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Presidential Documents

Title 3—

The President

Presidential Determination No. 84–3 of December 10, 1983

Argentine Certification

Memorandum for the Honorable George P. Shultz, the Secretary of State

Pursuant to Section 725(b) of the International Security and Development Cooperation Act of 1981, I hereby determine and certify:

(1) that the Government of Argentina has made significant progress in complying with internationally recognized principles of human rights, and

(2) that the eligibility of Argentina for the provision of security assistance and the transfer of defense articles and defense services, and the provision and transfer thereof, in accordance with the Foreign Assistance Act of 1961 and the Arms Export Control Act, are in the national interests of the United States.

This determination, together with the justification therefor, shall be reported to the Congress. This determination shall be published in the **Federal Register.**

Ronald Reagan

THE WHITE HOUSE,
Washington, December 10, 1983.

[FR Doc. 84–4536
Filed 2–15–84; 3:03 pm]
Billing code 3195–01–M

Presidential Documents

Presidential Determination No. 84–4 of January 18, 1984

International Military Education and Training for Yugoslavia

Memorandum for the Honorable George P. Shultz, the Secretary of State

By virtue of the authority vested in me by the Foreign Assistance Act of 1961, as amended (the Act):

I hereby find pursuant to section 620(f) of the Act that the furnishing of assistance to Yugoslavia under chapter 5 of part II of the Act is vital to the security of the United States, that Yugoslavia is not controlled by the international Communist conspiracy, and that such assistance will further promote the independence of Yugoslavia from international communism.

Pursuant to section 614(a)(1) of the Act—

(a) I hereby determine that the furnishing of such assistance to Yugoslavia is important to the security interests of the United States; and

(b) I hereby authorize the furnishing of such assistance to Yugoslavia without regard to section 620(f) of the Act in the amount of $130,000 in the fiscal year 1984.

This determination shall be reported to the Congress and published in the **Federal Register.**

Ronald Reagan

THE WHITE HOUSE,
Washington, January 18, 1984.

cc: The Secretary of Defense

[FR Doc. 84–4537
Filed 2–15–84; 3:04 pm]
Billing code 3195–01–M

Rules and Regulations

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DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

7 CFR Part 301

[Docket No. 84-303]

Mexican Fruit Fly; Expansion of Regulated Areas

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Interim rule.

SUMMARY: This document amends subpart 301.64 ("Subpart-Mexican Fruit Fly") of the domestic quarantine notices (7 CFR Part 301.64 *et seq.)* by expanding the area listed as a regulated area in Los Angeles County, California. This action is necessary as an emergency measure in order to prevent the artificial spread of the Mexican fruit fly, *Anastrepha ludens* (Loew), into noninfested areas of the United States. The effect of this amendment is to impose certain restrictions on regulated articles moving interstate from the regulated area.

DATES: Effective date of amendment February 17, 1984. Written comments concerning this final rule must be received on or before April 17, 1984.

ADDRESSES: Written comments concerning this rulemaking should be submitted to Thomas O. Gessel, Director, Regulatory Coordination Staff, Animal and Plant Health Inspection Service, U.S. Department of Agriculture, 6505 Belcrest Road, Room 728, Federal Building, Hyattsville, MD 20782. Written comments received may be inspected at Room 728 of the Federal Building, between 8:00 a.m. and 4:30 p.m., Monday through Friday, except holidays.

FOR FURTHER INFORMATION CONTACT: Gary Moorehead, Staff Officer, Field Operations Support Staff, Plant Protection and Quarantine, APHIS, USDA, Federal Building, 6505 Belcrest Road, Room 663, Hyattsville, MD 20782, (301) 436-8295.

SUPPLEMENTARY INFORMATION:

Emergency Action

Harvey L. Ford, Deputy Administrator of the Animal and Plant Health Inspection Service for Plant Protection and Quarantine, has determined that an emergency situation exists which warrants publication without prior opportunity for a public comment period on this final action because of the possibility that Mexican fruit fly could be spread artificially to noninfested areas of the United States. This situation requires immediate action to better control the spread of this pest.

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

Background

The Mexican fruit fly, *Anastrepha ludens* (Loew), is an extremely destructive pest of certain fruits and vegetables. The Mexican fruit fly can cause serious economic loss and it has a short life cycle that allows rapid development of serious outbreaks.

Infestations of Mexican fruit fly were found in portions of Los Angeles County, California, on October 25, 1983. Based on these findings, an emergency rulemaking document, effective upon publication, was published in the **Federal Register** on December 6, 1983 (48 FR 54577-54584). This document amended the Mexican fruit fly regulations (7 CFR 301.64 *et seq.*) by, among other things, designating a portion of Los Angeles County as a regulated area in § 301.64-3(c). On January 16, 1984, § 301.64-3 of the Mexican fruit fly regulations was further amended by expanding the portion of Los Angeles County designated as a regulated area by approximately 7 miles (see 49 FR 1871-1872). This action was taken because of findings by the Department that the infestation of Mexican fruit fly had spread beyond the perimeter of the original regulated area.

The portion of Los Angeles County designated as a regulated area by the January 16, 1984, rulemaking document remains infested at this time. However, additional Mexican fruit flies have since been found outside the regulated area in Los Angeles County. These findings were based on trapping surveys conducted by inspectors of the U.S. Department of Agriculture and state agencies of California and indicate that the Mexican fruit fly has spread beyond the outer perimeter of the regulated area in Los Angeles County. Therefore, in order to prevent further spread of the Mexican fruit fly it is necessary as an emergency measure to amend § 301.64-3 of the Mexican fruit fly regulations. This amendment expands the area in Los Angeles County, California designated as a regulated area prior to the publication of this document by approximately 12 square miles to cover a previously nonregulated portion of Los Angeles County where Mexican fruit fly has been found and now occurs.

The portion of Los Angeles County that is designated as a regulated area by this rulemaking document is described as follows (the area added by this rulemaking document is in italic):

Los Angeles County:

Beginning at the point where the Santa Monica Freeway (Interstate 10) intersects the Harbor Freeway (State Highway 110); then southerly along the Harbor Freeway to its intersection with El Segundo Boulevard; then easterly along El Segundo Boulevard to its intersection with Alpine Avenue; then northerly along Alpine Avenue to its intersection with Magnolia Avenue; then easterly along Magnolia Avenue to its intersection with Long Beach Boulevard; then northerly along Long Beach Boulevard to its intersection with Imperial Highway; then easterly along Imperial Highway to its intersection with Garfield Avenue; then northerly along Garfield Avenue to its intersection with Eastern Avenue; then northerly along Eastern Avenue to its intersection with *Atlantic Boulevard; then northeasterly along Atlantic Boulevard to its intersection with Garvey Avenue; then westerly along Garvey Avenue to its*

intersection with the northern boundary line of the city of Monterey Park; then westerly along said line to its intersection with the boundary line between the city of Los Angeles and Los Angeles County territory; then westerly along said line to its intersection with Medford Street; then westerly along Medford Street to Soto Street; then southwesterly along Soto Street to its intersection with San Bernardino Freeway (Interstate 10); then westerly along the San Bernardino Freeway to its intersection with the Golden State Freeway (Interstates 5 and 10); then southwesterly along the Golden State Freeway to its intersection with the Santa Monica Freeway; then westerly along the Santa Monica Freeway to the point of beginning.

Executive Order 12291 and Regulatory Flexibility Act

The interim rule is issued in conformance with Executive Order 12291 and Secretary's Memorandum No. 1512–1, and has been determined to be not a "major rule." Based on information compiled by the Department, it has been determined that this interim rule will not have a significant effect on the economy; will not cause a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; and will not have a significant adverse effect on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets. In addition, the review provisions required by sections three, four and seven of Executive Order 12291 have been waived by OMB for purposes of this interim rule.

Mr. Bert W. Hawkins, Administrator of Animal and Plant Health Inspection Service, has determined that this action will not have a significant impact on a substantial number of small entities. This amendment affects the interstate movement of regulated articles from a portion of Los Angeles County, California, previously unregulated that is about 12 square miles in size. It appears that there is very little or no commercial activity that occurs in this area because it is comprised of local private farms. The only commercial activity to be found stems from local street vendors, eight fruit stands and two local nurseries. These enterprises sell regulated articles primarily for intrastate, not interstate, movement.

List of Subjects in 7 CFR Part 301

Agricultural commodities, Mexican fruit fly, Plant diseases, Plant pests, Plants (Agriculture), Quarantine, Transportation.

PART 301—DOMESTIC QUARANTINE NOTICES

Accordingly, the description of the regulated area in Los Angels, County, California, found in paragraph (c) of § 301.64–3 is amended to read as follows:

§ 301.64–3 Regulated areas.

* * * * *

(c) The areas described below are designated as regulated areas:

California

Los Angeles County. Beginning at the point where the Santa Monica Freeway (Interstate 10) intersects the Harbor Freeway (State Highway 110); then southerly along the Harbor Freeway to its intersection with El Segundo Boulevard; then easterly along El Segundo Boulevard to its intersection with Alpine Avenue; then northerly along Alpine Avenue to its intersection with Magnolia Avenue; then easterly along Magnolia Avenue to its intersection with Long Beach Boulevard; then northerly along Long Beach Boulevard to its intersection with Imperial Highway; then easterly along Imperial Highway to its intersection with Garfield Avenue; then northerly along Garfield Avenue to its intersection with Eastern Avenue; then northerly along Eastern Avenue to its intersection with *Atlantic Boulevard; then northeasterly along Atlantic Boulevard to its intersection with Garvey Avenue; then westerly along Garvey Avenue to its intersection with the northern boundary line of the city of Monterey Park; then westerly along said line to its intersection with the boundary line between the city of Los Angeles and Los Angeles County territory; then westerly along said line to its intersection with Medford Street; then westerly along Medford Street to Soto Street; then southwesterly along Soto Street to its intersection with the San Bernardino Freeway (Interstate 10); then westerly along the San Bernadino Freeway to its intersection with the Golden State Freeway (Interstates 5 and 10); then southwesterly along the Golden State Freeway* to its intersection with the Santa Monica Freeway; then westerly along the Santa Monica Freeway to the point of beginning.

* * * * *

Authority: Secs. 8 and 9, 37 Stat. 318, as amended (7 U.S.C. 161, 162); secs. 105 and 106, 71 Stat. 32, 71 Stat. 33 (7 U.S.C. 150dd, 150ee); 37 FR 28464, 38477, as amended; 45 FR 8564, 8565.

Done at Washington, D.C., this 14th day of February, 1984.

H. L. Ford,

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

[FR Doc. 84–4344 Filed 2–16–84; 8:45 am]

BILLING CODE 3410–34–M

Soil Conservation Service

7 CFR Parts 620, 622, and 623

Water Resources; Watershed Projects

AGENCY: Soil Conservation Service (SCS), USDA.

ACTION: Final rule.

SUMMARY: This rule prescribes the general procedures for implementation of the Watershed Protection and Flood Prevention Program under the authority of Pub. L. 83–566 and those under the authority of Pub. L. 78–534. 7 CFR Parts 620 and 623 are being removed and reserved, as the information contained in these parts is now included in 7 CFR Part 622. Incorporating the material in 7 CFR simplifies and clarifies the rule by eliminating unnecessary detail and repetitious wording. These changes will result in a more accurate and usable regulation. The need for separate rules no longer exists.

EFFECTIVE DATE: March 19, 1984.

FOR FURTHER INFORMATION CONTACT: Edgar H. Nelson, Director, Basin and Area Planning Division, Soil Conservation Service, USDA, P.O. Box 2890, Washington, D.C. 20013, (202) 447–3587.

SUPPLEMENTARY INFORMATION:

I. General

Pub. L. 83–566 and Pub. L. 78–534 authorize the Secretary of Agriculture to cooperate with State and local agencies in the planning and carryout out of works of improvement for flood prevention; for the conservation, development, utilization, and disposal of water; and for the conservation and proper utilization of land in watershed or subwatershed areas. Under Pub. L. 83–566, these areas shall not exceed 250,000 acres; there is no limitation on acres for Pub. L. 78–534. The Secretary of Agriculture has delegated authority for administration of the Act to the Chief of the Soil Conservation Service (SCS) with two exceptions: (a) The Administrator of Farmers Home Administration (FmHA) has responsibility for administering Sec. 8 of the Act and those functions with respect to repayment obligations under section 4

and (b) The Chief of the Forest Service (FS) administers the forestry aspects of the Act under such general program criteria and procedures as may be established by the Chief of SCS.

This action has been reviewed under USDA procedures established in Secretary's Memorandum 1512–1 to implement Executive Order 12291, and has been classified "nonmajor."

It will not affect the national economy by $100 million or more, nor will it cause a major increase in costs or prices for consumers, individual industries, Federal, State or local government agencies, or geographic regions. It will not have significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets. Peter C. Myers, Chief, Soil Conservation Service, has determined that this action will not have a significant economic impact on a substantial number of small entities.

There will be no major increase in cost or prices for consumers, individuals, industries, Federal, State or local government agencies, or geographic regions.

The rule will govern a program of technical and financial assistance in which participation is voluntary. Thus, it will not impose an unnecessary regulatory, information or compliance burden on small businesses, organizations, or governmental jurisdictions as defined in the Regulatory Flexibility Act, Pub. L. 96–354 (5 U.S.C. 601).

II. Discussion of Comments

On April 19, 1983, SCS published a proposed rule (48 FR 16691) to revise its regulations for the watershed programs. This rule also covered the cancellation of 7 CFR Part 620 and 7 CFR Part 623 since this information is covered in 7 CFR Part 622. At that time, SCS solicited written comments from interested persons regarding the proposed revisions. The public comment period ended on June 20, 1983. Comments were received from three state environmental agencies, one regional environmental agency, four environmental advocacy organizations, and one Federal agency. A summary of the comments and SCS responses are as follows:

Comment 1: The most universal comment received from environmental organizations was concern over the loss of the environmental objective as a coequal objective in planning. The primary concern is that environmental concerns will not receive equal treatment during planning.

Response: It is not the intent of this rule to change the method of planning to exclude consideration of the environment. This regulation provides several mechanisms for the consideration of environmental concerns during the planning effort.

The Economic and Environmental Principles and Guidelines for Water and Related Land Resources Implementation Studies (P&G) issued by the Water Resources Council set the policy for planning watershed projects. SCS is committed to following the P&G along with regulations issued by the Council on Environmental Quality for complying with Pub. L. 91–190, National Environmental Policy Act (NEPA). By using both sets of guidelines, watershed plans will be developed which reasonably maximize net national economic benefits while at the same time minimize adverse environmental impacts. This is consistent with the Federal objective of water and related land resources planning which "is to contribute to national economic development consistent with protecting the Nation's environment, pursuant to national environmental statutes, applicable executive orders and other Federal planning requirements."

These guidelines also make it clear that any alternative plans (including the NED plan) developed will "include appropriate mitigation of adverse environmental effects." Using the environmental quality account and the impacts section, environmental effects will be accounted for in the analysis and the plan. Another key point is covered under the State and local concerns of the Principles and Guidelines. Alternative plans can be developed to address State and local concerns when their concerns are not fully addressed by the NED plan. In this regard, environmental concerns can be raised and thus examined in the planning effort.

Comment 2: Several comments were received which took exception to the deletion of § 622.2 (c) and (d) which addressed planning with environmental considerations and the input of other agencies.

Response: The two paragraphs of concern have been reincorporated in the rule as part of a new subpart: Subpart D—Planning.

Comment 3: Many comments were received indicating the new rule eliminates planning guidance and the new § 622.4 does not convey any substantial information. Suggestions were made to go back to the existing rule or at least be more explicit.

Response: Section § 622.4 was incorporated into the rule to cover all planning procedures which are to be followed in the watershed program. By including all references, the need for repeating information available from other sources is eliminated. The SCS intends to continue complying with all rules, regulations, and legislative mandates which affect the program. The last sentence of § 622.4 has been changed to more clearly convey this intent.

Comment 4: One commenter disagreed with the decision that this is a nonmajor action and, therefore, should have a program environmental impact statement.

Response: A major Federal action is defined as a change in the regulations which will result in an effect on the national economy of $100 million or more. Although the watershed program is funded on the average of more than $100 million, these proposed rule changes will not cause any change in the funding or any change which would have more than a $100 million impact (see the Supplementary Information at the beginning of this rule.) Therefore, under USDA procedures established in Secretary's Memorandum 1512–1 which implement Executive order 12291, this change has been classified as "nonmajor."

Comment 5: Most of the commenters were concerned over the change in the rule which states that projects must reasonably maximize "net national economic benefits" rather than just have benefits which are greater than the costs as in the former rule.

Response: The rule has been changed to indicate that net national economic benefits would be the criteria because of the changes put into effect with the approval of the *Economic and Environmental Principles and Guidelines for Water and Related Land Resources Implementation Studies (P&G).* The Principles state that "A plan recommending Federal action is to be the alternative plan with the greatest net economic benefit consistent with protecting the Nation's environment (the NED plan) is to be selected unless the Secretary of a department or head of an independent agency grants an exception . . ." The SCS has no choice but to follow the P&G. However, Pub. L. 83–566 requires that the benefits be greater than the costs and, therefore, a benefit-cost ratio will normally be developed for each water resource project plan.

Comment 6: There also were concerns over the elimination of the detail and protective language (planning procedures, environmental concerns, etc.) in the existing rule. Numerous

commenters felt that substantive parts of the existing rule should be retained.

Response: The simplification of the rule was carried out in accordance with Executive Order 12291, and Departmental and Office of Management and Budget guidelines. Detailed policy and procedural matters are reserved for departmental and agency directives and manuals. The SCS will continue to utilize the most up-to-date planning and implementation procedures that have evolved from experiences over the years in the soil and water resource arena.

Comment 7: Several sections dealing with the priority of considering measures have been eliminated. It has been suggested that the consideration of land treatment should be first, and channel work the last measure considered. This concept should be retained in the proposed rule.

Response: According to the procedures outlined in the *Economic and Environmental Principles and Guidelines for Water and Related Land Resources Implementation Studies*, all possible solutions shall be considered to determine the one which maximizes net NED benefits. This is interpreted to mean that all measures must be considered in order to formulate the National Economic Development Plan.

Comment 8: Several comments indicate that the rule seems to imply that other agencies will be left out of the planning process.

Response: As a result of the comments received, § 622.3 has been changed to clarify this point. Section 12 of Pub. L. 83–566, which requires coordination with the Fish and Wildlife Service and specifically refers to coordination with land management agencies when Federal lands are involved, is now cited in the rule.

Comment 9: The rule appears to require SCS to do all the design work for municipal and industrial (M&I) water supply structures.

Response: SCS's requirements for design of M&I water supply structures have not been changed by this proposed rule. Design work for an M&I structure will continue to be done by private consultants or the sponsor's own engineers.

Comment 10: Several reviewers suggested Subpart D—Planning and Approval be retained in the rule.

Response: As a result of this and other similar comments, Subpart D—Planning has been added to the proposed rule. The step-by-step procedures dropped from the old rule are now replaced with an overview of the planning and review process.

Comment 11: The proposed rule states that 7 CFR 623 is being cancelled but there is nothing in the rule that indicates the differences between the watershed program (Pub. L. 83–566) and the flood prevention program (Pub. L. 78–534).

Response: Section 622.3 has been added to the rule to summarize the differences between the programs.

Comment 12: The rule does not state that the programs will be operated so as not to be discriminatory.

Response: Section 622.6 on equal opportunity has been added to the rule.

List of Subjects

7 CFR Part 620

Soil conservation, Water resources.

7 CFR Part 622

Watersheds, Flood prevention, Technical assistance, Soil conservation, Grant programs-natural resources, Loan programs-natural resources.

7 CFR Part 623

Flood assistance.

Dated: January 11, 1984.

Peter C. Myers,

Chief, Soil Conservation Service.

Accordingly, Chapter VI of Title 7 is amended by removing and reserving Parts 620 and 623 and by revising Part 622 to read as follows:

PART 620—[RESERVED]

PART 622—WATERSHED PROJECTS

Subpart A—General

Sec.

Subpart B—Qualifications

Subpart C—Application Procedure

Subpart D—Planning

Authority: Pub. L. 83–566, 68 Stat. 666 as amended (16 U.S.C. 1001, et seq.); Pub. L. 78–534, 58 Stat. 889, 33 U.S.C. 701b–1.

Subpart A—General

§ 622.1 Purpose.

This part sets forth the general policies for planning and carrying out watershed projects under Pub. L. 83–566, 68 Stat. 666 (16 U.S.C. 1001 et seq.) and flood prevention projects under Pub. L. 78–534, 58 Stat. 889 (33 U.S.C. 701b–1).

§ 622.2 Scope.

(a) To assist sponsors in preparing and carrying out watershed plans, the Soil Conservation Service (SCS) shall conduct investigations and surveys, with the cooperation and assistance of other Federal agencies, to:

(1) Determine the extent of watershed problems and needs, and

(2) Set forth viable alternative solutions consistent with local, regional, and national objectives, including an alternative solution which makes the greatest net contribution to national economic development.

(b) Alternatives will consist of either land treatment, nonstructural or structural measures, or combinations thereof that will help accomplish one or more of the authorized project purposes.

(c) Authorized project purposes are watershed protection, conservation and proper utilization of land, flood prevention, agricultural water management including irrigation and drainage, public recreation, public fish and wildlife, municipal and industrial water supply, hydropower, water quality management, ground water supply, agricultural pollution control, and other water management.

(d) After a final plan for works of improvement is agreed upon between SCS and the sponsors and the approval processes are completed, SCS will provide technical and financial assistance to install the project, subject to the availability of funds and the budgeting and fiscal policies of the President.

§ 622.3 Relationship to the Pub. L. 78–534 Program.

(a) *General.* The purposes and objectives of the programs under Pub. L. 83–566 and Pub. L. 78–534 are the same in most cases. Planning criteria, economic justification, local sponsorship, agency participation, financial assistance, eligible measures, operation and maintenance arrangements for the Pub. L. 78–534 program are consistent with those of the Pub. L. 83–566 program. The differences with the Pub. L. 78–534 program are outlined below.

(b) *Initiation.* Flood prevention projects are individually authorized by

Federal legislation. The state conservationist and the sponsors agree on a plan of action and notify interested parties to solicit their participation. The sponsors keep the public informed and solicit their views and comments.

(c) *Subwatershed plans.* These plans are administratively approved by the state conservationist. If the plan involves purposes other than flood prevention, clearance must be obtained from the Office of Management and Budget before approval. Financial assistance available differs only in that program funds may be used for the purchase of land rights for single-purpose flood prevention structures and installing land treatment on Federal lands.

(d) *Installation.* SCS shall award and administer contracts for the installation of project measures unless the sponsors agree to perform the work. Project agreements between the sponsors and SCS are not required if the work consists of flood prevention structures built and funded by SCS.

§ 622.4 Relationship to other agencies.

SCS will coordinate responsibilities with other water and land resource development agencies on projects that may come under the jurisdictions of various authorities. This will include any land management agencies which may have land which would be affected by project measures. Coordination with the U.S. Department of the Interior's Fish and Wildlife Service will be in accordance with section 12 of Pub. L. 83–566 (as amended).

§ 622.5 Guidelines.

Guidelines for carrying out programs authorized under Pub. L. 83–566 and Pub. L. 78–534 are contained in miscellaneous instructions, manuals, and handbooks issued by the Soil Conservation Service, Regulations for Implementing NEPA (40 CFR Parts 1500–1508) issued by the Council on Environmental Quality, and in Economic and Environmental Principles and Guidelines for Water and Related Land Resources Implementation Studies issued by the Water Resources Council. Watershed projects are to be planned and carried out in a way that will conform to conditions mandated by the above and other applicable laws, Executive orders, and codified rules.

§ 622.6 Equal opportunity.

The Pub. L. 83–566 and Pub. L. 78–534 programs will be conducted in compliance with all requirements respecting nondiscrimination as contained in the Civil Rights Act of 1964, as amended, and in the regulations of the Secretary of Agriculture (7 CFR Part 15), which provide that no person in the United States shall, on the grounds of race, color, national origin, sex, age, handicap, or religion be excluded from participation in, be denied the benefits of, or be otherwise subjected to discrimination under any program or activity conducted or assisted by the Department of Agriculture.

§ 622.7 Notification under Executive Order 12372.

This program is covered under Executive Order 12372, "Intergovernmental Review of Federal Programs" and 7 CFR Part 3015, Subpart V, "Intergovernmental Review of the Department of Agriculture Programs and Activities." State processes or directly affected State, areawide, regional and local officials and entities have 60 days for comment starting from the date of submission of the application to the State Single Point of Contact.

Subpart B—Qualifications

§ 622.10 Sponsors.

(a) Watershed projects are sponsored by one or more local organizations qualifying as sponsors. All watershed plans shall be sponsored by entities legally organized under State law or by any Indian tribe or tribal organization having the authority to carry out, operate and maintain works of improvement. Those plans that incorporate the use of nonstructural or structural measures shall be sponsored by organizations that, individually or collectively, have:

(1) The power of eminent domain,

(2) The authority to levy taxes or use other adequate funding sources, including state, regional, or local appropriations, to finance their share of the project cost and all operation and maintenance costs.

(b) To receive Federal assistance for project installation, sponsors must commit themselves to use their powers and authority to carry out and maintain the project as planned.

§ 622.11 Eligible watershed projects.

(a) To be eligible for Federal assistance, a watershed project must:

(1) Meet the definition of a watershed area as defined in SCS's National Watersheds Manual.

(2) Not exceed 250,000 acres in size.

(3) Not include any single structure that provides more than 12,500 acre-feet of floodwater detention capacity nor more than 25,000 acre-feet of total capacity.

(4) Have significant land or water management problems that can be solved or alleviated by measures for watersheld protection, flood prevention, drainage, irrigation, recreation, fish and wildlife, municipal or industrial water supply, or other water management.

(5) Produce substantial benefits to the general public, to communities, and to groups of landowners.

(6) Cannot be installed by individual or collective landowners under alternative cost-sharing assistance.

(7) Have strong local citizen and sponsor support through agreement to obtain land rights, contribute the local cost of construction, and carry out operation and maintenance.

(b) Works and improvement that may be included in a watershed project are those that:

(1) Contribute to reducing floodwater, erosion, and sediment damages.

(2) Further the conservation, development, utilization, and disposal of water and the conservation and proper utilization of land.

(3) Have the greatest net national economic benefits consistent with protecting the Nation's environment (for structural water resource projects) relative to alternative works, unless an exception is granted by the Secretary.

Subpart C—Application Procedure

§ 622.20 Application.

Sponsors shall follow State developed procedures (based on Executive Order 12372) for coordination of proposed Federal financial assistance and also USDA's 7 CFR Part 3015 in applying for Pub. L. 83–566 assistance. Standard forms for Federal assistance or other approved forms may be obtained from SCS State, area, or field offices. These forms should be submitted to the Single Point of Contact in accordance with the State developed procedures.

§ 622.21 State agency approval.

The governor or designated State agency will approve or disapprove the application. If disapproved, no further action is required of SCS. If approved or not disapproved within 45 days, the application shall be sent to the SCS state conservationist. After the state conservationist has determined that the application is legally valid, he will notify the sponsor of receipt of the application. If found not legally valid, the state conservationist will return it to the originator with an opinion.

Subpart D—Planning

§ 622.30 General.

(a) Watershed projects are to be planned and carried out in a way that will (1) minimize all adverse impacts, and (2) mitigate unavoidable losses to the maximum practicable degree. Projects must comply with the requirements of the National Environmental Policy Act of 1969 (Pub. L. 91–190, 83 Stat. 852) (42 U.S.C. 4321 et seq.).

(b) Fish and Wildlife enhancement measures proposed by Federal or State fish and wildlife agencies will be included if they are technically and economically feasible and are acceptable to the sponsors and the SCS. If additional sponsors are needed to carry out the recommended fish and wildlife measures, SCS will assist fish and wildlife agencies in attempting to obtain such sponsors.

(c) All planning efforts by SCS and the sponsors must include well publicized public meetings to obtain public input and views on the project.

§ 622.31 Basic planning efforts.

Upon receipt of an application, the SCS will make any necessary field studies and develop a report to justify the need for planning effort. Once planning is authorized by the Chief of SCS, a watershed plan-environmental impact statement (plan-EIS) or a watershed plan-environmental assessment (plan-EA) will be prepared by SCS to request funding. This effort must be coordinated with other State and Federal agencies.

§ 622.32 Reviews and approvals.

(a) The watershed plan-environmental impact statement (or assessment) will be subject to internal technical reviews, sponsor and other local party review, interagency review by other Federal, state, and concerned groups, and a final review as stated in SCS's National Watersheds Manual.

(b) After thorough review by SCS and other agencies, the SCS and the sponsors shall accept the plan-EIS or plan-EA by signing the watershed agreement. The watershed plan must be approved by the Committees of Congress or the Chief of SCS. Funding for installation can then be granted by the Chief of SCS.

PART 623—[RESERVED]

[FR Doc. 84–1985 Filed 2–16–84; 8:45 am]
BILLING CODE 3410–16–M

Agricultural Marketing Service

7 CFR Part 910

[Lemon Reg. 451]

Lemons Grown in California and Arizona; Limitation of Handling

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: This regulation establishes the quantity of fresh California-Arizona lemons that may be shipped to market at 250,000 cartons during the period February 19–25, 1984. Such action is needed to provide for orderly marketing of fresh lemons for the period due to the marketing situation confronting the lemon industry.

EFFECTIVE DATE: February 19, 1984.

FOR FURTHER INFORMATION CONTACT: William J. Doyle, Chief, Fruit Branch, F&V, AMS, USDA, Washington, D.C. 20250, telephone 202–447–5975.

SUPPLEMENTARY INFORMATION: This final rule has been reviewed under Secretary's Memorandum 1512–1 and Executive Order 12291, and has been designated a "non-major" rule. William T. Manley, Deputy Administrator, Agricultural Marketing Service, has certified that this action will not have a significant economic impact on a substantial number of small entities.

This final rule is issued under Marketing Order No. 910, as amended (7 CFR Part 910) regulating the handling of lemons grown in California and Arizona. The order is effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674). The action is based upon recommendations and information submitted by the Lemon Administrative Committee and upon other available information. It is hereby found that this action will tend to effectuate the declared policy of the Act.

This action is consistent with the marketing policy currently in effect. The committee met publicly on February 14, 1984, at Ventura, California, to consider the current and prospective conditions of supply and demand and recommended a quantity of lemons deemed advisable to be handled during the specified week. The committee reports the demand for lemons is fair.

It is further found that it is impracticable and contrary to the public interest to give preliminary notice, engage in public rulemaking, and postpone the effective date until 30 days after publication in the **Federal Register** (5 U.S.C. 553), because of insufficient time between the date when information became available upon which this regulation is based and the effective date necessary to effectuate the declared purposes of the Act. Interested persons were given an opportunity to submit information and views on the regulation at an open meeting. It is necessary to effectuate the declared purposes of the Act to make these regulatory provisions effective as specified, and handlers have been apprised of such provisions and the effective time.

List of Subjects in 7 CFR Part 910

Marketing agreements and orders, California, Arizona, Lemons.

PART 910—[AMENDED]

Section 910.751 is added as follows:

§ 910.751 Lemon Regulation 451.

The quantity of lemons grown in California and Arizona which may be handled during the period February 19, 1984, through February 25, 1984, is established at 250,000 cartons.

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

Dated: February 15, 1984.

Russell L. Hawes,

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

[FR Doc. 84–4554 Filed 2–16–84; 8:45 am]
BILLING CODE 3410–02–M

Packers and Stockyards Administration

9 CFR Parts 201 and 203

Regulations and Policy Statements

AGENCY: Packers and Stockyards Administration, Agriculture.

ACTION: Final rule.

SUMMARY: This document removes two recordkeeping and accounting regulations and revises and consolidates four additional accounting regulations. It also consolidates the two regulations and one policy statement authorizing the disposal of records into a single policy statement. Eight trade practice regulations are revised and consolidated into a single, simplified regulation by this document. Three other trade practice regulations involving employment restrictions, solicitation of consignments, and gratuities are removed and two others, concerning settlement on actual weights and market agencies providing clearing services, are revised. Two trade practice regulations relating to false reports of market conditions and prices are similarly

consolidated and revised. The changes made in the regulations and policy statements by this notice will remove several restrictions on the business activities of market agencies and greatly simplify and clarify the trade practice regulations.

EFFECTIVE DATE: March 19, 1984.

FOR FURTHER INFORMATION CONTACT: Harold W. Davis, Director, Livestock Marketing Division (202) 447–6951 or Kenneth Stricklin, Director, Packer and Poultry Division (202) 447–7363.

SUPPLEMENTARY INFORMATION: The regulations and policy statements revised herein were first published in the **Federal Register** (47 FR 42114) and proposed for review by the Packers and Stockyards Administration on September 24, 1982. On November 24, 1982, the period for filing comments on this proposal was extended to December 13, 1982 (47 FR 53027).

A total of 11 comments were filed in response to the notice. One additional comment was filed after the December deadline. The comments generally supported the proposals, although some objections to the proposed changes were raised and modifications suggested. All comments of record were carefully considered by the Administration and several modifications were made, based upon the comments, as set forth below.

Accounting and Records

Prompt Payment and Accounting: Only two of the comments filed specifically addressed the proposed changes to and the consolidation of sections 201.43 and 201.111 concerning accounting and payment for livestock and poultry. Both comments supported the proposed changes. One comment, from a major trade group representing livestock marketing businesses, suggested section 201.43 be modified further to eliminate the requirement that authorizations to draw drafts in payment for livestock be in writing. This suggestion is contrary to the language and intent of section 409 of the Packers and Stockyards Act (P&S Act). Both the Senate and House Committee Reports on the 1976 amendments to the P&S Act state that a draft does not satisfy the prompt payment requirements of the new section 409(a). Section 409(b) provides, however, that prompt payment may be waived by express written agreement by the parties. The written draft authorization serves as such a waiver. Accordingly, § 201.43 of the regulations will be modified as proposed and § 201.111 will be removed.

No specific comments were received concerning the proposal to retain § 201.44 in its current form. For the reasons set forth in the proposal, this regulation, which requires prompt accounting by market agencies for purchases on order, will be retained without change.

Inspection of records by Principals. Section 201.45 of the regulations requiring market agencies to make certain records available for inspection by their principals will be retained for the reasons set out in the proposal. There were no specific comments relating to this section.

Daily Records. The proposal to remove § 201.46 of the regulations requiring a specific daily record of livestock received and shipped or bought and sold was specifically addressed by one comment which supported the proposed removal. Removal of this section will afford greater flexibility to the industry in meeting the recordkeeping requirements of the P&S Act. Accordingly, § 201.46 will be removed.

Scale tickets. Five of the comments filed addressed the proposed changes in §§ 201.49 and 201.107 of the regulations and their consolidation as § 201.49. Three of the comments endorsed the requirement that hot carcass weights be recorded on a permanent record when livestock is purchased on a carcass weight basis. One comment from a meat packer trade group questioned the use of the term "permanent" record. The Agency did not intend to require that such a record be retained indefinitely, but rather that hot carcass weights be accurately recorded and such records retained as a part of the packer's business records in accordance with the Administration's policy statement concerning record disposal. The language in the proposed regulation has been modified to clarify this point.

Two trade groups filed comments objecting to the proposed requirement that scale tickets be used in numerical sequence. Their primary concerns are: (1) That a particular customer's tickets would not be in sequence because all the trucks from a customer may not arrive at the same time; (2) that the scales may be used to weigh other commodities; and (3) the handling of scale tickets for multi-plant operations. The proposed changes to the regulations do not require that all the weight transactions with a particular customer be performed, recorded, or maintained together. Rather, it is intended that scale tickets be used in sequence so the order of weighing and approximate time of weighing can be determined or reconstructed. The weighing firm or agency would continue to exercise its own discretion in determining whether such serially numbered scale tickets would be used for other commodities or weighing services. The handling of serially numbered scale tickets for multi-plant operations is entirely within the discretion of the firm doing the weighing. The Administration does not believe that the proposed regulation would be costly or burdensome. In fact, most persons subject to the P&S Act are currently employing this procedure.

A trade group representing livestock marketing businesses filed a comment opposing the requirement that scale tickets include the name, initials, or number of the person who weighed the livestock. The association contended that a market agency is liable for the acts of its employees and therefore the requirement has little utility. However, weighmasters at stockyards are subject to the Act and can be charged with violations thereof, and any weighmaster creating a false record may be subject to criminal prosecution. Further identification of the weighmaster is necessary to facilitate investigations involving false or inaccurate weights. Therefore, this requirement will be continued in the regulation.

For the reasons set forth above, the proposed § 201.49 will be adopted with the modification noted above regarding the recording of hot carcass weights and the retention of such weight records. Section 201.107 will be removed.

Disposal of Records. Two comments were received concerning the proposed consolidation of the two existing regulations and one policy statement dealing with records disposal. One comment supported the proposal. The other objected to the incorporation of the policy statement dealing with the disposal of packer records into § 201.50 of the regulations and suggested a consolidated policy statement in lieu of the proposed regulation.

The Administration has reconsidered this proposal and determined that a policy statement which provides guidance as to the periods of time after which records may be disposed of is sufficient to effect the purpose and intent of section 401 of the P&S Act. Section 401 requires records to be kept which fully and correctly disclose all transactions involved in a person's business subject to the Act, but does not provide for the eventual disposal of such records. Policy statement § 203.4 sets forth time periods after which records may be destroyed.

For the reasons set forth above and in the proposal, the two regulations and one policy statement concerning records disposal will be consolidated into a single policy statement. Sections 201.50 and 201.101 of the regulations will be

removed. Section 203.4 of the policy statements will be revised.

Withholding of Information by Market Agency. It was proposed to remove § 201.52 of the regulations which prohibits market agencies from furnishing livestock sales information to unauthorized parties. No comments were received in opposition to this proposal. For the reasons set forth in the proposal, § 201.52 of the regulations will be removed.

Trade Practices

Responsibilities of Market Agencies Selling on Commission—Purchases from Consignment. The Administration proposed to consolidate eight trade practice regulations dealing with market agency responsibilities to consignors. In addition to numerous comments which expressed broad support for all the proposals in this group, five comments were filed which specifically addressed this proposal.

Two national livestock producer organizations expressed support for the proposal. One of these, however, stated, "Caution is urged so that the regulations are not modified to a point where consignors do not receive the true market value for their livestock". The Administration will continue to enforce the P&S Act to ensure fair competition and fair trade practices in livestock marketing.

One comment supported parts of the proposal, but contended that a market agency should be permitted to speculate on livestock purchased out of consignment. Another opposed the entire regulation as proposed and argued that speculative purchases should be permitted. It also suggested the terms "speculative resale" and "market support" should be defined. The comments from a major trade group representing livestock marketing businesses contended that failure to define "speculative resale" discourages legitimate market support.

In the context of this proposal, purchases for speculative resale are purchases made for the buyer's own account with the intent or expectation of making a profit by a gain in price on the prompt resale, whether or not a profit is actually realized. Market support purchases, on the other hand, are purchases made from consignments by the market agency to which the livestock is consigned with the intent and solely for the purpose of protecting the legitimate interest of the consignor when the market agency believes that the highest available bid does not reflect the true market value of the livestock. Determinations as to whether transactions are market support or speculative purchases require analysis of the facts surrounding the transactions at issue.

When a market agency accepts livestock for sale on consignment, it has a fiduciary responsibility and must assure that the consignor receives the highest available bid for the livestock. Conflicts of interest must be avoided to meet this responsibility.

Purchases from consignments for speculative resale create an inherent conflict of interest which cannot be reconciled with the market agency's fiduciary responsibilities. Therefore, the Administration has determined that the prohibition against speculating in consigned livestock should be retained as proposed.

One comment contended the requirement that disclosure be made both at the time of sale and on the account of sale, as set forth in paragraph (e) of proposed § 201.56 would increase the existing disclosure requirements. It should be noted that the proposal merely continues existing requirements. The Administration believes such disclosure requirements are essential to the protection of livestock sellers.

Clarifying changes have been made in the language of paragraph (d) of § 201.56. That section prohibits key employees of market agencies selling at auction from purchasing, for their own account, consigned livestock for speculative resale or to fill orders. The regulation does not, however, prohibit such key employees from executing bids and purchasing consigned livestock on behalf of the market agency to fill orders received by the market agency.

Accordingly, § 201.56 of the regulations will be revised as proposed. Sections 201.47, 201.57, 201.58, 201.59, 201.60, 201.62, and 201.66(b) will be removed.

Market Conditions and Prices—False Reports. It was proposed to consolidate §§ 201.53 and 201.102 of the existing regulations as § 201.53 and extend coverage of the regulation to meat prices. These sections proscribe making or circulating false or misleading reports about market conditions and prices. None of the comments filed specifically addressed this proposal. Section 201.53 will be revised and § 201.102 will be removed for the reasons set forth in the proposal.

Gratuities. Only one comment was filed concerning the proposal to remove § 201.54 of the regulations dealing with gratuities to truckers, and it supported the removal. For the reasons stated in the proposal, § 201.54 will be removed.

Actual Weights. Two comments were received concerning the proposal to revise § 201.55 dealing with accurate weights. The proposed changes clarify the language in the existing regulation. Both comments support the intent of this regulation. However, one suggested the language be modified to recognize that adjustments to the actual weights do occur in some transactions with the complete understanding of the parties. However, the proposed regulation explicitly recognizes that weight adjustments may be made by agreement. Where such adjustments are made, the proposed regulation requires full and accurate accounting for such adjustments. Therefore, § 201.55 of the regulations will be revised as proposed.

Clearing Services. No comments were filed concerning the proposal to revise § 201.61 dealing with clearing and financing services. That proposal removed some of the restrictions imposed by the existing regulation on market agencies. Section 201.61 of the regulations will be revised in accordance with the proposal for the reasons stated therein.

