions in this rule have been submitted for approval to the Office of Management and Budget (OMB) under section 3504(b) of the Paperwork Reduction Act of 1980, 44 U.S.C. 3501 *et seq.* Any final rule will explain how its information provisions respond to any OMB or public comments.

Pursuant to provisions of the Regulatory Flexibility Act, each proposed regulation is to be accompanied by a Regulatory Flexibility Analysis or by a certification that no such analysis is necessary because the regulation, if promulgated, will not have

a significant economic impact on a substantial number of small entities. For the same reasons that this is not a major regulation under E.O. 12291, I hereby certify that the proposed revisions to 40 CFR Part 162 do not have a significant impact on a substantial number of small entities.

Dated: August 24, 1982.

John W. Hernandez, Jr.,

Acting Administrator.

(Secs. 3, 25(a)(1), and 25(c)(3), Federal Insecticide, Fungicide, and Rodenticide Act, as amended (Pub. L. 92-516, 92 Stat. 819; 7 U.S.C. 136 et seq.; 1972, 1975, and 1978))

List of Subjects in 40 CFR Part 162

Intergovernmental relations, Labeling, Packaging and containers, Pesticides and pests, Administrative practices and procedures.

PART 162—REGULATIONS FOR THE ENFORCEMENT OF THE FEDERAL INSECTICIDE, FUNGICIDE AND RODENTICIDE ACT

Therefore, it is proposed that 40 CFR Part 162 be amended as follows:

1. In § 162.6, by revising paragraphs (b)(2)(i)(A)(*2*), (3)(ii)(B), and (4) to read as follows:

§ 162.6 Registration procedures.

* * * * *

(b) * * *

(2) * * *

(i) * * *

(A) * * *

(*2*) A number of copies, as specified by the Agency, of the complete final printed labeling, modified in accordance with any Agency requirements specified in the Notice of Registration, and meeting the requirements of § 162.10: provided, however, that final printed labeling generally need not be submitted until after the application for registration has been approved. The Agency may require that final printed labeling be submitted prior to registration if the applicant has previously failed to comply with labeling requirements, or if the Agency finds that the needed revisions are of such magnitude that further label review is required.

* * * * *

(3) * * *

(ii) * * *

(B) A number of copies, as specified by the Agency, of the complete final printed label, modified in accordance with any Agency requirements specified in the notice of approval, and meeting the requirements of § 162.110: provided, however, that final printed labeling generally need not be submitted until after the amendment has been approved. The Agency may require that final printed labeling be submitted prior to approval of the amendment if the applicant has previously failed to comply with labeling requirements, or if the Agency finds that the needed label revisions are of such magnitude that further review is required.

* * * * *

(4) *Notification of supplemental registration of distributor.* (i) A registrant may distribute a registered product under the name and address of any other person if:

(A) The registrant has submitted to the Agency for each distributor product a signed statement listing the names and addresses of both the registrant and the distributor, the distributor's company number, the additional brand name(s) to be used, and the registration number of the registered product;

(B) The composition of the supplementally distributed product is identical to that of the registered product;

(C) The supplementally distributed product is manufactured, packaged and labeled in a registered establishment operated by the same producer who manufactures, packages, and labels the registered product;

(D) The supplementally distributed product remains in the manufacturer's unbroken container (is not repackaged);

(E) The labeling of the supplementally distributed product is the same as that of the registered product: provided, however, that: specific claims may be deleted if by so doing no other changes are necessary; the brand name may be different; and the identification of the supplemental distributor may be substituted for that of the registrant;

(F) The label of the supplementally distributed product bears the name and address of the distributor and the registration number of the registered product followed by the EPA distributor number, and the label or immediate container bears the establishment number of the final establishment at which the product was produced; and

(G) The distributor product name is not misleading, as defined in § 162.10.

(ii) If a registrant has a potential distributor to whom a company number has not been assigned, he should have the distributor apply, by letterhead, to the Agency for a company number.

* * * * *

2. By revising § 162.16 to read as follows:

§ 162.16 Child-resistant packaging.

(a) *Definitions.* Terms used in this section shall have the same meaning set forth in the Act and § 162.3. In addition, as used in this section:

(1) "Child-resistant packaging" means packaging that is designed and constructed to be significantly difficult for children under five years of age to open or obtain a toxic or harmful amount of the substance contained therein within a reasonable time, and that is not difficult for normal adults to use properly.

(2) "Package" or "packaging" means the immediate container or wrapping, including any closure(s), in which the pesticide is contained for consumption, use or storage. "Package" does not include any shipping or bulk container used for transporting or delivering the pesticide, unless it is the only such package.

(3) "Residential use" means use of a pesticide:

(i) Directly on humans or pets;

(ii) In, on or around any structure, vehicle, article, surface, or area associated with the household, including but not limited to areas such as out-buildings, non-commercial greenhouses, pleasure boats, or recreational vehicles; or

(iii) In or around any preschool or day care facility.

(4) "Serviceperson" means a person who provides the service of controlling pests without delivering any unapplied pesticide to the person so served. The term includes, but is not limited to, a janitor, pest control operator, maintenance person or lawn care person. The term does not include household help.

(5) "Unit packaging" means a package that is labeled with directions to use the entire contents of the package in a single application or which consists of an individually packaged dosage unit.

(b) *When required.* A pesticide product must be in child-resistant packaging if the product meets all of the following criteria:

(1) It meets any of the following toxicity criteria when tested in accordance with Subdivision F of the Registration Guidelines:

(i) The product has an acute oral LD_{50} of 1.5 g/kg or less;

(ii) The product has an acute dermal LD_{50} of 2000 mg/kg or less;

(iii) The product has an acute inhalation LC_{50} of 2 mg/kg or less;

(iv) The product is corrosive to the eye (causes irreversible destruction of ocular tissue) or causes corneal involvement or irritation persisting for 21 days or more;

(v) The product is corrosive to the skin (causes tissue destruction into the dermis and/or scarring) or causes severe skin irritation (severe erythema or edema) at 72 hours; or

(vi) The product has such characteristics that, based upon human toxicological data, use history, accident data or such other evidence as is available, the Agency determines there is a serious hazard of accidental injury or illness which child-resistant packaging could reduce;

(2) Its labeling either directly recommends residential use or reasonably can be interpreted to permit residential use;

(3) It has not been restricted to use by or under the direct supervision of a certified applicator;

(4) It does not bear "serviceperson" labeling in accordance with paragraph (f) of this section; and

(5) It has not been exempted in accordance with paragraph (e) of this section.

(c) *Products classified for restricted use.* Notwithstanding the provisions of paragraph (b)(1) of this section, the Agency may require the use of child-resistant packaging if:

(1) The product is classified for restricted use only by or under the direct supervision of a certified applicator; and

(2) The Agency determines that the product poses a risk of serious accidental injury or illness which child-resistant packaging could reduce.

(d) *Unit packaging.* Pesticide products sold as an aggregate of one or more unit packages and meeting the criteria of paragraph (b) of this section must use child-resistant packaging either for each unit package or for the outer retail container which contains the unit packages. Child-resistant packaging is not required for both the outer package and the unit packages unless, on a case-by-case basis, the Agency determines that it is necessary for risk reduction.

(e) *Exemptions*—(1) Upon the written request of a registrant or applicant the Agency may grant an exemption from the requirements of this section if child-resistant packaging is not technically feasible or if the hazards indicated by the toxicity criteria in paragraph (b) of this section are not indicative of the risk to man. Requests for exemption will be evaluated on the basis of supporting data accompanying the request. A decision to grant an exemption shall apply to other products with identical or substantially similar composition.

(2) Upon the written request of a registrant or applicant, the Agency may grant an exemption from the requirements of this section for a specified length of time if:

(i) The registrant establishes that no child-resistant packaging is commercially available that can reasonably be used for packaging and marketing the product;

(ii) The registrant establishes that producing or obtaining child-resistant packaging that can reasonably be used for the product would impose an extreme economic hardship on the registrant; and

(iii) The Agency determines that granting the exemption would be in the public interest.

(f) *Serviceperson labeling.* A product that meets the criteria in paragraph (b) of this section for child-resistant packaging need not be in child-resistant packaging if:

(1) The product is restricted to sale to, use, and storage by servicepersons only; and

(2) The label bears the statement, "Only for Sale to and Use and Storage by Servicepersons," or an alternative version of this statement approved by the Agency. The statement must appear at the top of the front panel of the label in type size at least as large as the child hazard warning statement. Products restricted under this paragraph shall be deemed to be restricted under FIFRA sec. 3(d)(1)(C)(ii). The term "serviceperson" should be replaced on the label with a specific type of serviceperson whenever possible.

(g) *Standards*—(1) *Effectiveness standard.* The child-resistant package, when tested by the protocols specified in 16 CFR 1700.20, shall meet the following specifications:

(i) The packaging shall have child-resistant effectiveness of not less than 85 percent without a demonstration of the proper means of opening the package, and not less than 80 percent after a demonstration: provided that, in the case of unit packaging, child-resistant effectiveness shall not be less than 80 percent.

(ii) The packaging shall have adult-use effectiveness of not less than 90 percent without a demonstration.

(2) *Compatibility standard.* The child-resistant packaging must continue to meet the effectiveness specifications of paragraph (g)(1) of this section when in actual use as a pesticide container. This requirement may be satisfied by appropriate scientific evaluation of the compatibility of the substance with the child-resistant packaging to determine that the chemical and physical characteristics of the substance will not compromise or interfere with the proper functioning of the child-resistant packaging and that the packaging will not be detrimental to the integrity of the product during storage and use.

(3) *Duration standard.* The child-resistant packaging must continue to meet the effectivenes and compatibility standards of paragraph (g)(1) and (2) of this section for the reasonably expected lifetime of the package, taking into account the number of times the package is customarily opened and closed. This requirement may be satisfied by appropriate technical evaluation based on physical wear and stress factors, force required for activation, and other relevant factors.

(h) *Certification*—(1) *General.* The registrant of a pesticide product required to be in child-resistant packaging shall certify to the Agency that the package meets the standards set forth in paragraph (g) of this section. Certification must be submitted with each application for new registration, if applicable.

(2) *Contents of certification.* The certification required by this section must contain the following information:

(i) The name and EPA registration number of the product to which the certification applies, the registrant's name and address, the date and the name, title, and signature of the company official making the certification.

(ii) A statement that the packaging that is being used for the product will meet the standards of paragraph (g) of this section. The statement "I certify that the packaging that will be used for this product meets the standards of 40 CFR 162.16(g)" will suffice for this purpose. Alternatively, the applicant may indicate on his signed application form that he is using child-resistant packaging. If he does so, that statement, together with his signature, will be deemed to be the required statement.

(i) *Recordkeeping.* For as long as the registration of a pesticide product required to be in child-resistant packaging is in effect, the registrant must retain and, upon request by the Agency, make available to Agency representatives for inspection and copying, or submit to the Agency, the following records:

(1) A full description of the package including:

(i) A description of the container, including its dimensions and composition.

(ii) A description of the closure or child-resistant mechanism, including the name of its manufacturer and the manufacturer's designation for the closure or the physical working of the child-resistant packaging mechanism.

(2) A copy of the test data or other scientific evidence which the registrant used to determine that his product's packaging complies with this section.

3. By revising § 162.18–2(d)(2) to read as follows:

§ 162.18-2 Data required to be made available for agency review in support of conditional registration.

* * * * *

(d) * * *

(2) *Efficacy data.* (i) Efficacy data, in accordance with Subdivision G of the Registration Guidelines, for each product that bears a claim to control pest microogranisms that pose a threat to human health and whose presence cannot readily be observed by the user, including, but not limited to, microogranisms infectious to man in any area of the inanimate environment.

(ii) Efficacy data, in accordance with Subdivision G of the Registration Guidelines, for each product for which a new or added use is proposed, if the product contains an active ingredient, some uses of which have been suspended, cancelled, or are the subject of a Notice issued under § 162.11(a)(3)(ii) and the risks identified in the Notice or suspension/cancellation action may reasonably be anticipated as a result of the new use.

(iii) Efficacy data requested by the Agency for any product, registered or proposed for registration, such as when:

(A) A lack of efficacy has been reported for it;

(B) The Agency needs such data to evaluate benefits of the pesticide (or of alternative pesticides) when substantial risks have been identified; or

(C) Factors exist that make submission of such data necessary or desirable to support the presumption that it is efficacious.

(iv) Products which are inefficacious may violate FIFRA section 3(c)(5)(A). Applications to register products which do not meet the requirements of the Act will be denied; registrations of products which do not may be cancelled or the products themselves may be deemed misbranded per FIFRA section 2(q)(1)(A) and section 12(a)(1) (E) or (F).

* * * * *

[FR Doc. 82-25154 Filed 9-14-82; 8:45 am]

BILLING CODE 6560-50-M

40 CFR Part 171

[OPP-250037; PH-FRL-2205-6]

Certification of Pesticide Applicators; Notification to the Secretary of Agriculture of Proposed Recordkeeping and Reporting Requirements

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule related notice.

SUMMARY: Notice is given that the Administrator of EPA has forwarded to the Secretary of the U.S. Department of Agriculture a proposed regulation to impose certain recordkeeping and reporting requirements upon dealers. The proposed rule would require persons who make restricted use pesticides available to users to provide a one-time written report to the Agency, certifying that they are maintaining records of the sale or distribution of restricted use pesticides. This action is required by section 25(a)(2)(A) of the Federal Insecticide, Fungicide, and Rodenticide Act, as amended.

FOR FURTHER INFORMATION CONTACT: David Hannemann, Pesticides and Toxic Substances Enforcement Division (EN-342), Office of Pesticides and Toxic Substances, Environmental Protection Agency, Rm. 3624E, 401 M St. SW., Washington, D.C. 20460, (202-382-5645).

SUPPLEMENTARY INFORMATION: Section 25(a)(2)(A) of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), as amended (Pub. L. 92-516, 86 Stat. 973; Pub. L. 94-140, 89 Stat. 752; 7 U.S.C. 136 et seq.) provides that the Administrator shall provide the Secretary of Agriculture with a copy of any proposed regulation at least 60 days prior to signing it for publication in the **Federal Register.** If the Secretary comments in writing regarding the regulation within 30 days after receiving it, the Administrator shall issue in the **Federal Register,** with the proposed regulation, the comments of the Secretary and the response of the Administrator. If the Secretary does not comment in writing within 30 days after receiving the proposed regulation, the Administrator may sign the regulation for publication in the **Federal Register** anytime after the 30-day period.

Under FIFRA section 25(a)(3), a copy of this proposed rule has been forwarded to the Committee on Agriculture of the House of Representatives and the Committee on Agriculture, Nutrition, and Forestry of the Senate.

(Sec. 25, (Pub. L. 92-515, 86 Stat. 973; Pub. L. 94-140, 89 Stat. 753; (7 U.S.C. 136 et seq.)))

List of Subjects in 40 CFR Part 171

Pesticides and pests, Intergovernmental relations, Indian lands, Recordkeeping and reporting requirements.

Dated: August 27, 1982.

John A. Todhunter,

Assistant Administrator for Pesticides and Toxic Substances.

[FR Doc. 82-24886 Filed 9-14-82; 8:45 am]

BILLING CODE 6560-50-M

FEDERAL MARITIME COMMISSION

46 CFR Parts 534 and 536

[General Orders 10 and 13; Docket No. 82-42]

Green Hide Weighing Practices; and Publishing and Filing Tariffs by Common Carriers in the Foreign Commerce of the United States

AGENCY: Federal Maritime Commission.

ACTION: Notice of proposed rulemaking.

SUMMARY: This proposes to (1) remove regulations that were designed to cover a uniform method of declaring shipping weights on green salted hides for export in the foreign commerce of the United States and (2) amend 46 CFR 536.5(c)(17) to delete reference to 46 CFR Part 534 therein. The action will eliminate a regulation that no longer appears to be necessary.

DATE: Comments due by October 15, 1982.

ADDRESS COMMENTS TO: Francis C. Hurney. Secretary, Federal Maritime Commission, 1100 L Street NW., Washington, D.C. 20573.

FOR FURTHER INFORMATION CONTACT: Daniel J. Connors, Director, Bureau of Tariffs, Federal Maritime Commission, 1100 L Street NW., Washington, D.C. 20573, (202) 523-5796.

SUPPLEMENTARY INFORMATION:

On May 5, 1964, the Commission published regulations relating to Green Hide Weighing Practices, 29 FR 5887, to provide a uniform method of declaring shipping weights on green salted hides for shipment from the United States. These regulations were codified in Part 534 of Title 46 of the Code of Federal Regulations. The regulations require carriers of green salted hides to amend their tariffs to reflect the shipping weight of hides to be either the scale weight or a scale weight minus a specified deduction. Shipping documents were required to support the determination.

Carriers promptly met the requirements of 46 CFR 534, and the uncertainty regarding the weight to be utilized in calculating freight charges was eliminated. A review of the Commission's records indicates that no complaints or protests have been received concerning the handling of green hides since the Commission adopted the rule.

The Commission subsequently revised its tariff filing regulations under General Order 13 (46 CFR 536) and incorporated a provision relating to green hide weighing practices (46 CFR 536.5(c)(17))

which included the substance of 46 CFR 534. Therefore the removal of Part 534 will eliminate a regulation which solved a problem that existed at the time it was promulgated but which has since been rendered duplicative and unnecessary.

The Commission finds that this proposal is exempt from the requirements of the Regulatory Flexibility Act (5 U.S.C. 601). Section 601(2) of that Act excepts from its coverage any "rule of particular applicability relating to such rates * * *." As this rule clearly relates to rates and practices, the Regulatory Flexibility Act requirements are determined to be inapplicable.

List of Subjects in 46 CFR Parts 534 and 536

Water carriers, Tariffs.

Therefore, it is proposed, pursuant to 5 U.S.C. 553 and sections 14(b), 15, 16, 17, 18(b) and 43 Shipping Act, 1916 (46 U.S.C. 813(a), 814, 815, 816, 817 and 841(a)) that the following amendments be made.

PART 534—[REMOVED]

PART 536—PUBLISHING AND FILING TARIFFS BY COMMON CARRIERS IN THE FOREIGN COMMERCE OF THE UNITED STATES

§ 536.5 [Amended]

(1) Part 534 of Title 46 of the Code of Federal Regulations be removed; and (2) The first sentence of 46 CFR 536.5(c)(17) be amended by deleting the phrase: "in accordance with Part 534 of the Commission's rules".

By the Commission.

Francis C. Hurney,

Secretary.

[FR Doc. 82-25359 Filed 9-14-82; 8:45 am]

BILLING CODE 6730-01-M

INTERSTATE COMMERCE COMMISSION

49 CFR Part 1111

[Ex Parte No. 282 (Sub-No. 9)]

Railroad Consolidation Procedures—Trackage Rights Exemption

AGENCY: Interstate Commerce Commission.

ACTION: Notice of Proposed Exemption and Rulemaking.

SUMMARY: Acquisition by a rail carrier of trackage rights over a railroad line owned or operated by another rail carrier may be carried out only with the approval and authorization of the Commission. See 49 U.S.C. 11343. We propose to exempt from regulation, trackage rights proposals that are: (1) Based on written agreements; and (2) not sought as responsive applications in rail consolidation proceedings. Carriers taking advantage of such an exemption would remain subject to standard employee protective conditions and would not gain immunity from the antitrust laws and all other law as provided in 49 U.S.C. 11341. Exempting trackage rights applications as a class will promote the national rail transportation policy, and will also promote competition generally because trackage rights facilitate operating efficiencies by providing carriers with alternative, shorter, and faster routes. We invite public comment on this proposal.

DATE: Comments must be submitted by October 15, 1982.

ADDRESSES: Send comments (an original plus 10 copies) to: Interstate Commerce Commission, Section of Finance, Room 5421, Washington, D.C. 20423.

FOR FURTHER INFORMATION CONTACT:

Louis E. Gitomer, (202) 275-7245

or

Anne K. Quinlan, (202) 275-6458

SUPPLEMENTARY INFORMATION:

Trackage Rights

Acquisition by a rail carrier of trackage rights over a railroad line owned or operated by another rail carrier may be carried out only with the approval and authorization of the Commission. See 49 U.S.C. 11343. Under 49 U.S.C. 11344(d) the Commission is required to approve trackage rights applications unless we find that, as a result of a transaction, there is likely to be substantial lessening of competition, creation of a monopoly, or restraint of trade in freight surface transportation in any region of the United States, and the anticompetitive effects of the transaction outweigh the public interest in meeting significant transportation needs.

Use of Exemption Authority

The Staggers Rail Act substantially broadened our authority to exempt transactions from regulation. Under 49 U.S.C. 10505, we are required to exempt a person, class of persons, or a transaction or service when we find that regulation is not necessary to carry out the rail transportation policy of 49 U.S.C. 10101a, and, either the transaction or service is of limited scope, or regulation is not necessary to protect shippers from the abuse of market power. Thus, we can exempt not only a single transaction, but an entire class of transactions, as here proposed.[1]

Case-by-Case Exemptions

We have granted exemptions for trackage rights on a case-by-case basis under section 10505, both on petition by the rail carriers[2] and on our own motion following submission of an application under section 11343.[3]

In analyzing trackage rights proposals, we have found that they do not violate any of the 15 factors included in the rail transportation policy of section 10101a. Rather, they promote development and continuation of sound rail transportation systems (factor 4); promote sound economic conditions in transportation and ensure effective competition and coordination between rail carriers (factor 5); encourage honest and efficient management of railroads (factor 10); and promote energy conservation (factor 15). Also, use of the exemption power itself reduces regulatory barriers to entry into the rail transportation (factor 7), and minimizes the need for Federal regulatory control over rail transportation (factor 2).

We have also found that while trackage rights have involved track segments ranging in length from 384 feet to almost 150 miles, the transactions are of limited scope due to the nature of most trackage rights applications. Trackage rights that are sought for movement of bridge traffic have been found to be limited in scope because they had no significant effect on service to shippers on the line or on the traffic volume of other carriers serving the involved line. Trackage rights that are sought for the purpose of providing

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[1] See *Railroad Consolidation Procedure*, 363 I.C.C. 200, 202-203 (1980).

[2] The following cases are not all-inclusive, but are representative only. Finance Docket No. 29357F, *Burlington Northern, Inc.-Trackage Rights-Union Pacific Railroad Company-Exemption Under 49 U.S.C. 10505 From 49 U.S.C. 11343-46* (not printed), served December 5, 1980; Finance Docket No. 29549 (Sub-No. 1), *Louisiana & Arkansas Railway Company-Exemption Under 49 U.S.C. 10505 From 49 U.S.C. 11343(a)* (not printed), served February 27, 1981; Finance Docket No. 29579, *Golden Triangle Railroad, Burlington Northern, Inc., and Illinois Central Gulf Railroad Company—Petition for Exemption Under 49 U.S.C. 10505 From 49 U.S.C. 10901 and 11343* (not printed), served June 26, 1981; Finance Docket No. 29614, *Elgin, Joliet and Eastern Railway Company-Exemption Under 49 U.S.C. 10505 From 49 U.S.C. 11343* (not printed), served May 22, 1981; and Finance Docket No. 29732, *Chicago and North Western Transportation Company-Exemption Under 49 U.S.C. 10505 From 49 U.S.C. 11343* (not printed), served October 27, 1981.

[3] Finance Docket No. 29697 (Sub-No. 1), *Grand Trunk Western Railroad Company-Trackage Rights Over Lines of Norfolk and Western Railway Company and Chesapeake and Ohio Railway Company at Detroit, MI* (not printed), served December 31, 1981.

carriers with alternate access routes to rights-of-way or intra-system interchanges or more direct run-through operations have been found to be limited in scope because they merely resulted in allowing the carriers to use shorter routes, or routes over track with higher speed limits, without affecting operations of other rail carriers or service to shippers on the involved line.

Since trackage rights have been routinely found to be of limited scope, we have not found it necessary to examine whether regulation of a trackage rights transaction is necessary to protect shippers from the abuse of market power in individual cases.

Proposed Class Exemption

Prior approval of trackage rights proposals that are based on a written agreement and not filed as responsive applications to rail consolidation proposals does not appear to be necessary to carry out the goals of the rail transportation policy of section 10101a. Exempting trackage rights applications as a class will promote the national rail transportation policy, and will also promote competition generally because trackage rights facilitate operating efficiencies by providing carriers with alternative, shorter, and faster routes. Operating efficiencies, in turn, enhance a carrier's competitive edge.

The proposed exemption also appears to be of limited scope because we are limiting the class of exempted transactions. The requirement of a written agreement ensures that the Commission's jurisdiction is properly invoked, since the rail carriers must be parties to the transaction. See 49 U.S.C. 11343(a)(6). The written agreement will establish jurisdiction without unduly burdening the parties. Exclusion of trackage rights applications filed as responsive applications in rail consolidation cases eliminates proposals that would appear to have the greatest potential for anticompetitive impact. Such trackage rights applications are often filed to reduce or neutralize the perceived threat to market stability or market share that rail consolidation applications generally inspire.

The proposed exemption appears to be limited in scope also because, historically, trackage rights involve modifications in operations that promote efficiency for the operator and maintain the status quo insofar as shippers' services and other rail carriers' markets are concerned.

Since it appears that the proposed exemption is limited in scope, we normally would not need to determine whether regulation of certain trackage rights is necessary to protect shippers from the abuse of market power. However, since we are conducting a proceeding, it is appropriate to analyze this issue so that our conclusions in this proceeding are based on the most complete review of the proposal.

It appears that regulation of this class of trackage rights is not necessary to protect shippers from the abuse of market power. Addition of a competing carrier to a line through trackage rights increases the number of carriers on the line, and in turn, increases competition for traffic. It is difficult to conceive of a situation where such increased competition could result in an abuse of market power. Trackage rights proposals that add no services on the line (e.g., bridge traffic) merely maintain the status quo among carrier and shippers on the line.

Implementation of the Class Exemption

If the proposed exemption is adopted, a seventh category of exempt transactions would be added to the rail consolidation regulations. We would amend 49 CFR Part 1111 by adding § 1111.2(d)(7). Consistent with the regulations in Part 1111, carriers seeking to use the proposed exemption would be required to submit the information required by 49 CFR 1111.4(g), as amended in Ex Parte No. 282 (Sub-No. 3), *Railroad Consolidation Procedures*, 366 I.C.C. 75 (1982).

49 CFR 1111.4(g)(2) requires that the exemption notice filed with the Commission indicate the level of employee protection to be imposed. Under section 10505(g)(2), in granting exemptions, we may not relieve a carrier of its obligation to protect employees. Approval of trackage rights agreements under section 11343 must include the employee protective conditions set forth in *Norfolk and Western Ry. Co.—Trackage Rights—BN*, 354 I.C.C. 605 (1978), as modified by *Mendocino Coast Ry., Inc.—Lease and Operate*, 360 I.C.C. 653 (1980), *aff'd sub nom. Railway Labor Executives' Association v. Interstate Commerce Commission* —— F. 2d —— (D.C. Cir. April 9, 1982). Accordingly, all exemptions would be so conditioned.

It is also established that after a carrier begins trackage rights operations, even when conducted under an exemption, abandonment or discontinuance of the service may not occur absent a certificate of abandonment, or exemption therefrom, issued by this Commission. See *Burlington Northern Inc.-Exemption-49 U.S.C. 10505*, 363 I.C.C. 816, 818 (1981). The rule would continue to apply to each carrier utilizing the trackage rights class exemption.[4]

We emphasize that 49 U.S.C. 11343(a) provides that a carrier participating in a transaction under 49 U.S.C. Subchapter IV that is "*approved* by the Commission under this subchapter" is exempt from antitrust laws and from all other law, including state and municipal law, as necessary to carry out the transaction. (Emphasis added.) When we *exempt* transactions pursuant to section 10505 we are not "approving" the transactions under Subchapter IV; therefore, the antitrust immunity and preemption of other law is lost with respect to any exempted trackage rights transaction. Carriers that are concerned about the loss of antitrust immunity and immunity from other law should file an application under 49 U.S.C. 11344 and 11345, explaining why use of the exemption procedure is not adequate. See *Norfolk & Western Ry. Co.-Pur.-Illinois Term. R. Co.*, 363 I.C.C. 882 (1981), and Finance Docket No. 29757, *Colorado and Southern Railway Company—Merger Into Burlington Northern Railroad Company—Exemption and Request for Determination of Fairness* (not printed), served December 31, 1981.

We also note that the proposed exemption is limited strictly to trackage rights transactions and does not operate to exempt any regulated activities or associated transactions of the involved carriers.

Conclusion

We propose to exempt, under 49 U.S.C. 10505, trackage rights proposals under 49 U.S.C. 11343 that are: (1) Based on a written agreement between the carriers; and (2) not filed as responsive applications to rail consolidation applications. Public comments on this specific proposal, its scope and limits are invited.

Standard labor conditions would be imposed on any carrier using this class exemption. Carriers using this class exemption would not be immune from antitrust laws or other laws, and carriers could not discontinue or abandon service absent a certificate (or exemption) from this Commission. Comments on these proposals are also invited.

Regulatory Flexibility Impact

The Secretary of the Commission has certified that the proposed exemption

[4] A proposal to exempt termination of trackage rights is being considered by the Commission in Ex Parte No. 274 (Sub-No. 8), *Exemption of Out of Service Lines*. The notice of proposed exemption was served March 24, 1982, and published March 31, 1982, at 47 R.R. 13,538 (1982).

will not have a significant impact on a substantial number of small entities.

Exemption should not affect small shipper or carrier entities because the result of the trackage rights proposed for exemption would not affect rail operations except to increase efficiency. No shipper would lose service and other shippers might receive more efficient service under the proposal. No carrier's operations would be significantly affected by the trackage rights proposed for exemption.

This notice is based on 49 U.S.C. 10505(b) and 5 U.S.C. 553.

This action does not significantly affect the quality of the human environment or conservation of energy resources.

List of Subjects in 49 CFR Part 1111

Railroads, Common carriers, Antitrust.

Dated: September 8, 1982.

By the Commission, Chairman Taylor, Vice Chairman Gilliam, Commissioners Sterrett, Andre, Simmons, and Gradison.

Agatha L. Mergenovich,

Secretary.

[FR Doc. 82-25280 Filed 9-4-82; 8:45 am]

BILLING CODE 7035-01-M

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service, Office of the Solicitor

50 CFR Parts 11 and 12

Civil Procedures, Seizure and Forfeiture Procedures; Implementation of Lacey Act Amendments of 1981; Request for Comments

AGENCY: Office of the Solicitor, Interior.

ACTION: Proposed rule; request for comments.

SUMMARY: The Office of the Solicitor of the Department of the Interior is issuing a proposed rule to implement recent amendments to the Lacey Act. If adopted, this rule would amend current procedural regulations governing civil procedures for the assessment of monetary civil penalties for violations of Federal wildlife laws and the administrative forfeiture of items seized for alleged violations of various Federal wildlife laws, including the Lacey Act. Regulations proposed today reflect new amendments to the Lacey Act which now provide for administrative forfeiture and strict liability forfeiture for items seized under the Act in addition to provisions for assessment of monetary civil penalties for violations of wildlife laws. In recognition of the Department's general policy to provide an opportunity for public comment regarding the issuance of regulations, the public is invited to submit comments on the text of the proposed rule. The Department will take into account all public comments received on the proposed rule before it issues final regulations.

DATE: Public comments on the proposed rule must be received on or before September 30, 1982.

ADDRESSES: Interested persons or organizations are requested to submit comments to the Associate Solicitor, Conservation and Wildlife, Office of the Solicitor, Department of the Interior, Washington, D.C. 20240.

FOR FURTHER INFORMATION CONTACT: Mr. Mike Young, Attorney-Advisor, Division of Conservation and Wildlife, Office of the Solicitor, Department of the Interior, Washington, D.C. 20240 (202) 343-2172.

SUPPLEMENTARY INFORMATION: Recently, Congress amended various provisions of, and recodified the Lacey Act, formerly found at 18 U.S.C. 42-44 by Pub. L. 97-79, known as the Lacey Act Amendments of 1981 (hereinafter "the Act" or "the amendments"). The amendments modified among other things, the procedures for the forfeiture of fish, wildlife and plants imported, exported, transported, sold, received, acquired, or purchased contrary to the provisions of the Act or regulations implementing the Act. 16 U.S.C. 3374. These amendments altered pre-existing forfeiture procedures in the following ways:

1. The Lacey Act previously authorized only judicial forfeiture. The amendments now authorize administrative forfeiture in the case of property having a value not greater than $10,000. 16 U.S.C. 3374(b). *See* H. R. Rep. No. 97-276, 97th Cong. 1st Sess. 23 (1981).

2. The Lacey Act previously authorized forfeiture only after a criminal conviction or the assessment of a civil penalty. The amendments provide that all fish, wildlife and plants imported, exported, transported, sold, received, acquired or purchased contrary to 16 U.S.C. 3372 (except subsection 3372(b)), or implementing regulations, are subject to forfeiture, without regard for any additional evidence of culpability as required for a civil penalty assessment or criminal conviction. 16 U.S.C. 3374(a). That is, forfeiture proceedings may now be brought prior to the initiation of civil penalty or criminal proceedings and even in cases where no civil penalty or criminal proceeding will be brought. *See* H.R. Rep. No. 97-276, *supra* at 22.

3. The Lacey Act did not previously authorize the assessment of costs, such as storage costs, associated with seizure and forfeiture of fish, wildlife and plants. The amendments provide that any person who is convicted or assessed a civil penalty for a violation of the Act is liable for costs incurred by the Government in storing, caring for, and maintaining any fish, wildlife, or plant seized in connection with the violation. 16 U.S.C. 3374(c).

In amending the Lacey Act in the above ways, Congress recognized that efficient forfeiture procedures are a prerequisite for an effective conservation program for protected fish, wildlife and plants. *See* H.R. Rep. No. 97-276, *supra* at 22-23. The regulations proposed herein would, if adopted, facilitate this effort by implementing the changes in Lacey Act forfeiture procedures directed by the recent amendments.

Current regulations found at 50 CFR Part 12 govern seizure and forfeiture of contraband under various Federal conservation statutes such as the Endangered Species Act, 16 U.S.C. 1531 *et seq.*, the Eagle Protection Act, 16 U.S.C. 668 *et seq.*, the Airborne Hunting Act, 16 U.S.C. 742j-1, and the Marine Mammal Protection Act, 16 U.S.C. 1361 *et seq.* All of these statutes, with the exception of the Marine Mammal Protection Act, authorize administrative forfeiture and forfeiture without regard to culpability. In addition, the Endangered Species Act authorizes the assessment of costs connected with storage of contraband seized pursuant to that Act. As a result, existing provisions of 50 CFR Part 12 provide procedures for administrative forfeiture, forfeiture without culpability, and the assessment of costs for violations under the above statutes. The effect of the amendments to the Lacey Act is to authorize administrative forfeiture under that Act corresponding to that authorized by the above statutes and the implementing regulations in 50 CFR Part 12. The rules proposed today will, if adopted, apply the pre-existing forfeiture procedures of current regulations to forfeitures under the amended Lacey Act. A discussion of the specific provisions of 50 CFR Part 12 which are affected by this rule follows.

Recodification of Lacey Act Citations

Public Law 97-79 recodified those portions of the Lacey Act formerly appearing at 18 U.S.C. 43-44 as 16 U.S.C. 3371 *et seq.* Technical amendments to the following provisions of 50 CFR Part 12 are made to add the new citation to the Lacey Act as amended: The

Authority Citation; Scope of regulations, § 12.2(j); Bonded release, § 12.6(a); Civil actions to obtain forfeiture, § 12.22; and Transfer in settlement of civil penalty claims, § 12.25.

In addition, Lacey Act citations appear in 50 CFR Part 11 which governs civil penalty proceedings under the Lacey Act as well as other conservation laws. Although the amendments to the Lacey Act did not modify provisions relating to civil penalty procedures, amendment of Part 11 is also necessary to reflect the citation to the Lacey Act Amendments. Accordingly, technical amendments are made to the authority citation for Part 11 and to section 11.2, scope of regulations. No other changes to Part 11 are made by this rule.

This rule adds the citation to the Lacey Act Amendments of 1981 and does not replace the citation to the pre-existing Lacey Act in the above-referenced sections in 50 CFR Parts 11 and 12. This addition makes clear that proceedings can still be brought for alleged violations which occurred prior to the amendment of the Lacey Act. As a result, procedures and remedies available under the pre-existing Lacey Act can still be pursued for actions occurring prior to the amendment of the Lacey Act.

Administrative Forfeiture

As previously stated, the Lacey Act Amendments of 1981 now authorize administrative forfeiture proceedings. The following provisions of 50 CFR Part 12, which currently apply to administrative forfeiture pursuant to other wildlife laws, are amended to reflect this new authorization under the Lacey Act Amendments: Appraisement, § 12.12; Administrative forfeiture proceedings, § 12.23(a); Petition for remission, § 12.24(a); Petition for restoration of proceeds, § 12.41(a).

Pursuant to these regulatory amendments, when property is seized under the Lacey Act Amendments of 1981, its value must first be determined before forfeiture proceedings may be initiated. If the value of the property is less than $10,000, the property is subject to administrative forfeiture under pre-existing agency procedures set forth in 50 CFR Part 12. These procedures include the opportunity for property owners to petition the Department for remission and, in certain cases when the property has already been sold, for restoration of proceeds. The availability of petitions for remission and restoration of proceeds is in conformance with a discussion in the legislative history of the Lacey Act Amendments. *See* H.R. Rep. No. 97–276, *supra* at 22. This discussion recognized that in certain cases, forfeiture, while required as a matter of law, may nevertheless be unnecessarily harsh. Therefore, the Secretary has the discretion to remit or mitigate a forfeiture based upon the equities of a given case.

Strict liability forfeiture

The Act now authorizes forfeiture independent of criminal convictions or the assessment of civil penalties. To reflect this amendment, 50 CFR 12.22 is amended to authorize the Solicitor to request the Attorney General to file a civil action to obtain forfeiture under the Lacey Act Amendments of 1981. A criminal conviction of the assessment of a civil penalty is not necessary for such an action to be filed.

Recovery of storage costs

The Lacey Act Amendments of 1981 authorize the recovery of certain costs associated with the storage of property seized in conjunction with a violation of the Act. Section 12.42 of 50 CFR is amended to reflect this new authority.

Regulation promulgation

These amendments are being published as a proposed rule with a fifteen-day comment period. If adopted, this rule would implement changes to the Act which are technical and nondiscretionary in nature and which require only slight modifications to existing procedural regulations regarding administrative forfeiture and assessment of monetary civil penalties. Because actions on a large and growing number of wildlife violations which have occurred since the amendments to the Lacey Act have been held in abeyance pending clarification of the correct administrative procedure to follow, there is an urgent need to resolve this confusion. Further delays in this matter could ultimately create due process problems when the civil penalty and forfeiture actions are ultimately initiated. To alleviate this confusion and effectuate clear Congressional intent with regard to civil penalty and forfeitures under the Lacey Act as amended and to facilitate persons who have alleged to have violated the law in obtaining prompt resolution of issues pertaining to the alleged violation, it has been determined by the Department that these regulations should be adopted and become effective as soon as practicable. Thus, providing the opportunity to comment on this rule for a period of greater than fifteen days is impracticable, unnecessary and contrary to the public interest.

Thus, in order to balance the general policy of the Department of the Interior to seek public comment on regulatory actions whenever possible with the need for expedited actions, an abbreviated public comment period of fifteen days will be provided. All comments received within the comment priod will be considered before a final permanent regulation on this subject is issued. Where appropriate, changes will be made in the regulations issued today.

Primary Author: The primary author of this document is Frank Ruswick, Jr., Division of Conservation and Wildlife, Office of the Solicitor, Department of the Interior.

Note.—The Department of the Interior has determined that this is not a major rule and does not require preparation of a regulatory analysis under Executive Order 12291. The Department has also determined that this rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act. As a result of this rule, violations of the Lacey Act involving fish, wildlife or plants which are not deemed to be of criminal culpability can continue to be processed efficiently through civil penalty proceedings. Persons whose conduct is alleged to be violative of the law are enabled to obtain prompt administrative hearings of the issues under administrative procedures. The administrative forfeiture of contraband fish, wildlife or plants whose value is less than $10,000 is also more efficient because disposition of the items will not only reduce the overall cost to the government by reducing the number of more time-consuming and expensive judicial forfeitures to be sought, but may also generate a similar reduction in legal costs to members of the public whose property is involved in expedited administrative forfeiture proceedings. In addition, although the overall number of forfeitures is expected to rise due to the simplification of the forfeiture process, the current rate of property relinquishment is such that the change will probably not have a significant impact on any type of group or oranization. These are merely procedural enforcement reguations that will be applied to individuals aleged to have violated the law, it is unlikely that entire organizations or entities would be affected by these regulations absent a conspiracy to violate the law.

The revisons to the regulations contain no information collection or record-keeping reqirement under the Paperwork Reduction Act of 1980, U.S.C. 3507.

In accordance with Appendix 1.4 of Chapter 516 of the Departmental Manual, these proposed regulations concern law enforcement and legal transactions and are therefore categorically excluded from preparation of an environmental impact statement under section 102(2)(C) of the National Environmental Policy Act of 1969.

List of Subjects in 50 CFR Part 17

Administrative practice and procedure, Exports, Fish, Imports, Penalties, Plants (agriculture), Seizures and forfeitures, Surety bond, Wildlife.

Amendment of Existing Regulation

For the reason's set out in the preamble, Subchapter B, Chapter 1 of Title 50 of the Code of Federal Regulations is proposed to be amended as follows:

PART 11—CIVIL PROCEDURES

1. The Authority citation for Part 11 is revised to read as follows:

Authority: Lacey Act, 83 Stat. 279–281, 18 U.S.C. 42–44; Lacey Act Amendments of 1981, 95 Stat. 1073–1080, 16 U.S.C. 3371 *et seq.;* Bald Eagle Protection Act, sec. 2, 54 Stat. 251, 16 U.S.C. 668a; Endangered Species Act of 1973, sec. 11(f), 87 Stat. 884; Marine Mammal Protection Act of 1972, sec. 112(a), 86 Stat. 1042, 16 U.S.C. 1382.

2. Section 11.2 is revised to read as follows:

§ 11.2 Scope of regulations.

The regulations contained in this part apply only to actions arising under the following laws and regulations issued thereunder:

Lacey Act, 18 U.S.C. 43;
Lacey Act Amendments of 1981, 16 U.S.C. 3371 *et seq.;*
Bald Eagle Protection Act, 16 U.S.C. 668–668d;
Endangered Species Act of 1973, 87 Stat. 884; and
Marine Mammal Protection Act of 1972, 16 U.S.C. 1361–1384 and 1401–1407.

PART 12—SEIZURE AND FORFEITURE PROCEDURES

3. The Authority citation for Part 12 is revised to read as follows:

Authority: Act of September 6, 1966, 5 U.S.C. 301; Bald and Golden Eagles Protection Act, 16 U.S.C. 668–668b; National Wildlife Refuge System Administration Act, 16 U.S.C. 668dd(e)–(f); Migratory Bird Treaty Act, 16 U.S.C. 704, 706–707, 712; Migratory Bird Hunting and Conservation Stamp Act, 16 U.S.C. 718f–718g; Fish and Wildlife Act of 1956 [Airborne Hunting Amendments], 16 U.S.C. 742j–1(d)–(f); Black Bass Act, 16 U.S.C. 852d–853; Marine Mammal Protection Act of 1972, 16 U.S.C. 1375–1377, 1382; Endangered Species Act of 1973, 16 U.S.C. 1540; Lacey Act, 18 U.S.C. 43, 44; Lacey Act Amendments of 1981, 95 Stat. 1073–1080, 16 U.S.C. 3371 *et seq.;* Tariff Act of 1930, 19 U.S.C. 1602–1624; Fish and Wildlife Improvement Act of 1978, 16 U.S.C. 742*l*; Exotic Organisms, E.O. 11987, 42 F.R. 26949; American Indian Religious Freedom Act, 42 U.S.C. 1996.

4. Amend § 12.2 by adding a new paragraph (j) to read as follows:

§ 12.2 Scope of regulations

* * * * *

(j) The Lacey Act Amendments of 1981, 16 U.S.C. 3371 *et seq.*

5. Amend § 12.6 by revising paragraph (a) to read as follows:

§ 12.6 Bonded release.

(a) Subject to the conditions set forth in paragraphs (b) and (c) of this section, and to such additional conditions as may be appropriate, the Service, in its discretion, may accept an appearance bond or other security (including, but not limited to, payment of the value as property seized under the Endangered Species Act, 16 U.S.C. 1531 *et seq.;* Marine Mammal Protection Act, 16 U.S.C. 1361 *et seq.;* Lacey Act, 18 U.S.C. 43; Lacey Act Amendments of 1981, 16 U.S.C. 3371 *et seq.;* Airborne Hunting Act, 16 U.S.C. 742j–1; or Eagle Protection Act, 16 U.S.C. 588 *et seq.*

* * * * *

6. Revise § 12.12 to read as follows:

§ 12.12 Appraisement.

The Service shall determine the value of any cargo, of a vessel or other conveyance employed in unlawful taking, seized under the Marine Mammal Protection Act, 16 U.S.C. 1361 *et seq.,* and the value of any property seized under the Endangered Species Act, 16 U.S.C. 1531 *et seq.;* Eagle Protection Act, 16 U.S.C. 668 *et seq.;* Airborne Hunting Act, 16 U.S.C. 742j–1, *et seq.;* or the Lacey Act Amendments of 1981, 16 U.S.C. 3371 *et seq.* If the seized property may lawfully be sold in the United States, its domestic value shall be determined in accordance with § 12.3. If the seized property may not lawfuly be sold in the United States, its value shall be determined by other reasonable means.

7. Revise § 12.22 to read as follows:

§ 12.22 Civil actions to obtain forfeiture.

The Solicitor may request the Attorney General to file a civil action to obtain forfeiture of any property subject to forfeiture under the Airborne Hunting Act, 16 U.S.C. 742j–1; Lacey Act, 18 U.S.C. 43–44; Lacey Act Amendments of 1981, 16 U.S.C. 3371 *et seq.;* Black Bass Act, 16 U.S.C. 851 *et seq.;* Marine Mammal Protection Act, 16 U.S.C. 1361 *et seq.;* Migratory Bird Treaty Act, 16 U.S.C. 703 *et seq.;* Migratory Bird Hunting Stamp Act, 16 U.S.C. 718 *et seq.;* Eagle Protection Act, 16 U.S.C. 668 *et seq.;* or Endangered Species Act, 16 U.S.C. 1531 *et seq.* Before any such action is filed against property subject to forfeiture under the Lacey Act, 18 U.S.C. 43, or against property, other than the cargo of a vessel or other conveyance employed in unlawful taking, subject to forfeiture under the Marine Mammal Protection Act, 16 U.S.C. 1361 *et seq.,* a civil penalty must first be assessed in accordance with the statute and applicable regulations, and no such action may be filed more than 30 days after the conclusion of civil penalty assessment proceedings.

8. Amend § 12.23 by revising paragraph (a) to read as follows:

§ 12.23 Administrative forfeiture proceedings.

(a) *When authorized.* Whenever any property subject to forfeiture under the Eagle Protection Act, 16 U.S.C. 668 *et seq.;* Airborne Hunting Act, 16 U.S.C. 742j–l; or any wildlife or plant subject to forfeiture under the Endangered Species Act, 16 U.S.C. 1531 *et seq.,* or any fish, wildlife or plant subject to forfeiture under the Lacey Act Amendments of 1991, 16 U.S.C. 3371 *et seq.,* is determined under § 12.12 to have a value not greater than $10,000, the Solicitor may obtain forfeiture of such property in accordance with this section.

* * * * *

9. Amend § 12.24 by revising paragraph (a) to read as follows:

§ 12.24 Petition for remission of forfeiture.

(a) Any person who has an interest in cargo, of a vessel or other conveyance employed in unlawful taking, subject to forfeiture under the Marine Mammal Protection Act, 16 U.S.C. 1361 *et seq.,* or any person who has an interest in any property subject to forfeiture under the Endangered Species Act, 16 U.S.C. 1531 *et seq.;* Eagle Protection Act, 16 U.S.C. 668 *et seq.;* Airborne Hunting Act, 16 U.S.C. 742j–l; or the Lacey Act Amendments of 1981, 16 U.S.C. 3371 *et seq.,* or any person who has incurred or is alleged to have incurred a forfeiture of any such property, may file with the Solicitor or, when forfeiture proceedings have been brought in United States District Court, the Attorney General, a petition for remission of forfeiture.

* * * * *

10. Revise § 12.25 to read as follows:

§ 12.25 Transfers in settlement of civil penalty claims.

In the discretion of the Solicitor, an owner of wildlife or plants who may be liable for civil penalty under the Endangered Species Act, 16 U.S.C. 1531 *et seq.;* Lacey Act, 18 U.S.C. 43, Lacey Act Amendments of 1981, 16 U.S.C. 3371 *et seq.;* Eagle Protection Act, 16 U.S.C. 668 *et seq.;* or Marine Mammal Protection Act, 16 U.S.C. 1361 *et seq.,* may be given an opportunity to completely or partially settle the civil penalty claim by transferring to the United States all right, title, and interest in any wildlife or plants that are subject to forfeiture. Such transfer may be accomplished by the owner's execution and return of a United States Customs

Form 4607 or a similar compromise transfer of property instrument provided by the Department.

11. Amend § 12.41 by revising paragraph (a) to read as follows:

§12.41 Petition for restoration of proceeds.

(a) Any person claiming any property or interest therein which has been forfeited under the Endangered Species Act, 16 U.S.C. 1531 *et seq.;* Eagle Protection Act, 16 U.S.C. 668 *et seq.*; Airborne Hunting Act, 16 U.S.C. 742j–1; or the Lacey Act Amendments of 1981, 16 U.S.C. 3371 *et seq.*, and sold according to law, or any person claiming cargo or an interest therein, of a vessel or other conveyance employed in unlawful taking which has been forfeited under the Marine Mammal Protection Act, 16 U.S.C. 1361 *et seq.*, and sold according to law, may file with the Solicitor or, where forfeiture proceedings have been brought in United States District Court, the Attorney General, a petition or restoration of proceeds.

* * * * *

12. Revise § 12.42 to read as follows:

§12.42 Recovery of certain storage costs.

If any wildlife, plant, or evidentiary item is seized and forfeited under the Endangered Species Act, 16 U.S.C. 1531 *et seq.*, any person whose act or omission was the basis for the seizure may be charged a reasonable fee for expenses to the United States connected with the transfer, board, handling, or storage of such property. If any fish, wildlife or plant is seized in connection with a violation of the Lacey Act Amendments of 1981, 16 U.S.C. 3371, *et seq.*, any person convicted thereof, or assessed a civil penalty therefor, may be assessed a reasonable fee for expenses of the United States connected with the storage, care and maintenance of such property. Within a reasonable time after forfeiture, the Service shall send to such person by registered or certified mail, return receipt requested, a bill for such fee. The bill shall contain an itemized statement of the applicable costs, together with instructions on the time and manner of payment. Payment shall be made in accordance with the bill.

Dated: August 27, 1982.

William H. Coldiron,

Solicitor.

[FR Doc. 82–25349 Filed 9–14–82; 8:45 am]

BILLING CODE 4310–17–M

50 CFR Part 17

Endangered and Threatened Wildlife and Plants; Proposal To Remove the Florida Population of the Pine Barrens treefrog (Hyla andersonii) from the List of Endangered and Threatened Wildlife and Plants and To Rescind Previously Determined Critical Habitat.

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Proposed Rule.

SUMMARY: The U.S. Fish and Wildlife Service proposes to remove the Florida population of the Pine Barrens treefrog (*Hyla andersonii*) from the List of Endangered and Threatened Wildlife and Plants and to rescind the Critical Habitat that has been designated for this population. This action is being taken because recent evidence indicates that the species is much more widely distributed than originally known. Removal of this species from the List of Endangered and Threatened Wildlife would eliminate all protection provided by the Endangered Species Act of 1973, as amended.

DATES: Comments from the public must be received by November 15, 1982.

Comments from the Governor of Florida must be received by December 13, 1982.

FOR FURTHER INFORMATION CONTACT: Mr. Alex B. Montgomery, Endangered Species Senior Staff Specialist, Federal Assistance, U.S. Department of the Interior, 75 Spring Street, SW., Atlanta, Georgia 30303, 404/221–3583, FTS 242–3583.

ADDRESS: Comments and materials concerning this proposal should be sent to the Regional Director (ARD/FA), U.S. Department of the Interior, Fish and Wildlife Service, 75 Spring Street, SW., Atlanta, Georgia 30303. Comments and materials will be available for public inspection in the Regional Office from 8:00 am to 3:00 pm daily.

SUPPLEMENTARY INFORMATION:

Background

On April 5, 1977, the Service published a proposed rule in the **Federal Register** (42 FR 18109–18111) advising that sufficient evidence was on file to support a determination that the Florida population of the Pine Barrens treefrog was an Endangered species, as provided for by the Act. After a thorough review and consideration of all the information available, the Director determined and published a final rule on November 11, 1977, (42 FR 58754–58756) that the Florida population of the species was in danger of extinction throughout all or a significant portion of its range due to one or more of the factors described in Section 4(a) of the Act. The Endangered determination was based primarily on factor number one, "the present or threatened destruction, modification, or curtailment of its habitat or range." At that time the only known existing breeding sites were limited to seven small areas in Okaloosa County.

The total number of individuals in these populations was estimated at less than 500. Four other populations, including the only ones known from Walton County, were reported to have been extirpated in the period following the frog's discovery in 1970. It appeared that without the protection afforded by the Endangered Species Act, the remaining Florida population would likely be lost. The final rule classifying the Florida population as Endangered and designating Critical Habitat became effective on December 8, 1977.

The closest other populations of the Pine Barrens treefrog are found in the Carolinas and in New Jersey. As a matter of information, the Service has reviewed the status of these populations on the basis of a notice published in the **Federal Register** of August 2, 1977 (42 FR 39119–39120), and determined that for the immediate future they do not require protection under the Act.

In the spring of 1978, the Florida Game and Fresh Water Fish Commission began a project to better assess habitat needs and distribution limits of the species within Florida. This work was conducted pursuant to an Endangered Species Cooperative Agreement between the Service and the State as authorized under Section 6 of the Endangered Species Act. Survey results for the 1978 breeding season revealed a number of new populations in Okaloosa, Walton, and Santa Rosa Counties. Surveys were continued in 1979 with many additional populations being identified. In consequence of the obvious widespread distibution of the species, the Service contracted with the Florida Game and Fresh Water Fish Commission in December 1979 (contract no. 14–16–004–79–145) to develop recommendations regarding possible reclassification of the species. The report subsequently transmitted to the Service in January 1980 titled "The Florida Population of the Pine Barrens treefrog *(Hyla andersonii)*, A Status Review," recommended that the species be removed from the Federal List of Endangered and Threatened Wildlife.

The forenamed report was supplemented later in 1980 by the State's grant-in-aid final study report covering the period of May 1, 1978 to June 30, 1980 (Project No. E–1, Study No.

I–R). Data were presented which expanded the species' presently known Florida distribution from seven Okaloosa County sites to a total of 119 sites in Okaloosa, Walton, Santa Rosa, and Holmes Counties. Incidental investigations conducted in nearby Alabama areas revealed six other sites in Escambia and Covington Counties in that State.

To provide a more complete picture of the Florida-Alabama population as a whole, the Service contracted during 1980 for a thorough status survey in southern Alabama. This survey turned up an additional 16 populations in the Geneva-Escambia-Covington County area. The Alabama population was not covered by the 1977 rulemaking action which listed the Florida population as Endangered. However, knowledge of its existence does provide further evidence of the species' overall well-being in what is essentially a single Florida-Alabama population unit that is much larger than originally suspected.

Although the species appears to be limited to only four counties in Florida, it is of widespread occurrence within this area (Moler, 1981). A considerable amount of potential habitat within the Florida range has not been investigated, and results from the 1978–1980 survey indicate that much of this habitat is very likely to harbor the species. The large number of known and potential habitat sites suggest that the Florida population is relatively secure for the immediate future.

Summary Of Factors Affecting The Species

Section 4(a) of the Act (16 U.S.C. 1531 et. seq.) states: General—(1) The Secretary shall by regulation determine whether any species is an endangered species or a threatened species because of any of the following factors:

(1) the present or threatened destruction, modification, or curtailment of its habitat or range;

(2) overutilization for commercial, sporting, scientific, or educational purposes;

(3) disease or predation;

(4) the inadequacy of existing regulatory mechanisms; or

(5) other natural or manmade factors affecting its continued existence.

This authority has been delegated to the Director. The Pine Barrens treefrog and its relation to these factors is as follows:

1. *Present or threatened destruction, modification, or curtailment of its habitat or range.* The final rule published in the **Federal Register** of November 11, 1977, indicated that development and land clearing for agricultural use had destroyed four of the 11 known population sites within the seven year period following the species' discovery. The most recent data do not substantiate such a severe trend in habitat loss. Of the 112 new habitat sites surveyed by the Florida Game and Fresh Water Fish Commission between May 1978 and June 1980, four had been degraded to some degree by siltation or runoff, but still supported the frogs; and 15 of the localities were within or adjacent to clear-cut areas, but there was no immediate evidence of adverse effects to the frog population. Drainage of bogs for agricultural or silvicultural purposes does represent a potential threat, but to date such drainage has not been extensively practiced within the species' Florida range.

Some of the Pine Barrens treefrog's habitat has likely been lost through the creation of artificial lakes and ponds within bog areas utilized by the species. Man-made impoundments are common throughout the frog's Florida range, and new impoundments will likely continue to pose at least a minor threat.

The herb bog and shrub habitats required by the Pine Barrens treefrog are subclimax communities maintained by periodic fire. In total absence of fires these habitats are converted through plant succession to "mixed swamp" or "bayhead communities" (Means and Moler, 1979). Many of these subclimax communities have apparently disappeared during the last several centuries as the result of wildfires being suppressed or limited through human activity. However, Means and Moler (1979) suggest that in some cases other disturbance factors may be a suitable substitute for fire. They cite clear-cutting of surrounding uplands, such as may occur with the construction and maintenance of electric and gas transmission lines, as increasing groundwater seepage by reducing evapotranspiration, thus contributing to formation of herb bogs. Numerous population sites were found along such transmission lines during the Florida Game and Fresh Water Fish Commission's 1978–1980 survey of the species (Moler, 1981).

A review of the data indicates that the Florida population is apparently even larger and more secure than the New Jersey population which historically has been the best known enclave and long considered the stronghold of the species (Moler, 1980a,b). The Florida population has a further advantage in that many of the presently known breeding sites are located on large tracts of public land (Blackwater River State Forest and Eglin AFB) that will presumably forestall extensive residential and industrial development.

In summary, it should be noted that while impacts from development, siltation, impoundments, and drainage, and from the less obvious process of plant succession arising from long periods of fire exclusion, will likely produce some loss of habitat, such losses are not expected to be significant within the foreseeable future.

2. *Overutilization for commercial, sporting, scientific, or educational purposes.* This factor has apparently had no significant effect on the Pine Barrens treefrog population of Florida. Only the males can be conveniently located by their calling, and because the number calling at any one site fluctuates erratically from night to night, it is unlikely that anything short of very intense collecting could have an adverse impact.

3. *Disease or predation.* Not applicable to this species.

4. *The inadequacy of existing regulatory mechanisms.* The Florida Game and Fresh Water Fish Commission has regulatory authority to prohibit or regulate collecting of the species in Florida. Removal of the prohibitions afforded by the Endangered Species Act would not likely have any effect since collecting is not considered to represent a significant threat.

5. *Other natural or manmade factors affecting its continued existence.* None.

Critical Habitat

The Act defines "Critical Habitat" as (i) the specific areas within the geographical area occupied by the species, at the time it is listed in accordance with the provisions of Section 4 of this Act, on which are found those physical or biological features (I) essential to the conservation of the species and (II) which may require special management considerations or protection; and (ii) specific areas outside the geographic area occupied by the species at the time it is listed in accordance with the provisions of Section 4 of this Act, upon a determination by the Secretary that such areas are essential for the conservation of the species.

The data presented above in regard to Section 4(a) of the Act indicate that the Florida population of the Pine Barrens treefrog is biologically neither endangered nor threatened at this time. Accordingly, the need for Critical Habitat is negated and the areas previously designated in Okaloosa County will be rescinded should a final determination be made to remove this

species from the List of Endangered and Threatened Wildlife.

Effects of This Proposal If Published As A Final Rule

In addition to the effects discussed above, the effects of this proposal if published as a final rule include, but would not necessarily be limited to, those mentioned below:

All prohibitions pertaining to an Endangered species found in Section 9(a)(1) of the Act, as implemented by Section 17.21 of 50 CFR, would no longer apply. These include prohibitions on such things as taking, possessing, selling or offering for sale, exporting, and shipping in interstate or foreign commerce.