Consignments Not to be Solicited or Intercepted. One comment supported the proposed removal of § 201.63, which prohibits dealers from soliciting or intercepting consignments to a stockyard. None of the other comments addressed this section. For the reasons stated in the proposal, § 201.63 of the regulations will be removed.

Price Guarantees Not to be Given. No comments were received concerning the proposed retention of § 201.64 of the regulations pertaining to market agencies guaranteeing prices. Section 201.64 will be retained for the reasons stated in the proposal.

Employment of Salesmen on Split Commission. Only one comment addressed the proposal to remove § 201.65, which prohibits the employment of salesmen by market agencies on the basis of a split of the commissions. Removal of this section was supported by the comment. Section 201.65 of the regulations will be removed.

Paying the Expenses of Buyers. None of the comments specifically addressed the proposed retention of § 203.5 of the Statements of General Policy, which sets forth the Agency's policy with respect to market agencies selling on commission paying the expenses of buyers attending their sales. Policy Statement § 203.5 will be retained for the reasons stated in the proposal.

Executive Order

It has been determined that the regulations and policy statements relating to the accounting and recordkeeping and trade practices of

stockyards, market agencies, dealers, meat packers, and live poultry dealers or handlers, as revised herein, are not "major" rules as defined by section 1(b) of E.O. 12291.

The rules will not have an annual effect on the economy of $100 million or more, will not result in major increases in costs or prices for consumers, individual industries, Government agencies, or geographic regions, and will not have significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of U.S. based enterprises to compete with foreign based enterprises in domestic or export markets. Accordingly, regulatory impact analyses are not required.

Regulatory Flexibility Act

B. H. (Bill) Jones, Administrator, Packers and Stockyards Administration, has determined that these regulations and policy statements will not have a significant economic impact on a substantial number of small entities.

The changes made in the regulations and policy statements by this notice will remove several restrictions on the business activities of market agencies and greatly simplify and clarify the trade practice regulations.

These regulations simply proscribe certain unfair and deceptive practices which are unlawful under the Packers and Stockyards Act. Consolidation of the records disposal regulations and policy statement into a single policy statement does not impose any new recordkeeping requirements and, in fact, reduces the retention period for some packer records.

Paperwork Reduction Act of 1980

In accordance with the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*) the reporting and recordkeeping provisions that are included in these rules have been approved by the Office of Management and Budget (OMB) and have been assigned clearance number 0590–0001.

List of Subjects in 9 CFR Parts 201 and 203

Reporting and recordkeeping requirements, Stockyards, Trade practices.

(7 U.S.C. 228, 7 U.S.C. 222, and 15 U.S.C. 46)

Done at Washington, D.C. this 10th day of Feb. 1984.

B. H. (Bill) Jones,

Administrator, Packers and Stockyards Administration.

Parts 201 and 203, Chapter II, Title 9 of the Code of Federal Regulations are amended as follows:

PART 201—[AMENDED]

§§ 201.46, 201.47, 201.50, 201.52, 201.54, 201.57, 201.58, 201.59, 201.60, 201.62, 201.63, 201.65, 201.101, 201.102, 201.107 and 201.111 [Removed]

§ 201.66 [Amended]

1. Sections 201.46, 201.47, 201.50, 201.52, 201.54, 201.57, 201.58, 201.59, 201.60, 201.62, 201.63, 201.65, 201.66(b), 201.101, 201.102, 201.107 and 201.111 of the regulations are removed.

2. Section 201.43 of the regulations is revised to read as follows:

§ 201.43 Payment and accounting for livestock and live poultry.

(a) *Market agencies to make prompt accounting and transmittal of net proceeds.* Each market agency shall, before the close of the next business day following the sale of any livestock consigned to it for sale, transmit or deliver to the consignor or shipper of the livestock, or the duly authorized agent, in the absence of any knowledge that any other person, or persons, has any interest in the livestock, the net proceeds received from the sale and a true written account of such sale, showing the number, weight, and price of each kind of animal sold, the date of sale, the commission, yardage, and other lawful charges, and such other facts as may be necessary to complete the account and show fully the true nature of the transaction.

(b) *Prompt payment for livestock—terms and conditions.* (1) No packer, market agency, or dealer shall purchase livestock for which payment is made by a draft which is not a check, unless the seller expressly agrees in writing before the transaction that payment may be made by such a draft. (In cases of packers whose average annual purchases exceed $500,000, and market agencies and dealers acting as agents for such packers, see also § 201.200).

(2)(i) No packer, market agency, or dealer purchasing livestock for cash and not on credit, whether for slaughter or not for slaughter, shall mail a check in payment for the livestock unless the check is placed in an envelope with proper first class postage prepaid and properly addressed to the seller or such person as he may direct, in a post office, letter box, or other receptacle regularly used for the deposit of mail for delivery, from which such envelope is scheduled to be collected (A) before the close of the next business day following the purchase of livestock and transfer of possession thereof, or (B) in the case of a purchase on a "carcass" or "grade and yield" basis, before the close of the first business day following determination of the purchase price.

(ii) No packer, market agency, or dealer purchasing livestock for slaughter, shall mail a check in payment for the livestock unless (A) the check is made available for actual delivery and the seller or his duly authorized representative is not present to receive payment, at the point of transfer of possession of such livestock, on or before the close of the next business day following the purchase of the livestock and transfer of possession thereof, or, in the case of a purchase on a "carcass" or "grade and yield" basis, on or before the close of the first business day following determination of the purchase price; or unless (B) the seller expressly agrees in writing before the transaction that payment may be made by such mailing of a check.

(3) Any agreement referred to in paragraphs (b) (1) or (2) of this section shall be disclosed in the records of any market agency or dealer selling such livestock, and in the records of the packer, market agency, or dealer purchasing such livestock, and retained by such person for such time as is required by any law, or by written notice served on such person by the Administrator, but not less than two calendar years from the date of expiration thereof.

(4) No packer, market agency, or dealer shall, as a condition to its purchase of livestock, impose, demand, compel or dictate the terms or manner of payment, or attempt to obtain a payment agreement from a seller through any threat of retaliation or other form of intimidation.

(c) *Purchaser to promptly reimburse agents.* Each packer, market agency, or dealer who utilizes or employs an agent to purchase livestock for him, shall, in transactions where such agent uses his own funds to pay for livestock on order, transmit or deliver to such agent the full amount of the purchase price before the close of the next business day following receipt of notification of the payment of such purchase price, unless otherwise expressly agreed between the parties before the purchase of the livestock. Any such agreement shall be disclosed in the records of the principal and in the records of any market agency or dealer acting as such agent.

(d) *Purchasers to pay promptly for live poultry purchases.* Each packer or live poultry dealer or handler shall, before the close of the fifth business day following slaughter of any poultry purchased, transmit or deliver to the seller of such poultry or his duly authorized agent the full amount of the purchase price thereof, unless otherwise expressly agreed between the parties

before the purchase of the poultry. Any such agreement shall be disclosed in such purchaser's records and on all accountings or other documents issued by such purchaser relating to the transaction.

(Approved by the Office of Management and Budget under control number 0590–0001)

3. Section 201.49 of the regulations is revised to read as follows:

§ 201.49 Requirements regarding scale tickets evidencing weighing of livestock and live poultry.

(a) *Livestock.* When livestock is weighed for the purpose of purchase or sale, a scale ticket shall be issued which shall show: (1) The name and location of the agency performing the weighing service; (2) the date of the weighing; (3) the name of the buyer and seller or consignor, or a designation by which they may be readily identified; (4) the number of head; (5) kind; (6) actual weight of each draft of livestock; and (7) the name, initials, or number of the person who weighed the livestock, or if required by State law, the signature of the weigher. Scale tickets issued under this section shall be serially numbered and used in numerical sequence. Sufficient copies shall be executed to provide a copy to all parties to the transaction. In instances where the weight values are automatically recorded directly on the account of purchase, account of sale or other basic record, this record may serve in lieu of a scale ticket. When livestock is purchased on a carcass weight or carcass grade and weight basis, the hot carcass weights shall be accurately recorded, either manually or automatically, and retained as part of the person or firm's business records to substantiate settlement on each transmission.

(b) *Live poultry.* When live poultry is weighed for the purpose of purchase, sale, acquisition, or settlement by a packer or live poultry dealer or handler, a scale shall be issued which shall show: (1) The name of the agency performing the weighing service; (2) the name of the packer or live poultry dealer or handler; (3) the name and address of the grower, purchaser, or seller; (4) the name or initials of the person who weighed the poultry; (5) the location of the scale; (6) the gross weight, tare weight, and net weight; (7) the date and time gross weight and tare weight are determined; (8) the number of poultry weighed; (9) the weather conditions; (10) whether the driver was on or off the truck at the time of weighing; and (11) the license number of the truck or the truck number; PROVIDED, That when live poultry is weighed on a scale other than a vehicle scale, the scale ticket need not show the information specified in (9), (10), and (11) of this paragraph. Scale tickets issued under this paragraph shall be at least in duplicate form and shall be serially numbered and used in numerical sequence. One copy shall be furnished to the grower, purchaser, or seller, and one copy shall be furnished to or retained by the packer or live poultry dealer or handler.

(Approved by the Office of Management and Budget under control number 0590–0001)

4. Section 201.53 of the regulations is revised to read as follows:

§ 201.53 Persons subject to the Act not to circulate misleading reports about market conditions or prices.

No packer, live poultry dealer or handler, stockyard owner, market agency, or dealer shall knowingly make, issue, or circulate any false or misleading reports, records, or representation concerning the market conditions or prices of livestock, meat, live poultry, or dressed poultry.

5. Section 201.55 of the regulations is revised to read as follows:

§ 201.55 Purchases and sales to be made on actual weights.

When livestock is bought or sold on a weight basis, settlement therefore shall be on the basis of the actual weight shown on the scale ticket. If the actual weight used is not obtained on the date and at the place of transfer of possession, this information shall be disclosed with the date and location of the weighing on the accountings, bills, or statements issued. Any adjustment to the actual weights shall be fully and accurately explained on the accountings, bills, or statements issued and records shall be maintained to support such adjustment.

(Approved by the Office of Management and Budget under control number 0590–0001)

6. Section 201.56 of the regulations is revised to read as follows:

§ 201.56 Market agencies selling on commission; purchases from consignment.

(a) *Livestock to be sold openly at highest available bid.* Every market agency engaged in the business of selling livestock on a commission or agency basis shall sell the livestock consigned to it openly, at the highest available bid, and in such a manner as to best promote the interest of each consignor.

(b) *Purchases from consignment to fill orders.* No market agency engaged in the business of selling and buying livestock on a commission basis shall use livestock consigned to it for sale to fill orders on an agency basis, nor shall it permit its owners, officers, agents, employees, or any firm in which such market agency or its owners, officers, agents, or employees have an ownership or financial interest to use livestock consigned to such market agency to fill orders on an agency basis, without first offering the livestock for sale in an open and competitive manner to other available buyers, and then only at a price higher than the highest available bid on such livestock.

(c) *Market agencies not to speculate on pruchases from consignments.* No market agency engaged in selling livestock on a commission basis shall purchase livestock from consignments to such market agency for speculative resale, and no such market agency shall permit its owners, officers, agents, employees, or any firm in which such market agency or its owners, officers, agents, or employees have an ownership or financial interest to purchase livestock from consignments to such market agency for speculative resale; PROVIDED, That this paragraph shall not be construed to prohibit a market agency form purchasing livestock for its own account to support the market when necessary to protect the legitimate interests of its consignors.

(d) *Key employees at auction sales not to purchase livestock out of consignments to fill orders or for speculation.* No market agency engaged in selling livestock at auction shall permit its auctioneers, weighmasters, ringmen, or other employees performing duties of comparable responsibility in connection with the actual conduct of the auction sales, to purchase livestock out of consignment for their own account, directly, or indirectly, for speculative resale or to fill orders on an agency basis.

(e) *Purchases from consignment; disclosure required.* When a market agency purchases livestock consigned to it for sale to fill orders or to support the market, or sells consigned livestock to any owner, officer, agent, employee, or any person in whose business such market agency, owner, officer, agent, or employee has an ownership or financial interest, the market agency shall disclose the name of the buyer and the nature of the relationship existing between the market agency and the buyer. Such disclosure shall be made at the time of sale and on the account of sale.

(Approved by the Office of Management and Budget under control number 0590–0001)

7. Section 201.61 of the regulations is revised to read as follows:

§ 201.61 Market agencies selling or purchasing livestock on commission; relationships with dealers.

(a) *Market agencies selling on commission.* No market agency selling consigned livestock shall enter into any agreement, relationship or association with dealers or other buyers which has a tendency to lessen the loyalty of the market agency to its consignors or impair the quality of the market agency's selling services. No market agency selling livestock on commission shall provide clearing services for any independent dealer who purchases livestock from consignments to such market agency.

(b) *Market agencies buying on commission.* No market agency purchasing livestock on commission shall enter into any agreement, relationship, or association with dealers or others which will impair the quality of the buying services furnished to its principals. No market agency purchasing livestock on commission shall, in filling orders, purchase livestock from a dealer whose operations it clears or finances without disclosing the relationship between the market agency and dealer to its principals on the accountings furnished to the principals.

(Approved by the Office of Management and Budget under control number 0590–0001)

PART 203—[AMENDED]

8. Section 203.4 of the Statements of General Policy is revised to read as follows:

§ 203.4 Statement with respect to the disposition of records by packers, live poultry dealers or handlers, stockyard owners, market agencies and dealers.

(a) *Records to be kept.* Section 401 of the Packers and Stockyards Act (7 U.S.C. 221) provides, in part, that every packer, live poultry dealer or handler, stockyard owner, market agency, and dealer shall keep such accounts, records, and memoranda as fully and correctly disclose all transactions involved in his business, including the true ownership of such business by stockholding or otherwise. In order to properly administer the P&S Act, it is necessary that records be retained for such periods of time as may be required to permit the Packers and Stockyards Administration a reasonable opportunity to examine such records. Section 401 of the Act does not, however, provide for the destruction or disposal of records. Therefore, the Packers and Stockyards Administration has formulated this policy statement to provide guidance as to the periods of time after which records may be disposed of or destroyed.

(b) *Records may be disposed of after two years except as otherwise provided.* Except as provided in paragraph (c) of this section, each packer, live poultry dealer or handler, stockyard owner, market agency, and dealer may destroy or dispose of accounts, records, and memoranda which contain, explain, or modify transactions in its business subject to the Act after such accounts, records, and memoranda have been retained for a period of two full years; *Provided,* That the following records made or kept by a packer may be disposed of after one year: cutting tests; departmental transfers; buyers' estimates; drive sheets; scale tickets received from others; inventory and products in storage; receiving records; trial balances; departmental overhead or expense recapitulations; bank statements; reconciliations and deposit slips; production or sale tonnage reports (including recapitulations and summaries of routes, branches, plants, etc.); buying or selling pricing instructions and price lists; correspondence; telegrams; teletype communications and memoranda relating to matters other than contracts, agreements, purchase or sales invoices, or claims or credit memoranda; and Provided further, That microfilm copies of records may be substituted for and retained in lieu of the actual records.

(c) *Retention for longer periods may be required.* The periods specified in paragraph (b) of this section shall be extended if the packer, live poultry dealer or handler, stockyard owner, market agency, or dealer is notified in writing by the Administrator that specified records should be retained for a longer period pending the completion of any investigation or proceeding under the Act.

(d) *Unauthorized disposal of records.* If it is found that any person subject to the Act has disposed of accounts, records, and memoranda which are necessary to fully and correctly disclose all transactions in its business prior to the periods specified in this statement, consideration will be given to the issuance of a complaint charging a violation of section 401 of the Act and seeking an appropriate order. The administrative proceeding initiated will be conducted in accordance with the Rules of Practice Governing Formal Adjudicatory Proceedings Instituted by the Secretary (7 CFR 1.130 *et seq.*).

(Approved by the Office of Management and Budget under control number 0590–0001)

[FR Doc. 84–4199 Filed 2–16–84; 8:45 am]

BILLING CODE 3410–KD–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 83–NM–57–AD; Amdt. 39–4812]

Airworthiness Directives; British Aerospace Model HS/BH/DH 125 Series 1A, 400A, 600A, and 700A Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment adds a new airworthiness directive (AD) applicable to certain British Aerospace Model HS/BH/DH 125 series 1A, 400A, 600A, and 700A airplanes equipped with Garrett TFE731–3 engines which requires a change of the source of direct current electrical supply for the engines' fuel computers. This is needed to prevent the lose of both engine fuel computers due to a single fuse failure. The loss of electrical power to both engine fuel computers may result in an uncommanded thrust change on both engines which has the potential of resulting in the loss of the airplane.

DATES: Effective March 22, 1984.

ADDRESSES: The service bulletin specified in this AD may be obtained upon request to British Aerospace, Inc., Librarian, Box 17414, Dulles International Airport, Washington, D.C. 20041, or may be examined at the address shown below.

FOR FURTHER INFORMATION CONTACT: Mr. Sulmo Mariano, Foreign Aircraft Certification Branch, ANM–150S, Seattle Aircraft Certification Office FAA, Northwest Mountain Region, 9010 East Marginal Way South, Seattle, Washington, telephone (206) 431–2979. Mailing address: FAA, Northwest Mountain Region, 17900 Pacific Highway South, C–68966, Seattle, Washington 98168.

SUPPLEMENTARY INFORMATION: The Civil Aviation Authority of the United Kingdom has classified British Aerospace 125 series Service Bulletin 24–225–(2747) as mandatory. The manufacturer has determined that failure of a single fuse could result in the loss of both engine fuel computers if their source of direct power is from the PE2 bus bar. The loss of electrical power

to both engine fuel computers may result in an uncommanded thrust change on both engines. The failure may require immediate action by the pilot for continued safe flight, but under certain conditions this may be impossible to achieve and may result in the loss of the airplane. The service bulletin prescribes that the electrical power supply to Nos. 1 and 2 engine fuel computers be transferred from the PE2 bus bar to the PE bus bar.

A proposal to amend Part 39 of the Federal Aviation Regulations to include an airworthiness directive requiring the transfer of the power supply to the engine fuel computers from the PE2 bus bar to the PE bus bar was published in the **Federal Register** on September 22, 1983 (48 FR 43187). The comment period closed on November 8, 1983, and interested persons have been afforded an opportunity to participate in the making of this amendment. Two comments were received. Both agreed with the FAA in the issuance of the AD but pointed out that the only airplanes affected have Garrett TFE731–3 engines, which was not clearly stated in the proposed AD. The final rule has editorial changes and changes in the effectivity statement that reduce the number of airplanes affected; this is accomplished by mentioning the modifications that specify Garrett TFE731–3 engines are installed. The series 700A was originally certificated with these engines.

It is estimated that 45 U.S. registered airplanes will be affected by this AD, that it will take approximately 8 manhours to accomplish the required actions and that the average labor cost will be $35 per manhour. The kit materials are estimated at $500 per airplane. Based on these figures, the total cost impact of this AD on the U.S. operators is estimated to be $35,100. For these reasons, the proposed rule is not considered to be a major rule under the criteria of Executive Order 12291. Few small entities within the meaning of the Regulatory Flexibility Act will be affected.

Therefore, the FAA has determined that air safety and the public interest require the adoption of the rule with the changes previously noted.

List of Subjects in 14 CFR Part 39

Aviation safety, Aircraft.

Adoption of the Amendment

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

British Aerospace: Applies to Model HS 125 airplanes series 1A with modifications 251867 and 252605, series 400A with modification 252550, series 600A with modification 252468, and series 700A, certificated in all categories. The serial numbers of the affected airplanes are listed in the Planning Information section of British Aerospace 125 series Service Bulletin 24–225–(2747), dated October 17, 1980. Compliance is required as indicated, unless already accomplished.

To prevent loss of power to both engine fuel computers by a single fuse failure, accomplish the following:

A. Modify the engine fuel computers' direct current power supply electrical circuits within the next 500 hours time in service or one year, whichever occurs first after the effective date of this AD, in accordance with paragraph 2, Accomplishment Instructions, of British Aerospace, HS 125 series Service Bulletin 24–225–(2747), dated October 17, 1980.

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

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

This amendment becomes effective March 22, 1984.

(Sec. 313(a), 314(a), 601 through 610, and 1102 of the Federal Aviation Act of 1958 (49 U.S.C. 1354(a), 1421 through 1430, and 1502); 49 U.S.C. 106(g) (Revised, Pub. L. 97–449, January 12, 1983); and 14 CFR 11.89).

Note.—For reasons discussed earlier in the preamble, the FAA has determined that this regulation is not considered to be major under Executive Order 12291 or significant under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and it is further certified under the criteria of the Regulatory Flexibility Act that this rule will not have a significant economic effect on a substantial number of small entities because few small entities operate British Aerospace Model HS/BH/DH 125 airplanes. A final evaluation has been prepared for this regulation and has been placed in the docket. A copy of it may be obtained by contacting the person identified under the caption **"FOR FURTHER INFORMATION CONTACT."**

Issued in Seattle, Washington on February 6, 1984.

Wayne J. Barlow,

Acting Director, Northwest Mountain Region.

[FR Doc. 84–4333 Filed 2–16–84; 8:45 am]

BILLING CODE 4910–13–M

14 CFR Part 39

[Docket No. 84–NM–80–AD; Amdt. 39–4813]

Airworthiness Directives; McDonnell Douglas Model DC–10–30, –30F, –40, and Military KC–10A Series Airplanes Equipped With Goodyear, P/N 6002870, Antiskid Control Unit

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD) which requires modification of the Goodyear P/N 6002870 antiskid control unit on McDonnell Douglas Model DC–10–30, –30F, –40, and Military KC–10A series airplanes. There has been a report of the antiskid control unit being unable to detect an open circuit condition of the wheel speed transducer. Should this condition exist, rejected takeoff and landing braking distances would be greatly increased, and during heavy braking, the associated tire(s) would be damaged. This AD is needed to prevent an undetected severe loss in braking capability with possible loss of directional control.

DATES: Effective February 27, 1984. Compliance schedule as prescribed in the body of the AD, unless already accomplished.

ADDRESSES: The applicable service information may be obtained from: McDonnell Douglas Corporation, 3855 Lakewood Boulevard, Long Beach, California 90846, Attention: Director, Publications and Training, C1–750 (54–60). This information also may be examined at the FAA, Northwest Mountain Region, 17900 Pacific Highway South, Seattle, Washington, or at 4344 Donald Douglas Drive, Long Beach, California.

FOR FURTHER INFORMATION CONTACT: Mr. Eugene F. Huettner Aerospace Engineer, Systems & Equipment Branch, ANM–130L, FAA, Northwest Mountain Region, Los Angeles Aircraft Certification Office, 4344 Donald Douglas Drive, Long Beach, California 90808, telephone (213) 548–2831

SUPPLEMENTARY INFORMATION: One operator has reported that a BITE test of the phase IV antiskid control box failed to detect a wheel speed transducer open circuit condition. In-service and subsequent testing has shown that a condition exists in the antiskid control unit in which the system test provides a test response indication to the pilot that the system is functional when a transducer open circuit exists. If any open transducer circuit were to exist

during heavy braking the associated tire would not provide braking until below 30 knots at which point the tire would be damaged. Rejected takeoff and landing braking distance would be greatly increased, depending upon how many open wheel speed transducers were undetected. Douglas DC–10 Alert Service Bulletin A32–202, dated November 30, 1983, and Goodyear Service Bulletin DC–10–30/40–32–36, dated July 29, 1983, have been released to correct this condition by changing the resistance values of five resistors.

Since this situation is likely to exist or develop on other airplanes of the same type design, this AD requires modification of Goodyear P/N 6002870 antiskid control unit and an interim revision of the FAA approved Airplane Flight Manual (AFM) Limitations Section.

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

List of Subjects in 14 CFR Part 39

Aviation safety, Aircraft.

Adoption of the Amendment

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

McDonnell Douglas: Applies to McDonnell Douglas Model DC–10–30, –30, –40, and KC–10A (Military) series airplanes, certificated in all categories, equipped with Goodyear P/N 6002870 antiskid control unit. Compliance required as indicated, unless previously accomplished.

To prevent undetected severe loss of braking ability, accomplish the following:

A. Compliance required within 30 days after the effective date of this AD. Revise the Limitations Section of the FAA approved Airplane Flight Manual by adding a paragraph which reads as follows:

"Prior to each takeoff, turn the ANTISKID ARM switch in the cockpit from the ARM position to the OFF position, then back to the ARM position. Within sixty (60) seconds thereafter, initiate the ANTISKID TEST function using the cockpit test switch. Verify that no antiskid fail lights remain illuminated on the annunciator panel."

Note.—A copy of this AD may be inserted in the AFM as an acceptable means of compliance with the required AFM revision.

B. Compliance required within 3000 flight hours after the effective date of this AD. Modify Goodyear P/N 6002870 antiskid control unit in accordance with the Accomplishment Instructions of Douglas DC–10 Alert Service Bulletin A32–202, dated November 30, 1983, and Goodyear Service Bulletin DC–10–30/40–32–36, dated July 29, 1983, of later revisions approved by the Manager, Los Angeles Aircraft Certification Office, FAA, Northwest Mountain Region. Modification of the antiskid control unit as specified above constitutes terminating action for this AD and the interim AFM revision required by paragraph A., above, may be removed.

C. Alternate means of compliance which provide an equivalent level of safety may be used when approved by the Manager, Los Angeles Aircraft Certification Office, FAA, Northwest Mountain Region.

D. Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate airplanes to a base in order to comply with the requirements of this AD.

All persons affected by this directive who have not already received these documents from the manufacturer may obtain copies upon request to McDonnell Douglas Corporation, 3855 Lakewood Boulevard, Long Beach, California 90846, Attention: Director, Publications and Training, C1–750 (54–60). These documents also may be examined at the FAA, Northwest Mountain Region, 17900 Pacific Highway South, Seattle, Washington, or the Los Angeles Aircraft Certification Office, 4344 Donald Douglas Drive, Long Beach, California.

This Amendment becomes effective Feb. 27, 1984.

(Secs. 313(a), 314(a), 601 through 610, and 1102 of the Federal Aviation Act of 1958 (49 U.S.C. 1354(a), 1421 through 1430, and 1502); 49 U.S.C. 106(g) (Revised, Pub. L. 97–449, January 12, 1983); and 14 CFR 11.89).

Note.—The FAA has determined that this regulation is an emergency regulation that is not major under Section 8 of Executive Order 12291 with respect to this rule since the rule must be issued immediately to correct an unsafe condition in aircraft. It has been further determined that this document involves an emergency regulation under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979). If this action is subsequently determined to involve a significant/major regulation, a final regulatory evaluation or analysis, as appropriate, will be prepared and placed in the regulatory docket (otherwise, an evaluation is not required). A copy of it, when filed, may be obtained by contacting the person identified under the caption **"FOR FURTHER INFORMATION CONTACT."**

Issued in Seattle, Washington on February 6, 1984.

Leroy A. Keith,

Acting Director, Northwest Mountain Region.

[FR Doc. 84–4332 Filed 2–16–84; 8:45 am]

BILLING CODE 4910–13–M

14 CFR Part 71

[Airspace Docket Number 83–ACE–20]

Designation of Transition; Abilene, Kansas

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: The nature of this Federal action is to designate a 700-foot transition area at Abilene, Kansas, to provide controlled airspace for aircraft executing a new instrument approach procedure to the Abilene Municipal Airport, Abilene, Kansas, utilizing the Salina, Kansas, VORTAC as a navigational aid. This action will change the airport status from VFR to IFR. The intended effect of this action is to ensure segregation of aircraft using the new approach procedure under Instrument Flight Rules (IFR) and other aircraft operating under Visual Flight Rules (VFR).

EFFECTIVE DATE: May 10, 1984.

FOR FURTHER INFORMATION CONTACT: Dale L. Carnine, Airspace Specialist, Operations, Procedures and Airspace Branch, Air Traffic Division, ACE–532, FAA, Central Region, 601 East 12th Street, Kansas City, Missouri 64106, Telephone (816) 374–3408.

SUPPLEMENTARY INFORMATION: To enhance airport usage, a new instrument approach procedure is being developed for the Abilene, Kansas, Municipal Airport, utilizing the Salina Kansas, VORTAC as a navigational aid. This navigational aid will provide new navigational guidance for aircraft utilizing the airport. The establishment of an instrument approach procedure based on this approach aid entails designation of a transition area at Abilene, Kansas, at or about 700 feet above the ground (AGL) within which aircraft are provided air traffic control service. Transition areas are designed to contain IFR operations in controlled airspace during portions of the terminal operation and while transiting between the terminal and enroute environment. The intended effect of this action is to ensure segregation of aircraft using the new approach procedure under Instrument Flight Rules (IFR) and other aircraft operating under Visual Flight Rules (VFR). This action will change the airport status from VFR to IFR.

Discussion of Comments

On pages 55139 and 55140 of the **Federal Register** dated December 9, 1983, the Federal Aviation Administration published a Notice of

Proposed Rulemaking which would amend Section 71.181 of Part 71 of the Federal Aviation Regulations so as to designate a transition area at Abilene, Kansas. Interested persons were invited to participate in this rulemaking proceeding by submitting written comments on the proposal to the FAA. No objections were received as a result of the Notice of Proposed Rulemaking.

List of Subjects in 14 CFR Part 71

Aviation safety, Transition areas.

Accordingly, pursuant to the authority delegated to me, § 71.181 of Part 71 of the Federal Aviation Regulations (14 CFR Part 71) is amended, effective 0901 G.m.t. May 10, 1984, by designating the following transition area:

Abilene, Kansas

That airspace extending upward from 700 feet above the surface within a 5-mile radius of the Abilene Municipal Airport (latitude 38°54'20" N., longitude 97°14'08" W.) and within 2 miles each side of the Salina VORTAC (latitude 38°52'57" N., longitude 97°37'39" W.) 086° bearing extending from the 5-mile radius area to 5.75 miles west of the Abilene Municipal Airport.

(Secs. 307(a) and 313(a), Federal Aviation Act of 1958 (49 U.S.C. 1348(a) and 1354(a)); 49 U.S.C. 106(g) (Revised, Pub. L. 97-449, January 12, 1983); and Sec. 11.69 of the Federal Aviation Regulations (14 CFR 11.69)

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

Issued in Kansas City, Missouri, on February 6, 1984.

Murray E. Smith,

Director, Central Region.

[FR Doc. 84-4338 Filed 2-16-84; 8:45 am]

BILLING CODE 4910-13-M

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14 CFR Part 71

[Airspace Docket No. 84-ASO-2]

Revocation of Transition Area, Cullowhee, North Carolina

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule; request for comments.

SUMMARY: This amendment revokes the Cullowhee, North Carolina, transition area which is centered on the Jackson County Airport. The transition area was designated in 1979 to provide controlled airspace for containment of aeronautical activities in the vicinity of the airport. A non-federal radio beacon was to be commissioned to support Instrument Flight Rule (IFR) approach procedures at the airport; however, because of marginal radio signal reception, precipitous terrain and atmospheric conditions it has been determined that aviation safety would not benefit from establishment of the procedures. Therefore, since the transition area serves no useful purpose it will be revoked and the floor of controlled airspace, within a 20 mile radius of Jackson County Airport, will be raised from 700 to 1,200 feet above the surface.

DATES: Effective date: 0901 G.M.T., April 12, 1984. Comments must be received on or before March 12, 1984.

ADDRESSES: Send comments on the rule in triplicate to: Federal Aviation Administration, ATTN: Manager Airspace and Procedures Branch, ASO-530, Air Traffic Division, P.O. Box 20636, Atlanta, Georgia 30320.

The official docket may be examined in the Office of the Regional Counsel, Room 652, 3400 Norman Berry Drive, East Point, Georgia 30344, telephone: (404) 763-7646.

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

SUPPLEMENTARY INFORMATION:

Request for Comments on the Rule

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

The Rule

The purpose of this amendment to § 71.181 of Part 71 of the Federal Aviation Regulations (14 CFR Part 71) is to revoke the Cullowhee, North Carolina, transition area as the procedures for which it was designated were never established. Section 71.181 of part 71 of the Federal Aviation Regulations was republished in Advisory Circular AC 70-3A dated January 3, 1983. Under the circumstances presented, the FAA concludes that there is a need to revoke the transition area and raise the floor of controlled airspace from 700 to 1,200 feet above the surface within a 20-mile radius of Jackson County Airport. This revocation reduces the burden on the public by raising the base of controlled airspace over mountainous terrain. This action will enhance aviation safety for Visual Flight Rule aeronautical activity by providing additional uncontrolled airspace for such operations. Therefore, I find that notice or public procedure under 5 U.S.C. 553(b) is unnecessary.

List of Subjects in 14 CFR Part 71

Aviation safety, Airspace, Transition area.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me, the Cullowhee, North Carolina, transition area under § 71.181 of Part 71 of the Federal Aviation Regulations (14 CFR Part 71) (as amended) is further amended, effective 0901 G.M.T., April 12, 1984, as follows:

Cullowhee, NC—[Revoked]

By revoking the title and text.

(Secs. 307(a) and 313(a), Federal Aviation Act of 1958 (49 U.S.C. 1348(a) and 1354(a)); 49 U.S.C. 106(g) (Revised, Public Law 97-449, January 12, 1983))

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

Issued in East Point, Georgia, on January 25, 1984.

George R. LaCaille,

Acting Director, Southern Region.

[FR Doc. 84-4337 Filed 2-16-84; 8:45 am]

BILLING CODE 4910-13-M

FEDERAL TRADE COMMISSION

16 CFR Part 2

Organization, Procedures, and Rules of Practice

AGENCY: Federal Trade Commission.

ACTION: Final rule.

SUMMARY: The Commission has amended § 2.7 of its Rules of Practice and Procedure to delegate to a single Commissioner, to be designated by the Chairman, the authority to dispose of petitions to limit or quash an investigational subpoena or civil investigative demand or in his/her discretion to refer such petitions to the full Commission for action. The Commission will permit petitioners to seek review by the full Commission of the delegated Commissioner's rulings if a request for review is received within three days after service of the ruling.

EFFECTIVE DATE: February 17, 1984.

FOR FURTHER INFORMATION CONTACT: Bruce G. Freedman, (202) 523-3487, Deputy Assistant General Counsel, Federal Trade Commission, 6th Street and Pennsylvania Avenue, NW., Washington, D.C. 20580.

SUPPLEMENTARY INFORMATION: The Commission met on September 15, 1983 to consider ways in which to streamline and expedite its procedures. As part of that effort, the Commission determined to delegate authority to a single Commissioner to dispose of petitions to limit or quash compulsory process subject to review by the full Commission if such review is sought by the petitioner in a timely fashion. The Commission believes that many petitions to limit or quash compulsory process raise no novel questions of law or policy and may be disposed of upon careful examination of the facts presented and applicable legal principles without participation by the full Commission. In addition, the rule permits the delegated Commissioner, in his or her discretion, to refer more complex petitions to the Commission for decision. A similar procedure as been in effect for many years with respect to adjudicative motions, and it is hoped that its use in handling petitions to limit or quash will promote expeditious processing of these matters while maintaining the necessary protections for the petitioner.

List of Subjects in 16 CFR Part 2

Administrative practice and procedure, investigations, reporting and recordkeeping requirements.

PART 2—[AMENDED]

Accordingly, the Commission amends 16 CFR 2.7 by revising paragraphs (d) through (f) and by adding paragraph (g) to read as follows:

§ 2.7 Compulsory process in investigations.

* * * * *

(d) *Petitions to limit or quash*—(1) *General.* Any petition to limit or quash any investigational subpoena or civil investigative demand shall be filed with the Secretary of the Commission within twenty (20) days after service of the subpoena or civil investigative demand, or, if the return date is less than twenty (20) days after service, prior to the return date. Such petition shall set forth all assertions of privilege or other factual and legal objections to the subpoena or civil investigative demand, including all appropriate arguments, affidavits and other supporting documentation.

(2) *Extensions of time.* Bureau Directors, Deputy Directors, and Assistant Directors in the Bureaus of Competition and Economics, the Bureau Director, Deputy Directors and Associate Directors in the Bureau of Consumer Protection, Regional Directors and Assistant Regional Directors are delegated, without power of redelegation, the authority to rule upon requests for extensions of time within which to file such petitions.

(3) *Disposition.* A Commissioner, to be designated by the Chairman, is delegated, without power of redelegation, the authority to rule upon petitions to limit or quash an investigational subpoena or civil investigative demand, but the designated Commissioner may, in his or her sole discretion, refer a petition to the full Commission for determination.

(e) *Stay of compliance period.* The timely filing of a petition to limit or quash any investigational subpoena or civil investigative demand shall stay the time permitted for compliance with the portion challenged. If the petition is denied in whole or in part, the ruling will specify a new return date.

(f) *Review.* Any petitioner, within three days after service of a ruling by the designated Commissioner denying all or a portion of the relief requested in its petition, may file with the Secretary of the Commission a request that the full Commission review the ruling. The timely filing of such a request shall not stay the return date specified in the ruling, unless otherwise specified by the Commission.

(g) *Public disclosure.* All petitions to limit or quash investigational subpoenas or civil investigative demands and the responses thereto are part of the public records of the Commission, except for information exempt from disclosure under § 4.10(a) of this chapter.

(15 U.S.C. 46(g))

By direction of the Commission, Commissioners Pertschuk and Bailey voting in the negative.

Emily H. Rock,

Secretary.

Dissenting Statement of Commissioner Patricia P. Bailey

Delegation of Authority Re Closing of Investigations and Petitions To Quash

February 8, 1984.

In the first of these two proposed changes in Commission rules, the Commission majority delegates to Commission senior staff the authority to determine that material subpoenaed by majority vote of the Commission does not present sufficient "reason to believe" a law violation has occurred, or that even if it does, it is not in the "public interest" to pursue the case. This is a delegation of substantial, substantive, policy-making power to the senior staff. This is authority not only to terminate ongoing law enforcement investigation conducted with the authority of subpoenas bearing the signatures of Commissioners, it is also a potential deterrent to staff initiative to propose new investigative activity. Such delegation reverses a short-lived trend towards management of this agency "from the top down."

Where as a Commissioner, by approving a request for compulsory process, I have voted to intrude our jurisdiction into private corporate records, I have begun a process of inquiry into the distinct possibility that I might come eventually to see "reason to believe" that a law violation exists that it may be in the public interest to pursue. This decision is the very essence of the Commission's statutory power. Thus this delegation raises troubling concerns. For example, if I follow the practice of applying *per se* standards to certain kinds of violations, such as resale price maintenance, I may now find that the subject of my inquiry has failed some different legal standard applied by the staff Bureau chief. Or, I may belatedly discover that the case was judged "too small" to justify further resource commitments by the Bureau, or that the industry that forms the context

of an investigation is not an "appropriate target" of antitrust concern. On the other side of the FTC docket, I might believe a specific inquiry into deceptive practices is appropriate, only to find that a staff Bureau Director has determined that deception has a newer and different meaning than I understand the law currently to provide.

I regard all this sort of decision-making as my statutory prerogative, and not that of the staff Bureau Directors.

The new policy also offers fewer guarantees to those that are subject to Commission investigations. I do not see how a company subject to compulsory process can draw the same degree of comfort from a staff person's unilateral decision to close that it may now feel from a closing letter that comes "By Direction of the Commission" after a Commission level decision that use of compulsory process has resulted in a determination not to sue. The proponents of this reform have eliminated the tangible value that a Commission closing letter has represented in prior practice.

Two features of this "reform",—packaged as a way to eliminate delays rather than as the substantive change it really is—operate to ameliorate the effects of this rule. Ironically, however, both these saving features may lead to new delays. First, a Bureau director's decision to close a formal investigation in which compulsory process has been authorized by the Commission involves a three-day "negative option" during which the Commissioners may try at second guessing the Bureau chief's pending decision, based on whatever explanation for closing might be proffered. Second, Section 1(b) of Reorganization Plan No. 4 of 1961 provides that two Commissioners may direct that a matter be subjected to full Commission review.

The second proposed rules change is to delegate to the "petitions to quash" or "subpoena Commissioner" the personal unilateral authority to dispose of or modify aspects of respondents' compliance with subpoenas duces tecum and civil investigative demands that are signed, in a substantial number of instances, by a Commissioner other than the one handling petitions to quash. I have less objection to this proposed change than to the one affording staff personnel the right to terminate investigations, but I am sufficiently concerned to oppose the change.

The proposed rules change does *not* reflect the Commission's actual decision (to which I dissented at the time) that only "non-controveral" petitions to quash be subject to the delegation. *All* petition to quash resolution powers are being delegated to one Commissioner. While the rules change contemplates the submission to the Commission for approval those petitions to quash that the delegated Commissioner personally deems appropriate for such treatment, I would prefer a simpler streamlining of procedure that simply grants the delegated Commissioner the power to deny petitions to quash. These sorts of dispositions have been the bulk of the work in this area in the past, and if the purpose of this rules change is merely to reduce delay, allowing prompt disposition of petition denials should be sufficient to achieve such a goal.

The recent law requiring a Commissioner to sign a subpoena is based on Congress' concept that individual Commissioners should be held accountable for compulsory FTC demands for private property. If a Commissioner is accountable for the subpoenas he or she signs, that Commissioner always should be part of any decision that implies such a subpoena has swept too broadly. Where a subpoena has been issued, I believe it inappropriate to later declare portions of such a subpoena as irrelevant or burdensome without full consultation with the signatory Commissioner, and full Commission review. Although I have every confidence that this delegation will be administered with sensitivity, it has a potential to undermine the collegial operation of the Commission, and to allow the sort of "forum shopping" and delay we should not wish to encourage.