The protection afforded the Pine Barrens treefrog under Section 7(a) of the Act would also be eliminated. Section 7(a) requires Federal agencies to insure that activities they authorize, fund, or carry out, are not likely to jeopardize listed species or result in the destruction or adverse modification of designated Critical Habitat.

Survey work leading to the recommendation for delisting was made possible by partial funding under Section 6 of the Act. An attendant effect of delisting will be to lower the Federal funding priority under the grant program, thus reducing or eliminating additional funding to the State for biological studies on the Pine Barrens treefrog. However, in view of the currently known status of the Florida population neither the failure to conduct such studies nor the loss of protective measures under Sections 7 and 9 of the Act could be expected to have any appreciable effect upon the species. Furthermore, retention of the species in the category of "special concern" on the State of Florida list will help to insure that some attention is given to the species.

Information Collection and Recordkeeping Requirements

This rule will completely eliminate all recordkeeping and reporting requirements involving Federal, State, and private agencies and individuals which presently exist, including those involving permit requirements.

Economic Effects

This proposed rule merely recognizes the biological status of the Florida population of the Pine Barrens treefrog and will not have any significant effect. This stems from the fact that the proposed rule would have the effect of eliminating the restrictions and limitations of the ESA regarding public and private activities affecting this species. Thus, any economic consequences which may have occurred as a result of Sections 7 and 9 of the ESA would be eliminated. As such, the Service has determined that this proposed rule is not major as defined by Executive Order 12291, and would not have a significant economic effect on a substantial number of small entities under the Regulatory Flexibility Act.

National Environmental Policy Act

A draft Environmental Assessment has been prepared in conjunction with this proposal. It is on file in the Service's Endangered Species Office, Richard B. Russell Building, Room 1245, 75 Spring Street, NW., Atlanta, Georgia, and may be examined from 8:00 am to 3:00 pm daily. A determination will be made at the time of the final rule as to whether this is a major Federal action which would significantly effect the quality of the human environment within the meaning of Section 102(2)(c) of the National Environmental Policy Act of 1969, implemented at 40 CFR Parts 1500–1508.

Public Comments Solicited

The Director intends that the rules finally adopted will be accurate and as effective as possible in the conservation of any Endangered or Threatened species. Therefore, any comments or suggestions from the public, other concerned governmental agencies, the scientific community, industry, private interests, or any other interested party concerning any aspect of these proposed rules are hereby solicited. Comments particularly are sought concerning:

(1) Biological or other relevant data concerning any threat (or the lack thereof) to the species included in this proposal;

(2) Additional information concerning the range and distribution of this species;

(3) Current or planned activities in the subject areas.

Final promulgation of the regulations on the Pine Barrens treefrog will take into consideration the comments and any additional information received by the Director, and such communications may lead him to adopt final regulations that differ from this proposal.

Also, the Service is requesting information on environmental and economic impacts and effects on small entities (including small businesses, small organizations and small governmental jurisdictions) that would result from the delisting of the Florida population of the Pine Barrens treefrog as an Endangered species, and information on possible alternatives to the delisting. This information will aid the Service in complying with the requirements of the National Environmental Policy Act, Executive Order 12291 on Federal Regulation, and the Regulatory Flexibility Act, and in preparing any required analyses of effect.

This proposal is being published under the authority contained in the Endangered Species Act of 1973, as amended (16 U.S.C. 1531 *et seq.*; 87 Stat. 884). The primary author of this proposal is Mr. Thomas W. Turnipseed, Region 4 Endangered Species Office, Atlanta, Georgia 30303 (404/221–3583 or FTS 242–3583).

References

Means, D. B., and P.E. Moler. 1979. The Pine Barrens treefrog: fire, seepage bogs, and management implications. *In* R.R. Odum and L. Landers (eds.). Proceedings of the Rare and Endangered Wildlife Symposium, GA Dept. of Nat. Res., Game & Fish Div., Tech. Bulletin. W.L. 4:77–83.

Moler, P. E. 1980a. The Florida population of Pine Barrens treefrog (*Hyla andersonii*), a status review. Rept. to the U.S. Fish and Wildlife Service, Atlanta, GA. 44 pp.

——— 1980b. Pine Barrens treefrog population. Study completion report. Florida Endangered Species Project No. E–1. Study No. I–R. Available from the Florida Game & Fresh Water Fish Commission, Tallahassee, FL.

Moler, P. E. 1981. Notes on *Hyla andersonii* in Florida and Alabama. J. Herpetol. 15(4):441–444.

List of Subjects in 50 CFR Part 17

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

Regulations Promulgation

Accordingly, it is hereby proposed to amend Part 17, Subchapter B of Chapter I, Title 50 of the Code of Federal Regulations, as set forth below:

PART 17—ENDANGERED AND THREATENED WILDLIFE AND PLANTS

§ 17.11 [Amended]

1. It is proposed to amend § 17.11(h) by removing the entry for Pine Barrens treefrog, under "AMPHIBIANS," from the list of endangered and threatened wildlife.

§ 17.95 [Amended]

2. Also, the Service proposes to amend § 17.95(d) by removing the Critical Habitat for the Pine Barrens treefrog.

Dated: August 19, 1982.

J. Craig Potter,

Assistant Secretary for Fish and Wildlife and Parks.

[FR Doc. 82-25351 Filed 9-14-82; 8:45 am]

BILLING CODE 4310-55-M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 216

Incidental Taking of Marine Mammals During Commercial Fishing Operations

AGENCY: National Oceanic and Atmospheric Administration, Commerce.

ACTION: Request for information and advance notice of proposed rulemaking.

SUMMARY: Advance notice is hereby given that the National Marine Fisheries Service (NMFS) is considering modifying its incidental take regulations to exempt from the general permit process required by Section 104 of the Marine Mammal Protection Act (MMPA) certain commercial fishing operations, conducted by citizens of the United States, which are determined by the Secretary of Commerce to result in the incidental take of small numbers of non-depleted marine mammals. The NMFS invites interested persons and organizations to submit suggestions on the establishment of guidelines authorized by Section 101(a)(4) of the Marine Mammal Protection Act, as amended, pertaining to a cooperative system among the fishermen for monitoring the incidental take in those operations which qualify under this take process.

DATE: Information should be submitted on or before November 1, 1982.

ADDRESS: All information and contacts should be submitted to: Richard B. Roe, Acting Director, Office Of Marine Mammals and Endangered Species, National Marine Fisheries Service, NOAA, U.S. Department of Commerce, Washington, D.C. 20235.

FOR FURTHER INFORMATION CONTACT: Richard B. Roe, Acting Director, Office of Marine Mammals and Endangered Species, National Marine Fisheries Service, NOAA, U.S. Department of Commerce, Washington, D.C. 20235, Telephone (202) 634-7461.

SUPPLEMENTARY INFORMATION:

Pub. L. No. 97-58 (approved October 9, 1981) amended the Marine Mammal Protection Act of 1972 (MMPA) by adding, among other things, a new Section 101(a)(4) (16 U.S.C. 1371 (a)(4)) which directs the Secretary of Commerce during any period of 5 consecutive years to allow the incidental, but not intentional taking of small numbers of non-depleted species or stocks of marine mammals by citizens of the U.S. which engaged in fishing operations. This exemption to Section 104 can be granted only if after notice and opportunity for public comment, the Secretary (1) finds that the total of such taking will have a negligible impact on such species or stocks and (2) provides guidelines pertaining to the establishment of a cooperative system among the fishermen involved in the operation to monitor and report any such taking. (A finding of negligible impact cannot be made if the species is depleted). Until these two conditions are satisfied, all domestic fishing operations remain under the general permit system established by Section 104 and regulations established by Section 103 of the MMPA.

The NMFS invites all interested parties, including representatives of the commercial fishing industry, to submit suggestions on individual fisheries by location, and gear category that might qualify under this exemption, and the species and number of non-depleted marine mammals likely to be taken in the fishery, including the manner of taking and ways of minimizing the take in numbers and/or impact on individual animals; and on guidelines pertaining to establishment of the cooperative reporting system for monitoring the incidental take in the fishery which the new amendments require.

List of Subjects in 50 CFR Part 216

Administrative practice and procedure, Endangered and threatened wildlife, Imports, Indians, Intergovernmental relations, Marine mammals.

Dated: September 10, 1982.

Richard B. Roe,

Acting Director, Office of Marine Mammals and Endangered Species, National Marine Fisheries Service.

[FR Doc. 82-25376 Filed 9-14-82; 8:45 am]

BILLING CODE 3510-22-M

Notices

Federal Register
Vol. 47, No. 179
Wednesday, September 15, 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

Forms Under Review by Office of Management and Budget

September 10, 1982.

The Department of Agriculture has submitted to OMB for review the following proposals for the collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35) since the last list was published. This list is grouped into new proposals, revisions, extensions, or reinstatements. Each entry contains the following information:

(1) Agency proposing the information collection; (2) Title of the information collection; (3) Form number(s), if applicable; (4) How often the information is requested; (5) Who will be required or asked to report; (6) An estimate of the number of responses; (7) An estimate of the total number of hours needed to provide the information; (8) An indication of whether section 3504(h) of Pub. L. 96–511 applies; (9) Name and telephone number of the agency contact person.

Comments and questions about the items in the listing should be directed to the agency person named at the end of each entry. If you anticipate commenting on a form but find that preparation time will prevent you from submitting comments promptly, you should advise the agency person of your intent as early as possible.

Copies of the proposed forms and supporting documents may be obtained from: Richard J. Schrimper, Statistical Clearance Office, (202) 447–6201.

New

• Animal and Plant Health Inspection Service
9 CFR 51—Animals Destroyed Because of Brucellosis
On occasion
Farms: 1,295 responses; 104 hours; not applicable under 3504(h)
Dr. A. Robb, (301) 436–5961

• Agricultural Marketing Service
Commodity Credit Corporation Monthly Report and Remittance of Deductions from Dairy Farmers
Monthly
Farms, businesses or other institutions: 30,000 responses; 7,500 hours; not applicable under 3504(h)
Benjamin C. Weaver, (202) 447–7101

• Statistical Reporting Service
Supplemental Qualifications Statement
On occasion
Individuals: 1,200 responses; 2,400 hours; not applicable under 3504(h)
Lee Sandberg, (202) 447–6820
EXTENSION

• Economic Research Service
Quarterly Summary of Farm Mortgage Loan Experience of Life Insurance Companies
Quarterly
Businesses or other institutions: 52 responses; 104 hours; not applicable under 3504(h)
Wilson K. Kaiser, (202) 447–7340

Richard J. Schrimper,
Statistical Clearance Officer.

[FR Doc. 82–25294 Filed 9–14–82; 8:45 am]
BILLING CODE 3410–01–M

CIVIL AERONAUTICS BOARD

Civil Aeronautics Board Industry Advisory Committee on Aviation Mobilization; Meeting

The Committee will meet to discuss development of plans, procedures and systems necessary to assure effective operation of the air transportation industry resources during emergency conditions. The group provides advice to the Board in connection with the Board's responsibility for the administration of the War Air Service Program assigned under Part 15 of Executive Order 11490, as amended.

Time and Place

10:00 a.m.–1:00 p.m., Wednesday, October 6, 1982
Room 1012, Civil Aeronautics Board, 1825 Connecticut Avenue, N.W., Washington, D.C.
Open to the public

The meeting agenda will include a review of emergency domestic route authority; priorities for passenger and cargo movements; procedures for communication between the Board and airlines and assessing data on aircraft.

Joseph F. Laufer,
Chairman, CAB Industry Advisory Committee on Aviation Mobilization.

[FR Doc. 82–25375 Filed 9–14–82; 8:45 am]
BILLING CODE 6320–01–M

DEPARTMENT OF COMMERCE

International Trade Administration

[A–602–039]

Canned Bartlett Pears From Australia; Final Results of Administrative Review of Antidumping Finding

AGENCY: International Trade Administration, Commerce.

ACTION: Notice of Final Results of Administrative Review of Antidumping Finding.

SUMMARY: On June 8, 1982, the Department of Commerce published the preliminary results of its administrative review of the antidumping finding on canned Bartlett pears from Australia. The review covers the four known exporters of the merchandise to the United States and the period March 1, 1981 through February 28, 1982. There were no known shipments of the merchandise to the United States during the period and there are no known unliquidated entries.

Interested parties were given an opportunity to submit oral or written comments on these preliminary results. We received no comments.

EFFECTIVE DATE: September 15, 1982.

FOR FURTHER INFORMATION CONTACT: Patricia McClenahan or Robert Marenick, Office of Compliance, International Trade Administration, U.S. Department of Commerce, Washington, D.C. 20230 (202–377–5255).

SUPPLEMENTARY INFORMATION:

Background

On March 23, 1973, a dumping finding with respect to canned Bartlett pears from Australia was published in the **Federal Register** as Treasury Decision 73–84 (38 FR 7566). On June 8, 1982, the Department of Commerce ("the Department") published in the **Federal Register** (47 FR 24761) the preliminary results of its third administrative review of the antidumping finding. The

Department has now completed that administrative review.

Scope of the Review

Imports covered by the review are canned Bartlett pears, currently classifiable under item 148.8600 of the Tariff Schedules of the United States Annotated (TSUSA). The review covers the four known exporters of the mechandise to the United States and the period March 1, 1981 through February 28, 1982.

Final Results of the Review

Interested parties were invited to comment on the preliminary results. The Department received no written comments or requests for disclosure or a hearing. Therefore, the final results of our review are the same as those presented in the preliminary results of review. There were no known shipments to the United States during the period and there are no known unliquidated entries.

Since there were no shipments during this period and there have been no shipments since September 1973, the Department shall waive requirement of a cash deposit of estimated antidumping duties, as provided for in § 353.48(b) of the Commerce Regulations, on any shipments of Australian canned Bartlett pears entered, or withdrawn from warehouse, for consumption on or after the date of publication of this notice. This deposit waiver shall remain in effect until publication of the final results of the next administrative review.

The Department received information from two of the four known Australian exporters, Henry Jones Ltd. and the Kyabram Preserving Co., that they are no longer involved in the processing or marketing of canned Bartlett pears. The Department has determined not to include these two companies in future section 751 reviews until they again ship canned Bartlett pears from Australia to the U.S.

The Department intends to conduct the next administrative review by the end of March 1984. The Department encourages interested parties to review the public record and submit applications for protective orders, if desired, as early as possible after the Department's receipt of the information in the next administrative review.

This administrative review and notice are in accordance with section 751(a)(1) of the Tariff Act of 1930 (19 U.S.C. 1675(a)(1)) and § 353.53 of the Commerce regulations (19 CFR 353.53).

Gary N. Horlick,

Deputy Assistant Secretary for Import Administration.

September 8, 1982.

[FR Doc. 82-25320 Filed 9-14-82; 8:45 am]

BILLING CODE 3510-25-M

[A-412-027]

Diamond Tips for Phonograph Needles From the United Kingdom; Final Results of Administrative Review and Revocation in Part of Antidumping Finding

AGENCY: International Trade Administration, Commerce.

ACTION: Notice of Final Results of Administrative Review and Revocation in Part of Antidumping Finding.

SUMMARY: On June 8, 1982, the Department of Commerce published the preliminary results of its administrative review and tentative determination to revoke in part the antidumpting finding on diamond tips for phonograph needles from the United Kingdom. The review covers the three known exporters of this merchandise to the United States. For Bauden Precision Diamonds Ltd. and Diamond Stylus Company Ltd., the review covers the period April 1, 1980 through March 31, 1981. For Fidelitone International Ltd., the review covers the period June 1, 1975 through May 25, 1976, the date of the Treasury Department's tentative determination to revoke with respect to that firm. Interested parties were provided an opportunity to submit written comments or request disclosure and/or a hearing. We received no comments.

EFFECTIVE DATE: September 15, 1982.

FOR FURTHER INFORMATION CONTACT: Philip S. Gallas or Robert Marenick, Office of Compliance International Trade Administration, U.S. Department of Commerce, Washington, D.C. 20230 (202-377-5255).

SUPPLEMENTARY INFORMATION:

Background

On April 1, 1972, a dumping finding with respect to diamond tips for phonograph needles from the United Kingdom was published in the **Federal Register** as Treasury Decision 72-91 (37 FR 6665). On June 8, 1982, the Department of Commerce ("the Department") published in the **Federal Register** (47 FR 24761-3) the preliminary results of its second administrative review and a tentative determination to revoke with regard to one of the covered exporters, Fidelitone International Ltd. ("Fidelitone"). The Department has now completed that administrative review.

Scope of the Review

Imports covered by the review are diamond tips for phonograph needles, consisting individually of an almost microscopic chip of diamond bonded to steel and shaped to fit into the groves of a phonograph record. Diamond tips for phonograph needles are currently classifiable under item 685.3400 of the Tariff Schedules of the United States Annotated (TSUSA).

The Department knows of a total of three exporters to the United States of diamond tips for phonograph needles from the United Kingdom. For Bauden Precision Diamonds Ltd. ("Bauden") and Diamond Stylus Company Ltd. ("Diamond Stylus"), the review covers the period April 1, 1980 through March 31, 1981. For Fidelitone, the review covers the period June 1, 1975 through May 25, 1976, the date of the Treasury Department's tentative determination to revoke with respect to that firm (41 FR 21384). Treasury reviewed all prior periods for Fidelitone, finding that all sales by Fidelitone were made at not less that fair value from January 1, 1974 through May 31, 1975.

Final Results of Review

Interested parties were invited to comment on the preliminary results and tentative determination to revoke in part. The Department received no comments or requests for disclosure or a hearing. Therefore, the final results of our review are the same as those presented in the preliminary results of review and we determine that the following margins exists:

Manufacturer/exporter	Time period	Margin (percent)
Bauden Precision Diamonds Ltd	04/01/80-03/31/81	[1] 0
Diamond Stylus Company Ltd.	04/01/80-03/31/81	0
Diamond Stylus/Phono Stylus (importer)	04/01/80-03/31/81	9.37
Fidelitone International Ltd.	06/01/75-05/25/76	0

[1] No shipments during period.

Determination

As a result of this review, the Department revokes the antidumping finding on diamond tips for phonograph needles from the United Kingdom with respect to Fidelitone International Ltd. This partial revocation applies to all unliquidated entries of diamond tips for phonograph needles manufactured and exported by Fidelitone entered, or withdrawn from warehouse, for consumption on or after May 25, 1976.

The Department shall determine, and the U.S. Customs Service shall assess, dumping duties on all appropriate entries made with purchase dates or export dates during the time periods involved. Individual differences between United States price and foreign market value may vary from the percentage stated above for Diamond Stylus/Phono Stylus (importer). The Department will issue assessment instructions on each exporter directly to the Customs Service.

Further, as provided for in § 353.48 (b) of the Commerce regulations, a cash deposit of estimated antidumping duties based on the margins calculated above shall be required on all shipments of diamond tips for phonograph needles by the remaining firms entered, or withdrawn from warehouse, for consumption on or after the date of publication of this notice. For any shipment from a new exporter not covered in this review, unrelated to a covered firm, a cash deposit shall be required at the highest rate for responding firms with shipments during the period of this review.

These deposit requirements shall remain in effect until publication of the final results of the next administrative review. The Department intends to conduct the next administrative review by the end of April 1983. The Department encourages interested parties to review the public record and summit applications for protective orders, if desired, as early as possible after the Department's receipt of the information during the next administrative review.

This administrative review, partial revocation, and notice are in accordance with sections 751 (a) (1) and (c) of the Tariff Act of 1930 (19 U.S.C. 1675 (a) (1), (c)) and §§ 353.53 and 353.54 of the Commerce Regulations (19 CFR 353.53, 353.54).

Gary N. Horlick,

Deputy Assistant Secretary for Import Administration.

September 8, 1982.

[FR Doc. 82-25319 Filed 9-14-82; 8:45 am]

BILLING CODE 3510-25-M

High-Capacity Pagers From Japan; Initiation of Antidumping Investigation

AGENCY: International Trade Administration, Commerce.

ACTION: Initiation of Antidumping Investigation.

SUMMARY: On the basis of a petition filed in proper form with the United States Department of Commerce, we are initiating an antidumping investigation to determine whether high-capacity pagers from Japan are being, or are likely to be, sold in the United States at less than fair value. We are notifying the United States International Trade Commission ("ITC") of this action so that it may determine whether imports of this merchandise are materially injuring, or are threatening to materially injure, a United States industry. If the investigation proceeds normally, the ITC will make its preliminary determination on or before October 4, 1982, and we will make ours on or before January 26, 1983.

EFFECTIVE DATE: September 15, 1982.

FOR FURTHER INFORMATION CONTACT: Richard Rimlinger, Office of Investigations, Import Administration, International Trade Administration, United States Department of Commerce, 14th Street and Constitution Avenue NW., Washington, D.C. 20230; telephone (202) 377-4136.

SUPPLEMENTARY INFORMATION:

The Petition

On Augsut 19, 1982, we received a petition from counsel for Motorola, Inc., on behalf of the United States industry manufacturing high-capacity pagers. In compliance with the filing requirements of § 353.36 of the Commerce Regulation (19 CFR 353.36), the petition alleges that imports of the subject merchandise from Japan are being, or are likely to be, sold in the United States at less than fair value within the meaning of section 731 of the Act, and that these imports are materially injuring, or are threatening to materially injure, a United States industry. The allegation of sales at less than fair value is supported by comparisons of United States prices developed from actual quotations on sales of the merchandise in the United States with Japanese home market prices obtained from actual quotations on sales made in Japan.

Initiation of Investigation

Under section 732(c) of the Tariff Act of 1930, as amended (19 U.S.C. 1673a) ("the Act"), we must determine, within 20 days after the petition is filed, whether it sets forth the allegations necessary for the initiation of an antidumping investigation and whether it contains information reasonably available to the petitioner supporting the allegation. We have examined the petition filed by the industry, and we have found that it meets the requirements of section 732(b) of the Act. Therefore, we are initiating an antidumping investigation to determine whether high-capacity pagers from Japan are being, or are likely to be, sold at less than fair value in the United States. If our investigation proceeds normally, we will make our preliminary determination by January 26, 1983.

Scope of the Investigation

The merchandise covered by this investigation is high-capacity pagers (paging signal receivers 3,000 or more of which can be operated in a paging system on a single radio frequency channel). This investigation is intended to cover all high-capacity pagers regardless of tariff classification. Specifically covered are *Tariff Schedules of the United States* ("TSUS") item numbers: 685.24 ("solid-state (tubeless) radio receivers"), 685.2475 (radio receives "above 30 MHz, but not over 400 MHz"), 685.2480 (receives "above 400 MHz, but not over 1,000 MHz"), and 685.7935 (other "sound signalling apparatus").

Notification to ITC

Section 732(d) of the Act requires us to notify the United States International Trade Commission of this action and to provide it with the information we used to arrive at this determination. We will notify the ITC and make available to it all nonprivileged and nonconfidential information. We will also allow the ITC access to all privileges and confidential information in our files, provided it confirms that it will not disclose such information either publicly or under an administrative protective order without the consent of the Deputy Assistant Secretary of Import Administration.

Preliminary Determination by ITC

The ITC will determine within 45 days whether there is a reasonable indication that imports of high-capacity pagers from Japan are materially injuring, or are likely to materially injure, a United States industry. If its determination is negative, this investigation will terminate; otherwise, it will proceed according to the statutory procedures.

Gary N. Horlick,

Deputy Assistant Secretary for Import Administration.

September 8, 1982.

[FR Doc. 82-25328 Filed 9-14-82; 8:45 am]

BILLING CODE 3510-25-M

Leather Wearing Apparel From Colombia; Final Results of Administrative Review of Suspension Agreement

AGENCY: International Trade Administration, Commerce.

ACTION: Notice of Final Results of Administrative Review of Suspension Agreement.

SUMMARY: On June 4, 1982, the Department of Commerce published in the **Federal Register** the preliminary results of its administrative review of the agreement suspending the countervailing duty investigation on leather wearing apparel from Colombia. The review covered the period April 2, 1981 through August 31, 1981.

Interested parties were invited to comment on the preliminary results. We received no comments. Therefore, we determine that Confecciones Amazonas Orinoco, the predominant Colombian exporter of leather wearing apparel to the United States, has complied with the terms of the suspension agreement.

EFFECTIVE DATE: September 15, 1982.

FOR FURTHER INFORMATION CONTACT: Susan Silver or Richard Moreland, Office of Compliance, International Trade Administration, U.S. Department of Commerce, Washington, D.C. 20230 (202, 377–3691/2786).

SUPPLEMENTARY INFORMATION:

Background

On June 4, 1982, the Department of Commerce ("the Department") published in the **Federal Register** (47 FR 24379) the preliminary results of its administrative review of the agreement suspending the countervailing duty investigation on leather wearing apparel from Colombia (46 FR 19963). The Department has now completed that review.

Scope of the Review

The leather wearing apparel covered by the review is currently classifiable under items 791.7620, 791.7640 and 791.7660 of the *Tariff Schedules of the United States Annotated.* This merchandise includes men's, boys', women's, girls' and infants' leather coats and jackets and other leather wearing apparel (such as vests, pants and shorts), as well as parts and pieces thereof. The review covered the period April 2, 1981 through August 31, 1981, and the only program found to constitute a subsidy in the preliminary affirmative countervailing duty determination, the Tax Reimbursement Certificate Program ("CAT").

Final Results of Review

Interested parties were invited to comment on our preliminary results. We received no comments. As a result, we determine that Confecciones Amazonas Orinoco ("CAO"), the predominant exporter of such Colombian apparel to the U.S., has complied with the terms of the suspension agreement for the period April 2, 1981 through August 31, 1981. CAO renounced all CAT benefits associated with exports of leather wearing apparel to the United States, did not accept substitute or equivalent benefits and met all of the reporting requirements of the agreement. During the review period, CAO continued to account for at least 85 percent of U.S. imports of such Colombian leather wearing apparel.

Therefore, the suspension agreement for Colombian leather wearing apparel shall remain in effect. The Department intends to conduct the next administrative review by the end of April, 1983.

The Department encourages interested parties to review the public record and submit applications for protective orders, if desired, as early as possible after the Department's receipt of the information in the next administrative review.

This administrative review and notice are in accordance with section 751(a)(1) of the Tariff Act (19 U.S.C. 1675(a)(1)) and § 355.41 of the Commerce Regulations (19 CFR 355.41).

Gary N. Horlick,

Deputy Assistant Secretary for Import Administration.

September 9, 1982.

[FR Doc. 82-25318 Filed 9-14-82; 8:45 am]

BILLING CODE 3510-25-M

Consolidated Decision on Applications for Duty-Free Entry of Patch Clamp Systems

The following is a consolidated decision on applications for duty-free entry of patch clamp systems pursuant to Section 6(c) of the Educational, Scientific, and Cultural Materials Importation Act of 1966 (Pub. L. 89–651, 80 Stat. 897) and the regulations issued pursuant thereto (15 CFR Part 301 as amended by 47 FR 32517).

A copy of the record pertaining to each of the applications in this consolidated decision is available for public review between 8:30 a.m. and 5:00 p.m. in Room 2097, Statutory Import Programs Staff, U.S. Department of Commerce, 14th and Constitution Avenue, NW., Washington, D.C. 20230.

Docket No.: 82–00187. Applicant: Northwestern University, 619 Clark Street, Evanston, IL 60201. Article: Voltage Clamp System. Manufacturer: List Electronic, West Germany. Intended use of article: See Notice on page 24166 in the **Federal Register** of June 3, 1982. Advice submitted by: Department of Health and Human Services: July 20, 1982.

Docket No.: 82–00199. Applicant: Yale University School of Medicine, 333 Cedar Street, New Haven, CT 06510. Article: Extracellular Patch Clamp System L/M–EPC–5 and one Electrode Holder. Manufacturer: List Electronic, West Germany. Intended use of article: See Notice on page 27389 in the **Federal Register** of June 24, 1982. Advice submitted by: Department of Health and Human Services: July 20, 1982.

Docket No.: 82–00230. Applicant: University of California, San Diego, Receiving Dept., 3175 Miramar Road, Bldg. 509, La Jolla, CA 92093. Article: Extracellular Patch Clamp System with Pipette Holder. Manufacturer: List Electronic, West Germany. Intended use of article: See Notice on page 30537 in the **Federal Register** of July 14, 1982. Advice submitted by: Department of Health and Human Services: August 5, 1982.

Comments: No comments have been received with respect to any of the foregoing applications. Decision: Application approved. No instrument or apparatus of equivalent scientific value to the foreign instruments, for such purposes as these instruments are intended to be used, is being manufactured in the United States. Reasons: Each foreign instrument provides for measurement of current at four million-millionths amperes (4×10^{-12} A), low noise 0.12×10^{-12} picoamperes RMS at one kilohertz bandwidth and a transient cancellation range of 0–10 picofarads. The Department of Health and Human Services (DHHS) advises in its respectively cited memoranda that (1) the capabilities of the foreign instruments cited above are pertinent to the purposes for which each instrument is intended to be used, (2) it knows of no domestic instrument or apparatus of equivalent scientific value to either of the instruments to which the foregoing applications relate for such purposes as these instruments are intended to be used.

The Department of Commerce knows of no other instrument or apparatus of equivalent scientific value to any of the foreign instruments, to which the foregoing applications relate, for such purposes as these instruments are intended to be used, which is being manufactured in the United States.

(Catalog of Federal Domestic Assistance Program No. 11.105, Importation of Duty-Free Educational and Scientific Materials)

Richard M. Seppa,

Director, Statutory Import Programs Staff.

[FR Doc. 82-25327 Filed 9-14-82; 8:45 am]

BILLING CODE 3510-25-M

Sandia National Laboratories; Notice of Decision on Application for Duty-Free Entry of Scientific Instrument

The following is a decision on an application for duty-free entry of a scientific instrument pursuant to Section 6(c) of the Educational, Scientific, and Cultural Materials Importation Act of 1966 (Pub. L. 89-651, 80 Stat. 897) and the regulations issued pursuant thereto (15 CFR Part 301 as amended by 47 FR 32517).

A copy of the record pertaining to this decision is available for public review between 8:30 a.m. and 5:00 p.m. in Room 2097, Statutory Import Programs Staff, U.S. Department of Commerce, 14th and Constitution Avenue, N.W., Washington, D.C. 20230.

Docket No.: 82-00209. Applicant: Sandia National Laboratories, Division 2516, P.O. Box 5800, Albuquerque, NM 87185. Article: ESCALAB 5 Spectrometer. Manufacturer: VG Scientific Limited, United Kingdom. Intended use of article: See Notice on page 25396 in the **Federal Register** of June 11,1982.

Comments: No comments have been received with respect to this application. Decision: Application approved. No instrument or apparatus of equivalent scientific value to the foreign instrument, for such purposes as this instrument is intended to be used, is being manufactured in the United States. Reasons: This application is a resubmission of Docket Number 81-00201 which was denied without prejudice to resubmission on February 8, 1982 for informational deficiencies. The foreign instrument provides a spatial resolution of 10,000 Angstroms. The National Bureau of Standards advises in its memorandum dated August 11, 1982 that (1) the capability of the foreign instrument described above is pertinent to the applicant's intended purpose and (2) it knows of no domestic instrument or apparatus of equivalent scientific value to the foreign instrument for the applicant's intended use.

The Department of Commerce knows of no other instrument or apparatus of equivalent scientific value to the foreign instrument, for such purposes as this instrument is intended to be used, which is being manufactured in the United States.

(Catalog of Federal Domestic Assistance Program No. 11.105, Importation of Duty-Free Educational and Scientific Materials.)

Richard M. Seppa,

Director, Statutory Import Programs Staff.

[FR Doc. 82-25323 Filed 9-14-82; 8:45 am]

BILLING CODE 3510-25-M

St. Jude Children's Research Hospital; Decision on Application for Duty-Free Entry of Scientific Instrument

The following is a decision on an application for duty-free entry of a scientific instrument pursuant to Section 6(c) of the Educational, Scientific, and Cultural Materials Importation Act of 1966 (Pub. L. 89-651, 80 Stat. 897) and the regulations issued pursuant thereto (15 CFR Part 301 as amended by 47 FR 32517).

A copy of the record pertaining to this decision is available for public review between 8:30 a.m. and 5:00 p.m. in Room 2097, Statutory Import Programs Staff, U.S. Department of Commerce, 14th and Constitution Avenue, N.W., Washington, D.C. 20230.

Docket No.: 82-00220. Applicant: St. Jude Children's Research Hospital, 332 North Lauderdale, Memphis, TN 38101. Article: Nanosecond Fluorometer System. Manufacturer: Photochemical Research Associated, Inc., Canada. Intended use of article: See Notice on page 29581 in the **Federal Register** of July 7, 1982.

Comments: No comments have been received with respect to this application. Decision: Application approved. No instrument or apparatus of equivalent scientific value to the foreign instrument, for such purposes as this instrument is intended to be used, is being manufactured in the United States. Reasons: This application relates to a compatible accessory for an instrument that has been previously imported for the use of the applicant institution. The instrument is being furnished by the manufacturer which produced the foreign instrument with which it is intended to be used. We are advised by the Department of Health and Human Services in its memorandum dated August 5, 1982 that the accessory is pertinent to the applicant's intended uses and that it knows of no comparable domestic instrument.

The Department of Commerce knows of no similar accessory manufactured in the United States which is interchangeable with or can be readily adapted to the instrument with which the foreign instrument is intended to be used.

(Catalog of Federal Domestic Assistance Program No. 11.105, Importation of Duty-Free Educational and Scientific Materials)

Richard M. Seppa,

Director, Statutory Import Programs Staff.

[FR Doc. 82-25322 Filed 9-14-82; 8:45 am]

BILLING CODE 3510-25-M

Stanford University; Decision on Application for Duty-Free Entry of Scientific Instrument

The following is a decision on an application for duty-free entry of a scientific instrument pursuant to Section 6(c) of the Educational, Scientific, and Cultural Materials Importation Act of 1966 (Pub. L. 89-651, 80 Stat. 897) and the regulations issued pursuant thereto (15 CFR Part 301 as amended by 47 FR 32517).

A copy of the record pertaining to this decision is available for public review between 8:30 a.m. and 5:00 p.m. in Room 2097, Statutory Import Programs Staff, U.S. Department of Commerce, 14th and Constitution Avenue, N.W., Washington, D.C. 20230.

Docket No. 82-00222. Applicant: Stanford University, 851 Welch Road, Palo Alto, CA 94304. Article: Model WTM 5000 Transit case containing Whitlock Tritium Meter, charging unit, lens cap, seals, aerosol. Manufacturer: Hughes Whitlock, Ltd., United Kingdom. Intended use of article: See Notice on page 29581 in the **Federal Register** of July 7, 1982.

Comments: No comments have been received with respect to this application. Decision: Application approved. No instrument or apparatus of equivalent scientific value to the foreign instrument, for such purposes as this instrument is intended to be used, is being manufactured in the United States. Reasons: The foreign instrument provides a sensitivity of 10^{-4} microcuries per square centimeter of tritium. The Department of Health and Human Services advises in its memorandum dated August 5, 1982 that (1) the capability of the foreign instrument described above is pertinent to the applicant's intended purpose and (2) it knows of no domestic instrument or apparatus of equivalent scientific value to the foreign instrument for the applicant's intended use.

The Department of Commerce knows of no other instrument or apparatus of equivalent scientific value to the foreign instrument, for such purposes as this instrument is intended to be used, which is being manufactured in the United States.

(Catalog of Federal Domestic Assistance Program No. 11.105, Importation of Duty-Free Educational and Scientific Materials)

Richard M. Seppa,

Director, Statutory Import Programs Staff.

[FR Doc. 82-25321 Filed 9-14-82; 8:45 am]

BILLING CODE 3510-25-M

UMDNJ-New Jersey School of Osteopathic Medicine; Decision on Application for Duty-Free Entry of Scientific Instrument

The following is a decision on an application for duty-free entry of a scientific instrument pursuant to Section 6(c) of the Educational, Scientific, and Cultural Materials Importation Act of 1966 (Pub. L. 89-651, 80 Stat. 897) and the regulations issued pursuant thereto (15 CFR Part 301 as amended by 47 FR 32517).

A copy of the record pertaining to this decision is available for public review between 8:30 a.m. and 5:00 p.m. in Room 2097, Statutory Import Programs Staff, U.S. Department of Commerce, 14th and Constitution Avenue, NW., Washington, D.C. 20230.

Docket No.: 82-00201. Applicant: UMDNJ-New Jersey School of Osteopathic Medicine, Department of Osteopathic Sciences, P.O. Box 55, Piscataway, NJ 08854. Article: Particle Electrophoresis Apparatus. Manufacturer: Rank Brothers-Scientific Instrument Division, United Kingdom. Intended use of article: See Notice on page 25396 in the **Federal Register** of June 11, 1982.

Comments: No comments have been received with respect to this application. Decision: Application approved. No instrument or apparatus of equivalent scientific value to the foreign instrument, for such purposes as this instrument is intended to be used, is being manufactured in the United States. Reasons: The foreign instrument provides accurate temperature control, vertical flat cell for higher specific gravity particles and the rotating prism system for more complete and accurate measurement. The Department of Health and Human Services advises in its memorandum dated August 5, 1982 that (1) the capabilities of the foreign instrument described above are pertinent to the applicant's intended purpose and (2) it knows of no domestic instrument or apparatus of equivalent scientific value to the foreign instrument for the applicant's intended use.

The Department of Commerce knows of no other instrument or apparatus of equivalent scientific value to the foreign instrument, for such purposes as this instrument is intended to be used, which is being manufactured in the United States.

(Catalog of Federal Domestic Assistance Program No. 11.105, Importation of Duty-Free Educational and Scientific Materials)

Richard M. Seppa,

Director, Statutory Import Programs Staff.

[FR Doc. 82-25325 Filed 9-14-82; 8:45 am]

BILLING CODE 3510-25-M

University of Arizona; Notice of Decision on Application for Duty-Free Entry of Scientific Instrument

The following is a decision on an application for duty-free entry of a scientific instrument pursuant to Section 6(c) of the Educational, Scientific, and Cultural Materials Importation Act of 1966 (Pub. L. 89-651, 80 Stat. 897) and the regulations issued pursuant thereto (15 CFR Part 301 as amended by 47 FR 32517).

A copy of the record pertaining to this decision is available for public review between 8:30 a.m. and 5:00 p.m. in Room 2097, Statutory Import Programs Staff, U.S. Department of Commerce, 14th and Constitution Avenue, N.W., Washington, D.C. 20230.

Docket No.: 82-00224. Applicant: University of Arizona, Department of Pharmacology, Health Sciences Center, Tucson, AZ 85724. Article: PE-2 Glass Microelectrode Puller. Manufacturer: Narashige, Japan. Intended use of article: See Notice on page 29581 in the **Federal Register** of July 7, 1982.

Comments: No comments have been received with respect to this application. Decision: Application approved. No instrument or apparatus of equivalent scientific value to the foreign instrument, for such purposes as this instrument is intended to be used, is being manufactured in the United States. Reasons: The foreign instrument provides the massive pulling strength capable of producing best multibarreled microelectrodes. The Department of Health and Human Services advises in its memorandum dated August 5, 1982 that (1) the capability of the foreign instrument described above is pertinent to the applicant's intended purpose and (2) it knows of no domestic instrument or apparatus of equivalent scientific value to the foreign instrument for the applicant's intended use.

The Department of Commerce knows of no other instrument or apparatus of equivalent scientific value to the foreign instrument, for such purposes as this instrument is intended to be used, which is being manufactured in the United States.

(Catalog of Federal Domestic Assistance Program No. 11.105, Importation of Duty-Free Educational and Scientific Materials)

Richard M. Seppa,

Director, Statutory Import Programs Staff.

[FR Doc. 82-25326 Filed 9-14-82; 8:45 am]

BILLING CODE 3510-25-M

University of Texas Health Science Center; Notice of Decision on Application for Duty-Free Entry of Scientific Instrument

The following is a decision on an application for duty-free entry of a scientific instrument pursuant to Section 6(c) of the Educational, Scientific, and Cultural Materials Importation Act of 1966 (Pub. L. 89-651, 80 Stat. 897) and the regulations issued pursuant thereto (15 CFR Part 301 as amended by 47 FR 32517).

A copy of the record pertaining to this decision is available for public review between 8:30 a.m. and 5:00 p.m. in Room 2097, Statutory Import Programs Staff, U.S. Department of Commerce, 14th and Constitution Avenue, N.W., Washington, D.C. 20230.

Docket No.: 82-00208. Applicant: University of Texas Health Science Center, 5323 Harry Hines Boulevard, Dallas, TX 75235. Article: Dermovac Suction Blister Device. Manufacturer: Laakintasahko Instrumentarium, Finland. Intended use of article: See Notice on page 27390 in the **Federal Register** of June 24, 1982.

Comments: No comments have been received with respect to this application. Decision: Application approved. No instrument or apparatus of equivalent scientific value to the foreign instrument, for such purposes as this instrument is intended to be used, is being manufactured in the United States. Reasons: The foreign instrument provides the capability for harvesting living skin cells by a non-surgical removal and raise blisters of preselected size and number. The Department of Health and Human Services advises in its memoradum dated August 5, 1982 that (1) the capability of the foreign instrument described above is pertinent to the applicant's intended purpose and (2) it knows of no domestic instrument or apparatus of equivalent scientific value to the foreign instrument for the applicant's intended use.

The Department of Commerce knows of no other instrument of apparatus of equivalent scientific value to the foreign instrument, for such purposes as this instrument is intended to be used, which is being manufactured in the United States.

(Catalog of Federal Domestic Assistance Program No. 11.105, Importation of Duty-Free Educational and Scientific Materials)

Richard M. Seppa,

Director, Statutory Import Programs Staff.

[FR Doc. 82-25324 Filed 9-14-82; 8:45 am]

BILLING CODE 3510-25-M

Sheet Pilings From Canada; Suspension of Investigation

AGENCY: International Trade Administration, Commerce.

ACTION: Notice of Suspension of Investigation.

SUMMARY: The Department of Commerce has decided to suspend the antidumping investigation involving sheet pilings from Canada. The basis for the suspension is an agreement by Acier Casteel, Inc., a manufacturer and exporter which accounts for substantially all of the known imports of this product from Canada, to revise their prices to eliminate sales of this merchandise to the United States at less than fair value.

EFFECTIVE DATE: September 15, 1982.

FOR FURTHER INFORMATION CONTACT: Michael Hudak, Office of Investigations, Import Administration, International Trade Adminstration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, D.C. 20230, telephone (202) 377-3530.

SUPPLEMENTARY INFORMATION:

Case History

On November 24, 1981, the Department of Commerce (the Department) published a notice (46 FR 57586-57587) announcing that, on the basis of information developed under the "Trigger Price Mechanism" (TPM) for steel mill products we were self-initiating an antidumping investigation to determine whether imports of sheet pilings from Canada are being, or are likely to be, sold at less than fair value within the meaning of section 731 of the Tariff Act of 1930, as amended (the Act). The TPM was a monitoring device used by the Department to determine those basic steel mill products most likely to be sold at less than fair value in the United States. In accordance with section 731(b) of the Act, we notified the U.S. International Trade Commission (ITC) of our action.

On January 8, 1982, the ITC found that there is a reasonable indication that imports of sheet pilings from Canada are materially injuring, or threatening to materially injure, a U.S. industry. The ITC published its determination in the **Federal Register** on January 20, 1982.

On April 16, 1982, the Department published a notice announcing that the preliminary determination was being postponed from May 3, 1982, to no later than June 22, 1982 (47 FR 16366).

On June 28, 1982, the Department published a notice (47 FR 27881) announcing a preliminary determination of sales at less than fair value. The notice indicated that the overall weighted average margin on all sales compared was 1.9 percent. The weighted average margin on sales by Acier Casteel Inc. was 2.07 percent and the weighted average margin on sales by Brockhouse Canada Limited was 0.7 percent.

On August 6, 1982, the Department initialed a proposed agreement to suspend the antidumping investigation involving sheet pilings from Canada. The basis for the suspension is an agreement between the Department and Acier Casteel that the latter will revise their prices to eliminate sales of this merchandise to the United States at less than fair value. On the same date, in compliance with the procedural requirements of section 734(e) of the Act, we informed counsel for Armco Inc. and Bethlehem Steel Corporation of the proposed agreement, offered to consult with him concerning its terms, and provided him with a copy of the proposal.

Scope of the Investigation

For purposes of this investigation the term "sheet pilings" covers sheet pilings of iron or steel currently provided for in items 609.9600 and 609.9800 of the Tariff Schedules of the United States Annotated. Sheet pilings are shapes having interlocking joints on both edges to permit being driven, side by side, to form a continuous wall.

We investigated sheet pilings sold by Acier Casteel, Inc. and by Brockhouse Canada Limited during the period June 1, 1981 through November 30, 1981. We know of no other Canadian producers of sheet pilings.

Suspension of the Investigation

The Department consulted with the parties to the proceeding and has considered the comments submitted with respect to the proposed suspension agreement. We have determined that the agreement will eliminate sales of this merchandise to the United States at less then fair, value, that the agreement can be monitored effectively, and that the agreement is in the public interest. We find, therefore, that the criteria for suspension of an investigation pursuant to section 734 of the Act have been met. The terms and conditions of the agreement, signed September 7, 1982, are set forth in Annex 1 to this notice.

Pursuant to section 734(f)(2)(A) of the Act, the suspension of liquidation of all entries, entered or withdrawn from warehouse, for consumption of sheet pilings from Canada effective June 28, 1982, as directed in our notice of "Antidumpting Preliminary Determination of Sales at Less than Fair Value, Sheet Pilings from Canada" is hereby terminated. Any cash deposits on entries of sheet pilings from Canada pursuant to that suspension of liquidation shall be refunded and any bonds shall be released.

The Department intends to conduct an administrative review within twelve months of the anniversary date of publication of this suspension agreement as provided in section 751 of the Act.

Notwithstanding the suspension agreement, the Department will continue the investigation if we receive such a request in accordance with section 734(g) of the Act within 20 days after the date of publication of this notice.

This notice is published pursuant to section 734(f)(1)(A) of the Act.

Gary N. Horlick,

Deputy Assistant Secretary for Import Administration.

September 7, 1982.

Annex I: Suspension Agreement—Sheet Pilings From Canada

Suspension Agreement Sheet Pilings From Canada

Pursuant to the provisions of section 734 of the Tariff Act of 1930, as amended (19 U.S.C. 1673c) (the Act), and § 353.42 (19 CFR 353.42) of the Commerce Regulations, the Department of Commerce (the Department) and Acier Casteel, Inc. (Casteel) P.O. Box 555, Station A, Longueuil, Quebec, Canada, enter into the following suspension agreement (the agreement) on the basis of which the Department shall suspend its antidumping invetigation initiated on November 19, 1981 (46 FR 57586-57587) with respect to sheet pilings from Canada subject to the terms and provisions set forth below.

A. *Product Coverage.* This agreement applies to sheet pilings from Canada which are the subject of the above referenced investigation, manufactured by Casteel and, directly or indirectly, exported to the United States. Sheet pilings are currently provided for under item numbers 609.9600 and 906.9800 of the *Tariff Schedules of the United States Annotated.*

B. *Basis for the Agreement.* As of the effective date of this agreement Casteel, which accounts for substantially all of the imports of sheet pilings to the United States from Canada, agrees to make any necessary price revisions to eliminate completely any amount by which the foreign market value of sheet pilings, as determined by the price of such or similar merchandise in Canada,

exceeds the United States price of the product by ensuring that:

(1) Beginning on the effective date of the suspension of the investigation, the price Casteel will charge any U.S. importer or customer for all entries of sheet pilings which are entered into the United States or withdrawn from warehouse, for consumption in the United States, will not be less than the foreign market value of the product, using the methodology currently employed by the Department on the date of the signing of this agreement; and

(2) Subsequent price adjustments will be made by Casteel as necessary to ensure that future sales of sheet pilings, exported directly from Canada or through third countries, to the United States will not be made at less than foreign market value as determined in accordance with the statute and the Department of Commerce regulations. As soon as possible, but not later than the effective date of the suspension of the investigation, the Department shall advise Casteel of the method to be used in making fair value calculations. The Department reserves the right to modify its methodology at any time.

C. *Monitoring.* Casteel will supply to the Department such information as the Department deems necessary to ensure that Casteel is in full compliance with the terms of this agreement. At a minimum this will include quarterly reports from Casteel itemizing all sales of sheet pilings in Canada as well as all sheet pilings exported directly from Canada or through third countries, to the United States. These quarterly reports must list all adjustments, must provide an amount for each adjustment made on each sale, and must show how net prices in each market were calculated for purposes of making fair value comparisons.

The Department will conduct administrative reviews under section 751 of the Act annually or at such shorter intervals as the Department deems necessary to ensure that there are and will be no sales at less than fair value.

Casteel further agrees to permit such verification as the Department deems necessary. The Department shall also request the U.S. Customs Service to direct the ports of entry to forward an Antidumping Report of Importations for all entries of sheet pilings while this agreement is in effect.

D. *Violation of the Agreement.* If the Department determines that this agreement is being or has been violated or no longer meets the requirements of section 734 (b) or (d) of the Act, then section 734(i) shall apply.

E. *Other Provisions.* In entering into this agreement, Casteel does not admit that any sales of sheet pilings have been made at less than fair value.

The effective date of this suspension agreement is the date of publication.

Signed on this 7th day of September, 1982.

William K. Ince,

For Acier Casteel Inc.

Note.—I have determined that the provisions of Paragraph B provide for the complete elimination of sales at less than fair value of sheet pilings from Canada to the United States and that the provisions of Paragraph C ensure that this agreement can be monitored effectively pursuant to section 734(d) of the Act. Furthermore, I have determined that this agreement meets the requirements of section 734(b) of the Act and is in the public interest as required under section 734(d) of the Act.

U.S. Department of Commerce.

Gary N. Horlick,

Deputy Assistant Secretary for Import Administration.

September 7, 1982.

[FR Doc. 82-25330 Filed 9-14-82; 8:45 am]

BILLING CODE 3510-25-M

National Oceanic and Atmospheric Administration

National Marine Fisheries Service; Receipt of Application for Permit

Notice is hereby given that an Applicant has applied in due form for a Permit to take marine mammals as authorized by the Marine Mannal Protection Act of 1972 (16 U.S.C. 1361–1407), and the Regulations Governing the Taking and Importing of Marine Mammals (50 CFR Part 216).

1. Applicant: Gulf Exhibition Corporation (P90C), Fort Walton Beach, Florida 32548.

2. Type of Permit: Public Display.

3. Name and Number of Animals: Atlantic bottlenose dolphins (*Tursiops truncatus*) (2).

4. Type of Take: To take for permanent maintenance.

5. Location of Activity: Fort Walton Beach, Florida.

6. Period of Activity: 2 years.

The arrangements and facilities for transporting and maintaining the marine mammals requested in the above described application have been inspected by a licensed veterinarian, who has certified that such arrangements and facilities are adequate to provide for the well-being of the marine mammals involved.

Concurrent with the publication of this notice in the Federal Register, the Secretary of Commerce is forwarding copies of this application to the Marine Mammal Commission and the Committee of Scientific Advisors.

Written data or views, or requests for a public hearing on this application should be submitted to the Assistant Administrator for Fisheries, National Marine Fisheries Service, U.S. Department of Commerice, Washington, D.C. 20235, within 30 days of the publication of this notice. Those individuals requesting a hearing should set forth the specific reasons why a hearing on this particular application would be appropriate. The holding of such hearing is at the discretion of the Assistant Administrator for Fisheries.

All statements and opinions contained in this application are summaries of those of the Applicant and do not necessarily reflect the views of the National Marine Fisheries Service.

Documents submitted in connecton with the above application are available for review in the following offices:

Assistant Administrator for Fisheries, National Marine Fisheries Service, 3300 Whitehaven Street, N.W., Washington, D.C.; and

Regional Director, Southeast Region, National Marine Fisheries Service, 9450 Koger Boulevard, St. Petersburg, Florida 33702.

Dated: September 9, 1982.

Richard B. Roe,

Acting Director, Office of Marine Mammals and Endangered Species, National Marine Fisheries Service.

[FR Doc. 82-25368 Filed 9-14-82; 8:45 am]

BILLING CODE 3510-22-M

COMMODITY FUTURES TRADING COMMISSION

Comex Clearing Association, Inc.: Proposed Rule Amendments Relating to Membership and Approved Original Margin Depository Requirements; Eligibility of Foreign Banks

AGENCY: Commodity Futures Trading Commission.

ACTION: Extension of comment period.

SUMMARY: On August 6, 1982, the Commission published in the **Federal Register** proposed rule amendments of the Comex Clearing Association, Inc. pertaining to requirements for clearing membership and to approved original margin depositories which, *inter alia*, would preclude foreign persons or entities from becoming clearing members and foreign banks from becoming approved original margin depositories. 47 Fed. Reg. 34181. The comment period on the proposal was due to expire on September 7, 1982. The Commission has received a request for an extension of the comment period for an additional thirty days. Because it wishes to insure that all interested parties have an adequate opportunity to submit comments, the Commission has determined to extend the comment period on the proposed amendment of Comex Clearing Association By-Law sections 6.1 and 8.7.

DATE: The comment period has been extended through October 7, 1982.

ADDRESS: Interested persons should

submit their views and comments to Jane K. Stuckey, Secretariat, Commodity Futures Trading Commission, 2033 K Street, NW., Washington, D.C. 20581. Reference should be made to Comex Clearing Association By-Law sections 6.1 and 8.7.

FOR FURTHER INFORMATION CONTACT: Wendy E. Robinson, Esq. or George L. Garrow, Jr., Esq., Division of Trading and Markets, Commodity Futures Trading Commission, 2033 K Street NW., Washington, D.C. 20581. (202) 254–8955.

Issued in Washington, D.C. on September 9, 1982, by the Commission.

Jane K. Stuckey,

Secretary of the Commission.

[FR Doc. 82–25288 Filed 9–14–82; 8:45 am]

BILLING CODE 6351–01–M

New York Futures Exchange New York Stock Exchange Large Composite Index Futures Contract

AGENCY: Commodity Futures Trading Commission.

ACTION: Notice of availability of the terms and conditions of a proposed commodity futures contract.

SUMMARY: The New York Futures Exchange ("NYFE") has applied for designation as a contract market to trade an additional contract based on the New York Stock Exchange ("NYSE") Composite Index. The proposed contract would be known as the NYSE "Large Composite Index" futures contract. Its terms are identical to the terms and conditions of NYFE's current NYSE Composite Index futures contract (46 FR 30847, June 11, 1981) approved by the Commodity Futures Trading Commission ("Commission") on May 4, 1982, with two exceptions. The size of the NYSE Large Composite Index futures contract would be $1,000 times the NYSE Composite Index and the minimum price fluctuation would be one basis point. The size of NYFE's currently traded NYSE Composite Index futures contract is $500 times the NYSE Composite Index and the minimum price fluctuation is five basis points. The Large Composite Index contract would not replace the existing Composite Index contract, but rather, the exchange would be authorized to allow trading on both contracts simultaneously. The Commission has determined that the terms and conditions of the proposed futures contract are of major economic significance and that, accordingly, making the proposed contract available for public inspection and comment is in the public interest, will assist the Commission in considering the views of interested persons, and is consistent with the purposes of the Commodity Exchange Act.

DATE: Comments must be received on or before November 15, 1982.

ADDRESS: Interested persons should submit their views and comments to Jane K. Stuckey, Secretary, Commodity Futures Trading Commission, 2033 K Street NW., Washington, D.C. 20581. Reference should be made to the NYFE NYSE Large Composite Index Futures Contract.

FOR FURTHER INFORMATION CONTACT: Ronald Hobson, Division of Economics and Education, Commodity Futures Trading Commission, 2033 K Street NW., Washington, D.C. (202) 254–7303.

A copy of the terms and conditions of the NYFE proposed NYSE Large Composite Index futures contract will be available for inspection at the Office of the Secretariat, Commodity Futures Trading Commission, 2033 K Street NW., Washington, D.C. 20581. Copies of the terms and conditions can be obtained through the Office of the Secretariat by mail at the above address or by phone at (202) 254–6314.

Other materials submitted by the NYFE in support of its application for contract market designation may be available upon request pursuant to the Freedom of Information Act (5 U.S.C. 552) and the Commission's regulations thereunder (17 CFR Part 145 (1981)). Requests for inspection of such materials should be made to the FOIA, Privacy and Sunshine Acts Compliance Staff of the Office of the Secretariat at the Commission's headquarters in accordance with 17 CFR 145.7 and 145.8.

Any person interested in submitting written data, views or arguments on the terms and conditions of the proposed futures contract, or with respect to other materials submitted by the NYFE in support of its application, should send such comments to Jane K. Stuckey, Secretary, Commodity Futures Trading Commission, 2033 K Street NW., Washington, D.C. 20581, by November 15, 1982. Such comment letters will be publicly available except to the extent that they are entitled to confidential treatment as set forth in 17 CFR 145.5 and 145.9.

Issued in Washington, D.C. on September 9, 1982.

Jane K. Stuckey,

Secretary of the Commission.

[FR Doc. 82–25289 Filed 9–14–82; 8:45 am]

BILLING CODE 6351–01–M

New York Mercantile Exchange; Proposed Amendments Relating to the New York Harbor No. 2 Heating Oil, New York Harbor Leaded Regular Gasoline and New York Harbor Unleaded Regular Gasoline Futures Contracts

AGENCY: Commodity Futures Trading Commission.

ACTION: Notice of proposed contract market rule changes.

SUMMARY: The New York Mercantile Exchange ("NYMEX" or "Exchange") has submitted a proposal to amend its New York Harbor No. 2 heating oil, New York Harbor leaded regular gasoline and New Your Harbor unleaded regular gasoine futures contracts. These amendments constitute major revisions to the delivery procedures of the contracts. The Commodity Futures Trading Commission ("Commission") has determined that the proposal is of major economic significance and that, accordingly, publication of the proposal is in the public interest, will assist the Commission in considering the views of interested persons, and is consistent with the purposes of the Commodity Exchange Act.

DATE: Comments must be received on or before October 15, 1982.

ADDRESS: Interested persons should submit their views and comments to Jane K. Stuckey, Secretary, Commodity Futures Trading Commission, 2033 K Street, N.W., Washington, D.C. 20581. Reference should be made to the New York Mercantile Exchange, Rules 150.04, 150.09, 190.04, 190.09.

FOR FURTHER INFORMATION CONTACT: Richard Shilts, Division of Economics and Education, Commodity Futures Trading Commission, 2033 K Street, N.W., Washington, D.C. 20581, (202) 254–7303.

SUPPLEMENTARY INFORMATION: Rules 150.04 and 150.09 and Rules 190.04 and 190.09 govern the NYMEX's delivery procedures for the New York Harbor No. 2 heating oil and New York Harbor leaded and unleaded gasoline contracts, respectively. The Exchange's proposed amendments would include a requirement that the buyer must post full payment with its clearing member two days prior to the scheduled lifting of product. This differs from existing practice in which payment is posted one day after lifting. The Exchange also proposes to establish a Petroleum Delivery Committee. If a seller or buyer notifies the Committee that circumstances constituting force majeure prevent delivery or acceptance of delivery, the Committee would have

the authority, subject to certain limitations, to extend the delivery period up to five days from the scheduled time, change the delivery site and modify the method for taking delivery.

These revisions would become effective for existing contracts beginning with the second month from the delivery month prevailing at the time of Commission approval.

In accordance with Section 5a(12) of the Commodity Exchange Act, 7 U.S.C. 7a(12) (Supp. IV 1980), the Commission has determined that the proposal submitted by the NYMEX concerning its New York Harbor heating oil and gasoline futures contracts are of major economic significance. Accordingly, the NYMEX's proposed amendments to Rules 150.04 and 150.09 of its New York Harbor No. 2 heating oil and Rules 190.04 and 190.09 of its New York Harbor leaded and unleaded gasoline futures contracts are printed below, using bracketing to indicate deletions and italics to indicate additions.

New York Harbor No. 2 Heating Oil Contract

150.04 *DELIVERY*

(A) * * *

* * * * *

(3) By *stock* transfer of title to the buyer [without physical movement of product ("book transfer")], if the facility used by seller allows such transfer, *or by book transfer if the seller agrees to such transfer.*

* * * * *

150.09 *DELIVERY PROCEDURE*

(A) CLEARING MEMBERS HAVING OPEN LONG POSITIONS (BUYERS)

* * * * *

(2) As soon as possible after receipt from the [Clearing House] *Exchange* of a *Delivery Notice* [the notices referred to in sub-paragraph (D) of this section], but not later than 4:30 p.m. on *a business day which shall be not later than* the [fifth] *fourth* business day of the delivery month, the buyer shall give to the seller *identified in such Delivery Notice,* with a copy to the [Clearing House] *Exchange,* [a] properly completed and signed Initial Delivery Instructions, on the form prescribed by the [Clearing House] *Exchange,* which shall include the following information and such additional information as may be required by the [Clearing House] *Exchange:*

* * * * *

(f) A consecutive five-day period for *initiation of* delivery. *The buyer shall verify with the seller, prior to giving the seller Initial Delivery Instructions, that the method of delivery specified therein conforms to the normal capabilities of such facility with respect to the manner and time of delivery and the quantity to be delivered. Initial Delivery Instructions may not be amended after they have been given to the seller.*

(3) [At least 72 hours] *Not later than 10:30 a.m. on a business day at least one business day following the giving of Initial Delivery Instructions and at least two calendar days* prior to the time of the proposed [lifting] *delivery,* which time must be within the consecutive five-day period set forth in the [Buyer's] *buyer's* Initial Delivery Instructions, [but not later than noon of the Exchange business day immediately preceeding such 72-hour period] the buyer shall give to the seller, with a copy to the [Clearing House] *Exchange,* properly completed and signed Delivery Instructions on the form prescribed by the [Clearing House] *Exchange,* which shall include the following information [, as well as] *and* such additional information as may be required by the [Clearing House] *Exchange:*

(a) Name of seller [(Clearing Member)]

(b) Tender Number

(c) Name and Location of Delivery [Site] *Facility specified in the Delivery Notice*

(d) Number of Contracts

(e) Method of [Lifting] *Delivery (which must conform to the normal capabilities of the facility named in the Delivery Notice with respect to the manner and time of delivery and the quantity to be delivered)*

(f) Name of *proposed Carrier (i.e.,* Barge, Truck, [or] Tanker *or Pipeline),* [(] if applicable [)] *, and the approximate size of the barge, truck, or tanker, if any*

(g) For interfacility transfers, name of receiving facility

(h) Date *and Approximate Time* [of Lifting] *for Initiating Delivery*

[(h) Scheduled Time of Lifting] *Delivery Instructions given after 10:30 a.m. on any day shall be deemed to have been given on the following business day. Delivery Instructions may not be amended after they have been given to the seller.* [The buyer shall submit to the seller a copy of the freight contract before shipment commences, if applicable.]

(4)(a) If *the* buyer receives from *the* seller a Notice of Clearance advising that the seller will deliver pursuant to the Delivery Instructions, the buyer shall require its customer to post with it [100% margin, based upon the last settling price,] *the full purchase price of all product to be purchased under all contracts covered by such Notice less any margin already on deposit for such contracts,* on [an Exchange] *a* business day at least *two days* prior to the scheduled *initiation of delivery.*

(b) If *the* buyer receives [a Notice] from the seller a Notice *of Non-Clearance advising* that it is unable to deliver in accordance with the Delivery Instructions, it shall give to the seller, no later than [noon] *10:30 a.m.* on the [next] *third* business day following receipt of [the] *such* Notice, with a copy to the [Clearing House] *Exchange,* revised Delivery Instructions in accordance with the provisions of subparagraph (3) above and shall thereafter comply with the provisions of this *sub*paragraph (4) as if such revised Delivery Instructions were the original [notice] *Delivery Instructions. Such revised Delivery Instructions shall specify a delivery date and time not less than 24 hours before or after the delivery time specified in the original Delivery Instructions (whether or not such date and time is within the five-day period specified in the Initial Delivery Instructions), provided such date and time is prior to the last business day of the delivery month and at least two calendar days subsequent to the date on which such revised Delivery Instructions are given to the seller. Revised delivery instructions given after 10:30 a.m. on any day shall be deemed to have been given on the following business day. Revised Delivery Instructions may not be amended after they have been given to the seller.*

(B) CLEARING MEMBERS HAVING OPEN SHORT POSITIONS (SELLERS)

* * * * *

(2) [Within 24 hours of the receipt of buyer's Delivery Instructions, but not] *Not* later than 4:30 p.m. of [an Exchange business day] *a day on which the buyer gives the seller Delivery Instructions, the* seller shall give the buyer a properly completed and signed Notice of Clearance on the form prescribed by the Exchange, with a copy to the [Clearing House] *Exchange,* indicating that it is prepared to make delivery in accordance with the provisions of *the* buyer's Delivery Instructions. *Delivery Instructions given after 10:30 a.m. on any day shall be deemed to have been given on the following business day.* In the event that *the* seller is unable to make delivery in accordance with *the* buyer's Delivery Instructions *because of a bona fide inability to receive clearance from the facility, the* seller shall, *not later than 4:30 p.m. of the day on which the buyer gives the seller Delivery Instructions,* give [notice] to the buyer *a Notice of Non-Clearance* [of such inability], with a copy to the [Clearing House] *Exchange,* and state

the reasons *for such inability* [therefor]. *The seller may, at its option, in the Notice of Non-Clearance suggest an alternate delivery site and/or a preferred delivery date or time.* If a Notice of Clearing is given, delivery must be completed within 48 hours of the nominated time.] [If Notice of [Clearance] *Non-Clearance* is [not] given the seller shall require its customer to post [25% margin, based upon the last settling price by 4:30 p.m., on the next business day,], *at the time the Notice of Non-Clearance is given, additional original margin equal to 25% of the total contract value of all contracts listed in the Delivery Instructions. Such additional margin shall be posted by the seller with the Exchange not later than 11 a.m. on the next business day.*

(3) [In the event Seller gives the buyer notice of inability to deliver pursuant to sub-paragraph (2) above, the seller must give a Notice of Clearance upon receipt of buyer's revised Delivery Instructions.] *Not later than 4:30 p.m. of a day on which the buyer gives the seller revised Delivery Instructions, the seller shall give the buyer a Notice of Clearance, with a copy to the Exchange, indicating that it is prepared to make delivery in accordance with the provisions of the buyer's revised Delivery Instructions. Revised Delivery Instructions given after 10:30 a.m. on any day shall be deemed to have been given on the following business day. In the event that the seller is unable to make delivery in accordance with the buyer's revised Delivery Instructions because of force majeure, the seller shall, not later than 4:30 p.m. of the day on which the buyer gives the seller revised Delivery Instructions, give to the buyer a Notice of Non-Clearance with a copy to the Exchange, and state the reasons for such inability. If Notice of Non-Clearance is given pursuant to this subparagraph, the delivery covered by such Notice will be referred to the Petroleum Delivery Committee no later than the next business day.*

* * * * *

(F) Delivery Day

* * * * *

(6) The foregoing notwithstanding, if, at any time during the delivery month:

(i) a [Seller] *seller* who has received [Delivery Instructions or] revised Delivery Instructions [demonstrates to] *notifies* the [President or his designee ("President")] *Petroleum Delivery Committee* that delivery at the time and/or site designated may not be accomplished because [the Seller's facility will not permit clearance,] *of force majeure,* or

(ii) a [Buyer] *buyer* who has received [clearance] *a Notice of Clearance* but prior to delivery [demonstrates to] *notifies* the [President] *Petroleum Delivery Committee that* circumstances *constituting force majeure* prevent *acceptance of* delivery at the time and/or site designated,

the [President] *Petroleum Delivery Committee, based upon such information as may be furnished to it by the buyer and the seller and as may otherwise be obtained by it, shall determine whether force majeure exists* [may] *and shall (i)* order an extension of time for delivery up to five days from the scheduled time, [notwithstanding Rule 150.10(B)] *provided, however, that each delivery shall be completed not later than the fifth business day of the calendar month following the delivery month,* and/or *(ii)* change a delivery site provided that the [Seller] *seller* has product at the new site or will have product there in time for delivery, and/or *(iii)* modify the method of taking delivery if such method is acceptable to the [Buyer] *buyer,* and/or *(iv)* allocate deliveries. The [President] *Petroleum Delivery Committee* shall confer with the [Buyer] *buyer* and [Seller] *the seller* prior to issuing any order under this Section, and shall notify the [Buyer] *buyer* and [Seller] *the seller* of [his] *its* determination *within two business days of notification hereunder* [at least 48 hours prior to the time for delivery]. Thereafter, the delivery procedure will be completed as otherwise provided in this Chapter. In exercising [his] *its* authority under this Section, the [President] *Petroleum Delivery Committee* may not require a site or method of delivery other than provided in Rule 150.04. The [President's] *Petroleum Delivery Committee's* order shall be deemed final and may not be appealed. If the [Buyer] *buyer* or [Seller] *the seller* claims that the circumstances leading to an order of the [President] *Petroleum Delivery Committee* under this Section were caused by the action of the [Seller] *seller* or [Buyer] *the buyer,* respectively, the [Claimant] *party asserting such claim,* after complying with the [President's] *Petroleum Delivery Committee's* order, may submit a claim in arbitration, pursuant to Rule 51.05, against [such Buyer or Seller] *the other party.*

New York Habor Leaded Regular Gasoline and Unleaded Regular Gasoline Contract

190.04 *DELIVERY*

(A) * * *

* * * * *

(3) By *stock* transfer of title to the buyer [without physical movement of product ("book transfer")], if the facility used by seller allows such transfer, *or by book transfer if the seller agrees to such transfer.*

* * * * *

190.09 *DELIVERY PROCEDURE*

[(A) Open Longs: Clearing Members having open long positions shall give the Clearing House a Notice of Intention to Accept by 12 noon on the first business day of the delivery month. The Notice of Intention to Accept shall be on the form prescribed by the Clearing House, which shall be properly completed and signed.

(B) Open Shorts: Clearing Members having open short positions shall give the Clearing House a Delivery Notice by 12 noon on the first business day of the delivery month. The delivery Notice shall be on the form prescribed by the Clearing House, which shall be properly completed and signed. The Delivery Notice shall specify the location of the shore facility that will supply the product.]

(A) CLEARING MEMBERS HAVING OPEN LONG POSITIONS (BUYERS)

* * * * *

(2) As soon as possible after receipt from the Exchange of a Delivery Notice, but not later than 4:30 p.m. on a business day which shall be not later than the fourth business day of the delivery month, the buyer shall give to the seller identified in such Delivery Notice, with a copy to the Exchange, properly completed and signed Initial Delivery Instructions, on the form prescribed by the Exchange, which shall include the following information and such additional information as may be required by the Exchange:

* * * * *

(f) A consecutive five-day period for initiation of delivery.

The buyer shall verify with the seller, prior to giving the seller Initial Delivery Instructions, that the method of delivery specified therein conforms to the normal capabilities of such facility with respect to the manner and time of delivery and the quantity to be delivered. Initial Delivery Instructions may not be amended after they have been given to the seller.

(3) *Not later than 10:30 a.m. on a business day at least one business day following the giving of Initial Delivery Instructions and at least two calendar days prior to the time of the proposed delivery, which time must be within the consecutive five-day period set forth in the buyer's Initial Delivery Instructions, the buyer shall give to the seller, with a copy to the Exchange, properly*

completed and signed Delivery Instructions on the form prescribed by the Exchange, which shall include the following information and such additional information as may be required by the Exchange:

(a) Name of seller

(b) Tender Number

(c) Name and Location of Delivery Facility specified in the Delivery Notice

(d) Number of Contracts

(e) Method of Delivery (which must conform to the normal capabilities of the facility named in the Delivery Notice with respect to the manner and time of delivery and the quantity to be delivered)

(f) Name of proposed Carrier (i.e., Barge, Truck, Tanker or Pipeline), if applicable, and the approximate size of the barge, truck, or tanker, if any

(g) For interfacility transfers, name of receiving facility

(h) Date and Approximate Time for Initiating Delivery.

Delivery Instructions given after 10:30 a.m. on any day shall be deemed to have been given on the following business day. Delivery Instructions may not be amended after they have been given to the seller.

(4)(a) If the buyer receives from the seller a Notice of Clearance advising that the seller will deliver pursuant to the Delivery Instructions, the buyer shall require its customer to post with it the full purchase price of all product to be purchased under all contracts covered by such Notice less any margin already on deposit for such contracts, on a business day at least two days prior to the scheduled initiation of delivery.

(b) If the buyer receives from the seller a Notice of Non-Clearance advising that it is unable to deliver in accordance with the Delivery Instructions, it shall give to the seller, no later than 10:30 a.m. on the third business day following receipt of such Notice, with a copy to the Exchange, revised Delivery Instructions in accordance with the provisions of subparagraph (3) above and shall thereafter comply with the provisions of this subparagraph (4) as if such revised Delivery Instructions were the original Delivery Instructions. Such revised Delivery Instructions shall specify a delivery date and time not less than 24 hours before or after the delivery time specified in the original Delivery Instructions (whether or not such date and time is within the five-day period specified in the Initial Delivery Instructions), provided such date and time is prior to the last business day of the delivery month and at least two calendar days subsequent to the date on which such revised Delivery Instructions are given to the seller. Revised delivery instructions given after 10:30 a.m. on any day shall be deemed to have been given on the following business day. Revised Delivery Instructions may not be amended after they have been given to the seller.

(B) CLEARING MEMBERS HAVING OPEN SHORT POSITIONS (SELLERS)

* * * * *

(2) Not later than 4:30 p.m. of a day on which the buyer gives the seller Delivery Instructions the seller shall give the buyer a properly completed and signed Notice of Clearance on the form prescribed by the Exchange, with a copy to the Exchange, indicating that it is prepared to make delivery in accordance with the provisions of the buyer's Delivery Instructions. Delivery Instructions given after 10:30 a.m. on any day shall be deemed to have been given on the following business day. In the event that the seller is unable to make delivery in accordance with the buyer's Delivery Instructions because of a bona fide inability to receive clearance from the facility, the seller shall, not later than 4:30 p.m. of the day on which the buyer gives the seller Delivery Instructions, give to the buyer a Notice of Non-Clearance, with a copy to the Exchange, and state the reasons for such inability. The seller may, at its option, in the Notice of Non-Clearance suggest an alternate delivery site and/or a preferred delivery date or time. If Notice of Non-Clearance is given the seller shall require its customer to post, at the time the Notice of Non-Clearance given, additional original margin equal to 25% of the total contract value of all contracts listed in the Delivery Instructions. Such additional margin shall be posted by the seller with the Exchange not later than 11 a.m. on the next business day.

(3) Not later than 4:30 p.m. of a day on which the buyer gives the seller revised Delivery Instructions, the seller shall give the buyer a Notice of Clearance, with a copy to the Exchange, indicating that it is prepared to make delivery in accordance with the provisions of the buyer's revised Delivery Instructions. Revised Delivery Instructions given after 10:30 a.m. on any day shall be deemed to have been given on the following business day. In the event that the seller is unable to make delivery in accordance with the buyer's revised Delivery Instructions because of force majeure, the seller shall, not later than 4:30 p.m. of the day on which the buyer gives the seller revised Delivery Instructions, give to the buyer a Notice of Non-Clearance with a copy to the Exchange, and state the reasons for such inability. If Notice of Non-Clearance is given pursuant to this subparagraph, the delivery covered by such Notice will be referred to the Petroleum Delivery Committee no later than the next business day.

* * * * *

(F) DELIVERY DAY

* * * * *

(6) The foregoing notwithstanding, if, at any time during the delivery month:

(i) a seller who has received revised Delivery Instructions notifies the Petroleum Delivery Committee that delivery at the time and/or site designated may not be accomplished because of force majeure, or

(ii) a buyer who has received a Notice of Clearance but prior to delivery notifies the Petroleum Delivery Committee that circumstances constituting force majeure prevent acceptance of delivery at the time and/or site designated.

the Petroleum Delivery Committee, based upon such information as may be furnished to it by the buyer and the seller and as may otherwise be obtained by it, shall determine whether force majeure exists, and shall (i) order an extension of time for delivery up to five days from the scheduled time, provided, however, that any such extended delivery shall be completed not later than the fifth business day of the calendar month following the delivery month, and/or (ii) change a delivery site provided that the seller has product at the new site or will have product there in time for delivery, and/or (iii) modify the method of taking delivery if such method is acceptable to the buyer, and/or (iv) allocate deliveries. The Petroleum Delivery Committee shall confer with the buyer and the seller prior to issuing any order under this Section, and shall notify the buyer and the seller of its determination within two business days of notification hereunder. Thereafter, the delivery procedure will be completed as otherwise provided in this Chapter. In exercising its authority under this Section, the Petroleum Delivery Committee may not require a site or method of delivery other than provided in Rule 190.04. The Petroleum Delivery Committee's order shall be deemed final and may not be appealed. If the buyer or the seller claims that the circumstances leading to an order of the Petroleum Delivery Committee under this Section were caused by the action of the seller or the buyer, respectively, the party asserting such claim, after complying with the Petroleum Delivery Committee's order, may submit a claim

in arbitration, pursuant to Rule 51.05, against the other party.

The Commission is particularly interested in receiving comments on two questions relating to the proposed rule changes. First, to what extent, if any, would the value of existing contracts be affected by the proposal to require payment 48 hours prior to the scheduled lifting? Second, to what extent would such proposed changes imposed by the Petroleum Delivery Committee in timing, mode, and location of delivery be in conformance with commercial practices?

Other materials submitted by the NYMEX in support of the proposed rules may be available upon request pursuant to the Freedom of Information Act (5 U.S.C. 552) and the Commission's regulations thereunder (17 CFR Part 145 (1981)). Requests for copies of such materials should be made to the FOIA, Privacy and Sunshine Acts Compliance Staff of the Office of the Secretariat at the Commission's headquarters in accordance with 17 CFR 145.7 and 145.8.

Any person interested in submitting written data, views or arguments on the proposed amendments should send such comments to Jane K. Stuckey, Secretary, Commodity Futures Trading Commission, 2033 K Street, N.W., Washington, D.C. 20581, by October 15, 1982. Such comment letters will be publicly available except to the extent they are entitled to confidential treatment as set forth in 17 CFR 145.5 and 145.9.

Issued in Washington, D.C., on September 10, 1982.

Jane K. Stuckey,

Secretary of the Commission.

[FR Doc. 82-25371 Filed 9-14-82; 8:45 am]

BILLING CODE 6351-01-M

DEPARTMENT OF DEFENSE

Department of the Air Force

USAF Scientific Advisory Board; Meeting

September 3, 1982.

The USAF Scientific Advisory Board Ad Hoc Committee on EF-111A Capability Upgrade will meet at the Pentagon, Washington, DC on Friday, October 1, 1982. The purpose of the meeting will be to review the status of ASD studies on EF-111A Capability Upgrade. The meeting will convene at 8:30 a.m. and adjourn at 5:00 p.m.

The meeting concerns matters listed in Section 552b(c) of Title 5, United States Code, specifically subparagraph (1) thereof, and accordingly, will be closed to the public.

For further information, contact the Scientific Advisory Board Secretariat at (202) 697-8845.

Winnibel F. Holmes,

Air Force Federal Register Liaison Officer.

[FR Doc. 82-25260 Filed 9-14-82; 8:45 am]

BILLING CODE 3910-01-M

Office of the Secretary

Establishment of the Defense Mapping Agency Advisory Committee on Mapping, Charting and Geodesy (MC&G)

Under the provisions of Pub. L. 92-463, Federal Advisory Committee Act, notice is hereby given that the Defense Mapping Agency Advisory Committee on Mapping, Charting and Geodesy (MC&G) has been found to be in the public interest in connection with the performance of duties imposed on the Department of Defense by law.

The Defense Mapping Agency (DMA) is facing increasing problems involving effective utilization of state-of-the-art advances in equipment and systems technology in the MC&G production process. Recently, a new DMA component was established to concentrate on modernizing production activities and to develop the means of fully utilizing material collected from advanced acquisition systems. It is important that DMA obtain the best advice available regarding developments in private industry and academia.

The committee will conduct periodic reviews of the DMA Modernization and Technology Base Programs and provide advice regarding: (a) The validity of the technical approaches being pursued; (b) alternative solutions which should be considered; (c) technical areas which require additional research and development; and (d) organizational structures, technical, managerial, processing and communication capabilities implicit in the modernization effort.

M. S. Healy,

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

September 7, 1982.

[FR Doc. 82-24853 Filed 9-14-82; 8:45 am]

BILLING CODE 3810-01-M

Establishment of Board of Visitors for the Equal Opportunity Management Institute

Under the provisions of Pub. L. 92-463, Federal Advisory Committee Act, notice is hereby given that the Board of Visitors for the Defense Equal Opportunity Management Institute has been found to be in the public interest in connection with the performance of duties imposed on the Department of Defense by law.

The primary mission of the Equal Opportunity Management Institute, located at Patrick Air Force Base, Florida, is to conduct training for DoD military and civilian personnel assigned to duties as equal opportunity specialists, staff officers, or instructors in human/race relations, and provide assistance to DoD organizations in the development of specific curricula for human/race relations and equal opportunity education and training.

One of the Equal Opportunity Management Institute's goals is academic accreditation. Southern Association standards require that a Board of Visitors be established as a prerequisite for accreditation. The Board of Visitors for the Equal Opportunity Management Institute will serve this function, as well as help to assure that curriculum, instruction, and academic support remain responsive to changing mission requirements.

M. S. Healy,

OSD Federal Register Liaison Officer, Department of Defense.

August 30, 1982.

[FR Doc. 82-24091 Filed 9-14-82; 8:45 am]

BILLING CODE 3810-01-M

Defense Intelligence Agency Advisory Committee; Closed Meeting

Pursuant to the provisions of Subsection (d) of Section 10 of Pub. L. 92-463, as amended by Section 5 of Pub. L. 94-409, notice is hereby given that a closed meeting of a Panel of the DIA Advisory Committee has been scheduled as follows:

October 21, 1982, Thursday, Strategic Air Command, Omaha, Nebraska. The entire meeting, commencing at 0900 hours is devoted to the discussion of classified information as defined in Section 552b(c)(1), Title 5 of the U.S. Code and therefore will be closed to the public. Subject matter will be used in a

special study on intelligence support to tactical commanders.

M. S. Healy,

OSD Federal Register Liaison Officer, Department of Defense.

September 10, 1982.

[FR Doc. 82-25367 Filed 9-14-82; 8:45 am]

BILLING CODE 3810-01-M

DELAWARE RIVER BASIN COMMISSION

Commission Meeting and Public Hearing

Notice is hereby given that the Delaware River Basin Commission will hold a public hearing on Wednesday, September 22, 1982, commencing at 1:30 p.m. The hearing will be a part of the Commission's regular September business meeting, which is open to the public. Both the hearing and the meeting will be held in the Goddard Conference Room at the Commission's offices, 25 State Police Drive, West Trenton, New Jersey. The subject of the hearing will be applications for approval of the following projects as amendments to the Comprehensive Plan pursuant to Article 11 of the Compact and/or as project approvals pursuant to § 3.8 of the Compact.

1. *Warwick Water and Sewer, Inc. (D-80-31 CP).* A well water supply project to provide public water supplies to a new residential development in Warwick Townships, Bucks County, Pa. Well No. 1 is expected to yield 57,600 gallons per day and Well No. 2 is expected to yield 150,000 gallons per day.

2. *Great Valley Water Company (D-80-88 CP).* A well water supply project to augment public water supplies in the Company's service area in East Goshen Township, Chester County, Pa. The new facility is planned for use at an average rate of 86,000 gallons per day.

3. *Horsham Township Authority (D-81-1 CP).* A well water supply project to augment public water supplies in Horsham Township, Montgomery County, Pa. Designated as Well No. 19, the new well is expected to yield 336,000 gallons per day.

4. *Village of Monticello (D-81-38 CP).* A new sewage treatment plant to replace existing facilities in the Village of Monticello, Sullivan County, N.Y. Existing treatment facilities are overloaded and will be replaced. The project to serve the Village of Monticello will provide 95 percent removal of BOD from an average sewage flow of 2.5 million gallons per day, which will discharge to Tannery Brook after treatment.

5. *Deptford Township Municipal Utilities Authority (D-82-34 CP).* The purpose of this project is to reallocate withdrawals from four existing wells in Deptford Township, Gloucester County, N.J., which will improve hydraulic conditions in the distribution system. Total withdrawals from all wells will not be increased.

6. *Hazleton City Authority (D-82-37 CP).* A proposal to increase the spillway capacity of the Hazleton City Authority's dams F and G, and the storage capacity of dam F on Dreek Creek, Hazle Township, Luzerne County, Pa., to correct the dam safety concern of insufficient spillway capacity and to provide additional water supply storage.

7. *Burlington Township (D-82-38 CP).* A sewage treatment plant project to increase the capacity of, and provide additional treatment for, Burlington Township, Burlington County, N.J. Central Avenue Plant Facilities are expected to provide 93 percent BOD reduction at the design flow of 1.65 mgd. Treated wastes will continue to discharge to Tanners Run, a Delaware River tidal tributary.

8. *Pennsylvania Department of Environmental Resources (D-82-45 CP).* A project to temporarily lower the water level of Beltzville Reservoir to facilitate construction of a new boat ramp and dock designed for use by the handicapped.

9. *Getty Pipeline, Inc. (D-79-37).* A pipeline project, approximately 23 miles long, to transport refined petroleum products from the Getty Oil and Marketing Company's Delaware City, New Castle County, Del. refinery to the Sun Pipeline Twin Oaks pump station in Marcus Hook, Delaware County, Pa. The products may then be pumped through the existing Sun pipeline to a terminal in New Jersey for distribution in the New York City area.

10. *E & C Associates (D-82-3).* A sewage treatment project to serve the Howard Johnson Motel and Restaurant in Kidder Township, Carbon County, Pa. An existing holding tank will be replaced. Treatment facilities are designed to provide for removal of 85 percent of BOD from a sewage flow of 60,000 gallons per day. Treated effluent will discharge to Black Creek, a tributary of the Lehigh River.

11. *Arco Pipeline Company (D-82-13).* Relocation of a petroleum products pipeline crossing under Crum Creek in Ridley Township, Delaware County, Pa. Relocation will be made to accommodate construction of Legislative Route 1010-100 by the Pennsylvania Department of Transportation.

Documents relating to the above-listed projects may be examined at the Commission's offices. Contact Mr. David B. Everett. Persons wishing to testify at this hearing are requested to register with the Secretary prior to the date of the hearing.

Susan Weisman,

Secretary.

September 9, 1982.

[FR Doc. 82-25292 Filed 9-14-82; 8:45 am]

BILLING CODE 6360-01-M

DEPARTMENT OF EDUCATION

National Advisory Council on Bilingual Education; Meeting

AGENCY: National Advisory Council on Bilingual Education.

ACTION: Notice of meeting.

SUMMARY: This notice sets forth the schedule and proposed agenda of a forthcoming meeting of the National Advisory Council on Bilingual Education. Notice of this meeting is required under section 10(a)(2) of the Federal Advisory Committee Act. This document is intended to notify the general public of their opportunity to attend.

DATES: September 28, 1982—Orientation and briefing 9:00 a.m.–5:00 p.m.

September 29, 1982—Business meeting 9:00 a.m.–5:00 p.m.

ADDRESS: The Orientation and Briefing on September 28, 1982 will be held in Room 403 of the Reporter's Building, 300 7th Street SW., Washington, DC. The Business meeting on September 29, 1982 will also be in Room 403 of the Reporter's Building.

FOR FURTHER INFORMATION CONTACT: Ramon Ruiz, Designated Federal Offical, Room 421, Reporter's Building, 400 Maryland Avenue SW., Washington, DC 20202. (202) 245–2600.

SUPPLEMENTARY INFORMATION: The National Advisory Council on Bilingual Education is established under section 732(a) of the Bilingual Education Act (20 U.S.C. 3242). The Council is established to advise the Secretary of the Department of Education concerning matters arising in the administration of the Bilingual Education Act and other laws affecting the education of limited English proficient populations.

The meeting of the Council is open to the public. The proposed agenda includes the following:

September 28, 1982—New members will be sworn-in and will receive an orientation. Following this, the Full Council will receive a briefing on

activities that have taken place in the past six months.

September 29, 1982—The agenda for the Business Meeting includes:

I. Introductions.

II. Old Business.

III. New Business.

—Annual Report.

—Plans for the Year.

—Committee Structures.

—Preparation for Public Hearings.

Dated: September 6, 1982.

George J. Rios,

Acting Director, Office of Bilingual Education and Minority Languages Affairs.

[FR Doc. 82-25293 Filed 9-14-82; 8:45 am]

BILLING CODE 4000-01-M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Volume 724]

Determinations by Jurisdictional Agencies Under the Natural Gas Policy Act of 1978

Issued: September 7, 1982.

JD NO	JA DKT	API NO	D	SEC(1)	SEC(2)	WELL NAME	FIELD NAME	PROD	PURCHASER
OHIO DEPARTMENT OF NATURAL RESOURCES									
-ALTHEIRS OIL INC				RECEIVED:	08/09/82	JA: OH			
8248638		3412725647	103			107-TF R BUCKLEY #1A	SCOTCH HEIGHTS	5.0	
-APPALACHIAN EXPLORATION INC				RECEIVED:	08/09/82	JA: OH			
8248643		3415321092	103			107-TF ABOULHOSN #1	COPLEY	18.3	YANKEE RESOURCES
8248640		3415320837	103			107-TF JACOBY COMPANY #2	COPLEY	36.5	YANKEE RESOURCES
8248641		3415320998	103			107-TF MANTE UNIT #1	COPLEY	36.5	YANKEE RESOURCES
8248639		3415320832	103			107-TF R BENDER #3	COPLEY	73.0	YANKEE RESOURCES
8248644		3415321112	103			107-TF W LOCKHART #1	COPLEY	36.5	YANKEE RESOURCES
8248642		3415321064	103			107-TF W R DUNKLER UNIT #1	COPLEY	27.4	YANKEE RESOURCES
-ATLAS ENERGY GROUP INC				RECEIVED:	08/09/82	JA: OH			
8248645		3415520202	108			BAKER/BAKER UNIT #1		0.0	COLUMBIA GAS TRAN
8248663		3415520861	108			BAKER/BAKER UNIT #2		0.0	COLUMBIA GAS TRAN
8248653		3415520581	108			BUSH #1		0.0	COLUMBIA GAS TRAN
8248660		3415520856	108			CLEMENS #1		0.0	COLUMBIA GAS TRAN
8248659		3415520841	108			COLLIER #2A		0.0	COLUMBIA GAS TRAN
8248662		3415520858	108			CUPLER #1		0.0	COLUMBIA GAS TRAN
8248661		3415520857	108			CUPLER #2		0.0	COLUMBIA GAS TRAN
8248647		3415520498	108			GLAZE UNIT #1		0.0	COLUMBIA GAS TRAN
8248655		3415520663	108			GOODMAN (BARR) UNIT #1		0.0	COLUMBIA GAS TRAN
8248667		3415520891	108			GOODMAN ROOD UNIT #1		0.0	COLUMBIA GAS TRAN
8248656		3415520712	108			GREGORY - EVERITT #1		0.0	COLUMBIA GAS TRAN
8248651		3415520572	108			JAMES #1		0.0	COLUMBIA GAS TRAN
8248646		3415520448	108			K BRAINARD #1		0.0	COLUMBIA GAS TRAN
8248657		3415520713	108			KACHURIK #1		0.0	COLUMBIA GAS TRAN
8248671		3415521325	108			KACHURIK #2		0.0	COLUMBIA GAS TRAN
8248654		3415520661	108			MACKEY #1		0.0	COLUMBIA GAS TRAN
8248658		3415520733	108			MARTIN #1		0.0	COLUMBIA GAS TRAN
8248664		3415520862	108			MAXIN UNIT #1		0.0	COLUMBIA GAS TRAN
8248669		3415520953	108			METRO HOMES #1		0.0	COLUMBIA GAS TRAN
8248670		3415520993	108			MORRISON UNIT #1		0.0	COLUMBIA GAS TRAN
8248666		3415520864	108			SHURTLEFF UNIT #1		0.0	COLUMBIA GAS TRAN
8248648		3415520502	108			SMITH #1		0.0	COLUMBIA GAS TRAN
8248652		3415520575	108			SMITH UNIT #2		0.0	COLUMBIA GAS TRAN
8248668		3415520898	108			STIPEK #1		0.0	COLUMBIA GAS TRAN
8248665		3415520863	108			TATE ROAD UNIT #1		0.0	COLUMBIA GAS TRAN
8248650		3415520520	108			WARREN (BANKS) #2		0.0	COLUMBIA GAS TRAN
8248649		3415520519	108			WARREN #1		0.0	COLUMBIA GAS TRAN
-BELDEN & BLAKE OIL PRODUCTION				RECEIVED:	08/09/82	JA: OH			
8248672		3401920720	108			R & O SMITH #5 1-701		3.0	
-BEREA OIL AND GAS CORPORATION				RECEIVED:	08/09/82	JA: OH			
8248675		3415722383	108			GARABRANDT #1	GNADENHUTTEN	6.0	ATLANTIC RICHFIEL

JD NO	JA DKT	API NO	D	SEC(1)	SEC(2)	WELL NAME	FIELD NAME	PROD	PURCHASER
8248674		3415722369		108		H MILLER #3	GNADENHUTTEN	5.5	ATLANTIC RICHFIEL
8248676		3416726549		103	107-TF	HERMAN & ROSA WISE #1	PALMER	0.0	COLUMBIA GAS TRAN
8248673		3415722368	D	108		V WOLFE #1	GNADENHUTTEN	17.0	ATLANTIC RICHEIEL
-BRIDGE OIL DEVL (Q*LD) PTY LTD		RECEIVED: 08/09/82 JA: OH							
8248681		3416923319		103	107-TF	L MARTY #2	CRESTON	20.0	COLUMBIA GAS TRAN
8248680		3416923298		103	107-TF	PAUL MOOMAW #1	WOOSTER	22.0	COLUMBIA GAS TRAN
-BROILCO INC		RECEIVED: 08/09/82 JA: OH							
8248684		3410322102		108		BAMBECK #1		20.0	COLUMBIA GAS OF O
8248682		3410322100		108		REUSCH #1		20.0	COLUMBIA GAS OF O
8248683		3410322101		108		REUSCH #2		20.0	COLUMBIA GAS OF O
-CA D* ORA INC		RECEIVED: 08/09/82 JA: OH							
8248686		3416726904		107-DV		BOHL #1	WATERTOWN	8.0	
8248687		3416727045		107-DV		LEWIS #1	DECATUR	8.0	
8248685		3416726790		107-DV		SCHAAD #1	WATERTOWN	8.0	
-CAMERON BROS		RECEIVED: 08/09/82 JA: OH							
8248688		3411926312		107-TF		EDWIN TAYLOR #2	HOPEWELL	10.0	
-CARMCO INC		RECEIVED: 08/09/82 JA: OH							
8248689A		3407523107		103		FITZWATER #1	MONROE	0.0	
8248689B		3407523107	D	107-TF		FITZWATER #1	MONROE	0.0	
-CENTRAL OIL FIELD SUPPLY CO		RECEIVED: 08/09/82 JA: OH							
8248690		3412725603		103	107-TF	IMLER-LEWIS #6	NEW STRAITSVILLE	3.0	COLUMBIA GAS TRAN
-CHARLES O LIGHTHIZER		RECEIVED: 08/09/82 JA: OH							
8248776		3411923176		108		ESCHMAN #1		14.2	COLUMBIA GAS TRAN
8248775		3411923103		108		SKINNER #1		6.7	COLUMBIA GAS TRAN
-CLARENCE SHERMAN		RECEIVED: 08/09/82 JA: OH							
8248825		3407523760		103	107-TF	B & A TROYER #1	BALTIC	14.6	EAST OHIO GAS CO
8248826		3407523762		103	107-TF	B & A TROYER #2	BALTIC	14.6	EAST OHIO GAS CO
8248827		3407523786		103	107-TF	C & L YODER #1	BALTIC	365.0	EAST OHIO GAS CO
8248829		3415723743		103	107-TF	SWIHART #4	STONE CREEK	182.5	EAST OHIO GAS CO
8248828		3415722242		103	107-RT	WALKER #1	JEFFERSON	912.5	EAST OHIO GAS CO
-DART OIL COMPANY		RECEIVED: 08/09/82 JA: OH							
8248692		3409921448		103	107-TF	SNYDER UNIT #1	CLINTON FORMATION	30.0	EAST OHIO GAS CO
8248693		3409921449		103	107-TF	SNYDER UNIT #2	CLINTON FORMATION	30.0	EAST OHIO GAS CO
8248694		3409921450		103	107-TF	SNYDER UNIT #3	CLINTON FORMATION	30.0	EAST OHIO GAS CO
-DERBY OIL & GAS CORP		RECEIVED: 08/09/82 JA: OH							
8248695		3407523742		103	107-TF	JOHN B YODER #1	BERLIN	12.0	COLUMBIA GAS TRAN
8248696		3407523743		103	107-TF	MOSE RABER #1	BERLIN	12.0	COLUMBIA GAS TRAN
-DISCOVERY OIL LTD		RECEIVED: 08/09/82 JA: OH							
8248697		3410322902		107-TF		PERRY #1	WESTFIELD CENTER	14.0	
-DORAN & ASSOCIATES INC/ALDOR		RECEIVED: 08/09/82 JA: OH							
8248699		3412724812		108		KARL WILTSIE #1 KA-46		12.0	NATIONAL GAS & OI
8248698		3412724689	D	108		WILLIAM KING #1 KA-40		12.0	NATIONAL GAS & OI
-EARTH RESOURCES EXPL DEV CORP		RECEIVED: 08/09/82 JA: OH							
8248705		3416123629		103	107-TF	ALBORN #1	BOLIVAR	20.0	
8248706		3416922637		103	107-TF	BURGE #1	CANAAN	15.0	
8248704		3410322878		103	107-TF	FARNSWORTH #2	SEVILLE	25.0	
8248707		3416923102		103	107-TF	G & J CROSS #2	CRESTON	7.0	
8248709		3416923184		103	107-TF	MAIBACH #3	RITTMAN	15.0	
8248710		3416923185		103	107-TF	MAIBACH #4	RITTMAN	5.0	
8248700		3410322760		103	107-TF	NEUFER #1	LODI	7.0	
8248711		3416923188		103	107-TF	RUFENER #1	CRESTON	20.0	
8248701		3410322761		103	107-TF	SCHIELE #1	WADSWORTH	20.0	
8248702		3410322822		103	107-TF	STEELE #1	CRESTON	4.0	

JD NO	JA DKT	API NO	D	SEC(1)	SEC(2)	WELL NAME	FIELD NAME	PROD	PURCHASER
8248703		3410322824		103	107-TF	STEELE #3	CRESTON	4.0	
8248708		3416923172		103	107-TF	YODER #1	RITTMAN	15.0	
-EDCO DRILLING & PRODUCING INC				RECEIVED: 08/09/82 JA: OH					
8248715		3403124173		108		DUSENBERRY BL-2A		18.0	COLUMBIA GAS TRAN
8248714	3A	3403124172		108		DUSENBERRY BL-3A		18.0	COLUMBIA GAS TRAN
8248712	2A	3403123430		108		FRY BL-2A		18.0	COLUMBIA GAS TRAN
8248713		3403123770		108		FRY BL-4A		18.0	COLUMBIA GAS TRAN
8248717		3407522042		108		GRASSBAUGH CF-2A		18.0	COLUMBIA GAS TRAN
8248720		3407522049		108		GRASSBAUGH CF-3A		18.0	COLUMBIA GAS TRAN
8248719		3407522047		108		GRASSBAUGH CF-4A		18.0	COLUMBIA GAS TRAN
8248721		3407522050		108		GRASSBAUGH CF-5A		18.0	COLUMBIA GAS TRAN
8248718		3407522046		108		GRASSBAUGH CF-6A		18.0	COLUMBIA GAS TRAN
8248722		3407522145		108		MILLER MO-1C		18.0	COLUMBIA GAS TRAN
8248716		3403124639		103	107-TF	ROBINSON WB-1B	FRESNO	18.0	
-FREDERICK PETROLEUM CORP				RECEIVED: 08/09/82 JA: OH					
8248741		3412122808		107-DV		A DIMMERLING #2 ENOCH TOWNSHIP	MACKSBURG	23.0	
8248742		3412122809		107-DV		A DIMMERLING #3 ENOCH TOWNSHIP	MACKSBURG	18.0	
8248725		3412122757		107-DV		BIG "C" RANCH #5 ENOCH TOWNSHIP	MACKSBURG	14.0	
8248744		3416726914		107-DV		CLINE #2 GRANDVIEW TOWNSHIP	NEW MATAMORAS	20.0	
8248740		3412122803		107-DV		CRUM #1 ENOCH TOWNSHIP	MACKSVILLE	27.0	
8248743		3412122816		107-DV		D NALL #1 ENOCH TOWNSHIP	MACKSBURG	32.0	
8248737		3412122789		107-DV		FOGLE #1 ENOCH TOWNSHIP	MACKSBURG	16.0	
8248736		3412122788		107-DV		G SAILING #1 ENOCH TOWNSHIP	SARAHSVILLE	27.0	
8248723		3411122819		107-DV		GRIER #1 JACKSON TOWNSHIP	NEW MATAMORAS	30.0	
8248724		3411122820		107-DV		GRIER #2 JACKSON TOWNSHIP	NEW MATAMORAS	24.0	
8248739		3412122796		107-DV		H SAILING #1 ENOCH TOWNSHIP	MACKSVILLE	21.0	
8248735		3412122787		107-DV		N DIMMERLING #1 ENOCH TOWNSHIP	MACKSBURG	27.0	
8248734		3412122785		107-DV		NOON #1 JEFFERSON TOWNSHIP	MACKSBURG	29.0	
8248726		3412122760		107-DV		ORANGE COAL CO #3 ENOCH TOWNSHIP	MACKSBURG	16.0	
8248727		3412122761		107-DV		ORANGE COAL CO #4 ENOCH TOWNSHIP	MACKSBURG	21.0	
8248730		3412122770		107-DV		ORANGE COAL CO #5 ENOCH TOWNSHIP	MACKSBURG	12.0	
8248731		3412122772		107-DV		ORANGE COAL CO #7 ENOCH TOWNSHIP	MACKSBURG	18.0	
8248732		3412122775		107-DV		RESEARCH #1 ENOCH TOWNSHIP	MACKSBURG	31.0	
8248733		3412122776		107-DV		RESEARCH #2 ENOCH TOWNSHIP	MACKSBURG	36.0	
8248738		3412122795		107-DV		S DEAL #1 ENOCH TOWNSHIP	MACKSVILLE	27.0	
8248728		3412122768		107-DV		VESS #3 ENOCH TOWNSHIP	MACKSBURG	16.0	
8248729		3412122769		107-DV		VESS #4 ENOCH TOWNSHIP	MACKSBURG	0.0	
-FUTURE ENERGY CORPORATION				RECEIVED: 08/09/82 JA: OH					
8248745		3411522736		103	107-TF	R SEES #1	STOCKPORT	30.0	
-GASEARCH INC				RECEIVED: 08/09/82 JA: OH					
8248747		3415522171		103	107-TF	A S W - ROD & GUN #1	WEATHERSFIELD	20.0	AMERICAN ENERGY S
8248746		3415521293		107-TF		KARAGIS - ZIEGLER #1	FARMINGTON	100.0	COLUMBIA GAS TRAN
8248748		3415522204		103	107-TF	NATIONAL NORTHERN INC(LORDSTOWN)#1	LORDSTOWN	20.0	YANKEE RESOURCES
-GIANT PETROLEUM CORPORATION				RECEIVED: 08/09/82 JA: OH					
8248750		3400721915		103	107-TF	M MCELROY #3	HARTSGROVE	20.0	POI ENERGY INC
8248751		3400721964		103	107-TF	M MCELROY #4	HARTSGROVE	20.0	POI ENERGY INC
8248752		3400721965		103	107-TF	M MCELROY #5	HARTSGROVE	20.0	POI ENERGY INC
8248749		3400721914		103	107-TF	M MCELROY WELL #2	HARTSGROVE	20.0	POI ENERGY
-GREEN GAS COMPANY				RECEIVED: 08/09/82 JA: OH					
8248753		3403520933		103	107-RT	BROOKINS #2	OLMSTEAD	0.0	COLUMBIA GAS OF O
8248754		3403520962		103	107-TF	BROOKINS #3	OLMSTEAD	2.0	COLUMBIA GAS OF O
8248755		3403520963		103	107-TF	BROOKINS #4	OLMSTEAD	10.0	COLUMBIA GAS OF O
8248756		3403521110		103	107-TF	BROOKINS #5	NORTH OLMSTED	6.0	COLUMBIA GAS OF O

JD NO	JA DKT	API NO	D	SEC(1)	SEC(2)	WELL NAME	FIELD NAME	PROD	PURCHASER
-GREENLAND/PERRY 81-1				RECEIVED:	08/09/82	JA: OH			
8248757		3412725307		107-TF		JOHNSON #1	CLAYTON	365.0	COLUMBIA GAS TRAN
-HERALD OIL & GAS CO				RECEIVED:	08/09/82	JA: OH			
8248758		3410521842		107-TF		TIM WOODYARD #4	TIM WOODYARD	0.0	COLUMBIA GAS TRAN
-HOPEWELL OIL AND GAS DEVELOPMENT CO				RECEIVED:	08/09/82	JA: OH			
8248759		3412724993		103	107-TF	L RITTBERGER #1	HARRISON	15.0	COLUMBIA GAS TRAN
-J D DRILLING CO				RECEIVED:	08/09/82	JA: OH			
8248763		3410522377		107-DV		CUMMINS-BOGGESS HEIRS #1	NEW HAVEN	8.0	COLUMBIA GAS TRAN
8248761		3410522371		107-DV		HELEN SMITH #1	RAVENSWOOD	6.0	COLUMBIA GAS TRAN
8248760		3410522213		107-DV		JOHN & VIRGINIA PICKENS #1	PORTLAND	7.0	COLUMBIA GAS TRAN
8248762		3410522375		107-DV		R C & P HILL #1	NEW HAVEN	7.0	COLUMBIA GAS TRAN
8248764		3410522383		107-DV		R J & W SAYRE #1	RAVENSWOOD	8.0	COLUMBIA GAS TRAN
-JANCO WELL OPERATIONS				RECEIVED:	08/09/82	JA: OH			
8248765		3415521148		107-RT		ALBERT WICKLEY #1	FARMINGTON	70.0	COLUMBIA GAS TRAN
8248766		3415521151		107-RT		PLALAN LAKE UNIT #1	FARMINGTON	60.0	COLUMBIA GAS TRAN
-JOHN C MASON				RECEIVED:	08/09/82	JA: OH			
8248801		3407523747		107-TF		VERA MAST #1	BERLIN	50.0	COLUMBIA GAS TRAN
-K S T OIL & GAS CO INC				RECEIVED:	08/09/82	JA: OH			
8248768		3415321059		103	107-TF	BLOSSOM #6	NORTHAMPTON	0.0	
8248767		3409921237		103	107-TF	MARTIG #3	GOSHEN	0.0	
-KEN-TRAK II				RECEIVED:	08/09/82	JA: OH			
8248769		3410522279		107-TF		SHOEMAKER #1 NORTH	2ND BEREA (LOWER MISS	4.0	COLUMBIA GAS TRAN
-L & M PETROLEUM INC				RECEIVED:	08/09/82	JA: OH			
8248770		3412724937		107-TF		BLAIRE-SHARSHALL #2	NEW STRAITSVILLE	10.0	COLUMBIA GAS TRAN
8248772		3412725390		107-TF		BLAIRE-SHARSHALL #3	NEW STRAITSVILLE	10.0	COLUMBIA GAS TRAN
8248771		3412725389		107-TF		CLAYCRAFT #18	NEW STRAITSVILLE	10.0	COLUMBIA GAS TRAN
8248773		3412725414		107-TF		CLAYCRAFT #19	NEW STRAITSVILLE	10.0	COLUMBIA GAS TRAN
8248774		3412725531		107-TF		SHEERAN #6	NEW LEXINGTON	10.0	COLUMBIA GAS TRAN
-LOMAK PETROLEUM INC				RECEIVED:	08/09/82	JA: OH			
8248783		3413322828		107-TF		BURKHARD - REILLY #1	FREEDOM	18.0	EAST OHIO GAS
8248778		3411926265		107-TF		E SHAFER #2	HARRISON	8.0	COLUMBIA GAS TRAN
8248782		3413322738		107-TF		E VINE #1	WINDHAM	18.0	COLUMBIA GAS TRAN
8248781		3413322737		107-TF		G SHOWALTER #1	WINDHAM	12.0	COLUMBIA GAS TRAN
8248777		3405520326		107-TF		H LUXENBERG #2	BURTON	24.0	EAST OHIO GAS
8248780		3413322736		107-TF		L LONG #1	WINDHAM	18.0	COLUMBIA GAS TRAN
8248785		3415123707		107-TF		M CROFUT #1	TUSCARAWAS	24.0	COLUMBIA GAS TRAN
8248786		3415123708		107-TF		M CROFUT #2	TUSCARAWAS	24.0	COLUMBIA GAS TRAN
8248779		3411926306		107-TF		NORMAN - THOMAS #1	HARRISON	24.0	COLUMBIA GAS TRAN
8248784		3413322869		107-TF		SOINSKI UNIT #1	HIRAM	24.0	EAST OHIO GAS
-MARLINE OIL CORP				RECEIVED:	08/09/82	JA: OH			
8248789		3416725908		107-DV		ELMER HERCHER #2	BUCKEYE PROSPECT	3.7	COLUMBIA GAS TRAN
8248788		3416725907		107-DV		JEFFREY L DOAN #1	BUCKEYE PROSPECT	3.7	COLUMBIA GAS TRAN
8248800		3416726955		107-DV		JESSIE BARNETT #1	BUCKEYE PROSPECT	3.7	COLUMBIA GAS TRAN
8248792		3416725911		107-DV		JOHN F WALTER #1	BUCKEYE PROSPECT	3.7	COLUMBIA GAS TRAN
8248799		3416726563		107-DV		JOHN GRIMES #1	BUCKEYE PROSPECT	5.5	COLUMBIA GAS TRAN
8248795		3416726273		107-DV		L E HAMILTON #1	BUCKEYE PROSPECT	18.3	COLUMBIA GAS TRAN
8248791		3416725910		107-DV		NEVADA DYE SNIDER #1	BUCKEYE PROSPECT	7.3	COLUMBIA GAS TRAN
8248787		3416725906		107-DV		R J BRADEN #4	BUCKEYE PROSPECT	5.5	COLUMBIA GAS TRAN
8248798		3416726496		107-DV		R N ZOERKLER #1	BUCKEYE PROSPECT	7.3	COLUMBIA GAS TRAN
8248793		3416725912		107-DV		ROBERT L BAKER #1	BUCKEYE PROSPECT	3.7	COLUMBIA GAS TRAN
8248796		3416726274		107-DV		ROBERT SCHAFER #1	BUCKEYE PROSPECT	3.7	COLUMBIA GAS TRAN
8248790		3416725909		107-DV		RUTH KALB #1	BUCKEYE PROSPECT	12.8	COLUMBIA GAS TRAN
8248797		3416726462		107-DV		USA/BINEGAR #1	BUCKEYE PROSPECT	3.7	COLUMBIA GAS TRAN

JD NO	JA DKT	API NO	D	SEC(1)	SEC(2)	WELL NAME	FIELD NAME	PROL	PURCHASER
8248794		3416726235		107-DV		W J HEARN #1	BUCKEYE PROSPECT	3.7	COLUMBIA GAS TRAN
-MICHAELS OIL & GAS CO				RECEIVED:	08/09/82	JA: OH			
8248802A		3410322292		107-TF		MICHAELS #1	SHARON	200.0	
8248802B		3410322803		107-TF		MICHAELS #4	SHARON	200.0	
-MURPHY OIL CO				RECEIVED:	08/09/82	JA: OH			
8248803		3410521439		107-DV		MCKELVEY #1-A	GROUNDHOG CREEK	18.3	COLUMBIA GAS TRAN
-OHIO NATURAL FUEL CO				RECEIVED:	08/09/82	JA: OH			
8248806		3416922725		107-TF		BOWERS #1	NEW PITTSBURG	15.0	COLUMBIA GAS TRAN
8248807		3416923014		107-TF		GRUTER #1	NEW PITTSBURG	15.0	COLUMBIA GAS TRAN
-ONEAL PETROLEUM INC				RECEIVED:	08/09/82	JA: OH			
8248813		3411522149		107-TF		D SCOTT #4	PENN	40.0	COLUMBIA GAS TRAN
8248810		3411521820		107-RT		DEARTH #1	PENN	0.0	COLUMBIA GAS TRAN
8248812		3411522019		107-TF		PARMETER #2	MORGAN	0.0	COLUMBIA GAS TRAN
8248809		3411521631		107-TF		PAUL CHILDS #1	MEIGSVILLE	10.0	COLUMBIA GAS TRAN
8248811		3411521967		107-TF		R HOOPER #1	PENN	47.0	COLUMBIA GAS TRAN
8248814		3411522200		107-TF		R MARTIN #2	PENN	120.0	COLUMBIA GAS TRAN
8248808		3405922525		107-TF		SINGLETON #1	RICHLAND	21.0	COLUMBIA GAS TRAN
8248815		3411522310		107-TF		STOUT-DIELE UNIT #1	PENN	75.0	COLUMBIA GAS TRAN
-PETRO EVALUATION SERVICES INC				RECEIVED:	08/09/82	JA: OH			
8248818		3416923125		103	107-TF	ROSS & PHYLLIS MCCULLOUGH #1	CHESTER	10.0	COLUMBIA GAS TRAN
-POI ENERGY INC				RECEIVED:	08/09/82	JA: OH			
8248817		3413322765		103	107-TF	JURATOVAC #3	STREETSBORO	30.0	
8248816		3413322741		103	107-TF	LUCAS #1	AURORA	20.0	
-R GENE BRASEL DBA BRASEL & BRASEL				RECEIVED:	08/09/82	JA: OH			
8248677		3405320660		107-TF		ARTHUR JOHNSON #1	ADDISON	0.0	COLUMBIA GAS TRAN
8248678		3405320685		103	107-TF	F CAMERON SANDS #3	ADDISON	2.0	COLUMBIA GAS TRAN
8248679		3405320760		107-TF		HAROLD FLINT #1	GALLIPOLIS	1.5	COLUMBIA GAS TRAN
-RIMCO OPERATING INC				RECEIVED:	08/09/82	JA: OH			
8248819		3416922285		103	107-TF	SCHULZ #1	CHESTER	12.0	COLUMBIA GAS TRAN
8248820		3416922470		103	107-TF	SPECK #1	CHESTER	12.0	COLUMBIA GAS TRAN
-ROBERT D CHARLEBOIS				RECEIVED:	08/09/82	JA: OH			
8248691		3415522145		103	107-TF	ROOD WELL #1	NEWTON FALLS	15.0	COLUMBIA GAS TRAN
-S & R OIL CO				RECEIVED:	08/09/82	JA: OH			
8248822		3410322814		107-TF		GORTNER UNIT #1	CRESTON	300.0	
8248821		3410322813		107-TF		MCMURRAY-VERNOTZY UNIT #1	CRESTON	300.0	
-SALT CREEK JOINT VENTURE				RECEIVED:	08/09/82	JA: OH			
8248823		3411925214		103	107-TF	HOCK #1	SALT CREEK	0.5	COLUMBIA GAS TRAN
-SHELLY & SANDS OIL CO				RECEIVED:	08/09/82	JA: OH			
8248824		3400922365		107-TF		JOSEPH & BEVERLY LUCAS #1	CANAAN	12.0	
-SIGLER PETROLEUM CORP				RECEIVED:	08/09/82	JA: OH			
8248830		3405922233		107-RT		ELLIOT #2	WESTLAND	30.0	EAST OHIO GAS CO
-SUMMIT DRILLING CO INC				RECEIVED:	08/09/82	JA: OH			
8248832		3412122588		107-DV		LOTTIE & BERNARD CRUM #2	ELK	50.0	
8248833		3412122784		107-DV		ORANGE COAL WELL #1-B	ELK	50.0	
8248831		3412122206		107-DV		WALTER ULLMAN #4	ELK	50.0	
-TEMPLE OIL & GAS CO				RECEIVED:	08/09/82	JA: OH			
8248834		3411522692		107-TF		DELMER MCCORMICK #2	DEERFIELD	10.0	
-THE MUTUAL OIL & GAS COMPANY				RECEIVED:	08/09/82	JA: OH			
8248805		3411122800		107-DV		BLACKSTONE #1MA	STAFFORD	6.0	COLUMBIA GAS TRAN
8248804		3411122601		107-DV		BLACKSTONE #2M	STAFFORD	5.5	COLUMBIA GAS TRAN
-UNIVERSAL MINERALS INC				RECEIVED:	08/09/82	JA: OH			
8248841		3416922205		107-TF		SCHROCK #1	GREEN	12.0	COLUMBIA GAS TRAN
-WALLICK PETROLEUM CO				RECEIVED:	08/09/82	JA: OH			

JD NO	JA DKT	API NO	D	SEC(1)	SEC(2)	WELL NAME	FIELD NAME	PROD	PURCHASER
8248842		3400922557		103	107-TF	BILL DOCIE #1	CORNING	10.0	COLUMBIA GAS TRAN
8248843		3400922581		103	107-TF	BILL DOCIE #1-B	CORNING	10.0	COLUMBIA GAS TRAN
-WILLIAM N TIPKA		RECEIVED: 08/09/82 JA: OH							
8248839		3410323081		103	107-TF	BETHEL #1	MEDINA	0.0	COLUMBIA GAS TRAN
8248835		3405923298		103	107-TF	DONALD HALL #2	FREEPORT	20.0	EAST OHIO GAS CO
8248840		3415723717		103	107-TF	R FULLER #1	FREEPORT	20.0	EAST OHIO GAS CO
8248838		3410323053		103	107-TF	SHARON ACRES #2	SHARON	12.0	COLUMBIA GAS TRAN
8248836		3405923302		103	107-TF	SIMMONS #2	FREEPORT	0.0	EAST OHIO GAS CO
8248837		3410322860		103	107-TF	SNADER-MULLINS #1	WADSWORTH	10.0	COLUMBIA GAS TRAN

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 within fifteen days after publication of notice in the **Federal Register.**

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. 82–25218 Filed 9–14–82; 8:45 am]

BILLING CODE 6717–01–M

Determinations by Jurisdictional Agencies Under the Natural Gas Policy Act of 1978

Issued: September 7, 1982.