[FR Doc. 84-4387 Filed 2-16-84; 8:45 am]
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DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Parts 430, 436, 440, 450, 455, and 555

[Docket No. 83N-0395]

Antibiotic Drugs; Updating and Technical Changes

AGENCY: Food and Drug Administration.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is amending certain antibiotic regulations providing for accepted standards of antibiotic and antibiotic-containing drugs for both human and veterinary use by making updatings and noncontroversial technical changes, and by revoking a bulk drug monograph. These changes will result in more accurate and usable regulations.

DATES: Effective February 17, 1984; comments, notice of participation, and request for hearing by March 19, 1984; data, information, and analyses to justify a hearing by April 17, 1984. The Director of the Office of the Federal Register approves the incorporation by reference of certain publications in 21 CFR 450.20 effective February 17, 1984.

ADDRESS: Written comments to the Dockets Management Branch (HFA-305), Food and Drug Administration, Rm. 4-62, 5600 Fishers Lane, Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: Joan M. Eckert, National Center for Drugs and Biologics (HFN-140), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301-443-4290.

SUPPLEMENTARY INFORMATION: FDA is amending certain antibiotic drug regulations providing for acceptable standards of antibiotic and antibiotic-containing drugs intended for human and veterinary use by making updatings and noncontroversial technical changes, and by revoking a bulk drug nonograph. In three instances, the need for a change was called to FDA's attention by industry representatives. To aid in understanding the types of changes included in this document, the changes have been grouped into three general classes for discussion in this preamble: updating, technical changes, and revocation.

Updating

1. Section 450.20a is being redesignated as § 450.20 and revised to provide for a nonsterile bulk drug, dactinomycin. The nonsterile bulk drug is used in the manufacture of the only dactinomycin dosage form, dactinomycin for injection, which dosage form is subsquently made sterile by a filtration process. Also, conforming amendments are made to § 450.220 (a)(1), (b)(1)(ii)*(c)*, and (b)(4).

2. Current § 455.310b *Chloramphenicol ophthalmics* is being divided into two sections, §§ 455.310b and 455.310e, to provide separate monographs for the solution and suspension products. The amended § 455.310b, which provides for chloramphenicol for ophthalmic solution, is also revised editorially to conform to the current format for antibiotic monographs.

3. As noted § 455.310e is added to provide for a separate monograph for chloramphenicol-hydrocortisone acetate for ophthalmic suspension, which was

formerly included under § 455.310b. The new section, taken from the current § 455.310b, is revised editorially to conform to the current format for antibiotic monographs.

Technical Changes

1. Section 436.335 is added to provide for a high-pressure liquid chromatographic (HPLC) assay method to replace the current assay method for determining potency for chloramphenicol palmitate. The sole manufacturer has submitted adequate data to support this revision. Also, conforming amendments are made to §§ 430.5(b), 455.11 (a)(3)(i) and (b)(1), 455.111 (a)(3)(i) (*a*) and (*b*) and (b)(1), and 555.111 (a)(3)(i) (*a*) and (*b*) and (b)(1).

2. In § 440.55a(a)(1)(vi), the pH range for sterile penicillin G benzathine (5.0–7.5) is revised to read 4.0 to 6.5. Paragraph (b)(6) is also revised by providing for a new sample preparation method for determining pH. One manufacturer has submitted adequate data to support these revisions. The agency has contacted all affected manufacturers and these firms support the revisions.

3. In §§ 455.111(a)(1) and 555.111(a)(1), the chloramphenicol palmitate concentration in chloramphenicol palmitate oral suspension (31.25 milligrams per milliliter) is revised to read 30.0 milligrams per milliliter. The sole manufacturer has submitted adequate data to support this revision.

4. In § 455.310b(b)(3), the directions for the test sample preparation for determining pH of chloramphenicol for ophthalmic solution are revised by directing that the test sample be diluted to a specific concentration rather than reconstituting the test sample as directed in the labeling. Because the current method may result in three different test sample concentrations which give different pH readings, diluting to a specific concentration will improve the uniformity of the pH test results. The sole manufacturer has submitted adequate data to support this revision.

Revocation

Section 440.57 *Penicillin V. benzathine* is removed. This bulk drug product is not used in the manufacture of any dosage form. Also, conforming amendments are made to §§ 436.33(b) and 436.204(b)(2).

The agency has determined pursuant to 21 CFR 25.24(b)(22) (proposed December 11, 1979; 44 FR 71742) that this action is of a type that does not individually or cumulatively have a significant impact on the human environment. Therefore, neither an environmental assessment nor an environmental impact statement is required.

List of Subjects

21 CFR Part 440

Administrative practice and procedure, Antibiotics.

21 CFR Part 436

Antibiotics.

21 CFR Part 440

Antibiotics, penicillin.

21 CFR Part 450

Antibiotics, antitumor, Incorporation by reference.

21 CFR Part 455

Antibiotics.

21 CFR Part 555

Animal drugs, Antibiotics, chloramphenicol.

Therefore, under the Federal Food, Drug, and Cosmetic Act (secs. 507, 512(n), 701 (f) and (g), 52 Stat. 1055–1056 as amended, 59 Stat. 463 as amended, 82 Stat. 350–351 (21 U.S.C. 357, 360(n), 371 (f) and (g))) and under authority delegated to the Commissioner of Food and Drugs (21 CFR 5.10), Parts 430, 436, 440, 450, 455, and 555 are amended as follows:

PART 430—ANTIBIOTIC DRUGS: GENERAL

1. Part 430 is amended in § 430.5, by adding new paragraph (b)(81) to read as follows:

§ 430.5 Definitions of master and working standards.

* * * * *

(b) * * *

(81) *Chloramphenicol palmitate.* The term "chloramphenicol palmitate working standard" means a specific lot of a homogeneous preparation of chloramphenicol palmitate.

PART 436—TESTS AND METHODS OF ASSAY OF ANTIBIOTIC AND ANTIBIOTIC-CONTAINING DRUGS

2. Part 436 is amended:

§ 436.33 [Amended]

a. In § 436.33 *Safety test,* by amending the table in paragraph (b) by removing the item "Penicillin V benzathine."

§ 436.204 [Amended]

b. In § 436.204 *Iodometric assay,* by amending the table in paragraph (b)(2) by removing the items "Penicillin V benzathine blank solution" and "Penicillin V benzathine inactivated solution."

c. By adding new § 436.335 to read as follows:

§ 436.335 High-pressure liquid chromatographic assay for chloramphenicol palmitate.

(a) *Equipment.* A suitable high-pressure liquid chromatograph equipped with:

(1) A low dead volume cell 8 to 20 microliters;

(2) A light path of 1 centimeter;

(3) A suitable ultraviolet detection system operating at a wavelength of 280 nanometers;

(4) A suitable recorder of at least 25.4-centimeter deflection;

(5) A suitable integrator; and

(6) A 30-centimeter column having an inside diameter of 4.0 millimeters and packed with octadecyl silane chemically bonded to porous silica or ceramic microparticles, 5 to 10 micrometers in diameter, U.S.P. XX.

(b) *Mobile phase.* Mix methanol:water:glacial acetic acid (170:30:1). Degas the mobile phase just prior to its introduction into the chromatograph pumping system.

(c) *Operating conditions.* Perform the assay at ambient temperature with a typical flow rate of 2.0 milliliters per minute. Use a detector sensitivity setting that gives a peak height for the reference standard that is at least 50 percent of scale. The minimum between peaks must be no more than 2 millimeters above the initial baseline.

(d) *Preparation of sample and working standard solutions.* Accurately weigh approximately 65 milligrams of sample or chloramphenicol palmitate working standard each into a 50-milliliter volumetric flask. Add approximately 35 milliliters of methanol and 1 milliliter of glacial acetic acid. Place in an ultrasonic bath for 10 minutes and dilute to volume with methanol.

(e) *Procedure.* Using the equipment, mobile phase, and operating conditions listed in paragraphs (a), (b), and (c) of this section, inject 10 microliters of the working standard solution into the chromatograph. Allow an elution time sufficient to obtain satisfactory separation of expected components. After separation of the working standard solution has been completed, inject 10 microliters of the sample solution into the chromatograph and repeat the procedure described for the working standard solution.

(f) *Calculations.* Calculate the chloramphenicol content as follows:

$$\text{Micrograms of chloramphenicol per milligram} = \frac{(A)(W_s)(f)}{(B)(W_u)}$$

where:

A = Area of chloramphenicol palmitate sample peak (at a retention time equal to that observed for the standard);
B = Area of the working standard peak;
W_s = Weight of standard in milligrams;
W_u = Weight of sample in milligrams; and
f = Micrograms of chloramphenicol activity per milligram of chloramphenicol palmitate working standard.

PART 440—PENICILLIN ANTIBIOTIC DRUGS

3. Part 440 is amended:

a. In § 440.55a, by revising paragraphs (a)(1)(vi) and (b)(6) to read as follows:

§ 440.55a Sterile penicillin G benzathine.

(a) * * *

(1) * * *

(vi) Its pH in a 1:1 mixture of absolute ethyl alcohol and water containing 0.5 milligram per milliliter is not less than 4.0 and not more than 6.5.

* * * * *

(b) * * *

(6) *pH.* Proceed as directed in § 436.202 of this chapter, except prepare the sample as follows: Dissolve 50 milligrams of sample with 50 milliliters of absolute ethyl alcohol. Add 50 milliliters of distilled water and mix well.

* * * * *

§ 440.57 [Removed]

b. By removing § 440.57 *Penicillin V benzathine.*

PART 450—ANTITUMOR ANTIBIOTIC DRUGS

4. Part 450 is amended:

a. By redesignating § 450.20a as § 450.20 and revising it to read as follows:

§ 450.20 Dactinomycin.

(a) *Requirements for certification*—(1) *Standards of identity, strength, quality, and purity.* Dactinomycin is a bright-red compound that is so purified and dried that:

(i) Its potency is not less than 900 micrograms of dactinomycin per milligram, calculated on an anhydrous basis.

(ii) Its LD_{50}[1] in mice is not less than 0.65 and not more than 1.23 milligrams of dactinomycin per kilogram of body weight.

(iii) Its loss on drying is not more than 15 percent.

(iv) Its absorptivity at 445 nanometers is not less than 0.95 and not more than 1.03 times that of the dactinomycin working standard at the same wavelength. Its absorbance at 240 nanometers is not less than 1.3 and not more than 1.5 times its absorbance at 445 nanometers.

(v) It is crystalline.

(2) *Labeling.* It shall be labeled in accordance with the requirements of § 432.5(b) of this chapter, and in addition each package shall bear on its label the statement "Protect from light and excessive heat."

(3) *Requests for certification; samples.* In addition to the requirements of § 431.1 of this chapter, each such request shall contain:

(i) Results of tests and assays on the batch for potency, LD_{50}, loss on drying, absorptivity, and crystallinity.

(ii) Samples required: 16 packages, each containing approximately 40 milligrams.

(b) *Tests and methods of assay.* Dactinomycin is toxic and corrosive. It must be handled with care in the laboratory. Transfer all dry powders in a suitable hood, while wearing rubber gloves. Avoid inhaling fine particles of the powder. Do not pipette by mouth. If any of the substance contacts the skin, wash copiously with soap and water. Dispose of all waste material by dilution with large volumes of trisodium phosphate solution.

(1) *Potency.* Proceed as directed in § 436.105 of this chapter, preparing the sample for assay as follows: Dissolve an accurately weighed sample in sufficient methyl alcohol to obtain a stock solution of 10 milligrams of dactinomycin per milliliter (estimated). Further dilute the stock solution with 0.1*M* potassium phosphate buffer, pH 8.0 (solution 3), to the reference concentration of 1.0 microgram of dactinomycin per milliliter (estimated).

(2) *LD_{50}*—(i) *Sample solution.* Prepare a solution containing 50 micrograms of dactinomycin per milliliter by dissolving an appropriate quantity of the sample in sufficient sterile distilled water. If the sample does not dissolve immediately, place it in an ice water bath or a refrigerator for 1 to 2 hours, and then allow to reach room temperature before use.

(ii) *Procedure.* Select 70 female mice weighing between 18 and 20 grams. Individually identify and weigh them to the nearest 0.1 gram. Use 10 mice at each of the following dose levels: 9.6, 11.52, 13.9, 16.7, 20.0, 24.0, and 28.8 milliliters of sample solution per kilogram of body weight. Calculate the volume of solution to be given to each mouse and administer the appropriate volume intravenously at the rate of 0.5 milliliter per minute. Observe the mice daily for 14 days and record any signs of drug toxicity and times of death. Estimate the LD_{50} and its 95 percent confidence limits by the method of Carrol S. Weil, published in *Biometrics*, Vol. 8, pp. 249–263 (1952), which is incorporated by reference. Copies are available from the Managing Editor, "Biometrics," P.O. Box 5962, Raleigh, NC 27607, or available for inspection at the Office of the Federal Register, 1100 L St. NW., Washington, DC 20408.

(3) *Loss on drying.* Proceed as directed in § 436.200(b) of this chapter.

(4) *Absorptivity*—(i) *Procedure.* Accurately weigh approximately 15 milligrams of the sample "as is" and 15 milligrams of the working standard dried as directed in § 436.200(a) of this chapter. Transfer each weighing to separate 100-milliliter volumetric flasks. Dissolve the material and bring to volume with spectrophotometric-grade methyl alcohol. Mix well. Pipette 5.0 milliliters of each solution into separate 25-milliliter volumetric flasks, dilute to volume with spectrophotometric-grade methyl alcohol. Mix well. Using a suitable spectrophotometer and 1-centimeter absorption cells, determine the absorbance of the sample solution at the 240-nanometer and at the 445-nanometer absorption peaks (the exact position of the peaks should be determined for the particular instrument used). Determine the absorbance of the standard at the 445-nanometer absorption peak.

(ii) *Calculations.* Calculate the relative absorptivity and the ratio for the absorbances of the sample as follows:

Relative absorptivity at 445 nanometers = A_2 X milligrams of standard X potency of the standard in micrograms per milligram/A_3 X milligrams of sample X (100–M) X 10

Ratio for the absorbances of the sample at 240 and 445 nanometers = A_1/A_2

where:

A_1 = Absorbance at 240 nanometers for the sample;
A_2 = Absorbance at 445 nanometers for the sample;
A_3 = Absorbance at 445 nanometers for the standard; and
M = Percent moisture in the sample.

(5) *Crystallinity.* Proceed as directed in § 436.203(a) of this chapter.

b. In § 450.220, by revising the last sentence in paragraph (a)(1), by revising

[1] The term "LD_{50}" refers to the dosage of the drug that should be expected to kill 50 percent of the animals that receive the drug.

paragraph (b)(1)(ii)(*c*), and by revising the first sentence in paragraph (b)(4) to read as follows:

§ 450.220 Dactinomycin for injection.

(a) * * *

(1) * * * The dactinomycin used conforms to the standards prescribed by § 450.20(a)(1) (i), (v), (vi), and (vii).

* * * * *

(b) * * *

(1) * * *

(ii) * * *

(*c*) *Procedure.* Determine the absorbance of the sample and standard solution at the 455-nanometer absorption peak as directed in § 450.20(b)(6)(i).

* * * * *

(4) LD_{50}. Proceed as directed in § 450.20(b)(4), except prepare the sample for test as follows: Reconstitute a sufficient number of containers to yield 2,000 micrograms of dactinomycin. * * *

PART 455—CERTAIN OTHER ANTIBIOTIC DRUGS

5. Part 455 is amended:

a. In § 455.11, by revising paragraphs (a)(3)(i) and (b)(1) to read as follows:

§ 455.11 Chloramphenicol palmitate.

(a) * * *

(3) * * *

(i) Results of tests and assays on the batch for chloramphenicol content, safety, melting range, specific rotation, and crystallinity.

* * * * *

(b) * * *

(1) *Chloramphenicol content.* Proceed as directed in § 436.335 of this chapter.

* * * * *

b. In § 455.111, by revising the second sentence in paragraph (a)(1) and by revising paragraphs (a)(3)(i) (*a*) and (*b*) and (b)(1) to read as follows:

§ 455.111. Chloramphenicol palmitate oral suspension.

(a) * * *

(1) * * * Each milliliter contains chloramphenicol palmitate equivalent to 30.0 milligrams of chloramphenicol.

* * *

* * * * *

(3) * * *

(i) * * *

(*a*) The chloramphenicol palmitate used in making the batch for chloramphenicol content, safety, melting range, specific rotation, and crystallinity.

(*b*) The batch for chloramphenicol content, pH, and content of polymorph A crystals.

* * * * *

(b) * * *

(1) *Chloramphenicol content (high-pressure liquid chromatography).* Proceed as directed in § 436.335 of this chapter, except prepare the sample solution and calculate the chloramphenicol content as follows:

(i) *Preparation of sample solution.* Transfer a portion of the sample equivalent to 150 milligrams of chloramphenicol into a 200-milliliter volumetric flask. Add 100 milliliters of methanol and 4 milliliters of glacial acetic acid. Shake and dilute to volume with methanol. Filter the solution through a glass fiber filter or equivalent that is capable of removing particulate contamination to 1 micron in diameter.

(ii) *Calculations.* Calculate the chloramphenicol content as follows:

$$\text{Milligrams of chloramphenicol per milliliter} = \frac{(A)(W_s)(f)(4)}{(B)(1,000)(V)}$$

where:

A = Area of the chloramphenicol palmitate sample peak (at a retention time equal to that observed for the standard);

B = Area of the working standard peak;

W_s = Weight of standard in milligrams;

f = Micrograms of chloramphenicol activity per milligram of chloramphenicol palmitate working standard; and

V = Volume of sample in milliliters.

* * * * *

c. By revising § 455.310b to read as follows:

§ 455.310b Chloramphenicol for ophthalmic solution.

(a) *Requirements for certification*—(1) *Standards of identity, strength, quality, and purity.* Chloramphenicol for ophthalmic solution contains 25 milligrams of chloramphenicol with one or more suitable and harmless buffer substances. When reconstituted as directed in the labeling, its potency is not less than 90 percent and not more than 130 percent of the number of milligrams of chloramphenicol that it is represented to contain. It is sterile. Its pH is not less than 7.1 and not more than 7.5. The chloramphenicol used conforms to the standards prescribed by § 455.10(a)(1).

(2) *Labeling.* It shall be labeled in accordance with the requirements of § 432.5 of this chapter.

(3) *Requests for certification; samples.* In addition to complying with the requirements of § 431.1 of this chapter, each such request shall contain:

(i) Results of tests and assays on:

(*a*) The chloramphenicol used in making the batch for potency, safety, pH, specific rotation, melting range, absorptivity, and crystallinity.

(*b*) The batch for potency, sterility, and pH.

(ii) Samples required:

(*a*) The chloramphenicol used in making the batch: 10 packages, each containing approximately 300 milligrams.

(*b*) The batch:

(*1*) For all tests except sterility: A minimum of five immediate containers.

(*2*) For sterility testing: 20 immediate containers, collected at regular intervals throughout each filling operation.

(b) *Tests and methods of assay*—(1) *Potency.* Use either of the following methods:

(i) *Microbiological turbidimetric assay.* Proceed as directed in § 436.106 of this chapter, preparing the sample for assay as follows: Reconstitute as directed in the labeling. Dilute an accurately measured representative aliquot of the sample with sufficient distilled water to obtain a stock solution of convenient concentration. Further dilute an aliquot of the stock solution with distilled water to the reference concentration of 2.5 micrograms of chloramphenicol per milliliter (estimated).

(ii) *Spectrophotometric assay.* Reconstitute the sample as directed in the labeling and dilute a 1.0-milliliter aliquot in sufficient distilled water to obtain a solution containing 20 micrograms of chloramphenicol per milliliter. Dissolve an accurately weighed portion of the working standard in sufficient distilled water to obtain a solution containing 20 micrograms per milliliter. Using a suitable spectrophotometer and distilled water as the blank, determine the absorbance of the sample and standard solutions at 278 nanometers. Calculate the potency of the sample as follows:

Milligrams of chloramphenicol per milliliter = Absorbance of sample X labled potency per milliliter in milligrams/Absorbance of standard.

(2) *Sterility.* Proceed as directed in § 436.20 of this chapter, using the method described in paragraph (e)(1) of that section.

(3) *pH.* Proceed as directed in § 436.202 of this chapter, using an aqueous solution containing 5 milligrams per milliliter.

d. By adding new § 455.310e to read as follows:

§ 455.310e Chloramphenicol-hydrocortisone acetate for ophthalmic suspension.

(a) *Requirements for certification*—(1) *Standards of identity, strength, quality, and purity.* Chloramphenicol-hydrocortisone acetate for ophthalmic suspension contains 12.5 milligrams of

chloramphenicol and 25 milligrams of hydrocortisone acetate with one or more suitable and harmless buffer substances, preservatives, and diluents. When reconstituted as directed in the labeling, its potency is not less than 90 percent and not more than 130 percent of the number of milligrams of chloramphenicol that it is represented to contain. It is sterile. Its pH is not less than 7.1 and not more than 7.5. The chloramphenicol used conforms to the standards prescribed by § 455.10(a)(1).

(2) *Labeling.* It shall be labeled in accordance with the requirements of § 432.5 of this chapter.

(3) *Requests for certification; samples.* In addition to complying with the requirements of § 431.1 of this chapter, each such request shall contain:

(i) Results of tests and assays on:

(*a*) The chloramphenicol used in making the batch for potency, pH, specific rotation, melting range, absorptivity, and crystallinity.

(*b*) The batch for potency, sterility, and pH.

(ii) Samples required:

(*a*) The chloramphenicol used in making the batch: 10 packages, each containing approximately 300 milligrams.

(*b*) The batch:

(*1*) For all tests except sterility: A minimum of five immediate containers.

(*2*) For sterility testing: 20 immediate containers, collected at regular intervals throughout each filling operation.

(b) *Tests and methods of assay*—(1) *Potency.* Use either of the following methods:

(i) *Microbiological turbidimetric assay.* Proceed as directed in § 436.106 of this chapter, preparing the sample for assay as follows: Reconstitute as directed in the labeling. Dilute an accurately measured representative aliquot of the sample with sufficient distilled water to obtain a stock solution of convenient concentration. Further dilute an aliquot of the stock solution with distilled water to the reference concentration of 2.5 micrograms of chloramphenicol per milliliter (estimated).

(ii) *Spectrophotometric assay.* Reconstitute the sample as directed in the labeling and dilute a 1.0-milliliter aliquot in sufficient distilled water to obtain a solution containing 20 micrograms of chloramphenicol per milliliter. Dissolve an accurately weighed portion of the working standard in sufficient distilled water to obtain a solution containing 20 micrograms per milliliter. Using a suitable spectrophotometer and distilled water as the blank, determine the absorbance of the sample and standard solutions at 278 nanometers. Calculate the potency of the sample as follows:

Milligrams of chloramphenicol per milliliter = Absorbance of sample X labeled potency per milliliter in milligrams/Absorbance of standard.

(2) *Sterility.* Proceed as directed in § 436.20 of this chapter, using the method described in paragraph (e)(1) of that section.

(3) *pH.* Proceed as directed in § 436.202 of this chapter, using an aqueous solution containing 5 milligrams per milliliter.

PART 555—CHLORAMPHENICOL DRUGS FOR ANIMAL USE

6. Part 555 is amended in § 555.111, by revising the second sentence in paragraph (a)(1) and by revising paragraphs (a)(3)(i) (*a*) and (*b*) and (b)(1) to read as follows:

§ 555.111 Chloramphenicol palmitate oral suspension.

(a) * * *

(1) * * * Each milliliter contains chloramphenicol palmitate equivalent to 30.0 milligrams of chloramphenicol. * * *

* * * * *

(3) * * *

(i) * * *

(*a*) The chloramphenicol palmitate used in making the batch for chloramphenicol content, safety, melting range, specific rotation, and crystallinity.

(*b*) The batch for chloramphenicol content, pH, and content of polymorph A crystals.

* * * * *

(b) * * *

(1) *Chloramphenicol content (high-pressure liquid chromatography).* Proceed as directed in § 436.335 of this chapter, except prepare the sample solution and calculate the chloramphenicol content as follows:

(i) *Preparation of sample solution.* Transfer a portion of the sample equivalent to 150 milligrams of chloramphenicol into a 200-milliliter volumetric flask. Add 100 milliliters of methanol and 4 milliliters of glacial acetic acid. Shake and dilute to volume with methanol. Filter the solution through a glass fiber filter or equivalent that is capable of removing particulate contamination to 1 micron in diameter.

(ii) *Calculations.* Calculate the chloramphenicol content as follows:

$$\text{Milligrams of chloramphenicol per milliliter} = \frac{(A)(W_s)(f)(4)}{(B)(1{,}000)(V)}$$

where:

A = Area of the chloramphenicol palmitate sample peak (at a retention time equal to that observed for the standard);

B = Area of the working standard peak;

W_s = Weight of standard in milligrams;

f = Micrograms of chloramphenicol activity per milligram of chloramphenicol palmitate working standard; and

V = Volume of sample in milliliters.

* * * * *

These amendments institute changes that are corrective, editorial, or of a minor substantive nature. Because the amendments are not controversial and because when effective they provide notice of accepted standards, FDA finds that notice, public procedure, and delayed effective date are unnecessary and not in the public interest. The amendments, therefore, may become effective February 17, 1984. However, interested persons may, on or before March 19, 1984, submit written comments on this regulation to the Dockets Management Branch (address above). Two copies of any comments are to be submitted, except that individuals may submit one copy. Comments are to be identified with the docket number found in brackets in the heading of this document. Received comments may be seen in the Dockets Management Branch between 9 a.m. and 4 p.m., Monday through Friday.

Any person who will be adversely affected by this regulation may file objections to it and request a hearing. Reasonable grounds for the hearing must be shown. Any person who decides to seek a hearing must file (1) on or before March 19, 1984, a written notice of participation and request for hearing, and (2) on or before April 17, 1984, the data, information, and analyses on which the person relies to justify a hearing, as specified in 21 CFR 430.20. A request for a hearing may not rest upon mere allegations or denials, but must set forth specific facts showing that there is a genuine and substantial issue of fact that requires a hearing. If it conclusively appears from the face of the data, information, and factual analyses in the request for hearing that no genuine and substantial issue of fact precludes the action taken by this order, or if a request for hearing is not made in the required format or with the required analyses, the Commissioner of Food and Drugs will enter summary judgment against the person(s) who request(s) the hearing, making findings and conclusions and denying a hearing. All submissions must be filed in three copies, identified with the docket number appearing in the heading of this order and filed with the Dockets Management Branch.

The procedures and requirements governing this order, a notice of participation and request for hearing, a submission of data, information, and analyses to justify a hearing, other comments, and grant or denial of a hearing are contained in 21 CFR 430.20.

All submissions under this order, except for data and information prohibited from public disclosure under 21 U.S.C. 331(j) or 18 U.S.C. 1905, may be seen in the Dockets Management Branch, between 9 a.m. and 4 p.m., Monday through Friday.

Effective date. This regulation shall be effective February 17, 1984.

(Secs. 507, 512(n), 701 (f) and (g), 52 Stat. 1055–1056 as amended, 59 Stat. 463 as amended, 82 Stat. 350–351 (21 U.S.C. 357, 360b(n), 371 (f) and (g)))

Dated: February 13, 1984.

William F. Randolph,

Acting Associate Commissioner for Regulatory Affairs.

[FR Doc. 84-4353 Filed 2-16-84; 8:45 am]

BILLING CODE 4160-01-M

DEPARTMENT OF THE INTERIOR

Minerals Management Service

30 CFR Part 250

Outer Continental Shelf Oil and Gas Operations; Marking of Equipment

AGENCY: Minerals Management Service, Interior.

ACTION: Amendments to OCS Order No. 1; extension of effective date and correction of final rule.

SUMMARY: This Notice extends the effective date of the Final rule published on January 16, 1984 (49 FR 1897), amending Paragraph 5, *Marking of Equipment*, of OCS Order No. 1 and corrects editorial errors. The effective date is being extended to allow sufficient time for implementation. The editorial corrections make the subparagraphs on information collections consistent with the requirements of paragraph 5.

EFFECTIVE DATE: The effective date of the Final rule, as published on January 16, 1984, is extended to May 15, 1984.

FOR FURTHER INFORMATION CONTACT: David A. Schuenke; Chief, Branch of Rules, Orders, and Standards; Offshore Rules and Operations Division; Mail Stop 646; Minerals Management Service; U.S. Department of the Interior; 12203 Sunrise Valley Drive; Reston, Virginia 22091; telephone (703) 860–7916 or (FTS) 928–7916.

Dated: February 13, 1984.

John B. Rigg,

Associate Director for Offshore Minerals Management.

The following corrections are made to Paragraph 5, *Marking of Equipment*, of OCS Order No. 1 appearing in FR Doc. 84–988 on January 16, 1984 (49 FR 1897):

1. On page 1899 in item (5) at the bottom of column three, paragraph g, in the second line, the phrase "in paragraph 1" is corrected to read "in paragraph 5"; and in the eighth line, the word "materials," is replaced with the phrase "marking conventions for."

2. On page 1900 in item (6) at the top of column one, paragraph h, in the second line, the phrase "in paragraph 1" is corrected to read "in paragraph 5"; and in the eighth line, the word "materials," is replaced with the phrase "marking conventions for."

(43 U.S.C. 1334)

[FR Doc. 84-4423 Filed 2-16-84; 8:45 am]

BILLING CODE 4310-MR-M

POSTAL SERVICE

39 CFR Part 111

Handling Custom Designed Express Mail Shipments Lacking Address Information Outside the Pouch

AGENCY: Postal Service.

ACTION: Final rule.

SUMMARY: This rule amends postal regulations in the Domestic Mail Manual (DMM) to encourage a change in certain mailing practices which have caused unnecessary delays to some Custom Designed Express Mail shipments. An Express Mail shipment is normally intended for a single addresse. Hence, the practice had developed among some mailers of placing their Custom Designed Express Mail articles in an Express Mail pouch without either enclosing them in any other wrapper or including delivery address information inside the pouch or on the articles themselves. This practice had resulted in a growing tendency by postal employees to regard the Express Mail pouch itself as the sealed wrapper, which could be opened only in response to a search warrant or in a dead mail branch for the sole purpose of identifying a delivery address, whereas the items of Express Mail sealed against inspection are limited to the contents of an Express Mail pouch. The net result was that Express Mail pouches which had lost their outside address information were not generally opened by postal employees at the time the address information was found to be missing, but were forwarded to a dead mail branch for opening, causing delay to the mail. To alleviate this problem, postal regulations are changed to clarify that postal employees are authorized to open any Express Mail pouch lacking a delivery address in order to find such an address inside the pouch. Where no address can be found without disturbing the wrappers of the contents, the pouch and its contents must be immediately sent to the dead mail branch to be opened completely, including any wrappers if necessary, to find a delivery address.

EFFECTIVE DATE: March 18, 1984.

FOR FURTHER INFORMATION CONTACT: Ed McClure, (202) 245–4530.

SUPPLEMENTARY INFORMATION: On December 28, 1983, the Postal Service published for comment in the **Federal Register** (48 FR 57142) proposed changes to parts 115, 159, and 262 of the Domestic Mail Manual, dealing with Custom Designed Express Mail shipments lacking address information outside the pouch as explained in the summary above. Two minor errors in the regulations were also proposed to be corrected. Interested persons were invited to suibmit comments concerning the proposed changes on or before January 27, 1984. No comments were received.

Accordingly, the Postal Service hereby adopts, without change, the following amendments to the Domestic Mail Manual, which are incorporated by reference in the Code of Federal Regulations (39 CFR 111.1).

Lists of Subjects in 39 CFR Part 111

Postal Service.

Part 115—Mail Security

1. In 115.2, revise .21c to read as follows:

115.2 Opening, Reading, and Searching of Sealed Mail Generally Prohibited.

.21 General

* * * * *

c. A person executing a search warrant in accordance with 115.6.

2. In 115.3, revise .31h to read as follows:

115.3 Permissible Detention of Mail

.31 Sealed Mail Generally Not Detained. No postal employee may detain mail sealed against inspection (other than dead mail) except:

* * * * *

h. A postal employee, during the period required to seek and obtain instructions under 153.7, concerning mail whose delivery is in dispute, or under

424.1 of the Postal Operations Manual (POM), concerning legal process, other than a search warrant duly issued under Rule 41 of the Federal Rules of Criminal Procedure, purporting to require the surrender of mail matter.

Part 159—Undeliverable Mail

3. In 159.3, revise the title of .32 and add new .323 to read as follows:

159.3 Address Correction Service and Return

* * * * *

.32 Registered, C.O.D., and Express Mail

* * * * *

.323 Any postal employee who cannot dispatch, distribute, or deliver an Express mail pouch because there is no delivery address on the outside of the pouch must promptly open the pouch in order to find a delivery address on the outside of any envelope, wrapper, or other article inside the pouch. Postal employees must not open the wrappers or envelopes or break the seals of any Express Mail article inside the pouch. If address information is found, the pouch must be closed securely and promptly tagged and forwarded to the delivery address. If no address information is found inside the pouch, the pouch must be handled in accordance with 159.521h.

4. In 159.5, add new .521h to read as follows:

159.5 Dead Mail

* * * * *

.52 Treatment at Last Office of Address

.521 Disposition

* * * * *

h. When an Express Mail pouch must be opened to identify a delivery address (see 159.323), but no address is found without disturbing wrappers of the contents, the pouch and its contents must be immediately sent to the dead mail branch without a retention period. Express Mail outside pieces with defaced labels which cannot be read must also be immediately sent to the dead mail branch.

Part 262—Express Mail Custom Designed Service

5. Revise 262 to read as follows:

262 Express Mail Custom Designed Service

262.1 Except as provided in 261.2 (for outside pieces) and 223.24 (for pick-up from post office box addresses), all Custom Designed Service mail must be tendered in Express Mail pouches which are closed and which have the required receipt forms securely attached.

262.2 The mailer should wrap the individual contents of a Custom Designed Express Mail pouch so as to provide both the intended privacy and a space for appropriate address information. In addition to the address on the outside of the pouch, the mailer should also include address information either on a card or sheet of paper placed inside the pouch or preferably on the wrapper of each individual piece. This internal address is important because if the outside address of a pouch is lost, a postal employee who opens the pouch may be unable to determine to whom the pouch should be delivered (see 159.323).

262.3 Failure to provide an internal wrapper and address may have the following consequences if a Custom Designed Express Mail shipment is found lacking address information on the outside:

a. Any contents of the pouch which are intended and entitled to be kept private may be exposed to view if it is necessary for a postal employee to open the pouch to attempt to identify a delivery address.

b. Delivery of the shipment will be delayed or prevented if it is sent to a dead mail branch for examination and for disposal along with other undeliverable and nonreturnable mail if a delivery address is not found.

A transmittal letter making these changes in the pages of the Domestic Mail Manual will be published and will be transmitted to subscribers automatically. Notice of issuance of the transmittal letter will be published in the **Federal Register** as provided in 39 CFR 111.3.

(39 U.S.C. 401(2))

W. Allen Sanders,

Associate General Counsel, Office of General Law and Administration.

[FR Doc. 84-4407 Filed 2-16-84; 8:45 am]

BILLING CODE 7710-12-M

DEPARTMENT OF THE INTERIOR

Bureau of Reclamation

43 CFR Part 426

Acreage Limitation: Rules and Regulations; Correction

AGENCY: Bureau of Reclamation, Interior.

ACTION: Final rules; correction.

SUMMARY: This document corrects the final rules on acreage limitation that appeared on page 54748–54786 in the **Federal Register** on Tuesday, December 6, 1983 (48 FR 54748). The action is necessary to correct cross-reference, word usage, and typographical errors.

FOR FURTHER INFORMATION CONTACT: Phillip Doe, Acting Chief, Acreage Limitation Branch, Bureau of Reclamation, E&R Center, D–410, P.O. Box 25007, Denver Colorado 80225, (303) 234–7195.

The following corrections are made in volume 48, No. 235 of the **Federal Register**, pages 54748–54786 in the December 6, 1983 issue:

1. At the top of the first column on page 54748, under the subject heading, the date "November 3, 1983" is deleted.

2. In the first column on page 54748, under the first sentence of the "Summary" section, "* * * proposes to issue final rules * * *" is corrected to read "* * * is issuing final rules * * *."

3. On page 54748, column 1, last paragraph, "period" is corrected to read "period."

4. On page 54750, column 2, the third full paragraph, "thay" is corrected to read "that."

5. On page 54751, column 1, the first heading, "43 CFR 426.4(l) Irrigable land" is corrected to read "43 CFR 426.4(l) Irrigable land."

6. On page 54751, column 2, the first complete paragraph, "facilites" is corrected to read "facilities."

7. On page 54751, column 2, the last sentence in the sixth full paragraph, "930 acres" is corrected to read "960 acres."

8. On page 54751, column 2, the fourth sentence in the second last paragraph, "intent" is corrected to read "intend."

9. On page 54751, column 2, the fifth sentence in the second last paragraph, "906 acres" is corrected to read "960 acres."

10. On page 54751, column 3, the first sentence, "enought" is corrected to read "enough."

11. On page 54752, column 1, the last full sentence, "* * * that would be considered * * *" is corrected to read "* * * that would not be considered * * *."

12. On page 54752, column 2, the second heading, "43 CFR 426.5(2) New contracts" is corrected to read "43 CFR 426.5(a)(2) New contracts."

13. On page 54753, column 3, the first full sentence, "ot" is corrected to read "not."

14. On page 54753, column 3, the fifth full paragraph, "use" is corrected to read "used."

15. On page 54754, column 1, the first sentence, "articles" is corrected to read "article."

16. On page 54756, column 1, the third full paragraph, the first sentence, "* * * multidistrict ownership which * * *" is corrected to read "* * * multidistrict ownership in which * * *."

17. On page 54756, column 2, the second paragraph, "* * * is in the rules is * * *" is corrected to read "* * * are in the rules are * * *."

18. On page 54756, column 2, the fourth heading, "43 CFR 426.7(b)(1) The form and provisions of a lease" is corrected to read "43 CFR 426.7(b) The form and provisions of a lease."

19. On page 54757, column 1, the last heading, "43 CFR 426.7(3)" is corrected to read "43 CFR 426.7(c)(3)."

20. On page 54757, column 2, the third sentence of the second paragraph, "* * * section of the financing abilities * * *" is corrected to read "* * * section on the financing abilities * * *."

21. On page 54757, column 2, the last line, "* * * provisions of the title * * *" is corrected to read "* * * provisions of title * * *."

22. On page 54757, column 3, the last sentence of the first full paragraph, "* * * different classes of water and * * *" is corrected to read "* * * different classes of water, and * * *."

23. On page 54758, column 1, the third line, "have" is corrected to read "has."

24. On page 54758, column 3, the first sentence of the last full paragraph, "* * * the full O&M due * * *" is corrected to read "* * * the full O&M costs due * * *."

25. On page 54758, column 3, the first sentence of the last full paragraph, "* * * the full O&M due * * *" is corrected to read "* * * the full O&M costs due * * *."

26. On page 54759, column 1, the second sentence of the third full paragraph, "* * * full O&M under * * *" is corrected to read "* * * full O&M costs under * * *."

27. On page 54759, column 1, the last sentence of the third full paragraph, "* * * pay full O&M, * * *" is corrected to read "* * * pay full O&M costs, * * *."

28. On page 54759, column 3, the first sentence of the sixth full paragraph, "* * * is the same as that which has * * *" is corrected to read "* * * are the same as that which have * * *."

29. On page 54760, column 1, the second sentence of the last full paragraph, "is" is corrected to read "are."

30. On page 54761, column 1, the second sentence of paragraph 2, "not" is corrected to read "no."

31. On page 54761, column 1, the last paragraph, "their" is corrected to read "its."

32. On page 54761, column 2, the first paragraph, "paper work" is corrected to read "paperwork."

33. On page 54762, column 3, the fifth full paragraph, "it" is corrected to read "its."

34. On page 54763, column 2, the last sentence of the last full paragraph, "is" is corrected to read "are."

35. On page 54764, column 2, the first full sentence, "required" is corrected to read "acquired."

36. On page 54765, column 2, the last full paragraph in column 2, "* * * Corps of Engineers project * * *" is corrected to read "* * * Corps of Engineers projects * * *."

37. On page 54765, column 3, the fourth full paragraph, "ony" is corrected to read "only."

38. On page 54766, column 1, the last heading,"betterment" is corrected to read "Betterment."

39. On page 54766, column 2, the fifth paragraph, "adressed" is corrected to read "addressed."

40. On page 54766, column 2, the first word in the sixth paragraph, "Thr" is corrected to read "The."

41. On page 54767, column 2, the second sentence of the fourth full paragraph, "an" is corrected to read "and"

42. On page 54767, column 3, the first sentence of the third paragraph, "reclamation's" is corrected to read "Reclamation's."

43. On page 54767, column 3, the last heading, "reclamation" is corrected to read "Reclamation."

44. On page 54768, column 1, the heading "43 CFR 426.22 Severability" is corrected to read "43 CFR 426.23 Severability."

45. On page 54768, column 2, section 426.21 of the table of contents, "reclamation" is corrected to read "Reclamation."

§ 426.2 [Corrected]

46. On page 54768, column 3, the first full paragraph, "426.22" is corrected to read "426.23."

§ 426.5 [Corrected]

47. On page 54770, column 1, the second last line, "In these rules individuals * * *" is corrected to read, "In these rules, individuals * * *."

48. On page 54770, column 2, the heading for the third full paragraph, "amendements" is corrected to read "amendments."

49. On page 54771, column 1, the first sentence of the second full paragraph, "* * * not time limits * * *" is corrected to read "* * * no time limits * * *."

§ 426.6 [Corrected]

50. On page 54771, column 2, in the sixth sentence of the first full paragraph, "eligiblity" is corrected to read "eligibility."

51. On page 54771, column 3, the first sentence, "requirments" is corrected to read "requirements."

52. On page 54771, column 3, the second sentence of Example (1), "section 426.6(3)" is corrected to read "section 426.6(b)(3)."

53. On page 54771, column 3, the second sentence of Example (2), "section 426.6(3)" is corrected to read "section 426.6(b)(3)."

54. On page 54772, column 2, Example (5), "cares" is corrected to read "acres."

55. On page 54773, column 1, Example (1), "acrea" is corrected to read "acres."

56. On page 54773, column 1, the last sentence of Example (3), "purposed" is corrected to read "purposes."

§ 426.7 [Corrected]

57. On page 54774, column 1, introduction for the second Example (1), "(1)" is corrected to read "(1)."

58. On page 54775, column 3, the third last line, "shal" is corrected to read "shall."

59. On page 54776, column 2, the first line, "annul" is corrected to read "annual."

§ 426.8 [Corrected]

60. On page 54776, column 3, the first sentence of the first full paragraph, "* * * make irrevocable election * * * is corrected to read "* * * make an irrevocable election * * *."

61. On page 54776, column 3, the second sentence of the first full paragraph, "recipients" is corrected to read "recipient's."

§ 426.9 [Corrected]

62. On page 54776, column 3, last paragraph, "indentified" is corrected to read "identified."

§ 426.11 [Corrected]

63. On page 54781, column 3, the third and fifth sentences of Example (1), "landowner X" is corrected to read "Landowner X."

64. On page 54782, column 2, the last sentence of the second full paragraph, "(i)" is corrected to read "(j)."

§ 426.17 [Corrected]

65. On page 54784, column 3, last full paragraph, "(b) Sales Irrigation * * *" is corrected to read "(b) Sales. Irrigation * * *."

§ 426.18 [Corrected]

66. On page 54785, column 1, in section 426.18(b)(1), "flands" is corrected to read "lands."

67. On page 54785, column 1, the sixth last line, "* * * exchange" is corrected to read "* * * exchange." (Period added after "exchange.")

68. On page 54785, column 2, the third line, "by" is corrected to read "but."

§ 426.21 [Corrected]

69. On page 54786, column 1, the first line, "reclamation" is corrected to read "Reclamation."

§ 426.22 [Corrected]

70. On page 54786, column 2, the fourth full sentence, "have" is corrected to read "has."

§ 426.23 [Corrected]

71. On page 54786, column 3, the last paragraph, "in" is corrected to read "is."

Dated: January 12, 1984.

John N. Etchart,

Acting Commissioner.

[FR Doc. 84-1510 Filed 2-16-84; 8:45 am]

BILLING CODE 4310-09-M

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 95

Editorial Amendment; Personal Radio Services

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This document amends Subparts C and E of Part 95, Personal Radio Services, to specify the classes of emissions that Radio Control (R/C) radio stations are authorized to use. The amendment is necessary so that the technical regulations that apply to R/C stations will conform to the operational rules for those stations. The effect of this action is to bring about conformity among the regulations that govern R/C stations.

EFFECTIVE DATE: February 21, 1984.

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

FOR INFORMATION CONTACT: Maurice J. DePont, Private Radio Bureau, Washington, D.C. 20554.

List of Subjects in 47 CFR Part 95

Communications equipment, Radio.

Order

In the Matter of Editorial Amendment of 47 CFR Part 95, Subparts C and E, Personal Radio Services.

Adopted: January 30, 1984.
Released: February 3, 1984.

1. By Report and Order of November 4, 1982, in General Docket No. 82-181 (47 FR 51875; November 18, 1982), the Commission amended § 95.220(c), Radio Control (R/C) Rule 20, to specify the classes of emission which R/C radio stations are authorized to use.[1] Inadvertently, the Technical Regulations (Part 95, Subpart E) for equipment to be used at Radio Control stations were not amended at that time. The purpose of this rule amendment is to conform the Technical Regulations, § 95.611(c), to the Radio Control Radio Service Rule 11, § 95.211(c).

2. Since this amendment is editorial in nature, the notice and comment provisions of Section 553(b) of the Administrative Procedure Act are not applicable. For the same reason, the effective date provisions of Section 553(d) do not apply.

3. Authority for this action is contained in Sections 4(i) and 303(r) of the Communications Act of 1934, as amended, and § 0.231(d) of the Commission's Rules.

4. Accordingly, it is ordered, that §§ 95.211(c) and 95.611(c) of the Commission's Rules are amended as set forth in the attached Appendix.

5. The effective date of this rule amendment is February 21, 1984.

Federal Communications Commission.

Edward J. Minkel,

Managing Director.

Appendix

PART 95—[AMENDED]

Part 95, Subparts C and E, of Chapter I of Title 47 of the Code of Federal Regulations is amended, as follows:

1. Section 95.211(c) in Subpart C is revised to read, as follows:

§ 95.211 (R/C Rule 11) What communications may be transmitted?

* * * * *

(c) Your R/C station may only transmit non-voice:

(1) Stations in the 26–27 MHz range may employ only the following emissions:

(i) Amplitude tone modulated emissions (A9); or

(ii) On-off (on-off keying of an unmodulated carrier) emissions (A9).

(2) Stations in the 26–27 MHz range are not afforded any protection from interference caused by the operation of industrial, scientific or medical devices. Such stations also operate on a shared basis with other stations in the Personal Radio Services.

(3) Stations in the 72–76 MHz range may employ only the following emissions:

(i) Amplitude modulated emissions (A9); or

(ii) On-off (on-off keying of an unmodulated carrier) emissions (A9); or

(iii) Frequency (or phase) modulated emissions (F9).

(4) Stations in the 72–76 MHz range are subject to the condition that interference will not be caused to the remote control of industrial equipment operating on the same or adjacent frequencies or to the reception of television transmissions on Channels 4 and 5. These frequencies are not afforded any protection from interference due to the operation of fixed and mobile stations in other services assigned to the same or adjacent frequencies.

2. Section 95.611 in Subpart E is amended by revising paragraph (c), as follows:

§ 95.611 Availability of frequencies.

* * * * *

(c) R/C stations. (1) Frequencies authorized for use at R/C stations.

(i) 26–27 MHz frequency range:

MHz: 26–995; 27.045; 27.095; 27.145; 27.195; 27.255 [1].

(ii) 72–76 MHz frequency range:

MHz: 72.01; 72.03; 72.05; 72.07; 72.09; 72.11; 72.13; 72.15; 72.17; 72.19; 72.21; 72.23; 72.25; 72.27; 72.29; 72.31; 72.33; 72.35; 72.37; 72.39; 72.41; 72.43; 72.45; 72.47; 72.49; 72.51; 72.53; 72.55; 72.57; 72.59; 72.61; 72.63; 72.65; 72.67; 72.69; 72.71; 72.73; 72.75; 72.77; 72.79; 72.81; 72.83; 72.85; 72.87; 72.89; 72.91; 72.93; 72.95; 72.97; 72.99; 75.41; 75.43; 75.45; 75.47; 75.49; 75.51; 75.53; 75.55; 75.57; 75.59; 75.61; 75.63; 75.65; 75.67; 75.69; 75.71; 75.73; 75.75; 75.77; 75.79; 75.81; 75.83; 75.85; 75.87; 75.89; 75.91; 75.93; 75.95; 75.97; 75.99;

and the following frequencies until December 20, 1987:

MHz 72.08; 72.16; 72.24; 72.32; 72.40; 72.96 and 75.64.

(2) Special conditions.

(i) The frequencies listed above are available for non-voice transmissions only. (Certain operating limitations applicable to specific frequencies are listed in § 95.207 (R/C Rule 7)).

(ii) Stations in the 26–27 MHz range may employ only the following emissions:

(A) Amplitude tone modulated emissions (A9); or

(B) On-off (on-off keying of an unmodulated carrier) emissions (A9).

(iii) Stations in the 26–27 MHz range are not afforded any protection from interference caused by the operation of industrial, scientific or medical devices. Such stations also operate on a shared

[1] Section 95.220(c), R/C Rule 20, was redesignated as § 95.211(c), R/C Rule 11, by Report and Order of April 27, 1983, PR Docket No. 82-799, effective July 5, 1983 (48 FR 24884; June 3, 1983).

[1] This frequency is shared with stations in other services.

basis with other stations in the Personal Radio Services.

(iv) Stations in the 72–76 MHz range may employ only the following emissions:

(A) Amplitude modulated emissions (A9); or

(B) On-off (on-off keying of an unmodulated carrier) emissions (A9); or

(C) Frequency (or phase) modulated emissions (F9).

(v) Stations in the 72–76 MHz range are subject to the condition that interference will not be caused to the remote control of industrial equipment operating on the same or adjacent frequencies or to the reception of television transmissions on Channels 4 and 5. These frequencies are not afforded any protection from interference due to the operation of fixed and mobile stations in other services assigned to the same or adjacent frequencies.

* * * * *

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

[FR Doc. 84-4203 Filed 2-16-84; 8:45 am]

BILLING CODE 6712-01-M

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

Endangered and Threatened Wildlife and Plants; Final Rule To List Bidens Cuneata and Schiedea Adamantis as Endangered Species

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Final rule.

SUMMARY: The Service determines two plants, *Bidens cuneata* Sherff (cuneate bidens) and *Schiedea adamantis* St. John (Diamond Head schiedea), to be endangered. These two species are known from a single small population each, restricted to the rim of Diamond Head Crater, Oahu, Hawaii. This action is being taken because of the threat to the plants resulting from habitat degradation and potential fire hazards. This rule will implement the full protection provided by the Endangered Species Act of 1973, as amended.

DATE: The effective date of this rule is March 19, 1984.

ADDRESSES: The complete file for this rule is available for inspection by appointment during normal business hours at the Service's Office of Endangered Species, 1000 North Glebe Road, Arlington, Virginia. Active files on these species are maintained at the U.S. Fish and Wildlife Service, Endangered Species Field Station, 300 Ala Moana Boulevard, Room 6307, Honolulu, Hawaii.

FOR FURTHER INFORMATION CONTACT: Mr. Sanford R. Wilbur, Endangered Species Program, Region 1, U.S. Fish and Wildlife Service, Department of the Interior, 500 N.E. Multnomah Street, Suite 1692, Portland, Oregon 97232 (501/231–6131).

SUPPLEMENTARY INFORMATION:

Background

Bidens cuneata Sherff and *Schiedea adamantis* St. John are known from a single, small population each, growing on the rim of Diamond Head Crater, Honolulu, Hawaii. The continued existence of these species is threatened by several factors documented in recent status reports (Takeuchi 1980a, 1980b), and summarized below:

1. Both species' populations are located just below the trail following the crater crestline. Passage of hikers and sightseers through this summit area results in soil compaction and removal of vegetative cover, thus promoting runoff and the consequent erosion of habitat. The State intends to develop Diamond Head into a public park and recreation area. Although the State does not plan to develop those portions of the trail near the plants, the development will increase the number of persons using the area and necessitate measures to protect these two species from human impacts.

2. Due to the dry conditions that generally exist in the area, fire hazards are a significant potential threat. This threat will increase as the number of persons using the area increases.

3. Pressures attributable to the presence of exotic vegetation and the concomitant competition for soil moisture and space also are probable threats.

4. The extremely small numbers of extant individuals and their limited distribution also threaten the continued existence of these species. A single fire or natural fluctuations in the number of individuals in the community could cause their demise.

Both plants are of great scientific interest because they are members of families that have undergone much evolutionary diversification in Hawaii. Both are members of genera that would make excellent models for the study of evolution and adaptive radiation in insular floras. The Hawaiian species of *Bidens* have been and are presently being used for such studies (Gillet and Lim 1970). Additionally, *Schiedea*, an endemic genus of the carnation family, has an unusual floral structure for that family, and is of scientific interest due to its breeding systems.

Section 12 of the Endangered Species Act of 1973 (the Act) directed the Secretary of the Smithsonian Institution to prepare a report on those plants considered to be endangered, threatened or extinct. This report, designated as House Document 94–51, *Report on Endangered and Threatened Plant Species of the United States*, included a list of those plants considered by the Smithsonian Institution to qualify for endangered or threatened status. The Service accepted the report as a petition within the context of section 4(c)(2) of the Act, and it was the principal basis for a notice published in the July, 1, 1975, **Federal Register** (40 FR 27824–27924) indicating that over 3,000 plant taxa were being considered for listing as endangered or threatened.

Subsequently, in the June 16, 1976, **Federal Register** (41 FR 24524–24572), the Service published a proposal advising that sufficient evidence was then on file to support determinations that 1,783 plant taxa were endangered species as defined by the Act. That is, each of the included taxa was in danger of extinction over all or a significant portion of its range because of one or more of the factors set forth in Section 4(a)(1) of the Act. The proposal solicited comments, suggestions, objections and factual information from all interested persons.

Notification of the proposal and a solicitation for comments or suggestions were sent to the Governor of Hawaii and other interested parties on July 1, 1976. A public hearing regarding the proposal was held on July 14, 1976, in Honolulu, Hawaii. *Bidens cuneata* and *Schiedea adamantis* were included in House Document 94–51, the July 1, 1975, notice of review and the June 16, 1976, proposal.

Following the June 16, 1976, proposal, hundreds of comments were received from individuals, conservation organizations, botanical groups, and business and professional organizations. Few of these comments were specific in nature in that they did not address specific plant species. Most comments addressed the program or the concept of endangered plants and their protection and regulation.

These comments were summarized in the April 26, 1978, **Federal Register** publication of a final rule that also determined 13 plant species to be endangered or threatened (43 FR 17909–17916).

The 1978 Amendments to the Act subsequently required that all proposals

over two years old be withdrawn. A one year grace period was given to proposals already over two years old. On December 10, 1979, the Service published a notice withdrawing the portion of the June 16, 1976, proposal that had not been subject to final action, along with four other proposals that had expired (44 FR 70796–70797).

Bidens cuneata and *Schiedea adamantis* were again proposed for endangered status on August 23, 1982 (47 FR 36675–36678), based on information available at the time of the 1976 proposal and information gathered since that time.

Summary of Comments and Recommendations

In the August 23, 1982, proposed rule, all interested parties were requested to submit factual reports or information that might contribute to the development of a final rule. A letter was sent to the Governor of the State of Hawaii on September 2, 1982, notifying him of the proposed rule listing *Bidens cuneata* and *Schiedea adamantis*. Also in that month, notifications were sent to appropriate Federal agencies and other interested parties. Comments were received from the Governor of Hawaii, the Department of Transportation's Federal Aviation Administration and the National Park Service's Cooperative Resources Studies Unit at the University of Hawaii. All comments received have been considered in formulating this final rule.

The Governor of Hawaii concurred that both plants are in danger of extinction and that listing them will aid in their recovery by making them eligible to receive Federal funding. Both species are included in the proposed 10-year threatened and endangered plant action plan of the State's Division of Forestry and Wildlife. He also stated that both plants occur in areas where hiking is discouraged by the Division of State Parks.

Clifford W. Smith, Director of the Cooperative National Park Resources Studies Unit at the University of Hawaii, stated that there is "* * * an overwhelming need to protect these species in their wild condition," and that he knows of no private or state program preserving these plants in their natural habitat. He noted that listing of the plants by the Federal government will also place them under the protection of the State endangered species law.

John H. Gordon, Manager of the Honolulu Sector of the Federal Aviation Administration, appreciated our concern for the plants. He stated that his agency will coordinate any modifications of their Diamond Head facility with the Service to prevent any harm to the plants.

Summary of the Factors Affecting the Species

After a thorough review and consideration of all the available information, the Service has determined that *Bidens cuneata* and *Schiedea adamantis* should be classified as endangered species. Procedures found at section 4(a)(1) of the Endangered Species Act (16 U.S.C. 1531 *et seq.*) and regulations promulgated to implement the listing provisions of the Act (codified at 50 CFR; under revision to accommodate 1982 amendments) were followed. A species may be determined to be an endangered or a threatened species due to one or more of the five factors described in Section 4(a)(1). These factors and their application to *Bidens cuneata* (cuneate bidens) and *Schiedea adamantis* (Diamond Head Schiedea) are as follows:

A. *Present or threatened destruction, modification, or curtailment of its habitat or range.* Direct, human-induced threats probably were not significant before 1906, due to limited use of the crater rim habitat prior to that date. Subsequent to that time, several facilities were constructed on the Diamond Head crestline. These include the FAA link site on the northeast crest and military emplacements along the southern and western ridge summits. It is not known what effects, if any, these constructions may have had on the distribution of *B. cuneata* and *S. adamantis*, although it is of possible significance that no collection of either species has ever been made from the summit region in which these structures were erected. The Service has been assured full cooperation in protecting these species by both State and Federal agencies with management responsibilities on the crater rim. The proliferation of exotic plant species may also have been responsible for serious reductions in the populations as they existed in their original, undisturbed state. This possibility is difficult to evaluate since extensive introduction into the native lowland flora had already occurred by the time of the initial discovery of *Bidens cuneata* in 1903, and *Schiedea adamantis* in 1955. However, very few of the species found associated with the surviving *Bidens cuneata* and *Schiedea adamantis* individuals are native. Throughout the Diamond Head area, there are numerous indications of competitive displacement of natives by introduced species. A hiking trail extends almost entirely around the Diamond Head crater, following its crest. The presence of this trail constitutes a significant threat, since all reported sightings of the two plant species have been at or near the top of the crater rim in exactly the areas through which the trail passes. Habitat deterioration in the form of soil compaction, promotion of erosion, trampling of plants, and dislodging of rocks due to the passage of hikers are potential threats to the continued existence of these plants. However, Hawaii's Division of State Parks discourages hiking along the crater rim except in a few selected places. The two species do not occur in the approved hiking areas.

B. *Overutilization for commercial, recreational, scientific or educational purposes.* Not known to affect these species.

C. *Disease or predation.* Not known to affect these species.

D. *The inadequacy of existing regulatory mechanisms.* Although *Bidens cuneata* and *Schiedea adamantis* do appear on an informal State list developed by botanists (Fosberg and Herbst 1975), no local, State or Federal laws presently protect these species.

E. *Other natural or manmade factors affecting its continued existence.* Although the principal factor endangering these taxa is past and potential degradation or loss of habitat, it is possible that their reproductive success has been affected by a decline of native pollinating insects. Due to the dry conditions that generally exist in the area, fires are also a significant potential threat. Because of the dry conditions, vegetative litter decomposes very slowly and tends to accumulate over the soil surface. During the months of April–September, the litter dries out and is easily ignited. The location of the *Schiedea* population on windward-facing slopes makes it particularly susceptible to this potential hazard. Any fire originating on the lower rim in the vicinity of the crater entrance would be fanned toward the *Schiedea* population by the prevailing winds. Such a fire could be very severe if it should occur in the dry season following a particularly wet winter, since the volume of litter capable of sustaining a blaze would be especially great. Fire could easily result in the extinction of *Schiedea adamantis*, not only through the immediate destruction of established plants and propagules, but also by initiating a secondary vegetational succession in which the *Schiedea* might be excluded. Fires are less of a threat to the *Bidens*, which grows in a comparatively litter-free area.

The State's intention to develop Diamond Head into a public park and

recreation area will increase the number of persons using the area. The increased levels of human activity in this environment can be expected to increase the fire hazard potential as well as the rate of degradation of the habitat unless control measures are undertaken. Finally, the small number of individuals of both species and their limited distribution must be considered a threat to their existence. A single action could extirpate the taxa, as could natural fluctuations in their populations.

Critical Habitat

Section 4(a)(3) of the Endangered Species Act, as amended, requires that, to the maximum extent prudent and determinable, the Secretary designate critical habitat at the time a species is determined to be endangered or threatened. The Service finds that designations of critical habitat are not prudent for these species at this time. The single known remaining wild population of *Bidens cuneata* is estimated to be comprised of 10 mature individuals, while that of *Schiedea adamantis* is estimated to be 78. Both populations are adjacent to a trail used by hikers. Inadvertent or deliberate damage to or destruction of these small populations could result from vandalism or curiosity generated by listing the species. Acts of vandalism to vegetation are well documented in Hawaii, as well as elsewhere. Publication of critical habitat descriptions would pinpoint their exact localities, thus making them more vulnerable and increasing enforcement problems. So few individuals of either species remain that any damage to or destruction of these small populations would seriously jeopardize their survival. Therefore, it would not be prudent to determine critical habitat for either plant at this time.

Available Conservation Measures

Conservation measures provided to species listed as endangered or threatened under the Endangered Species Act include recognition, recovery actions, requirements for Federal protection, and prohibitions against certain practices. Recognition through listing encourages and results in conservation actions by Federal, State, and private agencies, groups and individuals. The Endangered Species Act provides for land acquisition and cooperation with the States and requires that recovery actions be carried out for all listed species. Such actions are initiated by the Service following listing. The protection required by Federal agencies are discussed, in part, below.

Section 7(a) of the Act, as amended, requires Federal agencies to evaluate their actions with respect to any species that is proposed or listed as endangered or threatened. Regulations implementing this Interagency Cooperation provision of the Act are codified at 50 CFR Part 402 and are now under revision (see proposal at 48 FR 29989; June 29, 1983). Section 7(a)(2) requires Federal agencies to ensure that activities they authorize, fund, or carry out are not likely to jeopardize the continued existence of a listed species. If a "may effect" situation is determined the Federal agency must enter into formal consultation with the Service. This provision of the Act now applies to *Bidens cuneata* and *Schiedea adamantis*.

The Act and its implementing regulations found at 50 CFR 17.61, 17.62, and 17.63 set forth a series of trade prohibitions and exceptions which apply to all endangered plant species. These prohibitions, in general, make it illegal for any person subject to the jurisdiction of the United States to import or export endangered plants; deliver, receive, carry, transport, or ship them in interstate commerce in the course of a commercial activity; or to sell them or offer them for sale in interstate or foreign commerce.

The Act and 50 CFR 17.62 and 17.63 provide for the issuance of permits to carry out otherwise prohibited activities involving endangered species under certain circumstances. Such permits involving endangered species are available for scientific purposes to enhance the propagation or survival of the species. In some instances, permits may be issued during a specified period of time to relieve undue economic hardship which would be suffered if such relief were not available.

Section 9(a)(2)(B) of the Act, as amended in 1982, states that it is unlawful to remove and reduce to possession endangered plant species from areas under Federal jurisdiction. This new taking prohibition does not apply to the *Bidens* and *Schiedea* species since they are known to occur only on State-owned land.

Requests for copies of the regulations on plants, and inquiries regarding them, may be addressed to the Federal Wildlife Permit Office, U.S. Fish and Wildlife Service, Washington, D.C. 20240. In addition to the protection provided by the Act, the Service will review these plants to determine whether they should be proposed to the Secretariat of the Convention on International Trade in Endangered Species of Wild Fauna and Flora for placement upon the appropriate appendix(ices) to that Convention, or whether they should be considered under other appropriate international agreements.

References

Fosberg, F.R. and D. Herbst. 1975. Rare and endangered species of Hawaiian vascular plants. Allertonia 1(1):1–72.

Gillett, G.W. and E.K.S. Lim. 1970. An experimental study of the genus *Bidens* (Asterceae) in the Hawaiian Islands. U.C. Publ. Bot. 56:1–63.

Takeuchi, W. 1980a. Unpubl. status report on *Bidens cuneata* Sherff. U.S. Fish and Wildlife Service, Honolulu.

Takeuchi, W. 1980b. Unpubl. status report on *Schiedea adamantis* St. John. U.S. Fish and Wildlife Service, Honolulu.

Author

The primary author of this rule is Derral Herbst, U.S. Fish and Wildlife Service, P.O. Box 50167, Honolulu, Hawaii 96850 (808/546–7530). It was edited by John L. Paradiso and John J. Fay, Office of Endangered Species, U.S. Fish and Wildlife Service, Washington, D.C. 20240 (703/235–1975).

List of Subjects in 50 CFR Part 17

Endangered and threatened wildlife, fish, marine mammals, plants (agriculture).

Regulations Promulgation

PART 17—[AMENDED]

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

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

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

§ 17.12 [Amended]

2. Amend § 17.12(h) by adding the following in alphabetical order under the families Asteraceae and Caryophyllaceae to the List of Endangered and Threatened Plants:

* * * * *

(h) * * *

Species		Historic range	Status	When listed	Critical habitat	Special rules
Scientific name	Common name					
Asteraceae—aster family:						
Bidens cuneata	Cuneate bidens	U.S.A. (HI)	E		NA	NA
Caryophyllaceae—pink family:						
Schiedea adamantis	Diamond Head schiedea	U.S.A. (HI)	E		NA	NA

Dated: January 9, 1984.

G. Ray Arnett.

Assistant Secretary for Fish and Wildlife and Parks.

[FR Doc. 84-4359 Filed 2-16-84; 8:45 am]

BILLING CODE 4310-07-M

Proposed Rules

Federal Register
Vol. 49, No. 34
Friday, February 17, 1984

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

DEPARTMENT OF AGRICULTURE

Federal Grain Inspection Service

7 CFR Part 810

Proposed Revision of the U.S. Standards for Rye

Corrections

In FR Doc 84–2503 beginning on page 3663, in the issue of Monday, January 30, 1984, make the following corrections.

1. On page 3665, second column, § 810.402, paragraph (e), last line, "same" should read "sample".

2. On page 3666, in the table § 810.406, in the fourth entry under "Grade No." the footnote reference after "U.S. No. 4" should be removed.

3. On the same page under § 810.407 paragraph (a), line 6, the word "plumb" should read "plump".

4. Under § 810.408, paragraph (a), first line the word "no" should read "not".

BILLING CODE 1505-01-M

SMALL BUSINESS ADMINISTRATION

13 CFR Part 124

Minority Small Business and Capital Ownership Development Assistance

AGENCY: Small Business Administration.

ACTION: Notice of extension of comment period on proposed rule.

SUMMARY: On December 22, 1983, SBA published in the **Federal Register** a proposed rule regarding its Minority Small Business and Capital Ownership Development Program (see 48 FR 56686). That publication provided that comments on the proposed rule would be received for a period of 60 days from date of publication. This notice extends the comment pertaining to the proposed rule for an additional 30 days in order to provide more time for public comment.

DATE: Comments on the above-referenced proposed rule must be receive by March 21, 1984..

ADDRESS: Written comments should be submitted to Mr. Henry T. Wilfong, Jr., Associate Administrator for Minority Small Business and Caiptal Ownership Development, U.S. Small Business Administration, 1441 L Street NW., Washington, D.C. 20416, Room 602.

FOR FURTHER INFORMATION CONTACT: Henry T. Wilfong, Jr., telephone (202) 653–6407.

SUPPLEMENTARY INFORMATION: In order to provide more time for public comment on the above-referenced proposed rule, SBA is hereby extending the comment period relative to the proposal for an additional 30 days. The public is encouraged to supply comments in writing to the address indicated above so that a complete record on this important proposed rule can be established.

Dated: February 10, 1984.

James C. Sanders,

Administrator.

[FR Doc. 84–4369 Filed 2–16–84; 8:45 am]

BILLING CODE 8025-01-M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

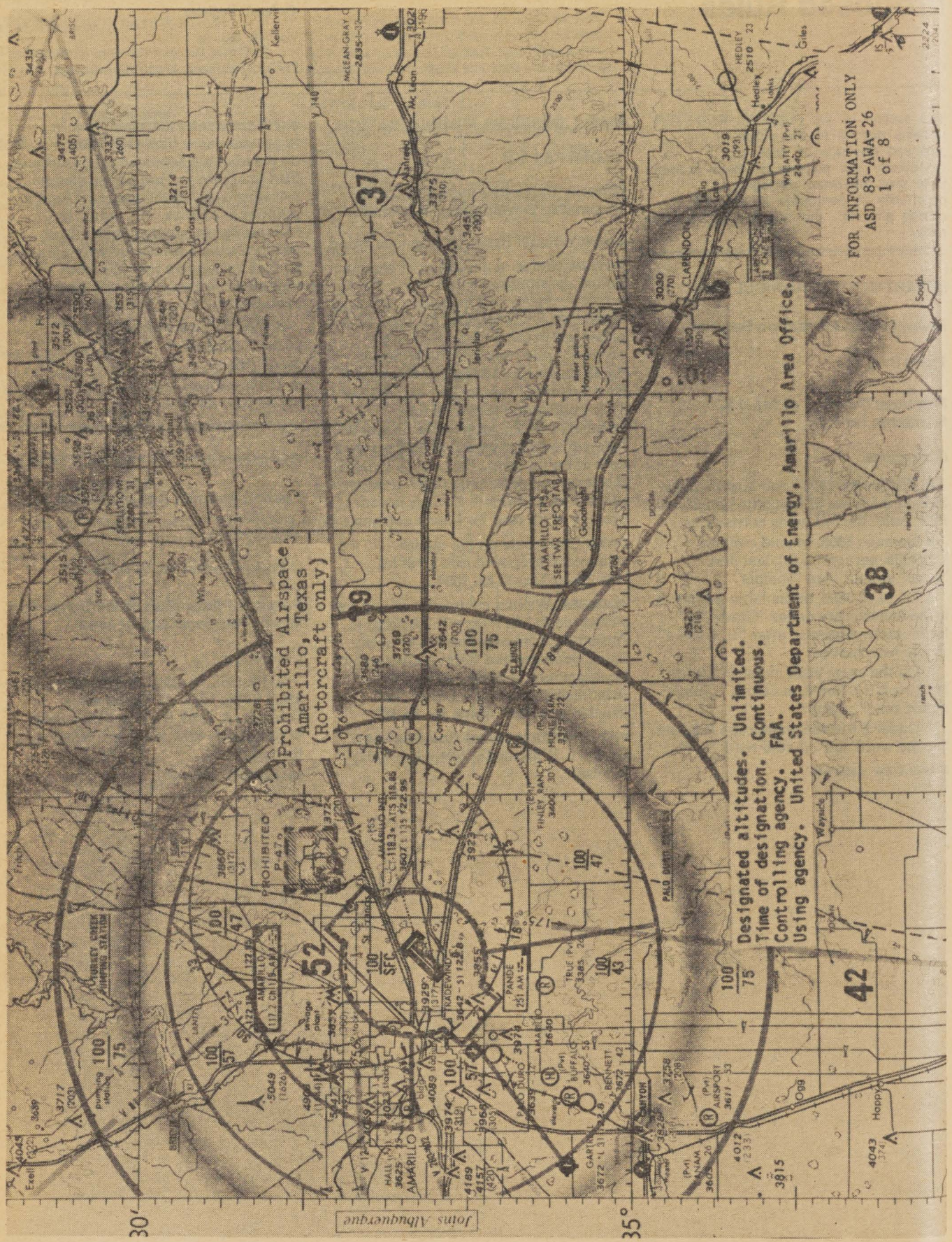
[Airspace Docket No. 83–AWA–22]

Proposed Alteration of the Dallas-Fort Worth Terminal Control Area

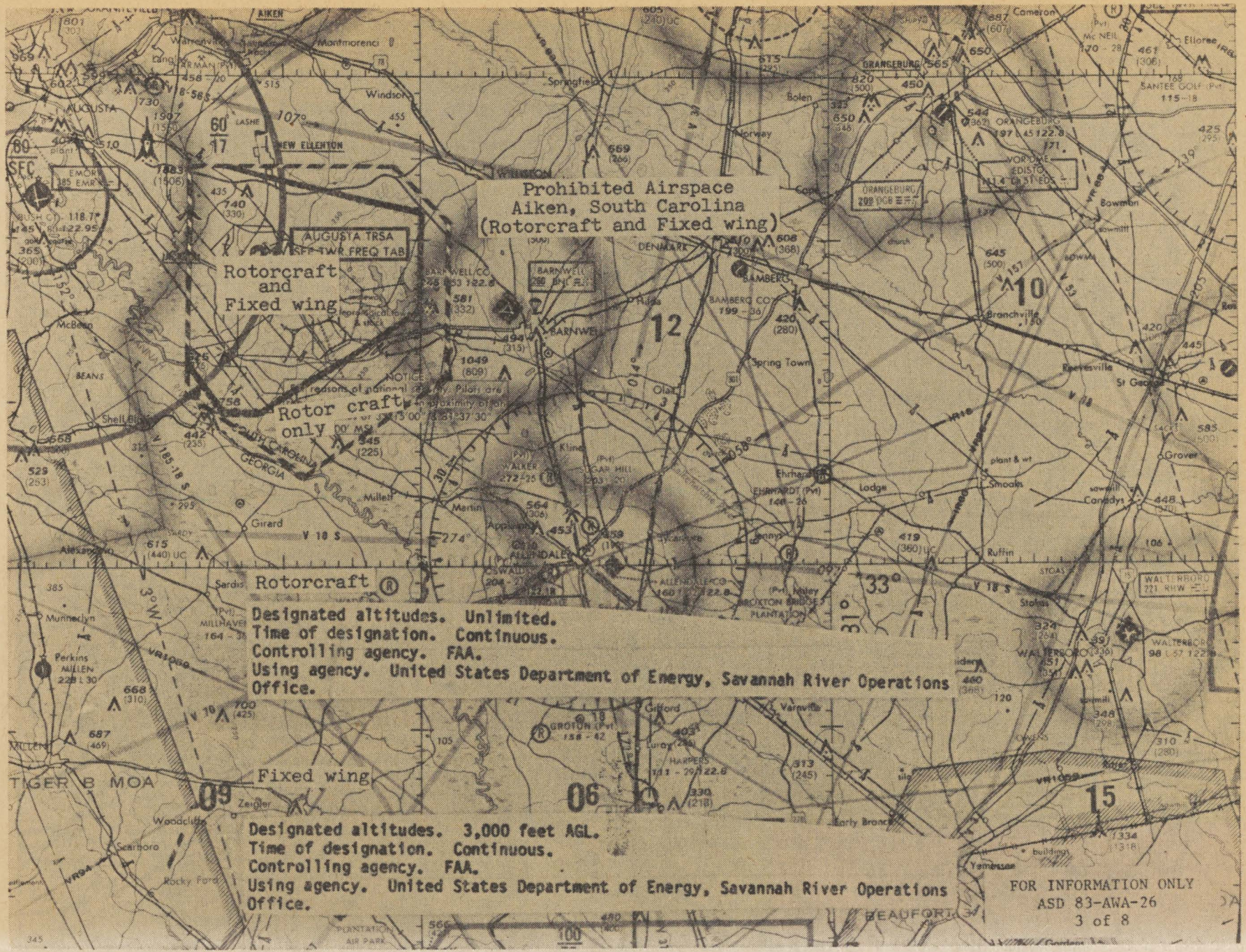
Correction

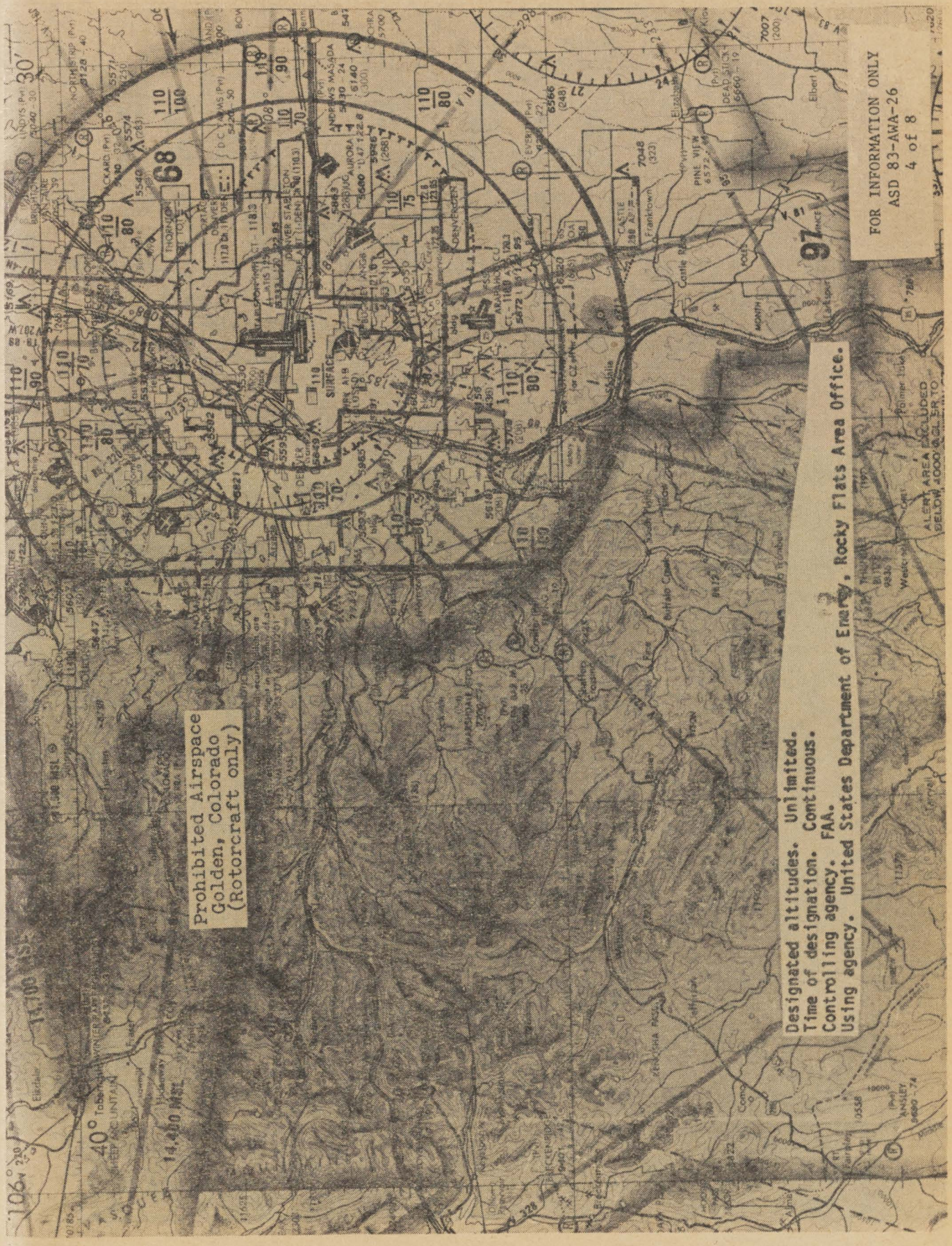
In FR Doc. 84–3390, beginning on page 4765, in the issue of Wednesday, February 8, 1984, the maps on pages 4770 through 4777 are republished in there entirely.