JD NO	JA DKT	API NO	D	SEC(1)	SEC(2)	WELL NAME	FIELD NAME	PROD	PURCHASER
COLORADO OIL & GAS COMMISSION									
-AMOCO PRODUCTION CO			RECEIVED:	08/12/82	JA: CO				
8248903	81-611	0503906359	103			CHAMPLIN 569 AMOCO "A" #2	DEADEYE	60.0	SUN GAS CO
-ANADARKO PRODUCTION COMPANY			RECEIVED:	08/12/82	JA: CO				
8248872	81-620	0508106341	102-2			JOHNSON #1	BLACK MOUNTAIN	29.0	MOUNTAIN FUEL SUP
8248873	81-615	0508106329	102-2			VILLARD #1-27	BLACK MOUNTAIN	762.0	MOUNTAIN FUEL SUP
-BOW VALLEY PETROLEUM INC			RECEIVED:	08/12/82	JA: CO				
8248931	81-610	0507708289	107-TF			CARLETON CURRIER 23-4	VEGA-MESA VERDE	180.0	NORTHWEST PIPELIN
-C & K PETROLEUM INC			RECEIVED:	08/12/82	JA: CO				
8248875	81-703	0507508840	102-2			HOUSTON #20-1	PADRONI	12.5	KANSAS-NEBRASKA N
8248874	81-704	0507508878	102-2			VERN HARLEY #29-1	PADRONI	12.5	KANSAS-NEBRASKA N
-CALVIN PETROLEUM CORPORATION			RECEIVED:	08/12/82	JA: CO				
8248932	82-206	0512310290	107-TF			SERAFINI #1	WATTENBURG EXTENSION	730.0	PANHANDLE EASTERN
-CARL A HOUY			RECEIVED:	08/12/82	JA: CO				
8248889	81-286	0500107771	102-4			DAVIS 23-24	FENCEPOST (NE/SW SEC	19.0	CRYSTAL OIL CO
8248890	81-590	0500107821	102-4			MAY 21-6	BASE LINE	190.0	CRYSTAL OIL CO
8248891	81-589	0500107834	102-4			MAY 32-6	BASE LINE	285.0	CRYSTAL OIL CO
8248892	81-289	0500107763	102-4			PACKARD 21-24	FENCEPOST (NE/NW SEC	19.0	CRYSTAL OIL CO
8248893	81-591	0500107820	102-4			SHIVELY 11-12	BASE LINE	86.0	CRYSTAL OIL CO
-CENTENNIAL PETROLEUM INC			RECEIVED:	08/12/82	JA: CO				
8248876	81-605	0501306046	102-2			FUTHEY #1	BOULDER VALLEY	36.0	PANHANDLE EASTERN
8248877	81-606	0500107923	102-2			SIRIOS #1-A	EGRET	100.0	KOCH HYDROCARBON
-CHAMPLIN PETROLEUM COMPANY			RECEIVED:	08/12/82	JA: CO				
8248904	81-698	0512310259	103			BRAMMING 41-25 #1	SPINDLE/SUSSEX	42.0	VESSELS PROCESSIN
8248905	81-651	0500107853	103			CARLSON 32-33 #2	RADAR	19.0	PANHANDLE EASTERN
8248907	81-697	0500107883	103			CAVENDER 31-11 #3	BASELINE/KRAUTHEAD	31.0	
8248906	81-696	0500107688	103			CAVENDER 32-11 #1	BASELINE/KRAUTHEAD	124.0	
8248878	81-695	0500107862	102-2			LAURIDSON 41-13 #2	BASELINE FIELD	2.0	
-CHEMCO INC			RECEIVED:	08/12/82	JA: CO				
8248933	81-708	0506106287	107-TF			E J MUIR #1-A	CAVALRY	0.0	COLORADO INTERSTA
8248934	81-677	0506106076	107-TF			H C WEAR #1	CAVALRY	162.5	COLORADO INTERSTA
-CONTINENTAL GAS TRANSMISSION			RECEIVED:	08/12/82	JA: CO				
8248879	82-235	0500107869	102-4			BOWEN AMOCO 44-08	ZENITH	36.4	PANHANDLE EASTERN
8248880	82-301	0500107946	102-4			BROSCH WEDOW 41-24	ZENITH	60.0	PANHANDLE EASTERN
8248881	81-182	0500106173	102-4			CLAIR 1-16	BENNETT	85.0	PANHANDLE EASTERN
8248882	81-181	0500107687	102-4			MEYER 41-20	BENNETT	60.0	PANHANDLE EASTERN
8248883	81-735	0500107899	102-4			THOMPSON 43-13	ZENITH	60.0	PANHANDLE EASTERN
8248884	81-628	0500107832	102-4			THOMPSON 43-13	ZENITH	42.0	PANHANDLE EASTERN
-COORS ENERGY CO			RECEIVED:	08/12/82	JA: CO				
8248935	81-667	0507708396	107-TF			HILL 3X-3	PLATEAU	295.3	NORTHERN NATURAL
8248936	81-638	0507708316	107-TF			NICHOLS #3-7	PLATEAU FIELD SECTION	305.5	NORTHERN NATURAL
8248937	81-639	0507708339	107-TF			WOOD #3-32	PLATEAU FIELD SEC 32	438.0	NORTHERN NATURAL

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JD NO	JA DKT	API NO	D	SEC(1)	SEC(2)	WELL NAME	FIELD NAME	PROD	PURCHASER
-COSEKA RESOURCES (USA) LIMITED				RECEIVED:	08/12/82	JA: CO			
8248908	81-707	0504506167		103		H S QUICK 7-9-5-101	WILDCAT	0.0	SOUTHWEST GAS COR
-DONALD S WALKER				RECEIVED:	08/12/82	JA: CO			
8248967	81-564	0512506586		107-TF		J BROPHY 1-20	BUCKBOARD	36.0	
8248968	81-595	0512506588		107-TF		SALVADOR 1-5	ROCK CREEK	36.0	
-ENERGY MINERALS CORPORATION				RECEIVED:	08/12/82	JA: CO			
8248885	81-706	0508707597		102-2		CHRISTENSEN #1	RIDGE	62.0	PANTERA ENERGY CO
8248886	81-608	0512310025		102-2		KRAUSE #1	WAITE LAKE	5.4	CRYSTAL OIL CO
8248887	81-593	0512310231		102-2		TED #1	WAITE LAKE	175.0	CRYSTAL OIL CO
-ENERGY OIL INC				RECEIVED:	08/12/82	JA: CO			
8248909	81-752	0506906102		103		ABRAMS #1	LOVELAND	0.0	
8248910	81-662	0512310090		103		BRUNTZ #1	WILDCAT	225.0	PANHANDLE EASTERN
-FARM-RANCH EXPLORATION CORP				RECEIVED:	08/12/82	JA: CO			
8248888	81-674	0500107799		102-2		VESSELS TRUPP-MITCHEM #2	UNNAMED	220.0	PANHANDLE EASTERN
-J-W OPERATING COMPANY				RECEIVED:	08/12/82	JA: CO			
8248894	81-666	0512506589		102-2		H SALVADOR #1-17	ROCK CREEK	184.7	CITIES SERVICE GA
8248938	81-598	0512506487		107-TF		MALCOLM AKEY #1-32	BEECHER ISLAND	92.9	CITIES SERVICE GA
8248939	81-599	0512506488		107-TF		MALCOLM AKEY #2-32	BEECHER ISLAND	29.1	CITIES SERVICE GA
8248940	81-600	0512506489		107-TF		MALCOLM AKEY #3-32	BEECHER ISLAND	41.6	CITIES SERVICE GA
-KENAI OIL AND GAS INC				RECEIVED:	08/12/82	JA: CO			
8248911	81-654	0500107663		103		COLORADO STATE #32-12	SUN - "D SAND"	165.0	KOCH HYDROCARBON
-LOCKRIDGE & THOMPSON				RECEIVED:	08/12/82	JA: CO			
8248941	81-616	0512109783		107-TF		ALLEN #1-15	DE NOVA	20.0	NATURAL GAS PIPEL
8248942	81-617	0512109578		107-TF		AXSOM #1-26	SPEAR	20.0	NATURAL GAS PIPEL
-LOCKRIDGE THOMPSON & CANTRALL				RECEIVED:	08/12/82	JA: CO			
8248943	82-35	0512506613		107-TF		CANTRALL 1-35	DUKE	18.0	KANSAS-NEBRASKA N
-MACEY & MERSHON OIL INC				RECEIVED:	08/12/82	JA: CO			
8248944	81-618	0512309833		107-TF		BILLINGS #1	WATTENBERG "J"	130.0	PANHANDLE EASTERN
8248945	81-601	0512310219		107-TF		HORN-LIBSACK #1	WATTENBERG J	60.0	PANHANDLE EASTERN
-MACHII-ROSS PETROLEUM CO				RECEIVED:	08/12/82	JA: CO			
8248912	81-741	0512310323		103		ARISTOCRAT ANGUS 23-3	ARISTOCRAT	171.2	COLORADO INTERSTA
8248913	81-682	0512309335		103		ARISTOCRAT ANGUS 41-4	ARISTOCRAT	93.4	COLORADO INTERSTA
8248914	81-681	0512309336		103		ARISTOCRAT ANGUS 41-8	ARISTOCRAT	146.0	COLORADO INTERSTA
8248915	81-740	0512310354		103		LEONARD 34-21	SPINDLE	47.5	TOA AMERICAN GAS
8248916	81-914	0512309440		103		SHELEY 24-4	SPINDLE	192.0	COLORADO INTERSTA
-MARSHALL R YOUNG OIL CO				RECEIVED:	08/12/82	JA: CO			
8248899	81-676	0500107847		102-2		MENG #20-1	ARROYO	0.0	COLORADO INTERSTA
8248900	81-656	0500107840		102-2		MIDDLEMIST #8-2	ARROYO	0.0	COLORADO INTERSTA
8248901	81-655	0500107849		102-2		MIDDLEMIST #8-3	ARROYO	0.0	COLORADO INTERSTA
8248902	81-756	0500107922		102-2		NOONEN RANCH #8	ARROYO	0.0	COLORADO INTERSTA
-MARTIN EXPLORATION MGMT CORP				RECEIVED:	08/12/82	JA: CO			
8248917	81-668	0512310350		103		BRIGGS #1-25	SPINDLE	0.0	PANHANDLE EASTERN
8248946	81-743	0501306068		107-TF		DAWSON #10-1	WATTENBERG	0.0	PANHANDLE EASTERN
8248947	81-717	0512310227		107-TF		HANSEN #16-1	WATTENBERG	0.0	PANHANDLE EASTERN
8248948	81-619	0501306049		107-TF		LEYNER #15-1	BOULDER VALLEY	72.0	PANHANDLE EASTERN
8248918	81-745	0512310389		103		LUDWIG #1-6	HAMBERT	94.4	PANHANDLE EASTERN
8248949	81-644	0512310252		107-TF		PLATTEVILLE #1-19	WATTENBERG	145.0	PANHANDLE EASTERN
8248919	81-744	0506706537		103		SHELHAMMER #1 (33-7)	IGNACIO-BLANCO	0.0	NORTHWEST PIPELIN
8248950	81-673	0501306062		107-TF		VON REYN #9-1	BOULDER VALLEY	72.0	PANHANDLE EASTERN
-MIDLANDS GAS CORPORATION				RECEIVED:	08/12/82	JA: CO			
8248974	81-653	0512506431		108		NEUHAUS 1 - 10	WHISPER	13.0	KANSAS-NEBRASKA N
-MOUNTAIN PETROLEUM CORPORATION				RECEIVED:	08/12/82	JA: CO			
8248955	82-36	0512506493		107-TF		ALLEN 1-1	BEECHER ISLAND	0.0	KANSAS-NEBRASKA N

JD NO	JA DKT	API NO	D	SEC(1)	SEC(2)	WELL NAME	FIELD NAME	PROD	PURCHASER
8248954	82-182	0512506399		107-TF		ALLEN 1-8	BEECHER ISLAND	0.0	KANSAS-NEBRASKA N
8248956	81-621	0512506349		107-TF		BLACH 2-19	PONY EXPRESS	8.0	NATURAL GAS PIPEL
-MTS LIMITED PARTNERSHIP				RECEIVED:	08/12/82	JA: CO			
8248895	81-701	0500506477		102-2		BURNET #1-2	WILDCAT	256.0	
8248951	81-700	0512506611		107-TF		CONRAD 1 #1	ECKLEY	217.0	CITIES SERVICE GA
8248952	81-699	0512506601		107-TF		ECKLEY KITZMILLER 33 #2	ECKLEY	179.0	CITIES SERVICE GA
-MTS LTD PARTNERSHIP				RECEIVED:	08/12/82	JA: CO			
8248953	81-702	0512506573		107-TF		TUELL 35 #2	ECKLEY	65.0	CITIES SERVICE GA
-NATOMAS NORTH AMERICA INC				RECEIVED:	08/12/82	JA: CO			
8248957	81-684	0506706536		107-TF		DAVIS 1-28	IGNACIO-BLANCO	702.0	NORTHWEST PIPE LI
8248958	81-627	0506706373		107-TF		GEARHART 1-5	IGNACIO-BLANCO	1136.0	NORTHWEST PIPE LI
8248959	81-686	0506706535		107-TF		LOBATO 1-26	IGNACIO-BLANCO	467.0	NORTHWEST PIPE LI
8248960	81-685	0506706534		107-TF		LOBATO 1-27	IGNACIO-BLANCO	591.0	NORTHWEST PIPE LI
8248961	81-683	0506706507		107-TF		RICHARDSON 1-25	IGNACIO	593.0	NORTHWEST PIPELIN
8248962	81-625	0506706505		107-TF		SHOEMAKER 1-34	IGNACIO	389.0	NORTHWEST PIPE LI
8248963	81-626	0506706504		107-TF		STATE 1-36 35-8	IGNACIO	630.0	NORTHWEST PIPE LI
8248964	81-657	0506706506		107-TF		TURNER SECURITIES 1-33	IGNACIO	569.0	NORTHWEST PIPE LI
-NIELSON ENTERPRISES INC				RECEIVED:	08/12/82	JA: CO			
8248920	81-648	0512310123		103		STATE-OLIN #3	WATTENBERG	200.0	COLORADO INTERSTA
8248921	81-646	0512310137		103		STATE-OLIN #4	WATTENBERG	200.0	COLORADO INTERSTA
-NORTHWEST EXPLORATION COMPANY				RECEIVED:	08/12/82	JA: CO			
8248971	81-636	0504506268		108		CLOUGH #110 (FORMERLY 1-W-16)	RULISON WASATCH	15.0	NORTHWEST PIPELIN
8248972	81-689	0504506267		108		CLOUGH #135 (FORMERLY 1-W-20)	RULISON WASATCH	21.5	NORTHWEST PIPELIN
8248970	81-635	0504506233		108		CLOUGH 13	RULISON MESAVERDE	75.0	NORTHWEST PIPELIN
8248973	81-671	0504506206		108		GOLDING 138 (FORMERLY #2)	RULISON WASATCH	1.8	NORTHWEST PIPELIN
-NORTHWEST PIPELINE CORPORATION				RECEIVED:	08/12/82	JA: CO			
8248969	81-690	0506705601		108		BONDAD 33-10 #4-3	IGNACIO BLANCO - MESA	17.0	NORTHWEST PIPELIN
8248922	81-631	0506706443		103		CARR #1M DK	IGNACIO BLANCO DAKOTA	21.0	NORTHWEST PIPELIN
8248923	81-632	0506706443		103		CARR #1M MV	IGNACIO BLANCO MESAVE	177.0	NORTHWEST PIPELIN
8248924	81-629	0506706451		103		TIFFANY #2M DK	IGNACIO BLANCO DAKOTA	40.0	NORTHWEST PIPELIN
8248925	81-630	0506706451		103		TIFFANY #2M MV	IGNACIO BLANCO MESAVE	61.0	NORTHWEST PIPELIN
-SNYDER OIL CO				RECEIVED:	08/12/82	JA: CO			
8248926	81-609	0508106462		103		GLADHILL DRAW STATE #1-13	WEST SIDE CANAL	350.0	NORTHWEST PIPELIN
-TETON ENERGY CO INC				RECEIVED:	08/12/82	JA: CO			
8248965	81-641	0507708368		107-TF		CARPENTER 15-1	PLATEAU CREEK	60.6	NORTHWEST PIPELIN
8248966	81-640	0507708359		107-TF		COLORADO WATER 15-2	PLATEAU CREEK	0.0	NORTHWEST PIPELIN
-VESSELS OIL & GAS CO				RECEIVED:	08/12/82	JA: CO			
8248927	81-734	0512310307		103		DOWDY #2	WATTENBERG	332.2	PANHANDLE EASTERN
8248896	81-913	0500506490		102-2		FMC #1	FAIRWAY	766.5	FAIRWAY GAS PROCE
8248928	81-737	0512310332		103		HARKIS #2	WATTENBERG	365.0	PANHANDLE EASTERN
8248929	81-781	0512310366		103		HEINZE #1-A	SPINDLE	32.1	VESSELS GAS PROCE
8248930	81-899	0512310367		103		HINGLEY #1-B	SPINDLE	21.5	VESSELS GAS PROCE
8248897	81-604	0500107798		102-2		MITCHEM MITCHELL #1-A	WILDCAT	2160.0	PANHANDLE EASTERN
8248898	81-768	0500107944		102-2		MITCHEM MITCHELL #1-B	ZENITH	83.2	PANHANDLE EASTERN
**********									
KANSAS CORPORATION COMMISSION									
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-CENTENNIAL ENERGY CO				RECEIVED:	08/11/82	JA: KS			
8248853	K-82-0595	1518120093		102-2		BRINEY #1-33	GOODLANDS	15.0	KANSAS NEBRASKA N
8248855	K-82-0592	1518120124		102-2		BRINEY FARMS #2-22	GOODLANDS	15.0	KANSAS NEBRASKA N
8248852	K-82-0591	1518120133		102-2		GLASCO #2-6	GOODLANDS	15.0	KANSAS NEBRASKA N
8248851	K-82-0590	1518120072		102-2		GLASCO #3-31	GOODLANDS	15.0	KANSAS NEBRASKA N
8248854	K-82-0593	1518120220		102-2		N L WALLACE #1-16	GOODLANDS	15.0	KANSAS NEBRASKA N

JD NO	JA DKT	API NO	D	SEC(1)	SEC(2)	WELL NAME	FIELD NAME	PROD	PURCHASER
8248850	K-82-0589	1518120097		102-2		NEMECHEK #1-3	GOODLANDS	15.0	KANSAS NEBRASKA N
-CENTENNIAL ENERGY CO				RECEIVED:	08/12/82	JA: KS			
8248869	K-82-0594	1518120127		102-2		CEBULA #1-15	GOODLANDS	15.0	KANSAS NEBRASKA N
8248870	K-82-0596	1518120039		102-2		GLASCO #1-31	GOODLANDS	15.0	KANSAS NEBRASKA N
8248871	K-82-0597	1518120040		102-2		GLASCO #1-6	GOODLANDS	15.0	KANSAS NEBRASKA N
-GULF COAST ROYALTY CO				RECEIVED:	08/11/82	JA: KS			
8248845	K-82-0639	1520522094		103		C HANSEN #3	VILAS	29.2	CITIES SERVICE GA
8248844	K-82-0640	1520521982		103		CARLSON #3	VILAS	29.2	CITIES SERVICE GA
8248846	K82-0638	1520522377		103		CARLSON #5	VILAS FIELD	29.2	CITIES SERVICE GA
8248847	K-82-0695	1520522378		103		CARLSON #6	VILAS	29.2	CITIES SERVICE GA
8248849	K-82-0641	1520520539		103		H ANDERSON #2	VILAS	29.2	CITIES SERVICE GA
8248848	K-82-0646	1520522118		103		H ANDERSON #5	VILAS	29.2	CITIES SERVICE GA
MICHIGAN DEPARTMENT OF NATURAL RESOURCES									
-AMOCO PRODUCTION CO				RECEIVED:	08/11/82	JA: MI			
8248859		2107934336		102-4		WISTRAND STATE COLD SPRINGS #3-1	COLDSPRINGS 1A-28N-6W	37.0	CONSUMERS POWER C
-DELTA OIL CO INC				RECEIVED:	08/11/82	JA: MI			
8248863		2105500000		102-4		HAIGHT-RAWLINGS #1-8	BLAIR 34-26N-11W POOL	750.0	CONSUMERS POWER C
-PATRICK PETROLEUM CORP OF MICHIGAN				RECEIVED:	08/11/82	JA: MI			
8248858		2104534019		102-4		DAILY #1-35	EATON "35"	100.0	CONSUMERS POWER C
-REEF PETROLEUM CORP				RECEIVED:	08/11/82	JA: MI			
8248860		2104500000		102-4		HARRIS #1-25	EATON "25"	36.0	
8248861		2102500000		102-4		KECK-BUNDE #1-34	CLARENCE "34"	36.0	BATTLE CREEK GAS
-SCHMUDE & PANGBORN ASSOCIATES				RECEIVED:	08/11/82	JA: MI			
8248862		2102500000		102-4		FROST #1-1	LEE "1"	1.8	BATTLE CREEK GAS
-SUN EXPLORATION & PRODUCTION CO				RECEIVED:	08/11/82	JA: MI			
8248857		2114334309		103		N-M-L-O-C & USA "B" #2	ST HELEN	61.0	DOW CHEMICAL CO
8248856		2111334255		103		NORWICH UNIT #5-28	NORWICH	11.0	DOW CHEMICAL
NEW MEXICO DEPARTMENT OF ENERGY & MINERALS									
-WARREN PETR CO A DIV OF GULF OIL CO				RECEIVED:	08/12/82	JA: NM			
8248866		3002506844		108		EUNICE KING #8	BLINEBRY	14.0	EL PASO NATURAL G
8248865		3002504924		108		W A RAMSAY (NCT-A) #16	EUMONT	8.8	EL PASO NATURAL G
8248864		3002504926		108		W A RAMSAY (NCT-A) #19	EUMONT	7.9	EL PASO NATURAL G
8248867		3002504897		108		W A RAMSAY (NCT-A) #21	EUMONT	5.0	EL PASO NATURAL G
8248868		3002504907		108		W A RAMSAY (NCT-A) #26	EUMONT	2.1	EL PASO NATURAL G
WEST VIRGINIA DEPARTMENT OF MINES									
-ALLEGHENY LAND & MINERAL COMPANY				RECEIVED:	08/12/82	JA: WV			
8249001		4709702314		103		A-1010	WASHINGTON DISTRICT	0.0	COLUMBIA GAS TRAN
8248999		4704103144		103		A-1029	FREEMANS CREEK DISTRI	0.0	CONSOLIDATED GAS
8248998		4709702316		103		A-1040	MEADE DISTRICT	0.0	COLUMBIA GAS TRAN
8248997		4701703051		103		A-1052	CENTRAL DISTRICT	0.0	CONSOLIDATED GAS
8249015		4708300543		103		A-1098	MIDDLE FORK DISTRICT	0.0	COLUMBIA GAS TRAN
8249000		4709702341		103		A-1106	MEADE DISTRICT	0.0	COLUMBIA GAS TRAN
-BOW VALLEY PETROLEUM INC				RECEIVED:	08/12/82	JA: WV			
8249016		4704700865		103		MULLINS #937	SANDY RIVER DISTRICT	0.0	CONSOLIDATED GAS
8249017		4704700866		103		MULLINS #938	SANDY RIVER DISTRICT	0.0	CONSOLIDATED GAS
-DEVON CORPORATION				RECEIVED:	08/12/82	JA: WV			
8248995		4707901056		107-DV		FLOYD STARCHER #962	MIDWAY	21.0	ROARING FORK GAS

JD NO	JA DKT	API NO	D	SEC(1)	SEC(2)	WELL NAME	FIELD NAME	PROD	PURCHASER
8248993		4709901752		107-DV		HERBERT MCCOMAS #1005	GRAGSTON CREEK	23.0	TENNESSEE GAS PIP
8248992		4709901753		107-DV		ORGE HUTCHINSON #1006	GRAGSTON CREEK	40.0	TENNESSEE GAS PIP
8248994		4709901751		107-DV		SADIE SHY #1004	GRAGSTON CREEK	26.0	TENNESSEE GAS PIP
-EASTERN AMERICAN ENERGY CORPORATION				RECEIVED:		08/12/82 JA: WV			
8248986		4702103839		103		SMITHSON #1		6.0	COLUMBIA GAS TRAN
8249018		4702103839		107-DV		SMITHSON #1	UNION	6.0	COLUMBIA GAS TRAN
-PALEO INC				RECEIVED:		08/12/82 JA: WV			
8248996		4701702591		108		BODE I-628	COVE	3.1	CONSOLIDATED GAS
8249010		4701702490		108		COLE #1	COVE	11.6	CONSOLIDATED GAS
8249013		4701702520		108		COLE #2	COVE	3.6	CONSOLIDATED GAS
8249009		4701702486		108		HINTER I-621	COVE	1.1	CONSOLIDATED GAS
8249006		4701702323		108		HINTER I-622	COVE	0.7	CONSOLIDATED GAS
8249011		4701702495		108		KREYENBUHL I-641	COVE	1.3	CONSOLIDATED GAS
8249012		4701702504		108		LOWTHER #1	COVE	6.1	CONSOLIDATED GAS
8249007		4701702459		108		RILEY I-623	COVE	3.3	CONSOLIDATED GAS
8249008		4701702473		108		WOOFTER I-629	COVE	20.0	CONSOLIDATED GAS
-RIDGEWOOD RESOURCES INC				RECEIVED:		08/12/82 JA: WV			
8248975		4707321262		107-DV		ELLA BRADFIELD #1	UNION	10.0	COLUMBIA GAS TRAN
8249004		4707321287		107-DV		GILBERT BARNHART #1	UNION	10.0	COLUMBIA GAS TRAN
8249005		4707320982		107-DV		LAWRENCE ELDER #1	UNION	10.0	COLUMBIA GAS TRAN
8249003		4709520941		107-DV		RUTH ADKINS #1	UNION	10.0	COLUMBIA GAS TRAN
-SENECA-UPSHUR PETROLEUM CO				RECEIVED:		08/12/82 JA: WV			
8249014		4709702171		103		JIMMIE R WOODY #1	BANKS	0.0	COLUMBIA GAS TRAN
8249002		4709702165		103		WALKER #1	BANKS	0.0	COLUMBIA GAS TRAN
-STONESTREET LANDS CO				RECEIVED:		08/12/82 JA: WV			
8248978		4700701690		103		BRADY STAVE #1-S-62	ELMIRA	22.0	COLUMBIA GAS TRAN
8248979		4700701691		103		BRADY STAVE #2-S-63	ELMIRA	25.0	COLUMBIA GAS TRAN
8248980		4700701772		103		DUNLAP #1-S-273	ELMIRA	20.0	COLUMBIA GAS TRAN
8248982		4701303252		103		FERRELL #1-S-127	ELMIRA	29.0	COLUMBIA GAS TRAN
8248985		4701501982		103		FLORA #1-S-213	ELMIRA	29.0	COLUMBIA GAS TRAN
8248977		4700701687		103		HART #3-S-251	ELMIRA	25.0	COLUMBIA GAS TRAN
8248987		4700701665		103		OKEY JAMES #2-S-205	ELMIRA	26.0	COLUMBIA GAS TRAN
8248976		4700701675		103		RICHARDS #2-S-243	ELMIRA	22.0	COLUMBIA GAS TRAN
8248984		4701303329		103		SHAFFER-STARCHER 2-S-201	ELMIRA	29.0	COLUMBIA GAS TRAN
8248983		4701303253		103		STEVE WHITE #1-S-145	ELMIRA	29.0	COLUMBIA GAS TRAN
8248981		4701303231		103		VAUGHN-EAKLE #2-S-174	ELMIRA	23.0	COLUMBIA GAS TRAN
-TRIO PETROLEUM CORP				RECEIVED:		08/12/82 JA: WV			
8248991		4702103720		107-DV		BATTON #1	GLENVILLE NORTH	50.0	CONSOLIDATED GAS
8248990		4704103133		107-DV		KEITH #1-A	FINSTER-ASPINALL	50.0	
8248989		4704103049		107-DV		SANDY "A" #1	FINSTER-ASPINALL	50.0	
8248988		4702103834		107-DV		WHITE #3	GLENVILLE NORTH	50.0	

CORRECTIONS TO PREVIOUS NOTICES OF DETERMINATION

JD No.	JA	Applicant	Well Name	Orig. FERC Vol. No.	Date Pub. in Federal Register	C:	Correction to prior Fed. Register notice
82-17232	TX	Superior Oil Company	E. E. Placke #1	600	3-01-82	C:	107-PE approved, not 107-TF
82-18970	OK	Tenneco Oil Company	Ruth Pollack #1-28	607	3-15-82	C:	108-ER approved
82-18972	OK	Kaiser-Francis Oil Co.	Williams Eversole #1-20	607	3-15-82	C:	108-ER approved
82-20136	PA	R. Wesley Smith & W. G. Shaner	State Permit Number Arm - 411	612	3-24-82	C:	107-PE approved, not 107-TF
82-25449	KS	Gould Oil Inc.	Davis #1	636	4-23-82	C:	108-SA approved
82-25475	KS	Kansas-Nebraska Nat Gas	Jackson #1	636	4-23-82	C	108 approved, not 108-TP
82-26159	UT	J. C. Thompson	State M-15	639	4-27-82	C:	108-ER approved
82-27153	TX	Mitchell Energy Corp.	JR Halsell #16	642	5-07-82	C:	103 approved, not 108
82-27204	TX	Burk Royalty Co.	#1 JW & Bessie Fite Stuart	642	5-07-82	C:	Well Name
82-28258	OK	Kepco Inc.	Bevins #2-33	646	5-17-82	C:	Well Name
82-28461	OH	Ronald F. Moran	John L. Baughman #1	647	5-17-82	C:	103 denied, not approved
82-28493	OH	Rimco Operating Inc.	Bricker #3	647	5-17-82	C:	103 approved, 107-TF denied
82-28606	TX	Aztec Gas Systems, Inc.	Shannon Estate #1-P	648	5-21-82	C:	108-ER approved
82-28614	TX	Superior Oil Co	Otto Bastion GU #1	648	5-21-82	C:	107-DP approved, not 107-TF
82-28714	TX	Rycol Exploration Inc.	Raymond L. Hartman No. 1	648	5-21-82	C:	108 approved, not 102-2
82-28731	TX	Phillips Petroleum Co.	Beasley 3 #4	648	5-21-82	C:	102-3 and 107-TF approved
82-29047MMS(CO)		Coseka Resources (USA) Limited	Federal #12-13-4-104	649	5-21-82	C:	Well Name
82-29059MMS(CO)		Coseka Resources (USA) Limited	Federal #3-32-4-101	649	5-21-82	C:	103 &107-TF approved
82-29148	LA	Mid Louisiana Gas Co.	MLGC GTC #14	649	5-21-82	C:	Well Name
82-29366	OK	Petro-Lewis Corp.	Kirk #4	650	5-21-82	C:	102-4 and 103 approved
82-30371	OK	Richard Wheeler, Jr.	Wilson No. 2	654	6-03-82	C:	Well Name
82-30644	TX	Overly Operating Co.	Martin Gonzales et al #2	655	6-03-82	C:	Well Name
82-32524	TX	Gulf Oil	J. C. Riggs No. 2	662	6-14-82	C:	108-ER approved
82-32531	TX	Oklahoma Oil Co.	Evelyn Bragg No. 1	662	6-14-82	C:	Well Name
82-32582	TX	Texas Oil & Gas Corp.	Renfrow A-1	662	6-14-82	C:	Well Name
82-32584	TX	Saxon Oil Co.	Snell No. 1	662	6-14-82	C:	Well Name
82-32661	TX	Scandrill Co.	Putnam "C" No. 19	662	6-14-82	C:	Well Name
82-32854	TX	Mobil (Tex & NM)	Sand Hills Judkins #11	662	6-14-82	C:	108 approved, not 108-SA
82-32855	TX	Mobil (Tex & NM)	South Lagloria	662	6-14-82	C:	108 approved, not 108-SA
82-33010	OK	Boswell Energy Corp.	Chisholm No. 3-9	663	6-14-82	C:	Well Name
82-33011	OK	Boswell Energy Corp.	Chisholm No. 3-9	663	6-14-82	C:	Well Name
82-33012	OK	Boswell Energy Corp	Chisholm No. 3-9	663	6-14-82	C:	Well Name
82-33804MMS(UT)		Coastal Oil & Gas Co.	NBU 56-N2	666	6-17-82	C:	103 & 107-TF approved

CORRECTIONS TO PREVIOUS NOTICES OF DETERMINATION

JD No.	JA	Applicant	Well Name	Orig. FERC Vol. No.	Date Pub. in Federal Register	C:	Correction to prior Fed. Register notice
82-34357	LA	Ergon, Inc.	Clara Savage #2	669	6-18-82	C:	103 & 107-TF approved
82-34373	LA	Ergon, Inc.	L B King #2	669	6-18-82	C:	103 & 107-TF approved
82-34978	NY	Villanova Nat Gas	State Ref Area 6 #5	672	6-28-82	C:	107-TF Approved; not 107-DV
82-34979	NY	Villanova Nat Gas	State Ref Area 6 #4	672	6-28-82	C:	107-TF Approved; not 107-DV
82-34980	NY	Villanova Nat Gas	State Ref Area 6 #3	672	6-28-82	C:	107-TF Approved; not 107-DV
82-34981	NY	Villanova Nat Gas	State Ref Area 6 #1	672	6-28-82	C:	107-TF Approved; not 107-DV
82-34991	NY	Sunrise Resources	Richter #1	672	6-28-82	C:	107-TF Approved; not 107-DV
82-34992	NY	Cumberland Oil Corp	Douglas Fairbanks #2	672	6-28-82	C:	107-TF Approved; not 107-DV
82-34993	NY	Envirogas Inc	A Kopta #4	672	6-28-82	C:	107-TF Approved; not 107-DV
82-34994	NY	Envirogas Inc	State Ref Area 5 #19	672	6-28-82	C:	107-TF Approved; not 107-DV
82-35438	OH	Hopco Resources	Miller #B1	673	6-28-82	C:	103 Approved; 107-TF Denied
82-35882	TX	TXO Production	Allgood G.U. #1-2	674	6-28-82	C:	Well Name
82-36279	NY	Eclipse Mgmt Assoc	EE #3 Martin #1	675	6-28-82	C:	107-TF Denied
82-39567	PA	Fox Oil & Gas	Fred Golden #2	687	7-14-82	C:	102-2 Approved

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 within fifteen days after publication of notice in the **Federal Register.**

Categories within each NGPA section are indicated by the following codes:

Section 102–1: New OCS lease
Section 102–2: New well (2.5 mile rule)
Section 102–3: New well (1000 ft rule)
Section 102–4 New onshore reservoir
Section 102–5 New reservoir on old BCS lease

Section 107–DP: 15,000 feet or deeper
Section 107–GB: Geopressured brine
Section 107–CS: Coal seams
Section 107–DV: Devonian shale
Section 107–PE: Production enhancement
Section 107–TF: New tight formation
Section 107–RT: Recompletion tight formation

Section 108: Stripper well
Section 108–SA: Seasonally affected
Section 108–ER: Enhanced recovery
Section 108–PB: Pressure buildup

Kenneth F. Plumb,

Secretary.

[FR Doc. 82–25217 Filed 9–14–82; 8:45 am]

BILLING CODE 6717–01–M

Office of the Secretary

Long-Term Management of Liquid High-Level Radioactive Waste at the Western New York Nuclear Service Center, West Valley; Record of Decision

This Record of Decision has been prepared pursuant to regulations of the Council on Environmental Quality (40 CFR Part 1505) and Implementing Procedures of the Department of Energy (45 FR 20694).

Decision

The Department of Energy (DOE) has decided to construct and operate facilities at the Western New York Nuclear Service Center (Center), West Valley, New York, to solidify the existing liquid High-Level Radioactive Wastes (HLW) which are presently being stored in underground tanks. The wastes will be solidified into a form which is suitable for transportation and disposal in a Federal geologic repository (Alternative 1A) in accordance with the West Valley Demonstration Project (WVDP) Act of 1980 (Pub. L. 96–368). Related decisions, such as selection of the terminal waste form, final decontamination and decommissioning of solidification facilities, and the siting and design of the repository will be addressed in subsequent environmental analyses. Each of these decisions will be subject to appropriate documentation to comply with the National Environmental Policy Act (NEPA) as provided for by DOE compliance guidelines.

Disposition of project generated low-level waste is another decision which must still be made. Two principal options exist: packaging and storage on site until transportation to a regional low-level waste burial site can be effected, or use of the Nuclear Regulatory Commission (NRC) licensed burial area at West Valley. Selection of one of these options will be made after appropriate environmental review.

Background

The Center is located near the town of West Valley, approximately 50 km (30 miles) southeast of Buffalo, New York. At this site there are about 2 million liters (600,000 gallons) of liquid high-level radioactive wastes stored in underground tanks. The wastes are the byproducts of commercial reprocessing of nuclear reactor fuel from both Federal Government reactors and commercial power reactors during the period 1966–1972, and are composed of a sludge phase and an aqueous supernatant solution.

The Federal Government's long-term radioactive waste management objective is to isolate existing and future wastes from the biosphere so they pose no significant risk to public health and safety. The U.S. Congress directed the Department in October 1980 to carry out a high-level radioactive waste management demonstration project at the Center for the purpose of demonstrating solidification techniques which can be used for preparing high-level radioactive waste for disposal. Solidification of the wastes is consistent with DOE's policy and management objective regarding the isolation of radioactive waste from the biosphere.

In accordance with the National Environmental Policy Act (NEPA), the DOE published the *Final Environmental Impact Statement—Long-Term Management of Liquid-High-Level Radioactive Wastes Stored at the Western New York Nuclear Service Center, West Valley* (DOE/EIS–0081) in July 1982. The action considered in the Environmental Impact Statement (EIS) is to construct and operate facilities necessary to solidify the liquid HLW stored at West Valley in accordance with Pub. L. 96–368. Reasonable alternatives to implementing this action were analyzed in the EIS. Notice of the availability of the EIS was published in the **Federal Register** on July 16, 1982 (47 FR 31062).

Description of Alternatives

The following alternatives were considered in the EIS for management of the liquid HLW.

1. *Alternative 1—On-Site Processing to Terminal Waste Form.*

• 1A—Separated Salt/Sludge Process (Preferred Alternative). In this alternative the majority of radioactive components of the waste supernatant would be stripped from the aqueous phase. The remaining low-level aqueous phase would then be dried to a low-level radioactive salt cake and the high-level radioactive components would be mixed with the remaining HLW sludge. This HLW mixture would then be concentrated, chemically treated and converted into a solid, terminal waste form suitable for transportation off-site and disposal in a Federal geologic repository.

• 1B—Nonseparated Salt/Sludge. This alternative is similar to 1A, except that the sludge and supernatant phases of the HLW would be converted together to a terminal waste form (i.e., no separation and concentration).

In either Alternative 1A or 1B, the solidified HLW would most likely be stored at the West Valley site until such time that a Federal repository becomes available (late 1990's).

2. *Alternative 2—On-Site Processing to an Interim Waste Form.* In this alternative the liquid HLW would be converted to a solid interim waste form which would be shipped to a Federal waste facility (not presently available) for future processing to a terminal form and disposal in a Federal geologic repository.

3. *Alternative 3—In Tank Solidification.* In this alternative the liquid HLW would be mixed with cement and other additives, poured back into the existing underground tanks and the solidified HLW left on-site.

4. *Alternative 4—No Action.*

• 4A—Delay 10 Years. In this alternative the liquid HLW would continue to be stored in the underground tanks for 10 years, after which time solidification alternatives would be reconsidered.

• 4B—Continued Storage in Tanks. In this alternative the liquid HLW would continue to be stored in the tanks indefinitely with the liquid HLW periodically transferred to new storage tanks.

Basis for Decision

High-level radioactive waste must be managed so that current and future generations will be protected from its potential hazards. The principal objective of disposal is the isolation of the waste from the human environment, with minimum reliance on maintenance and surveillance. Continued tank storage at West Valley would required periodic construction of replacement tanks, and transfer of such wastes. Continued storage is therefore only an interim measure for management of these wastes.

Tables 2.3 and 2.4 of the EIS provides a summary comparison of the technical aspects and environmental impacts of the various alternatives. The projected impacts of the HLW solidification alternatives would be small. None of the alternatives in the EIS is so environmentally superior that it can be identified as clearly preferable.

The Secretary is required by the West Valley Demonstration Project Act to solidify, at West Valley, the liquid HLW in a form which is suitable for subsequent transportation and disposal in an appropriate Federal respository. Alternative 1 options are the only approaches which comply fully with this requirement.

Alternative 1A (separated salt/sludge process) appears environmentally to be slightly preferable, based on occupational and short-term (100 years) population impacts, and has the strongest technological base; consequently alternative 1A was selected.

Ongoing efforts will further refine design, construction, and operational aspects of the WVDP. The process of the actual WVDP, as built, may therefore differ from the present descriptions due to the incorporation of refinements from the development program. Such refinements are not expected to substantially alter the projected environmental impacts.

Considerations in the Implementation of the Decision

The existing West Valley facilities will be modified for use and new facilites may be added. All facilities will comply with DOE standards for such factors as: earthquake, tornado, fire, radiation protection and environmental protection. The construction of new facilities should not pose any significant or unmitigable impacts and would take place in previously disturbed areas of a site already used for nuclear applications. Measures to minimize potential environmental impacts include sound engineering design, proper construction practices and an adequate quality assurance program.

Safety Analysis Reports and Operational Safety Requirements are required for this project and will be approved by DOE and reviewed by the U.S. Nuclear Regulatory Commission to ensure that the project develops and operates in a safe and environmentally sound manner. The final design and layout of the facilities will include all practicable methods of mitigating impacts. The ongoing environmental monitoring program will be expanded to a more comprehensive program so potential impacts of new construction and new operations can be quickly detected and mitigated.

For the United States Department of Energy.

Dated: September 9, 1982.

Shelby T. Brewer,

Assistant Secretary for Nuclear Energy.

[FR Doc. 82-25340 Filed 9-14-82; 8:45 am]

BILLING CODE 6450-01-M

ENVIRONMENTAL PROTECTION AGENCY

[OPP 40009A; FRL 2199-4]

Department of the Interior Federal Agency Plan; Approval of Plan for Certification of Applicators of Restricted Use Pesticides

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: In the Federal Register of June 15, 1982 (47 FR 25768), the Administrator of EPA announced her intention to approve the plan of the Department of the Interior (DOI) for the certification of its employees to apply restricted use pesticides in the performance of their duties. The comment period for the DOI Plan ended on July 30, 1982. No comments were received. Accordingly, this notice announces the Administrator's approval of the DOI Plan.

DATE: This approval is effective September 15, 1982.

FOR FURTHER INFORMATION CONTACT:

John MacDonald, Office of Pesticides and Toxic Substances Enforcement (EN-342), Environmental Protection Agency, Rm. 3220H, 401 M St. SW., Washington, D.C. 20460 (202-382-5598).

SUPPLEMENTARY INFORMATION: The DOI Plan at present applies only to employees of the Bureau of Land Management. If the Department should at a later date wish to include others under the certification plan, the submittal and approval of a new certification plan or an amendment to this certification plan will be required.

Summary of Plan

Federal employees are considered by EPA to be commercial applicators. The DOI's Plan certifies its employees in the following commercial applicator categories: Agriculture Pest Control—Plant; Forest Pest Control; Ornamental and Turf Pest Control; Aquatic Pest Control; Right-of-Way Pest Control; Industrial, Institutional, Structural and Health-Related Pest Control; Public Health Pest Control; and Demonstration and Research Pest Control.

Certification is based on the taking and passing of a written examination and is valid for a period not to exceed three years. Recertification will also require the taking and passing of a written examination. It is anticipated that training for certification and recertification will often be provided by outside organizations, most especially the Department of Defense which has an approved certification plan in operation. When training is provided by outside organizations, a Department of the Interior examination will still have to be passed before certification or recertification is granted.

Certified applicators will be issued a certificate and wallet-size identification card to be carried when applying pesticides or supervising their use. These documents will identify the certified applicator, the category in which the applicator is certified, the date of issuance, expiration date, and issuing authority. Examples of these documents are contained in the Plan.

General use and restricted use pesticides will be applied either by a certified applicator or by a person under the direct supervision of a certified applicator. The certified applicator will retain responsibility for the actions of the non-certified applicator and be available if and when required.

The Plan provides for the hiring of non-DOI employees for pest control operations. Such persons must be certified commercial applicators, or under the direct supervision of a certified commercial applicator, holding

certification valid in the State or territory where the services are peformed.

Authority for denying, suspending and revoking DOI certification rests with the official responsible for carrying out the Plan. Any applicator who falsifies records or who violates any provision of the Federal Insecticide, Fungicide, and Rodenticide Act, including the prohibition against the misuse of pesticides, may have the applicator's certificate suspended or revoked.

Records regarding the kinds, amounts, uses, dates, and places of use of restricted use pesticides will be maintained for two years from the date of application of the restriced use pesticides. Such records will be available for inspection and copying by Federal and State pesticide officials.

Incidents of pesticide misuse and record falsification by any person will be reported to the appropriate EPA or State authority. EPA and State enforcement personnel will have access to DOI property at reasonable times for sampling, inspection and observation.

The DOI Plan requires personnel to comply with substantive State standards for pesticide regulation which are more stringent than, or are in addition to, standards established in the Plan, as required by Executive Order 12088. In cases where the State decides its substantive standards are more stringent than those of the DOI, it may notify the Director of the Bureau of Land Management and request compliance. In any case where the Director and the State disagree as to the need for DOI employees to comply with a State standard, the Administrator of EPA will arbitrate the dispute.

Annual reports will be submitted by the DOI to the Administrator, EPA. The report will contain information as outlined in 40 CFR 171.7(d)(1), such as, numbers of applicators certified, changes in commercial subcategories, summary of enforcement actions and significant proposed changes in standards of competency. Other reports will be submitted as required by 40 CFR 171.7(d)(2).

The DOI's Plan for certification of employees of the Bureau of Land Management as applicators of restricted use pesticides is approved.

(Sec. 4, as amended, 92 Stat. 827 (Pub. L. 95–396))

Dated: September 2, 1982.

Anne M. Gorsuch,

Administrator.

[FR Doc. 82–24859 Filed 9–14–82; 8:45 am]

BILLING CODE 6560–50–M

[OPP–30169A; PH–FRL 2205–1]

Gametrics Limited; Approval of Application To Register a Pesticide Product Containing a New Active Ingredient

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: EPA has approved the application by Gametrics Limited to register the rodenticide Epibloc, containing an active ingredient not included in any previously registered pesticide product pursuant to the provisions of section 3(c)(4) of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), as amended.

FOR FURTHER INFORMATION CONTACT: William Miller, Product Manager (PM) 16, Registration Division (TS–767C), Office of Pesticide Programs, Environmental Protection Agency, Rm. 211, CM#2, 1921 Jefferson Davis Highway, Arlington, VA 22202, (703–557–2600).

SUPPLEMENTARY INFORMATION: EPA issued a notice published in the **Federal Register** of August 2, 1979 (44 FR 45483) that Gametrics Limited, Sausalito, CA 94965, had submitted an application to register the rodenticide Epibloc, containing 1 percent of the active ingredient alpha-chlorohydrin (3-chloro-1,2-propanediol) an ingredient not included in any previously registered product.

The application was approved on August 9, 1982 for restricted use in pesticide formulation. The product was assigned EPA Registration No. 42882–1.

A copy of the approved label and the list of data references used to support registration are available for public inspection in the office of the product manager. The data and other scientific information used to support registration, except for the material specifically protected by section 10 of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), as amended (92 Stat. 819; 7 U.S.C. 136), will be available for public inspection in accordance with section 3(c)(2) of FIFRA within 30 days after registration date. Requests for data must be made in accordance with the provisions of the Freedom of Information Act and must be addressed to the Freedom of Information Office (A–101), EPA, 401 M St., SW., Washington, D.C. 20460. Such requests should: (1) Identify the product name and registration number and (2) specify the data or information desired.

(Sec. 3(c)(2) FIFRA, as amended)

Dated: August 27, 1982.

Edwin L. Johnson,

Director, Office of Pesticide Programs.

[FR Doc. 82–24696 Filed 9–14–82; 8:45 am]

BILLING CODE 6560–50–M

[OPP–30108C; PH–FRL 2204–8]

J. J. Mauget Co.; Approval of Application to Conditionally Register a Pesticide Product Containing a New Active Ingredient

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: EPA has conditionally approved the application by J. J. Mauget Co. to register the fungicide Fungisol, containing an active ingredient not included in any previously registered pesticide product pursuant to the provisions of section 3(c)(4) of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), as amended.

FOR FURTHER INFORMATION CONTACT: Henry Jacoby, Product Manager (PM) 21, Registration Division (TS–767C), Office of Pesticide Programs, Environmental Protection Agency, CM#2 Rm. 227, 1921 Jefferson Davis Highway, Arlington, VA 22202 (703–557–1900).

SUPPLEMENTARY INFORMATION: EPA issued a notice published in the **Federal Register** of February 27, 1976 (41 FR 8532) that J. J. Mauget Co., P.O. Box 3422, Burbank CA 91504, had submitted an application to register the fungicide Fungisol, containing the active ingredients [2-(2-ethoxyethoxy) ethyl-2-benzimidazole carbamate] at 1.7 percent and methyl 2-benzimidazolecarbamate at 0.3 percent, ingredients not included in any previously registered product.

The application was approved on July 26, 1982 for general use in pesticide formulation. The product was assigned EPA registration No. 7946–6.

A copy of the approved label and the list of data references used to support registration are available for public inspection in the office of the product manager. The data and other scientific information used to support registration, except for the material specifically protected by section 10 of the Federal Insecticide, Fungicide, and Rodenticide Act (FIRFRA), as amended (92 Stat. 819; 7 U.S.C. 136), will be available for public inspection in accordance with section 3(c)(2) of FIFRA within 30 days after registration date. Requests for data must be made in accordance with the provisions of the Freedom of Information Act and must be addressed to the Freedom of Information Office

(A–101), EPA, 401 M St., SW., Washington, DC 20460. Such requests should: (1) Identify the product name and registration number and (2) specify the data or information desired.

(Sec. 3(c)(2) FIFRA, as amended)

Dated: August 27, 1982.

Edwin L. Johnson,

Director, Office of Pesticide Programs.

[FR Doc. 82–24698 Filed 9–14–82; 8:45 am]

BILLING CODE 6560–50–M

[AEN–FRL–2207–1]

Inland Steel Co; Steel Industry Compliance Extension Act of 1981

AGENCY: Environmental Protection Agency.

ACTION: Notice of withdrawal of application.

SUMMARY: EPA announces that Inland Steel Company has withdrawn its application under the Steel Industry Compliance Extension Act of 1981.

DATE: Effective Agusut 5, 1982.

FOR FURTHER INFORMATION CONTACT: Michael S. Alushin, Acting Associate Enforcement Counsel for Air (EN–329), U.S. Environmental Protection Agency, 401 M Street SW., Washington, D.C. 20460. Phone (202) 382–2820.

SUPPLEMENTARY INFORMATION: On November 5, 1981, Inland Steel Company submitted to the Environmental Protection Agency an application under the Steel Industry Compliance Extension Act of 1981. Notices of receipt of the application was published at 46 FR 56650. On August 5, 1982 Inland Steel Company withdrew the application from further consideration by EPA. EPA, tehrefore, will not further process the application. The application and supplementry materials, excluding confidential information, are available for public inspection at the Central Docket Room, West Tower, EPA Headquarters, 401 M Street SW., Washington, D.C. Refer to Docket No. EN 81–16l.

Dated: August 25, 1982.

Robert M. Perry,

Associate Administrator for Legal and Enforcement Counsel.

[FR Doc. 82–25336 Filed 9–14–82; 8:45 am]

BILLING CODE 6560–50–M

FEDERAL HOME LOAN BANK BOARD

Investors Savings and Loan Association, Fairview Heights, Illinois; Notice of Appointment of Receiver

Notice is hereby given that, pursuant to the authority contained in section 406(c)(2) of the National Housing Act, as amended 12 U.S.C. 1729(c)(2) (1976)), the Federal Home Loan Bank Board appointed the Federal Savings and Loan Insurance Corporation as sole Receiver for Investors Savings and Loan Association, Fairview Heights, Illinois, effective September 9, 1982.

Dated: September 9, 1982.

J. J. Finn,

Secretary.

[FR Doc. 82–25337 Filed 9–14–82; 8:45 am]

BILLING CODE 6720–01–M

FEDERAL MARITIME COMMISSION

[Docket No. 82–39]

W. R. Grace & Co., Davison Chemical Division v. C. N. Lloyd Brasileiro; Filing of Complaint and Assignment

Notice is given that a complaint filed by W. R. Grace & Co., Davison Chemical Division against C. N. Lloyd Brasileiro was served September 7, 1982. Complainant alleges that respondent has subjected it to an overcharge of rates for ocean transportation.

This proceeding has been assigned to Administrative Law Judge John E. Cograve. Hearing in this matter, if any is held, shall commence within the time limitations prescribed in 46 CFR 502.61. The hearing shall include oral testimony and cross-examination in the discretion of the presiding officer only upon proper showing that there are genuine issues of material fact that cannot be resolved on the basis of sworn statements, affidavits, depositions, or other documents or that the nature of the matter in issue is such that an oral hearing and cross-examination are necessary for the development of an adequate record.

Francis C. Hurney,

Secretary.

[FR Doc. 82–25355 Filed 9–14–82; 8:45 am]

BILLING CODE 6730–01–M

[Docket No. 82–40]

W. R. Grace & Co., Davison Chemical Division v. Companhia Maritima Nacional; Filing of Complaint and Assignment

Notice is given that a complaint filed by W. R. Grace & Co., Davison Chemical Division against Companhia Maritima Nacional was served September 7, 1982. Complainant alleges that respondent has subjected it to an overcharge of rates for ocean transportation.

This proceeding has been assigned to Administrative Law Judge John E. Cograve. Hearing in this matter, if any is held, shall commence within the time limitations prescribed in 46 CFR 502.61. The hearing shall include oral testimony and cross-examination in the discretion of the presiding officer only upon proper showing that there are genuine issues of material fact that cannot be resolved on the basis of sworn statements, affidavits, depositions, or other documents or that the nature of the matter in issue is such that an oral hearing and cross-examination are necessary for the development of an adequate record.

Francis C. Hurney,

Secretary.

[FR Doc. 82–25357 Filed 9–14–82; 8:45 am]

BILLING CODE 6730–01–M

[Docket No. 82–41]

W. R. Grace & Co., Davison Chemical Division v. Delta Steamship Lines, Inc.; Filing of Complaint and Assignment

Notice is given that a complaint filed by W. R. Grace & Co., Davision Chemical Division v. Delta Steamship Lines, Inc. was served September 7, 1982. Complainant alleges that respondent has subjected it to an overcharge of rates for ocean transportation.

This proceeding has been assigned to Administrative Law Judge John E. Cograve. Hearing in this matter, if any is held, shall commence within the time limitations prescribed in 46 CFR 502.61. The hearing shall include oral testimony and cross-examination in the discretion of the presiding officer only upon proper showing that there are genuine issues of material fact that cannot be resolved on the basis of sworn statements, affidavits, depositions, or other documents or that the nature of the matter in issue is such that an oral hearing and cross-examination are necessary for the development of an adequate record.

Francis C. Hurney,

Secretary.

[FR Doc. 82–25354 Filed 9–14–82; 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): Royal Caribbean Cruise Line A/S and Royal Caribbean Cruise Line, Inc., c/o Royal Caribbean Cruise Line, 903 South America Way, MIami, Florida 33132.

Dated: September 10, 1982.

Francis C. Hurney,

Secretary.

[FR Doc. 82–25358 Filed 9–14–82; 8:45 am]

BILLING CODE 6730–01–M

DEPARTMENT OF THE INTERIOR

Bureau of Indian Affairs

Indians of California; Plan for the Use and Distribution of the Indians of California Judgment Funds in Dockets 342–70 and 343–70 Before the United States Court of Claims

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 July 16, 1981, in satisfaction of the award granted to the Hoopa Valley Tribe as the representative of the Indians of California in United States Court of Claims Dockets 342–70 and 343–70. The plan for the use and distribution of the funds was submitted to the Congress with a letter dated April 5, 1982, and was received (as recorded in the Congressional Record) by the Senate on April 4, 1982, and by the House of Representatives on April 14, 1982. The plan became effective on July 15, 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 July 16, 1981, in satisfaction of the award granted to the Hoopa Valley Tribe as the representative of the Indians of California in Dockets 342–70 and 343–70 before the United States Court of Claims, including all interest and investment income accrued, less attorney fees and litigation expenses, shall be distributed as herein provided.

The Secretary of the Interior (hereinafter 'Secretary') shall make a per capita distribution of the totality of the funds, in a sum as equal as possible, to each individual who was determined eligible to have his/her name included on the 'roll of persons of California Indian descent' prepared pursuant to the Act of September 21, 1968, 82 Stat. 860.

The per capita shares of living competent adults shall be paid directly to them. The per capita shares of legal incompetents shall be placed in individual Indian money (IIM) accounts and handled under 25 CFR 104.5. The per capita shares of deceased individual beneficiaries shall be determined and distributed in accordance with 43 CFR, Part 4, Subpart D. The per capita shares of minors shall be handled pursuant to 25 CFR 60.10 (a) and (b)(1) and 104.4.

None of the funds distributed per capita or held in trust under the provisions of this plan shall be subject to Federal or State income taxes, and the per capita payments shall not be considered as income or resources when determining the extent of eligibility for assistance under the Social Security Act."

Theodore C. Krenzke,

Acting Deputy Assistant Secretary—Indian Affairs.

[FR Doc. 82–25290 Filed 9–14–82; 8:45 am]

BILLING CODE 4310–02–M

Bureau of Land Management

[Serial No. I–7322]

Idaho; Partial Termination of Proposed Withdrawal and Reservation of Lands

September 2, 1982.

Notice of an application, serial number I–7322, for withdrawal and reservation of lands was posted in the Land Office records October 1, 1973. A notice was not published in the **Federal Register.** The applicant agency has cancelled its application insofar as it involved the lands described below. Therefore, pursuant to the regulations contained in 43 CFR, Subpart 2091, such lands will be at 9 a.m. on October 7, 1982, relieved of the segregative effect of the above mentioned application.

The lands involved in this notice of termination are all public lands ¼ mile on either side of the Clearwater River in the following Townships and Ranges:

Boise Meridian

T. 32 N., R. 4 E.,
T. 33 N., R. 4 E.
T. 32 N., R. 5 E.

The area described is in Idaho County.

William E. Ireland,

Chief, Lands Section.

[FR Doc. 82–25333 filed 9–14–82; 8:45 am]

BILLING CODE 4310–84–M

[Nev–047449]

Nevada; Proposed Continuation of Withdrawal; Correction

August 31, 1982.

In FR Doc. 81–33236, beginning on page 56664 in the issue for Wednesday, November 18, 1981, the following corrections are made:

1. Under T. 18 N., R. 68 E., it should read sec. 26, not 36.

2. On page 56665, first column, thirteenth line from the bottom should read T. 34 N., R. 34 E., not T. 44 N., R. 34 E. The correction published in the **Federal Register** issue of Tuesday, December 8, 1981, page 60065, first column, is incorrect.

3. Delete T. 40 N., R. 66 E., sec. 8, SE¼SE¼.

4. Add the following:

T. 39 N., R. 18 E.,
Sec. 1, Lot 24;
Sec. 12, NW¼SE¼.
T. 42 N., R. 18 E.,
Sec. 11, Lot 12.
T. 44 N., R. 18 E.,
Sec. 33, N½SE¼.
T. 33 N., R. 19 E.,
Sec. 30, Lots 3 and 4.
T. 45 N., R. 20 E.,
Sec. 10, SW¼SE¼.
T. 41 N., R. 21 E.,
Sec. 11, SW¼NE¼;
Sec. 13, Lot 4, SE¼NW¼.
T. 45 N., R. 21 E.,
Sec. 20, SW¼SW¼.
T. 41 N., R. 22 E.,
Sec. 9, NW¼NE¼;
Sec. 19, NW¼NE¼.

On page 56666 beginning with line 8, the paragraph should read, "The described parcels contain 15, 506.90 acres (80 in Carson City, 321.18 in Clark County, 562.29 in Elko County, 240.00 in Eureka County, 8,296.54 in Humboldt County, 1,180.19 in Lander County, 393.71 in Lincoln County, 40.00 in Mineral County, 1,707.20 in Nye County, 1,035.60 in Pershing County, 641.96 in Washoe County, and 1,008.23 in White Pine County)."

Wm. J. Malencik,

Chief, Division of Operations.

[FR Doc. 82–25334 Filed 9–14–82; 8:45 am]

BILLING CODE 4310–84–M

Fish and Wildlife Service
Availability of a Draft Environmental Impact Statement on the Proposed State-Federal Land Exchange Involving Portions of False Cape State Park and Back Bay National Wildlife Refuge Located in Virginia Beach, Virginia

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice.

SUMMARY: This Notice advises the public that the Draft Environmental Impact Statement on the Proposed State-Federal Land Exchange is available for public review. Comments and suggestions are requested.

The statement discusses various land exchange alternatives each of which would provide access through Back Bay National Wildlife Refuge to False Cape State Park.

DATES: Written comments are requested by November 12, 1982.

A public meeting wil be held in Richmond, Virginia on October 4, 1982 at 7:00 p.m. at the Commonwealth of Virginia Highway Department Building Auditorium (main entrance), 1221 Broad Street, Richmond, Virginia.

A second public meeting will be held on October 5, 1982 at 7:00 p.m. at the Virginia Beach Pavilion, 1000 19th Street, Virginia Beach, Virginia.

ADDRESS: Comments should be addressed to: Howard N. Larsen, Regional Director, U.S. Fish and Wildlife Service, One Gateway Center, Suite 700, Newton Corner, Massachusetts 02158.

FOR FURTHER INFORMATION CONTACT: Mr. Walter J. Quist, U.S. Fish and Wildlife Service, One Gateway Center, Suite 700, Newton Corner, Massachusetts 02158, (617) 965–5100, extension 300.

Individuals wishing a copy of the DEIS for review should immediately contact the above individual. Copies have been sent to all agencies, organizations and individuals who participated in the scoping process and to all others who requested copies. Copies will be available for examination at:

Back Bay National Wildlife Refuge Headquarters, Pembroke Office Park, Pembroke Two Building, Suite 218, Virginia Beach, Virginia 23462

Virginia Beach Public Library, Operations Building, Room 300, Courthouse Complex, Virginia Beach, Virginia 23456

Commonwealth of Virginia, Department of Conservation and Economic Development, Division of Parks, 1201 Washington Building, Capitol Square, Richmond, Virginia 23219.

SUPPLEMENTARY INFORMATION: The primary authors of this document are Walter J. Quist and Joseph E. Ware, Jr. The Fish and Wildlife Service (FWS), Department of the Interior, has prepared a Draft EIS on its proposal to effect an exchange on lands between the FWS and the State of Virginia.