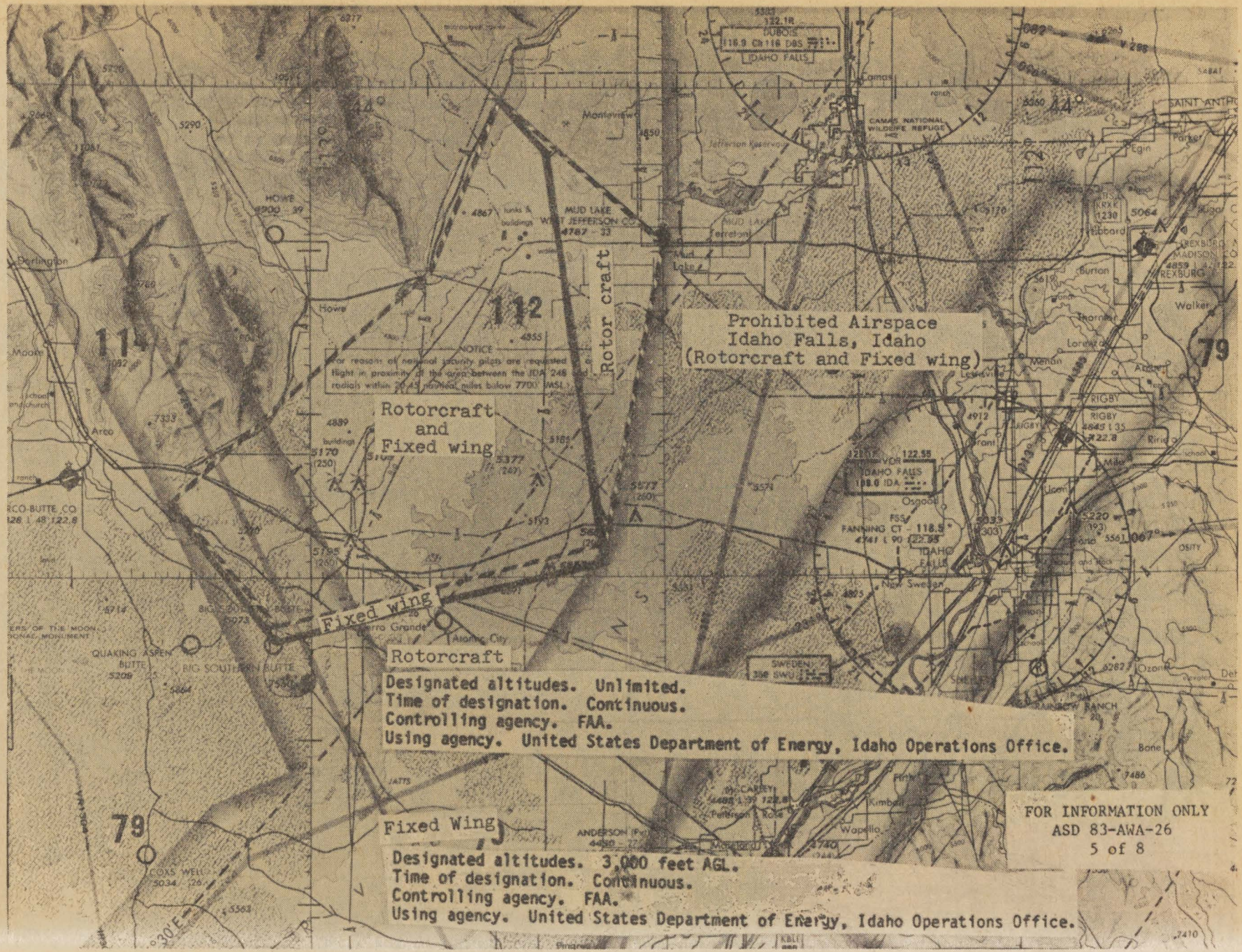
BILLING CODE 1505-01-M

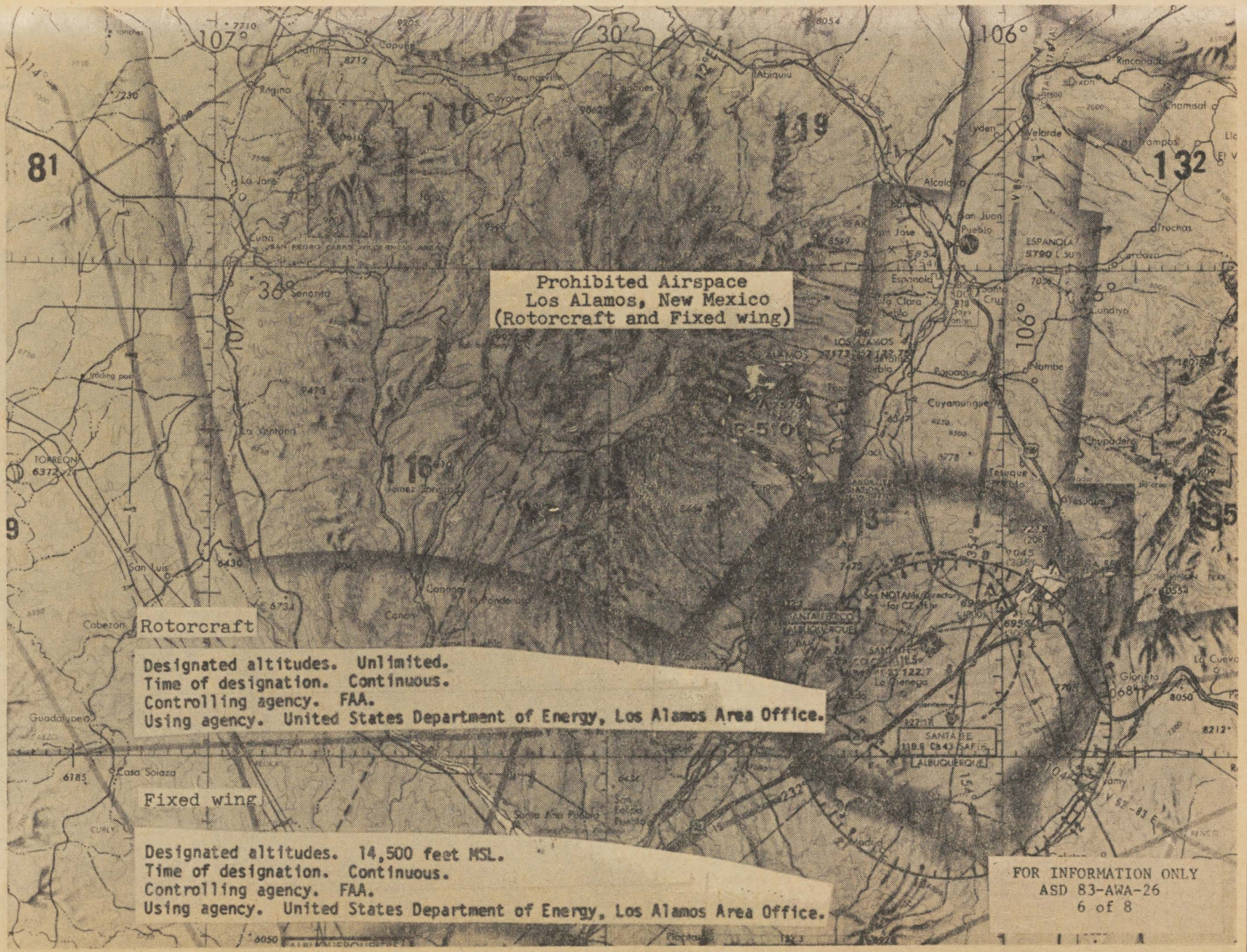

Prohibited Airspace
Amarillo, Texas
(Rotorcraft only)
Designated altitudes. Unlimited.
Time of designation. Continuous.
Controlling agency. FAA.
Using agency. United States Department of Energy, Amarillo Area Office.
FOR INFORMATION ONLY
ASD 83-AWA-26
1 of 8
Johns Albuquerque
30°
35°
37
38
42
49
52

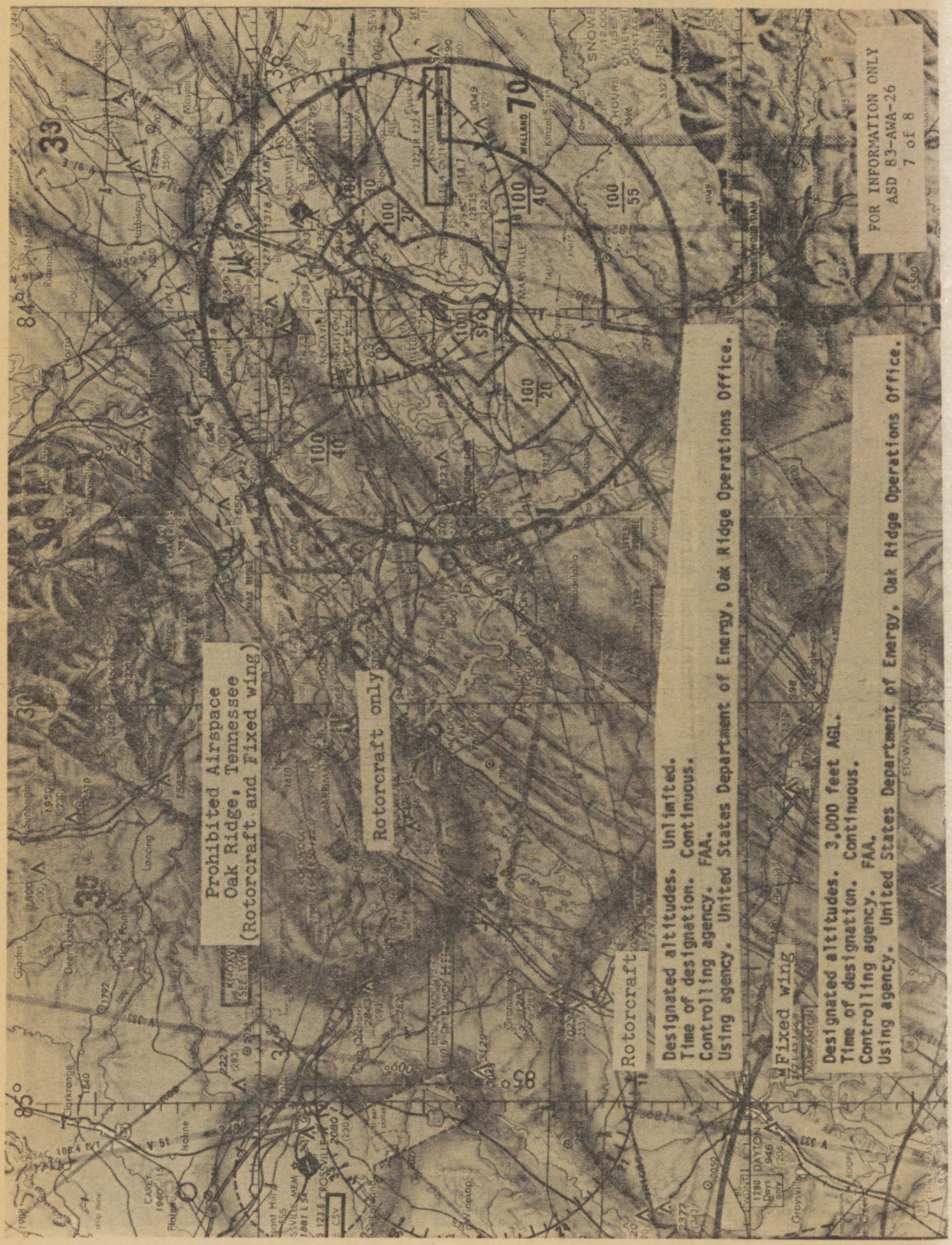

Prohibited Airspace
Livermore, California
(Rotorcraft only)
Prohibited Airspace
San Francisco, California
(Rotorcraft only)
Designated altitudes. Unlimited.
Time of designation. Continuous.
Controlling agency. FAA.
Using agency. United States Department of Energy, San Francisco Operations Office.
FOR INFORMATION ONLY
ASD 83-AWA-26
2 of 8


Prohibited Airspace
Aiken, South Carolina
(Rotorcraft and Fixed wing)
Rotorcraft
and
Fixed wing
Rotor craft
only
Rotorcraft
Designated altitudes. Unlimited.
Time of designation. Continuous.
Controlling agency. FAA.
Using agency. United States Department of Energy, Savannah River Operations Office.
Fixed wing
Designated altitudes. 3,000 feet AGL.
Time of designation. Continuous.
Controlling agency. FAA.
Using agency. United States Department of Energy, Savannah River Operations Office.
TIGER B MOA
FOR INFORMATION ONLY
ASD 83-AWA-26
3 of 8


FOR INFORMATION ONLY
ASD 83-AWA-26
4 of 8
Prohibited Airspace
Golden, Colorado
(Rotorcraft only)
Designated altitudes. Unlimited.
Time of designation. Continuous.
Controlling agency. FAA.
Using agency. United States Department of Energy, Rocky Flats Area Office.


Prohibited Airspace
Idaho Falls, Idaho
(Rotorcraft and Fixed wing)
Rotorcraft
and
Fixed wing
Rotor craft
Fixed wing
Rotorcraft
Designated altitudes. Unlimited.
Time of designation. Continuous.
Controlling agency. FAA.
Using agency. United States Department of Energy, Idaho Operations Office.
Fixed Wing
Designated altitudes. 3,000 feet AGL.
Time of designation. Continuous.
Controlling agency. FAA.
Using agency. United States Department of Energy, Idaho Operations Office.
FOR INFORMATION ONLY
ASD 83-AWA-26
5 of 8


Prohibited Airspace
Los Alamos, New Mexico
(Rotorcraft and Fixed wing)
Rotorcraft
Designated altitudes. Unlimited.
Time of designation. Continuous.
Controlling agency. FAA.
Using agency. United States Department of Energy, Los Alamos Area Office.
Fixed wing
Designated altitudes. 14,500 feet MSL.
Time of designation. Continuous.
Controlling agency. FAA.
Using agency. United States Department of Energy, Los Alamos Area Office.
FOR INFORMATION ONLY
ASD 83-AWA-26
6 of 8


Prohibited Airspace
Oak Ridge, Tennessee
(Rotorcraft and Fixed wing)
Designated altitudes. Unlimited.
Time of designation. Continuous.
Controlling agency. FAA.
Using agency. United States Department of Energy, Oak Ridge Operations Office.
Rotorcraft only
Rotorcraft
Designated altitudes. 3,000 feet AGL.
Time of designation. Continuous.
Controlling agency. FAA.
Using agency. United States Department of Energy, Oak Ridge Operations Office.
Fixed wing
FOR INFORMATION ONLY
ASD 83-AWA-26
7 of 8

BILLING CODE 1505-01-C

A file line should appear at the end of the document as follows:

[FR Doc. 84-3390 Filed 2-7-84; 8:45 am]
BILLING CODE 1505-01-M

14 CFR Part 71

[Airspace Docket No. 84-ASW-6]

Designation of Federal Airways, Area Low Routes, Controlled Airspace, and Reporting Points; Proposed Alteration of Transition Area: Giddings, TX

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Federal Aviation Administration proposes to alter the transition area at Giddings, TX. The intended effect of the proposed action is to provide additional controlled airspace for aircraft executing a new standard instrument approach procedure (SIAP) to the Giddings-Lee County Airport. This action is necessary since there is a new RNAV Runway 35 SIAP to the airport which will require an additional 700-foot transition area south of the airport.

DATE: Comments must be received on or before March 19, 1984.

ADDRESSES: Send comments on the proposal in triplicate to: Manager, Airspace and Procedures Branch, Air Traffic Division, Southwest Region, Federal Aviation Administration, P.O. Box 1689, Fort Worth, TX 76101.

The official docket may be examined in the Rules Docket, weekdays, except Federal holidays, between 8 a.m. and 4:30 p.m. The FAA Rules Docket is located in the Office of the Regional Counsel, Southwest Region, Federal Aviation Administration, 4400 Blue Mound Road, Fort Worth, TX.

FOR FURTHER INFORMATION CONTACT: Kenneth L. Stephenson, Airspace and Procedures Branch, ASW-535, Air Traffic Division, Southwest Region, Federal Aviation Administration, P.O. Box 1689, Forth Worth, TX 76101; telephone: (817) 877-2630.

SUPPLEMENTARY INFORMATION:

History

Federal Aviation Regulation Part 71, Subpart G, § 71.181 as republished in Advisory Circular AC 70-3A dated January 3, 1983, contains the description of transition areas designated to provide controlled airspace for the benefit of aircraft conducting instrument flight rules (IFR) activity. Alteration of the transition area at Giddings, TX, will necessitate an amendment to this subpart. This amendment will be required at Giddings, TX, since there is a proposed change in IFR procedures to the Giddings-Lee County Airport.

Comments Invited

Interested persons are invited to participate in this proposed rulemaking by submitting such written data, views, or arguments as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposals. (Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposals.) Communications should identify the airspace docket and be submitted in triplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this notice must submit with those comments a self-addressed, stamped postcard on which the following statement is made: "Comments to Airspace Docket No. 84-ASW-6." The postcard will be date/time stamped and returned to the commenter. All communications received before the specified closing date for comments will be considered before taking action on the proposed rule. The proposals contained in this notice may be changed in the light of comments received. All comments submitted will be available for examination in the Rules Docket both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

Availability of NPRM

Any person may obtain a copy of this notice of proposed rulemaking (NPRM) by submitting a request to the Manager, Airspace and Procedures Branch, Air Traffic Division, Southwest Region, Federal Aviation Administration, P.O. Box 1689, Fort Worth, TX 76101, or by calling (817) 877-2630. Communications must identify the notice number of this NPRM. Persons interested in being placed on a mailing list for future NPRM's should contact the office listed above.

List of Subjects in 14 CFR Part 71

Control Zones, Transition areas, Aviation safety.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me, the FAA proposes to amend 71.181 of Part 71 of the Federal Aviation Regulations (14 CFR Part 71) by adding:

Giddings, TX Amended

; and within 2.5 miles each side by the 176° bearing of the airport extending from the 5-mile radius area to 6 miles south of the airport.

(Sec. 307(a), Federal Aviation Act of 1958 (49 U.S.C. 1348(a)); Sec. 6(c), 49 U.S.C. 106(g) (Revised, Pub. L. 97-449, January 12, 1983); and 14 CFR 11.61(c))

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

Issued in Fort Worth, TX, on February 7, 1984.

Henry J. Christiansen,

Acting Director, Southwest Region.

[FR Doc. 84-4335 Filed 2-16-84; 8:45 am]
BILLING CODE 4910-13-M

14 CFR Part 71

[Airspace Docket No. 84-ASO-5]

Proposed Alteration of Transition Area, Cullman, Alabama

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: This notice proposes to alter the Cullman, Alabama, transition area by revoking an unneeded arrival extension, increasing the size of the basic area centered on Folsom Field airport and designating additional controlled airspace in the vicinity of Rountree Field airport. The arrival extension located north of Folsom Field in not required for protection of aeronautical activities and the basic area centered on the airport needs to be enlarged from 6.5 to 7.5 miles to accommodate the size aircraft which the airport is capable of accommodating. Additional controlled airspace is required in the vicinity of Rountree Field to accommodate Instrument Flight Rule (IFR) operations to and from the airport. An instrument approach procedure has been developed to serve the airport and this transition area alteration will lower the base of controlled airspace, in the

vicinity of Rountree Field, from 1,200 to 700 feet above the surface.

DATES: Comments must be received on or before: March 27, 1984.

ADDRESSES: Send comments on the proposal in triplicate to: Federal Aviation Administration, Attn: Manager, Airspace and Procedures Branch, ASO-530, P.O. Box 20636, Atlanta, Georgia 30320.

The official docket may be examined in the Office of the Regional Counsel, Room 652, 3400 Norman Berry Drive, East Point, Georgia 30344, telephone: (404) 763-7646.

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

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views or arguments as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposal. Communications should indentify the airspace docket and be submitted in triplicate to the address listed above. Commenters wishing the FAS to acknowledge receipt of their comments on this notice must submit with those comments a self-addressed, stamped postcard on which the following statement is made: "Comments to Airspace Docket No. ———." The postcard will be date/time stamped and returned to the commenter. All communications received before the specified closing date for comments will be considered before taking action on the proposed rule. The proposal contained in this notice may be changed in the light of comments received. All comments submitted will be available in the Rules Docket both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

Availability of NPRM's

Any person may obtain a copy of this Notice of Proposed Rulemaking (NPRM) by submitting a request to the Federal Aviation Administration, Manager, Airspace and Procedures Branch (ASO-530), Air Traffic Division, P. O. Box 20636, Atlanta, Georgia 30320. Communications must identify the notice number of this NPRM. Persons interested in being placed on a mailing list for future NPRM's should also request a copy of Advisory Circular No. 11-2 which describes the application procedure.

The Proposal

The FAA is considering an amendment to § 71.181 of Part 71 of the Federal Aviation Regulations (14 CFR Part 71) that will designate additional controlled airspace in the vicinity of Rountree and Folsom Fields. In addition, the floor of controlled airspace in an area north of Folsom Field will be raised from 700 to 1,200 feet above the surface. If these actions are found acceptable, the operating status of Rountree Field will be changed to IFR and an instrument approach procedure will be established to serve the airport. Section 71.181 of Part 71 of the Federal Aviation Regulations was republished in Advisory Circular AC 70-3A dated January 3, 1983.

List of Subjects in 14 CFR Part 71

Aviation safety, Airspace, Transition area.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me, the Federal Aviation Administration proposes to amend the Cullman, Alabama, transition area under § 71.181 of Part 71 of the Federal Aviation Regulations (14 CFR Part 71) as follows:

Cullman, AL—[Revised]

That airspace extending upward from 700 feet above the surface within a 7.5-mile radius of Folsom Field (Lat. 34° 15'57"N., Long. 86° 51'35"W.); with a 6.5-mile radius of Rountree Field (Lat. 34° 24'28"N., Long. 86° 55'58"W.).

(Secs. 307(a) and 313(a), Federal Aviation Act of 1958 (49 U.S.C. 1348(a) and 1354(a)); 49 U.S.C. 196(g) (Revised, Public Law 97-449, January 12, 1983))

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

Issued in East Point, Georgia, on February 3, 1984.

George R. LaCaille,

Acting Director, Southern Region.

[FR Doc. 84-4334 Filed 2-16-84; 8:45 am]

BILLING CODE 4910-13-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 176

[Docket No. 84N-0025]

Incorporation by Reference; Proposed Updating of Text

Correction

In FR Doc. 84-2258 beginning on page 3804 in the issue of Monday, January 30, 1984, make the following correction.

On page 3824, first column, the fourth line of § 176.170(d)(3) should have read "cell described in Official Methods of Analysis of the Association of Official Analytical".

BILLING CODE 1505-01-M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 35

[WH-FRL 2267-5]

Grants for Construction of Treatment Works

AGENCY: Environmental Protection Agency.

ACTION: Proposed rule with request for comments.

SUMMARY: This rule proposes to specify a maximum allowable project cost which will limit increases on grants for construction of publicly owned treatment works (POTWs). This limit is intended to provide additional incentive for communities to manage their grant funds as efficiently as possible. It will limit the allowable cost increase for grants awarded after the effective date of this rule.

DATES: Comments must be received on or before April 17, 1984.

ADDRESSES: Comments should be addressed to: Central Docket Section (LE-131, Attention Docket No. G-82-06, Environmental Protection Agency, Washington, D.C. 20460.) The public may inspect the comments received on this proposed rule at: Central Docket

Section, Gallery 1 West Tower Lobby, Environmental Protection Agency, 401 M Street, SW., Washington, D.C., between 8 a.m. and 4 p.m., business days.

FOR FURTHER INFORMATION CONTACT: William Kramer, Facility Requirements Division (WH-595), Environmental Protection Agency, Washington, D.C. 20460, (202) 382-7277.

SUPPLEMENTARY INFORMATION: In the final construction grants regulation, 40 CFR Part 35, Subpart I (published elsewhere in this issue of the **Federal Register**), Federal involvement in the review of individual construction grant projects is greatly reduced. At the same time, the regulation includes several provisions to encourage more efficient and effective grantee management of their construction grant projects.

Commentors on the interim final regulation (47 FR 20450, May 12, 1982) recommended further improvements in the allowable cost provisions related to change orders, claims assessment and defense against contractor claims. In response, EPA revised those provisions of the final regulation to clarify the criteria under which such costs would be allowable.

In addition, several commenters recommended that the regulation limit the total amount a grant could be increased to cover cost increases. Historical experience in the construction grants program indicates that, in a well managed construction subagreement, the total costs associated with all grant increases generally amount to approximately two to four percent of the original bid price. However, these percentages can vary considerably. Most construction grant agreements include a contingency amount of from two to five percent of the estimated allowable cost of the project to permit minor cost increases without grant amendments.

The States and EPA have traditionally approved grant increases to cover the Federal share of cost increases that exceed the contingency. Based on this experience, we believe it would be reasonable to limit all grant increases, and we are proposing a new section (§ 35.2205) which would do that. If readers of this proposed rule have data supporting or questioning the percentage used here, EPA would appreciate that information as a comment on this proposal.

The new section would apply to all construction grants regardless of the grant award date. For grants awarded before the effective date of this rule, the rule will apply only to increases beyond the approved grant amount (including contingencies) on building subagreements awarded after the effective date. In these cases, allowable cost increases will be limited to five percent of the initial subagreement price. For grants awarded after the effective date of this rule, increases in allowable cost will be limited to five percent of the allowable project cost, including the initial price of subagreements, the estimated cost of force account included in the grant agreement, the cost of any eligible land and the amount budgeted in the original grant award for other project costs, less any amounts included in the grant to cover contingencies.

Effective Date

The rule will be effective 90 days after publication as a final rule in the **Federal Register.**

List of Subjects in 40 CFR Part 35

Grant programs—environmental protection, Waste treatment and disposal.

Regulation Development Process

Under Executive Order 12291, EPA is required to judge whether a regulation is "major" and therefore subject to the regulatory impact analysis requirements of the Order or whether it may follow other regulation development procedures. I have determined this regulation is not a major regulation, and thus is not subject to the impact analysis requirements of executive order 12291.

Under the Regulatory Flexibility Act (5 U.S.C. 601) I hereby certify that this regulation will not have a significant impact on a substantial number of small entities. This rule would apply to all municipalities in the same way and our survey shows that there would not be a disproportionate impact on small municipalities.

This program is listed in the Catalog of Federal Domestic Assistance as number 66.418—Construction Grants for Wastewater Treatment Works.

This regulation was submitted to OMB for review as required by Executive Order 12291.

Dated: February 3, 1984.

William D. Ruckelshaus,

Administrator.

PART 35—[AMENDED]

For the reasons set forth in the preamble, 40 CFR Part 35 is proposed to be amended by adding § 35.2205 to read as follows:

§ 35.2205 Maximum allowable project cost.

(a) *Grant assistance awarded on or after (effective date of this regulation).* For grants awarded on or after (effective date of this regulation), the total allowable project cost will not exceed the sum of:

(1) The initial amount of all subagreements awarded for the project;

(2) The initial amount approved for force account work to be performed on the project;

(3) The purchase price of any eligible real property;

(4) The amount budgeted in the original grant award amount for project costs not included under paragraphs (a)(1) through (a)(3) of this section, excluding any amounts included in the grant amount to cover contingencies; and

(5) Five percent of the sum of the costs included under paragraphs (a)(1) through (a)(4) of this section.

(b) *Grant assistance awarded before (effective date of this regulation).* For grants awarded before (effective date of this regulation), increases in the allowable cost for work covered by a subagreement awarded on or after (effective date of this regulation) will be limited to five percent of the initial award amount of the subagreement, unless the increases are within the approved grant amount on (effective date of this regulation).

(Federal Water Pollution Control Act, 33 U.S.C. 466, et seq.)

[FR Doc. 84-4075 Filed 2-16-84; 8:45 am]

BILLING CODE 6560-50-M

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 83

[PR Docket No. 84-139; RM-4575; FCC 84-46]

Radiotelegraph Officers to Perform Maintenance and Repair Duties While Keeping the Mandatory Watch on 500 kHz

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: This notice proposes to allow a radiotelegraph officer during his watch to perform maintenance and repair duties at the request of the master, at locations away from the station's main transmitter, provided he keeps a listening watch using headphones, loudspeakers, or a portable receiver. This proposal was recommended by the Department of Transportation's Maritime Administration. The new rule, if adopted, would allow more effective use of the radio officer than is presently

permitted. Its effect would be to enhance the radiotelegraph officer's value as a member of the ship's crew.

DATES: Comments must be received on or before April 17, 1984 and reply comments must be received on or before May 17, 1984..

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

FOR FURTHER INFORMATION CONTACT: Maureen Cesaitis, Private Radio Bureau, (202) 632–7175.

List of Subjects in 47 CFR Part 83

Communications equipment, Marine safety, Radio, Telegraph vessels.

Proposed Rule Making

In the matter of amendment of part 83 of the Commission's rules to allow radiotelegraph officers to perform maintenance and repair duties while keeping the mandatory watch on 500 kHz. PR DOCKET No. 84–139, RM–4575.

Adopted: February 7, 1984.
Released: February 10, 1984.

By the Commission.

1. This Notice of Proposed Rule Making (NPRM) proposes rule amendments to allow merchant ship radio officers to perform maintenance and repair duties of electronic equipment while keeping an uninterrupted watch on 500 kHz.

2. Our rules require that all ship stations employing radiotelegraph on frequencies between 405 and 535 kHz keep watch on the international distress frequency, 500 kHz, during the ship's hours of service. Additionally, they must keep a silent watch by radio officer, twice each hour, for three-minute periods known as the "silence periods." This Notice proposes to allow the radio officer to perform maintenance and repair duties at the request of the master, at locations away from the station's main transmitter, provided he keeps a listening watch by suitable means, such as headphones, loudspeaker(s) or a portable receiver, except during the "silence periods."

3. This proposal was initiated in response to a letter from the U.S. Department of Transportation's Maritime Administration (MARAD). That agency's request, RM–4575, was placed on public notice on August 19, 1983. No comments were filed in response to the petition. MARAD suggests that such a rule would permit more efficient use of the radio officer.

4. At present, radio officers are permitted to discontinue listening on the radiotelegraph distress frequency when handling traffic on other frequencies or when necessary in performing urgent repair of equipment for radiocommunication used for safety or radio navigational equipment. This notice does not propose to allow additional watch relief. Instead, it proposes to allow the radio officer, at the request of the master, to perform maintenance and repair duties at locations away from the station's main or reserve transmitter, provided the watch is kept by suitable means such as a remote loudspeaker, headphones, or a portable receiver. However, the radio officer must continue to be in the radiotelegraph room for each of the silence periods.

5. Under the proposed procedure the general watch would not be interrupted by the radio officer's additional duties. However, there could be a slight delay in the radio officer's response to a call because the officer would have to return to the station in order to transmit. This occasional delay appears to be outweighed by the increased utility of the watch officer. Due to the delay described above the proposed new rule requires the radiotelegraph officer to stand the silence period watch in the radiotelegraph room. Thus, if a distress call is received during a silence period, the radiotelegraph officer will be able to respond immediately.

6. For the reasons discussed above, we propose to add new paragraph (e) to § 83.204 of the rules. The new rule sets forth the conditions under which the radiotelegraph officer may leave the main transmitter site to perform maintenance on equipment. This notice is issued under the authority contained in Sections 4(i) and 303 (c) and (r) of the Communications Act of 1934, as amended, 47 U.S.C. 154(i) and 303 (c) and (r).

7. Under procedures set out in Section 1.415 of the Rules and Regulations, 47 CFR 1.415, interested persons may file comments on or before April 17, 1984 and reply comments on or before May 17, 1984. All relevant and timely comments will be considered by the Commission before final action is taken in this proceeding. In reaching its decision, the Commission may take into consideration information and ideas not contained in the comments, provided such information or a writing indicating the nature and source of such information is placed in the public file, and provided that the fact of the Commission's reliance on such information is noted in the report and order.

8. In accordance with the provisions of § 1.419 of the Rules and Regulations, 47 CFR 1.419, formal participants shall file an original and 5 copies of their comments and other materials. Participants wishing each Commissioner to have a personal copy of their comments should file an original and 11 copies. Members of the general public who wish to express their interest by participating informally may do so by submitting one copy. All comments are given the same consideration, regardless of the number of copies submitted. All documents will be available for public inspection during regular business hours in the Commission's Public Reference Room at its headquarters in Washington, D.C.

9. For purposes of this non-restricted notice and comment rule-making proceeding, members of the public are advised that *ex parte* contacts are permitted from the time the Commission adopts a notice of proposed rulemaking until the time a public notice is issued stating that a substantive disposition of the matter is to be considered at a forthcoming meeting or until a final order disposing of the matter adopted by the Commission, whichever is earlier. In general, an *ex parte* presentation is any written, or oral communication (other than formal written comments/ pleadings and formal oral arguments) between a person outside the Commission and a Commissioner or a member of the Commission's staff which addresses the merits of the proceeding. Any person who submits a written *ex parte* presentation must serve a copy of that presentation on the Commission's Secretary for inclusion in the public file. Any person who makes an oral *ex parte* presentation addressing matters not fully covered in any previously-filed written comments for the proceeding must prepare a written summary of that presentation; on the day of oral presentation, that written summary must be served on the Commission's Secretary for inclusion in the public file, with a copy to the Commission official receiving the oral presentation. Each *ex parte* presentation described above must state on its face that the Secretary has been served, and must also state by docket number the proceeding to which it relates. See generally, Section 1.1231 of the Commission's rules, 47 CFR 1.1231.

10. Pursuant to Section 605 of the Regulatory Flexibility Act of 1980 (Pub. L. 96–354), we certify that the proposed new rules will not have a significant economic impact on a substantial number of small entities. These rules propose to enhance the radiotelegraph officer's position aboard ship by allowing him to assume duties he could previously not carry out during his eight-hour watch. Wiring and loudspeakers, headphones, or remote receivers would be necessary to take advantage of the

proposed new rules; however, no vessels would be required to make the investment or to operate in this fashion. There are approximately 800 radiotelegraph-fitted vessels of U.S. registry. The operation of a single such vessel typically runs into the millions of dollars per year.

11. Regarding questions on matters covered in this document contact Maureen Cesaitis (202) 632–7175.

12. It is ordered, That a copy of this Notice of Proposed Rule Making shall be sent to the Chief Counsel for Advocacy of the Small Business Administration.

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

William J. Tricarico,
Secretary.

Appendix

Part 83 of Chapter I of Title 47 of the Code of Federal Regulations is proposed to be amended as follows:

PART 83—STATIONS ON SHIPBOARD IN THE MARITIME SERVICES

Section 83.204 is amended by adding new paragraph (e), to read as follows:

§ 83.204 Provisions governing radiotelegraph watch.

* * * * *

(e) When authorized by the master, the radio officer may perform maintenance or repair of communications, navigation or other electronic equipment outside of the radiotelegraph room, provided that the listening watch on 500 kHz can be maintained by headphones, loudspeakers, portable receivers, or other suitable means. The watch on 500 kHz must be maintained in the radiotelegraph room during the silence period.

[FR Doc. 84–4347 Filed 2–16–84; 8:45 am]
BILLING CODE 6712–01–M

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47 CFR Parts 81 and 83

[PR Docket No. 84–140; RM 4534; RM 4535; RM 4536; FCC 84–47]

Radioprinter Communications by Vessels of Less than 1,600 Gross Tons

AGENCY: Federal Communications Commission.

ACTION: Proposed rules.

SUMMARY: This document proposes rules for the introduction and use, in the Maritime Mobile Service, of radioprinter communications by vessels of less than 1,600 gross tons using frequencies in the shared bands. This action is in response to three separate petitions for rulemaking which pointed out need for a radioprinter communications in conjunction with the operation of relatively small vessels. The intended effect is to make radioprinter communication services available for use between limited coast stations and vessels of less than 1,600 gross tons.

DATE: Comments must be received by April 2, 1984, and reply comments must be received by April 17, 1984.

ADDRESS: Send comments to: Federal Communications Commission, Washington, D.C. 20554.

FOR FURTHER INFORMATION CONTACT: Robert E. Mickley, Private Radio Bureau, (202) 632–7175.

List of Subjects

47 CFR Part 81

Coast stations, Communications equipment.

47 CFR Part 83

Communications equipment, Ship stations.

Proposed Rule Making

In the matter of radioprinter communications by vessels of less than 1,600 gross tons; PR Docket No. 84–140, RM 4534, RM 4535, and RM 4536.

Adopted: February 7, 1984.
Released: February 10, 1984.

By the Commission.

Introduction

1. In this Notice of Proposed Rule Making we propose to amend Part 81 and 83 of the rules to provide for the use of shared maritime frequencies for a simple system of radioteletype (RTTY) for business and operational communications by vessels of less than 1,600 gross tons.

2. Petitions for this rulemaking were filed by Northwest Instrument, United New York-New Jersey Sandy Hook Pilot's Benevolent Association, and A.P. St. Philip, Inc. The petitioners seek to amend the Commission's rules to permit relatively small vessels, such as tug boats, pilot boats and fishing vessels, to communicate for operational and business purposes by means of radioprinter (RTTY) with associated limited coast stations.[1]

3. Mobile Marine Radio, Inc. (MMR) filed comments concerning each of the three petitions for rulemaking referred to above. In essence, MMR argued that a new proceeding was unnecessary since PR Docket No. 82–828 addressed the matter of licensing and availability of narrow-band direct-printing (NB–DP) RTTY frequencies. However, in the Report and Order in PR Docket No. 82–828,[2] the Commission deferred consideration of limited coast station radioteletype operations to a follow-on proceeding, which we are initiating with this notice.

Discussion

4. Large oceangoing vessels have a sophisticated and relatively expensive system of narrow-band direct-printing (NB-DP) radiotelegraphy. By means of this equipment they communicate with public coast radiotelegraph stations on a tariffed basis.[3]

5. The petitioners contend that the needs of smaller vessels such as fishing vessels, pilot boats, and tug boats can be satisfied by a simple RTTY system rather than the more complex internationally standardized public correspondence NB-DP telegraphy system used by high seas vessels. In justification of their proposal, the petitioners point out that the requested radioprinter system would provide:

a. More efficient use of the radio spectrum by using a communication mode more capable of handling a high volume of message traffic;

b. Proportionate relief for the congestion now being experienced on the frequencies authorized for voice communication;

c. Some degree of privacy as compared with the single sideband voice communication mode; and

d. A relatively low cost system which would enable direct communications between limited coast stations and their associated vessels.

6. We believe that the proposal made by the petitioners has merit and that the simple RTTY system benefits seem realistic and attainable. We also believe there is a valid need for this additional mode of communications and consider that the public interest would be served by the authorization of a simpler RTTY system for the use of smaller vessels.

7. The simpler RTTY system we are proposing would not conform to the common standards which are necessary for international NB-DP public correspondence. This dictates that the proposed system use frequencies different from those now available for NB-DP in the maritime mobile service. We are proposing, therefore, that

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[1] Limited coast stations serve the operational and business needs of ships and are not open to public correspondence. Such stations are normally licensed to owners/operators of radio equipped vessels.

[2] See Report and Order, PR Docket No. 82–828, released November 15, 1983, 48 FR 53118.

[3] Public coast stations are open to public correspondence and are licensed to provide a communication service to ships at sea on the basis of a filed tariff.

frequencies in the shared bands which are available to the maritime mobile service as a result of recent Commission action,[4] be used to satisfy the simpler RTTY system for smaller vessels. We believe the shared bands can provide adequate numbers of frequencies to serve this requirement of ships under 1600 gross tons. It is envisioned that applicants for the proposed radioprinter system will have the responsibility to select and propose specific frequencies for use. The Commission will then initiate the frequency coordination process. In view of the current extensive and varied use of frequencies in these shared bands, satisfactory coordination may be difficult.

8. Accordingly, we propose to amend Parts 81 and 83 of the Commission's rules as set forth in the attached Appendix to provide for the use of radioprinter by vessels of less than 1600 gross tons.

9. The proposed amendments to the Commission's rules set forth in the attached Appendix are issued under the authority contained in Sections 4(i) and 303(b), (c), (e), (g), and (r) of the Communications Act of 1934, as amended.

Comments

10. Under procedures set out in § 1.415 of the Rules and Regulations, 47 CFR 1.415, interested persons may file comments on or before April 2, 1984, and reply comments on or before April 17, 1984. All relevant and timely comments will be considered by the Commission before final action is taken in this proceeding. In reaching its decision, the Commission may take into consideration information and ideas not contained in the comments, provided that such information or a writing indicating the nature and source of such information is placed in the public file, and provided that the fact of the Commission's reliance on such information is noted in the Report and Order.

11. In accordance with the provisions of § 1.419 of the Rules and Regulations, 47 CFR 1.419, formal participants shall file an original and 5 copies of their comments and other materials. Participants wishing each Commissioner to have a personal copy of their comments should file an original and 11 copies. Members of the general public who wish to express their interest by participating informally may do so by submitting one copy. All comments are given the same consideration, regardless of the number of copies submitted. All documents will be available for public inspection during regular business hours in the Commission's Public Reference Room at its headquarters in Washington, D.C.

12. For purposes of this non-restricted notice and comment rulemaking proceeding, members of the public are advised that *ex parte* contacts are permitted from the time the Commission adopts a notice of proposed rulemaking until the time a public notice is issued stating that a substantive disposition of the matter is to be considered at a forthcoming meeting or until a final order disposing of the matter is adopted by the Commission, whichever is earlier. In general, an *ex parte* presentation is any written oral communication (other than formal written comments/pleadings and formal oral arguments) between a person outside the Commission and a Commissioner or a member of the Commission's staff which addresses the merits of the proceeding. Any person who submits a written *ex parte* presentation must serve a copy of that presentation on the Commission's Secretary for inclusion in the public file. Any person who makes an oral *ex parte* presentation addressing matters not fully covered in any previously-filed written comments for the proceeding must prepare a written summary of that presentation; on the day of the oral presentation, that written summary must be served on the Commission's Secretary for inclusion in the public file, with a copy to the Commission official receiving the oral presentation. Each *ex parte* presentation described above must state on its face that the Secretary has been served, and must also state by docket number the proceeding to which it relates. See generally, § 1.1231 of the Commission's rules, 47 CFR 1.1231.

13. The rules proposed herein would provide for the use of radioprinter by vessels of less than 1600 gross tons. It is intended that the service rendered under these rules would expand the modes of communication available to vessels of this category. At the option of the user, the proposed rules could result in equipment being added to these vessels. However, no additional equipment or expanded service would be mandated by these rules. Therefore, pursuant to the Regulatory Flexibility Act of 1980, 5 U.S.C. 605(b), we certify that the proposed rules will not, if promulgated, have a significant economic impact on a substantial number of small entities.

14. Regarding questions on matters covered in this document, contact Robert E. Mickley, (202) 632-7175.

15. It is ordered, That a copy of this Notice of Proposed Rule Making shall be sent to the Chief Council for Advocacy of the Small Business Administration.

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

Federal Communications Commission.

William J. Tricarico,

Secretary.

Appendix

Parts 81 and 83 of Chapter I of Title 47 of the Code of Federal Regulations are proposed to be amended as follows:

PART 81—STATIONS ON LAND IN THE MARITIME SERVICES AND ALASKA-PUBLIC FIXED STATIONS

Three new §§ 81.374, 81.376 and 81.378 are added, to read as follows:

§ 81.374 Frequencies available for radioprinter.

(a) Frequencies assigned to limited coast stations for radioprinter use will be taken from those non-exclusive frequency bands listed below which are shared among several services including the Maritime Mobile Service:

kHz

2107–2170	3155–3400	5060–5450
2194–2495	4438–4650	5730–5950
2505–2850	4750–4850	7300–8100

(b) Each assigned frequency is available on a shared use basis only, not for the exclusive use of any one station or licensee. All station licensees must cooperate to minimize interference and obtain the most effective use of authorized frequencies.

(c) Frequencies requested and the names of ships to be served must be included on the application.

§ 81.376 Nature of service and supplemental radioprinter eligibility.

(a) Limited coast stations which use radioprinter may transmit to authorized ship stations aboard vessels of less than 1600 tons gross tonnage.

(b) A radioprinter authorization for a limited coast station may be issued to the owner or operator of a vessel of less than 1600 tons gross tonnage, a community of vessels, or an association whose members operate vessels of less than 1600 tons gross tonnage.

(c) Limited coast station licensees must provide copies of their license to all vessels with which they are authorized to conduct radioprinter operations.

[4] The Report and Order in General Docket 80-739, released December 8, 1983, FCC 83-511, the United States Table of Frequency Allocations to implement the Final Acts of The World Administrative Radio Conference, Geneva, 1979.

§ 81.378 Technical radioprinter requirements.

The technical provisions of Subpart E of this part shall apply to radioprinter operations except as follows:

(a) CCITT Alphabet No. 2 (Baudot) or No. 5 (USASCII) may be employed.

(b) The keying speed must not exceed 300 bits per second.

(c) The operational mode must be single frequency simplex.

PART 83—STATIONS ON SHIPBOARD IN THE MARITIME SERVICES

§ 83.339 [Redesignated as § 83.333]

1. The section currently designated § 83.339 is renumbered § 83.333.

§ 83.340 [Redesignated as § 83.334]

2. The section currently designated § 83.340 is renumbered § 83.334.

§ 83.341 [Redesignated as § 83.335]

3. The section currently designated § 83.341 is renumbered § 83.335.

4. Five new §§ 83.337, 83.339, 83.341, 83.343, and 83.345 are added, to read as follows:

§ 83.337 Frequencies available for radioprinter.

(a) Frequencies assigned to ship stations for radioprinter use will be taken from those non-exclusive frequency bands listed below which are shared among several services including the Maritime Mobile Service:

kHz

2107–2170	3155–3400	5060–5450
2194–2495	4438–4650	5730–5950
2505–2850	4750–4850	7300–8100

(b) Each assigned frequency is available on a shared use basis only, not for the exclusive use of any one station or licensee. All station licensees must cooperate to minimize interference and obtain the most effective use of authorized frequencies.

(c) Ship stations may conduct radioprinter operations with limited coast stations based upon frequency selection guidance received from the limited coast station.

§ 83.339 Nature of service and supplemental radioprinter eligibility.

(a) A ship station is eligible to conduct radioprinter operations if the vessel is associated with a limited coast station authorized to conduct radioprinter operations.

(b) Ship radioprinter communications may be conducted only with the limited coast station with which the ship is associated.

(c) Ships authorized to communicate by radioprinter with a given limited coast station may also conduct intership radioprinter operations.

(d) Radioprinter communications may only be authorized aboard ships of less than 1600 tons gross tonnage.

§ 83.341 Authority for radioprinter operations.

Licensed ship radio stations will operate under the authority of the limited coast station license which lists the vessels authorized to conduct radioprinter operations with that station. A copy of the limited coast station license must be posted at the principal operating location of the ship radio station.

§ 83.343 Technical radioprinter requirements.

The technical provisions of Subpart E of this part shall apply to equipment used aboard ship to provide radioprinter communications, except as follows:

(a) CCITT Alphabet No. 2 (Baudot) or No. 5 (USASCII) may be employed.

(b) The keying speed must not exceed 300 bits per second.

(c) The mode of operation must be single frequency simplex.

§ 81.345 Authorized radioprinter communications.

Only those communications which concern the business and operation of the vessel are authorized.

[FR Doc. 84-4348 Filed 2-16-84; 8:45 am]

BILLING CODE 6712-01-M

INTERSTATE COMMERCE COMMISSION

49 CFR Parts 1002, 1011, 1152, 1177, 1180 and 1182

[Ex Parte No. 246 (Sub-No. 2)]

Fees for Services Performed in Connection With Licensing and Related Services

AGENCY: Interstate Commerce Commission.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Interstate Commerce Commission (ICC) is proposing to amend its regulations to establish fees for services and benefits provided by the Commission under its jurisdictional statute. The Commission is authorized by the Independent Offices Appropriation Act of 1952 (IOAA) to establish fees for services and benefits it provides. A report issued by GAO in 1983 recommended that the Commission revise and update its current fees and look at certain other services for which fees are not assessed to determine whether such items should be included in the fee schedule. The amendments proposed in this proceeding update the Commission's current fee schedules found at 49 CFR Part 1002.1, 1002.2(d) and also add new fee items.

DATES: The Commission has been required by the Congress to issue final rules on or before May 1, 1984. Therefore no extension of the comment period will be permitted Comments must be submitted by March 19, 1984.

ADDRESS: An original and 15 copies should be sent to: Ex Parte No. 246 (Sub-No. 2), Case Control Branch, Room 1312, Office of the Secretary, Interstate Commerce Commission, Washington, DC 20423. Also copies of the additional cost study material can be obtained upon request from: Office of the Secretary, Room 2215, Interstate Commerce Commission, Washington, DC 20423.

FOR FURTHER INFORMATION CONTACT: Cost Study Information, Paul Meder (202) 275–7457, Susan Maslar (202) 275–7548. Other Information, James H. Bayne (202) 275–7428, Kathleen King (202) 275–7429.

SUPPLEMENTARY INFORMATION:

Summary

In this proceeding, we propose to adjust many existing fees and establish other new ones. The following discussion addresses types of fees, levels of fees, and proposed exceptions. Appendix A contains the proposed rules, including proposed fees. Appendix B contains the results of the cost analyses on which we relied. Additional work papers are available from the Secretary's Office upon request.

The proposed fee items in Appendix A are subject to the caveats discussed in this notice. First, a number of costs are questionable and certain functions have not been separately studied. Accordingly, additional studies will be undertaken during the comment period. Second, we have serious reservations about the lawfulness or propriety of charging a fee for a number of items in Appendix A. These issues are discussed below. Third, certain of the proposed fee categories are overlapping or confusing due to combining existing categories with GAO suggestions. We intend to correct this in the final rules and seek comment on which fees to consolidate.

Background

The Commission, as an independent regulatory agency, is authorized under the Independent Offices Appropriation Act of 1952, 31 U.S.C. 483a [IOAA] to establish fees for services and benefits that it provides. The IOAA provides that:

[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 primary guidance for implementation of this Act is set forth in Bureau of the Budget Circular A–25 *User Fees* (September 23, 1959). That circular states that the general policy that "a reasonable charge . . . should be made to each identifiable recipient for a measurable unit or amount of the Government services or property for which there derives a special benefit . . ." (Circular A–25 at 1). Examples of special benefits include patents or licenses to carry on specific business which enable the beneficiary to obtain more immediate or substantial gains than those which the general public obtain, or certificates of necessity and convenience for airline routes which assure public confidence in a business.

These guidelines were used by the Commission when it established its first user fee schedule in 1966 in *Regulations Governing Fees For Services,* 326 I.C.C. 573 (1966). That decision was modified in a supplemental decision at 329 I.C.C. 814 (1967). The last major revision of the Commission's user fee schedule occurred in *Regulations Governing Fees For Services,* 339 I.C.C. 555 (1971). At that time the Commission conducted cost studies to determine the processing costs for its various fee items. Also, the Commission adopted fees which represented about one-half of the average costs incurred by the Commission, because the Commission then believed that approximately 50 percent of the benefit for performing the services accrued to the public at large.

Since 1971 there have been several court decisions interpreting the IOAA and setting forth the general standards that agencies must meet in establishing fees under this Act. In 1974, the Supreme Court stated that a fee may only be charged for a special benefit provided to identifiable beneficiaries measured by its value to the recipient. It also stated that the special benefit must have some connection between the agency and the recipient other than the mere fact of regulation or the adoption of some practice of general benefit to the industry as a whole. The Court also upheld that portion of Circular A–25 stating that there could be no charge where the identity of the beneficiary is obscure and the services can be primarily considered to benefit the general public. See *National Cable Television Association* v. *United States* 415 U.S. 336 (1974) and *FPC* v. *New England Power Co.,* 415 U.S. 345 (1974).

In 1976, the U.S. Court of Appeals for the District of Columbia rendered a series of decisions which provided additional guidance for agencies adopting or revising fee schedules issued under IOAA. See *National Cable Television Association* v. *F.C.C.,* 554 F2d 1094 (D.C. Cir. 1976); *Electronic Industries Association* v. *F.C.C.,* 554 F.2d 1109 (D.C. Cir. 1976); and *Capital Cities Communications Inc.* v. *F.C.C.,* 554 F.2d 1135 (D.C. Cir. 1976). In those decisions, the court set out the following guidelines:

1. An agency may impose a reasonable charge on recipients for an amount of work for which they benefit. The fees must be for specific services to specific persons. These services include the issuance of a license and assistance in complying with a statutory duty such as tariff filing.
2. The fees may not exceed the cost to the agency in rendering the service.
3. An agency may recover the full cost of providing a service to an identifiable beneficiary regardless of the incidental public benefits which may flow from service.

The agency, when it proposes a fee, must also meet the requirements set out in *Electronic Industries Association* v. *F.C.C.,* 554 F.2d at 1117:

1. The agency must justify the assessment of a fee by a clear statement of the particular service or benefit for which it seeks reimbursement.
2. The agency must calculate the cost basis for each fee by:
   a. Allocating specific expenses of the cost basis of the fee to the smallest practical unit.
   b. Excluding expenses that service an independent public interest; and
   c. A public explanation of the specific expenses included in the cost basis for a particular fee, and an explanation of the criteria used to include or exclude a particular item.
3. The fee must be set to return the cost basis at a rate that reasonably reflects the cost of the services performed and value conferred on the payor.

In 1982, the United States General Accounting Office (GAO) conducted a review of the ICC's policies and procedures for assessing user fees. That review culminated in a report issued by GAO on January 13, 1983 entitled "Interstate Commerce Commission Should Revise Its User Fee Program" (GAO/RCED 83–55). The GAO recommended that the Commission revise and update its current fees and look at certain other services for which fees are not assessed to determine whether such items should be included in the fee schedule.

In response to this report, the Commission established an agency-wide User Fee Task Force. The Task Force was assigned the responsibility of developing cost data for existing fee items, recommending other items for inclusion in the fee schedule, and revising the Commission's procedures with respect to user fees.

A 13-week time and motion study of all current fee items and a number of other items identified by use and suggested by GAO was conducted. Interviews also were conducted with staff to determine the processing time that would be needed for those items which were not received during the cost study period. One item, tariff filings was the subject of a one-week special study because of the large volume of items filed daily. These studies were used to approximate direct labor costs. The Task Force also developed a governmental overhead cost percentage of 46.3 percent which includes 20 percent for Leave and Holidays, 20.4 percent Retirement and Disability and 5.9 percent Health, Life Insurance and Social Security. The basis of these calculations is found in Office of Management and Budget Circular A–76 *Policies for Acquiring Commercial or Industrial Type Products and Services Needed by the Government.* It also established the general and administrative cost which includes estimated departmental overhead costs for the Offices and Bureaus included in the study at 19.92 percent. Costs were also determined for **Federal Register** and *ICC Register* publication and environmental assessments, when applicable.

Qualifications to the Cost Study Results

The cost study involved tracking the staff time expended on various items received by the Commission in a 13-week period beginning on May 23, 1983 and ending on August 19, 1983. The cost data were collected by attaching a specifically designed abstract to each item as it was received. Each employee who worked on an item recorded the amount of time he or she spent on the item. The work was classified into either clerical, professional, or supervisory based on the individual's grade level and function. The employee provided information from which his or her actual

hourly pay rate could be determined. A computer program was developed which analyzed these data and developed direct labor costs for these items processed during the cost study period.

The cost study produced questionable data for certain items. It appears that many of the items received during the cost study period may not have been representative of their respective categories. In some instances, too few items may have been received to make a valid study. The 13-week period also clearly was not long enough to capture complete data for some items, because the proceedings were not completed within the 13-week period. Therefore, the data collected are not representative of the staff time normally spent on such proceedings. Also, it appears that some of the initial staff estimates were conservative.

The items which we believe are especially questionable are shown with an asterisk in the proposed fee listing in Appendix A. We invite comment on these and other items. Underlying work papers will be made available upon request. We consider fees for these items as preliminary figures which are subject to adjustment based on further study by the Task Force. We will continue to develop more complete data on the questionable items during the comment period. Our Task Force will review our historical records for such procedures and conduct follow-up interviews with our senior staff.

We believe that our proposal to assess fees for these items is valid even if the exact dollar amount is not known at the time proposed rules are issued. Our intent is clear and we invite comment on our methodology.

Proposed Fees

A. Types of Fees

Our Task Force has completed a review of all activities performed by the Commission. The activities in Appendix A of this decision appear to be the type of activities which may be considered for inclusion in a fee schedule issued under the authority of the IOAA and Circular A–25.

The majority of these activities is the "Proceedings" group, which includes most applications or petitions on which the Commission must take formal action. The second group includes tariff filings and formal and informal proceeding related to tariffs. The third group includes our clerical and reproduction services such as certifications, photocopying and computer services and other services such as adding names of interested persons to service lists and personal delivery of decisions to the rail carriers' Washington, D.C. agents.[1] The remaining items cover a variety of subjects, which range from acceptance and publication of notices through which a person may qualify for the intercorporate hauling exemption to informal opinions rendered by our staff on various subjects.

There are many difficult questions that need to be resolved before the Commission can establish a revised fee schedule that takes into consideration all of these activities and services. The first major issue is whether there should be a separate fee for opposed and unopposed licensing and certain rate cases.

We are able to isolate the additional costs for opposed temporary and permanent motor carrier and related applications and protests to tariffs. Proposed fees based on our initial cost estimate are found at items (1), (8), (64) and (71). Tentatively, we have proposed to charge a fee for such protests. In the licensing area, one could argue there is specific benefit to protestants which would allow us to assess such a fee. Similar claims could be made with regard to protests of tariffs. We would like to receive public comment on this issue. If adopted, applicants would be charged the average cost of an unopposed filing. Each protestant would pay the fee computed in our cost study. The fee is based on the additional costs incurred in protested cases divided by the average number of protestants.

Another problem area involves proceedings filed with different titles [e.g., declaratory orders (item 63) and complaints item (60); and proposed items (76) and (86)] but which seek the same relief. In the first example both procedures seek an agency adjudication on the legality of a particular action or the correctness of an interpretation. In which areas are separate categories necessary? A number of proposed fees may also overlap as now worded. See, e.g., items (44) and (48). At this point, we propose to consolidate a number of these categories to avoid such fee inequities.

Another relevant issue is whether separate categories should exist for requests for waiver and exemption. The term waiver is intended to denote a request that the agency dispense with a particular *regulation* in a specific proceeding. The term exemption refers to a request for the particular *statutory* exemption. Proposed fee item (62) is intended to cover general waiver requests. Specific waiver requests such as special permission—proposed fee item (73)—and requests for wiaver of lease and interchange requirements—proposed fee item (79)—were maintained because they are handled by specific procedures by offices other than the Office of Proceedings. We would like the public to comment on whether these distinctions should continue or whether it would be simpler to develop one fee item to cover any request for waiver or exemption. While we wish to develop a cost-specific fee schedule, we also desire a simple one that is easily applied.

Another issue is whether we should establish a fee for petitions for rulemaking.[2] We do not believe that a fee should be established for this type of proceeding because of its broad public significance and quasi-legislative nature. The public is the primary beneficiary of such actions. While we are proposing a fee for petitions for exemptions under 49 U.S.C. 10505, we only would impose the fee for exemptions which benefit only one or two persons, such as a particular trackage rights exemption. No fee would be assessed for petitions for exemption of general scope which are handled as rulemakings. If a private exemption proceeding is expanded into a case of national significance, we proposed to refund the filing fee.

Another area in which a cost study was done but we are uncertain whether to assess a fee is tariff (and contract) filing. We question whether there is any private or public benefit in this requirement, and seek comment on this analysis. If a charge is assessed, a quarterly billing system is proposed.

For all the areas for which fees are proposed, the most difficult issue is whether the benefits from the activity or service flow to an identifiable private beneficiary. The public is requested to comment on this issue of private versus public benefit. We also solicit comment as to whether any of the proposed items do not confer any benefits—public or private. Any such areas identified could qualify for administrative change or a recommendation to Congress for statutory modification.

As to the third group, clerical functions, we are also proposing modification of our regulations in 49 CFR 1002.1 *Fees for record search,*

[1] Since there are a substantial number of decisions which must be served in this manner each year, it may not be feasible to issue bills with each delivery. We are exploring the possibility of establishing a quarterly billing system for such deliveries. We would like to receive public comment on the best method of billing for this service.

[2] While we do not propose a fee for petitions for rulemaking, we developed costs for that item during our cost study which are included at the end of the cost study.

copying, certification, and services in connection therewith, as set forth in Appendix A. Our modifications include establishing fees for search time for records based on the actual grade level of the researchers rather than the average fees for clerical and supervisory and professional personnel now used in 49 CFR 1002.1(f)(1). Our proposal also applies these search and copying fees, which previously applied to search involving records not considered public under the Freedom of Information Act, to record searches conducted for public records. Our fees for certifications, photocopying, and computer services will be modified to reflect current costs of those operations. These fees only include the Commission's direct cost as required by 5 U.S.C. 552.

Our Task Force has prepared preliminary cost studies on all the items listed in the proposed fee schedule. While we are not satisfied with all of the results, as previously discussed, these figures will serve as a starting point. The level of the fee is secondary to the propriety of charging the fee. We will continue to develop more precise data during the comment period. The GAO study and the Congressional interest it generated made it clear that we must establish additional fee items. Many of the proposed items reflect changes brought about by the Motor Carrier Act of 1980, the Staggers Rail Act and The Bus Regulatory Reform Act of 1982. We would like the public to comment on whether these items are appropriate items to be included in the Commission's fee schedule.

There are several items that the GAO report listed as services for which we are not proposing to charge a fee. Our cost study showed that requests for reference assistance average less than $1.00 in direct costs. We foresee a collection problem here because most inquiries are telephone requests. The cost of billing for these services would be more than the charge for the service itself. Under Circular A–25, it is acceptable not to assess a fee when the incremental cost of collecting the fee would be an unduly large part of the receipts. See Circular A–25 at 3. We will reserve the right to charge individual requestors for any copying services which we may perform or for staff time as set forth in 49 CFR 1002.1 for substantial research requests.

We have also evaluated the follow-up activities relating to the filing of delinquent reports. That service is not a service which benefits an identifiable beneficiary.

Our Task Force originally proposed the addition of a fee item for Life Analyses Studies-Railroads. However, this service is no longer provided by the Depreciation Branch of the Bureau of Accounts. Therefore, no fee is proposed.

We are required by the IOAA to base our fees on the smallest practical unit of a category of service or benefit. In *Electronic Industries Association* v. *F.C.C.*, 554 F.2d at 1116–17, the Court of Appeals for the D.C. Circuit stated that it expected the smallest practical unit would be a class of carriers, applicants, grantees or service. We have done this by revising our current fee schedule to provide separate proposed fees for various types of proceedings and services. For certain rail items our proposed fee schedule also provides separate fees for the different classification of applications see e.g., regulations at 49 C.F.R. 1180.2.

The public should inform us if any of our proposed fee item descriptions are confusing and if alternative descriptions or categories would be helpful. The listing in Appendix A should be viewed as a starting point. We are willing to consider any changes in the description or listing of the items which would make the fee schedule easier for the public to use.

B. Level of Fees

In the past, the Commission arbitrarily allocated 50 percent of the cost of such activities to the public interest. We do not believe that formula is appropriate today. The guidance that the courts have given us in this area shows that an agency should as a general rule set fees to recover the full cost of processing the application or petition. We believe that to fulfill our responsibility under IOAA, and A–25 policy we must set our fees at the full cost recovery levels unless a specific A–25 policy would allow a lesser assessment. The fees that we propose include the direct labor costs, governmental overhead and general and administrative costs (including operational overhead) and additional costs where appropriate, such as **Federal Register** or *ICC Register* publication costs and environmental assessments performed by our staff.

It is appropriate to include governmental overhead and general and administrative costs. As the Fifth Circuit has stated:

> The individual (employee) must be supplied with working space, heating, lighting, telephone service and secretarial support. Arrangements must be made so that [he is] hired, paid on a regular basis and provided specialized training courses. These and other costs such as depreciation and interest on plant and capital equipment are all necessarily incurred in the process of reviewing an application." *Miss. Power & Light* v. *U.S. Nuclear Regulatory Commission*, 601 F2d 223 (5th Cir. 1979).

The direct labor costs in our studies are intended, with one exception, to include all staff work, including clerical, professional and supervisory staff time, performed on the application or petitions. We did not include the Office of Hearings costs in the proposed fees. Few Commission cases now are the subject of oral hearings. Hearings are reserved for major complex cases, such as rail merger cases or controversial cases such as contested abandonments which require public participation. The length of hearings varies from case to case and it is impossible to estimate the cost in advance. A hearing often is scheduled due to widespread public opposition to a proceeding, and we do not believe it appropriate to charge this cost to the applicant. The extra cost has been factored in the case of a major or significant rail finance transaction. See discussion, infra.

As we discussed in the previous section, "Qualifications to The Cost Study Results," we are continuing to verify certain items to insure that all staff time spent on a particular type of application or petition is included in the direct labor costs.

A review of Appendix A will reveal many changes in existing fee levels as well as many new fees. Perhaps the most significant development is the fee reduction for license-related matters. Motor carrier licensing is our largest work area by far and affects the greatest number of companies and individuals. The fee reduction is possible due to the procedural and substantive changes of the Motor Carrier Act and certain administrative efficiencies.

C. Exceptions to full cost recovery.

While we intend to establish fees which include all the recoverable costs associated with a particular benefit or service provided by the Commission, we recognize that in certain instances this is not possible. Therefore, we are proposing to include some special exceptions to these proposed fees.

Circular A–25 allows agencies to make exceptions to the general policy of full cost recovery under the following circumstances:

* * * * *

> (3) The recipient is engaged in a non-profit activity designed for the public safety, health, or welfare.
>
> (4) Payment of the full fee by a State, local government or non-profit group would not be in the interest of the program. (Circular A–25 at 4)

The first exception is that none of our proposed filng fees will apply to other

federal government agencies which institute proceedings at the Commission or which participate in our cases. We also believe that the public interest warrants the exemption of all state and local governmental entities from 50 percent of our proposed filing fees. A state or local government entity that files an application or pleading with the Commission is representing the interest of its citizens. While this clearly is a private interest, there is also a public benefit.

We believe that it is also appropriate to exempt an individual filing on his or her own behalf from most of our filing fee requirements. However, this exemption would not apply to motor carrier, or water carrier permanent or temporary authority applications or permanent broker and freight forwarder authority.

We are also considering providing lower fees or total fee exemption for non-profit citizen groups which seek to participate in our cases. However, it is difficult to devise an exception that would distinguish between an ad-hoc, non-profit group which is organized to participate in a particular Commission proceeding and a permanent, staffed association which serves a particular group. We would like the public to comment on whether a better definition can be developed so that an exception can be provided for the grass-roots citizens group. Also, should it make a difference if the group is represented by counsel?

When fees are established, the Commission must review the fairness and equitability of the proposed fee in terms of the value to the recipient. There are several fees which require adjustment under this principle. One fee is proposed item (5), a petition to renew authority to transport explosives under 48 USC 10922 or 10923. We believe that the fee for that process should be the same as the fee for a request for modification of an operating authority to make ministerial correction, proposed fee item (4).

The other fee is proposed fee item (83), petition for reinstatement of a dismissed operating rights application. We believe that the fee for this item should be the same as the filing fee for an initial operating rights request, proposed fee item (1).

The processing costs for several of the proposed fee items, specifically items 46 through 49 relating to railroad merger proceedings vary based upon the type of transaction involved. Our Task Force obtained staff estimates of the direct labor cost for these items broken down by the transaction classification set forth in 49 CFR 1180.2. Since there is a substantial difference in the processing time for each transaction type, we are proposing different fee levels for each type.

Our staff estimates for major and significant transactions also include the time devoted to directly related and responsive applications. Such applications expand the scope of the proceeding. The benefits from the handling of directly related or responsive applications flow to the parties filing those applications; therefore, the expenses associated with such applications must be excluded from our proposed fee for these items. We believe that generally 50 percent of the expenses in major and significant cases are attributable to directly related or responsive applications. Therefore, the fully distributed costs for major and significant transactions should be decreased by 50 percent.

One other adjustment needs to be made to the fee for major and significant transactions. We believe that a certain percentage of the expenses of these types of applications is attributable to the general public interest. Obviously, this cannot be quantified exactly. Thus, we propose arbitrarily apportioning a 25 percent reduction. Major transactions involve the merger of at least two class I railroads. In such cases the Commission must consider, among other matters, the effect of the proposed transaction on the adequacy of transportation service to the public and the interest of carrier employees. See 49 U.S.C. 11344(B). A significant transaction involves at least one class I railroad acting together with one or more other class I or class II railroads in a major market extension. Such a transaction would be either of regional or national transportation significance. In such a case the Commission must consider the impact of the transaction.

Therefore, the fees that we propose for major and significant merger transactions represent a reduction of total of 75 percent of the processing costs of these proceedings. The resulting proposed fees would be $100,000 for major transactions and $20,000 for significant transactions. Due to the substantial amount of the fees for major transactions, we are proposing to allow the applicant to remit the fee in four equal payments of $25,000 each. The first payment would be due when the application is filed. The remaining payments would be due in 3, 6, and 9 month intervals.

These adjustments will also affect proposed fee item 50, an application for determination of a fact of competition under 49 U.S.C. 11321(a)(2). Our estimates for that item were based on the similarity between that type of proceeding and a significant merger transaction. We believe that a similar 75 percent reduction is warranted in that type of proceeding because of the public interest issues. Therefore, we propose to reduce the proposed fee for that item to $20,000.

We tentatively conclude that no reductions are warranted for the proposed fees for minor or exempt transactions. Directly related or responsive applications are not filed in this type of proceeding. These types of transactions also do not involve primarily public interest issues. Therefore, we propose that the fees for those types of transactions will remain at the fully distributed cost level. However, we would like to receive comments on this proposal. We especially seek comment on the issue of whether the fee for these exemptions plus other types of exemptions (both rail and motor carriers) should be set at less than the fully distributed cost levels. It may be argued that these exemptions benefit all through administrative efficiency and should be encouraged or that we should consider broader class exemptions.

As discussed above, we propose to modify our current practice and assess a separate fee for directly related or responsive applications or for notices of exemptions. See 49 CFR 1180.4(c). We propose a fee of $1,750 for each directly related or responsive application. The fee for these of exemptions is proposed to be $480.

One additional minor modification also needs to be discussed. Currently the Commission's abandonment regulations in 49 CFR 1152.23 provide for a separate fee for summary applications. We propose to delete that provision from 49 CFR 1152.23 since our cost study figures have provided us with the actual costs of processing abandonments.

We believe that there are also public policy considerations which warrant setting lower fees for proposed fee item (18), petition to discontinue motor carrier of passenger transportation in one state, and items (68) and (69), petition for review of state regulation of intrastate rate, rules or practices filed by interstate rail and motor passenger carriers, pursuant to 49 U.S.C. 11501. These three proceedings involve Federal preemption of decisions of state regulatory agencies. The Commission stands in the position of an appellate court for such state actions to determine whether the state actions are in conformance with federal practices and are not an unreasonable burden on interstate commerce. Congress saw a

special need to create this extraordinary remedy and, accordingly, we believe that the fees for these items should be $500, so that the carriers will not be deterred from pursuing their special Congressionally-granted remedy.

All of our proposed fee items, except the hourly search rates, and filing fees of less than $30 have been rounded down to the nearest ten dollars. Filing fee items of less than $30 have been rounded down to the nearest dollar.

Proposed fees will be adjusted in the final rules for new general schedule wage increases.

Fee Collections

Several modifications to 49 CFR 1002.2, *Filing Fees,* are warranted. Our policy regarding filing fees that are not refundable is proposed to be modified to reflect current Commission policy of allowing applicant to credit filing fees or use the fees from rejected applications to file replacement applications.

A new paragraph also is proposed to be added to express the Commission's policy that generally filing fees will not be waived for individual applications or proceedings. However, we will establish a waiver provision through which an applicant or petitioner can apply for waiver of fees. It is our intent only to grant fee waivers in the most unusual circumstances. We will use the same waiver standard that we currently use for waiver of fees and charges for searches and copying of records not considered public under the Freedom of Information Act. That standard allows waiver ". . . if such waiver is found to be in the best interest of the public, or if a fee or charge would impose an undue hardship upon the requestor." See 49 CFR 1002.4. We will delegate responsibility for fee waiver decisions to the Secretary of the Commission, who will consult with any involved office. The public is invited to submit comments on whether this is an appropriate standard to establish. Alternative standards will be considered, if submitted.

Additional language is being proposed to state that a filing is deficient if the appropriate fee is not submitted. Such a deficient application can be *rejected* by the Commission. *We are proposing to consider the filing date of the application as the date the appropriate fee is submitted* in those instances in which an application initially is submitted without a fee or with an incorrect fee. We would like the public to comment on how strictly this policy should be applied. As a minor matter, we will also modify our rules to specify the type of conversion referred to in this paragraph as a conversion of a certificate of registration only not a conversion of a permit to a certificate of public convenience and necessity.

Annual Updating of Fees

The Commission also proposes to update its user fees annually to reflect current Commission costs. An updated fee schedule will be published in the **Federal Register** each year, on or about August 30th. The new fee schedule will become effective on October 1st of each year. The fees will be updated by applying the formula set forth in proposed section 49 CFR 1002.2.

Regulatory Flexibility Analysis

The Regulatory Flexibility Act (RFA) (5 U.S.C. 601–612) requires us to issue an initial regulatory flexibility analysis, and receive public comment on that analysis. Our analysis must describe the impact the proposed rule will have on small entities.

Our proposed proposal will have a significant effect on small entities. However, this impact generally will be beneficial. Our application fee for motor carrier authority will decrease rather than increase. This will benefit all small carriers since this is the major contact that they have with the Commission. Our fee for owner-operator applications also will decrease which should enable more owner-operators to participate more directly in regulated transportation. We have proposed separate rail and non-rail fees in many instances, which will again benefit small entities whose filing fees will no longer subsidize the more complex proceedings. We propose to adopt a fee waiver procedure, which should allow small businesses to continue to use Commission procedures.

In the rail fees we have provided separate fee categories in the merger, consolidation and purchase applications so that small rail carriers will not be burdened with the fees that correspond to major rail proceedings.

These rules, as proposed, appear to represent the appropriate balance which would satisfy the purpose of both the IOAA and the RFA. However, this is the first time the Commission has had to revise its fee schedules and meet the requirements of the RFA. We welcome any alternative suggestions that the public may have.

List of Subjects in 49 CFR Parts 1002, 1011, 1152, 1177, 1180, 1182

Administrative practice and procedure.

Authority: 5 U.S.C. 553, 31 U.S.C. 483a, and 49 U.S.C. 10321.

Dated: February 10, 1984.

By the Commission, Chairman Taylor, Vice Chairman Andre, Commissioners Sterrett and Gradison.

James H. Bayne,

Acting Secretary.

Appendix A [1]

Title 49 of the Code of Federal Regulations would be amended as follows:

PART 1002—FEES

(1) In § 1002.1, the heading, introductory text and paragraphs (a)–(c), (e) and (f) would be revised and paragraph (d) added to read as follows:

§ 1002.1 Fees for records search, copying, certification, and related services.

Certifications and copies of such tariffs, reports and other public records and documents on file with the Interstate Commerce Commission, as may be practicable to furnish, as well as searches and copying of records not considered public under the Freedom of Information Act (5 U.S.C. 552), will be furnished on the following basis:

(a) Certificate of the Secretary, $3.00.

(b) Services involved in examination of tariffs or schedules for preparation of certified copies of tariffs or schedules or extracts therefrom at the rate of $15.00 per hour.

(c) Services involved in checking records to be certified to determine authenticity, the clerical work, etc. Incidental thereto, at the rate of $11.00 per hour.

(d) Electrostatic copies of tariffs, reports, and other public documents, at the rate of $0.60 per letter size or legal size exposure. A minimum charge of $3.00 will be made for this service.

(e) The fee for search and copying services requiring ADP processing are as follows:

(1) A fee of $28.00 per hour for professional staff time will be charged when it is required to fulfill a request for ADP data.

(2) The fee for port minute time for the search will be set at the current rate set forth in the Commission's contract with our time sharing computer contractor. Information on those charges can be obtained from the Chief, Section of Systems Development, Interstate Commerce Commission, Washington, D.C. 20423.

[1] A number of the proposed fee levels for substantive activity are based on cost study data that are not considered representative. These items are starred and should not be relied upon. Further study is being undertaken and will be completed before May 1. We invite comment on other items that appear incorrect.

(3) Printing shall be charged at the rate of $.05 per page of computer generated output with a minimum charge of $.25. A charge of $25 per reel of magnetic tape will be made if the tape is to be permanently retained by the requestor.

(f) Search and copying services for records not considered public under the Freedom of Information Act are as follows:

(1) The search fee hourly rate will be based on the hourly rate of the individual or individuals who perform the search. Those hourly rates are set forth in the following table:

Grade	Rate
GS–1	$4.73
GS–2	5.15
GS–3	5.81
GS–4	6.51
GS–5	7.29
GS–6	8.12
GS–7	9.02
GS–8	9.99
GS–9	11.04
GS–10	12.16
GS–11	13.35
GS–12	16.01
GS–13	19.03
GS–14	22.49
GS–15 and above	26.45

(2) The fee for electrostatic copies shall be $0.60 per letter size or legal size exposure with a minimum charge of $3.00.

(3) The fee charged for ADP data is set forth in (e) above.

(4) No fee shall be charged for time spent reviewing documents to determine disclosability under the Freedom of Information Act. A fee may be charged for searches which are not productive and for searches for records or those parts of records which are determined to be exempt from disclosure.

* * * * *

(2) Section 1002.2 would be revised to read as follows:

§ 1002.2 Filing fees.

(a) *Manner of payment.* (1) All filing fees will be payable at the time and place the application, petition, notice, tariff, contract, or other documents is tendered for filing.

(2) Except as specified below, fees will be payable to the Interstate Commerce Commission by check drawn upon funds deposited in a bank in the United States or money order payable in U.S. currency.

(3) For those categories of cases for which there is an initial payment and subsequent quarterly direct billing, only the initial fee must be paid when the application is filed.

(b) *Deficiencies.* (1) Any filing that is not accompanied by the appropriate filing fee 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 that 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) *Fees not refundable.* Fees will be assessed for every filing in the type of proceeding listed in the schedule of fees contained in paragraph (f) of this section, subject to the exceptions contained in paragraphs (d) and (e) of this section. After the application, petition, notice, tariff, contract, or other document has been accepted for filing by the Commission, the filing fee will not be refunded, regardless of whether the application, petition, notice, tariff, contract, or other document is granted or approved, denied, dismissed, or withdrawn. If an application, petition, notice, tariff, contract, or other document is rejected by the Commission as incomplete or for some other reason, prior to docketing, the fee will be returned. If an application is rejected as incomplete after docketing, the applicant will be given the opportunity to file a replacement application with reference to the fee number assigned to the prior application and no additional fee will be required, but the fee will not be refunded.

(d) *Related or consolidated proceedings.* (1) Separate fees need not be paid on related applications filed by the same applicant which would be the subject of one proceeding, such as a single petition for modification of more than one certificate or permit held by the same person; a related plan of track relocation, joint use, purchase of trackage rights, and issuance of securities, however, such applications must be filed by the same applicant that filed the primary application; a motor common carrier acquisition application combined with a related section application for a certificate of public convenience and necessity; or the like. In such instances, the only fee to be assessed will be that applicable to the embraced proceeding which carries the highest filing fee as listed in paragraph (f) of this section; except that, directly related applications involving a transfer under 49 U.S.C. 10926 or an application on Form OP–1 for gateway elimination and/or a conversion of a certificate of registration and a certificate of public convenience and necessity the sole fee shall be the basic fee for the transfer application. However, the directly related application must be filed at the same time the primary application is filed.

(2) Each filing of an original or updated notice of intent to engage in compensated intercorporate hauling operations shall be considered a separate filing, and shall be subject to payment as described in paragraph (f)(12) of this section.

(3) Separate fees will be assessed for the filing of temporary authority applications as provided in paragraphs (f)(8) (9) and (10) of this section, regardless of whether such applications are related to an application for corresponding permanent authority.

(4) The Commission may reject concurrently filed applications, petitions, notices, contracts, or other documents asserted to be related and refund the filing fee if, in its judgment, they embrace two or more severable matters which should be the subject of separate proceedings.

(e) *Waiver of filing fees.* It is the general policy of the Commission not to waive filing fees except as described below:

(1) Filing fees are waived for an application or other proceeding which is filed by a federal government agency. Fifty percent of the applicable filing fees will be waived for a state or local government entity.

(2) All filing fees except for applications for motor carrier, or water carrier temporary or permanent operating authority and broker or freight forwarder operating authority will be waived for an individual applying on his or her own behalf.

(3) In extraordinary situations the Commission will accept requests for waivers in accordance with the following procedure:

(i) *When to request.* At the time that a filing is submited to the Commission the applicant may request a waiver or reduction of the fee prescribed in this part. Such request should be addressed to the Secretary.

(ii) *Basis.* The applicant must show the waiver or reduction of the fee is in the best interest of the public, or that payment of the fee would impose an undue hardship upon the requestor.

(iii) *Commission Action.* The Secretary will notify the applicant of the decision to grant or deny the request for waiver or reduction.