This action is designed to provide limited access through the Back Bay National Wildlife Refuge to False Cape State Park. This access would enable the Virginia Division of Parks to establish beach facilities, expand hiking and bicycling trails and primitive campsites and provide environmental education programs.

The major alternatives under consideration that are analyzed and evaluated in the Draft EIS are:

1. Alternative I (No Action) would not involve any exchange of lands. Conditions would remain the same as present.

2. Alternative II is based on recommendations made by the Governor of Virginia's False Cape State Park Task Force. It would involve an access corridor to the park along existing refuge roads. In exchange for this corridor the FWS would acquire approximately 1,285 acres of existing park land. This alternative would limit access to the park to some type of mass transit system. Peak visitor use would not exceed 2,000 visitors per day.

3. Alternative III involves the construction of a road through a portion of the wildlife refuge to the False Cape State Park. The method of access would not be limited, however the intensity of public use would be controlled.

In exchange for this road corridor FWS would acquire approximately 1,250 acres of barrier island located at the southern end of False Cape State Park.

4. Alternative IV involves an exchange of land which would result in the State receiving a 108 acre parcel in the northern portion of the refuge in order to establish a beach facility. The State would also receive a strip of beach front extending from the above mentioned tract southward to the park. In exchange the Service would receive approximately 2,400 acres of marsh islands, wooded swamp, shrublands, forest and dunelands extending along Back Bay. This alternative would concentrate beach usage along the northern portion of the beach and allow the remaining portion of the park to be managed on a low intensity level. The refuge would manage these additional lands in keeping with present refuge objectives.

The U.S. Fish and Wildlife Service has developed these alternatives in cooperation with the Virginia Division of Parks. Public and agency input was also provided at scoping meetings held on July 12, 1982 in Richmond, Virginia and on July 13, 1982 in Virginia Beach, Virginia and through written comments.

Recommendations of the False Cape Task Force, which was assembled by the Governor of Virginia to study the access problem, have also been incorporated into the alternatives.

The legal authority for an exchange of Federal lands for State lands exists in the National Refuge System Act of 1966 (16 U.S.C. 668dd(a)(3)).

Dated September 7, 1982.

Howard N. Larsen,

Regional Director.

[FR Doc. 82-25179 Filed 9-14-82; 8:45 am]

BILLING CODE 4310-55-M

Availability of a Draft Environmental Impact Statement for Oil and Gas Exploration Within the Coastal Plain of the Arctic National Wildlife Refuge, Alaska

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice.

SUMMARY: This notice advises the public that the draft Environmental Impact Statement (EIS) for Oil and Gas Exploration within the Coastal Plain of the Arctic National Wildlife Refuge, Alaska, is available for public review; comments and suggestions are requested. The proposed action is to establish, by regulation, guidelines to govern geological and geophysical exploration for oil and gas within the coastal plain of the Arctic National Wildlife Refuge in a manner that avoids significant adverse effects on the fish and wildlife, their habitats, or the environment. The proposed regulations accompanying this EIS were developed in consideration of probable impacts and were designed to prevent significant adverse effects while permitting applicants to choose exploratory methods and techniques, as long as these exploratory activities satisfy the environmental protections contained in the regulations. Three other alternatives to the proposed regulations evaluated in this EIS include Regulations Authorizing Government-Prescribed Operations, Regulations Authorizing Applicant-Defined Operations, and No Action (no regulations).

DATES: Written Comments are requested by November 1, 1982. Public meetings will be held October 5, 1982, at the Village of Kaktovik, Alaska, and on October 7, 1982, at 1011 East Tudor Road, Anchorage, Alaska.

ADDRESS: Comments should be addressed to: Regional Director (Attention: Steve Wilson), U.S. Fish and Wildlife Service, 1011 East Tudor Road, Anchorage, Alaska 99503.

FOR FURTHER INFORMATION CONTACT: Further information may be obtained from: Mr. Steve Wilson, ANILCA 1002 EIS Team Leader, U.S. Fish and Wildlife Service, 1011 East Tudor Road, Anchorage, Alaska 99503, (907) 276–3800.

Individuals wishing copies of this EIS for review should contact the above individual immediately. Copies have been sent to representatives of the cooperating agencies, to those individuals who participated in the planning and scoping process, to agencies with jurisdiction by law and special expertise, and to those who have requested copies.

SUPPLEMENTARY INFORMATION: Mr. Steve Wilson is the EIS Team Leader for this Draft EIS. The Fish and Wildlife Service (FWS), Department of the Interior, has prepared this EIS on its proposal to establish, by regulation, initial guidelines to govern aerial and surface geological exploration or geophysical exploration, or both, for oil and gas within the coastal plain of the Arctic National Wildlife Refuge in a manner that avoids significant adverse effects on the fish and wildlife, their habitats, or the environment. The proposed regulations accompanying this EIS were developed in consideration of the probable impacts of such exploration and were designed to prevent significant adverse effects, while permitting applicants to choose the exploratory methods and techniques they wish to use as long as these exploratory activities satisfy the environmental protections contained in the regulations. Alternatives to these proposed regulations evaluated in this EIS include Regulations Authorizing Government-Prescribed Operations, Regulations Authorizing Applicant-Defined Operations, and No Action (no regulations).

The Alaska National Interest Lands Conservation Act (ANILCA) became law on December 2, 1980, 16 U.S.C. 3101–3233. Section 1002 of ANILCA (16 U.S.C. 3142) provides for a comprehensive and continuing inventory and assessment of the fish and wildlife of the coastal plain of the Arctic National Wildlife Refuge (ANWR) and an analysis of the impacts of oil and gas exploration, development, and production. Exploratory activities within the coastal plain are authorized in a manner that avoids significant adverse effects on fish and wildlife, their habitats, or the environment. By June 1982, the Secretary was to publish results of the continuing study of fish and wildlife resources, followed by revisions as new information is obtained. This baseline study was published April 1982. The Secretary of the Interior is required to establish, by regulation, initial guidelines to govern exploratory activities. The guidelines are to be based on the results of the initial baseline study and other information as may be available to the Secretary and are to be accompanied by an environmental impact statement (EIS) on exploratory activities.

In assessing the impacts of exploratory activities, four methods of seismic exploration are evaluated in detail, since seismic exploration provides the best methods allowed under the act to estimate the location and volume of oil and gas resources. These seismic methods are: (1) Winter operations using helicopters to transport equipment and personnel; (2) winter operations using ground-surface vehicles for transport (cat-trains); (3) summer operations using helicopters for transport; and (4) summer cat-train operations. Impacts of these seismic methods are largely determined by season of the year and mode of access. Some variation in impacts would result from the seismic technique used: (1) air shot (Poulter); (2) conventional (below-ground explosives); and (3) mechanical (vibration or vibroseis).

Too ensure that exploratory activities do not have significant adverse effect on fish and wildlife, their habitats, or the environment, the regulations must include but are not limited to:

- A prohibition on the carrying out of exploratory activities during caribou calving and immediate postcalving seasons or during any other period in which human activity may have adverse effects;
- Temporary or permanent closing of appropriate areas to such activity;
- Specifications of the support facilities, equipment, and related manpower that is appropriate in connection with exploratory activity; and
- Requirements that exploratory activities be coordinated in such a manner as to avoid unnecessary duplication.

After the initial regulations are promulgated and the EIS is finalized, any person, including the United States Geological Survey (USGS), may submit to the Secretary one or more exploration plans. An exploration plan must set forth such imformation as the Secretary may require in order to determine whether the plan is consistent with the regulations. As a condition of approval of any plan, the Secretary:

- May require that such modifications be made to the plan as he considers necessary and appropriate to make it consistent with the regulations;
- Shall require that all data and information (including processed, analyzed, and interpreted information) obtained as a result of carrying out the plan shall be submitted to the Secretary; and
- Shall make such data and information available to the public, except that any processed, analyzed, and interpreted data or information shall be held confidential by the Secretary for a period of not less than 2 years following any lease sale including the area from which the information was obtained.

Regardless of the regulatory option selected, there will be some degree of unavoidable adverse impact. Following is a summary of unavoidable impacts of the seismic survey methods.

Winter Access by Ground Vehicle. Some soil and vegetation disturbance will occur from this operation. The requirement for sufficient snow and/or a frostline as outlined by the proposed action may preclude portions of the study area from cat-trains if it is determined that such operations could result in significant, unavoidable adverse impacts. Although biological activity is at its lowest ebb during the winter, equipment noise and human activity can adversely affect animals present, especially polar bears and muskoxen. The proposed regulations will ensure temporary closure of sensitive areas, to prevent significant adverse impacts on wildlife or other resources. Wintering caribou are less likely to be seriously affected, although temporary shifts in animal distribution as a result of seismic activity may affect subsistence hunting. There is little difference in impacts from mechanical versus conventional surveys, although a slightly greater noise factor is possible with conventional survey because of more frequent aircraft flights. The air-shot method would have the greatest noise disturbance impact because of the above-ground detonation of explosives. On the other hand, ground-surface impacts would be less, as vehicles required to transport heavy vibrating machines or drill rigs would not be necessary.

Winter Access by Helicopter. Because this method does not require ground vehicles, surface impacts will be mnor. Some minor physical impacts could be associated with temporary camps. Noise

impacts would be greater than those for cat-train operations because of the numerous flights by low-flying helicopters. This impact will be minimized as a potential disturbance factor to muskoxen and denning polar bears by placing appropriate conditions and terms in special use permits and creating temporary closure areas. Disruption to other species, primarily caribou, and major scavangers and predators, such as foxes, wolverines, and wolves, would also be greater with this method than would a cat-train operation. Limitations of this method are the greater risk to human safety and the relatively short winter periods in which helicopter use would be practicable. Mechanical surveys could not be conducted due to the weight of the required equipment. Helicopter-transported seismic exploration would have the least adverse impact of the seismic methods.

Summer Access by Ground Vehicle. This is the most damaging seismic method and would result in significant unavoidable adverse impacts to esthetic, recreational, archeological, and wilderness values. Analysis of this method has led to the conclusion that the environmental impacts from the summer operation of ground vehicles would be unacceptable under the statutory standard of no significant adverse effect and, for this reason, the proposed regulations preclude a permittee from choosing this option.

Summer Access by Helicopter. Ground surface and aquatic impacts would be minor with a helicopter-transported summer seismic operation. Equipment sound and human activity could be potential disturbance factors to breeding, calving, and nesting activities. The proposed regulations prohibit exploratory activities from occuring in caribou calving and postcalving areas and prohibit the use of helicopters in areas used by nesting and staging waterbirds. There may be areas within the ANWR where summer activities would be acceptable, depending upon the numbers and species of wildlife likely to be encountered. As with a winter helicopter operation, surveys using the vibroseis technique would be infeasible due to the weight of equipment.

The U.S. Geological Survey, the Minerals Management Service, other federal and state agencies and the public have contributed to the planning and evaluation of the proposal and to the preparation of this EIS. The Notice of Intent to prepare the EIS was published in the July 14, 1981, **Federal Register.** Public meetings to identify issues and scope the EIS were held in Anchorage, Fairbanks, Kaktovik, Arctic Village and Barrow, Alaska; and Wahington, D.C. during August and September 1981.

All agencies and individuals are urged to provide comments and suggestions as soon as possible. All comments received by the above date will be considered in preparing the final EIS for this proposed action.

The proposed regulations to govern exploratory activity will be published in the **Federal Register** and undergo a separate and concurrent review. Comments provided on the draft EIS can also constitute comments on the proposed regulations, if identified as such.

Dated: September 2, 1982.

F. Eugene Hester,

Acting Director, U.S. Fish and Wildlife Service.

Approved:

Bruce Blanchard,

Director Environmental Project Review.

[FR Doc. 82-25302 Filed 9-14-82; 8:45 am]

BILLING CODE 4310-55-M

INTERSTATE COMMERCE COMMISSION

[Finance Docket No. 30002]

Atchison, Topeka & Santa Fe Railway Co.; Exemption of Abandonment Between Maryneal and San Angelo, TX

AGENCY: Interstate Commerce Commission.

ACTION: Notice of exemption.

SUMMARY: The Commission exempts from the requirement of prior approval under 49 U.S.C. 10903 *et seq.* the abandonment by the Atchison, Topeka & Santa Fe Railway Company of 53.4 miles of track between Milepost 658.6 near Maryneal, TX, and Milepost 712.0 near San Angelo, TX, subject to the standard labor protection.

DATES: This exemption will be effective on October 15, 1982. Petitions to stay the effectiveness of the decision must be filed by September 24, 1982, and petitions for reconsideration of the decision must be filed by October 5, 1982.

ADDRESSES: Send pleadings to: (1) Section of Finance, Room 5349 Interstate Commerce Commission, Washington, D.C. 20423. Petitioner's representative: Michael W. Blaszak, 80 East Jackson Blvd., Chicago, IL 60604.

Pleadings should refer to Finance Docket No. 30002.

FOR FURTHER INFORMATION CONTACT: Louis E. Gitomer, (202) 275-7245.

SUPPLEMENTARY INFORMATION: Additional information is contained in the Commission's decision. To purchase a copy of the full decision, contact T.S. InfoSystems, Inc., Room 2227, Washington, DC 20423, or call 289-4357 in the D.C. metropolitan area or toll free (800) 424-5403.

Agatha L. Mergenovich,

Secretary.

[FR Doc. 82-25279 Filed 9-14-82; 8:45 am]

BILLING CODE 7035-01-M

[Finance Docket No. 30007]

Illinois Central Gulf Railroad Co.; Abandonment of Exemption—Union, MS

AGENCY: Interstate Commerce Commission.

ACTION: Notice of exemption.

SUMMARY: The Interstate Commerce Commission exempts from the requirement of prior approval under 49 U.S.C. 10903-10906, the abandonment by the Illinois Central Gulf Railroad Company of 0.81 miles of line in Union, MS, subject to standard labor protection provisions.

DATES: This exemption shall be effective on October 15, 1982. Petitions to stay the effectiveness of this decision filed by September 27, 1982. Petitions for reconsideration must be filed by October 5, 1982.

ADDRESSES: Send pleadings to:

(1) Section of Finance, Room 5349 Interstate Commerce Commission Washington, D.C. 20423.

(2) Petitioner's representative: Richard M. Kamowski, Illinois Central Gulf Railroad Company, 233 N. Chicago Avenue, 26th Floor, Chicago, IL 60601.

Pleadings should refer to Finance Docket No. 30007.

FOR FURTHER INFORMATION CONTACT: Louis E. Gitomer (202) 275-7245.

SUPPLEMENTARY INFORMATION: Additional information is contained in the Commission's full decision. To purchase a copy of the decision, contact T.S. Infosystems, Inc., Room 2227, Washington, DC 20423, or call 289-4357 in the D.C. metropolitan area or toll free (800) 424-5403.

Decided: September 8, 1982.

By the Commission, Chairman Taylor, Vice Chairman Gilliam, Commissioners Sterrett, Andre, Simmons, and Gradison.

Agatha L. Mergenovich,

Secretary.

[FR Doc. 82-25278 Filed 9-14-82; 8:45 am]

BILLING CODE 7035-01-M

[Finance Docket No. 29985]

Louisville & Nashville Railroad Co. and Seaboard Coast Line Railroad Co.; Exemption—Purchase of Railroad Properties and Acquisition of Control Through Stock Ownership

AGENCY: Interstate Commerce Commission.

ACTION: Notice of exemption.

SUMMARY: The Commission exempts Louisville and Nashville Railroad Company and Seaboard Coast Line Railroad Company from the requirements of prior review and approval under 49 U.S.C. 11343 of their purchase from the Georgia Railroad and Banking Company of its railroad properties.

DATES: Exemption effective on October 15, 1982. Petitions for reconsideration must be filed by October 5, 1982. Petitions for stay must be filed by September 27, 1982.

ADDRESSES: Send pleadings to:

(1) Section of Finance, Room 5349, Interstate Commerce Commission, Washington, DC 20423

(2) Petitioner's representative: Charles M. Rosenberger, Louisville and Nashville Railroad Company and Seaboard Coast Line Railroad Company, 500 Water Street, Jacksonville, FL 32202

FOR FURTHER INFORMATION CONTACT: Louis E. Gitomer, (202) 275-7245.

SUPPLEMENTARY INFORMATION: For further information, see the decision served concurrently in Finance Docket No. 29985. To purchase a copy of the full decision, contact T. S. Info Systems, Inc., Room 2227, Interstate Commerce Commission, Washington, DC 20423, or call (202) 289-4357 in the D.C. Metropolitan area or (800) 424-5403 (toll-free) outside the D.C. area.

Decided: September 8, 1982.

By the Commission, Chairman Taylor, Vice Chairman Gilliam, Commissioners Sterrett, Andre, Simmons, and Gradison.

Agatha L. Mergenovich,

Secretary.

[FR Doc. 82-25282 Filed 9-14-82; 8:45 am]

BILLING CODE 7035-01-M

[Ex Parte No. 387 (Sub-254)]

Seaboard Coast Line Railroad Company Exemption for Contract Tariff ICC-SCL-C-0037 (Pulpboard and Woodpulp); Decision

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.

DATE: Protests are due within 15 days of publication in the **Federal Register.**

ADDRESS: 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. 10101(a) 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:

The grant neither shall be construed to mean that the Commission has approved the contract 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 this contract and to determine its lawfulness.

This action will not significantly affect the quality of the human environment or conservation of energy resources.

Authority: 49 U.S.C. 10505.

Decided: September 9, 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. 82-25277 Filed 9-14-82; 8:45 am]

BILLING CODE 7035-01-M

[Finance Docket No. 19922 (Sub-1)]

Toledo, Peoria & Western Railroad Co. et al. Trackage Rights, Acquisition, etc.; Petition for Reopening

AGENCY: Interstate Commerce Commission.

ACTION: Notice of filing of petition to reopen proceeding and to remove conditions.

SUMMARY: By decision served November 6, 1958, in Finance Docket No. 19922, *Toledo, Peoria & Western Railroad Company Et. Al. Trackage Rights, Acquisition, Etc.*, the Commission authorized the Toledo, Peoria & Western Railroad Company (TPW) and the Chicago and North Western Railroad Company (CNW): (1) to acquire trackage rights over each other's lines in Peoria, IL and (2) to operate a connecting track at Sommer, IL. As a condition to the grant of authority, the Commission required CNW and TPW to interchange all bridge traffic moving over certain routes with the Peoria and Pekin Union Railway Company (PPU).

By joint petition, filed July 1, 1982, CNW and TPW request reopening of this proceeding and the removal of the interchange condition. PPU has replied to this petition. Any other interested party may participate in this proceeding by submitting comments with the parties and the Commission at the addresses listed below.

DATES: Comments are due October 15, 1982.

ADDRESSES: Send comments to:

(1) Section of Finance, Room 5417, Interstate Commerce Commission, 12th and Constitution Avenue NW., Washington, DC 20423

(2) Parties' representatives:

(a) TPW representative: Dennis A. Kearns, 224 Michigan Avenue, Room 1203, Chicago, IL 60604

(b) CNW representative: Stuart F. Gassner, One Northwestern Center, Chicago, IL 60606

(c) PPU representative: Mark M. Levin, White & Case, 1747 Pennsylvania Avenue NW., Washington, DC 20006.

FOR FURTHER INFORMATION CONTACT: Louis E. Gitomer, (202) 275-7245.

Agatha L. Mergenovich,

Secretary.

[FR Doc. 82-25283 Filed 9-14-82; 8:45 am]

BILLING CODE 7035-01-M

Motor Carrier Temporary Authority Application

The following are notices of filing of applications for temporary authority

under Section 10928 of the Interstate Commerce Act and in accordance with the provisions of 49 CFR 1131.3. These rules provide that an original and two (2) copies of protests to an application may be filed with the Regional Office named in the **Federal Register** publication no later than the 15th calendar day after the date the notice of the filing of the application is published in the **Federal Register**. One copy of the protest must be served on the applicant, or its authorized representative, if any, and the protestant must certify that such service has been made. The protest must identify the operating authority upon which it is predicated, specifying the "MC" docket and "Sub" number and quoting the particular portion of authority upon which it relies. Also, the protestant shall specify the service it can and will provide and the amount and type of equipment it will make available for use in connection with the service contemplated by the TA application. The weight accorded a protest shall be governed by the completeness and pertinence of the protestant's information.

Except as otherwise specifically noted, each applicant states that there will be no significant effect on the quality of the human environment resulting from approval of its application.

A copy of the application is on file, and can be examined at the ICC Regional Office to which protests are to be transmitted.

Note.—All applications seek authority to operate as a common carrier over irregular routes except as otherwise noted.

Motor Carriers of Property

Notice No. F–200

The following applications were filed in Region 2. Send protests to: ICC, Fed. Res. Bank Bldg., 101 North 7th St. Rm. 620, Philadelphia, PA 19106.

MC 163622 (Sub-II–1TA), filed August 30, 1982. Applicant: GERALD N. CREASY, d.b.a. CREASY TRANSPORT, 911 Euclid Avenue, Lynchburg, VA 24501. Representative: William F. Quillian, III, 801 Court Street, Lynchburg, VA 24504. Contract irregular: *Enemas, Douches, Drugs and Toilet Preps* between Lynchburg on the one hand and on the other points in the states of: AL, AR, DE, FL, GA, LA, MD, MS, NJ, NC, OK, SC, TN, TX, VA and WV. for 270 days. An underlying eta seeks 120 days authority. Supporting shipper(s): C.F. Fleet Company, Inc., P.O. Box 11349, Lynchburg, VA 24506.

MC 140889 (Sub-II–31TA), filed September 2, 1982. Applicant: FIVE STAR TRUCKING, INC., 4720 Beidler Rd., Willoughby, OH 40094. Representative: Ignatius B. Trombetta, One Public Sq, Suite 1001, Cleveland, Oh 44113. Contract, irregular: *food products* from Santa Maria and Watsonville, CA and Portland and Gresham, OR to points in TX, OH, MI, IN, OK, AL and NY under a continauing contract(s) with Ramsey Laboratories, Inc of Cleveland, OH for 270 days. An underlying E.T.A. seeks 120 days authority. Shipper: Ramsey Laboratories, Inc., 2742 Grand Avenue, Cleveland, OH.

MC 163377 (Sub-II–1TA), filed August 30, 1982. Applicant: INDEPENDENT DRESSED BEEF COMPANY, INC., Fairmont Pike, Route 19 South, P.O. Box 2276, Morgantown, WV 26505. Representative: Edgar F. Heiskell, 242 Pleasant Street, Morgantown, WV 26505. *Meat, meat products, meat by-products* and *dairy products,* from Morgantown, WV on the one hand, and on the other to the WV points of Bridgeport, Elkins, Grafton, Harrisville, Mannington, Morgantown, Star City, West Milford and Weston having a prior or subsequent movement in interstate commerce for 270 days. An underlying eta seeks 120 days authority. Supporting shipper: John Morrell & Co., 208 South LaSalle St., Chicago, IL 60604.

MC 65580 (Sub-II–1TA), filed August 30, 1982. Applicant: MUSHROOM TRANSPORTATION COMPANY, INC., 845 East Hunting Park Ave., Philadelphia, PA 19124. Representative: Michael C. Arnold (same as applicant). *Contract Irregular: General commodities (except classes A & B explosives)* between points in the states of CT, DE, MA, MD, NJ, NY, OH, PA, RI, VA, WV and DC under continuing contract(s) with E.I. Du Pont De Nemours & Co., Inc., Wilmington, DE for 270 days. An underlying eta seeks 120 days authority. Supporting shipper(s): E.I. Du Pont De Nemours & Company, Inc., 1007 Market St., Wilmington, DE 19898.

MC 163619 (Sub-II–1TA), filed August 30, 1982. Applicant: Executive Air Courier, Inc., d.b.a. National Expedited Data Express, 7610 Bristol Pike, Levittown, PA 19057. Representative: Wilmer B. Hill, Suite 366, 1030 Fifteenth Street, N.W., Washington, D.C. 20005 Contract Irregular: *Materials, equipment, supplies and products used or produced by or in the data processing industry,* between points in the U.S. (except AK and HI), under continuing contract(s) with Shared Medical Systems Corporation, King of Prussia, PA for 270 days. Supporting shipper(s): Shared Medical Systems Corporation, P.O. Box 675, King of Prussia, PA 19406.

MC 163618 (Sub-II–1TA), filed August 30, 1982. Applicant: Safeway Cab Company, 812 Bland Street, Bluefield, WV 24701. Representative: J. W. Barringer, P.O. Box 1459, Bluefield, WV 24701. Contract Irregular: *railroad workers* between Mercer County, West Virginia, and Wise, Buchanan, Lee, Dickinson, Tazewell, Bland, and Roanoke Counties, Virginia, and McDowell, Wyoming, Mingo, and Logan Counties, West Virginia, under continuing contract with Norfolk and Western Railway Company, 800 Princeton Avenue, Bluefield, West Virginia 24701. for 180 days. An underlying eta seeks 120 days authority. Supporting shipper(s): Norfolk & Western Railway Co., 800 Princeton Ave., Bluefield, WV 24701.

MC 163682 (Sub-II–1TA), filed September 2, 1982. Applicant: SELECT TRUCKING CO., INC., 714 Mancell Road, Strafford, PA 19087. Representative: Russell R. Sage, Suite 304, Overlook Building, 6121 Lincolnia Road, Alexandria, VA 22312. *Contract Irregular: General commodities, except household goods and Classes A & B explosives,* between Balmat, NY on the one hand, and on the other points in the United States under a continuing contract(s) with R.T. Vanderbilt Company, Inc., and its wholly-owned subsidiary, Gouverneur Talc Company, Inc. for 270 days. An underlying eta seeks 120 days authority. Supporting shipper(s): R.T. Vanderbilt Company, Inc., Gouverneur Talc Company, Inc., 30 Winfield St., Norwalk, CT 06855.

MC 163378 (Sub-II–1TA), filed August 31, 1982. Applicant: STREAMSIDE FARMS TRUCKING, INC. R.D. #5, Box 390. Sinking Spring, PA 19608. Applicant's Representative: Lee E. High, P.O. Box 8551, Reading, PA 19603. *Processed Materials,* from points in PA, IL, AZ, CA and WA to points in the United States, excluding AK and HI for 270 days. An underlying ETA seeks 120 days authority. Supporting shippers: 1. Heyco Metals, Inc., RD #9160, Stinson Drive, Reading, PA 19605; 2. Lusk Metals Corporation, 2141 South Industrial Park Ave., Tempe, AZ 85282; 3. Jaw Manufacturing Company, P.O. Box 213, Reading, PA 19603; and 4. Penn Precision Rolling Mills LTD., P.O. Box 6244, Wyomissing, PA 19610.

MC 146769 (Sub-II–1TA), filed August 26, 1982. Applicant: STEWART CORPORATION, d.b.a. TRANSINTERNATIONAL SYSTEM, P.O. Box 109, Worthington OH 43085. Representatives: Richard H. Brandon, 220 W Bridge St., P.O. Box 97, Dublin OH 43017. *Metal products,* between

points in Richland County, OH and Starke County, IN, on the one hand, and, on the other, points in IN, MD, NJ, NY, PA and VA for 270 days. Supporting shipper: Copperweld Corporation, Steel Tubing Division, Shelby OH 44875.

The following applications were filed in Region 3. Send protests to: ICC, Regional Authority Center, Room 300, 1776 Peachtree Street NE., Atlanta, GA 30309.

MC 163381 (Sub-3–1–TA), filed September 2, 1982. Applicant: ALABAMA FOOD SERVICE, INC. 315 North McDonough Street, Montgomery, AL 36197. Representative: Cecil M. Tucker (same address as applicant). *Petroleum and related products and chemicals and related products,* from AL to points in the US (except HI and AK), and *Food and related products,* from points in the US to AL, GA and FL. Supporting shipper(s): There are six statements in support of this application which may be examined at the ICC Regional Office, Atlanta, GA.

MC 142626 (Sub-3–2TA), filed September 3, 1982. Applicant: GINGHAM LEASING CORPORATION, Highway 45 North, Box 466, Booneville, MS 38829. Representative: John Davidson, Box 1456, 111 Highway 72 West, Corinth, MS 38834. *Elevators and conveyors or parts thereof and iron and steel articles* between Lee County, MS on the one hand, and on the other, points in the US (excluding AK and HI). Supporting shipper: F.M.C. Corporation, Hwy. 45 N., Tupelo, MS 38801.

MC 149433 (Sub-3–6TA), filed September 1, 1982. Applicant: CARL O. BOONE, SR., d.b.a. BOONE EXPRESS, P.O. Box 114, Smyrna, TN 37167. Representative: Carl O. Boone, Sr. (same address as applicant). *New and used automotive parts, supplies and accessories; also articles associated with the exhibition of motion pictures and amusement parks, such as paper products, candy, pastries and food related items,* between points in TN, AL and GA. Supporting shipper(s): Automobile Electric Service Co., Inc., 1008 Charlotte Ave., Nashville, TN 37203; Parts Distributors Warehouse, P.O. Box 22089, Nashville, TN 37202; Blivins Popcorn Company, 3098 Charlotte Ave., Nashville, TN 37209; United Warehouse, 515 Jackson St., Nashville, TN 37219.

Note.—Applicant intends to tack with authority held by it in MC–149433 and related subs and to interline at Evansville, IN and Nashville, TN.

MC 152950 (Sub-3–2TA), filed September 1, 1982. Applicant: CENTURY TRANSPORTATION CORPORATION, P.O. Box 207, Columbus, MS 39701. Representative: Lloyd R. Pate (same as applicant). *Contract Carrier;* irregular route; *General Commodities (except Classes A & B Explosives; Household Goods; and Commodities in Bulk)* between MS, on the one hand, and, on the other, points in the U.S. (except AK and HI), under continuing contracts(s) with: Ben C. Williams Bakery Service, Dallas, TX; Sugar Services Corporation, Memphis, TN; Humboldt Products Corporation, Columbus, MS; Johnston-Tombigbee Manufacturing Company, Columbus, MS; Magnolia Wholesale Foods, Inc., Clinton, MS; Trojan Enterprises, Columbus, MS; Supporting shippers. There are 6 statements in support of this application which may be examined at the ICC Regional Office, Atlanta, GA.

MC 163635 (Sub-3–1TA), filed September 2, 1982. Applicant: GLENN R. BROOKS, d.b.a. HAMMERDOWN EXPRESS, Box 635, Lincolnton, NC 28092. Representative: Dwight L. Koerber, Jr., 110 North Second Street, P.O. Box 1320, Clearfield, PA 16830. *Contract carrier;* irregular routes; *Furniture and materials and supplies used in the manufacture of furniture,* between Lincolnton, NC, on the one hand, and, on the other, points in the US in and east of ND, SD, NB, KS, OK, and TX, under a continuing contract with Burris Industries, Inc., of Lincolnton, NC. Supporting shippers: Burris Industries, Inc., Burris Blvd., Lincolnton, NC 28092.

MC 161217 (Sub-3–1TA), filed September 2, 1982. Applicant: JOWIN EXPRESS, INC., 1498 Highway 13 North, Columbia, MS 39429. Representative: Fred W. Johnson, Jr., P.O. Box 1291, Jackson, MS 39205. (1) *Post poles and pilings* from Forrest County, MS to points in AL, AR, IA, IL, IN, KY, KS, LA, MI, MO, NE, OH, OK, TN and WI; and (2) *brick and tile* from Plant City, FL to points in AL, AZ, AR, CA, CO, GA, ID, IL, IN, KS, KY, LA, MI, MS, MO, MT, NV, NM, NC, OH, OK, OR, SC, TN, TX, UT, VA, WA, WV and WY. Supporting shipper: Davis Timber Company, Inc., P.O. Box 1591, Hattiesburg, MS 30401; Florida Brick & Clay Co., Inc., P.O. Box 1656, Plant City, FL 33666.

MC 612171 (Sub-3–3TA), filed September 1, 1982. Applicant: T F EXPRESS, INC., P.O. Box 114, Lawrenceburg, TN 38464. Representative: Roland M. Lowell, 5th Floor, 501 Union St., Nashville, TN 37219. *Common,* Regular Routes, *General Commodities (except Classes A & B explosives, household goods and commodities in bulk)* between Lawrence and Giles Counties, TN, on the one hand, and, on the other, points in the US (except AK and HI). Applicant intends to interline at Atlanta, GA; Birmingham, AL; Chicago, IL; Louisville, KY; Cincinnati, OH; Nashville, TN; Memphis, TN; St. Louis, MO; Dallas, TX; Charlotte, NC; Knoxville, TN; Chattanooga, TN; Denver, CO; Kansas City, KA; Oklahoma City, OK; Shreveport, LA; Jacksonville, FL; and Pittsburgh, PA. There are 17 statements of support which can be examined at the ICC Regional Office at Atlanta, GA.

MC 161217 (Sub-3–3TA), filed September 1, 1982. Applicant: T F EXPRESS, INC., P.O. Box 114, Lawrenceburg, TN 38464. Representative: Roland M. Lowell, 5th Floor, 501 Union St., Nashville, TN 37219. *Common,* Regular Routes, *General Commodities (except Classes A & B explosives, household goods and commodities in bulk)* between Lawrence and Giles Counties, TN, on the one hand, and, on the other, points in the US (except AK and HI). Applicant intends to interline at Atlanta, GA; Birmingham, AL; Chicago, IL; Louisville, KY; Cincinnati, OH; Nashville, TN; Memphis, TN; St. Louis, MO; Dallas, TX; Charlotte, NC; Knoxville, TN; Chattanooga, TN; Denver, CO; Kansas City, KA; Oklahoma City, OK; Shreveport, LA; Jacksonville, FL; and Pittsburgh, PA. There are 17 statements of support which can be examined at the ICC Regional Office at Atlanta, GA.

MC 149133 (Sub-3–24TA), filed September 1, 1982. Applicant: DIST/TRANS MULTI-SERVICES, INC., d/b/a TAHWHEELALEN EXPRESS, INC., 1333 Nevada Boulevard, P.O. Box 7191, Charlotte, NC 28217. Representative: Charles L. Garrison (same as above). *Contract carrier:* irregular routes *steel scaffolds and recreational outdoor bleachers* between WI, IL, IN, MD, CA, MI, MN, OH, TX, NY, GA, NC, TN, PA and MO, under a continuing contract or contracts with Safway Steel Products, of Milwaukee, WI 53201. Supporting shipper: Safway Steel Products, 6228 W. State Street, Milwaukee, WI 53201.

The Following applications were filed in Region 4. Send protests to: ICC, Complaint and Authority Branch, P.O. Box 2980, Chicago, IL 60604.

MC 15735 (Sub-4–28TA), filed August 30, 1982. Applicant: ALLIED VAN LINES, INC., 2120 S. 25th Avenue, Broadview, IL 60153. Representative: Richard V. Merrill, P.O. Box 4403, Chicago, IL 60680. Contract irregular: *Household goods* between points in the U.S. (except AK and HI) under a continuing contract with Quaker Oats Co. Supporting Shipper: Quaker Oats Co., Chicago, IL.

MC 87113 (Sub-4–2TA), filed August 31, 1982. Applicant: WHEATON VAN LINES, INC., 8010 Castleton Rd., Indianapolis, IN 46250. Representative: Alan F. Wohlstetter, Denning & Wohlstetter, 1700 K St., NW., Washington, DC 20006. *Contract* irregular *household goods,* between points in the U.S. (except AK and HI) under continuing contract(s) with The Stroh Company, Inc., and subsidiaries, of Milwaukee, WI, for 270 days. Supporting shipper: The Stroh Company, Inc. of Milwaukee, WI. An underlying ETA seeks 120 days.

MC 105159 (Sub-4–20TA), filed August 31, 1982. Applicant: KNUDSEN TRUCKING, INC., 1320 West Main St., Red Wing, MN 55066. Representative: Stephen F. Grinnell, 1600 TCF Tower, 121 South 8th St., Minneapolis, MN 55402, (612) 333–1341. *Plastic foam insulation* from Pevely, MO and Hanging Rock, OH to points in IA, IL, MN, ND, SD, and WI. An underlying ETA seeks 120 days authority. Supporting shippers: Edward Sales, Minneapolis, MN 55426, Brock-White, Golden Valley, MN 55426, White, Inc., New Hope, MN 55428.

MC 123194 (Sub-4–5TA), filed September 2, 1982. Applicant: ENTERPRISE TRUCK LINE, INC., 7336 West 15th Ave., Gary, IN 46406. Representative: Bernard J. Kompare, 180 N. Michigan Ave., Suite 1700, Chicago, IL 60601. *Such commodities as are dealt in or used by manufacturers or distributors of paper and paper products* between points in IA, IL, IN, KY, MI, MN, MO, OH, TN and WI. An underlying ETA seeks 120 day authority. Supporting shippers: Paper and Pulp Fibers, Inc., 1400 E. Touhy Avenue, Des Plaines, IL 60067, and Akers Packaging Service, Inc., 1037 E. 87th Street, Chicago, IL 60619.

MC 145804 (Sub-4–3TA), filed August 30, 1982. Applicant: WILLIAM T. SMEESTER, d.b.a. UPPER PENINSULA SPECIAL DELIVERY SERVICE, Box 207, Iron Mountain, MI 49801. Representative: William T. Smeester (same as applicant). *General Commodities* (except commodities the transportation of which because of size or weight requires the use of special equipment, and those transported in tank vehicles) between points in Ontonagon, Houghton, Baraga, Iron, Marquette, Dickinson, Alger, Delta and Menominee Counties, MI on the one hand, and on the other, points in IL, IN, MI, MN, OH and WI. An underlying ETA seeks 90 day authority. There are 18 statements of support attached.

MC 163469 (Sub-4–2TA), filed September 1, 1982. Applicant: IHC TRANSPORTATION P.O. Box 3147, Terre Haute, IN 47803. Representative: Owen B. Katzman, 1828 L Street, N.W., Suite 1111, Washington, DC 20036. *Contract*—Irregular: *Water soluble coatings for printing,* from Indianapolis, IN, Somerset, NJ, and Racine, WI, to Los Angeles and San Francisco, CA, Elizabeth, NJ, and New York, NY. Supporting Shipper: Calchem Corporation, 356 Veteran's Highway, Commack, NY 11725.

MC 163469 (Sub-4–1TA), filed September 1, 1982. Applicant: IHC TRANSPORTATION P.O. Box 3147, Terre Haute, IN 47803. Representative: Owen B. Katzman, 1828 L Street, N.W., Suite 1111, Washington, DC 20036. *Contract*—Irregular: *Records, record players, component parts, and equipment, materials, and supplies used in the manufacture and distribution thereof,* (1) between Allentown, PA, Shelbyville, IN, Sunnyvale and Sun Valley, CA, Phoenix, AZ, Council Bluffs, IA, and Hauppage, Holbrook and Ronkonkoma, NY, and (2) between the points in (1) above, on the one hand, and on the other, points in the US (except AK and HI), under a continuing contract with Electrosound Group, Inc. Supporting shipper: Electrosound Group, Inc., 725 Broadway Avenue, Holbrook, NY 11741.

MC 163632 (Sub-4–1TA), filed August 30, 1982. Applicant: STATE MATERIALS SERVICE, INC., 520 No. Webster, Jacksonville, IL 62650. Representative: Robert T. Lawley, 300 Reisch Bldg., Springfield, IL 62701. *Contract,* irregular: *Liquid aqua ammonia, in bulk,* from Meredosia, IL to St. Louis and St. Louis County, MO. Restricted to traffic moving under continuing contract with MBD, Inc. An underlying E/T/A seeks 120 days authority. Supporting shipper: MBD, Inc., P.O. Box 666, Jacksonville, IL 62650.

MC 163633 (Sub-4–1TA), filed August 30, 1982. Applicant: JAMES C. BEMIS, d.b.a. JIM BEMIS TRUCKING, R.R. No. 4, Milaca, MN 56353. Representative: James C. Bemis, R.R. No. 4, Milaca, MN 56353. *Contract,* irregular: *Lumber and Wood Products,* between points in Mille Lacs, County, MN and points in IA, IL, MN, and WI, under a continuing contract with Foreston Dimesions Co., Inc. of Foreston, MN. Supporting shipper: Woodcraft Industries, Inc., Foreston, MN, 56330.

MC 163655 (Sub-4–1TA), filed August 31, 1982. Applicant: T.S.R. INC., Suite 225, 26400 Van Born Road, Dearborn Heights, MI 48146. Representative: P. L. Graham, Sr., c/o Redd & Grey—P.O. Box 37, Lincoln Park, MI 48146. *Canned* and *packaged foods, household supplies, beverages, store supplies,* and such *items* as are dealt in by *grocery stores; health* and *beauty aid items, toiletries,* and *general merchandise* as dealt in by *drug* or *variety stores. Cleaning* and *scouring compounds, soaps* and *materials* and *supplies,* used in the manufacture thereof between points in Ingham, Macomb, Oakland, and Wayne Counties, MI, Lucas and Stark Counties, OH, and Chicago, IL, and Commercial Zone, on one hand, and on the other, points and places in: AL, AR, AZ, CA, CO, FL, GA, IA, IL, IN, KS, KY, LA, MA, MD, MI, MN, MO, MS, NC, NE, NJ, NY, OH, OR, PA, SC, TN, TX, VA, WA, WI, and WV. An underlying ETA seeks 90 days authority. Restricted to two (2) Supporting shippers: Allied Supermarkets, Inc., 8711 Meadowdale, Detroit, MI 48228 and The Korex Company, 5000 West Pontiac Trail, Wixom, MI 48096.

MC 163656 (Sub-4–1TA), filed August 31, 1982. Applicant: NEWAY-LOVE DISTRIBUTION, INC., 533 E. Beltline SE., Grand Rapids, MI 49506. Representative: Edward Malinzak, 900 Old Kent Bldg., Grand Rapids, MI 49503. *Floor covering (except in bulk, Classes A and B Explosives, and household goods as defined by the Commission)* between points in the States of GA, SC, NC, PA, TN, AL, MI, IL, IN, WI and OH. Supporting shippers: Galaxy Carpet Mills, Inc., P.O. Box 800, Chatsworth, GA 30705; S & S Mills, Inc., P.O. Box 1067, Dalton, GA 30720; Cutlass Carpets, Inc., P.O. Box 1511, Dalton, GA 30720.

MC 163685 (Sub-4–1TA), filed September 2, 1982. Applicant: GLACIER TRANSIT & STORAGE, INC., 128 Appleton, Box 355, Plymouth, WI 53073. Representative: James A. Spiegel, Attorney, Olde Towne Office Park, 6333 Odana Road, Madison, WI 53719. *Food and related products* between Plymouth, WI, on the one hand, and, on the other, points in IL. Supporting shipper: Plymouth Cold Storage, Inc., 128 Appleton Street, Plymouth, WI 53073.

MC 163691 (Sub-4–1TA), filed September 2, 1982. Applicant: R. G. DOBBS, P.O. Box 408, Loraine, IL 62349. Representative: Kenneth F. Dudley, P.O. Box 279, Ottumwa, IA 52501. Phone: 515–682–8154. *Contract,* irregular: *Lime and Limestone Products,* in bulk, in hopper trailers, Between St. Genevieve, MO, on the one, hand, and, on the other, points in Keokuk, Iowa and Pryor, Oklahoma. Supporting Shipper: Midwest Carbide Corporation, P.O. Box 607, Keokuk, Iowa 52632.

MC 146605 (Sub-4–1TA), filed September 1, 1982. Applicant: EVENSON BROS. INC., P.O. Box 328,

Pelican Rapids, MN 56572. Representative: THOMAS J. VAN OSDEL, 15 Broadway, Suite 502, Fargo, ND 58102. *Contract,* Irregular: *Coal, charcoal, briquets, cement and related products,* between points in the states of MN, ND, MT, SD and WI. Supporting shipper: Concrete Sectional Culvert Co., 1010 1st Ave. No., Fargo, MD 58107.

The following applications were filed in region 5. Send Protests to: Consumer Assistance Center, Interstate Commerce Commission, Post Office Box 17150, Fort Worth, TX 76102.

MC 16334 (Sub-5–8TA), filed September 2, 1982. Applicant: DEBRICK TRUCK LINE COMPANY, P.O. Box 421, Paola, KS 66071. Representative: John T. Pruitt, 9832 Connell, Overland Park, KS 66212. *Chemicals and Related Products* between points in Johnson County, KS, Cook County, IL, Butler County, PA, and Jefferson Parish, LA, on the one hand, and, on the other, points in the U.S. Supporting shipper: The Industrial Fumigant Co., Olathe, KS 66061.

MC 16334 (Sub-5–9TA), filed September 3, 1982. Applicant: DEBRICK TRUCK LINE COMPANY, P.O. Box 421, Paola, KS 66071. Representative: John T. Pruitt, 9832 Connell, Overland Park, KS 66212. *Granulated Slag* between points in Linn County, KS, on the one hand, and, on the other, points in AR, CO, IL, IA, KY, MN, NE, ND, SD, TN, TX, and WY. Supporting shipper: H. B. Reed Co., Inc., Highland, IN.

MC 144603 (Sub-5–47TA), filed September 3, 1982. Applicant: F.M.S. Transportation, Inc., 2564 Harley Drive, Maryland Heights, MO 63043. Representative: Laura C. Berry (same address as applicant). *Such commodities as are dealt in by manufacturers and distributors of rug cleaning equipment, cleaning chemicals and compounds (except commodities in bulk)* between Fresno, CA and Columbia, MD, and their respective commercial zones, on the one hand, and, on the other, points in the United States (except AK & HI), for the account of Rug Doctor, Inc. and its licensees. Supporting shipper: Rug Doctor, Inc., 997 Horan Dr., Fenton, MO 63026.

MC 151753 (Sub-5–8TA), filed September 2, 1982. Applicant: M.W. Cycle Hauler, Inc., 11909 Santa Fe Drive, Lenexa, KS 66215. Representative: Clyde N. Christey, Ks Credit Union Bldg., 1010 Tyler, Suite 110L, Topeka, KS 66612. *Paper,* Between the Commercial zone of Newton Falls, NY, on the one hand, and points and places in the US (except AK & HI) on the other. Supporting shipper: Newton Falls Paper Mill, Inc., Newton Falls, KS 67501.

MC 152447 (Sub-5–2TA), filed September 3, 1982. Applicant: Opies' Milk Haulers, Inc., Highway 52 West, P.O. Box 89, Eldon, MO 65026. Representative: James C. Swearengen, P.O. Box 456, Jefferson City, MO 65102. *Commodities in bulk (except petroleum, natural gas, and their products, and chemcials and related products)* between the facilities of Inland Products, Inc., at or near Carthage, Jasper County, MO, on the one hand, and, on the other hand, all points in the U.S. (except AK and HI). Supporting shipper: Inland Products, Inc., Carthage, MO 64836.

MC 152803 (Sub-5–1TA), filed September 2, 1982. Applicant: SAM LATTNER DISTRIBUTING COMPANY, P.O. Box 351, Groesbeck, TX 76642. Representative: A. William Brackett, 623 S. Henderson, 2nd Floor, Fort Worth, TX 76104. *Flat unprinted paper on pallets,* From Dallas County, TX, to points in TX. Supporting shipper: Flatt Stationers, Inc., Mexia, TX 76667.

MC 154656 (Sub-5–2TA), filed September 1, 1982. Applicant: Roy Hamill dba Hamill Trucking, Rt. 2 Box 164, Pryor, OK 74361. Representative: Roy Hamill (same as above). Contract; Irregular; *Solvents, paper and paper products* between Pryor, OK and Flagstaff, AZ. Supporting shipper: Orchids Paper Products, La Palma, CA.

MC 157179 (Sub-5–3TA), filed September 1, 1982. Applicant: WARRIOR TRANSPORT, INC., 1085 East N.W. Highway, Grapevine, TX 76051. Representative: Harry F. Horak, Suite 115, 5001 Brentwood Stair Rd., Forth Worth, TX 76112. Contract; irregular: *general commodities (except classes A and B explosives, and commodities in bulk), having a prior or subsequent movement by water,* between points in the U.S. (except AK and HI), under continuing contract(s) with Dallas CFS Terminal, Inc. Supporting shipper: Dallas CFS Terminal, Inc., 12330 East N.W. Highway, Dallas, TX 75218.

MC 158959 (Sub-5–4TA), filed September 3, 1982. Applicant: RINEHART'S MEAT PROCESSING, INC., SR 2, Hollywood Hills, Branson, MO 65616. Representative: Charles J. Fain, Attorney at Law, 333 Madison Street, Jefferson City, MO 65101. Contract; Irregular. *Food and related products* between the facilities of George A. Hormel & Co. at Fremont, NE and facilities of Rinehart's Meat Processing, Inc. in Branson, MO; and also from the facilities of George A. Hormel & Co. at Springfield and Rockville, MO to facilities of George A. Hormel & Co. at Fremont, NE; and from the facilities of Rinehart's Meat Processing, Inc., Branson, MO to all points in NE, OK, MO, KS and AR. Supporting shipper: George A. Hormel & Co., P.O. Box 800, Austin, MN 55912.

MC 160575 (Sub-5–1TA), filed September 3, 1982. Applicant: COLUMBIA TRUCKING COMPANY, P.O. Box 1246, Columbia, MO 65201. Representative: Richard S. Brownlee, III, 235 East High St., Suite 210, Jefferson City, MO 65102. *Heavy machinery, metal products and building materials (returned and rejected shipments)* between points in MO and KS on the one hand, and, on the other, points in the US. Supporting Shippers: Case Power & Equipment, Columbia, MO, Associated Electric Coop, Inc., Huntsville, MO, N.E. Pierson Construction CO., Columbia, MO, Central Electric Co. Fulton, MO.

MC 163331 (Sub-5–1TA), filed September 3, 1982. Applicant: Gary, Kenneth & Oren La Rue, d.b.a. Country Boy Trucking, 1326 South Crutcher, Springdale, AR 72764. Representative: George Spencer, 7 North Block, Fayetteville, Ar 72701. *Malt Beverages and Empty Beverage Containers* between Jefferson County, CO, on the one hand, and, on the other, points in LA and MS. Supporting shipper: Adolph Coors Company, Golden, CO 80401.

MC 163503 (Sub-5–3TA), filed September 1, 1982. Applicant: NATIONAL FREIGHT SYSTEM, INC., 2305 Oak Lane #115, Grand Prairie, TX. 75051. Representative: Stephen W. Mitchell, 2305 Oak Lane #115, Grand Prairie, TX. 75051. *Malt Beverages, Equipment and Supplies used in the Manufacture and Distribution of Malt Beverages* between NC, TN and TX on the one hand, and, on the other, points in CO, GA, IA, IL, IN, LA, MI, MN, ND, OH, SD and WI. Supporting shipper(s): 17.

MC 163606 (Sub-5–2TA), filed September 3, 1982. Applicant: LARRY D. STEFFENSMEIER, d.b.a. Steffy's Trucking, 1609 Elk St., Schuyler, NE 68661. Representative: Bradford E. Kistler, P.O. Box 82028, Lincoln, NE 68501. *Hides and skins,* from points in NE and IA to points in TX. Supporting shipper: Chilewich Corporation, 120 Wall St., New York City, NY 10005.

MC 163664 (Sub-5–1TA), filed September 1, 1982. Applicant: L & L TRUCK BROKER, INC., P.O. Box 924, Stuttgart, AR 72160. Representative: Dwight L. Koerber, Jr., P.O. Box 1320, Clearfield, PA 16830. *Foodstuffs* from Stuttgart, AR to points in MO, KS, OK, TX, LA, MS, AL, GA, MD, FL, NC, SC, TN, VA, DE, PA, NJ, and KY. Supporting

shipper: ARKANSAS RICE GROWERS COOPERATIVE ASSOCIATION, d.b.a. RICELAND FOODS, P.O. Box 927, Stuttgart, AR 72160.

MC 163702 (Sub-5–1TA), filed September 3, 1982. Applicant: Larry R. Behmer, d.b.a. Raven Express, 517 14th Street, West Des Moines, IA 50265. Representative: Richard D. Howe, 600 Hubbell Building, Des Moines, IA 50309. *Salt,* between Toole County, UT, on the one hand, and, on the other, West Des Moines, IA. Supporting shipper: Culligan Water Conditioning, Inc., 111 7th Street, West Des Moines, IA 50265.

MC 61396 (Sub-5–25TA), filed September 7, 1982. Applicant: HERMAN BROS., INC., P.O. Box 189, Omaha, NE 68101. Representative: Jack L. Schultz, P.O. Box 82028, Lincoln, NE 68501. *Fly ash,* from Wausau, WI, Alma, WI, and Lansing, IA to Minneapolis, MN and its commercial zone. Supporting shipper: Apple Valley Redi Mix, Minneapolis, MN.

MC 64189 (Sub-5–3TA), filed September 7, 1982. Applicant: TOPLIFF TRUCK LINES, INC., 746 N. Santa Fe, Salina, KS 67401. Representative: Charles J. Kimball, 1600 Sherman, #665, Denver, CO 80203. (A) *Common,* Regular; *general commodities, except explosives, hazardous waste, commodities in bulk, and household goods,* (1) between Wichita, KS and Junction City, KS, serving all intermediate points; from Wichita, KS over U.S. I–135 and U.S. Hwy 81 to Salina, KS; then over U.S. Hwy 40 to its junction with U.S. Hwy 77, then over U.S. Hwy 77 to its junction with KS Hwy 18, then over KS Hwy 18 to Junction City, and return over the same route; and (2) between Wichita, KS and Great Bend, KS, serving all intermediate points and the off route point of Hoisington, KS, from Wichita, KS over U.S. I–135 and U.S. Hwy 81 to its junction with U.S. Hwy 56, then over U.S. Hwy 56 to Great Bend, KS, and return over the same route. Applicant requests authority to tack and interline. Supporting shippers: 7.

MC 101186 (Sub-5–2TA), filed September 7, 1982. Applicant: ARLEDGE TRANSFER, INC., P.O. Box 157, Burlington, IA 52001. Representative: William L. Fairbank, 2400 Financial Center, Des Moines, IA 50309. *General commodities (except classes A and B explosives, household goods and commodities in bulk)* Between Covington, TN, on the one hand, and, on the other, points in IL, IA, MI and WI. Supporting shipper: Clopay Corporation, 101 East 4th, Cincinnati, OH 45202.

MC 106400 (Sub-5–8TA), filed September 7, 1982. Applicant: KAW TRANSPORT COMPANY, P.O. Box 8525, Sugar Creek, MO 64054. Representative: John E. Jandera, P.O. Box 1979, Topeka, KS 66601. Contract Carrier, *Chemicals,* Between points in the U.S., except AK and HI, under a continuing contract with Reichhold Chemicals, Inc.; Kansas City, KS 66115.

MC 114028 (Sub-5–9TA), filed September 7, 1982. Applicant: ROWLEY INTERSTATE TRANSPORTATION CO., INC., 2010 Kerper Blvd., Dubuque, IA 52001. Representative: Carl E. Munson, P.O. Box 796, Dubuque, IA 52001. Contract; Irregular. *Paper and paper products,* from Courtland and Mobile, AL; Newark, DE; Bastrop, Francesville and Springhill, LA; Rumford and Westbrook, ME; points in MI; Brainerd, Cloquet and International Falls, MN; Moss Point, MS; Glens Falls and Oswego, NY; Canton and Riegelwood, NC; Hamilton, OH; Portland, OR, points in PA; Pasadena, TX; Franklin, VA; and points in WI, to points in IL, IN, IA and Milwaukee, WI, under continuing contract(s) with Bradner Smith & Company, Inc., Chicago, IL 60606. Supporting shipper: Bradner Smith & Company, 333 South Desplaines Street, Chicago, IL 60606.

MC 159864 (Sub-5–2TA), filed September 7, 1982. Applicant: UNITED STAR CORP., 19 Main Street, St. Peters, MO 63376. Representative: W. R. England III, P.O. Box 456, Jefferson City, MO 65102. *Paper and related products* between points in St. Charles County, MO on the one hand, and, on the other, points in the U.S. (Except AK and HI) under continuing contract(s) with Texas Stock Tab Co. of Dallas, TX. Supporting shipper: Texas Stock Tab Co., 7 St. Croix Lane, St. Charles, MO 63301.

MC 163372 (Sub-5–3), filed September 7, 1982. Applicant: TRANS-CARRIERS, INC., 1013 Camelot Cove, West Memphis, AR 72301. Representative: R. Connor Wiggins, Jr., 100 N. Main Bldg., Suite 909, Memphis, TN 38103. *Such commodities as are sold by retail, wholesale, and discount stores* between facilities utilized by B and E Sales Company, Inc. at or near Jessup, MD; Memphis, TN; City of Industry, CA; and Westland, MI, on the one hand, and, on the other, points in the US (except AK and HI). Supporting shipper: B and E Sales Company, Inc., 12630 Greenfield Road, Detroit, MI 48227.

MC 163713 (Sub-5–1TA), filed September 7, 1982. Applicant: OSCAR J. & YADIRA CIENFUEGOS, 323 Jefferson, Pharr, TX 78577. Representative: William D. Lynch, 1003 West 6th Street, Austin, TX 78703. *Brick, when moving in foreign commerce,* from points in the counties of Starr, Hidalgo and Cameron, TX to points in the counties of Montgomery and Harris, TX. Suppporting shipper: Rudy's Brick Supply, 2930 Lincoln Dr., Houston, TX 77038.

Agatha L. Mergenovich,

Secretary.

[FR Doc. 82–25284 Filed 9–14–82; 8:45 am]

BILLING CODE 7035–01–M

[No. GT–53–80, etc.]

Motor Carriers: Invalidation of Operating Authorities

In the matter of No. GT–53–80, et al., The Andrews Moving & Storage Co., Government Traffic Application (Cleveland, OH); No. GT–393–80, et al., Academy Van and Storage Co., Inc., (Norfolk, VA); No. GT–558–80, et al., Nilson Van & Storage (Columbia, SC); No. GT–790–80, et al., Ideal Way Movers, Inc., (Marlboro, NJ); No. GT–850–80, Y. Higa Enterprises, LTD [1]; No. GT–1015–80, et al., James M. Barnett and Mrs. James M. Barnett, A Government Traffic Application (Kosciusko, Ms); No. GT–1031–80, Fidelity Storage Corp. Government Traffic Application (Alexandria, VA).

AGENCY: Interstate Commerce Commission.

ACTION: Notice of invalidation of operating authorities issued under Ex Parte No. MC–107, *Transportation of Government Traffic,* 129 M.C.C. 623 (1978), 131 M.C.C. 845 (1979), after the July 1, 1980 effective date of the Motor Carrier Act of 1980 effective date of the Motor Carrier Act of 1980, where the application was successfully challenged in court.

SUMMARY: In Ex Parte No. MC–107, *Transportation of Government Traffic, supra,* the Commission adopted a simplified licensing procedure for carriers desiring to transport property for the United States Government. Inasmuch as a general finding of public convenience and necessity was established as a result of the rulemaking proceeding, the sole remaining issue concerned the applicant's fitness and capacity to perform the service proposed and to conform to the Interstate Commerce Act and the requirements of the Commission. Thus, the result was, in essence, the adoption of a "fitness only" licensing procedure for such carrier-applicants. On July 1, 1980, the Motor Carrier Act of 1980 became effective. The new Act prohibited the Commission from making a finding relating to public convenience and necessity based upon general findings developed in rulemaking

proceedings. The Commission, thereupon, on July 2, 1980, repealed MC–107 and stated that it would no longer accept applications under the formerly adopted rules. However, the Commission determined that it would continue to process applications for Government traffic authority filed at the Commission prior to July 1, 1980. On August 10, 1982, the United States Court of Appeals for the District of Columbia Circuit entered a decision in No. 80–1990, *Aero Mayflower Transit Co., Inc. et al.* v. *ICC et al.*, reversing and remanding the Commission's issuance of operating authorities to 136 carriers whose applications were challenged as in violation of Section 5(b)(3) of the Motor Carrier Act of 1980. On the other hand, the court affirmed the Commission's findings of fitness pertaining to the involved applicants.

Accordingly, the Commission has determined that the operating authorities issued to these 136 carriers under MC–107 will be void when the mandate of the court issues. (The MC–107 certificate of Y. Higa Enterprises issued in GT–850–80 will also be void since that administrative proceeding was timely appealed in court in *Imperial Van Lines, Inc. et al.* v. *ICC*, U.S.C.A. D.C. Cir. No. 81–1306).

However, because the involved applicants have previously been found fit, they already meet the "fitness only" standards applicable to applicants for authority to transport certain property for the United States Government under 49 U.S.C. 10922(b)(4)(C) and 10922(b)(9). Thus, upon notice to the Commission of a desire by the affected carriers to receive certificates of public convenience and necessity reflecting such operating rights, the Commission will expeditiously process the issuance of these fitness-only certificates. However, those affected carriers desiring the full scope of operating authority formerly held under their "letter notices" issued under MC–107 must meet the dual standards under Section 10922(b)(1), establishing that the service proposed will serve a useful public purpose, responsive to a public demand or need as well as the applicant's fitness. Thus, in those instances, the carriers must file applications using ICC Form OP 1 (1/81).

FOR FURTHER INFORMATION CONTACT: Marion E. Guyton, 202–275–7965; Andrew L. Lyon, 202–275–7805; Howell Sporn, 202–275–7691.

SUPPLEMENTARY INFORMATION: The purpose of this notice is to comply with the court's decision in *Aero Mayflower Transit Company, et al.* v. *Interstate Commerce Commission and the United States of America*, U.S.C.A., D.C. Cir., No. 80–1990, et al.,[1] by announcing to the public that upon the effective date of the court's order (the date the mandate issues), the 137 "letter notices" issued under MC–107 that were challenged in court on jurisdictional grounds will be void.[2] Further, this notice announces to the public the Commission's determination that those carriers affected by this decision may request certificates of public convenience and necessity reflecting operating authority (1) for the "transportation for the United States Government of property other than used household goods, hazardous or secret materials, and sensitive weapons and munitions" (49 U.S.C. 10922(b)(4)(C) and (2) "transportation for the United States Government of used household goods which transportation is incidental to a pack and crate service on behalf of the Department of Defense" (49 U.S.C. 10922(b)(9)). Because operating authority to perform the above transportation services for the United States Government are "fitness only" applications which may be issued upon a showing of fitness, and inasmuch as those carriers affected by this decision have already established their fitness, carriers desiring this authority should write a letter to the Commission requesting it. Certificates granting this authority will then be issued promptly. Carriers should list their former GT numbers at the top of their letters to the Commission. They should also include a statement that they have remained in compliance with the Commission's insurance and DOT's safety requirements. Their letters should be addressed to the Office of Proceedings, Section of Operating Rights, Room 2339, ICC, Washington, D.C. 20423.

Affected carriers desiring to retain the comprehensive scope of operating authority which they formerly held under MC–107 must file regular applications for operating authority under 49 U.S.C. 10922(b)(1), seeking authority to perform the transportation services not within the scope of the "fitness only" standards.[3] These applicants must use ICC Form OP 1 (1/81), and should list their former GT numbers at the top of their applications. The applications will be processed as expeditiously as possible. Applicants should note that under Section 10922(b)(1), they must show fitness and establish "on the basis of evidence presented by persons supporting the issuance of the certificate, that the service proposed will serve a useful public purpose, responsive to a public demand or need." Evidence of any prior operations conducted under MC–107, (or shipper support), as well as the fitness finding affirmed in Aero), can be used to make the showing required by the 1980 Act. Moreover, carriers may file applications for temporary authority to continue operations after the court's mandate issues.

Decided: September 3, 1982.

By the Commission, Chairman Taylor, Vice Chairman Gilliam, Commissioners Sterrett, Andre, Simmons, and Gradison. Commissioner Gradison did not participate.

Agatha L. Mergenovich,

Secretary.

[FR Doc. 82-25276 Filed 9-14-82; 8:45 am]

BILLING CODE 7035-01-M

[1] In the subject case, petitioners, which are nationwide household goods carriers, challenged the grant of authority in 160 applications for Government traffic authority under MC–107 that they beleived relied on MC–107 after the Motor Carrier Act of 1980 forbade such reliance on a general finding of public need in a rulemaking. Although the court held that 245 of the applications were properly granted because the "certificates" were issued prior to enactment of the Motor Carrier Act, it found that "the 136 certificates issued after the July 1, 1980 effective date were issued in violation of the policy established by Congress in Section 5(b)(3) of the Act. However, the court affirmed the Commission's findings that the applicants had established their fitness.

[2] This decision affects the Commission's decision in No. GT–85–80, *Y. Higa Enterprises*, as well as the case involved in the *Aero* litigation. This is so because the *Higa* case was appealed in *Imperial Van Lines Inc. et al.* v. *ICC*, U.S.C.A. D.C. Cir. No. 81–1306, where proceedings have been in abeyance pending a disposition of *Aero*.

[3] For example, any applicant needing authority to transport household goods traffic (other than "pack and crate" operations), must file a regular application for such authority.

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.

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 Team 3, (202) 275–5223.

Volume No. OP3–139

Decided: September 8, 1982.

By the Commission, Review Board Number 2, Members Carleton, Williams and Ewing.

FF–614, filed August 27, 1982. Applicant: CROSSROADS FORWARDING CORP., P.O. Box 693, 16 West Palisade Ave., Englewood, NJ 07631. Representative: Robert J. Gallagher, 1000 Connecticut Ave., N.W., Suite 1200, Washington, DC 20036, (202) 785–0024. As a *freight forwarder,* 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).

W–1354, filed July 30, 1982, previously published in the **Federal Register** issue of August 25, 1982. Applicant: CONTI CARRIERS AND TERMINALS, Division of CONTINENTAL GRAIN COMPANY, 2700 North River Rd., Des Plaines, IL 60018. Representative: Andrew P. Goldstein, 1200 Eighteenth St., NW., Washington, DC 20036, (202) 331–8277. Transporting by water, by non-self propelled vessels or barges, or tows, in the transportation of *paper, paper articles and woodpulp,* from Calhoun, TN, to ports and points on the Tennessee, Mississippi, Ohio, Missouri, Illinois, Cumberland, and Arkansas Rivers, and the Gulf Intracoastal Waterway between St. Mark, FL, and Brownsville, TX, under continuing contract(s) with Bowater Southern Paper.

Note.—This republication indicates that the applicant is a contract carrier.

MC 1515 (Sub-314), filed August 24, 1982. Applicant: GREYHOUND LINES, INC., Greyhound Tower, Phoenix, AZ 85077. Representative: L. J. Celmins (same address as applicant), (602) 248–2942. Over *regular routes,* transporting *passengers and their baggage and express and newspapers,* in the same vehicle with passengers, (1) between Bowling Green, OH and Napoleon, OH: From Bowling Green over unnumbered Hwy to junction U.S. Hwy 6, then over U.S. Hwy 6 to Napoleon; (2) between Norwalk, OH and Cleveland, OH: From Norwalk over U.S. Hwy 20 to Elyria, OH, then over OH Hwy 57 to junction OH Hwy 2 (also designated Interstate Hwy 90), then over OH Hwy 2 to Cleveland; (3) between Youngstown, OH and Wheeling, WV: From Youngstown over Interstate Hwy 680 to junction OH Hwy 11, then over OH Hwy 11 to East Liverpool, OH, then over OH Hwy 7 to Bridgeport, OH, then over Interstate Hwy 70 to Wheeling, WV; (4) between Washington Court House, OH and Chillicothe, OH: From Washington Court House over OH Hwy 41 to junction U.S. Hwy 35, then over U.S. Hwy 35 to Chillicothe; and (5) between the junction of U.S. Hwy 68 and OH Hwy 125 near Georgetown, OH and Ripley, OH, over U.S. Hwy 68, serving all intermediate points in connection with routes (1) through (5) and return over the same route. Applicant intends to tack this authority to its existing authority in MC–1515.

MC 38984 (Sub-2), filed August 13, 1982. Applicant: JUNG TRUCK SERVICES, INC., R.R. 2, Box 354, Mascoutah, IL 62258. Representative: Donald X. Jung (same address as applicant), (618) 566–8553. Transporting (1) *pulp, paper and related products,* between points in the U.S. (except AK and HI), under continuing contract(s) with Hexagon Honeycomb Corp. of Trenton, IL and (2) *metal products,* between points in the U.S. (except AK and HI), under continuing contract(s) with Century Castings Co. and Empire Stove Co. both of Belleville, IL.

MC 60325 (Sub-14), filed August 23, 1982. Applicant: JEFFERSON LINE, INC., 1206 Currie Ave., Minneapolis, MN 55403. Representative: Richard D. Howe, 600 Hubbell Bldg., Des Moines, IA 50309, (515) 244–2329. Over *regular routes,* transporting *passengers and their baggage* and *express and newspapers,* in the same vehicle with passengers, between Cedar Rapids and Davenport, IA; from Cedar Rapids over Interstate Hwy 380 to junction U.S. Hwy 30, then over U.S. Hwy 30 to junction IA Hwy 38, then over IA Hwy 38 to junction IA Hwy 130, and then over IA Hwy 130 to Davenport, and return over the same route, serving all intermediate points.

MC 109865 (Sub-21), filed August 25, 1982. Applicant: VALLEY TRANSPORTATION, INC., d.b.a. CONNECTICUT AMERICAN CHARTERS, 516 Oxford Road, Oxford, CT 06483. Representative: L. C. Major, Jr., Suite 304, Overlook Building, 6121 Lincolnia Road, P.O. Box 11278, Alexandria, VA 22312, (703) 750–1112. Transporting *passengers and their baggage,* in the same vehicle with passengers, in charter and special operations, between points in CT, on the one hand, and, on the other, points in the U.S. (except HI).

MC 118034 (Sub-24), filed August 24, 1982. Applicant: MILLER TRUCK LINE, INC., 901 N.E. 28th St., Fort Worth, TX 76106. Representative: Nona Mae Miller, 101 Rivercrest, Fort Worth, TX 76107 (817) 624–2143. 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 123325 (Sub-12), filed August 27, 1982. Applicant: WRIGHT MOTOR LINES, INC., 135 Thompson St., Asheville, NC 28803. Representative: S. P. Wright (same address as applicant) (704) 253–1001. Transporting *fertilizer and fertilizer ingredients,* between points in the NC, SC, GA, VA, and TN.

MC 127955 (Sub-14), filed August 23, 1982. Applicant: RICCI TRANSPORTATION CO., INC., Odessa Ave. & Aloe St., Pomona, NJ 08240. Representative: Joseph A. Keating, Jr., 121 S. Main St., Taylor, PA 18517 (717) 344–8030. Transporting *Paper, plastic and rubber products and related products,* between points in Putnam and Clay Counties, FL, on the one hand, and, on the other, points in the U.S. (except AK and HI).

MC 133984 (Sub-6), filed August 27, 1982. Applicant: POPPERT TRUCKING, INC., 401 Covina Lane, City of Industry, CA 91744. Representative: Richard C. Celio, 2300 Camino Del Sol, Fullerton, CA 92633 (717) 738–3889. Transporting *general commodities* (except classes A and B explosives and household goods), between points in the U.S. in and west of LA, AR, MO, IA, and MN.

MC 143165 (Sub-8), filed August 25, 1982. Applicant: MC CLELLAND LUMBER TRANSPORTS, P.O. Box 73, Cuba, MO 65453. Representative: Charles W. McClelland (same address as applicant) (314) 885–3332. Transporting *such commodities* as are dealt in or used by manufacturers and distributors of plastics, between points in the U.S. (except AK and HI), under continuing contract(s) with Can-Tex Industries of Rolla, MO.

MC 146024 (Sub-6), filed August 27, 1982. Applicant: G&R PETROLEUM, INC. 253 S.W. 4th Ave., Ontario, OR 97914. Representative: Timothy R. Stivers, P.O. Box 1576, Boise, ID 83701 (208) 343–3071. Transporting *general commodities* (except classes A and B explosives and household goods), between points in the U.S. (except AK and HI), under continuing contract(s) with (1) Agro-West, Inc., of Wilder, ID, (2) Loomix Incorporated, of Nyssa, OR, and (3) Union Fertilizer, Inc., of Nampa, ID.

MC 151324 (Sub-4), filed August 30, 1982. Applicant: ALAN H. KRAMER, 29911 Aubrey Lane, Eugene, OR 97402. Representative: Lawrence V. Smart, Jr., 419 N.W. 23rd Ave., Portland, OR 97210 (503) 226–3755. Transporting *pulp, paper and related products,* between points in OR, WA, CA, and NV.

MC 155394 (Sub-1), filed August 27, 1982. Applicant: LANIER EXPRESS INCORPORATED 2775 Highway 54 West, Fayetteville GA 30214. Representative: Edward J. Kiley, 1730 M St., N.W., Washington, DC 20036 (404) 622–4416. Transporting *general commodities* (except classes A and B explosives, household goods, and commodities in bulk), between Atlanta, GA, on the one hand, and, on the other, points in LA and MS.

Note.—Applicant intends to tack this authority with its existing authority.

MC 157294, filed August 23, 1982. Applicant: GREENACRES BUILDING SUPPLIES, INC., P.O. Box 11852, Spokane, WA 99211. Representative: Garno D. Dishneau (same address as applicant) (509) 535–4190. Transporting *general commodities* (except classes A and B explosives, household goods and commodities in bulk), between points in AZ, CA, CO, ID, MT, NM, NV, OR, TX, UT, WA and WY.

MC 157485, filed August 24, 1982. Applicant: EVES TRUCKING CO., INC., Rt. 724, R.D.1, Phoenixville, PA 19460. Representative: Raymond A. Thistle, Jr., Five Cottman Ct., Homestead Rd. & Cottman St., Jenkintown, PA 19046 (215) 576–0131. Transporting *petroleum and petroleum products,* between points in the U.S. (except AK and HI), under continuing contract(s) with Atlantic Richfield Co. of Los Angeles, CA.

MC 162265 (Sub-1), filed August 26, 1982. Applicant: SMITH BROTHERS TRUCKING, INC., North Third St., P.O. Box H, Bardstown, KY 40004. Representative: Robert H. Kinker, 314 West Main St., P.O. Box 464, Frankfort, KY 40602, (502) 223–8244. Transporting *general commodities* (except classes A and B explosives, household goods, and commodities in bulk), between points in the U.S. in and east of MN, IA, NE, KS, OK, and TX.

MC 162575 (Sub-1), filed August 24, 1982. Applicant: ALLSTATE CARRIERS, INC., 2520 Berner Street, Fort Worth, TX 76111. Representative: Marshall Kragen, 1919 Pennsylvania Avenue, NW, Suite 300, Washington, DC 20006, (202) 466–3778. Transporting *general commodities* (except household goods, classes A and B explosives, and commodities in bulk), between points in the U.S., under continuing contract(s) with Swift Independent Packing Company of Chicago, IL.

MC 162575 (Sub-2), filed August 24, 1982. Applicant: ALLSTATE CARRIERS, INC., 2520 Berner Street, Fort Worth, TX 76111. Representative: Marshall Kragen, 1919 Pennsylvania Avenue, NW, Suite 300, Washington, DC 20006, (202) 466–3778. Transporting *general commodities* (except household goods, classes A and B explosives, and commodities in bulk), between points in the U.S., under continuing contract(s) with McCrory Corp. of York, PA.

MC 163074, filed August 25, 1982. Applicant: DONALD J. VAN WIEREN, d.b.a. D & J TRUCKING, 226 Golden Rain St., N.W., Demotte, IN 46310. Representative: Richard D. Howe, 600 Hubbell Bldg., Des Moines, IA 50309, (515) 244–2329. Transporting (1) *asphalt building and roofing materials,* between points in Cook County, IL, on the one hand, and, on the other, points in IN, IA, MI, OH, and WI, and (2) *liquid asphalt,* between points in Lake and Cass Counties, IN, and Hammond, IN, on the one hand, and, on the other, points in Cook County, IL.

MC 163504, filed August 23, 1982. Applicant: CUMBERLAND MILLS TRANSPORT, INC., Duvall Road (P.O. Box 189), Chatsworth, GA 30705. Representative: Archie B. Culbreth, 2200 Century Parkway, Suite 570, Atlanta, GA 30345, (404) 321–1765. Transporting (1) *textile mill products,* between points in Hampden County, MA, and GA, on the one hand, and, on the other, points in the U.S. (except AK and HI), (2) *chemicals and related products,* (A) between Chicago, IL, Kansas City, KS, and points in Simpson County, KY, Champaign County, OH, and Greene County, MO, on the one hand, and, on the other, points in the U.S. (except AK and HI), (B) between La Mirada, CA, on the one hand, and, on the other, points in AZ, CO, ID, MT, NV, NM, OR, WA, and WY, (C) between Atlanta, GA, Jacksonville, FL and Memphis, TN, on the one hand, and, on the other, points in AL, FL, GA, KY, LA, MS, NC, SC, TN, and VA, and (D) between points in Anderson County, SC, Orange County, NC, and Screven County, GA, on the one hand, and, on the other, points in Murray and Whitfield Counties, GA, (3) *lumber and wood products, clay, concrete, glass or stone products, roofing and roofing materials, shingles,* and *nails,* between points in Trumbull County, OH, on the one hand, and, on the other, those points in the U.S. in and east of MN, IA, MO, AR, and LA, (4) *mops, brooms, air fresheners, and body nutrients,* (A) between Chicago, IL, and points in Simpson County, KY, Champaign County, OH, and Greene County, MO, on the one hand, and, on the other, points in the U.S. (except AK and HI), (B) between La Mirada, CA, on the one hand, and, on the other, points in AZ, CO, ID, MT, NV, NM, OR, WA, and WY, and (C) between Atlanta, GA, Jacksonville, FL, and Memphis, TN, on the one hand, and, on the other, points in AL, FL, GA, KY, LA, MS, NC, SC, TN, and VA, and (5) *motorized and electric lift trucks,* between Baltimore, MD, Northbrook, IL, and Horsham, PA, on the one hand, and, on the other, Knoxville, TN.

MC 163514, filed August 23, 1982. Applicant: FULLONE'S TRUCKING & PRODUCE, INC., 10717 Mile Block Rd., North Collins, NY 14111. Representative: Philip B. Cochran, 50 W. Broad St.,

Columbus, OH 43215, (614) 464–4103. Transporting (1) *commodities in bulk* between points in NY, on the one hand, and, on the other, points in AL, FL, MD, NC, NJ, OH and PA, (2) *coal*, between points in CT, MA, ME, NH, NJ, NY, OH, PA, RI, and VT, and (3) *such commodities* as are dealt in or used by retail farm supply stores, between points in NY, on the one hand, and, on the other, points in MD, NJ and PA.

MC 163515, filed August 23, 1982. Applicant: CUSTOM CAR CARRIERS, a Division of TRISECT TRANSPORTATION, INC., 1825 Westholme #4, Los Angeles, CA 90025. Representative: Frederick J. Coffman, P.O. Box 1433, 1834 N. Kelly Way, Upland, CA 91786, (714) 981–9981. Transporting *antique, classic, customized, modified, and restored motor vehicles and repli-cars*, between points in the U.S. (except AK and HI).

MC 163524, filed August 23, 1982. Applicant: STERLING BREEN TRUCKING, INC., 490 Sterling Heights, Chehalis, WA 98532. Representative: David W. Wiley, 1100 Norton Bldg., Seattle, WA 98104, (206) 622–4067. Transporting *ores and minerals*, between ports of entry on the International Boundary line between the U.S. and Canada, on the one hand, and, on the other, points in WA, under continuing contract(s) with Washington Irrigation & Development Co. of Centralia, WA.

MC 163534, filed August 23, 1982. Applicant: TIM HINTERMEISTER, d.b.a. HINTERMEISTER TRUCKING, R.F.D. #1, Malcom, IA 50157. Representative: Donald L. Stern, Suite 610, 7171 Mercy Road, Omaha, NE 68106, (402) 392–1220. Transporting (1) *hides*, between points in Colfax, Dodge and Douglas Counties, NE and Tama, Clay, Pottawattamie and Webster Counties, IA, on the one hand, and, on the other, points in the U.S., and (2) *iron and steel articles*, between Chicago, IL, on the one hand, and, on the other, points in the U.S.

MC 163535, filed August 23, 1982. Applicant: McQUAY-NORRIS, INC., 2320 Marconi Ave., St. Louis, MO 63110. Representative: Robert W. Linnenbom (same address as applicant), (314) 776–4800. Transporting *such commodities* as are dealt in or used by manufacturers and distributors of automobile parts, accessories, and supplies, between points in the U.S. (except AK and HI).

MC 163545, filed August 24, 1982. Applicant: K–W LEASING, INC., P.O. Box 2455, 102 Enterprise St., West Monroe, LA 71291. Representative: David Rogers (same address as applicant), (318) 387–1753. Transporting *Mercer commodities*, between points in LA, on the one hand, and, on the other, points in the U.S. (except AK and HI).

MC 163554, filed August 25, 1982. Applicant: B.W. BROWN TRUCKING COMPANY, INC., 233 Woodlawn Rd., Berlin, CT 06037. Representative: John E. Fay, 663 Maple Ave., Hartford, CT 06114, (203) 525–2661. Transporting *general commodities* (except classes A and B explosives, household goods, and commodities in bulk), between points in CT, on the one hand, and, on the other, points in MA, RI, and NY.

MC 163555, filed August 25, 1982. Applicant: BRINKE TRANSPORTATION CORPORATION, 11858 N.W. 36th Ave., Miami, FL 33168. Representative: Ronald N. Cobert, 1730 M St., N.W., Suite 501, Washington, DC 20036, (202) 296–2900. 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). Condition: Issuance of a certificate in this proceeding is subject to prior or coincidental cancellation of Permit No. FF–478 and subs thereunder, at applicant's written request.

MC 163584, filed August 27, 1982. Applicant: VILLAGE SQUARE TRAVEL, INC., 433 W. Bagley Rd., Berea, OH 44017. Representative: Mary Ellen Posze (same address as applicant), (216) 243–7600. As a *broker*, at Berea, OH, in arranging for the transportation of *passengers and their baggage*, by motor vehicle, in charter operations, between points in the U.S. (except AK and HI).

MC 163594, filed August 27, 1982. Applicant: CARL J. BECKER, 108 Nicholson St., Wilkes-Barre, PA 18702. Representative: Carl J. Becker (same address as applicant), (717) 824–4132. Transporting *metal products*, between points in the U.S. (except AK and HI), under continuing contract(s) with Bridon American Corporation, of Wilkes-Barre, PA.

MC 163605, filed August 30, 1982. Applicant: COURY CARTAGE, INC., 2275 Wycliff, St. Paul, MN 55114. Representative: William L. Libby, 5200 Willson Road, Suite 307, Edina, MN 55424, (612) 927–8855. Transporting *general commodities* (except classes A and B explosives, household goods and commodities in bulk), between points in Anoka, Hennepin, Ramsey, Washington, Carver, Scott and Dakota Counties, MN, on the one hand, on the other, points in the U.S. (except AK and HI).

MC 163625, filed August 30, 1982. Applicant: McMANUS BROS., INC., R.R. 1, Highway 67, Commanche, IA 52730. Representative: William L. Fairbank, 2400 Financial Center, Des Moines, IA 50309, (515) 282–3525. Transporting *general commodities* (except classes A and B explosives, household goods, and commodities in bulk), (1) between points in Clinton County, IA, on the one hand, and, on the other, points in IL, IA, IN, MN, MO, MT, NE, ND, OK, SD, TX, and WI, and (2) between points in IL and IA.

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Decided: September 9, 1982.

By the Commission, Review Board Number 2, members Carleton, Williams, and Ewing.

MC 144546 (Sub-3), filed August 30, 1982. Applicant: LAWYER TRUCKING, INC., P.O. Box 186, Mooresville, IN 46158. Representative: Donald W. Smith, P.O. Box 40248, Indianapolis, IN 46240, (317) 846–6655. Transporting (1) *clay, concrete, glass or stone products*, and (2) *coal* and *shale*, between points in the U.S. (except AK and HI), under continuing contract(s) with Hydraulic Press Brick Company, of Brooklyn, IN.

MC 149576 (Sub-21), filed August 30, 1982. Applicant: TRANS AMERICAN TRUCKING SERVICE, INC., P.O. Box 1247, Nixon Station, Edison, NJ 08818. Representative: R. M. McGraw, (same address as applicant), (201) 985–2182. Transporting *alcoholic beverages*, between points in the U.S. (except AK and HI), under continuing contract(s) with Renfield Importers, Ltd. of New York, NY.

MC 149576 (Sub-22), filed August 30, 1982. Applicant: TRANS AMERICAN TRUCKING SERVICE, INC., P.O. Box 1247, Nixon Station, Edison, NJ 08818. Representative: R. M. McGraw (same address as applicant), (201) 985–2182. 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)

Volume No. OP4–331

Decided: September 9, 1982.

By the Commission, Review Board No. 2, Members Carleton, Williams, and Ewing.

MC 140716 (Sub-2), filed August 16, 1982. Applicant: THE STROH TRANSPORTATION COMPANY, 1 Stroh Dr., Detroit, MI 48226. Representative: Wilhelmina Boersma, 1600 First Federal Bldg., Detroit, MI 48226, (313) 962–6492. Transporting *general commodities* (except classes A and B explosives and household goods), between points in the U.S. (except AK and HI), under continuing contract(s) with The Stroh Brewery Company, of Detroit, MI, Jos. Schlitz Brewing Co., of Milwaukee, WI, and F & M Schafer Company, of Detroit, MI.

MC 143846 (Sub-15), filed August 23, 1982. Applicant: MISSION TRANSPORT, INC., 50 Van Keuren Ave., Jersey City, NJ 07306. Representative: Kenneth M. Piken, Queens Office Tower, 95–25 Queens Blvd., Rego Park, NY 11374, (212) 275–1000. 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 149576 (Sub-20), filed August 27, 1982. Applicant: TRANS AMERICAN TRUCKING SERVICE, INC., P.O. Box 1102, Nixon Station, Edison, NJ 08818. Representative: Ronald McGraw (same address as applicant), (201) 985–2707. Transporting *chemicals and related products,* between points in the U.S. (except AK and HI), under continuing contract(s) with Diversey Wyandotte Corporation of Wyandotte, MI.

MC 151786 (Sub-1), filed August 17, 1982. Applicant: OZBURN-HESSEY STORAGE CO., P.O. Box 100707, Nashville, TN 37210. Representative: Henry W. Seaton, 1024 Pennsylvania Bldg., 425 13th Street NW., Washington, DC 20004, (202) 347–8862. Transporting *general commodities* (except classes A and B explosives, household goods and commodities in bulk), between points in Davidson and Rutherford Counties, TN, on the one hand, and, on the other, points in AR, AL, GA, KY, MS, MO, NC, TN, and VA.

MC 163616, filed August 30, 1982. Applicant: ROCKY MOUNTAIN MOTORISTS, INC., d.b.a. AAA TRAVEL AGENCY, 4100 E. Arkansas, Denver, CO 80222. Representative: Julie Gildea (same address as applicant) (303) 753–8864. To operate as a *broker,* at Denver, CO, in interstate or foreign commerce, in arranging for the transportation of *passengers and their baggage,* between points in the U.S.

MC 163586, filed August 26, 1982. Applicant: MARKO SERVICES, P.O. Box 35866, Houston, TX 77035. Representative: John G. Wentz, Jr., 7863 Cook Rd., Houston, TX 77072, (713) 28–7447. Transporting *general commodities* (except classes A and B explosives, household goods and commodities in bulk), between points in AR, LA, OK and TX.

MC 163626, filed August 30, 1982. Applicant: CROWN TRANSPORTATION, INC., 8333 East Freeway, Houston, TX 77029. Representative: Charles E. Munson, 500 West 16th St., P.O. Box 1945, Austin, TX 78767, (512) 478–9808. Transporting *Mercer commodities,* between points in TX, LA, MS, AR, OK, KS, CO, NM, WY, UT, MT, ND, and SD.

MC 163576, filed August 26, 1982. Applicant: CBP MOTOR EXPRESS, INC., 1106 Richardson Ave., Andalusia, PA 19020. Representative: Brian S. Stern, 5411–D Backlick Rd., Springfield, VA 22151, (703) 941–8200. Transporting (a) *such commodities* as are dealt in or used by manufacturers or distributors of metal products, public and recreational furniture and fixtures, partitions, shelving and store fixtures, park shelters, amusement, sporting and athletic goods, apparatus and parts, and electric lighting equipment, between points in Crawford County, MO, Camden County, NJ, Mahoning County, OH, Mifflin and Bucks Counties, PA, and Florence County, SC, on the one hand, and, on the other, points in the U.S. in and east of MN, IA, MO, AR, and LA, and (b) *pulp, paper and related products, and printed matter,* between points in Clarke County, AL, Grant County, IN, Kalamazoo County, MI, Suffolk County, NY, Montgomery County, OH, and Montgomery County, PA, and New York, NY, on the one hand, and, on the other, points in the U.S. in and east of MN, IA, MO, AR and AL, and (c) *such commodities* as are dealt in or used by manufacturers and distributors of mine roof support systems and accessories, between points in Bucks County, PA, on the one hand, and, on the other, points in AZ, CO, ID, IL, KS, LA, MO, MT, NE, NV, NM, NY, SD, TX, UT, and WY.

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Decided: September 9, 1982.

By the Commission, Review Board No. 2. Members Carleton, Williams, and Ewing.

MC 97447 (Sub-2), filed August 25, 1982. Applicant: B. W. BROWN TRUCKING COMPANY, INC., 95 Leggett, St., E Hartford, CT 06108. Representative: John E. Fay, 663 Maple Ave., Hartford, CT 06114, (203) 525–2661. Transporting *general commodities* (except classes A and B explosives, household goods and commodities in bulk), between points in CT. Condition: Issuance of a certificate in this proceeding is conditioned upon applicant's prior or coincidental cancellation of Certificate of Registration No. MC–97447 Sub 1, issued March 1, 1978.

MC 121037 (Sub-2), filed August 30, 1982. Applicant: CONTINENTAL FREIGHTWAYS, INC., P.O. Box 9423, Houston, TX 77011. Representative: John W. Carlisle, P.O. Box 967, Missouri City, TX 77459, (713) 437–1768. Transporting *Mercer commodities, machinery,* and *metal products,* between points in the U.S. (except HI).

MC 144277, filed August 27, 1982. Applicant: SERVICE TRANSPORT, INC., P.O. Box 369, Franklin, KY 42134. Representative: Robert L. Baker, 6th Floor, U.S. Bank Bldg., Nashville, TN 37219, (615) 244–8100. Transporting *alcohol, petroleum, natural gas and their products,* between points in IN, KY, and TN.

MC 144927 (Sub-45), filed August 24, 1982. Applicant: REMINGTON FREIGHT LINES, INC., Box 315, U.S. 24 W., Remington, IN 47977. Representative: Jack Luck (same address as applicant) (219) 261–3461. Transporting *charcoal and briquets,* between points in Osage County, MO, on the one hand, and, on the other, points in the U.S. (except AK and HI).

MC 145777 (Sub-2), filed August 30, 1982. Applicant: CARROLL MOVING & TRANSFER COMPANY, P.O. Box 314, 618 Canton Rd. NW, Carrollton, OH 44615. Representative: A Charles Tell, 100 E. Broad St., Columbus, OH 43215, (614) 228–1541. Transporting *general commodities* (except classes A and B explosives and household goods), between points in the U.S. (except AK and HI), under continuing contract(s) with Cravat Coal Co., of Cadiz, OH, Pep Fuels, Inc., and Puskarich Mining, Inc., both of Sherrodsville, OH.

MC 146787 (Sub-9), filed August 30, 1982. Applicant: ALBAUGH FARMS TRUCKING CORPORATION, 1306 Wayne St, Des Moines, IA 50316. Representative: Thomas E. Leahy, Jr., 1980 Financial Center, Des Moines, IA 50309, (515) 245–4300. Transporting *general commodities* (except classes A and B explosives, household goods and commodities in bulk), between points in Polk County, IA, on the one hand, and, on the other, points in IA.

MC 153487 (Sub-1), filed August 30, 1982. Applicant: QUALITY DELIVERY COMPANY, 1800 E 5th Ave., Columbus, OH 43219. Representative: John L. Alden, 1396 W 5th Ave., Columbus, OH 43212, (614) 481–8821. Transporting *food and related products,* between points in Marion, Wyandot and Franklin Counties, OH, and Louisville, KY, on the one hand, and, on the other, points in the U.S. (except AK and HI).

MC 163517, filed August 24, 1982. Applicant: CROWN TRANSFER, INC., P.O. Box 726, Worland, WY 82401. Representative: M. A. Andrade, 770 Grant St., Suite 228, Denver, CO 80203, (303) 861–4273. Transporting *non-alcoholic beverages,* between points in Washakie County, WY and Weber County, UT, on the one hand, and, on the other, points in AZ, CA, CO, ID, MT, NE, NY, SD, UT, and WY, under

continuing contract(s) with Admiral Beverage Corporation, of Worland, WY, and Crown Cork and Seal Company, Inc., of Philadelphia, PA.

MC 163557, filed August 27, 1982. Applicant: FREIGHT DEVELOPMENT ENTERPRISES, INC., P.O. Box 304, Lisle, IL 60532. Representative: Norman A. Cooper, 145 W. Wisconsin Ave., Neenah, WI 54956. (414) 722–2848. 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 Shaklee Corporation, of San Francisco, CA.

MC 163597, filed August 27, 1982. Applicant: SEAWARD CONSTRUCTION COMPANY, INC., Route 236, Kittery, ME 03904. Representative: John C. Lightbody, 30 Exchange St., Portland, ME 04101, (207) 773–5651. Transporting *general commodities* (except classes A and B explosives, household goods, and commodities in bulk), between points in the U.S. (except HI), under continuing contract(s) with Interstate Equipment Corporation, of Eliot, ME.

MC 163607, filed August 30, 1982. Applicant: COMMODITY EXPRESS CO, P.O. Box 431, W Columbia, SC 29169. Representative: Jerry L. Cook, (Same address as applicant), (803) 796–3618. Transporting *general commodities* (except classes A and B explosives, household goods and commodities in bulk), between points in NC, SC, and GA.

MC 163617, filed August 30, 1982. Applicant: LANNY LAWYER d.b.a. L. LAWYER TRUCKING, 757 N. Indiana St., Morresville, IN 46158. Representative: Donald W. Smith, P.O. Box 40248, Indianapolis, IN 46240, (803) 796–8388. Transporting *clay, concrete, glass or stone products, coal and shale,* between points in the U.S. (except AK and HI), under continuing contract(s) with General Shale Products Corporation of Johnson City, TN.

MC 163627, filed August 30, 1982. Applicant: JIM R. SMITH d.b.a. JIM SMITH TRUCKING, Box 301, Petersburg, IL 62675. Representative: Michael W. O'Hara, 300 Reisch Bldg., Springfield, IL 62701, (217) 544–5468. Transporting (a) *electrical parts and supplies,* between points in Menard and DeKalb Counties, IL, on the one hand, and, on the other, points in the U.S. (except AK and HI), (b) *household appliances, electrical appliances and fixtures, lawn mowers and lawn maintenance equipment and supplies,* between points in Peoria and Tazewell Counties, IL, and St. Louis, MO, on the one hand, and , on the other, points in the U.S. (except AK and HI), and (c) *steel and stainless steel tanks,* between points in Cass County, IL, on the one hand, and, on the other, points in the U.S. (except AK and HI).

MC 163487, filed August 20, 1982. Applicant: JESS DIAZ TRUCKING INC., P.O. Box 367, Santa Fe Springs, CA 90670. Representative: Jess Diaz (Same address as applicant), (213) 921–5566. Transporting (1) *machinery,* and (2) *paper and paper products,* between points in AZ, CA, and NV.

Agatha L. Mergenovich,

Secretary.

[FR Doc. 82–25361 Filed 9–14–82; 8:45 am]

BILLING CODE 7035–01–M

INTERNATIONAL DEVELOPMENT COOPERATION AGENCY

Agency for International Development

Advisory Committee on Voluntary Foreign Aid; Meeting

Pursuant to the Federal Advisory Committee Act, notice is hereby given of a meeting sponsored by the Advisory Committee on Voluntary Foreign Aid which will be held on September 28, 1982 (from 9:30 a.m. to 10:30 a.m.) in the Board Room of the Cooperative League of the USA (CLUSA), 1828 L St., NW., Suite 1100, Washington, D.C.

This will be an informal briefing for the PVO community by members of AID legislative staff on legislation pending before the U.S. Congress.

The meeting will be open to the public. Any interested person may attend, request to appear before, or file statements with the Advisory Committee in accordance with procedures established by the Committee. Written statements should be filed prior to the meeting and should be available in twenty copies.

There will be an AID representative at the meeting. It is suggested that those desiring further information contact Martha McCabe (202) 872–0550 or by mail c/o the Advisory Committee on Voluntary Foreign Aid, Agency for International Development, Washington, D.C. 20523.

Dated: September 8, 1982.

Julia Chang Bloch,

Assistant Administrator, Bureau for Food for Peace and Voluntary Assistance.

[FR Doc. 82–25287 Filed 9–14–82; 8:45 am]

BILLING CODE 6116–01–M

INTERNATIONAL TRADE COMMISSION

[Investigation Nos. 701–TA–189 (Preliminary) and 731–TA–104 Through 731–TA–106 (Preliminary)]

Steel Rails From the European Community, the Federal Republic of Germany, France, and the United Kingdom

AGENCY: International Trade Commission.

ACTION: Institution of preliminary countervailing duty and antidumping investigations and the scheduling of a conference to be held in connection with the investigations.

SUMMARY: The U.S. International Trade Commission hereby gives notice of the institution of investigation No. 701–TA–189 (Preliminary) under section 703(a) of the Tariff Act of 1930 (19 U.S.C. 1671b(a)) to determine whether there is a reasonable indication that an industry in the United States is materially injured, or is threatened with material injury, or the establishment of an industry in the United States is materially retarded by reason of imports from the European Community of steel rails, provided for in items 610.20 and 610.21 of the Tariff Schedules of the United States (TSUS) (1982), upon which bounties or grants are alleged to be paid.

The Commission also gives notice of the institution of investigations Nos. 731–TA–104 through 106 (Preliminary) under section 733(a) of the Tariff Act (19 U.S.C. 1673b(a)) to determine whether there is a reasonable indication that an industry in the United States is materially injured, or is threatened with material injury, or the establishment of an industry in the United States is materially retarded, by reason of imports from the Federal Republic of Germany, France, and the United Kingdom, of steel rails, provided for in items 610.20 and 610.21 of the TSUS, which are alleged to be sold at less than fair value.

EFFECTIVE DATE: September 3, 1982.

FOR FURTHER INFORMATION CONTACT: Mr. Lawrence Rausch, Office of Investigations, U.S. International Trade Commission; telephone 202–523–0286.

SUPPLEMENTARY INFORMATION:

Background.—These investigations are being instituted in response to a petition filed September 3, 1982, on behalf of CF & I Steel Corporation, Pueblo, Colorado. The Commission must make its determinations in these investigations within 45 days after the date of the filing of the petition or by October 18, 1982 (19 CFR 207.17). The

investigations will be subject to the provisions of part 207 of the Commission's Rules of Practice and Procedure (19 CFR 207, 44 FR 76457), and particularly subpart B therof.

Persons wishing to participate in these investigations as parties must file an entry of appearance with the Secretary to the Commission not later than seven (7) days after the publication of this notice in the **Federal Register** (19 CFR 201.11). Any entry of appearance filed after this date will be referred to the Chairman, who shall determine whether to accept the late entry for good cause shown by the person desiring to file the notice.

Service of documents.—The Secretary will compile a service list from the entries of appearance filed in these investigation. Any party submitting a document in connection with the investigations shall, in addition to complying with section 201.8 of the Commission's rules (19 CFR 201.8), serve a copy of each document on all other parties to the investigations. Such service shall conform with the requirements set forth in § 201.16(b) of the rules 19 CFR 201.16(b)).

In addition to the foregoing, each document filed with the Commission in the course of these investigations must include a certificate of service setting forth the manner and date of such service. This certificate will be deemed proof of service of the document. Documents not accompanied by a certificate of service will not be accepted by the Secretary.

Written submissions.—Any person may submit to the Commission on or before October 1, 1982, a written statement of information pertinent to the subject matter of the investigations. A signed original and fourteen copies of such statements must be submitted.

Any business information which a submitter desires the Commission to treat as confidential shall be submitted separately, and each sheet must be clearly marked at the top "Confidential Business Data." Confidential submissions must conform with the requirements of § 201.6 of the Commission's Rules of Practice and Procedure (19 CFR 201.6). All written submissions, except for confidential business data will be available for public inspection.

Conference.—the Director of Operations of the Commission has scheduled a conference in connection with the investigations for 9:30 a.m., on September 29, 1982, at the U.S. International Trade Commission Building, 701 E Street, NW., Washington, D.C. Parties wishing to participate in the conference should contact the Director of Investigations, Mr. William Fry, telephone 202–523–0301, not later than September 27, 1982, to arrange for their appearance.

For further information concerning the conduct of the investigations and rules of general application, consult the Commission's Rules of Practice and Procedure, part 207, subparts A and B (19 CFR 207 and Part 201, subparts A through E (19 CFR Part 201). Further information concerning the conduct of the conference will be provided by Mr. Fry.

This notice is published pursuant to § 207.12 of the Commission's rules of Practice and Procedure (19 CFR § 207.12).

By order of the Commission.
Issued: September 9, 1982.

Kenneth R. Mason,

Secretary.

[FR Doc. 82–25363 Filed 9–14–81; 8:45 am]
BILLING CODE 7020–02–M

[Investigations Nos. 701–TA–99, 107, and 138 (Final)]

Certain Carbon Steel Products From the Netherlands and the United Kingdom

AGENCY: International Trade Commission.

ACTION: Termination of final countervailing duty investigations.

EFFECTIVE DATE: September 7, 1982.

SUMMARY: As a result of final negative countervailing duty determinations by the United States Department of Commerce involving certain carbon steel products from the Netherlands and the United Kingdom, the United States International Trade Commission hereby gives notice of the termination of the following investigations:

- Hot-rolled carbon steel sheet and strip, provided for in TSUSA items 607.6610, 607.6700, 607.8320, 607.8342, and 607.9400 and 608.1920, 608.2120, and 608.2320, respectively, from the Netherlands (investigation No. 701–TA–99 (Final));
- Cold-rolled carbon steel sheet, provided for in TSUSA items 607.8320 and 607.8344, from the Netherlands (investigation No. 701–TA–107 (Final)); and
- Cold-formed carbon steel bar, provided for in TSUSA items 606.8805 and 606.8815, from the United Kingdom (investigation No. 701–TA–138 (Final)).

FOR FURTHER INFORMATION CONTACT: Mr. Robert Eninger (202–523–0312) or Mr. Daniel Leahy (202–523–1369), Office of Investigations, U.S. International Trade Commission.

This notice is published pursuant to section 207.20 of the Commission's Rules of Practice and Procedure (19 CFR 207.20).

By order of the Commission.

Issued: September 8, 1982.

Kenneth R. Mason,

Secretary.

[FR Doc. 82–25365 Filed 9–14–82; 8:45 am]
BILLING CODE 7020–02–M

[Investigations Nos. 701–TA–155, 157, 158, 159, 160, and 162 (Final)]

Certain Carbon Steel Products From Spain

AGENCY: International Trade Commission.

ACTION: Institution of final countervailing duty investigations and scheduling of a hearing to be held in connection with the investigations.

EFFECTIVE DATE: August 25, 1982.

SUMMARY: As a result of affirmative preliminary determinations by the United States Department of Commerce that there is a reasonable basis to believe or suspect that the Government of Spain is providing, directly or indirectly, subsidies with respect to the manufacture, production, or exportation of certain carbon steel products within the meaning of section 701 of the Tariff Act of 1930 (19 U.S.C. 1671), the United States International Trade Commission hereby gives notice of the institution of the following investigations under section 705(b) of the Act (19 U.S.C. 1671d(b)) to determine whether an industry in the United States is materially injured, or is threatened with material injury, or the establishment of an industry in the United States is materially retarded, by reason of imports from Spain of the specified merchandise:

- Hot-rolled carbon steel plate, provided for in items 607.6615, 607.9400, 608.0710, and 608.1100 of the Tariff Schedules of the United States Annotated (TSUSA) (investigation No. 701–TA–155 (Final));
- Cold-rolled carbon steel sheet, provided for in TSUSA items 607.8320 and 607.8344 (investigation No. 701–TA–157 (Final));
- Galvanized carbon steel sheet, provided for in TSUSA items 608.0710, 608.0730, 608.1100, and 608.1300 (investigation No. 701–TA–158 (Final));
- Carbon steel structural shapes, provided for in TSUSA items 609.8005,

609.8015, 609.8035, 609.8041, and 609.8045 (investigation No. 701–TA–159 (Final));

• Hot-rolled carbon steel bar, provided for in TSUSA items 606.8310, 606.8330, and 606.8350 (investigation No. 701–TA–160 (Final)); and

• Cold-formed carbon steel bar, provided for in TSUSA items 606.8805 and 606.8815 (investigation No. 701–TA–162 (Final)).

FOR FURTHER INFORMATION CONTACT: Mr. Robert Eninger (202–523–0312) or Mr. Daniel Leahy (202–523–1369), Office of Investigations, U.S. International Trade Commission.

SUPPLEMENTARY INFORMATION:

Background.—On June 10, 1982, the Commission determined, on the basis of the information developed during the course of its preliminary investigations, that there was a reasonable indication that an industry in the United States was materially injured or threatened with material injury by reason of allegedly subsidized imports of the subject carbon steel products from Spain. The preliminary investigations were instituted in response to petitions filed on January 11, 1982, by six U.S. steel producers. The Department of Commerce will make its final subsidy determinations in these cases on or before November 8, 1982. The Commission must make its final injury determinations in the investigations within 120 days after the date of Commerce's preliminary subsidy determinations or by December 22, 1982 (19 CFR 207.25). A public version of the staff report containing preliminary findings of fact will be placed in the public record on October 22, 1982, pursuant to section 207.21 of the Commission's Rules of Practice and Procedure (19 CFR 207.21).

Hearing.—The Commission will hold a hearing in connection with these investigations beginning at 10:00 a.m., e.s.t., on November 9, 1982, at the U.S. International Trade Commission Building, 701 E Street, NW., Washington, D.C. 20436. The hearing in these investigations will be held simultaneously with the hearing previously scheduled for antidumping investigations Nos. 731–TA–53, 58, 59, 60, 61, 62, 63, 67, 69, 70, 74, 82, 83, 85, and 86 (Final) concerning certain carbon steel products from Belgium, Brazil, France, Italy, Romania, the United Kingdom, and the Federal Republic of Germany (47 FR 38646). Requests to appear at the hearing should be filed in writing with the Secretary to the Commission not later than the close of business (5:15 p.m.) on October 21, 1982. All persons desiring to appear at the hearing and make oral presentations may file prehearing briefs and should attend a prehearing conference to be held at 10:00 a.m., e.d.t., on October 27, 1982, in Room 117 of the U.S. International Trade Commission Building. Prehearing briefs must be filed on or before November 3, 1982.

Testimony at the public hearing is governed by § 207.23 of the Commission's Rules of Practice and Procedure (19 CFR 207.23). This rule requires that testimony be limited to a nonconfidential summary and analysis of material contained in prehearing briefs and to new information. All legal arguments, economic analyses, and factual materials relevant to the public hearing should be included in prehearing briefs in accordance with rule 207.22 (19 CFR 207.22). Posthearing briefs must conform with the provisions of rule 207.24 (19 CFR 207.24) and must be submitted not later than the close of business on November 17, 1982.

Written submissions.—Any person may submit to the Commission a written statement of information pertinent to the subject of these investigations. A signed original and fourteen (14) true copies of each submission must be filed with the Secretary to the Commission on or before November 17, 1982. All written submissions except for confidential business data will be available for public inspection.

Any business information for which confidential treatment is desired shall be submitted separately. The envelope and all pages of such submissions must be clearly labeled "Confidential Business Information." Confidential submissions and requests for confidential treatment must conform with the requirements of § 201.6 of the Commission's Rules of Practice and Procedure (19 CFR 201.6).

Service of documents.—Any interested person may appear in these investigations as a party, either in person or by representative, by filing an entry of appearance with the Secretary in accordance with section 201.11 of the Commission's rules (19 CFR 201.11). Each entry of appearance must be filed with the Secretary no later than 21 days after the publication of this notice in the **Federal Register.**

The Secretary will compile a service list from the entries of appearance filed in these final investigations and from the Commission's record in the preliminary investigations. Any party submitting a document in connection with these investigations shall, in addition to complying with § 201.8 of the Commission's rules (19 CFR 201.8), serve a copy of each such document on all other parties to the investigations. Such service shall conform with the requirements set forth in section 201.16(b) of the rules (19 CFR 201.16(b)).

In addition to the foregoing, each document filed with the Commission in the course of these investigations must include a certificate of service setting forth the manner and date of such service. This certificate will be deemed proof of service of the document. Documents not accompanied by a certificate of service will not be accepted by the Secretary.

For further information concerning the conduct of the investigations, hearing procedures, and rules of general application, consult the Commission's Rules of Practice and Procedure, Part 207, subparts A and C (19 CFR 207, 44 FR 76457 as amended in 47 FR 6190 and 47 FR 12792) and Part 201, subparts A through E (19 CFR 201).

This notice is published pursuant to § 207.20 of the Commission's Rules of Practice and Procedure (19 CFR 207.20).

Issued: September 8, 1982.

By order of the Commission.

Kenneth R. Mason,

Secretary.

[FR Doc. 82–25364 Filed 9–14–82; 8:45 am]

BILLING CODE 7020–02–M

[Investigation No. 701–TA–185 (Preliminary)]

Fireplace Mesh Panels From Taiwan

Determination

On the basis of the record[a] developed in investigation No. 701–TA–185 (Preliminary), the Commission unanimously determines, pursuant to section 703(a) of the Tariff Act of 1930 (19 U.S.C. 1671b(a)), that there is a reasonable indication that an industry in the United States is materially injured or threatened with material injury[b] by reason of imports from Taiwan of fireplace mesh panels,[c] which are alleged to be subsidized by the Government of Taiwan.

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[a] The "record" is defined in § 207.2(i) of the Commission's Rules of Practice and Procedure (47 FR 6190, Feb. 10, 1982).

[b] Commissioner Haggart determines that there is a reasonable indication of material injury and therefore does not reach the issue of reasonable indication of threat of material injury.

[c] For the purposes of this investigation, fireplace mesh panels are defined as precut, flexible mesh panels, both finished and unfinished, which are constructed of interlocking spirals of steel wire and are of a kind used in the manufacture of safety screening by U.S. manufacturers of fireplace accessories and zero-clearance fireplaces. Fireplace mesh panels are provided for either in item 642.87 or item 654.00 of the Tariff Schedules of the United States depending on their stage of processing.

Background

On July 20, 1982, Justesen Industries, Inc., Pacific Fireplace Furnishings, Inc., and Fall River Fireplace Co., Inc., filed a petition with the U.S. International Trade Commission and the U.S. Department of Commerce alleging that an industry in the United States is materially injured and is threatened with material injury by reason of imports from Taiwan of fireplace mesh panels upon which bounties or grants are alleged to be paid. Accordingly, effective July 20, 1982, the Commission instituted a preliminary investigation under section 703(a) of the Tariff Act of 1930 to determine whether there is a reasonable indication that an industry in the United States is materially injured, or is threatened with material injury, or the establishment of an industry in the United States is materially retarded, by reason of the importation of such merchandise into the United States.

Notice of the institution of the Commission's investigation and of a conference to be held in connection therewith was given by posting copies of the notice in the Office of the Secretary, U.S. International Trade Commission, Washington, D.C., and by publishing the notice in the **Federal Register** on July 29, 1982 (47 FR 32808). The conference was held in Washington, D.C. on August 12, 1982, and all persons who requested the opportunity were permitted to appear in person or by counsel.

Views of the Commission

On the basis of the record in investigation No. 701–TA–185 (Preliminary), we determine that there is a reasonable indication that an industry in the United States is materially injured [1] or threatened with material injury by reason of imports of fireplace mesh panels from Taiwan upon which bounties or grants are alleged to be paid.[2] Our determination in the present case is based on the considerations set forth below.

Domestic Industry

Section 771(4)(A) of the Tariff Act of 1930 defines the term "industry" as the "domestic producers as a whole of a like product or those producers whose collective output of the like product constitutes a major proportion of the total domestic production of that product." [3] A "like product" is defined as "a product which is like, or in the absence of like, most similar in characteristics and uses with, the article subject to an investigation under this subtitle." [4]

The imported articles subject to this investigation are pre-cut panels of fireplace mesh. These imported panels generally have rings attached for mounting, are finished with black oxide, and are constructed of 19-to-21 gage wire. Imported fireplace mesh panels are incorporated into fireplace screens or zero-clearance fireplaces by manufacturers of those items.

The domestic fireplace mesh panels typically have rings attached for mounting, are constructed from wire which ranges from 19-to-21 gage, and are finished with black enamel.[5] Like the imported panels, they are incorporated into fireplaces screens and zero clearance fireplaces. We find that the domestic products that are like the imported fireplace mesh panels are fireplace mesh panels of any size, with or without rings, with black oxide or black enamel finish, and of any gage wire which may vary from 19-to-21 gage. Based on the above, we have determined that the industry in this investigation is composed of domestic producers of fireplace mesh panels.[6]

Material Injury or Threat of Material Injury by Reason of Subsidized Imports

Section 771(7)(B) of the Act directs that the Commission in making its material injury determination shall consider, among other factors, the impact of the imports on the domestic industry, the volume of these imports, and their impact on domestic prices.

During the period covered by this investigation, the fireplace mesh panel industry has experienced a decline in key indicators. Between 1978 and 1981, domestic production declined 72 percent from 10.6 to 2.9 million square feet. Production also declined by 39 percent in January–June 1982 relative to the corresponding period of 1981. Capacity utiliztion dropped from 87 percent in 1978 to 27 percent in 1981, and then declined to 11 percent in January–June 1982.[7] Commercial shipments fell by 78 percent from 4.6 to 1.0 million square feet between 1978 and 1981, and declined significantly during January–June 1982 as compared with the corresponding period in 1981.[8] Since 1978, six producers ceased manufacturing fireplace mesh panels. The average number of production and related workers engaged in the production of fireplace mesh panels declined rapidly, from 91 in 1978 to 16 in 1981, and to 6 in January–June 1982 compared with 14 in the corresponding period in 1981.[9] Inventories of domestic producers, which are generally negligible in this industry, were larger than usual in 1981 and even larger in January–June 1982 compared with the corresponding period in 1981.[10]

Profit and loss data further confirm the problems confronting U.S. producers of fireplace mesh panels. The profit and loss experience of the U.S. producers on their fireplace mesh panel operations has sharply declined during the period under investigation.[11] Net sales declined 83 percent from $2.7 million in 1978 to $445,000 in 1981. Net operating profits and losses followed the same trend with U.S. producers showing a profit on their fireplace mesh operations of $522,000 in 1978 and a loss of $50,000 in 1981.

The available profit and loss data for January–March 1982 on overall establishments [12] in which fireplace

[1] Commissioner Haggart determines only that there is a reasonable indication of material injury, and therefore does not reach the issue of threat of material injury.

[2] Commissioner Frank notes that the statute and legislative history require the Commission in its preliminary determinations in both antidumping and countervailing duty investigations to exercise only a low threshold test based upon the best information available to it at the time of such determination which reasonably indicates that an industry in the United States could possibly be suffering injury, threat thereof or material retardation. H.R. Rep. No. 96–317, 96th Cong., 1st sess., 52. (1979). See also Commissioner Frank's Views in Certain Steel Products from Belgium Brazil, France, Italy, Luxembourg, the Netherlands, Romania, the United Kingdom and West Germany, Vol. 1. Investigations Nos. 701–TA–86 through 144, 146 and 147 (Preliminary) and 731–TA–53 through 86 (Preliminary) USITC Publication 1221 (February 1982) pp. 121–129.

[3] 19 U.S.C. 1677(4)(A).

[4] 19 U.S.C. 1677(10).

[5] Report at A–3.

[6] Our conclusion regarding the definition of "domestic industry" in this case is the same as that contained in Fireplace Mesh Panels from Taiwan, Inv. No. 731–TA–49 (Final) USITC Pub. No. 1250 (May 1982) at 3–4. For a full discussion of this issue, see the above-referenced opinion.

[7] Report at A–14, A–9 and A–10.

[8] Report at A–15. The figures for January–June 1982 are confidential.

[9] Report at A–24. Data cited in the Report and in this opinion represent varying numbers of domestic producers and various percentages of domestic production depending upon the completeness of questionnaire responses. This is the best available information. Available data on employment and hours worked represent companies which accounted for 51 percent of U.S. production in 1981. Report at A–23.

[10] Report at A–17. These figures are confidential.

[11] During investigation 731–TA–49 (Final) profit and loss data on fireplace mesh panel operations alone was provided by four firms which accounted for 24 percent of production in 1981. In this investigation, only one firm provided such data. Nevertheless, these data are not inconsistent with the other economic indicators provided by this industry during the interim periods of 1981 and 1982. The specific figures are confidential information.

[12] Three firms accounting for 46 percent of production in January–June 1982 provided profit and loss data on overall establishments producing fireplace mesh panels for January–June 1982. However, for one of these producers, which accounts for a substantial share of domestic production of fireplace mesh panels, its fireplace

mesh panels are produced indicate a continued deteriorating position. Net operating losses increased significantly in January–June 1982 compared with the corresponding period of 1981.[13] The ratio of net operating losses to net sales also increased significantly in January–June 1982 compared with the corresponding period in 1981.[14]

Both apparent U.S. consumption and apparent open-market consumption of fireplace mesh panels declined between 1978 and January–June 1982.[15] The eroding position of the U.S. fireplace mesh panel industry coincides with a dramatic downturn in consumption related to the drop in housing starts and saturation of the glass-door fireplace screen market.

The volume of the imports from Taiwan during the period under investigation presents an irregular pattern, but generally shows a decline. However, the ratio of imports from Taiwan to apparent U.S. consumption declined between 1978 and 1979, but increased substantially between 1979 and 1980,[16] and increased to 44 percent in 1981 compared with 35.9 percent in 1980. The trend presented by the ratio of imports to apparent open-market consumption is similar. These increases in market penetration made during a period of decreasing consumption indicate that the injury experienced by domestic producers by reason of imports from Taiwan was in addition to that resulting from general declines in demand.

Figures for January–June 1982 indicate that imports from Taiwan declined substantially in this period compared with the corresponding period of 1981. Similarly, the ratio of imports from Taiwan to apparent consumption and to apparent open-market consumption have declined significantly during this period. If this trend continues, it may well impact upon the Commission's determination of material injury or threat of material injury should a final investigation be conducted on this matter.[17]

In addition, the margin of underselling was significant throughout the period covered by this investigation. Imports from Taiwan undersold U.S. products by weighted average margins of 45 percent in 1979, 45 percent in 1980, and 33 percent in 1981. Margins of underselling were equally significant in January–June 1982.[18]

In analyzing these margins of underselling, we are mindful of the fact that competition in this industry is often based upon a combination of factors including price, availability, and quality. Further, margins of underselling are based on data for comparable, but not always identical, merchandise. As we had already observed, fireplace mesh panels possess a considerable number of variable product characteristics, such as the gage of wire used, spiral diameter and pitch, type of finish, panel size, pleating, and the attachment of pull tassels or rings for mounting the panel. This diversity of characteristics has made price comparisons of the panels subject to this investigation difficult. For example, the Commission staff estimates that the cost of the metal content of the mesh could vary by $4 per 100 square feet, based on using wire ranging from 19-to-21 gage, and enamel panel finish commands a premium of roughly $5 per 100 square feet over block oxide.[19] However, regardless of these variable product characteristics, the data provide a clear indication that significant underselling is taking place.

Lost sales information further demonstrates the results of price undercutting. For instance, a U.S. manufacturer of fireplace screens which accounts for a significant share of apparent open-market consumption of fireplace mesh panels, switched entirely from the domestic product in 1978 to the improted product from Taiwan in 1981.[20] Another important consumer of domestic fireplace mesh panels also shifted almost entirely to imports from Taiwan during this period.[21]

Already suffering from a serious decline in the market, the problems of the domestic fireplace mesh panel industry have been compounded by competition from allegedly subsidized imports from Taiwan. The information before the Commission on import penetration, underselling and lost sales indicates that there is a reasonable indication of material injury to the domestic industry by reason of the allegedly subsidized imports from Taiwan.

In addition, there is a reasonable indication that imports of allegedly subsidized fireplace mesh panels from Taiwan threaten to cause material injury to the domestic industry.[22] Data on production, shipments, capacity utilization, employment, and profitability all indicate that the deterioration of the domestic industry is accelerating. This is further evidenced by the fact that yet another domestic producer went out of business in the January–June 1982 period.[23] Thus the domestic industry has become increasingly vulnerable to underselling by imports from Taiwan.

Inventory levels also declined slightly in January–June 1982 compared with the corresponding period in 1981.[24] Nevertheless, inventory levels for this period are approximately 20 times the level of domestic inventories for this period,[25] and approximately 20 times the amount of imports entered during this period.[26] This suggests that the overhang of imports from Taiwan pose a threat of material injury despite the recent drop in the level of imports.[27]

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mesh panel sales in 1982 accounted for a substantial share of its total net sales. Therefore, these figures closely approximate data for fireplace mesh operations alone.

[13] Report at A–21 (Table 11). The specific figures are confidential information.