(f) Schedule of Filing Fees:

Type of proceedings	Proposed fees	Existing fees
PART 1: NON-RAIL-APPLICATIONS FOR OPERATING AUTHORITY OR EXEMPTIONS		
(1) An application for motor carrier or water carrier operating authority, water carrier exemption authority, a certificate of registration or an application for broker or freight forwarder authority	$*150	$350
Protest to permanent authority application	*190	None
(2) A fitness only application for motor common carrier authority under 49 U.S.C. 10922(b)(4)(E) or motor contract authority under 49 U.S.C. 10923(b)(5)(A) to transport food and related products	30	150
(3) A petition to interpret or clarify an operating authority under 49 CFR 1160.64	90	200
(4) A request seeking the modification of operating authority only to the extent of making a ministerial correction, a change in the name of the shipper or owner of a plant-site or the change of a highway name or number	27	None
(5) A petition to renew authority to transport explosives under 49 U.S.C. 10922 or 10923	27	5
(6) An application to remove restriction or broaden unduly narrow authority under 49 CFR 1165	90	350
(7) An application for authority to deviate from authorized regular route authority 49 U.S.C. 10923(a)	90	15
(8) An application for motor carrier or water carrier temporary authority under 49 U.S.C. 10928(b)	*70	60
Protest to a temporary authority application	*26	None
(9) An application for motor carrier emergency temporary authority 49 U.S.C. 10928(c)(1)	50	None
(10) An extension of the time period during which an outstanding application for emergency temporary authority as defined in 49 U.S.C. 10928(c)(1) may continue	12	10
(11) Request for name change of carrier, broker or freight forwarder	5	None
(12) A notice required by 49 U.S.C. 10524(b) to engage in compensated incorporate hauling including an updated notice required by 49 CFR 1167.4	70	150
(13) A notice of intent to operate under the agricultural cooperative exemption in 49 U.S.C. 10526(a)(5)	60	None
(14) [Reserved]		
(15) [Reserved]		
(16) [Reserved]		
PART II: NON-RAIL-APPLICATION TO DISCONTINUE TRANSPORTATION		
(17) A notice or petition to discontinue ferry service. 49 U.S.C. 10908	6,170	650
(18) A petition to discontinue motor carrier of passenger transportation in one state	500	350
(19) [Reserved]		
PART III: NON-RAIL-APPLICATIONS TO ENTER UPON A PARTICULAR FINANCIAL TRANSACTION OR JOINT ARRANGEMENT		
(20) An application for the pooling or division of traffic	730	100
(21) An application of two or more carriers to consolidate or merge their properties or franchises or any part thereof into one corporation for the ownership management and operation of the properties previously in separate management. 49 U.S.C. 11343(a)(1)	*830	700
(22) An application of a noncarrier to acquire control of two or more carriers through ownership of stock or otherwise	*830	700
(23) An application of a carrier or carriers to purchase, lease or contract to operate the properties of another, or to acquire control of another by purchase of stock or otherwise. 49 U.S.C. 11343(a) (2) and (3)	*620	700
(24) An application for approval of, or to amend, a non-rail rate association agreement. 49 U.S.C. 10706	7,110	300
(25) An application for temporary authority to operate a motor or water carrier. 49 U.S.C. 11349	*130	60
(26) An application to transfer, or lease of a certificate or permit, including a certificate of registration, and a broker license or change of control of companies holding broker's license. 49 U.S.C. 10926	*150	100
(27) A petition to transfer a water carrier exemption authorized under 49 U.S.C. 10542 and 10544 to a successor	120	100
(28) An application for approval of a motor vehicle rental contract. 49 CFR 1057.41(d)	120	30
(29) A petition for exemption under 49 U.S.C. 11343(e)	390	None
(30) [Reserved]		
(31) [Reserved]		
(32) [Reserved]		
PART IV: RAIL-APPLICATIONS FOR OPERATING AUTHORITY		
(33) An application for a certificate authorizing the construction, extension, acquistion, or operation of lines of railroad. 49 U.S.C. 10901	6,170	700
(34) An application filed under 49 U.S.C. 10910 Feeder Line Development Program	1,810	300
(35) [Reserved]		
(36) [Reserved]		
(37) [Reserved]		
PART V: RAIL-APPLICATIONS TO DISCONTINUE TRANSPORTATION SERVICES		
(38) An application for authority to abandon all or a portion of a line of railroad or operation thereof filed by a railroad except Consolidated Rail Corporation	1,620	700
(39) An application for authority to abandon all or a portion of a line of railroad or operation thereof filed by Consolidated Rail Corporation pursuant to the North East Rail Service Act	190	None
(40) A notice or petition to discontinue passenger train service	6,170	650
(41) [Reserved]		
(42) [Reserved]		
(43) [Reserved]		
PART VI: RAIL-APPLICATIONS TO ENTER UPON A PARTICULAR FINANCIAL TRANSACTION OR JOINT ARRANGEMENT		
(44) An application for use of terminal facilities or other application. 49 U.S.C. 11103	*5,180	150
(45) An application for the pooling or division of traffic. 49 U.S.C. 11342	3,570	100
(46) An application for two or more carriers to consolidate or merge their properties or franchises or a part thereof, into one corporation for ownership, management, and operation of the properties previously in separate ownership:		
(i) Major transaction	100,000	700
(ii) Significant transaction	20,000	700
(iii) Minor transaction	1,750	700
(iv) Exempt transaction	480	None
(v) Responsive application	1,750	None
(47) An application of a noncarrier to acquire control of two or more carriers through ownership of stock or otherwise. 49 U.S.C. 11343(a)(1):		
(i) Major transaction	100,000	700
(ii) Significant transaction	20,000	700
(iii) Minor transaction	1,750	700
(iv) Exempt transaction	480	None
(v) Responsive application	1,750	None
(48) An application to acquire trackage rights over, joint ownership in, or joint use of, any railroad lines owned and operated by any other carrier and terminals incidental thereto. 49 U.S.C. 11343:		
(i) Major transaction	100,000	700
(ii) Significant transaction	20,000	700
(iii) Minor transaction	1,750	700
(iv) Exempt transaction	480	None
(v) Responsive application	1,750	None
(49) An application of a carrier or carriers to purchase, lease, or contract to operate the properties of another, or to acquire control of another by purchase of stock or otherwise:		
(i) Major transaction	100,000	700
(ii) Significant transaction	20,000	700
(iii) Minor transaction	1,750	700
(iv) Exempt transaction	480	None
(v) Responsive application	1,750	None
(50) An application for a determination of fact of competition. 49 U.S.C. 11321 (a)(2) or (b)	20,000	100
(51) An application for approval of, or to amend a rail rate association agreement. 49 U.S.C. 10706	18,890	300
(52) An application for authority to hold a position as officer or director. 49 U.S.C. 11322	50	10
(53) An application to issue securities; an application to assume obligation or liability in respect to securities of another; an application or petition for modification of an outstanding authorization, or an application for exemption for competitive bidding requirements of Ex Parte No. 158, 49 CFR 1175.10. 49 U.S.C. 11301	*830	200

Type of proceedings	Proposed fees	Existing fees
(54) A petition for exemption (other than a rulemaking) filed by rail carriers. 49 U.S.C. 10505	*530	None
(55) An application for forced sale of bankrupt railroad lines	300	300
(56) [Reserved]		
(57) [Reserved]		
(58) [Reserved]		
(59) [Reserved]		
PART VII: OTHER PROCEEDINGS		
(60) A complaint alleging unlawful rates or practices of carriers	*340	None
(61) A complaint seeking or a petition requesting institution of an investigation seeking the prescription of division of joint rates, fares or charges. 49 U.S.C. 10705(f)(1)(A)	*400	700
(62) A petition for waiver from Commission regulations	*610	None
(63) A petition for declaratory order	*930	
(64) A request for motor, water, or freight forwarder nationwide or regional general rate increases, including major rate restructures	*3,650	
Protest to a general rate increase	*180	None
(65) A petition to define or redefine a commercial zone, or to remove the exemption applicable to commercial zone movements	180	150
(66) A petition for exemption from filing tariffs by water and bus carriers	110	None
(67) An application for shipper antitrust immunity. 49 U.S.C. 10706(a)(5)(A)	1,970	None
(68) Petition for review of state regulations of intrastate rates, rules or practices filed by interstate rail carriers. 49 U.S.C. 11501	500	None
(69) Petition for review of state regulations of intrastate rates, rules or practices filed by interstate bus carriers. 49 U.S.C. 11501	500	None
(70) Commission verification of the quarterly index applicable to rail rate increases	1,330	None
(71) Request for suspension or investigation of tariff matter	29	None
(72) An application for authority to establish released value rates or ratings under 49 U.S.C. 10730 except that no fee will be assessed for applications seeking such authority in connection with reduced rates established to relieve distress caused by drought or other calamitous visitation	330	200
(73) An application for special permission for short notice or the waiver of other tariff publishing requirements	30	20
(74) The filing of tariff and rate schedules including supplements	[1] *8	None
(75) Special docket application from rail and water carriers	[2] 40	None
(76) Informal complaint about rate application	160	None
(77) An application for original qualification as an insurer, surety or self-insurer	[3] 65	65
(78) A service fee for insurer, surety or self-insurer accepted certificate of insurance or surety bond. The fee is based on a formula of $10 per accepted certificate of insurance or surety bond as indication of ICC insurance activity. (There is a $50 annual minimum)	[4] 10	10
(79) A petition for waiver of any provision of the lease and interchange regulations. 49 CFR Part 1057	230	35
(80) A petition for reinstatement of revoked operating authority	30	60
(81) Acceptance of filings of designated agents for service of process	[5] 8	None
(82) Request for informal interpretations from the Office of Compliance and Consumer Assistance	200	None
(83) Petition for reinstatement of a dismissed operating rights application	150	None
(84) Filing of documents for recordation. 49 U.S.C. 11303 and 49 CFR 1177.3(c)	[6] 10	[7] 50
(85) Valuations of railroad lines in conjunction with purchase offers in abandonment proceedings	770	None
(86) Informal opinions about rate applications	60	None
(87) [Reserved]		
(88) [Reserved]		
(89) [Reserved]		
(90) [Reserved]		
(91) [Reserved]		
(92) [Reserved]		
(93) [Reserved]		
(94) [Reserved]		
(95) [Reserved]		
PART VIII: SERVICES		
(96) Messenger delivery of decisions to a railroad carrier's Washington, DC agent	[8] 7	None
(97) Request for service list for proceedings	[9] 5	None
(98) Requests to be added to the service list of a proceeding by a non-party	[10] 2	None
(99) Requests for copies of the one-percent carload waybill sample	80	None
(100) Verification of surcharge level pursuant to Ex Parte No. 389, Procedures for Requesting Rail Variable Cost & Revenue Determination for Joint Rates Subject to Surcharge or Cancellation	[11] 10	None
(101) Diazo copies of public docket materials	[12] .05	None
(102) Application fee for Interstate Commerce Commission Practitioners' Exam	50	50

[1] Per series transmitted.
[2] Per letter of intent or disposition.
[3] Current fee retained due to changes made in Ex Parte MC-5 (Sub-No. 2) and Ex Parte No. 159 (Sub-No. 1) (eff. 1/13/84). Will be reviewed when fee schedule is updated.
[4] Per accepted certificate.
[5] Per filing.
[6] Per document.
[7] For primary document. 10 for secondary document.
[8] Per delivery.
[9] Per list.
[10] Per request.
[11] Per movement.
[12] Per copy with a .25 minimum.

(3) Section 1002.3 would be added to read as follows:

§ 1002.3 Updating user fees.

(a) *Update.* Each fee established in this part shall be updated in accordance with this section annually.

(b) *Publication and effective dates.* Updated fees shall be published in the **Federal Register** and shall become effective 30 days after publication.

(c) *Payment of fees.* Any person submitting a filing for which a fee is established shall pay the fee in effect at the time of the filing.

(d) *Method of updating fees.* Each fee shall be updated by updating the cost components comprising the fee. Cost components shall be update as follows:

(1) Direct labor costs shall be updated by multiplying base level direct labor costs by percentage changes in average wages and salaries of Commission employees. Base level direct labor costs are direct labor costs determined by the Commission's FY 1983–84 User Fee Cost Study. The base period for measuring changes shall be April 1984.

(2) Governmental overhead costs shall be updated by multiplying updated direct labor costs by estimated employee fringe benefits and other wage related governmental cost contributions. Estimates of these benefits and contributions are currently published by the Office of Management and Budget in OMB Circular A–76.

(3) General and administrative costs and operational overhead shall be updated by multiplying updated direct labor and governmental overhead costs by the sum of base level operations overhead and current Commission general and administrative percentage costs. Base level operations overhead are those percentage costs determined by the Commission's FY 1983–84 User Fee Cost Study. Current Commission general and administrative percentage costs shall be deteremined by dividing budgeted Commission general and administrative costs for the current fiscal year by total budgeted agency expenses for the current fiscal year.

(4) Other costs shall be updated by multiplying base level other costs by percentage changes in the consumer price index. Base level other costs are other costs determined by the Commission's FY 1983–84 User Fee Cost Study. The base period for measuring changes shall be April 1984.

(e) *Rounding of updated fees.* Updated fees shall be rounded down to the nearest ten dollar increment, except fees of less than $30 will be rounded down to the nearest $1.00. (This rounding procedure excludes copying, printing and search fees).

PART 1011—COMMISSION ORGANIZATION; DELEGATIONS OF AUTHORITY

(4) in § 1011.8, a new paragraph (b) would be added to read as follows:

§ 1011.8 Delegation of Authority by the Interstate Commerce Commission to Specific Bureaus and Offices of the Commission.

* * * * *

(b) *Office of the Secretary.* Authority to waive filing fees set forth in 49 CFR 1002.2(f) will be delegated to the Secretary of the Commission, to be exercised in consultation with involved offices.

PART 1152—ABANDONMENT AND DISCONTINUANCE OF RAIL LINES AND RAIL TRANSPORTATION UNDER 49 U.S.C. 10903

(5) In § 1152.23, paragraph (e) would be revised to read as follows:

§ 1152.23 Summary application.

* * * * *

(e) A check or money order payable to the Interstate Commerce Commission must be submitted with the application to cover the applicable filing fee.

PART 1177.3—RECORDATION OF DOCUMENTS

In§ 1177.3 paragraph (c) would be revised to read as follows:

§ 1177.3 Requirements for submission.

* * * * *

(c) Be accompanied by a fee in the appropriate amount. The filing fee for either a primary or secondary document is $10 per document. However, assignments which are executed prior to the filing of the primary document and which are submitted concurrently will be treated along with the primary document as one for fee purposes and will be assessed only one $10 fee. A lease and agreement (Philadelphia Plan) shall be similarly treated.

* * * * *

PART 1180—RAILROAD ACQUISITION, CONTROL, MERGER, CONSOLIDATION PROJECT, TRACKAGE RIGHTS, AND LEASE PROCEDURES

(7) In § 1180.4, paragraph (c)(1) would be revised to read as follows:

§ 1180.4 Procedures.

* * * * *

(c) *Application.* (1) The filing fee to file a primary application with the Commission under these procedures is set forth at 49 CFR 1002.2(f) (46–49). There is no filing fee for a directly related application filed by the party that filed the primary application. The fee for a directly related or responsive application filed by another party is $1,620. For a finance-related exemption filed by any party the fee is $480.

* * * * *

PART 1182—MOTOR CARRIER APPLICATIONS TO CONSOLIDATE, MERGE, OR ACQUIRE CONTROL UNDER 49 U.S.C. 11343–11344

§ 1182.1 [amended]

(8) In § 1182.1, paragraph (b) would be amended by revising the amount "$700" in the third sentence to read "$1,750.

Appendix B—Cost Report—Filing and Service Fees

Cost Analyses

The following analyses provides the primary information base used to determine the cost data applicable to the filing, service fees and other items under consideration in the User Fee Study. Procedures utilized in the performance of the thirteen (13) week time and motion study are available upon request. Special studies and interviews were conducted to develop cost information on those items which did not appear during the course of the time and motion study or where unrepresentative cost study results could be quickly adjusted to produce a more accuate estimate. Explanations regarding the cost treatment of each service, whether included in the study and/or developed through special studies and interviews are outlined herein.

Average cost data associated with each service under consideration were constructed on the basis of the following cost considerations:

A. Direct Labor cost data per unit resulting from the time and motion study and/or special studies and interviews.

B. Government Overhead Costs—Fringe benefits and other wage related governmental cost contributions as noted. (Source: Office of Management and Budget—OMB Circular A–76):

1. Leave and holidays: 20.0 percent (Chapter IV, page 20)
2. Retirement and Disability: 20.4 percent (Chapter IV, page 23)
3. Health, Life Insurance and Social Security: 5.9 percent (Chapter IV, page 23)
4. Total: 46.3 percent (Applied to Direct Cost)

C. Commission General and Administrative Costs including estimated operational overhead costs for those Offices and/or Bureaus included in the study amounts to 19.92 percent. (See attachment 1)

D. Publication costs i.e., **Federal Register** and/or I.C.C. Register.

E. Total Cost (Sum of costs in A. through D.).

A post study audit of the cost items shown in this report reveal that certain cost items produce results that appear unrepresentative of the average cost of handling these types of proceedings, i.e., unrepresentative samples and conservative estimates from staff interviews, and are questionable. A further review of these items will be made during the comment period in an effort to develop more representative cost information. The specific areas of concern are starred.

Cost Data

A detailed account of the average cost per unit record based on the cost levels outlined in A. through D. above, will be made available on request. Titles used here may not be identical to titles used in the current 49 CFR Part 1002—Fees.

§ 1002.1

(a) Certificate of the Secretary.

Direct Labor Cost—$1.94.

Fully Distributed Cost—$3.39.

Current Fee—$2.50.

Discussion

Fee based on GM 15 @ 5 minutes @$23.34=$1.94.

(b) Services involved in examination of tariffs and schedules for preparation of certified copies of tariffs or schedules or extracts therefrom.

Direct Labor Cost—$9.02.

Fully Distributed Cost—$15.82.

Current Fee—$7.00.

Discussion

Fee based on GS 7/5 level. ($9.02 per hour).

(c) Services involved in checking records to be certified to determine authenticity, the clerical work, etc., incidental thereto.

Direct Labor Cost—$6.51.

Fully Distributed Cost—$11.42.

Current Fee—$4.00.

Discussion

Fee based on GS 4/5 level. ($6.51 per hour)

(d) Electrostatic copies of Tariffs, Reports and other public documents.

Direct Labor Costs—$0.36.

Fully Distributed Cost—$0.64.

Current Fee—$0.25.

Discussion

A special study was conducted and the cost results are based on the following:

Pages copied during fiscal year 1983 (10/1/82 through 9/30/83) is 61,793.

(e)(1) The direct labor cost for professional staff time to fulfill a request for automated data processing service is estimated on the following:

	Fully distributed
Clerical, GS 4, Step 1=$5.75 per hour	$10.09
Professional, GS 12, Step 5=16.01 per hour	28.08
Supervisory, GM 15, Step 5=26.45 per hour	46.41

(e)(2) The direct cost for computer time expended in data searches is estimated as follows:

$.18 cents per port minute—CompuServe System.

The cost is based on average computer port time charges of $11.00 per hour ($11.00 per hour÷60 minutes=$0.183 cents per minute).

(e)(3). Printing cost per page of computer generated data is estimated at $0.05 per page. Material cost for one reel of magnetic tape permanently retained by requestor is estimated at $25.00.

(f) Search and copying services, not considered public under the Freedom of Information Act.

Discussion

Estimates of direct labor costs applicable to the search and copy services relative to information sought under the Freedom of Information Act are outlined as follows:

(f)(1) The direct labor cost for clerical, professional and supervisory personnel, on a per hour basis, is estimated at the mid-level (Step 5) for each grade level in the October 1982 General Schedule Federal Pay Scales as follows:

GS grade	Rate per hour
1	$4.73
2	5.15
3	5.81
4	6.51
5	7.29
6	8.12
7	9.02
8	9.99
9	11.04
10	12.16
11	13.35
12	16.01
13	19.03
14	22.49
15	26.45

Estimates of average direct labor costs (Clerical grades 1 thru 6, Professional 7 thru 14 and Supervisory at GS 15) are as follows:

Clerical GS 4, Step 1=$5.75 per hour.

Professional GS 11, Step 1=$11.78 per hour.

Supervisory GS 15, Step 1=$23.34 per hour.

(f)(2) See (d) above.

(f)(3) See (e) above.

49 CFR Part 1002.2(f)—Schedule of Filing Fees.

1.*An application for motor or water carrier operating or exemption authority, a certificate of registration or an application for broker or freight forwarder authority.

Direct Labor Cost—$85.24 (unopposed applications).

Fully Distributed cost—$154.55 (unopposed applications).

Direct Labor Cost $108.18 (protests).

Fully Distributed Cost—$193.16 (protests).

Current Fee—$350.00.

Discussion

During the study period 2,777 unopposed applications and 536 opposed applications were observed. Direct labor cost was seen as $29.21 for each unopposed application and $24.51 *more* for each opposed one. A review of the cost data indicated that staff time was substantially understated for both types of cases. The figures have, therefore, been recomputed by analyzing total staff hours dedicated to these applications. This produced costs as follows:

Unopposed—10,400 staff hours× average hourly rate from cost study of $15.57=direct labor cost of $161,928÷2,777 applications=$58.31 direct labor cost per unit.

Opposed—4,160 staff hours×average hourly rate from cost study of $17.44=direct labor costs of $72,550÷536 applications=$135.35 direct labor cost per unit (opposed cases). Case status records indicate that on the average, there are 1.5 protests per application.

In addition it is estimated that the review process of these applications requires an additional hour by three review board members amounting to $26.45. (GM 15/5 @26.45 at 20 minutes×3=one hour or $26.45). Moreover mail room handling is estimated at $0.48 (GS 4/1 @$5.75 per hour×5 minutes=$0.48), resulting in additional direct labor costs per unit of $26.93.

Unopposed direct labor cost $58.31+$26.93=$85.24.

Opposed direct labor cost $135.35+$26.93=$162.28÷1.5=$108.18.

Publication costs ICC Register are estimated to be $5.00.

2. A fitness only application for motor common carrier authority under 10922(b)(4)(E) or motor contract authority under 10923(b)(5)(A) to transport food and related products.

Direct Labor Cost—$15.21.

Fully Distributed Cost—$31.68.

Current Fee—$150.00.

Discussion

During the study period a total of 78 applications were observed resulting in direct labor costs per unit of $15.21.

Publication costs in the ICC Register are estimated at $5.00.

3. A petition to interpret or clarify an operating authority under 49 CFR 1160.54.

Direct Labor Cost—$52.03.

Fully Distributed Cost—$96.28.

Current Fee—$200.00.

Discussion

During the study period no petitions were observed. A review of the processing functions required to produce this service indicates that handling of these petitions is comparable to processing restriction removals. Therefore, we are estimating the direct labor costs based on restriction removals (Item 6) of $52.03.

Publication Costs I.C.C. Register are estimated to be $5.00.

Durint the final data input of outstanding abstracts one application was observed resulting in direct labor costs of $82.00 and fully distributed costs amounting to $148.86.

4. A request seeking the modification of operating authority only to the extent of making a ministerial correction, a change in the name of a shipper or owner of a plant-site, or the change of a highway name or number.

Direct Labor Cost—$15.21.

Fully Distributed Cost—$27.21.

Current Fee—None.

Discussion

During the study period there were no requests observed. A review of the procedures involved in handling these requests, by the appropriate personnel, indicates that the processing time is comparable to fitness only applications (Item 2 abve). It is recommended that fitness only direct costs of $15.21 be used to develop the cost base for these requests.

This item is not published.

5. A petition to renew authority to transport explosives under Section 10922 or 10923.

Direct Labor Cost—$70.72.

Fully Distributed Cost—$124.07.

Current Fee—$5.00.

Discussion

During the study period there were no petitions observed. A review of the procedures involved in handling the above petitions, by appropriate section personnel, indicates the following direct labor cost estimates:

Clerical 8 hours (GS 6/8—$8.84 per hour=$70.72.

This item is not published.

6. An application to remove restriction or broaden unduly narrow authority under 49 CFR 1109.

Direct Labor Cost—$52.03.
Fully Distributed Cost—$96.28.
Current Fee—$350.00.

Discussion

During the study period a total of 29 applications were observed, resulting in direct labor costs per unit of $52.03.

Publication costs in the I.C.C Register are estimated at $5.00.

7. An application for authority to diviate from authorized regular route, 49 CFR § 1042.

Direct Labor Cost—$49.85.
Fully Distributed Cost—$92.46.
Current Fee—$15.00.

Discussion

During the study period there were no applications filed. A review of the procedures involved in handling these types of applications, by the appropriate personnel, indicates the follow direct labor cost estimates:

Clerical—3 hours (GS 4/7)—$6.89 per hr	$20.67
Professional—2 hours (GS 12/2)—$14.59 per hr	29.18
Total	49.85

Publication costs in the ICC Register are estimated at $5.00.

8.* An application for motor carrier and water carrier temporary authority.

Motor—Direct Labor Cost—$38.01; Fully Distributed Cost—$71.69.

Water—Direct Labor Cost—$14.05; Fully Distributed Cost—$29.64.

Combined—Direct Labor Cost—$37.94; Fully Distributed Cost—$71.57.

Protests—Direct Labor Cost—$14.95; Fully Distributed Cost—$26.23.

Current Fee—$60.00.

Discussion

During the study period a total of 1,296 motor carrier and 8 water carrier applications were observed, resulting in direct labor cost (motor) $24.84 and (water) $14.05. Combined direct labor cost amounts to $24.77.

It was estimated by the filed staff that an additional 1,800 hours during the study period were spent in the 51 district offices throughout the six regions in handling these cases. Therefore, additional direct labor costs per unit of $13.17 are assigned, based on an average hourly rate calculated from the study data, by dividing direct labor dollars (motor) $32,187 by direct labor hours of 3,396 = $9.48 per hour × 1,800 hours = $17,064 ÷ 1,296 applications = $13.17.

Estimates applicable to the cost of handling protests are as follows:

GS 8/5—1 hour at $9.99 p.h.	$9.99
GS 14 (R.B. 3 members) at 5 min. per member = 15 min at $19.84	4.96
Total	14.95

Publication costs in the I.C.C. Register is estimated at $5.00.

9. and 10. Emergency temporary applications for motor carrier authority including an extension of the time period defined in 49 CFR 1162.1(b)(1).

ETA—Direct Labor Cost—$30.19; Fully Distributed Cost—$52.97.

EXT—Direct Labor Cost—$7.12; Fully Distributed Cost—$12.50.

Current Fee—ETA—None; Extension—$10.00.

Discussion

During the study period a total of 762 emergency temporary applications were processed and 19 extensions were observed (all field offices), resulting in direct labor cost of $30.19 and $7.12.

This item is not published.

11. Requests for name changes of carrier, broker or freight forwarder.

Direct Labor Cost—$3.17.
Fully Distributed Cost—$5.56.
Current Fee—None.

Discussion

During the study period a total of 274 records were observed resulting in direct labor cost per unit of $2.69. An additional $0.48 has been added for mail room handling based on the estimate shown in Item 1 above increasing direct labor costs per unit to $3.17.

12. A notice required by 49 U.S.C. 10524(b) to engage in Compensated Intercorporate Hauling, including updates.

Direct Labor Cost—$3.10.
Fully Distributed Cost—$70.43.
Current Fee—$150.00.

Discussion

During the course of the study 16 notices were observed resulting in a direct cost per unit of $1.55. Estimated costs, based on data reflected in 84 below above of $1.55 are added, increasing direct labor cost per unit to $3.10.

Federal Register costs are estimated at $65.00 (1/2 column per notice).

13. Accepting, processing and publishing Agricultural Co-Op Filings.

Direct Labor Cost—$2.23.
Fully Distributed Cost—$68.91.
Current Fee—None.

Discussion

During the study period 6 filings were observed resulting in direct labor costs per unit of $1.75. An additional $0.48 cents per unit has been added to cover mail room handling resulting in direct labor costs per unit of $2.23.

Federal Register publication costs are estimated at $65.00 (1/2 column per notice).

14.–16. Reserved.

17. and 40. Notice of Petition to discontinue Train or Ferry Service. Section 13(a).

Direct Labor Cost—$3,445.89.
Fully Distributed Cost—$6,175.57.
Current Fee—$650.00.

Discussion

During the course of the study no notices of petitions were observed. A review of the processing requirements indicate that this service involves a considerable amount of time because of their complexity. A discussion with the appropriate personnel indicate the following estimated direct labor

Clerical—GS-5—15 hrs. @$6.43 per hr.	$96.45
Professional—GS-14—150 hrs. @$19.48 per hr.	2976.00
Supervisory—GM-15—16 hrs. @$23.34 per hr.	373.44
Total	3445.89

Publication costs—**Federal Register** is estimated at $130.00 (1 column).

18. A petition to discontinue motor carrier transportation of passengers in one state.

Direct Labor Cost—$1,030.50.
Fully Distributed Cost—$1,807.77.
Current Fee—$350.00.

Discussion

Although there were approximately 23 petitions completed since April 1983, the responsible office did not include this item in the study. A review of the handling procedures, by the appropriate personnel, indicates the following direct labor cost estimates:

Clerical—10 hours (GS 4/6)—$6.70 per hr.	$67.00
Professional—40 hours (GS 14/3)—$21.17 per hr.	846.80
Supervisory—20 hours (GM 15)—$23.34 per hr.	116.70
Total	1,030.50

No publications costs are assigned since petitions are not published.

19. Reserved.

20. and 45. An Application for the pooling or division of traffic. Section 5(1).

Rail—Direct Labor Cost—$1,963.65; Fully Distributed Cost—$3,574.74.
Motor—Direct Labor Cost—$416.68; Fully Distributed Cost—$735.18;
Current Fee—$100.00.

Discussion

During the course of the study no applications, rail or motor, were observed. A review of the processing requirements with appropriate

personnel indicates the following estimated direct labor costs:

	Rail	Motor
Clerical—GS5 $6.43 per hr	15 hrs $96.45	4 hrs $25.72
Professional—GS14 $19.48 per hr	80 hrs 1,587.20	15 hrs 297.60
Supervisory—GM15 $23.34 per hr	12 hrs 280.00	4 hrs 93.36
Total	$1,963.65	$416.68

Publication costs—**Federal Register** (Rail) estimated at $130.00 (1 column); I.C.C. Register (Motor) estimated at $4.00.

21.* and 46.[1] An application of two or more carriers to consolidate or merge their properties or franchises, or any part thereof, into one corporation for the ownership, management and operation of the properties therefore in separate ownership.

Rail—Direct Labor Cost—Various—See below.

Fully Distributed Cost—Various—See below.

Motor—Direct Labor Cost—$400.32.

Fully Distributed Cost—$832.23.

Current Fee—$700.00.

Discussion

During the course of the study there were no rail or motor applications observed.

A review of the rail processing requirements, with appropriate personnel, indicates that these applications are segregated into four major categories prior to processing and the respective estimates for each category are shown as follows:

	Major	Significant
Cler.—GS5 $6.43 per hr	1,000 hrs $6,430	200 hrs $1,286
Prof.—GS14 $19.84 per hr	10,000 hrs 198,400	2,000 hrs 39,680
Sup.—GM15 $23.34 per hr	1,000 hrs 23,340	200 hrs 4,668
Total	228,170	45,634

	Minor	Exempt
Cler.—GS5 $6.43 per hr	6 hrs $39	3 hrs $19
Prof.—GS14 $19.84 per hr	40 hrs 794	8 hrs 159
Sup. GM15 $23.34 per hr	4 hrs 93	1 hr 23
Totals	925	201

Fully Distributed Cost—Major $400,220.06; Significant 80,044.01; Minor 1,753.73; Exempt 483.27.

A review of the motor processing requirements, with appropriate personnel, indicate the following estimated direct labor costs:

Clerical—GS5—2 hrs	$6.43	$12.86
Professional—GS14—16 hrs	19.84	317.44
Supervisory—GM15—3 hrs	23.34	70.02
Total		400.32

Publication Costs (Rail) and (Motor) **Federal Register** are estimated at $130.00

22.* and [1] 47 An application of a non-carrier to acquire control of two or more carriers through ownership of stock or otherwise.

Rail—Direct Labor Cost—See Item 21; Fully Distributed Cost—see item 21;

Motor—Direct Labor Cost—$400.43; Fully Distributed Cost—$832.23; Current Fee—$700.00.

Rail—See Discussion in Item 21, for cost estimates applicable to this service.

Motor—See Discussion in Item 21, for cost estimates applicable to this service.

23.* and [1] 49. An Application of a carrier or carriers to purchase, lease or contract to operate the properties of another, or to acquire control of another by purchase of stock or otherwise.

Rail—Direct Labor Cost—See Item 21; Fully Distributed Cost—See item 21.

Motor—Direct Labor Cost—$284.72; Fully Distributed Cost—$629.53; Current Fee—$700.00.

Discussion

Rail—See Discussion in Item 21, for cost estimates applicable to this service. During the study period 2 rail applications were observed resulting in direct labor costs of $437.71 and fully distributed cost of $897.93

Motor—During the study period 20 applications were observed resulting in direct labor costs of $284.72.

Publication costs in the **Federal Register** are estimated at $130.00

24. and 51. An application for approval of, or to amend a rate association agreement. Section 5(a).

	Rail	Motor
Direct Labor Cost	$10,698.01	$3,983.36
Fully Distributed Cost	18,898.91	7,118.53
Current Fee—$300.00		

Discussion

During the course of the 13-week study period no current rate bureau agreement applications could be usefully monitored for an exact cost study. However, a review of the procecedures utilized in the preparation of these applications, with the appropriate personnel, indicate the following actual handling time and direct labor costs considerations:

	Rail	Motor
Cler. GS4/9—8hrs. $7.27	$58.16	$58.16
Prof. GS14—602 hrs. ($19.84 p.h.) $11,943.68		
GM 15—320 hrs. ($23.34 p.h.) = $7,468.80 ($11,943.68 + 7,468.80) = 19,412.48 ÷ 2	9,706.25	
GS14/2—180 ($20.51 p.h.) = Supv. GM/15—40 hrs. ($23.34 p.h.)	933.60	3,691.80
GM/15—10 hrs. (23.34 p.h.)		233.40
Total	10,698.01	3,983.36

Publication costs in the **Federal Register** are estimated at $130.00 (1 column).

[1] 25.* An application for temporary authority to operate a motor or water carrier.

Direct Labor Cost—$75.59.

Fully Distrubuted Cost—$137.61.

Current Fee—$60.00.

Discussion

During the study period a total of 15 records were observed resulting in direct labor cost per unit of $75.69.

Publication cost I.C.C. Register is estimated at $5.00.

[1] 26.* An application for transfer or lease of a certificate or permit, including a certificate of registration, and a broker license or change of control of companies holding broker licenses.

Direct Labor Cost—$87.46.

Full Distributed Cost—$156.44.

Current Fee—$100.00

Discussion

During the study period a total of 202 applications were observed, resulting in direct labor costs of $87.46.

Publication costs in the ICC Register are estimated at $3.00.

27. A petition to transfer a water carrier exemption to a successor.

Direct Labor Cost—$68.23.

Fully Distributed Cost—$124.73.

Current Fee—$100.00.

Discussion

During the study period no petitions were observed. A review of procedures involved in handling these petitions, by the appropriate personnel, indicates the following direct labor cost estimates:

Clerical—1 hr (GS 4/6)—$6.70 per hr	$6.70
Professional—3 hrs (GS 14/2)—$20.51 per hr	61.53
Total	68.23

Publication costs in the ICC Register are estimated at $5.00.

28. An application for approval of a motor vehicle rental contract. [49 CFR 1057.6(b)].

Direct Labor Cost—$68.11.

Fully Distributed Cost—$124.49.

Current Fee—$30.00.

[1] Further studies will be conducted on motor carrier costs to determine whether the costs are associated with standard applications or exemption petitions.

Discussion

During the study period no applications were received. A review of the processing functions applicable to this item indicate the following direct labor cost estimates:

Clerical—(GS5)—30 minutes—$6.42	$3.21
Professional—(GS12)—3 hours—14.12	42.36
Professional—(GS13)—1 hour—16.70	16.70
Supervisory—(GM15)—15 minutes—23.34	5.84
Total	68.11

Publication costs I.C.C. Register are estimated at $5.00.

29. Petitions for exemption from Commission regulations under 49 U.S.C. 11343.

Direct Labor Cost—$224.27.

Fully Distributed Cost—$398.47.

Current Fee—None.

Discussion

During the study period 148 petitions were processed resulting in direct labor cost per unit of $116.98.

A post study audit revealed that of the 148 petitions, 99 were tariff exemptions and 49 were associated with exemptions under 49 U.S.C. 11343. The direct labor unit costs were recalculated and are shown herein and in item 66 below.

The 49 petitions observed resulted in direct labor cost of $224.27.

Publication cost I.C.C. Register is estimated at $5.00.

30–32. Reserved.

33. An application for a certificate authorizing the construction, extension, acquisition or operation of lines of railroad.

Direct Labor Cost—$3,445.89.

Fully Distributed Cost—$6,175.57.

Current Fee—$700.00.

Discussion

During the study period 3 publications were observed resulting in direct labor costs per unit of $206.81. **Federal Register** costs are estimated at $100.00 (¾ of 1 column).

It was determined in post study reviews that only a small portion of the direct labor costs were captured on this item, since the three applications were not completed during the study. A review of these applications, with appropriate personnel indicates that direct labor costs would be comparable to the direct labor cost estimates for Items 17 and 40 of $3,445.89 and fully distributed costs of $6,175.57.

34. An application filed under 49 U.S.C. 10910, Feeder Line Development Program.

Direct Labor Cost—$979.60.

Fully Distributed Cost—$1,818.55.

Current Fee—$300.00.

Discussion

During the study period no applications were observed. A review of the processing functions required to provide the service were discussed with the appropriate personnel and findings indicate the following direct labor cost estimates:

Clerical—10 hrs (GS4/7)—$6.89	$68.90
Professional—40 hrs (GS14/1)—$19.85	794.00
Supervisory—5 hrs (GM15)—$23.34	116.70
Total	979.60

Publication Costs **Federal Register** are estimated at $100.00 (3/4 of 1 column).

35.–37. Reserved.

38. An application to abandon all or a portion of a line of railroad or the operation thereof.

Direct Labor Cost—$849.97.

Fully Distributed Cost—$1,621.22.

Current Fee—$700.00.

Discussion

During the course of the study 20 applications were observed, resulting in direct costs per unit of $290.77.

Direct labor cost for providing environmental analyses is based on the following data:

Cler.—1,040 hrs×$8.12 per hr (GS 6/5)=$8,445÷102 anal	$82.79
Prof.—3,640 hrs×$13.35 per hr (GS 11/5)=$48,594÷102 anal	476.41
Total	559.20

Federal Register cost is estimated at $130.00 (1 column).

Direct Labor and Fully Distributed Costs for opposed applications are as follows (10 applications): $1,452.78 ($893.58+$559.20) and $2,678.80.

39. Conrail Abandonment Proceedings.

Direct Labor Cost—$72.02.

Fully Distributed Cost—$191.32.

Current Fee—None.

Discussion

During the course of the study no applictions were observed. A review of the processing functions required to provide the service were discussed with the appropriate personnel. The findings indicate the following direct labor cost:

Clerical—3 hrs (GS4/7)—$6.89 per hr	$20.67
Professional—2 hrs (GS14/1)—$19.84 per hr	39.68
Supervisory—30 min. (GM15)—$23.34per hr	11.67
Total	72.02

Publication Costs in the **Federal Register** are estimated at $65.00 (1/2 of column).

40. (See Item 17).

41.–43. Reserved.

44. * An application for use of Terminal Facilities.

Direct Labor Cost—$2,882.84.

Fully Distributed Cost—$5,187.81.

Current Fee—$150.00.

Discussion

During the course of the study no applications were observed. A review of the processing requirements with the appropriate personnel indicate the following estimated direct labor costs:

Clerical—GS 5—20 hrs.—$6.43 per hr	$126.60
Professional—GS 14—120 hrs.—19.84 per hr.	2,380.80
Supervisory—GM 15—16 hrs.—23.43 per hr.	373.44
Total	2,882.84

Publication costs—**Federal Register** is estimated at $130.00 (1 column).

45. (See Item 20.)

46. (See Item 21.)

47. (See Item 22.)

48. An application to acquire trackage rights over joint ownership in, or joint use of, any railroad lines owned and operated by any other carrier and terminals incidental thereto.

Direct Labor Cost—Various—See item 21.

Fully Distributed Cost—Various—See item 21.

Current Fee—$700.00.

Discussion

Rail—See Discussion in item 21 for cost estimates applicable to this service.

During the study one (1) application was observed resulting in direct labor cost of $184.06 and fully distributed cost of $452.92.

49. (See Item 23.)

50. An application for a determination of fact of competition.

Direct Labor Cost—$45,634.00.

Fully Distributed Cost—$80,044.01.

Current Fee—$100.00.

Discussion

During the course of the study no applications were observed. A review of the processing requirements, with appropriate personnel, indicate the following estimated cost considerations:

Clerical—GS5—$6.43—200 hrs.	$1,286.00
Professional—GS14—$19.84—2000 hrs.	39,680.00
Supervisory—GM15—$23.34—200 hrs.	4,668.00
Total	45,634.00

Publication costs in the **Federal Register** estimated at $130.00 (1 column).

51. (See Item 24.)

52. An application for authority to hold a position as Officer or Director.

Direct Labor Cost—$30.52.

Fully Distributed Cost—$53.54.

Current Fee—$10.00.

Discussion

During the study period no applications were filed. A review of the processsing functions attributed to this item indicates that it takes less than one day to process. The cost base is estimate at 2 hours processing time, separated as follows: (Not applicable to motor carrier).

Clerical—GS5—$6.42—4[illegible] mins	$4.82
Professional—GS14—$19.85—1 hr	19.85
Supervisory—GM15—$23.43—15 mins	5.85
Total	30.52

This item is not published.

[2]53. An application to issue securities; and application to assume obligation or liability in respect to securities of another; an application or petition for modification of an outstanding authorization; or an application for exemption from competitive bidding requirements of Ex Parte No. 158, 49 CFR 1175.10.

Direct Labor Cost—$417.78.
Fully Distributed Cost—$832.96.
Current Fee—$200.00.

Discussion

During the study period 6 rail applications were processed resulting in direct labor costs of $417.78.

Publication cost **Federal Register** is estimated at $100.00 (¾ of 1 column).

No motor carrier jurisdiction on Securities.

54. *Petitions for exemption under 49 U.S.C. 10505.

Direct Labor Cost—$233.65.
Fully Distributed Cost—$539.92.
Current Fee—None.

Discussion

During the study period 55 petitions were observed resulting in a direct labor cost per unit of $233.65.

Publication costs in the **Federal Register** are estimated at $130.00 (1 column).

55. An application for forced sale of bankrupt railroad lines.

No cost study was prepared for this item because it was established in Ex Parte No. 282 (Sub-No. 4a) *Forced Sale Procedures for Bankrupt Railroad Lines*, 367 I.C.C. 789.

56–59. Reserved.

60. *Complaint cases based on unlawful rates or practices of carriers.

Direct Labor Cost—$195.54.
Fully Distributed Cost—$343.07.
Current Fee—None.

Discussion

During the study period 14 (13 Rail and 1 Motor) complaint cases were observed. Direct Labor Costs (Rail) are $196.28 and (Motor) are $182.05. The weighted average direct labor for both modes is $195.54.

61. *A complaint seeking or a petition requesting institution of an investigation seeking the prescription of divisions of joint rates, fares or charges.

Direct Labor Cost—$154.26.
Fully Distributed Cost—$400.64.
Current Fee—$700.00.

Discussion

During the study period 1 complaint was observed resulting in direct labor costs of *$154.26.* A review of this item with Rail Section personnel indicates that these types of proceedings compare to major complaint cases. Estimates from appropriate personnel indicate that these types of compliants/petitions would produce direct labor costs in excess of $100,000,00.

Publication Costs—**Federal Register** are estimated at $130.00 (1 column).

62.* Petitions for waiver of Commission regulations.

Direct Labor Cost—$350.43.
Fully Distributed Cost—$614.81.
Current Fee—None.

Discussion

During the study period 6 rail and 2 motor petitions were procesed, resulting in rail direct labor cost of *$402.85* and Motor Direct Labor Cost of *$191.52.* The weighted average direct labor cost for both modes is *$350.43.*

63. *Petitions for Declaratory Orders.

Direct Labor Cost—$416.32.
Fully Distributed Cost—$938.41.
Current Fee—None.

Discussion

During the study period 5 rail and 2 motor petitions were observed, resulting in Direct Labor Cost (Rail) of $314.96 and (Motor) of $668.52. The weighted average direct labor cost for both modes is $416.32.

Publication costs **Federal Register** are estimated at $208.00 (1 and ½ colums)

[3]*64. Requests for nationwide or regional motor, water or freight forwarder carrier general rate increases, including major rate restructures.

Direct Labor Cost—$2,085.09; Fully Distributed Cost—$3,658.14.

Direct Labor Cost—$107.55 (Protest); Fully Distributed Cost—$188.69 (Protest).

Current Fee—None.

Discussion

During the study period a total of 8 major motor general rate and rate restructure cases were observed resulting in direct labor cost per unit of $2,085.09.

Estimates applicable to the cost of handling protests are as follows:

48 hours processing time × average hourly wage (cost study) of 17.93=$860.40÷8 cases=107.55×1 average protest per case=$107.55.

65. A petition to define or redefine a commercial zone, or to remove the exemption applicable to commercial zone movements and petition for individual determination of the exempt areas within which air cargo pickup and delivery service or transportation of air passengers may be performed.

Direct Labor Cost—$69.37.
Fully Distributed Cost—$186.71.
Current Fee—$150.00.

Discussion

During the course of the study no petitions were filed. A review of the processing functions, by the appropriate personnel, indicate that these petitions require approximately one-third more processing time than a restriction removal (Item 6). Therefore, we estimate direct labor costs to be $69.37 ($52.03 × 1.33).

Publication costs in the the **Federal Register** are estimated at $65.00 (½ of one column).

66. Petitions for exemption from filing tariffs by water and bus carriers.

Direct Labor Cost—$63.88.
Fully Distributed Cost—$117.07.
Current Fee—None.

Discussion

During the study period 99 petitions were observed resulting in direct labor costs per unit of $63.88.

Publication cost I.C.C. Register is estimated at $5.00.

67. Application—Shipper Antitrust Immunity.

Direct Labor Cost—$1,052.66.
Fully Distributed Cost—$1,976.82.
Current Fee—None.

Discussion

During the study period no applications were observed. A review of the processing functions necessary to provide this type of application, with the appropriate personnel, indicates the following direct labor cost estimates:

Clerical—GS 4/6—8 hrs—$8.36	$68.88
Professional—GS 14/2—45 hrs—$20.51	820.40
Supervisory—GM 15—7 hrs—$23.34	163.38

Publication Costs **Federal Register** are estimated at $130.00 (1 column)

68. Petition for review of State regulation of intrastate rates, rules or

[2] A similar question as is raised in footnote 1 for motor cases arises in this rail item.

[3] Water and freight forwarder will be costed during the comment period.

practices filed by interstate rail carriers pursuant to 49 U.S.C. 11501.