[14] *Id.*

[15] The report presents data on apparent U.S. consumption of fireplace mesh panels and on apparent U.S. open-market consumption. Apparent U.S. consumption includes U.S. producers' captive consumption of fireplace mesh panels, whereas apparent open-market consumption reflects only open-market transactions. In this case, imports have displaced some captive production, thus competing in the captive market as well as in the open market. Thus, the Commission has focused on the data on apparent U.S. consumption since they reflect the full impact of the imported product.

[16] The specific figure is confidential.

[17] Commissioner Frank notes that in making a determination of threat material injury, the Commission considers, among other factors: (1) the rate of increases of subsidized or dumped imports into the U.S. market (and the impact of these imports on domestic producers), (2) the capacity in the exporting country to generate exports, and (3) the availability of home or other export markets. It is his opinion that the decreased volume and penetration of imports from Taiwan alone would not influence his decision in a final investigation because a decrease such as that in the first half of 1982 might be the result of changing seasonal plunges in demand for the product. Alternatively, it might be based on a decision of U.S. importers to accumulate inventories in the United States during 1981 and/or a decision by Taiwan exporters to expand inventory in 1981 and 1982 and to curtail shipments to the United States during the first half of 1982 in light of the Commission's affirmative preliminary determination of September 1981 in the dumping investigation, and the Department of Commerce's preliminary determination of LTFV sales in the dumping investigation of January 22, 1982.

[18] Report at A–35. The figures for the margins of underselling in January–June 1982 are confidential.

[19] Report at A–23.

[20] Report at A–27.

[21] *Id.*

[22] See n. 1 *supra.*

[23] Report at A–7.

[24] Report at A–13.

[25] Id.

[26] Report at A–13 and A–10.

[27] There is no information currently available on the foreign producers' capacity to produce fireplace mesh panels or on their ability to increase the level of exports. However, the United States is apparently the major export market for these exports. Report at A–5. If this investigation returns to the Commission for a final determination, an attempt will be made to develop information on these other issues.

Commissioner Stern notes that, given the previous levels of imports which were substantially higher than levels for the January–June 1982 period, and given the fact that no information indicating a reduction in capacity has been provided, it is

Additional Views of Commissioner Paula Stern

In previous preliminary antidumping and countervailing duty cases, I have often noted, "I must base my determination as much on what information the Commission has not been able to gather (but has expectations of developing in a full scale investigation) as on the information I have before me." [28] In the case before us now, *Fireplace Mesh Panels*, the record remains insufficiently developed for me to preclude that the subject goods are causing material injury through underselling and/or price depression made possible by the alleged subsidies. Should this case return, I would base my final determination on more complete information and analysis of the extent and impact of the alleged subsidies.

In *Certain Steel Wire Nails from the Republic of Korea* (March 1982),[29] the issue arose as to what the Commission should examine in determining causation in countervailing duty cases. In *Carbon Steel Wire Rod from Brazil, Belgium, France, and Venezuela* [30] that concern was broadened to antidumping cases as well. This investigation takes us a step further to a situation in which we are considering the effects of subsidized imports where there is already a final dumping finding in place on the same imports.

Because the subject is so important and because of the potential relationship between the dumping and these alleged export subsidies, I shall discuss further the arguments enunciated in my above cited "Additional Views". Discussion of the issue of what the Commission should examine in determining countervailing duty cases has focused on two interpretations of the phrases, "the effects of the subsidized imports" [31] and "by reason of imports": [32] (1) judging the full impact of the subject imports, which happen to benefit from a subsidy or are being sold at less than fair value, or (2) judging the impact of the subject imports in connection with the subsidy or margin of dumping in causing the injury. The language of the Trade Agreements Act [33] on this subject is not clear on its face and therefore merits careful examination.

The conceptual difference between these two approaches cannot be underestimated. The first alternative would attach no weight to whether, for instance, a subsidy was 0.5 percent or 50 percent. Any imports benefitting from a subsidy—no matter how insignificant—would be equally tainted for purposes of causality analysis. By contrast, the second formulation would require the causality analysis to trace, to whatever extent possible, the effect of the subsidy or dumping in determining the impact of the imports on the U.S. industry.

The statute in section 771(C)(ii) mandates that the Commission consider certain factors in "evaluating the effect of imports of such merchandise." But how these factors should be evaluated to determine causality is not explicit in this phrase. I believe that the statute, the legislative history, and the relevant international agreements taken together clearly demonstrate that the second alternative is the proper basis for assessing causality in the Commission's countervailing duty and antidumping investigations and is true to the intended meaning of the phrases "the effects of the subsidized imports" and "by reason of imports."

The Senate Finance Committee's "Report on the Trade Agreements Act" (Senate Report) directs the Commission to continue its practice of looking to the effects of the net subsidy in its countervailing duty determinations:

> In determining whether injury is "by reason of" subsidized imports, the ITC now looks at the effects of such imports on the domestic industry. The ITC investigates the conditions of trade and competition and the general condition and structure of the relevant industry. It also considers, among other factors, the quantity, nature, and rate of importation of the imports subject to the investigation, and *how the effects of the net bounty or grant relate to the injury*, if any, to the domestic industry. Current ITC practice with respect to which imports will be considered in determining the impact on the U.S. industry is continued under the bill. (Emphasis added.)[34]

The Senate Report employs the identical language in directing the Commission with regard to antidumping deliberations, replacing only the phrase "net bounty or grant" with "margin of dumping." [35] The "by reason of imports" language of the Trade Agreements Act tracks similar language in the Antidumping Act, 1921. The statutory repetition of this causality language in the absence of any criticism of the Commission's prior practice constitutes implicit approval by Congress of the Commission's causality methodology.

The Commission's longstanding practice under the 1921 Act was to link the dumping margin to the injury. This precedent was repeated in its first countervailing duty investigation conducted by the Commission under section 303(b) of the Tariff Act, *Certain Zoris from the Republic of China* (1976). The Commission noted:

> * * * The bounty or grant paid on the subject imports of zoris would amount to only about 1.3 cents per pair. Such a bounty or grant would account for only a fraction of the margin of underselling which the subject imports enjoy over casual footwear produced in the United States.[36]

In a later antidumping case, *Welded Stainless Steel Pipe and Tube from Japan* (1978), the Commission found in the negative also because the dumping margins accounted for only a small part of the amount by which the imports undersold the U.S. product.[37] In *Certain Fish from Canada* (1978), a unanimous Commission found in the negative. It concluded that there was no likelihood of injury due to the subject imports

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reasonable to assume that producers in Taiwan have the ability to increase the level of exports.

[28] *See* Certain Carbon Steel Products from Belgium, the Federal Republic of Germany, France, Italy, Luxembourg, the Netherlands and the United Kingdom, Inv. Nos. 731–TA–18–24 (Preliminary), USITC Pub. 1064 (May 1980), "Statement of Reasons of Commissioner Paula Stern" at 41. *Also see* Certain Steel Products from Belgium, Brazil, France, Italy, Luxembourg, the Netherlands, Romania, the United Kingdom, and West Germany, Inv. No. 701–TA–86–144, 146 and 147 (Preliminary) and Inv. No. 731–TA–53–86 (Preliminary), USITC Pub. 1221, Vol. 1 (January 1982), "Additional Views of Commissioner Paula Stern" at 119–20; Carbon Steel Wire Rod from Brazil, Belgium, France, and Venezuela, Inv. Nos. 701–TA–148–150 (Preliminary) and Inv. No. 731–TA–88 (Preliminary) USITC Pub. 1231 (March 1982), "Additional Views of Commissioner Paula Stern" at 21.

[29] Certain Steel Wire Nails from the Republic of Korea, Inv. No. 701–TA–145 (Preliminary), USITC Pub. No. 1223 (March 1982). *See* "Additional Views of Commissioner Paula Stern."

[30] Carbon Steel Wire Rod from Brazil, Belgium, France, and Venezuela, Inv. Nos. 701–TA–148–150 (Preliminary) and Inv. No. 731–TA–88 (Preliminary) USITC Pub. 1231 (March 1982), "Additional Views of Commissioner Paula Stern."

[31] *E.g.*, section 771(4)(D) uses this phrase.

[32] *E.g.*, section 701(a), 703(a) and 705(b)—which deal with the countervailing duty determinations of the Commission—employ such a phrase. The same phrase is found in sections 731(a), 733(a), and 735(b) which concern antidumping determinations.

[33] 19 U.S.C. 1671(b).

[34] Senate Comm. on Finance, Trade Agreements Act of 1979, S. Rept. No. 96–249, 96th Cong., 1st Sess. (1979) at 57. *See also* U.S. Office of Special Trade Representative, Background Papers on MtN, Subsidies and Countervailing Duties (May 2, 1979).

[35] *Ibid.*, at 74.

[36] Certain Zoris from the Republic of China (Taiwan), Inv. No. 303–TA–1, USITC Pub. No. 787 (September 1976) at 7.

[37] Welded Stainless Steel Pipe and Tube from Japan, Inv. No. AA–1921–180, USITC Pub. No. 899 (July 1978). In the majority opinion, Chairman Joseph O. Parker, and Commissioners George M. Moore and Catherine Bedell concluded: "* * * the dumping margin accounted for only a small part of the amount by which the Japanese pipe and tubing undersold any sales that U.S. producers might have lost to Japanese imports or any price suppression that might have been experienced by U.S. producers cannot be attributed to the LTFV margins applicable to the imports from Japan." ("Views" at 7.) In the concurring "Reasons for Negative Determination," Commissioners Bill Alberger and Daniel Minchew adopted similar reasoning and came to an identical conclusion. ("Reasons" at 11–12.)

because those subsidies not scheduled for immediate elimination "are not likely to have any injurious impact on the U.S. industry."[38]

In *Unlasted Leather Footwear Uppers from India* (1980)[39] the first countervailing duty case decided after the Trade Agreements Act of 1979 took effect, the Commission majority relied in large part on the "inconsequential" size of the subsidy in coming to a negative determination. In our "Statement of Reasons," Chairman Bedell and Commissioners Moore and I noted:

> * * * The impact of a subsidy of 1.01 percent ad valorem on the price of finished nonrubber footwear is inconsequential * * *. If the Indian subsidies had any effect on U.S. nonrubber footwear prices, it was to make them more competitive with prices of imported footwear, since it is U.S. nonrubber footwear producers which purchase the Indian shoe uppers.[40]

In their concurring views, then Vice Chairman Alberger and Commissioner Calhoun also relied on an analysis of the subsidy in making the Commission's determination unanimous.[41]

In a subsequent preliminary antidumping case, *Certain Iron-Metal Castings from India* (1981), Vice Chairman Calhoun and Commissioners Moore and Bedell spoke of a reasonable indication of material injury "beyond, and entirely separate from, any injury caused by the export subsidies already found to exist on Indian castings."[42] In my concurring opinion and in Chairman Alberger's dissenting opinion, we both referred to the LTFV margins and the countervailing duty in examining causation.[43] [44]

Thus, it has been a long and continuous Commission practice in both antidumping and countervailing duty cases to require a causal nexus between the offending act—the subsidy or margin of dumping—and any impact of the imports on the domestic industry. When the net subsidy or margin of dumping has accounted for only a small portion of the margin of underselling, the Commission has reasoned when appropriate that the injury could not be remedied by a countervailing or antidumping duty and found in the negative.

In preliminary investigations the Commission is usually unable to assess precisely the effects of the subsidization or dumping because at this stage their exact nature and extent is often unknown. Thus, in judging causation in a preliminary case, it has often not been possible to perform a substantial analysis of the alleged subsidy or margins of dumping. This does not mean that information on subsidies or margins should be ignored in preliminary investigations. A demonstrtion at any stage that the subsidies or margins of dumping cannot possibly result in material injury would be a persuasive argument for a negative determination. For example, in my preliminary findings in *Hot-Rolled Carbon Steel Sheet from France*[45] I noted that such a demonstration had not been made. I analyzed subsidy information in coming to the conclusion that "[t]here is no reasonable basis for denying the potential impact such subsidies could be having * * * ." That case had been initiated by the Department of Commerce (Commerce), which is responsible for determining the extent of subsidies. The information provided by Commerce on the nature and extent of the alleged subsidies was substantial.

I do not believe that an affirmative determination critically depends on an exact, quantitative tracing of the impact of the subsidies and dumping margins on the domestic market. We are required to base our determinations on the best available information. The process is not unnecessarily burdensome to the Commission. Indeed, the Commission is accustomed to making detailed analyses of market phenomena. This is clearly illustrated by the past Commission practice discussed above.

I have always been of the view that the concepts of the Act (*e.g.*, material injury, by reason of, industry), have a single meaning common to both preliminary and final cases. Indeed, the definitions of such terms are found in secion 771 which applies to preliminary and final antidumping and countervailing duty cases alike. But there is a fundamental, inescapable difference between preliminary and final cases—the evidentiary standards. In preliminary cases, a *reasonable indication* must be shown; in final cases, material injury due to subsidized or LTFV imports *must be proven.* Using more complete information on subisidies or dumping margins in final cases imposes no double standard other than the different evidentiary requirements.

In the present investigation, I am unable to conclude with any reasonable degree of precision that the alleged subsidies are not impacting the domestic industry with material injury.[46] There is no indication on the record that these export subsidies improve the exporter's competitive position in ways other than reducing price, such as advertising or allowing for greater volume or efficiencies of production. It is conceivable that the impact of these subsidies is to make possible the dumping that was the subject of the prior investigation.[47] However, one of the two Taiwanese producers, Fuan Da Industrial Co., Ltd., which would be a recipient of the alleged subsidies has been found to have LTFV margins of zero. It is not clear from the record for what percentage of its production Fuan Da is the exporter of record. Therefore there remains on the basis of these facts a reasonable indication of material injury to the domestic industry by the allegedly subsidized imports.

Additional Views of Commissioner Calhoun

I concur with the majority in its outcome and reasoning in this preliminary investigation because I believe a finding of reasonable indication of material injury is supported by a reasonable, though debatable, legal theory and by adequate information on the record. As I expressed in *Subway Cars,*[48] an

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[38] Certain Fish from Canada, Inv. No. 303-TA-3, USITC Pub. No. 919 (September 1978). "Statement of Reasons of Chairman Joseph O. Parker, Vice Chairman Bill Alberger and Commissioners George M. Moore, Catherine Bedell, and Italo H. Ablondi," at 8.

[39] Unlasted Leather Footwear Uppers from India, Inv. No. 701-TA-1 (Final), USITC Pub. No. 1045 (March 1980).

[40] *Ibid.*, "Statement of Reasons of Chairman Catherine Bedell, Commissioners George Moore and Paula Stern" at 6.

[41] *Ibid.*, "Views of Commissioners Alberger and Calhoun" at 14.

[42] Certain Iron-Metal Castings from India, Inv. No 731-TA-37 (Preliminary), USITC No. 1122 (January 1891), "Statement of Reasons for the Affirmative Determination of Vice Chairman Michael J. Calhoun and Commissioners George M. Moore and Catherine Bedell" at 5.

[43] *Ibid.*, "Views of Commissioner Paula Stern" at 9 and "Views of Chairman Bill Alberger" at 10.

[44] *See also* Certain Iron-Metal Castings from India, Inv. No. 303-TA-13 (Final), USITC Pub. No. 1098 (September 1980). In this investigation the Commission dealt with the issue of the impact of a subsidy on the domestic industry. I noted in my views, "My analysis shows that subject imports caused price suppression as a result of the subsidies despite the fact that margins of underselling were larger than the levels of subsidy." ("Statement" at 24) Chairman Alberger also observed in his views: "The margin of underselling by the importers' product was more than twice the amount of the subsidy * * * ." ("Views at 34"). Though we reached different conclusions, both Chairman Alberger and I recognized the importance of analyzing the effect of the subsidy.

[45] Hot-Rolled Carbon Steel Sheet from France, Inv. No. 701-TA-85 (Preliminary), USITC Pub. No. 1206 (January 1982), "Views of Commissioner Paula Stern" at 27.

[46] See Fireplace Mesh Panels from Taiwan, Inv. No. 731-TA-49 (Final), USITC Pub. 1250 (May 1982) at 6, n. 15.

[47] The sorting out of such a question is greatly simplified when the subsidy case precedes the dumping case.

[48] See Additional Views of Commissioner Calhoun in *Certain Rail Passenger Cars and Parts*

affirmative determination in a preliminary investigation need only be supported by a palpable legal theory coupled with adequate and complementary information on the record. Such a view of the standard for assessing preliminary cases allows for, *inter alia*, closer examination in the final investigation of novel issues of law supporting the petition but issues of law which are not patently frivolous.

I wish to observe, however, that the legal theory which seems to be implicit in the majority's reasoning raises, for me, rather serious underlying questions. Simply put, I understand the majority has relied, in large part, on indicators of material injury which were also relied upon in our prior affirmative determination regarding this product in the context of less than fair value sales.[49] Reliance on those indicators is made without differentiating between indicators which establish material injury by reason of imports of LTFV merchandise and indicators which establish material injury by reason of imports of subsidized merchandise

The fundamental legal issue posed by such an approach to causality on this case seems to me to be as follows: Whether or to what extent the statute requires us to establish a discrete nexus between material injury and imported subsidized merchandise when the same imported merchandise has already been found to have been causing material injury in the context of being imported merchandise sold at less than fair value. This question arises, it seems to me, because the Trade Agreements Act of 1979 provides, in this connection, for two parallel but presumably distinct causes of action. The first arises under section 701, *et seq*, affording domestic industries remedy for material injury caused by
imports of merchandise found to be subsidized. The second arises under section 731, *et seq.*, which allows remedy for material injury caused by im ports of merchandise found to be sold at less than fair value. Having established two discrete, though parallel, legal rights, it ought to follow that the statute contemplates, if not requires, distinct showings of nexus between the imported merchandise in question and the harm caused by it.

This would seem to be especially so when, as here, a petitioner files a claim under one section regarding merchandise already having been found in violation of the other. The plain implication of such a filing is that the petitioner is alleging that the merchandise in its alternative character is causing material injury which is distinct from that associated with the injury for which a remedy is already in place. With respect to such an allegation, I would think we are required by the separate provisions of the statute and by requirements of due process to make a determination by finding causality based upon the terms under which the allegation is made.

My understanding of the legal argument supporting the apparent majority position that a separate causality showing is not required with regard to merchandise already having a dumping duty in place, but which is subsequently charged with harm under section 701 is, simply stated, as follows: Title VII of the 1979 Act only requires that the impact of the particular merchandise in question and not the impact of the unlawful practice be relied upon as the basis for establishing causality for purposes of finding material injury. Since it is the merchandise that is at issue and not the underlying unfair practice and since, as is the circumstance here, the dumped merchandise is the same as the allegedly subsidized merchandise, the adverse impact of the merchandise has already been determined by the LTFV finding. Thus, essentially, the only matter that remains to be resolved is whether material injury by reason of the merchandise still exists and how to apportion the remedial duty between a countervailing duty and a dumping duty. The former problem is before us now. The latter problem is largely the function of the Department of Commerce.

Since, on its face, there is a compelling and inherent logic to this reasoning, I have supported an affirmative preliminary determination based on it. But such a legal view is subject to a number of counter arguments. First, while in some cases [50] Commerce can and will apportion remedial duties so as to avoid so-called "double counting", there are cases, such as this one, where petitioner seems to be claiming two distinct harms; one harm caused by the LTFV character of the imported merchandise and the other caused by its subsidized character.[51]

Second, despite the practice of the Department of Commerce to "offset" certain types of subsidies, Commerce's responsibility for fashioning a remedy is quite distinct from our responsibility to establish a nexus between material injury and subsidized and/or dumped imports. Commerce's offsets can in some cases have the effect of increasing or decreasing the level of duties. Since offsetting can only occur after an appropriate finding by us, our task is not a mere formality. It has a measurable impact on the level of benefit to the domestic industry and the level of burden to the importer. Thus, a petitioner and importer are entitled to an assessment of whether harm is caused by two separate wrongs or only by one wrong.

Third, merchandise from only one of the two known Taiwanese producers was found to be causing material injury pursuant to section 731. Thus, to apply the reasoning described above and argue that the merchandise under investigation here has already been found to be causing material injury, making separate causality analysis unnecessary, is arbitrarily to ascribe to one group of imported merchandise harm for which it ought not to be held accountable.

It is possible here, however, to make separate causality findings as between harm under section 731 and harm under section 701 without doing violence, to the extent this is a desired objective, to the view that title VII does not, in general, require us to link a harmful practice to material injury. There is a dilemma posed because it would seem that to make separate causal findings ultimately turns upon the ability to distinguish impact associated with the subsidized character of the imported merchandise from that associated with the dumped character of the imported merchandise.

Even though such an undertaking may smack of the kind of tracing I have questioned whether the statute compels us to make in the normal process of reaching determinations under Title VII,[52] if the application of the language of the statute to the peculiar facts of a case suggests it ought to be done, then

Thereof from Canada; Investigation No. 701–TA–182 (Preliminary), USITC Pub. 1277 (August 1982), at p. 11.

[49] The bulk of the imports of fireplace mesh panels from Taiwan is from one producer. Panels from this producer were found to be causing material injury pursuant to section 731. In this investigation, the data relied upon covers largely the same period reviewed in the LTFV case and to a great extent is based upon the same imports found to be violating section 731.

[50] Generally cases involving export subsidies. See GC Memo GC–F–290, August 27, 1982 at pp. 8–11.

[51] It must be noted, however, that since few, if any, mesh panels are sold in Taiwan, the alleged subsidy is, in effect, very similar to an export subsidy to which Department of Commerce "offsets" might apply.

[52] See Additional Views of Vice Chairman Calhoun, Investigation No. 701–TA–145(P), *Certain Steel Wire Nails from the Republic of Korea*, (USITC Pub. 1223) March 1982.

so be it. Inherent in the legislative history of the 1979 Act seems to be the belief that the Commission's expertise resides largely in the application of law to different fact situations, many of which may be unique. That the language of the statute, in general, directs us to focus only on the impact of the imported merchandise cannot be read to preclude the interaction of fact and language, as a practical matter, calling for focus on the impact of the subsidy or of the practice of LTFV sales.[53] Indeed, consistency in the application of language to fact need not render the same analytical process in all instances. The application of our understanding of the law is made variable by virtue of the differing fact situations we confront, thus, variations that may arise in the analytical process, while maintaining consistency in the application of statutory language, ought not to be surprising or disturbing. In contrast, compelling the analytical process to be the same each time certain statutory language is used in the context of differing facts seems to run much too close to analytical rigidity.

The plain language in the statute that we are to find material injury by reason of the particular merchandise under investigation as it is applied in the context of an investigation characterized by (a) an allegation of material injury by reason of imports of subsidized merchandise, (b) a pre-existing finding of material injury by reason of imports of merchandise sold at less than fair value and (c) the merchandise in question being largely identical to that having the pre-existing finding, would seem to compel an analytical process in which we are to distinguish those factors of causation related to the former finding from those related to the instant allegation.

The best way I can see at this point to meet this obligation is to analyze the instant allegation on a basis of those features which are different in the two investigations. It may be that conditions in the marketplace are different, that the nature of the domestic industry is different, that factors related to the imports are different or that, indeed, the subsidized aspect of the merchandise has an impact different from that of the less than fair value sales aspect.

[53] As I observed in my Additional Views in *Nails*, a nexus standard which focuses on the relationship between merchandise and harm is a lower standard than that requiring a nexus between subsidy/LTFV sales and harm. It follows, however, that if the latter nexus can be shown, the former nexus must exist. Thus, while the statute may not require a showing of causality between subsidy and harm, the statute must be satisfied if such causality is in fact established.

Whatever the distinction, if our finding here is to be by reason of the merchandise under investigation, to wit subsidized fireplace mesh panels from Taiwan, then it seems to me we must be able to identify how the subsidized character of the merchandise and not the LTFV character of the merchandise is causing material injury. To undertake this kind of analytical process given the fact situation here seems to me only to be logical. Moreover, it does not seem to be a disturbing inconsistency when compared to the use of a different analytical process when applying the language to a situation in which the merchandise in question has not been found otherwise to be in violation of Title VII.

As I have said before, resolving complex issues of law or fact or complex mixed questions is best left for final investigations if less complex bases for finding a reasonable indication can be relied upon. In this connection, I repeat my concurrence with the majority, but heartily invite parties to address the issue I have raised here.

By order of the Commission.

Issued: September 3, 1982.

Kenneth R. Mason,

Secretary.

[FR Doc. 82-25386 Filed 9-14-82; 8:45 am]

BILLING CODE 7020-02-M

[Investigations Nos. 701-TA-176 Through 178 (Final)]

Hot-Rolled Stainless Steel Bar, Cold-Formed Stainless Steel Bar, and Stainless Steel Wire Rod From Spain

AGENCY: International Trade Commission.

ACTION: Institution of final countervailing duty investigations.

SUMMARY: As a result of a preliminary determination by the United States Department of Commerce that the government of Spain is providing subsidies to the manufacturers, producers, or exporters of certain stainless steel products within the meaning of section 701 of the Tariff Act of 1930 (19 U.S.C. 1673), the United States International Trade Commission hereby gives notice of the institution of investigations Nos. 701-TA-176 through 178 (Final) to determine whether an industry in the United States is materially injured, or is threatened with material injury, or the establishment of an industry in the United States is materially retarded, by reason of imports from Spain of hot-rolled stainless steel bar, cold-formed stainless steel bar, and stainless steel-wire rod, provided for in item 606.90 (hot-rolled and cold formed stainless steel bars) and items 607.26 and 607.43 (stainless steel wire rod) of the Tariff Schedules of the United States. These investigations will be conducted according to the provisions of part 207, subpart C, of the Commission's Rules of Practice and Procedure (19 CFR 207, 44 FR 76458).

EFFECTIVE DATE: September 9, 1982.

FOR FURTHER INFORMATION CONTACT: Mr. Larry Reavis, Office of Investigations, U.S. International Trade Commission, Room 341, 701 E Street NW., Washington, D.C. 20436; telephone 202-523-0296.

SUPPLEMENTARY INFORMATION:

Background

On June 2, 1982, the Commission unanimously determined, on the basis of the information developed during the course of investigations Nos. 701-TA-176 through 178 (Preliminary), that there was a reasonable indication that an industry in the United States was materially injured, or was threatened with material injury, by reason of imports of the above-named products alleged to be subsidized by the government of Spain. As a result of the Commission's affirmative preliminary determination, the Department of Commerce continued its investigation into the question of subsidies. Unless the investigation is extended, the final subsidary determination will be made by the Department of Commerce on or before November 8, 1982.

A staff report containing preliminary findings of fact will be available to all interested parties on November 4, 1982.

Service of documents.—Any interested person may appear in these investigations as a party, either in person or by representative, by filing an entry of appearance with the Secretary in accordance with § 201.11 of the Commission's rules (19 CFR 201.11). Each entry of appearance must be filed with the Secretary no later than 21 days after the publication of this notice in the **Federal Register.**

The Secretary will compile a service list from the entries of appearance filed in these final investigations and from the Commission's record in the preliminary investigations. Any party submitting a document in connection with these investigations shall, in addition to complying with § 201.8 of the Commission's rules (19 CFR § 201.8), serve a copy of each such document on all other parties to the investigations. Such service shall conform with the

requirements set forth in § 201.16(b) of the rules (19 CFR 201.16(b)).

In addition to the foregoing, each document filed with the Commission in the course of this investigation must include a certificate of service setting forth the manner and date of such service. This certificate will be deemed proof of service of the document. Documents not accompanied by a certificate of service will not be accepted by the Secretary.

Written submissions: Any person may submit to the Commission a written statement of information pertinent to the subject of these investigations. A signed original and fourteen (14) true copies of each submission must be filed at the Office of the Secretary, U.S. International Trade Commission Building, 701 E Street NW., Washington, D.C. 20436, on or before November 24, 1982. All written submissions, except for confidential business data, will be available for public inspection.

Any business information for which confidential business treatment is desired must be submitted separately. The envelope and all pages of such submissions must be clearly labeled "Confidential Business Information." Confidential submissions and requests for confidential treatment must conform with the requirements of § 201.6 of the Commission's Rules of Practice and Procedure (19 CFR 201.6).

Public hearing: The Commission will hold a public hearing in connection with these investigations on November 16, 1982, in the Hearing Room of the U.S. International Trade Commission Building, beginning at 9:30 a.m. Requests to appear at the hearing should be filed in writing with the Secretary to the Commission not later than the close of business (5:15 p.m.), on November 3, 1982. All persons desiring to appear at the hearing and make oral presentations must file prehearing statements and should attend a prehearing conference to be held at 9:30 a.m. on November 4, 1982, in Room 117 of the U.S. International Trade Commission Building. Prehearing statements must be filed on or before November 12, 1982.

Testimony at the public hearing is governed by § 207.23 of the Commission's Rules of Practice and Procedure (19 CFR 207.23). This rule requires that testimony be limited to a nonconfidential summary and analysis of material contained in prehearing statements and to new information. The Commission will not receive prepared testimony for the public hearing, as would otherwise be provided for by rule § 201.12(d). All legal arguments, economic analyses, and factual materials relevant to the public hearing should be included in prehearing statements in accordance with § 207.22.

For further information concerning the conduct of the investigations, hearing procedures, and rules of general application, consult the Commission's Rules of Practice and Procedure, part 207, subparts A and C (19 CFR Part 207), and Part 201, subparts A through E (19 CFR Part 201).

This notice is published pursuant to § 207.20 of the Commission's Rules of Practice and Procedure (19 CFR 207.20, 44 FR 76472).

By order of the Commission.

Issued: September 1982.

Kenneth R. Mason,

Secretary.

[FR Doc. 82-25356 Filed 9-14-82; 8:45 am]

BILLING CODE 7020-02-M

NATIONAL ADVISORY COMMITTEE ON OCEANS AND ATMOSPHERE

Hydrology Panel; Meeting

Pursuant to Section 10(a)(2), of the Federal Advisory Committee Act, 5 U.S.C. App. (1976), notice is hereby given that the Hydrology Panel of the National Advisory Committee on Oceans and Atmosphere (NACOA) will meet on Friday, October 1, 1982. The Panel will meet in Washington, D.C. at Page Building #1, Room B-100A, 2001 Wisconsin Avenue, NW. The session, which will be open to the public, will convene at 9:00 a.m. and adjourn at 3:00 p.m. This panel meeting will be worksession on the draft report.

Persons desiring to attend will be admitted to the extent seating is available. Persons wishing to make formal statements should notify the Chairperson of the Hydrology Panel, Dr. Paul Bock. The Chairperson retains the prerogative to impose limits on the duration of oral statements and discussion. Written statements may be submitted before or after each session.

Additional information concerning this meeting may be obtained through the NACOA Executive Director, Mr. Steven N. Anastasion, or James A. Almazan, the Staff Member for the Hydrology Panel. The mailing address is: NACOA, 3300 Whitehaven Street, NW., (Suite 438, Page Building #1), Washington, DC 20235.

Dated: September 10, 1982.

Steven N. Anastasion,

Executive Director.

[FR Doc. 82-25353 Filed 9-14-82; 8:45 am]

BILLING CODE 3510-12-M

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[Notice (82-51)]

NASA Advisory Council (NAC), Life Sciences Advisory Committee; Meeting

AGENCY: National Aeronautics and Space Administration.

ACTION: Notice of meeting.

SUMMARY: In accordance with the Federal Advisory Committee Act, Pub. L. 92-463, as amended, the National Aeronautics and Space Administration announces a forthcoming meeting of the NASA Advisory Council, Life Sciences Advisory Committee (LSAC).

DATE AND TIME: October 1, 1982, 10 a.m. to 4:30 p.m.; October 2, 1982, 8:30 a.m. to 5 p.m.

ADDRESS: NASA Headquarters, Room 5026, 400 Maryland Ave. SW, Washington, DC 20546.

FOR FURTHER INFORMATION CONTACT: Dr. William P. Bishop, Code EB-3, National Aeronautics and Space Administration, Washington, DC 20546 (202/755-3726).

SUPPLEMENTARY INFORMATION: The Life Sciences Advisory Committee consults with and advises the Council and NASA on the accomplishments and plans of NASA's Life Sciences Programs.

This meeting will be closed to the public from 3:30 p.m. to 5 p.m. on October 2 for a discussion of candidates being considered for Committee membership. During this session, the qualifications of proposed new members will be candidly discussed and appraised. Since this session will be concerned throughout with matters listed in 5 U.S.C. 552b(c)(6), it has been determined that this session should be closed to the public. The remainder of the meeting will be open to the public up to the seating capacity of the room (approximately 50 persons including committee members and other participants).

TYPE OF MEETING: Open—except for a closed session as noted in the agenda below.

October 1, 1982

10 a.m—Space Motion Sickness (Open session).

October 2, 1982

8:30 a.m.—Space Station (Open session).

12:30 p.m.—Second Dedicated Mission (Open session).

3:30 p.m.—LSAC Membership (Closed session).

Richard L. Daniels,

Director, Management Support Office, Office of Management.

September 8, 1982.

[FR Doc. 82-25275 Filed 9-14-82; 8:45 am]

BILLING CODE 7510-01-M

NATIONAL FOUNDATION ON THE ARTS AND THE HUMANITIES

Media Arts Panel (Policy Section); Meeting

Pursuant to Section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92-463), notice is hereby given that a meeting of the Media Arts Advisory Panel (Policy Section) to the National Council on the Arts will be held on September 28, 1982, from 9:00 a.m.-5:00 p.m. in Room 1426 of the Columbia Plaza Office Complex, 2401 E Street, NW., Washington, D.C. 20506.

This meeting will be open to the public on a space available basis. The topic for discussion will be Year End Reports for Radio Division, Programming in the Arts and Media Arts Division FY 1984 Guideline Discussion.

Further information with reference to this meeting can be obtained from Mr. John H. Clark, Advisory Committee Management Officer, National Endowment for the Arts, Washington, D.C. 20506, or call (202) 634-6070.

John H. Clark,

Director Office of Council and Panel Operations, National Endowment for the Arts.

Dated: September 7, 1982.

[FR Doc. 82-25291 Filed 9-14-82; 8:45 am]

BILLING CODE 7537-01-M

NUCLEAR REGULATORY COMMISSION

[Docket No. 50-373]

Commonwealth Edison Co.; Issuance of Amendment of Facility Operating License

The U.S. Nuclear Regulatory Commission (the Commission) has issued Amendment No. 6 to Facility Operating License No. NPF-11, issued to Commonwealth Edison Company, which revised Technical Specifications for operation of the La Salle County Station, Unit No. 1 (the facility) located in Brookfield Township, La Salle County, Illinois. The Amendment is effective as of the date of issuance.

The Amendment consists of a change to the Technical Specifications to include the Unit 2 Service Water System Effluent Line Radiation Monitor (2D18-K608) in Tables 3.3.7.10-1 and 4.3.7.10-1 of Specification 3.3.7.10.

The application for amendment complies with the standards and requirements of the Atomic Energy Act of 1954, as amended (the Act), and the Commission's rules and regulations. The Commission's rules and regulations in 10 CFR Chapter I, which are set forth in the license amendment. Prior public notice of this Amendment was not required since the Amendment does not involve a significant hazards consideration.

The Commission has determined that the issuance of this Amendment will not result in any significant environmental impact and that pursuant to 10 CFR 51.5(d)(4) an environmental impact statement, or negative declaration and environmental impact appraisal need not be prepared in connection with issuance of this Amendment.

For further details with respect to this action, see (1) the application for amendment dated August 19 and 30, 1982, (2) Amendment No. 6 to License NPF-11 dated September, 1982. All of these items are available for public inspection at the Commission's Public Document Room, 1717 H Street, N.W., Washington, D.C. 20555, and the Public Library of Illinois Valley Community College, Rural Route No. 1, Ogelsby, Illinois. A copy of items (1) and (2) may be obtained upon request addressed to the U.S. Nuclear Regulatory Commission, Washington, D.C. 20555, Attention: Director, Division of Licensing.

Dated at Bethesda, Maryland, this 7th day of September 1982.

For the Nuclear Regulatory Commission.

A. Schwencer,

Chief, Licensing Branch No. 2, Division of Licensing.

[FR Doc. 82-25307 Filed 9-14-82; 8:45 am]

BILLING CODE 7590-01-M

[Docket No. 50-370]

Duke Power Co., William B. McGuire Nuclear Station, Unit 2; Order Extending Construction Completion Dates

Duke Power Company is the holder of Construction Permit No. CPPR-84 issued by the Atomic Energy Commission [1] on February 28, 1973, for construction of the William B. McGuire Nuclear Station, Unit 2, presently under construction at the Company's site on the shore of Lake Norman in Mecklenburg County, North Carolina.

In response to previous requests from Duke Power Company (the permittee), the Nuclear Reguatory Commission issued Orders on August 3, 1976, and December 6, 1978, extending the latest date for completion of construction. By letters dated March 30 and November 30, 1979, and November 26, 1980, the permittee filed requests for another extension of the completion date. This extension was requested because a major portion of the construction effort was diverted from Unit 2 to completion of Unit 1 which is now operating. In addition, construction was delayed due to, among other things, pipe hanger problems, ice condenser activities, preoperational testing, environmental qualification modifications, modifications to other components/systems, and the impact due to the accident at Three Mile Island Unit 2.

This action involves no significant hazards consideration; good cause has been shown for the delay; and the requested extension is for a reasonable period, the bases for which are set forth in a staff evaluation of the request for extension.

The Commission has determined that this acton will not result in any significant environmental impact, and pursuant to 10 CFR 51.5(d)(4), an environmental statement, or negative declaration and environmental impact appraisal, need not be prepared in connection with this action.

The NRC staff safety evaluation of the request for extension of the construction permit is available for public inspection at the Commission's Public Document Room 1717 H Street, N.W., Washington, D.C. 20555 and at the local public document room established for McGuire at the Public Library of Charlotte and Mecklenburg County, 310 North Tryon Street, Charlotte, North Carolina 28202.

It is hereby ordered that the latest completion date is extended for CPPR-84 from December 31, 1980 to June 30, 1983.

Date of Issuance: September 2, 1982.

For the Nuclear Regulatory Commission.

Robert A. Purple,

Acting Director, Division of Licensing, Office of Nuclear Reactor Regulation.

[FR Doc. 82-25308 Filed 9-14-82; 8:45 am]

BILLING CODE 7590-01-M

[1] Effective January 20, 1975, the Atomic Energy Commission became the Nuclear Regulatory Commission and Permits in effect on that day were continued under the authority of the Nuclear Regulatory Commission.

[Docket No. 50-387]

Pennsylvania Power & Light Co. and Allegheny Electric Cooperative, Inc.; Issuance of Amendment to Facility Operating License

The U.S. Nuclear Regulatory Commission (the Commission) has issued Amendment No. 2 to Facility Operating License No. NPF-14, issued to Pennsylvania Power & Light Company and Allegheny Electric Cooperative, Inc., for Susquehanna Steam Electric Station, Unit 1 (the facility) located in Luzerne County, Pennsylvania. This amendment grants the utilization of the Section 14, Susquehanna Final Safety Analysis Report as amended through Amendment 50, to conduct the post-fuel-loading initial test program. This amendment is effective as of the date of issuance.

The application for the amendment complies with the standards and requirements of the Atomic Energy Act of 1954, as amended (the Act), and the Commission's regulations. the Commission has made appropriate findings as required by the Act and the Commission's regulations in 10 CFR Chapter I, which are set forth in the license amemdment. Prior public notice of this amendment was not required since the amendment does not involve a significant hazards consideration.

The Commission has determined that the issuance of this amendment will not result in any significant environmental impact and that pursuant to 10 CFR 51.5(d)(4) an environmental impact statement, or negative declaration and environmental impact appraisal need not be prepared in connection with issuance of this amendment.

For further details with respect to this action, see (1) the application for the amemdment dated August 20, 1982; (2) Amendment No. 2 to License NPF-14, dated, September 8, 1982 and (3) the Commission's evaluation dated Sepember 8, 1982. All of these items are available for public inspection at the Commission's Public Document Room, 1717 H Street, N.W., Washington, D.C. 20555, and at the Osterhout Free Library, Reference Department, 71 South Franklin Street, Wilkes-Barre, Pennsylvania 18701. A copy of items (1), (2) and (3) may be obtained upon request addressed to the U.S. Nuclear Regulatory Commission, Washington, D.C. 20555, Attention: Director, Division of Licensing.

Dated at Bethesda, Maryland, this 8th day of September 1982.

For the Nuclear Regulatory Commission.

B. J. Youngblood,

Chief, Licensing Branch No. 1, Division of Licensing.

[FR Doc. 82-25309 Filed 9-14-82; 8:45 am]

BILLING CODE 7590-01-M

[Docket No. 50-206]

Southern California Edison Co. and San Diego Gas & Electric Co.; Issuance of Amendment to Provisional Operating License

The U.S. Nuclear Regulatory Commission (the Commission) has issued Amendment No. 63 to Provisional Operating License No. DPR-13, issued to Southern California Edison Company and San Diego Gas and Electric Company (the licensees), which revised the Technical Specifications for Operation of the San Onofre Nuclear Generating Station, Unit No. 1 (the facility) located in San Diego County, California. The amendment is effective 30 days from its date of issuance.

The amendment approves changes to the Appendix A Technical Specifications which incorporate modifications to the operability and surveillance requirements for shock suppressors (snubbers). These Technical Specification changes are to be implemented within 30 days from the date of issuance of the amendment.

The application for amendment complies with the standards and requirements of the Atomic Energy Act of 1954, as amended (the Act), and the Commission's rules and regulations. The Commission has made appropriate findings as required by the Act and the Commission's rules and regulations in 10 CFR Chapter I, which are set forth in the license amendment. Prior public notice of this amendment was not required since the amendment does not involve a significant hazards consideration.

The Commission has determined that the issuance of this amendment will not result in any significant environmental impact and that pursuant to 10 CFR 51.5(d)(4), an environmental impact statement or negative declaration and environmental impact appraisal need not be prepared in connection with issuance of this amendment.

For further details with respect to this action, see (1) the application for amendment dated December 24, 1981 as supplemented by letter dated June 10, 1982, (2) Amendment No. 63 to Provisional Operating License No. DPR-13, and (3) the Commission's related Safety Evaluation. All of these items are available for public inspection at the Commission's Public Document Room, 1717 H Street, NW., Washington, D.C., and at the San Clemente Branch Library, 242 Avenida Del Mar, San Clemente, California. A single copy of items (2) and (3) may be obtained upon request addressed to the U.S. Nuclear Regulatory Commission, Washington, D.C. 20555, Attention: Director, Division of Licensing.

Dated at Bethesda, Maryland, this 8th day of September, 1982.

For the Nuclear Regulatory Commission.

Dennis M. Crutchfield,

Chief, Operating Reactors Branch No. 5, Division of Licensing.

[FR Doc. 82-25310 Filed 9-14-82; 8:45 am]

BILLING CODE 7590-01-M

[Docket No. 50-361]

Southern California Edison Co., et al.; Issuance of Amendment Facility Operating License No. NPF-10

Pursuant to the Atomic Safety and Licensing Board's Partial Initial Decision dated January 11, 1982, its Initial Decision dated May 14, 1982 and Commission Memorandum M820728 dated July 30, 1982, the U.S. Nuclear Regulatory Commission (the Commission) has issued Amendment No. 7 to Facility Operating License No. NPF-10, to Southern California Edison Company, San Diego Gas and Electric Company, The City of Riverside, California and The City of Anaheim, California (licensees) for the San Onofre Nuclear Generating Station, Unit 2 (the facility). The facility is a pressurized water reactor, located in San Diego County, California.

This amendment authorizes operation at power levels up to 100% of full rated core power, 3390 thermal megawatts, in accordance with the provisions of the License as amended, the Technical Specifications as amended, and the Environmental Protection Plan. In addition, the amendment includes changes to the License and Technical Specifications to (1) modify the operability requirements for fire detection instrumentation, (2) extend the implementation date for the environmental qualification surveillance program, (3) add emergency preparedness conditions, (4) require performance of a study of rapid depressurization and decay heat removal, and (5) impose a requirement on qualification of auxiliary feedwater pump motor bearings. The amendment is effective as of the date of issuance.

Issuance of this amendment complies with the standards and requirements of the Atomic Energy Act of 1954, as amended (the Act), and the

Commission's regulations. The Commission has made appropriate findings as required by the Act and the Commission's regulations in 10 CFR Chapter I, which are set forth in the amendment. Prior public notice of the overall action involving the proposed issuance of an operating license authorizing full power operation including item (3) above was published in the **Federal Register** on April 7, 1977 (42 F.R. 18460). Prior notice of the actions authorized in items (1), (2), (4) and (5), above is not required since these actions do not involve significant hazards considerations.

The Commission has determined that the issuance of this license amendment will not result in any environmental impacts other than those evaluated in the Final Environmental Statement and its Errata since the activity authorized by the license amendment is encompassed by the overall action evaluated in the Final Environmental Statement and its Errata.

For further details with respect to this action, see (1) Amendment No. 7 to Facility Operating License No. NPF–10 and the related Safety Evaluation; (2) Southern California Edison Company's letters dated May 14, July 9, July 12, and July 30, 1982; (3) the reports of the Advisory Committee on Reactor Safeguards dated February 10, 1982, and March 17, 1981; (4) the Commission's Safety Evaluation Report dated February 1981, Supplement No. 1 dated February 1981, Supplement No. 2 dated May 1981, Supplement No. 3 dated September 1981, Supplement No. 4 dated Janaury 1982, Supplement No. 5 dated February 1982 and Supplement No. 7 dated June 1982; (5) the Final Safety Analysis Report and Amendments thereto; (6) the Environmental Report and Supplements thereto; (7) the Final Environmental Statement dated April 1981 and the Errata to the Final Environmental Statement dated June 1981; (8) the Partial Initial Decision and the Initial Decision issued by the Atomic Safety and Licensing Board dated January 11, 1982 and May 14, 1982, respectively; and (9) Commission Memorandum M820728 dated July 30, 1982.

These items are available for public inspection at the Commission's Public Document Room, 1717 H Street, N.W., Washington, D.C., and the San Clemente Branch Library, 242 Avenida Del Mar, San Clemente, California 92672. A copy of Amendment No. 7 to Facility Operating License No. NPF–10 may be obtained upon request addressed to the U.S. Nuclear Regulatory Commission, Washington, D.C. 20555, Attention: Director, Division of Licensing. Copies of the Safety Evaluation Report and its Supplements 1 through 6 (NUREG–0712) and the Technical Specifications (NUREG–0741) may be purchased at current rates from the National Technical Information Service, Department of Commerce, 5285 Port Royal Road, Springfield, Virginia 22161, and through the NRC GPO sales program by writing to the U.S. Nuclear Regulatory Commission, Attention: Sales Manager, Washington, D.C. 20555. GPO deposit account holders can call 301/492–9530.

Dated at Bethesda, Maryland, this 7th day of September, 1982.

For the Nuclear Regulatory Commission.

Frank J. Miraglia,

Chief, Licensing Branch No. 3, Division of Licensing.

[FR Doc. 82–25311 Filed 9–14–82; 8:45 am]

BILLING CODE 7590–01–M

[Docket Nos. 50–361 OL, 50–362 OL]

Southern California Edison Co., et al. (San Onofre Nuclear Generating Station, Units 2 and 3); Oral Argument

Notice is hereby given that, in accordance with the Appeal Board's order of September 8, 1982, oral argument on intervenors' appeals from the Licensing Board's January 11, 1982 partial initial decision on seismic issues and May 14, 1982 initial decision on emergency planning, which taken together authorized the issuance of a full power operating license for Units 2 and 3 of the San Onofre Nuclear Generating Station, will be heard at *9:00 a.m. on Wednesday, October 6, 1982,* in the San Diego County Administration Building, Room 302, 1600 Pacific Highway, San Diego, California.

Dated: September 9, 1982.

For the Appeal Board.

C. Jean Shoemaker,

Secretary to the Appeal Board.

[FR Doc. 82–25312 Filed 9–14–82; 8:45 am]

BILLING CODE 7590–01–M

[Docket No. 50–508]

Washington Public Power Supply System, et al., Nuclear Project No. 3; Receipt of Application for Facility Operating License; Availability of Applicants' Environmental Report; Consideration of Issuance of Facility Operating License; and Notice of Opportunity for Hearing

Notice is hereby given that the Nuclear Regulatory Commission (the Commission) has received an application from Washington Public Power Supply System (WPPSS), et al. for a facility operating license to possess, use, and operate the Nuclear Project No. 3 (WNP–3), a pressurized water nuclear reactor (the facility) located in Grays Harbor County, Washington, approximately three miles south of Satsop, Washington. The application was filed by WPPSS on behalf of itself and Pacific Power and Light Company, Portland General Electric Company, Puget Sound Power and Light Company and Washington Water Power Company. The reactor is designed to operate at a core power level of 3800 megawatts thermal, with an equivalent net electrical output of approximately 1300 megawatts.

Pursuant to the National Environmental Policy Act of 1969 and the regulations of the Commission in 10 CFR Part 51, the applicants filed an environmental report as part of the application. The report, which discusses environmental considerations related to the proposed operation of the facility, is being made available in the Office of the Governor, Planning and Community Affairs Agency, 400 Capitol Center Building, Olympia, Washington 98504, the Office of Financial Management, 109 House Office Building, Olympia, Washington 98504 and the Grays Harbor Regional Planning Commission, 2109 Simpson Avenue, Suite 202, Aberdeen, Washington 98520.

After the environmental report has been analyzed by the Commission's staff, a draft environmental statement will be prepared. Upon preparation of the draft environmental statement, the Commission will, among other things, cause to be published in the **Federal Register**, a notice of availability of the draft statement, requesting comments from interested persons on the draft statement. The notice will also contain a statement to the effect that any comments of Federal agencies and State and local officials will be made available when received. The draft environmental statement will focus only on matters which differ from those previously discussed in the final environmental statement prepared in connection with the issuance of the construction permit. Upon consideration of comments submitted with respect to the draft environmental statement, the Commission's staff will prepare a final environmental statement, the availability of which will be published in the **Federal Register.**

The Commission will consider the issuance of a facility operating license to the applicants which would authorize the applicants to possess, use and operate the Nuclear Project No. 3 in

accordance with the provisions of the license and the technical specifications appended thereto, upon: (1) The completion of a favorable safety evaluation of the application by the Commission's staff; (2) the completion of the environmental review required by the Commission's regulations in 10 CFR Part 51; (3) the receipt of a report on the applicants' application for a facility operating license by the Advisory Committee on Reactor Safeguards; and (4) a finding by the Commission that the application for the facility license, as amended, complies with the requirements of the Atomic Energy Act of 1954, as amended (the Act), and the Commission's regulations in 10 CFR Chapter I. Construction of the facility was authorized by Construction Permit No. CPPR–154, issued by the Commission on April 11, 1978. The applicants have advised that construction may be completed as early as June 1985.

With regard to Executive Order 11988, Floodplain Management, the WNP–3 facility will have structures and construction activities located on the floodplain. The subject of floodplain management will be discussed in the Commission's environmental statement referenced above.

Prior to issuance of an operating license, the Commission will inspect the facility to determine whether it has been constructed in accordance with the application, as amended, and the provisions of the construction permit. In addition, the license will not be issued until the Commission has made the findings reflecting its review of the application under the Act, which will be set forth in the proposed license, and has concluded that the issuance of the license will not be inimical to the common defense and security or to the health and safety of the public. Upon issuance of the license, the applicants will be required to execute an indemnity agreement as required by Section 170 of the Act and 10 CFR Part 140 of the Commission's regulations.

By October 15, 1982, the applicants may file a request for a hearing with respect to issuance of the facility operating license. By October 15, 1982, any person whose interest may be affected by this proceeding may file a petition for leave to intervene. Requests for a hearing and petitions for leave to intervene shall be filed in accordance with the Commission's "Rules of Practice for Domestic Licensing Proceedings" in 10 CFR Part 2. If a request for a hearing or petition for leave to intervene is filed by the above date, the Commission or an Atomic Safety and Licensing Board designated by the Commission or by the Chairman of the Atomic Safety and Licensing Board Panel, will rule on the request and/or petition and the Secretary of the Commission, or designated Atomic Safety and Licensing Board, will issue a notice of hearing or an appropriate order.

As required by 10 CFR 2.714, a petition for leave to intervene shall set forth with particularity the interest of the petitioner in the proceeding and how that interest may be affected by the results of the proceeding. The petiton should specifically explain the reasons why intervention should be permitted with particular reference to the following factors: (1) The nature of the Petitioner's right under the Act to be made a party to the proceeding; (2) the nature and extent of the petitioner's property, financial, or other interest in the proceeding; and (3) the possible effect of any order which may be entered in the proceeding on the petitioner's interest. The petition should also identify the specific aspect(s) of the subject matter of the proceeding as to which petitoner wishes to intervene. Any person who has filed a petition for leave to intervene or who has been admitted as a party may amend his petition, but such an amended petition must satisfy the specificity requirements described above.

Not later than fifteen (15) days prior to the first prehearing conference scheduled in the proceeding, a petitioner shall file a supplement to the petition to intervene which must include a list of the contentions which are sought to be litigated in the matter, and the bases for each contention set forth with reasonable specificity. A petitioner who fails to file such a supplement which satisfies these requirements with respect to at least one contention will not be permitted to participate as a party.

A request for a hearing or a petition for leave to intervene must be filed with the Secretary of the Commission, United States Nuclear Regulatory Commission, Washington, D.C. 20555, Attention: Docketing and Service Branch, or may be delivered to the Commission's Public Document Room, 1717 H Street, N.W., Washington, D.C. by October 15, 1982. A copy of the petition must also be sent to the Executive Legal Director, U.S. Nucler Regulatory Commission, Washington, D.C. 20555, and to Debevoise & Liberman, 1200 Seventeenth Street, N.W., Suite 700, Washington, D.C. 20036, Attention: Nicholas S. Reyonalds, Esq., attorney for the applicants. Any requests for additional information regarding the content of this notice should be addressed to the Chief Hearing Counsel, Office of the Executive Legal Director, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555.

Nontimely filings of petitions for leave to intervene, amended petitions, supplemental petitions and/or requests for hearing will not be entertained absent a determination by the Commission, the presiding officer, or the Atomic Safety and Licensing Board designated to rule on the petition and/or request, that the petitioner has made a substantial showing of good cause for the granting of a late petition and/or request. That determination will be based upon a balacing of the factors specified in 10 CFR 2.714(a)(1)(i)–(v) and 2.714(d).

For further details pertinent to the matters under consideration, see the application for the facility operating license, including the Final Safety Analysis Report and the Environmental Report, forwarded on August 20, 1982, which are avialable for public inspection at the Commission's Public Document Room, 1717 H Street, N.W., Washington, D.C. 20555 and at the W. H. Abel Memorial Library, 125 Main Street, South, Montesano, Washington 98563. As they become available, the following documents may be inspected at the above locations: (1) the safety evaluation report prepared by the Commission's staff; (2) the draft environmental statement; (3) the final environmental statement; (4) the report of the Advisory Committee on Reactor Safeguards (ACRS) on the application for the facility operating license; (5) the proposed facility opreating license; and (6) the technical specifications, which will be attached to the proposed facility operating license.

Copies of the proposed operating license and the ACRS report, when available, may be obtained by request to the Director, Division of Licensing, Office of Nuclear Reactor Regulation, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555. Copies of the Commission's staff safety evaluation report and final environmental statement, when avialable, may be purchased at current rates, from the National Technical Information Service, Department of Commerce, 5285 Port Royal Road, Springfield, Virginia 22161.

Dated at Bethesda, Maryland this 1st day of September 1982.

For the Nuclear Regulatory Commission.

D. E. Sells,

Acting Chief, Licensing Branch No. 3, Division of Licensing.

[FR Doc. 82-25319 Filed 9-14-82; 8:45 am]

BILLING CODE 7590-01-M

Draft Regulatory Guide; Issuance and Availability

The Nuclear Regulatory Commission has issued for public comment a draft of a proposed revision to a guide in its Regulatory Guide Series together with a draft of the associated value/impact statement. This series has been developed to describe and make available to the public methods acceptable to the NRC staff of implementing specific parts of the Commission's regulations and, in some cases, to delineate techniques used by the staff in evaluating specific problems or postulated accidents and to provide guidance to applicants concerning certain of the information needed by the staff in its review of applications for permits and licenses.

The draft, temporarily identified by its task number, SG 047-4 (which should be mentioned in all correspondence concerning this draft guide), is proposed Revision 1 to Regulatory Guide 5.37 and is entitled "In Situ Assay of Enriched Uranium Residual Holdup." This guide is being developed to describe procedures acceptable to the NRC staff for the in situ assay of residual enriched uranium holdup. Residual holdup is the inventory component remaining in and about process equipment and handling areas after those collection areas have been prepared for the inventory of special nuclear materials required by the Commission's regulations.

This draft guide and the associated value/impact statement are being issued to involve the public in the early stages of the development of a regulatory position in this area. They have not received complete staff review and do not represent an official NRC staff position.

Public comments are being solicited on both drafts, the guide (including any implementation schedule) and the draft value/impact statement. Comments on the draft value/impact statement should be accompanied by supporting data. Comments on both drafts should be sent to the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555, Attention: Docketing and Service Branch, by November 15, 1982.

Although a time limit is given for comments on these drafts, comments and suggestions in connection with (1) items for inclusion in guides currently being developed or (2) improvements in all published guides are encouraged at any time.

Regulatory guides are available for inspection at the Commission's Public Document Room, 1717 H Street NW., Washington, D.C. Requests for single copies of draft guides (which may be reproduced) or for placement on an automatic distribution list for single copies of future draft guides in specific divisions should be made in writing to the U.S. Nuclear Regulatory Commission, Washington, D.C. 20555, Attention: Director, Division of Technical Information and Document Control. Telephone requests cannot be accommodated. Regulatory guides are not copyrighted, and Commission approval is not required to reproduce them.

(5 U.S.C. 552(a))

Dated at Rockville, Maryland, this 9th day of September 1982.

For the Nuclear Regulatory Commission.

Karl R. Goller,

Director, Division of Facility Operations, Office of Nuclear Regulatory Research.

[FR Doc. 82-25314 Filed 9-14-82; 8:45 am]

BILLING CODE 75901-01-M

Advisory Committee on Reactor Safeguards Meeting With the German Reactor Safety Commission (RSK); Meeting

Representatives of the German Reactor Safety Commission (RSK) will meet October 5 and 6, 1982, Room 1046, at 1717 H Street NW., Washington, DC. Several members of the ACRS and RSK will meet to discuss the use of pra and quantitative safety goals in the design and regulation of nuclear power plants; recent or proposed changes in safety-related policy, including items such as consideration of Class 9 accidents in the design of nuclear plants; changes in safety-related technology, including items such as the use of the Double Ended Pipe Break as the basis for plant design and consideration of pressurized thermal shock of reactor pressure vessel; and handling/disposal of radioactive wastes.

The meeting will be closed to public attendance to ensure the security of information identified and supplied by a foreign government in confidence (Sunshine Act Exemption 4). In order to receive and consider this information, the ACRS must be able to engage in frank discussion with representatives of the FRG regulatory agency and its advisory body on reactor safety (RSK). For the reason just stated, such a discussion would not be possible if held in public session.

I have determined, therefore, that it is necessary to close this meeting to permit the ACRS to obtain information necessary in carrying out its statutory responsibilities. The authority for such closure is Exemption (4) of the Sunshine Act, 5 U.S.C. 552b(c)(4).

Further information can be obtained by a prepaid telephone call to the cognizant Designated Federal Employee, Mr. Raymond F. Fraley (telephone 202/634-3265) between 8:15 a.m. and 5:00 p.m., EDT.

Dated: September 9, 1982.

John C. Hoyle

Advisory Committee Management Officer.

[FR Doc. 82-25315 Filed 9-14-82; 8:45 am]

BILLING CODE 7590-01-M

Advisory Committee on Reactor Safeguards Subcommittee on Anticipated Transients Without Scram; Meeting

The ACRS Subcommittee on Anticipated Transients Without Scram (ATWS) will hold a meeting on October 1, 1982, Room 1046, at 1717 H Street NW., Washington, DC. The Subcommittee will discuss the proposed plan and schedule of the NRC Task Force on ATWS for resolution of this issue.

In accordance with the procedures outlined in the **Federal Register** on September 30, 1981 (46 FR 47903), oral or written statements may be presented by members of the public, recordings will be permitted on during those portions of the meeting when a transcript is being kept, and questions may be asked only by members of the Subcommittee, its consultants, and Staff. Persons desiring to make oral statements should notify the cognizant Designated Federal Employee as far in advance as practicable so that appropriate arrangements can be made to allow the necessary time during the meeting for such statements.

The entire meeting will be open to public attendance except for those sessions which will be closed to protect proprietary information (Sunshine Act Exemption 4). One or more closed sessions may be necessary to discuss such information. To the extent practicable, these closed sessions will be held so as to minimize inconvenience to members of the public in attendance.

The agenda for subject meeting shall be as follows:

Friday, October 1, 1982—8:30 a.m. until the conclusion of business.

During the initial portion of the meeting, the Subcommittee, along with any of its consultants who may be present, may exchange preliminary views regarding matters to be considered during the balance of the meeting.

The Subcommittee will then hear presentations by and hold discussions with representatives of the NRC Staff, their consultants, and other interested persons regarding this topic.

Further information regarding topics to be discussed, whether the meeting has been cancelled or rescheduled, the Chairman's ruling on requests for the opportunity to present oral statements and the time allotted therefor can be obtained by a prepaid telephone call to the cognizant Designated Federal Employee, Mr. Paul Boehnert (telephone 202/634–3267) between 8:15 a.m. and 5:00 p.m., EDT.

I have determined, in accordance with Subsection 10(d) of the Federal Advisory Committee Act, that it may be necessary to close some portions of this meeting to public attendance to protect proprietary information. The authority for such closure is Exemption (4) to the Sunshine Act, 5 U.S.C. 552b(c)(4).

Dated: September 9, 1982.

John C. Hoyle,

Advisory Committee Management Officer.

[FR Doc. 82–25316 Filfed 9–14–82; 8:45 am]

BILLING CODE 7590–01–M

PACIFIC NORTHWEST ELECTRIC POWER AND CONSERVATION PLANNING COUNCIL

Executive Committee Meeting

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 Executive Committee of its Scientific and Statistical Advisory Committee.

DATE: Tuesday, September 21, 1982. 1:00 p.m.

ADDRESS: The meeting will be held at the Council's Central Office located at 700 SW Taylor Street, Suite 200, Portland, Oregon.

FOR FURTHER INFORMATION CONTACT:
Torian Donohoe, (503) 222–5161.

Edward Sheets,

Executive Director.

[FR Doc. 82–25295 Filed 9–14–82; 8:45 am]

BILLING CODE 0000–00–M

PENSION BENEFIT GUARANTY CORPORATION

Agency Forms Under Review

September 8, 1982.

Background

When executive department and agencies propose public use forms, reporting, or recordkeeping requirements, the Office of Management and Budget (OMB) reviews and acts on those requirements under the Paperwork Reduction Act [44 U.S.C. Chapter 35]. Departments and agencies use a number of techniques including public hearings to consult with the public on significant reporting requirements before seeking OMB approval. OMB in carrying out its responsibilities under the act also considers comments on the forms and recordkeeping requirements that will affect the public. Reporting or recordkeeping requirements that appear to raise no significant issues are approved promptly. OMB's usual practice is not to take any action on proposed reporting requirements until at least ten working days after notice in the **Federal Register**, but occasionally the public interest requires more rapid action.

List of Forms Under Review

Immediately following the submission of a request by the Pension Benefit Guaranty Corporation (PBGC) for OMB approval of a reporting or recordkeeping requirement, a description of the report is published in the **Federal Register**. This information contains the name and telephone number of the PBGC clearance officer (from whom a copy of the form and supporting documents is available). The entries are grouped by type of submission—i.e., new forms, revisions, extensions (burden change), extensions (no change), and reinstatements.

Comment and Questions

Copies of the proposed forms and supporting documents may be obtained from the PBGC clearance officer whose name, address, and telephone number appear below. The agency clearance officer will send you a copy of the proposed form or regulation, the request for clearance (SF 83), and the supporting statement that are submitted to OMB for review.

FOR FURTHER INFORMATION CONTACT:
Clearance Officer—Robert E. Geiger, Office of Management Services, Pension Benefit Guaranty Corporation, 2020 K Street, NW., Washington, DC 20006.
OMB Reviewer—Norman Frumkin, Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, Room 3208, Washington, DC 20503.

New Form

Title of the Collection of Information: Notice of Intent to Terminate.
Agency Form Number: IRS/PBGC Form 5310.
How often the Collection of Information must be filed: On occasion (once in the life of a plan).
Who is asked or required to report: All employers with single-employer defined benefit pension plans covered under Title IV of ERISA who are terminating their pension plans.
Estimated number of annual responses: 4,540.

The purpose of this form is to gather the information necessary to effectuate plan termination. In the past, PBGC regulations, 29 CFR 2616 required certain information to be submitted to the PBGC. That same information would now be required on IRS/PBGC Form 5310 so that compilation and completion of the information requirements will be less burdensome on the public. In addition, those plans requesting IRS action on plan termination need only submit one form for both agencies' purposes.

Comments should be sent to: One copy to Melanie Nussdorf, Special Counsel, Pension Benefit Guaranty Corporation, 2020 K Street, NW., Suite 7200, Washington, DC 20006, and one copy to Norman Frumkin, Desk Officer for Reports Management Branch, Office of Management and Budget, New Executive Office Building, Room 3208, 726 Jackson Place, NW., Washington, DC 20503.

Mitchell L. Strickler,

Deputy General Counsel.

[FR Doc. 82–25119 Filed 9–14–82; 8:45 am]

BILLING CODE 7708–01–M

DEPARTMENT OF THE TREASURY

Public Information Collection Requirements Submitted to OMB for Review

During the period September 3 through September 9, 1982, the

Department of Treasury submitted the following public information collection requirements to OMB, for review and clearance under the Paperwork Reduction Act of 1980, Pub. L. 96–511. Copies of these submissions may be obtained from the Treasury Department Clearance Officer, by calling (202) 634–2179. Comments regarding these information collections should be addressed to the Treasury Reports Management Officer, Information Resources Management Division, Room 309, 1625 I St. NW., Washington, D.C. 20220; *and* to the OMB reviewer listed at the end of each entry.

Date Submitted: September 3, 1982.
Submitting Bureau: Internal Revenue Service.
OMB Number: 1545–0227.
Form Number: 6251.
Type of Submission: Revision.
Title: Alternative Minimum Tax Computation.
Purpose: Form 6251 is used by individuals, estates, and trusts having certain tax preference items or certain nonbusiness credits, who may be liable for the alternative minimum tax. The form provides a computation of the alternative minimum tax which is to be added to tax liability. The information is needed to see whether taxpayers are complying with the law.
OMB Reviewer: Michael Abrahams (202) 395–6880, Office of Management and Budget, Room 3208, New Executive Office Building, Washington, D.C. 20503.

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Date Submitted: September 3, 1982.
Submitting Bureau: Internal Revenue Service.
OMB Number: 1545–0142.
Form Number: 2220.
Type of Submission: Revision.
Title: Underpayment of Estimated Tax by Corporations.
Purpose: Form 2220 is used by corporation to determine whether they paid enough estimated tax, whether they are subject to the penalty for underpayment of estimated tax, and, if so, the amount of penalty. The information is used to determine whether the penalty should be assessed.
OMB Reviewer: Michael Abrahams (202) 395–6880, Office of Management and Budget, Room 3208, New Executive Office Building, Washington, D.C. 20503.

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Date Submitted: September 8, 1982.
Submitting Bureau: Internal Revenue Service.
OMB Number: 1545–0619.
Form Number: 6765.
Type of Submission: Revision.
Title: Credit for Increasing Research Activities.
Purpose: Internal Revenue Code section 44F, added by Public Law 97–34, allows a credit against income tax for amounts spent for increasing the research activities of a trade or business. The data is used to verify that the credit claimed is correct.
OMB Reviewer: Michael Abrahams (202) 395–6880, Office of Management and Budget, Room 3208, New Executive Office Building, Washington, D.C. 20503.

* * * * *

Date Submitted: September 8, 1982.
Submitting Bureau: Internal Revenue Service.
OMB Number: 1545–0228.
Form Number: 6252.
Type of Submission: Revision.
Title: Computation of Installment Sale Income.
Purpose: Information needed to figure and report an installment sale for a casual or incidental sale of personal property and a sale of real property by someone not in the business of selling real estate. Data to determine whether installment sale has been properly reported and correct amount of profit included in income on taxpayer's return.
OMB Reviewer: Michael Abrahams (202) 395–6880, Office of Management and Budget, Room 3208, New Executive Office Building, Washington, D.C. 20503.

* * * * *

Date Submitted: September 8, 1982.
Submitting Bureau: Internal Revenue Service.
OMB Number: 1545–0089.
Form Number: 1040NR.
Type of Submission: Revision.
Title: U.S. Nonresident Alien Income Tax Return.
Purpose: This form is used by nonresident individuals, foreign estates and trusts to report their income subject to tax and compute their correct tax liability. The information on the return is used to determine whether income, deductions, credit, payments, etc., are correctly figured.
OMB Reviewer: Michael Abrahams (202) 395–6880, Office of Management and Budget, Room 3208, New Executive Office Building, Washington, D.C. 20503.

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Date Submitted: September 9, 1982.
Submitting Bureau: Internal Revenue Service.
OMB Number: 1545–0231
Form Number: 6478.
Type of Submission: Revision.
Title: Credit for Alcohol Used as Fuel.
Purpose: This form is used to compute the credit allowed under IRC section 44E for alcohol used as fuel. The information is needed to determine that the amount of credit claimed is correct.
OMB Reviewer: Michael Abrahams (202) 395–6880, Office of Management and Budget, Room 3208, New Executive Office Building, Washington, D.C. 20503.

* * * * *

Date Submitted: September 9, 1982.
Submitting Bureau: Internal Revenue Service.
OMB Number: 1545–0162.
Form Number: 4136.
Type of Submission: Revision.
Title: Computation of Credit for Federal Tax on Gasoline, Special Fuels, and Lubricating Oil.
Purpose: IRC section 39 requires information in order to claim a credit for Federal excise tax on certain gasoline, special fuels, and lubricating oil used. This form is used to figure the amount of credit. Data is used to verify validity of claim.
OMB Reviewer: Michael Abrahams (202) 395–6880, Office of Management and Budget, Room 3208, New Executive Office Building, Washington, D.C. 20503.

* * * * *

Date Submitted: September 9, 1982.
Submitting Bureau: Internal Revenue Service.
OMB Number: 1545–0455.
Form Number: 6318.
Type of Submission: Revision.
Title: Instructor Evaluation (VITA).
Purpose: This form is used by the volunteer instructor to evaluate the quality of the VITA (Volunteer Income Tax Assistance) training material. This form is part of the VITA Instructor Guide, Publication 1155.
OMB Reviewer: Michael Abrahams (202) 395–6880, Office of Management and Budget, Room 3208, New Executive Office Building, Washington, D.C. 20503.

* * * * *

Date Submitted: September 9, 1982.
Submitting Bureau: Internal Revenue Service.
OMB Number: 1545–0072.
Form Number: 2119.
Type of Submission: Revision.
Title: Sale or Exchange or Principal Residence.
Purpose: Form 2119 is used by taxpayers who sell their principal residence at a gain, whether or not they purchase another one. It is also used by those taxpayers 55 years of age or older who elect to exclude gain on the sale of their principal residence. The information is used to help verify whether the gain or exclusion of gain has been correctly reported.
OMB Reviewer: Michael Abrahams (202) 395–6880, Office of Management

and Budget, Room 3208, New Executive Office Building, Washington, D.C. 20503.

Joy Tucker,

Departmental Reports Management Officer.

September 10, 1982.

[FR Doc. 82-25304 Filed 9-14-82; 8:45 am]

BILLING CODE 4810-25-M

Office of the Secretary

[Number 105-9]

Delegation of Authority to the Deputy Assistant Secretary (Operations) To Approve Regulations on Viticultural Areas

August 20, 1982.

By virtue of the authority vested in the Secretary of the Treasury by Reorganization Plan No. 26 of 1950 and pursuant to the authority delegated to me as Assistant Secretary (Enforcement and Operations), by Treasury Order No. 101-5, my authority to approve regulations concerning the establishment of viticultural areas pursuant to 27 CFR Part 4 is hereby delegated to the Deputy Assistant Secretary (Operations). The names of established viticultural areas are used as appellations of origin in wine labeling and advertising.

John M. Walker, Jr.,

Assistant Secretary (Enforcement and Operations).

[FR Doc. 82-25331 Filed 9-14-82; 8:45 am]

BILLING CODE 4810-25-M

[Number 101-3]

Delegation of Procurement Authority to Office of Procurement and Treasury Bureaus

September 7, 1982.

By virtue of the authority vested in me as Assistant Secretary (Administration) by Treasury Department Order No. 208, Revision 4, the following appointments and delegations are made:

1. *Procurement Executive.* The Director, Office of Procurement, Office of the Secretary, is appointed as Procurement Executive, in accordance with the provisions of Executive Order 12352, of March 17, 1982. The Director, Office of Procurement is responsible for the development and oversight of Department-wide procurement systems and is authorized to:

a. Prescribe and publish Treasury-wide procurement policies, regulations and procedures;

b. Enter into, make determinations and decisions and take other actions, consistent with appropriate laws, policies, regulations and procedures with respect to purchases, contracts, leases, and other contractual procurement transactions, except those required by law or regulation to be made by other authority;

c. Designate persons qualified in procurement matters as contracting officers and representatives thereof in accordance with the requirements and procedures established in § 1.404 of the "Treasury Procurement Regulations;"

d. Establish clear lines of contracting authority;

e. If appropriate, exercise priorities authority on behalf of the Department of the Treasury, in accordance with the provisions of the Defense Production Act of 1950 (50 U.S.C. App. 2071, et seq.), Department of Defense Delegation of Priorities Authority, dated October 1, 1958, and applicable policies and regulations;

f. Evaluate and monitor the Department of the Treasury's procurement system performance;

g. In coordination with the Director of Personnel, Office of the Secretary, manage and enhance career development of the procurement work force throughout the Department;

h. Examine, in coordination with the Office of Federal Procurement Policy, the procurement system to determine specific areas where Government-wide performance standards should be established and applied, and participate in the development of Government-wide procurement policies, regulations and standards.

i. Determine areas for Treasury unique standards and develop unique Department-wide standards;

j. Be the Department of the Treasury's advocate for competition in procurement;

k. Certify to the Assistant Secretary (Administration) that the Department of the Treasury's procurement system meets approved standards; and

l. Serve as "chief officer responsible for procurement" within the meaning of 41 U.S.C. 257(b) for Office of the Secretary procurement transactions.

2. *Bureau Head Procurement Authority.* a. The following officials of the Department of the Treasury are delegated authority to perform the functions described above in paragraphs 1.b, 1.c and 1.d with respect to procurement transactions and operations of their bureaus:

Director, Bureau of Alcohol, Tobacco and Firearms
Comptroller of the Currency
Commissioner of Customs
Director, Bureau of Engraving and Printing
Director, Federal Law Enforcement Training Center
Commissioner, Bureau of Government Financial Operations
Commissioner of Internal Revenue
Director of the Mint
Commissioner of the Public Debt
National Director, U.S. Savings Bonds Division
Director, U.S. Secret Service

b. Each of the officials named in paragraph 2 is deemed "chief officer responsible for procurement" within the meaning of 41 USC 257(b).

3. *Redelegation of Authority.* a. The authorities delegated in paragraphs 1.b, 1.c and 1.d may be redelegated by the Director, Office of Procurement and each of the officials named in paragraph 2 in accordance with procedures established in Section 1.404 of the "Treasury Procurement Regulations," to any subordinate officer or employee of his/her respective organization, except that the authority of paragraph 1.b may be delegated only to personnel qualified to serve as Contracting Officer for the United States for the type and complexity of specific procurement actions.

b. The authorities delegated in paragraphs 1.e, 1.g, 1.h and 1.j may be redelegated by the Director, Office of Procurement through Treasury Directives or, on a case-by-case basis, by program memorandums.

4. *Limitations.* All authorities delegated above shall be exercised in accordance with the applicable limitations and requirements of the Federal Property and Administrative Services Act of 1949; policies and regulations issued by the Office of Federal Procurement Policy in the Office of Management and Budget; the Federal Procurement Regulations, 41 CFR, Ch. 1; the applicable portions of the Federal Property Management Regulations, 41 CFR, Ch. 101; as well as regulations issued by the Department of the Treasury which implement and supplement the Federal Procurement Regulations and the Federal Property Management Regulations, including but not limited to 41 CFR Chap. 10 and Treasury Directives Manual Chapter 70-06, "Treasury Procurement Regulations," and other numbered directives in the TD 70-06 series.

This Order supersedes Department of the Treasury Order 101-3, dated February 20, 1980.

Dated: September 7, 1982.

Cora P. Beebe,

Assistant Secretary (Administration).

[FR Doc. 82-25332 Filed 9-14-82; 8:45 am]

BILLING CODE 4810-25-M

VETERANS ADMINISTRATION

Privacy Act of 1974; Amendment of System Notice and New Routine Use Statement

Notice is hereby given that the VA (Veterans Administration) is considering adding a new routine use statement for the system of VA records entitled "Compensation, Pension, Education and Rehabilitation Records-VA" (58VA21/22/28) as set forth on page 372 of the **Federal Register** of January 5, 1982. The VA Office of Inspector General under the authority of the Inspector General's Act (Pub. L. 95–452, section 4(a)), plans to conduct a series of computer matches to detect and prevent fraud and abuse. The matches will compare earned income information reported to a State's department or bureau of employment security with certain VA compensation and pension records for the purpose of determining if income and employment data are being properly reported to the VA. The goal of the matches is to detect the unwarranted payment of benefits under title 38, United States Code. In order to disclose identifying information, e.g. social security number and date of birth, to a State and to use the information generated by the match to detect unwarranted VA benefit payments and meet the requirements of due process, a new routine use must be added. The new proposed routine use No. 43 permits the disclosure of identifying information regarding veterans and their dependents, except for their names and addresses, to a State agency to obtain income and employment information from the State. The VA has determined that release of information for these purposes is necessary and a proper use of information in this system of records and that a specific routine use for transfer of this information is appropriate.

Interested persons are invited to submit written comments, suggestions, or objections regarding the proposed routine use of the system of records to the Administrator of Veterans Affairs (271A), Veterans Administration, 810 Vermont Ave, N.W., Washington, D.C. 20420. All relevant material received before October 14, 1982 will be considered. All written comments received will be available for public inspection at the above address only between the hours of 8 a.m. and 4:30 p.m. Monday through Friday (except holidays) until October 25, 1982. Any person visiting Central Office for the purpose of inspecting any such comments will be received by the Central Office Veterans Services Unit in room 132. Visitors to any field station will be informed that the records are available only in Central Office and furnished the above address and room number.

If no public comment is received during the 30-day review period allowed for public comment or unless otherwise published in the **Federal Register** by the Veterans Administration, the new routine use statement included herein is effective October 14, 1982.

Approved: September 7, 1982.

By direction of the Administrator.

Everett Alvarez, Jr.,

Deputy Administrator.

Notice of Systems of Records

In the system identified as 58VA21/22/28, "Compensation, Pension, Education and Rehabilitation Records-VA," appearing at 47FR372, the following changes are made:

SYSTEM NAME:

Compensation, Pension, Education and Rehabilitation Records-VA.

* * * * *

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

* * * * *

43. Identifying information, except for the name and address of a veteran, may be disclosed to a State agency for the purpose of conducting a computer match to determine if income and employment data are being properly reported to the VA and to detect the unwarranted payment of benefits under title 38, U.S.C.

[FR Doc. 82-25303 Filed 9-14-82; 8:45 am]

BILLING CODE 8320-01-M

Sunshine Act Meetings

Federal Register
Vol. 47, No. 179
Wednesday, September 15, 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 a.m., Tuesday, September 21, 1982.

PLACE: 2033 K Street, N.W., Washington, D.C., fifth floor hearing room.

STATUS: Open.

MATTERS TO BE CONSIDERED:

NYFE/NYSE Industrial Stock Index Designation
NYFE/NYSE Financial Stock Index Designation
NYFE/NYSE Utility Stock Index Designation
CME 6-month T-Bill Designation

CONTACT PERSON FOR MORE INFORMATION: Jane Stuckey, 254–6314.

[S–1308–82 Filed 9–10–82; 4:43 pm]

BILLING CODE 6351–01–M

2

CONSUMER PRODUCT SAFETY COMMISSION

TIME AND DATE: 10 a.m., Thursday, September 16, 1982.

LOCATION: Third floor hearing room, 1111 18th Street, N.W., Washington, D.C.

STATUS: Open to the public.

MATTERS TO BE CONSIDERED:

1. *Beer Kegs Petition, CP 82–3*
The staff will brief the Commission on issues related to petition CP 82–3 from Mr. William C. Haensch which requests a consumer product safety rule to declare certain beer keg tap rod assemblies to be a banned hazardous product under the CPSA.
2. *Upholstered Furniture Status Report*
The staff will brief the Commission on the status of the project concerned with smoldering ignition of upholstered furniture. Representatives of the Upholstered Furniture Action Council (UFAC) will also make a presentation to the Commission on their activities in this area.
3. *NEISS Product Codes*
The staff will brief the Commission on options for reducing the National Electronic Injury Surveillance System (NEISS) product codes.

CONTACT PERSON FOR ADDITIONAL INFORMATION:
Sheldon D. Butts, Deputy Secretary, Office of the Secretary, Suite 342, 5401 Westbard Avenue, Bethesda, MD 20207; Telephone (301) 492–6800.

[S–1311–82 Filed 9–13–82; 10:33 am]

BILLING CODE 6355–01–M

3

CONSUMER PRODUCT SAFETY COMMISSION

"FEDERAL REGISTER" CITATION OF PREVIOUS ANNOUNCEMENT: 47 FR 40286, September 13, 1982.

PREVIOUSLY ANNOUNCED TIME AND DATE OF THE MEETING: 10 a.m., September 15, 1982.

CHANGES IN THE MEETING: The meeting for September 15, 1982 was revised by deleting Section 6(b) CPSA Proposed Rules and adding an enforcement matter OS#2090.

[S–1321–82 Filed 9–13–82; 3:42 pm]

BILLING CODE 6355–01–M

4

FEDERAL COMMUNICATIONS COMMISSION

September 8, 1982.

The following item as been deleted from the list of agenda items scheduled for consideration at the September 14, 1982, Open Meeting, and previously listed in the Commission's Notice of September 7, 1982.

Agenda, Item No., and Subject

General—3—*Title:* In the Matter of Amendment of the Commission's Rules to Allow the Selection from Among Mutually Exclusive Competing Applications Using Random Selection or Lotteries Instead of Comparative Hearings, Gen. Docket No. 81–768. *Summary:* The Commission will consider whether to adopt a Second Notice of Proposed Rule Making to implement the FCC's random selection authority contained in the recent amendments to 47 U.S.C. § 309(i). This rule making proposes to establish a general framework for random selection of certain initial telecommunications licenses, including procedures, administration and preferences.

Issued: September 8, 1982.

William J. Tricarico,
Secretary, Federal Communications Commission.

[S–1322–82 Filed 9–13–82; 3:25 pm]

BILLING CODE 6712–01–M

5

FEDERAL DEPOSIT INSURANCE CORPORATION

Pursuant to the provisions of subsection (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 10:30 a.m. on Monday, September 13, 1982, the Corporation's Board of Directors determined, on motion of Director Irvine H. Sprague (Appointive), seconded by Director C. T. Conover (Comptroller of the Currency), that Corporation Business required the withdrawal from the agenda for consideration at the meeting, on less tha seven days' notice to the public, of the following matter:

Recommendation regarding the liquidation of a bank's assets acquired by the Corporation in its capacity as receiver, liquidator, or liquidating agent of those assest:
Case No. 45,343–L—Reserves for Losses, 108 Open Liquidation Cases

By the same majority vote, the Board determined that no earlier notice of this change in the subject matter of the meeting was practicable.

Dated: September 13, 1982.

Federal Deposit Insurance Corporation.

Alan J. Kaplan,
Deputy Executive Secretary.

[S–1318–82 Filed 9–13–82; 3:18 pm]

BILLING CODE 6714–01–M

6

FEDERAL DEPOSIT INSURANCE CORPORATION

Pursuant to the provisions of the "Government in the Sunshine Act" (5 U.S.C. 552b), notice is hereby given that at 2:30 p.m. on Monday, September 20, 1982, the Federal Deposit Insurance

Corporation's Board of Directors will meet in closed session, by vote of the Board of Directors pursuant to sections 552b(c)(2), (c)(4), (c)(6), (c)(8), (c)(9)(A)(ii), and (c)(9)(B) of Title 5, United States Code, to consider the following matters:

Summary Agenda: No substantive discussion of the following items is anticipated. These matters will be resolved with a single vote unless a member of the Board of Directors requests that an item be moved to the discussion agenda.

Recommendations with respect to the initiation, termination, or conduct of administrative enforcement proceedings (cease-and-desist proceedings, termination-of-insurance proceedings, suspension or removal proceedings, or assessment of civil money penalties) against certain insured banks or officers, directors, employees, agents or other persons participating in the conduct of the affairs thereof:

Names of persons and names and locations of banks authorized to be exempt from disclosure pursuant to the provisions of subsections (c)(6), (c)(8), and (c)(9)(A)(ii), of the "Government in the Sunshine Act" (5 U.S.C. 552b(c)(6), (c)(8), and (c)(9)(A)(ii)).

Note.—Some matters falling within this category may be placed on the discussion agenda without further public notice if it becomes likely that substantive discussion of those matters will occur at the meeting.

Discussion Agenda:

Application for consent to establish six remote service facilities:

Riverhead Savings Bank, Riverhead, New York, for consent to establish remote service facilities at: (1) King Kullen, 1171 Sunrise Highway, Bay Shore, New York; (2) King Kullen, 1950 Jericho Turnpike, Centereach, New York; (3) King Kullen, Montauk Highway, Eastport, New York; (4) King Kullen, 472 Lake Avenue, St. James, New York; (5) King Kullen, Boyle Road and Route 25, Selden, New York; and (6) King Kullen, 250 Union Street, West Islip, New York.

Recommendations regarding the Corporation's assistance agreement with an insured bank pursuant to section 13(c) of the Federal Deposit Insurance Act.

Recommendation 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. 45,378-L (Amended)—Banco Regional, Bayamon, Puerto Rico

Reports of committees and officers:

Report of the Director, Office of Corporate Audits:

Audit Report re: Banco Credito y Ahorro Ponceno, San Juan, Puerto Rico, dated August 19, 1982

Personnel actions regarding appointments, promotions, administraive pay increases, reassignments, retirements, separations, removals, etc.:

Names of employees authorized to be exempt from disclosure pursuant to provisions of subsections (c)(2) and (c)(6) of the "Government in the Sunshine Act" (5 U.S.C. 552b(c)(2) and (c)(6)).

The meeting will be held in the Board Room on the sixth floor of the FDIC Building located at 550 17th Street, N.W., Washington, D.C.

Requests for information concerning the meeting may be directed to Mr. Hoyle L. Robinson, Executive Secretary of the Corporation at (202) 389-4425.

Dated: September 13, 1982.

Federal Deposit Insurance Corporation.

Alan J. Kaplan,

Deputy Executive Secretary.

[S-1319-82 Filed 9-13-82; 3:15 pm]

BILLING CODE 6714-01-M

7

FEDERAL DEPOSIT INSURANCE CORPORATION

Agency Meeting

Pursuant to the provisions of the "Government in the Sunshine Act" (5 U.S.C. 552b), notice is hereby given that the Federal Deposit Insurance Corporation's Board of Directors will meet in open session at 2:00 p.m. on Monday, September 20, 1982, to consider the following matters:

Summary Agenda: No substantive discussion of the following items is anticipated. These matters will be resolved with a single vote unless a member of the Board of Directors requests that an item be moved to the discussion agenda.

Disposition of minutes of previous meetings.

Application for consent to merge and establish two branches:

Malden Trust Company, Malden, Massachusetts, for consent to merge, under its charter and title, with The First National Bank of Malden, Malden, Massachusetts, and for consent to establish the two offices of The First National Bank of Malden as branches of the resultant bank.

Recommendation 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. 45,362-L—Northeast Bank of Houston, Houston, Texas

Recommendation with respect to payment for legal services rendered and expenses incurred in connection with receivership and liquidation activities:

Doval, Munoz, Acevedo, Otero & Trias, Hato Rey, Puerto Rico, in connection with the liquidation of Banco Credito y Ahorro Ponceno, Ponce, Puerto Rico.

Memorandum and resolution re: Privacy Act of 1974—Annual Publication of Systems of Records; Notice of Amendments.

Appeals from initial denials of two requests for records pursuant to the Freedom of Information Act.

Reports of committees and officers:

Minutes of actions approved by the standing committees of the Corporation pursuant to authority delegated by the Board of Directors.

Reports of the Division of Bank Supervision with respect to applications or requests approved by the Director or Associate Director of the Division and the various Regional Directors pursuant to authority delegated by the Board of Directors.

Discussion Agenda:

Memorandum and resolution re: Advance notice of proposed rulemaking to solicit comments on: (1) whether there is a need for rulemaking to condition, restrict, or prohibit insured nonmember banks from establishing or acquiring subsidiaries that issue, underwrite, sell, or distribute stocks, bonds, debentures, notes, or other securities; (2) whether there is a need for rulemaking in order to restrict the manner in which an insured nonmember bank may deal with a securities affiliate; and (3) what criteria should be taken into account in deciding if a securities subsidiary is in fact a "bona fide" subsidiary for purposes of applying the Corporation's recent policy statement to the effect that the Glass-Steagall Act does not prohibit insured nonmember banks from being affiliated with companies that engage in the securities business or from having bona fide subsidiaries that engage in securities activities.

Memorandum and resolution re: Funding request from the Neighborhood Reinvestment Corporation.

The meeting will be held in the Board Room on the sixth floor of the FDIC building located at 550 17th Street, N.W., Washington, D.C.

Requests for information concerning the meeting may be directed to Mr. Hoyle L. Robinson, Executive Secretary of the Corporation, at (202) 389-4425.Q04

Dated: September 13, 1982.

Federal Deposit Insurance Corporation.

Alan J. Kaplan,

Deputy Executive Secretary.

[S-1320-82 Filed 9-13-82; 3:19 pm]

BILLING CODE 6714-01-M

8

FEDERAL MARITIME COMMISSION

"FEDERAL REGISTER" CITATION OF PREVIOUS ANNOUNCEMENT: 47 FR 39934, September 10, 1982.

PREVIOUSLY ANNOUNCED TIME AND DATE OF THE MEETING: 9 a.m., September 15, 1982.

CHANGE IN THE MEETING: Withdrawal of the following item from the open session:

1. Agreements Nos. 10108–7 and 5700–29: Modifications, respectively, of Rate Agreement No. 10108, and the New York Freight Bureau to authorize intermodal authority.

[S–1312–82 Filed 9–13–82; 10:52 pm]

BILLING CODE 6730–01–M

9

FEDERAL MINE SAFETY AND HEALTH REVIEW COMMISSION

TIME AND DATE: 10 a.m., Wednesday, September 15, 1982.

PLACE: Room 600, 1730 K Street, N.W., Washington, D.C.

STATUS: Open.

MATTERS TO BE CONSIDERED: The Commission will consider and act upon the following:

1. Joseph W. Herman v. Imco Services, Docket No. WEST 81–109–DM; Petition for Discretionary Review. (Issues include whether the judge erred in dismissing a discrimination complaint as untimely filed.)

It was determined by a unanimous vote of Commissioners that Commission business required that a meeting be held on this item and that no earlier anouncement of the meeting was possible.

CONTACT PERSON FOR MORE INFORMATION: Jean Ellen (202) 653–5632.

[S–1315–82 Filed 9–13–82; 1:56 pm]

BILLING CODE 6735–01–M

10

INTERNATIONAL TRADE COMMISSION

[USITC SE–82–36]

TIME AND DATE: 10 a.m., Tuesday, September 21, 1982.

PLACE: Room 117, 701 E Street, N.W., Washington, D.C. 20436.

STATUS: Open to the public.

MATTERS TO BE CONSIDERED:

1. Agenda.
2. Minutes.
3. Ratifications.
4. Petitions and complaints, if necessary:
   a. Certain character display devices (Docket No. 867).
5. Investigation 701–TA–188 [Preliminary] (Commuter Airplanes from Brazil)—briefing and vote.
6. Investigation TA–406–9 (Mushrooms from the People's Republic of China)—briefing and vote on injury.
7. Any items left over from previous agenda.

CONTACT PERSON FOR MORE INFORMATION: Kenneth R. Mason, Secretary (202) 523–0161.

[S–1309–82 Filed 9–13–82; 10:12 am]

BILLING CODE 7020–02–M

11

INTERNATIONAL TRADE COMMISSION:

[USITC SE–82–37]

TIME AND DATE: 2:30 p.m., Wednesday, September 22, 1982.

PLACE: Room 117, 701 E Street, N.W., Washington, D.C. 20436.

STATUS: Open to the public.

MATTERS TO BE CONSIDERED:

1. Investigation TA–406–9 (Mushrooms from the People's Republic of China)—briefing and vote on remedy, if necessary.

CONTACT PERSON FOR MORE INFORMATION: Kenneth R. Mason, Secretary (202) 523–0161.

[S–1310–82 Filed 9–13–82; 10:12 am]

BILLING CODE 7020–02–M

12

NATIONAL CREDIT UNION ADMINISTRATION

Notice of previously held emergency meeting.

TIME AND DATE: 10:30 a.m., Wednesday, September 1, 1982.

PLACE: Seventh floor board room, 1776 G Street, N.W., Washington, D.C.

STATUS: Closed.

MATTER CONSIDERED:

1. Request from a Federally insured credit union for special assistance under Section 208 of the Federal Credit Union Act.

BACKGROUND: The Board voted that the agency business required that a meeting be held with less than seven days advance notice.

The Board unanimously voted to close the meeting under exemptions (8) and (9)(A)(ii). The General Counsel certified that the meeting could be closed under those exemptions.

FOR MORE INFORMATION CONTACT: Rosemary Brady, Secretary of the Board; telephone (202) 357–1100.

[S–1313–82 Filed 9–13–82; 1:56 pm]

BILLING CODE 7535–01–M

13

NATIONAL CREDIT UNION ADMINISTRATION

TIME AND DATE: 9:30 a.m., Thursday, September 23, 1982.

PLACE: Whitehall Room, Omni Hotel, 16th Street and Biscayne Blvd., Miami, Florida.

STATUS: Open.

MATTERS TO BE CONSIDERED:

1. Policy regarding Corporate Federal Credit Union Chartering Guidelines.
2. Delegation of Authority on Matters Involving Corporate Credit Unions.
3. Proposed Interpretive Ruling and Policy Statement: Statutory Lien—Enforcing Lien By Applying Shares Directly to Defaulted Loan Without First Getting a Court Judgment.
4. Review of Central Liquidity Facility Lending Rate.
5. Policy to allow unclaimed shares in liquidations to be trusteed to the States at full value.
6. Final Rule: Deregulation of "Organizing a Federal Credit Union," "Standard Form of Bylaws," "Amendment of Bylaws and Charters." Parts 701.1, 701.3 and 701.4 of NCUA Rules and Regulations.
7. Final Rule: Part 721, Insurance and Group Purchasing Activities.

TIME AND DATE: 4:30 p.m., Wednesday, September 22, 1982.

PLACE: Omni Hotel, 16th Street and Biscayne Blvd., Miami, Florida.

STATUS: Closed.

MATTERS TO BE CONSIDERED:

1. Administrative Action under Section 206 of the Federal Credit Union Act. Closed pursuant to exemptions (8) and (9)(A)(ii).
2. Personnel Actions. Closed pursuant to exemptions (2) and (6).
3. Organizational Structure. Closed pursuant to exemption (2).

FOR MORE INFORMATION CONTACT: Rosemary Brady, Secretary of the Board; telephone (202) 357–1100.

[S–1314–82 Filed 9–13–82; 1:56 pm]

BILLING CODE 7535–01–M

14

NUCLEAR REGULATORY COMMISSION

DATE: Week of September 13, 1982.

PLACE: Commissioners' Conference Room, 1717 H Street, N.W., Washington, D.C.

STATUS: Open.

MATTERS TO BE DISCUSSED: *Friday, September 17:*

10:00 a.m.:
FEMA Briefing on Offsite Appraisals Program (Public Meeting)

ADDITIONAL INFORMATION: Discussion of Management-Organization and Internal Personnel Matters scheduled for September 8 was postponed to September 9. The Affirmation of Indian Point Special Proceeding—Order Responding to Licensing Board's

Certified Questions (Public Meeting) was continued on September 10 from September 9.

AUTOMATIC TELEPHONE ANSWERING SERVICE FOR SCHEDULE UPDATE: (202) 634–1498. Those planning to attend a meeting should verify the status on the day of the meeting.

CONTACT PERSON FOR MORE INFORMATION: Walter Magee (202) 634–1410.

September 10, 1982.

Walter Magee,

Office of the Secretary.

[S–1323–82 Filed 9–13–82; 3:53 pm]

BILLING CODE 7590–01–M

15

POSTAL SERVICE

Board of Governors

The Board of Governors of the United States Postal Service, pursuant to its Bylaws (39 CFR 7.5) and the Government in the Sunshine Act (5 U.S.C. 552b), hereby gives notice that it intends to hold a special meeting at 2:00 p.m. on September 19, 1982, at Postal Service Headquarters, in Washington, D.C. At its meeting on September 9, 1982, the Board voted to close this meeting to public observation. Requests for information about the meeting should be addressed to the Secretary of the Board, Louis A. Cox, at (202) 245–4632.

The only agenda item to be considered at this meeting will be a discussion of the selection of an independent certified public accounting firm to certify the accuracy of Postal Service financial statements as required by 39 U.S.C. 2008(e).

Louis A. Cox,

Secretary.

[S–1316–82 Filed 9–13–82; 3:05 pm]

BILLING CODE 7710–12–M

16

POSTAL SERVICE

(Board of Governors)

At its meeting on September 9, 1982, the Board of Governors of the United States Postal Service unanimously voted to close to public observation its meeting scheduled for 2:00 p.m., September 19, 1982, in Washington, D.C. The meeting is to consist of a discussion of the selection of an independent certified public accounting firm to certify the accuracy of Postal Service financial statements as required by 39 U.S.C. 2008(e), the selection of such firm being one of the matters that is reserved for decision by the Board of Governors under section 3.4 of the Bylaws of the Board (39 CFR 3.4).

The Board is of the opinion that public access to these discussions would be likely to disclose information relating to proposed Postal Service procurement activity. Accordingly, the Board has determined that, pursuant to section 552b(c)(9)(B) of title 5, United States Code, and section 7.3(i) of title 39, Code of Federal Regulations, this discussion is exempt because premature disclosure of information to be discussed would be likely significantly to frustrate implementation of future action in regard to the procurement of audit services. The Board further determined that the public interest does not require that the Board's discussion of this matter be open to the public.

In accordance with section 552b(f)(1) of title 5, United States Code, and section 7.6(a) of title 39, Code of Federal Regulations, the General Counsel of the United States Postal Service has certified that, in his opinion, the meeting of the Board may properly be closed to public observation pursuant to section 552b(9)(B) of title 5, United States Code, and section 7.3(i) of title 39, Code of Federal Regulations.

Louis A. Cox,

Secretary.

[S–1317–82 Filed 9–13–82; 3:05 pm]

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federal register

Wednesday
September 15, 1982

Part II

National Labor Relations Board

Amendment, Clarification, and Restatement of Procedural Rules

NATIONAL LABOR RELATIONS BOARD

29 CFR Part 102

Procedural Rules; Amendment, Clarification, and Restatement

AGENCY: National Labor Relations Board.

ACTION: Final rule.

SUMMARY: These revisions to the National Labor Relations Board (NLRB) procedural rules are promulgated pursuant to the Board's authority under section 6 of the National Labor Relations Act, as amended. 29 U.S.C. 156. They (1) establish page limits on briefs and other documents filed with the Board, and extend from 10 to 20 days the period for filing exceptions to an administrative law judge's granting of a motion to dismiss a complaint in its entirety; (2) clarify Board procedures for requesting special permission to appeal to the Board from rulings by a regional director, by a hearing officer, or by an administrative law judge, and those concerning the scope and effect of motions for reconsideration, for rehearing, or to reopen the record; and (3) restructure §§102.67 and 102.69 to provide a single statement of repetitive provisions, and to permit a clearer statement of the operative procedural provisions.

EFFECTIVE DATE: October 15, 1982.

FOR FURTHER INFORMATION CONTACT: John C. Truesdale, Executive Secretary, 1717 Pennsylvania Avenue, NW., Room 701, Washington, D.C. 20570, Telephone: (202) 254–9430.

SUPPLEMENTARY INFORMATION:

I. *Page Limits on Briefs to the Board.* Revisions to § 102.46(j) impose a 50-page limit, exclusive of subject index and table of cases and other authorities cited, on briefs filed with the Board in unfair labor practice proceedings. The page limit is not applicable to briefs filed with the administrative law judge. Other revisions require all briefs filed with the Board to be double spaced on 8½- by 11-inch paper. The 50-page limit on briefs was one of the recommendations (No. 52) made by the Chairman's Task Force on the NLRB. The specification of 8½- by 11-inch paper is to simplify filing, and to adopt a standard consistent with that to be followed in the Federal court system. Provision is made for requesting permission to file briefs of greater length. Amendments to §§ 102.67(k) and 102.69(j) impose the same page and size limits for documents filed with the Board in representation proceedings. The page limit is not applicable to briefs filed with the regional director. Procedures are also provided for requesting permission to file briefs of greater length.

II. *Time for an Appeal From an Administrative Law Judge's Order Dismissing a Complaint in Its Entirety Prior to Decision.* Section 102.46 provides 20 days for filing an appeal from an administrative law judge's decision, but § 102.27 provides only 10 days for an appeal when the administrative law judge dismisses the complaint in its entirety by an order entered without issuance of a decision. The time for an appeal under the circumstances of § 102.27 has been extended by these revisions to 20 days to conform it to the time allowed in all other situations.

III. *Board Procedures Involving Requests for Special Permission To Appeal.* Section 102.26, providing for requests for special permission to appeal from a ruling of a regional director or of an administrative law judge, and § 102.65(c), providing for requests for special permission to appeal from a ruling of the regional director or of the hearing officer, have been amended to make clear that the documents filed should address not only the justification for granting permission, but also the merits of the issue on appeal. The revisions also make clear that the merits of the appeal may be ruled upon at the time permission for the appeal is granted.

IV. *Motions for Reconsideration, for Rehearing, or To Reopen the Record.* The provisions of § 102.65(e)(1), concerning motions for reconsideration, for rehearing, or to reopen the record in representation cases, have been restated for greater clarity. They now explicitly state that a motion for reconsideration, for rehearing, or to reopen the record will not stay the time for filing a request for review or exceptions, and also explicitly authorize the present practice of the regional director in treating a request for review or exceptions as a motion for reconsideration.

V. *Restructuring of Rules Concerning Representation Case Procedures Before the Board.* The new §§ 102.67(k) and 102.69(j) have been structured to permit collection from §§ 102.67 and 102.69, respectively, of those repetitive provisions dealing with such housekeeping matters as the number of copies to be filed, service requirements, statements of service, and filing with the regional director of a copy of documents and of briefs filed with the Board. With the elimination of these housekeeping provisions, the remaining operative provisions of § 102.69(c) have been separated into three numbered paragraphs for easy reference.

List of Subjects in 29 CFR Part 102

Administrative practice and procedure.

PART 102—RULES AND REGULATIONS, SERIES 8, AS AMENDED

Accordingly, 29 CFR Part 102 is amended as follows:

1. Section 102.26 is revised to read:

§ 102.26 Motions, rulings, and orders part of the record; rulings not to be appealed directly to the Board without special permission; requests for special permission to appeal.

All motions, rulings, and orders shall become a part of the record, except that rulings on motions to revoke subpenas shall become a part of the record only upon the request of the party aggrieved thereby as provided in § 102.31. Unless expressly authorized by the Rules and Regulations, rulings by the regional director or by the administrative law judge on motions and/or by the administrative law judge on objections, and orders in connection therewith, shall not be appealed directly to the Board except by special permission of the Board, but shall be considered by the Board in reviewing the record if exception to the ruling or order is included in the statement of exceptions filed with the Board pursuant to § 102.46. Requests to the Board for special permission to appeal from a ruling of the regional director or of the administrative law judge, together with the appeal from such ruling, shall be filed promptly, in writing, and shall briefly state the reasons special permission should be granted and the grounds relied on for the appeal. The moving party shall immediately serve a copy of the request for special permission and of the appeal on the other parties and, if the request involves a ruling by an administrative law judge, on the administrative law judge. Any statement in opposition or other response to the request and/or to the appeal shall be filed promptly, in writing, and shall be served immediately on the other parties and on the administrative law judge, if any. If the Board grants the request for special permission to appeal, it may proceed forthwith to rule on the appeal.

2. Section 102.27 is revised to read:

§ 102.27 Review of granting of motion to dismiss entire complaint; reopening of the record.

If any motion in the nature of a motion to dismiss the complaint in its entirety is granted by the administrative law judge before filing his decision, any party may obtain a review of such action by filing a request therefor with the Board in Washington, D.C., stating the grounds for review, and immediately on such filing shall serve a copy thereof on the regional director and on the other parties. Unless such request for review is filed within 20 days from the date of the order of dismissal, the case shall be closed.

3. Section 102.46 is amended by revising paragraph (j) to read:

§ 102.46 Exceptions, cross-exceptions, briefs, answering briefs; time for filing; where to file; service on the parties; extension of time; effect of failure to include matter in exceptions; oral arguments.

* * * * *

(j) Exceptions to administrative law judges' decisions, or to the record, and briefs shall be printed or otherwise legibly duplicated. Carbon copies of typewritten matter will not be accepted. Eight copies of such documents shall be filed with the Board in Washington, D.C., and copies shall also be served promptly on the other parties. Briefs filed pursuant to this section shall be double spaced on 8½- by 11-inch paper. Briefs shall not exceed 50 pages in length, exclusive of subject index and table of cases and other authorities cited, unless permission to exceed that limit is obtained from the Board by motion, setting forth the reasons therefor, filed not less than 10 days prior to the date the brief is due. Where any brief filed pursuant to this section exceeds 20 pages, it shall contain a subject index with page references and an alphabetical table of cases and other authorities cited.

4. Section 102.65 is amended by revising paragraphs (c) and (e) (1), (2), and (3) to read:

§ 102.65 Motions; interventions.

* * * * *

(c) All motions, rulings, and orders shall become a part of the record, except that rulings on motions to revoke subpenas shall become a part of the record only upon the request of the party aggrieved thereby as provided in § 102.66(c). Unless expressly authorized by the Rules and Regulations, rulings by the regional director or by the hearing officer shall not be appealed directly to the Board, but shall be considered by the Board on appropriate appeal pursuant to § 102.67 (b), (c), and (d) or whenever the case is transferred to it for decision: *Provided, however,* That if the regional director has issued an order transferring the case to the Board for decision such rulings may be appealed directly to the Board by special permission of the Board. Nor shall rulings by the hearing officer be appealed directly to the regional director unless expressly authorized by the Rules and Regulations, except by special permission of the regional director, but shall be considered by the regional director when he reviews the entire record. Requests to the regional director, or to the Board in appropriate cases, for special permission to appeal from a ruling of the hearing officer, together with the appeal from such ruling, shall be filed promptly, in writing, and shall briefly state (1) the reasons special permission should be granted and (2) the grounds relied on for the appeal. The moving party shall immediately serve a copy of the request for special permission and of the appeal on the other parties and on the regional director. Any statement in opposition or other response to the request and/or to the appeal shall be filed promptly, in writing, and shall be served immediately on the other parties and on the regional director. If the Board or the regional director, as the case may be, grants the request for special permission to appeal, the Board or the regional director may proceed forthwith to rule on the appeal.

* * * * *

(e)(1) A party to a proceeding may, because of extraordinary circumstances, move after the close of the hearing for reopening of the record, or move after the decision or report for reconsideration, for rehearing, or to reopen the record, but no such motion shall stay the time for filing a request for review of a decision or exceptions to a report. No motion for reconsideration, for rehearing, or to reopen the record will be entertained by the Board or by any regional director with respect to any matter which could have been but was not raised pursuant to any other section of these rules: *Provided, however,* That the regional director may treat a request for review of a decision or exceptions to a report as a motion for reconsideration. A motion for reconsideration shall state with particularity the material error claimed and with respect to any finding of material fact shall specify the page of the record relied on for the motion. A motion for rehearing or to reopen the record shall specify briefly the error alleged to require a rehearing or hearing *de novo,* the prejudice to the movant alleged to result from such error, the additional evidence sought to be adduced, why it was not presented previously, and what result it would require if adduced and credited. Only newly discovered evidence—evidence which has become available only since the close of the hearing—or evidence which the regional director or the Board believes should have been taken at the hearing will be taken at any further hearing.

(2) Any motion for reconsideration or for rehearing pursuant to this subsection shall be filed within 10 days, or such further period as may be allowed, after the service of the decision or report. Any request for an extension of time to file such a motion must be received 3 days prior to the due date and copies thereof shall be served promptly on the other parties. A motion to reopen the record shall be filed promptly on discovery of the evidence sought to be adduced.

(3) The filing and pendency of a motion under this provision shall not unless so ordered operate to stay the effectiveness of any action taken or directed to be taken, except that, if the motion states with particularity that the granting thereof will affect the eligibility to vote of specific employees, the ballots of such employees shall be challenged and impounded in any election conducted while such motion is pending. A motion for reconsideration, for rehearing, or to reopen the record need not be filed to exhaust administrative remedies.

5. Section 102.67 is amended by revising paragraphs (a), (b), (e), (g), and (i) and by adding new paragraphs (k)(1), (2), and (3) to read:

§ 102.67 Proceedings before the regional director; further hearing; briefs; action by the regional director; appeals from action by the regional director; statement in opposition to appeal; transfer of case to the Board; proceedings before the Board; Board action.

(a) The regional director may proceed, either forthwith upon the record or after oral argument, the submission of briefs, or further hearing, as he may deem proper, to determine the unit appropriate for the purpose of collective bargaining, to determine whether a question concerning representation exists, and to direct an election, dismiss the petition, or make other disposition of the matter. Any party desiring to submit a brief to the regional director shall file the original and one copy thereof, which may be a typed carbon copy, within 7 days after the close of the hearing: *Provided, however,* That prior to the close of the hearing and for good cause the hearing officer may grant an extension of time not to exceed an additional 14 days. Copies of the brief

shall be served on all other parties to the proceeding and a statement of such service shall be filed with the regional director together with the brief. No reply brief may be filed except upon special leave of the regional director.

(b) A decision by the regional director upon the record shall set forth his findings, conclusions, and order or direction. The decision of the regional director shall be final: *Provided, however,* That within 10 days after service thereof any party may file a request for review with the Board in Washington, D.C. The regional director shall schedule and conduct any election directed by the decision notwithstanding that a request for review has been filed with or granted by the Board. The filing of such a request shall not, unless otherwise ordered by the Board, operate as a stay of the election or any other action taken or directed by the regional director: *Provided, however,* That if a pending request for review has not been ruled upon or has been granted ballots whose validity might be affected by the final Board decision shall be segregated in an appropriate manner, and all ballots shall be impounded and remain unopened pending such decision.

* * * * *

(e) Any party may, within 7 days after the last day on which the request for review must be filed, file with the Board a statement in opposition thereto, which shall be served in accordance with the requirements of paragraph (k) of this section; except that, if personal service of the request for review is made upon the Board, 10 days will be allowed. However, 3 days will not be added to either of the aforesaid prescribed periods as provided in section 102.114. The Board may deny the request for review without awaiting a statement in opposition thereto.

* * * * *

(g) The granting of a request for review shall not stay the regional director's decision unless otherwise ordered by the Board. Except where the Board rules upon the issues on review in the order granting review, the appellants and other parties may, within 7 days after issuance of an order granting review, file briefs with the Board. Such briefs may be reproductions of those previously filed with the regional director and/or other briefs which shall be limited to the issues raised in the request for review. Where review has been granted, the Board will consider the entire record in the light of the grounds relied on for review. Any request for review may be withdrawn with the permission of the Board at any time prior to the issuance of the decision of the Board thereon.

* * * * *

(i) If any case is transferred to the Board for decision after the parties have filed briefs with the regional director, the parties may, within such time after service of the order transferring the case as is fixed by the regional director, file with the Board the brief previously filed with the regional director. No further briefs shall be permitted except by special permission of the Board. If the case is transferred to the Board before the time expires for the filing of briefs with the regional director and before the parties have filed briefs, such briefs shall be filed as set forth above and served in accordance with the requirements of paragraph (k) of this section within the time set by the regional director. If the order transferring the case is served on the parties during the hearing, the hearing officer may, prior to the close of the hearing and for good cause, grant an extension of time within which to file a brief with the Board for a period not to exceed an additional 14 days. No reply brief may be filed except upon special leave of the Board.

* * * * *

(k)(1) All documents filed with the Board under the provisions of this section shall be filed in eight copies, double spaced, on 8½- by 11-inch paper, and shall be printed or otherwise legibly duplicated. Carbon copies of typewritten materials will not be accepted. Requests for review, including briefs in support thereof; statements in opposition thereto; and briefs on review shall not exceed 50 pages in length, exclusive of subject index and table of cases and other authorities cited, unless permission to exceed that limit is obtained from the Board by motion, setting forth the reasons therefor, filed not less than 5 days, including Saturdays, Sundays, and holidays, prior to the date the document is due. Where any brief filed pursuant to this section exceeds 20 pages, it shall contain a subject index with page authorities cited.

(2) The party filing with the Board a request for review, a statement in opposition to a request for review, or a brief on review shall serve a copy thereof on the other parties and shall file a copy with the regional director. A statement of such service shall be filed with the Board together with the document.

(3) Requests for extensions of time to file requests for review, statements in opposition to a request for review, or briefs, as permitted by this section, shall be filed with the Board or the regional director, as the case may be, not less than 3 days before the date the brief or other document is due. The party filing the request for an extension of time shall serve a copy thereof on the other parties and, if filed with the Board, on the regional director. A statement of such service shall be filed with the document.

6. Section 102.69 is amended by revising paragraphs (c) and (f) and by adding new paragraphs (j)(1), (2), and (3) to read:

§ 102.69 Election procedure; tally of ballots; objections; certification by the regional director; report on challenged ballots; report on objections; exceptions; action of the Board; hearing.

* * * * *

(c)(1) If objections are filed to the conduct of the election or to conduct affecting the results of the election, or if the challenged ballots are sufficient in number to affect the results of the election, the regional director shall, consistent with the provisions of § 102.69(d), initiate an investigation, as required, of such objections or challenges.

(2) If a consent election has been held pursuant to § 102.62(b), the regional director shall prepare and cause to be served on the parties a report on challenged ballots or on objections, or on both, including his recommendations, which report, together with the tally of ballots, he shall forward to the Board in Washington, D.C. Within 10 days from the date of issuance of the report on challenged ballots or on objections, or on both, any party may file with the Board in Washington, D.C., exceptions to such report, with supporting documents as permitted by § 102.69(g)(3) and/or a supporting brief if desired. Within 7 days from the last date on which exceptions and any supporting documents and/or supporting brief may be filed, or such further period as the Board may allow, a party opposing the exceptions may file an answering brief, with supporting documents as permitted by § 102.69(g)(3) if desired, with the Board in Washington, D.C.; except that, if personal service of the exceptions and any supporting documents and/or brief is made upon the Board, 10 days will be allowed. However, 3 days as provided in § 102.114 will not be added to the prescribed time for filing an answering brief. If no exceptions are filed to such report, the Board, upon the expiration of the period for filing such exceptions, may decide the matter forthwith upon the record or may make other disposition of the case. The report on

challenged ballots may be consolidated with the report on objections in appropriate cases.

(3) If the election has been conducted pursuant to a direction of election issued following any proceeding under § 102.67, the regional director may (i) issue a report on objections or on challenged ballots, or on both, as in the case of a consent election pursuant to paragraph (b) of § 102.62, or (ii) exercise his authority to decide the case and issue a decision disposing of the issues, and directing appropriate action or certifying the results of the election.

* * * * *

(f) In a case involving a consent election held pursuant to § 102.62(b), if exceptions are filed, either to the report on challenged ballots or on objections, or on both if it be a consolidated report, and it appears to the Board that such exceptions do not raise substantial and material issues with respect to the conduct or results of the election, the Board may decide the matter forthwith upon the record or may make other disposition of the case. If it appears to the Board that such exceptions raise substantial and material factual issues, the Board may direct the regional director or other agent or the Board to issue and cause to be served on the parties a notice of hearing on said exceptions before a hearing officer. The hearing shall be conducted in accordance with the provisions of §§ 102.64, 102.65, and 102.66 insofar as applicable. Upon the close of the hearing the agent conducting the hearing, if directed by the Board, shall prepare and cause to be served on the parties a report resolving questions of credibility and containing findings of fact and recommendations to the Board as to the disposition of the challenges or objections or both if it be a consolidated report. In any case in which the Board has directed that a report be prepared and served, any party may within 10 days from the date of issuance of the report on challenged ballots or on objections, or on both, file with the Board in Washington, D.C., exceptions to such report, with supporting brief if desired. Within 7 days from the last date on which exceptions and any supporting brief may be filed, or such further period as the Board may allow, a party opposing the exceptions may file an answering brief with the Board in Washington, D.C.; except that, if personal service of the exceptions and any supporting brief is made upon the Board, 10 days will be allowed. However, 3 days as provided in § 102.114 will not be added to the prescribed time for filing an answering brief. If no exceptions are filed to such report, the Board, upon the expiration of the period for filing such exceptions, may decide the matter forthwith upon the record or may make other disposition of the case. The Board shall thereupon proceed pursuant to § 102.67; *Provided, however,* That in any proceeding wherein a representation case has been consolidated with an unfair labor practice case for purposes of hearing the provisions of § 102.46 of these rules shall govern with respect to the filing of exceptions or an answering brief to the exceptions to the administrative law judge's decision.

* * * * *

(j)(1) All documents filed with the Board under the provisions of this section shall be filed in eight copies, double spaced, on 8½- by 11-inch paper, and shall be printed or otherwise legibly duplicated. Carbon copies of typewritten materials will not be accepted. Briefs in support of exceptions or answering briefs shall not exceed 50 pages in length, exclusive of subject index and table of cases and other authorities cited, unless permission to exceed that limit is obtained from the Board by motion, setting forth the reasons therefor, filed not less than 5 days, including Saturdays, Sundays, and holidays, prior to the date the brief is due. Where any brief filed pursuant to this section exceeds 20 pages, it shall contain a subject index with page references and an alphabetical table of cases and other authorities cited.

(2) The party filing with the Board exceptions to a report, a supporting brief, or an answering brief shall serve a copy thereof on the other parties and shall file a copy with the regional director. A statement of such service shall be filed with the Board together with the document.

(3) Requests for extensions of time to file exceptions to a report, supporting briefs, or answering briefs, as permitted by this section, shall be filed with the Board or the regional director, as the case may be, not less than 3 days before the date the brief or other document is due. The party filing the request for an extension of time shall serve a copy thereof on the other parties and, if filed with the Board, on the regional director. A statement of such service shall be filed with the document.

(29 U.S.C. 156)

Dated, Washington, D.C., September 7, 1982.

By Direction of the Board.
National Labor Relations Board.

John C. Truesdale,

Executive Secretary.

[FR Doc. 82-25270 Filed 9-14-82; 8:45 am]

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AGENCY PUBLICATION ON ASSIGNED DAYS OF THE WEEK

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
DOT/SECRETARY	USDA/ASCS		DOT/SECRETARY	USDA/ASCS
DOT/COAST GUARD	USDA/FNS		DOT/COAST GUARD	USDA/FNS
DOT/FAA	USDA/REA		DOT/FAA	USDA/REA
DOT/FHWA	USDA/SCS		DOT/FHWA	USDA/SCS
DOT/FRA	MSPB/OPM		DOT/FRA	MSPB/OPM
DOT/MA	LABOR		DOT/MA	LABOR
DOT/NHTSA	HHS/FDA		DOT/NHTSA	HHS/FDA
DOT/RSPA			DOT/RSPA	
DOT/SLSDC			DOT/SLSDC	
DOT/UMTA			DOT/UMTA	

List of Public Laws

Last Listing September 14, 1982

This is a continuing list of public bills from the current session of Congress which have become Federal laws. The text of laws is not published in the **Federal Register** but may be ordered in individual pamphlet form (referred to as "slip laws") from the Superintendent of Documents, U.S. Government Printing Office, Washington, D.C. 20402 (telephone 202–275–3030).

H.R. 6128/Pub. L. 97–258 To revise, codify, and enact without substantive change certain general and permanent laws, related to money and finance, as title 31, United States Code, "Money and Finance". (September 13, 1982, 96 Stat. 877) Price: $6.00.

H.R. 3239/Pub. L. 97–259 To amend the Communications Act of 1934, and for other purposes. (September 13, 1982; 96 Stat. 1087) Price: $2.50.