Direct Labor Cost—$2,071.68.
Fully Distributed Cost—$3,634.42.
Current Fee—None.

Discussion

No petitions were captured during the study period. A review of the processing time, with appropriate personnel, indicates the following direct labor cost estimates:

Clerical—16 hours (GS 4/7)--$6.89 per hr.	$110.24
Professional—80 hours (GS 14/1)—$19.85 per hr.	1,588.00
Supervisory—16 hours (GM 15)—$23.34 per hr.	373.44
Total	2,071.68

69. Petition for review of State regulation of Intrastate rates, rules or practices filed by interstate bus carriers pursuant to 49 U.S.C. 11501.

Direct Labor Cost—$875.93.
Fully Distributed Cost—$1,536.76.
Current Fee—None.

Discussion

A review with appropriate personnel, indicates that these petitions require approximately 85% of the processing time required to provide a discontinuance (Item 18). Therefore, the direct labor cost is established at $875.93. ($1,030.50×85%)

70. Vertification of Quarterly Index applicable to Rail Rate Increases.

Direct Labor Cost—$686.52.
Fully Distributed Cost—$1,334.45.
Current Fee—None.

Discussion

A review of the processing requirements used to verify and prepare the quarterly index indicates the following direct labor cost estimates.

Clerical—GS 5/5 4 hrs.—$7.28 per hr.	$29.12
Prof.—GS 13/7 30 hrs.—$20.15 per hr.	604.50
Supr.—GM 15/5 2 hrs.—$26.45 per hr.	52.90
Total	686.52

Publication costs in the **Federal Register** is estimated at $130.00.

71. Requests for investigation or suspension of tariff matter.

Direct Labor Cost—$25.14.
Fully Distributed Cost—$29.41.
Current Fee—None.

Discussion

During the study period, no protests were reviewed. Processing time applicable to such requests produces the following direct labor cost.

GS 11—1 hr.—$11.78 per hr.	$11.78
GS 13—30 min.—$16.79 per hr.	8.40
GS 14—15 min.—$19.84 per hr.	4.96
Total	25.14

Fully distributed cost=44.11+average protest per filing of 1.5=adjusted fully distributed cost of $29.41.

72. An application for authority to establish released value rates or ratings.

Direct Labor Cost—$189.72.
Fully Distributed Cost—$334.85.
Current Fee—$200.00.

Discussion

No released rate applications were observed during the during the study period. A review of the processing time applicable to this item, by appropriate personnel, indicates the following direct cost based estimates:

Clerical—(GS 5)—15 mins—$6.72	$1.68
Professional—(GS 11)—12 hrs—$11.78	141.36
Supervisory—(GM 15)—2 hrs—$23.34	46.68
Total	189.72

Publication costs I.C.C. Register is estimated at $2.00.

73. An application for special permission for short notice or the waiver of tariff publishing requirements.

Director Labor Cost—$19.03.
Fully Distributed Cost—$33.39.
Current Fee—$20.00.

Discussion

During the study period a total 3,664 special permission applications were observed resulting in direct labor costs per unit of $19.03.

No publication cost is assigned since applications are not published.

[4] 74. Filing of tariffs and contracts, including supplements.

Direct Labor Cost—$4.92.
Fully Distributed Cost—$8.63.
Current Fee—None.

Discussion

Due to the magnitude of tariff filings it was determined that a special study be initiated to determine cost estimates for this service. The study was designed to recover the direct labor resource of the responsible section. First, it was determined that the monthly direct labor expenses for the section amounted to $75,650.00. This figure was determined by applying 147 average monthly staff hours to the hourly rate of each of the 49 employees assigned to the Section. The 147 average monthly hours were developed by reducing annual employee hours of 2,080 by 312 hours for annual and sick leave plus holidays (30 days Annual & Sick Leave & 9 Holidays) resulting in 1,760 productive hours÷12 months=147 average monthly productive hours.

Second, a one week study of teransmittal letters received was taken and resulting in 3,591 transmittal letters. The weekly transmittal count was reduced to a daily figure by dividing by 7 days resulting in a daily count of 513. The 513 average daily count was expanded to a monthly figure by 30 days resulting in an estimated monthly transmittal count of 15,390 transmittals.

Lastly, direct labor costs per transmittal were then calculated by dividing the $75,650.00 monthly labor costs by 15,390 average monthly transmittals resulting in an average direct labor cost of $4.92 per transmittal.

75. Special docket application from rail and water carriers.

Direct Labor Cost—$22.90.
Fully Distributed Cost—$40.17.
Current Fee—None.

Discussion

During the study period a total of 153 requests were observed resulting in direct labor costs per unit of $22.90.

[5] 76. Informal Rate Complaints.

Direct Labor Cost—$93.00.
Fully Distributed Cost—$163.16.
Current Fee—None.

During the study period a total of 17 complaints were observed resulting in direct labor costs per unit of $93.00.

77. An application for original qualification as an insurer, surety or self insurer.

Direct Labor Cost—$404.45.
Fully Distributerd Cost—$709.58.
Current Fee—$65.00.

Discussion

During the study period 2 applications were processed resulting in direct labor costs per unit of $404.45.

No publication costs are assigned since applications are not published.

78. Service fee for insurer, surety, or self insurer accepted certificate of insurance or surety bond.

Direct Labor Cost—$.0.50.
Fully Distributed Cost—$0.88.
Current Fee—Contract (During Study Period).

Discussion

During the study period a total of 1,275 qualifications were observed resulting in direct labor costs of $0.50 cents per qualification. The direct labor cost is in addition to the Contract Fee Schedule.

79. A petition for waiver of any provision of the lease and interchange regulations 49 CFR Part 1057.

Direct Labor Cost—$128.76.

[4] During the comment period, we will undertake further studies costing specific tariff-related functions (e.g., filing vs. rejection).

[5] These items illustrate the manner in which functions overlap but costs differ.

Fully Distributed Cost—$230.91.
Current Fee—$35.00.

Discussion

During the study period a total of 7 petitions were observed resulting in direct labor cost per unit of $128.76.

Publication Costs ICC Register are estimated at $5.00.

80. A petition for reinstatement of revoked operating authority.
Direct Labor Cost—$21.11.
Fully Distributed Cost—$37.03.
Current Fee—$60.00.

Discussion

During the study period a total of 13 petitions were observed resulting in direct labor costs per unit of $21.11.

This item is not published.

81. Acceptance of filing designating agents for service of process.
Direct Labor Cost—$4.94.
Fully Distributed Cost—$8.67.
Current Fee—None.

Discussion

During the study period a total of 50 filings were processed resulting in a direct labor cost per unit of $4.94.

No publication costs are assigned since filings are not published.

82. Informal interpretations.
Direct Labor Cost—$115.28.
Fully Distributed Cost—$202.25.
Current Fee—None.

Discussion

During the study period a total of 24 interpretations were processed resulting in direct labor costs per unit of $115.28. Initial GAO requested that we study informal interpretations on operating rights. It was determined at the outset that we should broaden this to include all informal interpretations processed by the OCCA staff.

No publication costs are assigned since interpretations are not published.

83. Reinstatement of dismissed applications.
Direct Labor Cost—$125.69.
Fully Distributed Cost—$220.51.
Current Fee—None.

Discussion

During the study period 11 motor applications were observed. Discussions with the Rail Section indicate that they do not process these types of applications. Direct Labor Costs are $125.69.

No publication costs are assigned since applications are not published.

84. Filing of any primary and secondary document as defined in 49 CFR 1177.1(a) for recordation under 49 CFR 11303 and 49 CFR 1116.3(c).
Direct Labor Cost—$6.00 and $5.63.
Fully Distributed Cost—$10.53 and $9.88.
Current Fee—$50.00—Primary; $10.00—Secondary.

Discussion

During the study period a total of 286 primary documents and 190 secondary documents were observed resulting in direct labor costs per unit of *$4.45* and *$4.08*. In addition we have estimated other direct labor costs per unit of *$0.48* for mail room handling and $1.07 per unit for review by the application unit resulting in direct costs per unit of *$6.00* and *$5.63*. Cost data is based on the following: Mail Room GS–4/1 at $5.75 per hour times 5 minutes=$0.48 and Application Unit GS–5/1 at $6.42 per hour times 10 minutes=$1.07.

85. Valuations of railroad lines in conjunction with purchase offers in abandonment proceedings.
Direct Labor Cost—$443.28.
Fully Distributed Cost—$777.71.
Current Fee—None.

Discussion

During the study no valuations were observed. A review of the process involved in providing a valuation indicates the following direct labor cost considerations:

Professional GS–13/4—@24 hours $18.47 per hr=*$443.28*.

All reports are machine generated therefore no clerical time is required.

[5] 86. Informal opinions about rate applications.
Direct Labor Cost—$39.80.
Fully Distributed Cost—$69.83.
Current Fee—None.

Discussion

During the study period a total of 457 reviews were observed resulting in direct labor costs per unit of $39.80.

87.–95. Reserved.

96. Messenger delivery of decisions to a rail carrier's Washington, D.C. agent.
Direct Labor Cost—$4.45.
Fully Distributed Cost—$7.81.
Current Fee—None.

Discussion

During the study period 577 decisions were observed resulting in a direct labor cost per unit delivered of *$3.93*. Additional estimates include recovery of Commission cost of $0.52 cents for messenger service to physically deliver the notices. The $0.52 cents is based on a contract cost of $3.13, to deliver multiple decisions to an agent, reduced by an estimate of 6 decisions per delivery. The total direct cost per unit is *$4.45*.

[5] Footnote.

97. Providing service lists for cases to the public upon request.
Direct Labor Cost—$3.08.
Fully Distributed Cost—$5.14.
Current Fee—None.

Discussion

During the study period 16 requests were observed resulting in direct labor costs per unit of $2.60. An additional $0.48 cents per unit has been added to cover mail room handling resulting in total direct labor costs per unit of *$3.08*.

98. Adding names of interested parties.
Direct Labor Cost—$1.42.
Fully Distributed Cost—$2.49.
Current Fee—None.

Discussion

Direct Labor costs applicable to this item were not captured during the study period. A review of the processing functions involved in providing the above service indicates that it takes a GS–7/3 approximately 10 minutes to perform the service. It is estimated that the direct labor cost per unit is $1.42 ($8.49 per hour at 10 minutes=$1.42).

99. Processing of requests for copies of one-percent carload waybill sample.
Direct Labor Cost—$46.64.
Fully Distributed Cost—$81.82.
Current Fee—None.

Discussion

During the study period 18 requests were observed resulting in direct labor cost per unit of $46.64.

No publication costs are assigned since requests are not published.

100. Verification of Surcharge levels pursuant to Ex Parte No. 389, Procedures for Requesting Rail Variable Cost and Revenue Determination for Joint Rates Subject to Surcharge or Cancellation.
Direct Labor Cost—$5.85 per movement.
Fully Distributed Cost—$10.27 per movement.
Current Fee—None.

Discussion

During the study period a total of 7 movements were costed resulting in direct labor costs per movement of $5.85.

No publication cost is assigned since verfications are not published.

101. Requests for Diazo Copies of Microfilm documents.
Direct Labor Cost—$0.03.
Fully Distributed Cost—$0.05.
Current Fee—None.

Discussion

During the course of study 21, 486 diazo copies were observed resulting in direct labor costs per unit of $0.03.

Items Eliminated From Consideration

—Reference assistance to the public.
Direct Labor Cost—$0.73.
Fully Distributed Cost—$1.28.
Current Fee—None.

Discussion

During the study period 425 inquiries were observed resulting in direct labor cost per inquiry of $0.73.

—Life Analyses Studies—Railroads.
Direct Labor Cost—None.
Fully Distributed Cost—None.
Current Fee—None.

Discussion

This service is no longer provided by the Depreciation Branch in the Bureau of Accounts, Section of Accounting and Reporting and was not studied. All Future Life Analyses Studies will be provided by the individual railroads based on depreciation rates set by the I.C.C. Therefore, it is recommended that this item be eliminated from further consideration.

—Deliquent Filings—Annual Report.
Direct Labor Cost—$1.20 and $3.68.
Fully Distributed Cost—$2.11 and $6.46.
Current Fee—None.

Discussion

Annual Report filings are currently being processed by an independent contractor including the tracing of delinquent filings. The tracer letter cost to the Commission is $1.20 for the initial letter and $3.68 for a follow-up letter. It is noted that the I.C. Act, Section 11901 provides for a fine of $500.00 for each violation, and $250.00 per day for each day the violation continues.

—Petitions for rulemaking.
Direct Labor Cost—$411.83.
Fully Distributed Cost—$930.34.
Current Fee—None.

Discussion

During the study period 8 rail and no motor petitions were observed resulting in direct labor cost per unit of $411.83.

Attachment 1.—Outline of Computation of General and Administrative Cost—Commission and Departmental

A. Commission General and Administrative Costs—Based on Fiscal Year 1983 Budget and Fiscal Determinations.

1. Personnel Costs (Commissioners, Managing Director, General Counsel and Auditing Costs)	$5,000,000
2. Rent, Communications and Utilities Cost	1,102,300
3. Printing and Reproduction Costs	30,200
4. Supplies and Materials	67,200
5. Furniture and Equipment	86,800
6. Leasehold Improvements	8,300
Total	$6,294,800

Total Agency Expenses FY 1983=$69,000,000.

Commission G&A $6,294,800 ÷ FY 1983 Expense $69,000,000 = 9.10 percent.

B. Operations overhead—Based on the relationship of Supervisory Direct Labor to total Direct Labor (Clerical, Professional and Supervisory) from the cost study.

Supervisory Direct Labor=$65,473.00.
Total Direct Labor=$362,875.00.
Supervisory direct labor ÷ total direct labor = 18.04 percent.

It was determined that operations overhead should not be considered as being 100 percent related to projects under consideration in the fee study, since certain administrative functions would be associated with other Commission business. Therefore, operations overhead percent is estimated to be 60 percent leaving 40 percent associated with other functions, or *10.82% (18.04% × 60%= 10.82%)*.

C. Commission General and Administrative=9.10 percent; Operations Overhead=10.82 percent; Total 19.92 percent.

[FR Doc. 84-4161 Filed 2-16-84; 8:45 am]
BILLING CODE 7035-01-M

Notices

Federal Register
Vol. 49, No. 34
Friday, February 17, 1984

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

Agricultural Marketing Service

List of Warehouses and Availability of List of Cancellations and/or Terminations

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Notice of Publication of List of Warehouses Licensed Under the U.S Warehouse Act and Availability of List of Cancellations and/or Terminations Occurring During Calendar Year 1983.

Notice is hereby given that the Agricultural Marketing Service has published a list of warehouses licensed under the U.S. Warehouse Act (7 U.S.C. 241 *et seq.*) as of December 31, 1983, as required by section 26 of that Act. Also available is a list of cancellations and/or terminations that occurred during calendar year 1983. A copy of the list of warehouses as of December 31, 1983, will be distributed to all licensed warehousemen. Other interested parties may obtain a copy of either list from: Mrs. Judy Fry, Warehouse Service Branch, Warehouse and Seed Division—AMS, U.S. Department of Argiculture, Room 2720–South Agriculture Bldg., Washington, D.C. 20250, PH: 202–447–3821.

Done at Washington, D.C., February 13, 1984.

William T. Manley,

Deputy Administrator, Marketing Program Operations.

[FR Doc. 84-4367 Filed 2-16-84; 8:45 am]

BILLING CODE 3410-02-M

Agricultural Stabilization and Conservation Service

Burley Tobacco; 1984–85 National Marketing Quota for Burley Tobacco

AGENCY: Agricultural Stabilization and Conservation Service, Agriculture (USDA).

ACTION: Notice of Determination of 1984–85 Marketing Quota.

SUMMARY: The purpose of this notice is to announce determinations with respect to the 1984 crop of burley tobacco in accordance with the Agricultural Adjustment Act of 1938, as amended. In addition to other determinations, the Secretary of Agriculture has determined that the 1984–85 national marketing quota for burley tobacco shall be 583 million pounds. The Secretary is required by statute to announce the 1984–85 national marketing quota by February 1, 1984.

EFFECTIVE DATE: February 1, 1984.

FOR FURTHER INFORMATION CONTACT: Robert L. Tarczy, Agricultural Economist, Analysis Division, ASCS, Room 3736-South Building, P.O. Box 2415, Washington, D.C. 20013 (202) 447–5187. The Final Regulatory Impact Analysis describing the options considered in developing this notice and the impact of implementing each option is available on request from Robert L. Tarczy.

SUPPLEMENTARY INFORMATION: This notice has been reviewed under USDA procedures established in accordance with Executive Order 12291 and Departmental Regulation No. 1512–1 and has been classified "not major." This action has been classified "not major" since implementation of these determinations will not result in: (1) An annual effect on the economy of $100 million or more, (2) a major increase in costs or prices for consumers, individual industries, Federal, State or local governments, or geographical region, or (3) significant adverse effects on competition, employment, investment, productivity, innovation, the environment, or the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

The title and number of the Federal Assistance Program that this notice applies to are: Title—Commodity Loan and Purchases; Number 10.051, as set forth in the Catalog of Federal Domestic Assistance.

It has been determined that the Regulatory Flexibility Act is not applicable to this notice since the Agricultural Stabilization and Conservation Service (ASCS) is not required by 5 U.S.C. 553 or any provision of law to publish a notice of proposed rulemaking with respect to the subject matter of this notice.

This notice of determination is issued in accordance with the Agricultural Adjustment Act of 1938, as amended (hereinafter referred to as the "Act"), in order to announce for the 1984–85 marketing year for burley tobacco the following:

1. The amount of the reserve supply level;
2. The amount of the total supply;
3. The amount of the national marketing quota;
4. The national factor; and
5. The national reserve:

A. For establishing marketing quotas for new farms, and

B. For making corrections and adjusting inequities in marketing quotas old farms.

Marketing quotas on a poundage basis were proclaimed by the Secretary of Agriculture for burley tobacco for the 1983–84, 1984–85, and 1985–86 marketing years (see 48 FR 7228). Since at least one-third of the burley tobacco producers voting in a marketing quota referendum during the period February 28 through March 3, 1983, did not vote to disapprove marketing quotas, such marketing quota is in effect for the 1984–85 marketing year (see 48 FR 28303).

The determinations by the Secretary as set forth in this notice have been made on the basis of the latest available statistics of the Federal Government and after consideration of data, views, and recommendations received from burley tobacco producers and others pursuant to a Proposed Notice of Determination which was published on November 17, 1983 (48 FR 52339).

Discussion of Comments

During the comment period, 16 written responses were received from producers, farm groups and a State Department of Agriculture. Five of the 8 comments which made specific recommendations with respect to the size of the 1984–85 marketing quota recommended a 10 percent reduction in

the quota, noting that supplies were excessive. One comment recommended at least a five percent reduction in quota and two other comments recommended that the 1984–85 marketing quota should be maintained at the same level as the 1983–84 marketing quota. The other 8 responses made no specific recommendations on the amount of the marketing quota.

A meeting was held in the burley tobacco producing area to give producers and others a further opportunity to express their views. Nine of the 10 persons in attendance who expressed views favored a 10 percent reduction in quota, while the other favored a 5 percent reduction in quota. All of these comments were based upon the existing excess supply of burley tobacco.

Section 319(c) of the Act provides, in part, that the national marketing quota which is determined for burley tobacco for any marketing year shall be the amount of burley tobacco which is produced in the United States which the Secretary estimates will be utilized domestically and will be exported during such marketing year, adjusted upward or downward in such amount as the Secretary, in his discretion, determines is desirable for the purpose of maintaining an adequate supply or for effecting an orderly reduction of supplies to the reserve supply level. Any such downward adjustment shall not exceed 10 percent of such estimated domestic utilization and exports. For each marketing year for which marketing quotas are in effect under section 319, the Secretary in his discretion may establish a reserve (hereinafter referred to as the "national reserve") from the national marketing quota in an amount not in excess of 1 percent of the national marketing quota. The national reserve is to be available for making corrections and adjusting inequities in farm marketing quotas and for establishing marketing quotas for new farms.

Section 319(e) of the Act provides, in part, that the farm marketing quota for the 1984–85 marketing year shall be determined by multiplying the previous year's farm marketing quota by a national factor obtained by dividing the national marketing quota (less the national reserve) by the sum of the farm marketing quotas for the immediately preceding year for all farms for which burley tobacco marketing quotas will be determined for the 1984–85 marketing year. However, such national factor shall be not less than 90 percent.

Section 301(b)(14)(B) of the Act defines "reserve supply level" as the normal supply, plus 5 percent thereof, to insure a supply adequate to meet domestic consumption and export needs in years of drought, flood, or other adverse conditions, as well as in years of plenty.

The "normal supply" is defined in section 301(b)(10)(B) of the Act as a normal year's domestic consumption and exports, plus 175 percent of a normal year's domestic use and 65 percent of a normal year's exports as an allowance for a normal year's carryover.

A "normal year's domestic consumption" is defined in section 301(b)(11)(B) of the Act as the average quantity produced and consumed in the United States during the 10 marketing years immediately preceding the marketing year in which the quota must be announced (1983–84), adjusted for current trends in such consumption.

A "normal year's exports" is defined in section 301(b)(12) of the Act as the average quantity produced in the United States which was exported from the United States during the 10 marketing years immediately preceding the marketing year in which such exports are determined, adjusted for current trends in such exports.

The reserve supply level is 1,629 million pounds, based on a normal year's domestic consumption of 480 million pounds and a normal year's exports of 140 million pounds. The average domestic usage for the past 10 marketing years is 493 million pounds. Domestic use has trended downward in recent years. The 10-year average for exports is 112 million pounds. Exports have averaged 138 million pounds during the past 2 marketing years and are expected to continue their upward trend in the future as foreign manufacturers upgrade their blends. In view of these data and estimates, a reserve supply level of 1,629 million pounds has been determined to be reasonable.

The total supply for the 1983–84 marketing year (carryover stocks as of October 1, 1983 plus estimated marketings of the 1983 crop) is 1,822 million pounds. This is 193 million pounds above the reserve supply level.

Total disappearance for the 1984–85 marketing year is estimated at 585 million pounds. While it would appear appropriate to establish a national marketing quota for the 1984–85 marketing year at significantly less than estimated disappearance, section 319(e) of the Act provides that the sum of the farm marketing quotas for such marketing year cannot be less than 90 percent of the farm marketing quotas for the previous marketing year. Accordingly, the national marketing quota for burley tobacco for the marketing year beginning October 1, 1984 is determined to be 583 million pounds. The sum of the preliminary farm marketing quotas for farms eligible for the 1984–85 marketing year is 646,585,555 pounds. A quota of 583 million pounds, less a national reserve of 1,000,000 pounds, results in a national factor for burley tobacco for the 1984–85 marketing year of 0.90.

Determinations 1984–85 Marketing Year

Accordingly, the following determinations have been made with respect to burley tobacco for the marketing year beginning October 1, 1984:

(a) A national marketing quota of 583 million pounds.

(b) A reserve supply level of 1,629 million pounds.

(c) The national reserve of 1,000,000 pounds.

(d) The national factor is 0.90.

(Secs. 301, 319, 375, 52 Stat. 38, as amended, 85 Stat. 23, 52 Stat. 66, as amended, 7 U.S.C. 1301, 1314e, 1375)

Signed at Washington, D.C. on February 13, 1984.

John R. Block,

Secretary.

[FR Doc. 84-4366 Filed 2-16-84; 8:45 am]

BILLING CODE 3410-05-M

Fire-Cured (Type 21), Fire-Cured (Types 22-23), Dark Air-Cured, Virginia Sun-Cured, Cigar-Binder (Types 51 & 52), and Cigar-Filler and Binder (Types 42, 43, 44, 53, 54 & 55) Tobaccos; 1984–85 Marketing Quota and Acreage Allotments

AGENCY: Agricultural Stabilization and Conservation Service, USDA.

ACTION: Notice of Determination of 1984–85 Marketing Quota and Acreage Allotments.

SUMMARY: The purpose of this notice is to announce determinations with respect to the 1984 crops of fire-cured (type 21), fire-cured (types 22–23), dark air-cured, Virginia sun-cured, cigar-binder, and cigar filler and binder tobaccos. In addition to other determinations, USDA has declared national acreage allotments for the following kinds of tobaccos: fire-cured (type 21), 8,751 acres; fire-cured (types 22–23), 24,737 acres; dark air-cured, 9,637 acres; Virginia sun-cured, 1,227 acres; cigar binder (types 51 & 52), 1,974 acres; cigar-filler and binder (types 42–44 & 53–55), 11,593 acres.

Separate referenda for cigar-binder (types 51–52) and cigar-filler and binder (types 42–44; 53–55) tobaccos will be

held during the period February 27–March 1, 1984, by mail to determine whether or not these producers favor quotas for the next three marketing years.

EFFECTIVE DATE: February 1, 1984.

FOR FURTHER INFORMATION CONTACT: Robert L. Tarczy, Agricultural Economist, Analysis Division, ASCS, Room 3736 South Building, P.O. Box 2415, Washington, D.C. 20013, (202) 447–5187. The Final Regulatory Impact Analysis describing the options considered in developing this notice and the impact of implementing each option is available on request from Robert L. Tarczy.

SUPPLEMENTARY INFORMATION: This notice has been reviewed under USDA procedures established in accordance with Executive Order 12291 and Departmental Regulation No. 1512–1 and has been classified "not major." This action has been classified "not major" since implementation of these determinations will not result in: (1) An annual effect on the economy of $100 million or more, (2) a major increase in costs or process for consumers, individual industries, Federal, State or local governments, or geographical region, or (3) significant adverse effects on competition, employment, investment, productivity, innovation, the environment or the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

The title and number of the Federal Assistance Program that this notice applies to are: Title—Commodity Loan and Purchases; Number 10.051, as set forth in the Catalog of Federal Domestic Assistance.

It has been determined that the Regulatory Flexibility Act is not applicable to this notice since the Agricultural Stabilization and Conservation Service (ASCS) is not required by 5 U.S.C. 553 or any provision of law to publish a notice of proposed rulemaking with respect to the subject matter of this notice.

Under section 312(a) of the Agricultural Adjustment Act of 1938, as amended (hereinafter referred to as the "Act"), the Secretary is required to proclaim not later than February 1 of any marketing year with respect to any kind of tobacco, other than flue-cured tobacco, a national marketing quota for any kind of tobacco for each of the next 3 marketing years if such marketing year is the last year of three consecutive years for which marketing quotas previously proclaimed will be in effect. Such is the case with respect to cigar-binder (types 51–52) and cigar-filler and binder (types 42–44; 53–55) tobaccos. The Act also requires the Secretary to announce the reserve supply level and the total supply of fire-cured (type 21), fire-cured (types 22–23), dark air-cured, Virginia sun-cured, cigar-binder, and cigar-filler and binder tobaccos for the marketing year beginning October 1, 1983, and to announce for the 1984–85 marketing year the amounts of the national marketing quotas, national acreage allotments, and national acreage factors for apportioning the national acreage allotments (less reserves) to old farms, and the amounts of the national reserves and parts thereof available for (a) new farms and (b) making corrections and adjusting inequities in old farm allotments for fire-cured (type 21), fire-cured (types 22–23), dark air-cured, Virginia sun-cured, cigar-binder, cigar-filler and binder tobaccos.

These determinations have been made on the basis of the latest available statistics of the Federal Government, and after consideration of data, views, and recommendations received from tobacco producers and others in response to a Proposed Notice of Determination which was published on November 17, 1983 (48 FR 52340).

Pursuant to the provisions of section 317(c) of the Act, it has been determined that acreage-poundage quotas will not be announced for the 1984–85 marketing year for any of these kinds of tobaccos since such quotas would not result in a more effective marketing quota program for such kinds of tobacco.

Discussion of Comments

Seventy-two written responses were received. A summary by kind of tobacco is as follows:

Fire-cured (type 21) tobacco: Four comments were received recommeding that quotas remain unchanged.

Virginia sun-cured (type 37) tobacco: Two comments were received recommending quotas remain unchanged.

Fire-cured (types 22–23) tobacco: Thirty-three comments were received. Comments were in two main categories with almost all growers recommending that quotas remain unchanged, and all dealers and manufacturers recommending that quotas be increased by as much as 20 percent.

Dark air-cured tobacco: Twenty-two comments were received. Comments were in two main categories with almost all growers recommending that quotas remain unchanged, and all dealers and manufacturers recommending that quotas be increased by as much as 20 percent.

Cigar binder (types 51–52) tobacco: A total of six comments were received. Five comments recommended no change in quota, while one recommended a substantial reduction.

Cigar-filler and binder (types 42–44; 53–55) tobacco: Five comments were received. Three recommended that quotas remain unchanged, while two recommended that quotas be reduced from 10 to 15 percent.

There was one comment which recommended that the referendum be held by mail ballot.

In addition to the written comments, a meeting was held to discuss quotas for Kentucky-Tennessee fire-cured and dark air-cured tobaccos. A combined total of 28 comments were made. Of the 4 comments that made a specific recommendation on fire-cured quotas, all stated that the quota should be increased between 17 and 20 percent. Of the 4 comments specifically on the dark air-cured quota, all recommendations called for an increase in quota of between 10 and 20 percent.

Statutory Provisions

Section 312(b) of the Act provides, in part, that the amount of the national marketing quotas is the total quantity of a kind of tobacco which may be marketed which will make available during such marketing year a supply of such tobacco equal to the reserve supply level. Since producers of these kinds of tobacco generally produce less than their respective national acreage allotments, it is determined that a larger quota would be necessary to make available production equal to the reserve supply level. The amount of the national marketing quota so announced may, not later than the following March 1, be increased by not more than 20 percent if the Secretary determines that such increase is necessary in order to meet market demands or to avoid undue restriction of marketings in adjusting the total supply to the reserve supply level.

Definitions

Section 301(b)(14)(B) of the Act defines "reserve supply level" as the normal supply, plus 5 percent thereof, to insure a supply adequate to meet domestic consumption and export needs in years of drought, flood, or other adverse conditions, as well as in years of plenty. The "normal supply" is defined in section 301(b)(10)(B) of the Act as a normal year's domestic use and 65 percent of a normal year's exports as an allowance for a normal year's carryover. A "normal year's domestic consumption" is defined in section 301(b)(11)(B) of the Act as the average quantity produced and consumed in the United States during the 10 marketing

years immediately preceding the marketing year in which the quota must be announced (1983–84), adjusted for current trends in such consumption.

A "normal year's exports" is defined in section 301(b)(12) of the Act as the average quantity produced in and exported from the United States during the 10 marketing years immediately preceding the marketing year in which the quota must be announced (1983–84), adjusted for current trends in such exports.

Fire-Cured (Type 21) Tobacco

The yearly average quantity of fire-cured (type 21) tobacco produced in the United States which is estimated to have been consumed in the United States during the 10 marketing years preceding the 1983–84 marketing year was approximately 2.0 million pounds. The average annual quantity of fire-cured (type 21) tobacco produced in the United States and exported from the United States during the 10 marketing years preceding the 1983–84 marketing year was 3.3 million pounds (farm sales weight basis). Domestic use has shown an upward trend, while exports have trended downward. Accordingly, a normal year's domestic consumption has been set at 3.2 million pounds while a normal year's exports has been set at 3.0 million pounds. Application of the formula prescibed by section 301(b)(14)(B) of the Act results in a reserve supply level of 14.4 million pounds.

Manufacturers and dealers reported stocks of fire-cured (type 21) tobacco held on October 1, 1983, of 10.3 million pounds. The 1983 fire-cured (type 21) tobacco crop is estimated to be 4.8 million pounds. Therefore, the total supply of fire-cured (type 21) tobacco for the 1983–84 marketing year is 15.1 million pounds. During the 1983–84 marketing year, it is estimated that disappearance will total approximately 4.5 million pounds. By deducting this disappearance from the total supply, a carryover of 10.6 million pounds for the 1984–85 marketing year is obtained.

The difference between the reserve supply level and the estimated carryover on October 1, 1984 is 3.8 million pounds. This represents the quantity of fire-cured (type 21) tobacco which may be marketed which will make available during such marketing year a supply equal to the reserve supply level. Because about 47 percent of the announced national marketing quotas during the past 5 marketing years has been produced, it is hereby determined that a national marketing quota of 8.0 million pounds is necessary to make available production of 3.8 million pounds. Increasing the quota by 20 percent in accordance with section 312(b) of the Act to 9.6 million pounds is necessary to avoid undue restriction of marketings. This results in the 1984–85 national marketing quota of 9.6 million pounds.

In accordance with section 313(g) of the Act, the 1984–85 national marketing quota, divided by the 1979–83, 5-year national average yield of 1.097 pounds per acre, results in a 1984 national acreage allotment of 8,751.14 acres.

Pursuant to the provisions of section 313(g) of the Act, a national acreage factor of 0.95 is determined by dividing the national acreage allotment, less a national reserve of 55.0 acres, by the total of 1984 preliminary farm acreage allotments. The preliminary farm coverage allotments reflect the factors specified in section 313(g) of the Act for apportioning the national acreage allotment, less the national reserve, to old farms.

Fire–Cured (Types 22 & 23) Tobacco

The yearly average quantity of fire-cured (types 22 & 23) tobacco produced in the United States which is estimated to have been consumed in the United States during the 10 years preceding the 1983–84 marketing year was about 15.9 million pounds. The average annual quantity of fire-cured (types 22 & 23) tobacco produced in the United States and exported during the 10 marketing years preceding the 1983–84 marketing year was 19.8 million pounds (farm-sales weight basis). Domestic use and exports have trended up recently. Accordingly, a normal year's domestic consumption has been established at 18.1 million pounds and a normal year's exports at 21.3 million pounds. Application of the formula prescribed by section 301(b)(14)(B) of the Act results in a reserve supply level of 89.1 million pounds.

Manufacturers and dealers reported stocks of fire-cured (types 22 & 23) tobacco on October 1, 1983, of 68.7 million pounds. The 1983 fire-cured (types 22 & 23) crop is estimated to be 30.7 million puunds. Therefore, the total supply of fire-cured (types 22 & 23) tobacco for the marketing year beginning October 1, 1983, is 99.4 million pounds. During the 1983–84 marketing year, it is estimated that disappearance will totally approximately 39.0 million pounds. By deducting this disappearance from the total supply, a carryover of 60.4 million pounds for the 1984–85 marketing year is obtained.

The difference between the reserve supply level and the estimated carryover on October 1, 1984 is 28.7 million pounds. This represents the quantity of fire-cured (types 22 & 23) tobacco which may be marketed which will make available during the 1984–85 marketing year a supply equal to the reserve supply level. Because about 81 percent of the announced national marketing quotas over the past 5 years has been produced, it is hereby determined that a national marketing quota for the 1984–85 marketing year of 35.3 million pounds is necessary to make available production of 28.7 million pounds. In accordance with section 312(b) of the Act, it has been further determined that the 1984–85 national marketing quota must be increased in order to avoid undue restriction of marketings. This results in a national marketing quota for the 1984–85 marketing year of 42.4 million pounds.

The national acreage allotment for the 1984–85 marketing year is determined to be 24,737.46 acres. In accordance with section 313(g) of the Act, the national marketing quota for the 1984–85 marketing year has been divided by the 1979–83, 5-year national average yield of 1,714 pounds per acre, to obtain a national acreage allotment of 24,737.46 acres, for the 1984–85 marketing year.

Pursuant to the provisions of section 313(g) of the Act, a national acreage factor of 1.10 is determined by dividing the national acreage allotment for the 1984–85 marketing year less a national reserve of 130 acres, by the total of the 1984 preliminary farm acreage allotments. The preliminary farm acreage allotments reflects the factors specified in section 313(g) of the Act for apportioning the national acreage allotment, less a reserve, to old farms.

Dark Air–Cured Tobacco

The yearly average quantity of dark air-cured tobacco produced in the United States which is estimated to have been consumed in the United States during the 10 years preceding the 1984–84 marketing year was approximately 14.4 million pounds. The average annual quantity produced domestically and exported during this period was 2.2 million pounds (farm-sales weight basis). Exports have shown a downward trend while domestic use has been erratic. Accordingly, 15.7 million pounds have been used as a normal year's domestic consumption and 2.0 million pounds have been used as a normal year's exports. Application of the formula required by section 301(14)(B) of the Act results in a reserve supply level of 48.8 million pounds.

Manufacturers and dealers reported stocks of dark air-cured tobacco held on October 1, 1983, of 42.3 million pounds. The 1983 dark air-cured crop is

estimated to be 12.1 million pounds. Therefore, the total supply for the market-year beginning October 1, 1983, is 54.4 million pounds. During the 1983–84 marketing year, it is estimated that disappearance will total approximately 16.0 million pounds. By deducting this disappearance from the total supply, a carryover of 38.4 million pounds for the 1984–85 marketing year is obtained.

The difference between the reserve supply level and the estimated carryout on October 1, 1984 is 10.4 million pounds. This represents the quantity of dark air-cured tobacco which may be marketed which will make available during such marketing year a supply equal to the reserve supply level. Because only about 77 percent of the announced national marketing quotas over the past 5 years has been produced, it is hereby determined that a national marketing quota for the 1984–85 marketing year of 13.5 million pounds is necessary to make available production of 10.4 million pounds. In accordance with section 312(b) of the Act, it has been further determined that the 1984–85 marketing quota must be increased by 20 percent to 16.2 million pounds.

In accordance with section 313(g) of the Act, the 1984–85 national marketing quota, divided by the 1979–83, 5-year national average yield of 1,681 pounds per acre, results in a national acreage allotment of 9,637.12 acres.

Pursuant to the provisions of section 313(g) of the Act, a national acreage factor of 1.0 is determined by dividing the national acreage allotment, less a national reserve of 45 acres, by the total of the 1984 preliminary farm acreage allotments. The preliminary farm acreage allotments reflect the factors specified in section 313(g) for apportioning the national acreage allotment, less the national reserve, to old farms.

Virginia Sun-Cured Tobacco

The yearly average quantity of Virginia sun-cured tobacco produced in the United States which is estimated to have been consumed in the United States during the 10 marketing years preceding the 1983–84 marketing year was approximately 730 thousand pounds. The average annual quantity produced in the United States and exported during the same period was approximately 170 thousand pounds (farm-sales weight basis). Both domestic use and exports have shown a downward trend. Accordingly, 549 thousand pounds have been used as a normal year's domestic consumption and 80 thousand pounds have been used as a normal year's exports. Application of the formula prescribed by section 301(b)(14)(B) of the Act results in a reserve supply level of 1,724 thousand pounds.

Manufacturers and dealers reported stocks of Virginia sun-cured tobacco held on October 1, 1983, of 1,451 thousand pounds. The 1983 Virginia sun-cured tobacco crop is estimated to be 490 thousand pounds. Therefore, the total supply of Virginia sun-cured tobacco for the 1983–84 marketing year is 1,941 thousand pounds. During the 1983–84 marketing year, it is estimated that disappearance will total approximately 800 thousand pounds. By deducting this disappearance from the total supply, a carryover of 1,141 thousand pounds for the 1984–85 marketing year is obtained.

The difference between the reserve supply level and the estimated carryover on October 1, 1984 is 583 thousand pounds. This represents the quantity of Virginia sun-cured tobacco which may be marketed which will make available during such marketing year a supply equal to the reserve supply level. Because less than half of the announced national marketing quotas over the past 5 years have been produced, it is hereby determined that a national marketing quota of 1,166 thousand pounds is necessary to make available production of 583 thousand pounds. Increasing the quota by 20 percent in accordance with section 312(b) of the Act to 1,399 thousand pounds is necessary to avoid undue restriction of marketings. This results in a national marketing quota of 1,399 thousand pounds.

In accordance with section 313(g) of the Act, the 1984–85 national marketing quota, divided by the 1979–83, 5-year national average yield of 1,140 pounds per acre, results in a 1984 national acreage allotment of 1,227.19 acres.

Pursuant to the provisions of section 313(g) of the Act, a national acreage factor of 1.0 is determined by dividing the national acreage allotment, less a national reserve of 8.0 acres, by the total of the 1984 preliminary farm acreage allotments. The preliminary farm acreage allotments reflect the factors specified in section 313(g) of the Act for apportioning the national acreage allotment, less the national reserve, to old farms.

Cigar-Binder (Types 51 & 52) Tobacco

The yearly average quantity of cigar-binder (types 51 & 52) tobacco produced in the United States, which is estimated to have been consumed in the United States during the 10 years preceding the 1983–84 marketing year, was approximately 2.6 million pounds. The average annual quantity of cigar-binder tobacco produced in the United States and exported from the United States during the 10 marketing years preceding the 1983–84 marketing year was .1 million pounds (farm-sales weight basis). Domestic use has shown an upward trend, while exports have fluctuated between .1 and .2 million pounds. Accordingly, 2.8 million pounds have been used as a normal year's domestic consumption and .2 million pounds have been used as a normal year's exports.

Application of the formula prescribed by section 301(b)(14)(B) of the Act results in a reserve supply level of 8.4 million pounds.

Manufacturers and dealers reported stocks of cigar-binder tobacco held on October 1, 1983 of 7.3 million pounds. The 1983 cigar-binder tobacco crop is estimated to be 2.7 million pounds. Therefore, the total supply of cigar-binder tobacco for the 1983–84 marketing year is 10.0 million pounds. During the 1983–84 marketing year, it is estimated that disappearance will total about 3.0 million pounds. By deducting the estimated disappearance during the 1983–84 marketing year from the total supply, a carryover of 7.0 million pounds at the beginning of the 1984–85 marketing year is obtained.

The difference between the reserve supply level and the estimated carryover on October 1, 1984 is 1.4 million pounds. This represents the quantity of cigar-binder tobacco which may be marketed which will make available during such marketing year a supply equal to the reserve supply level. Because about 47 percent of the announced national marketing quotas over the past 5 years has been produced, it is hereby determined that a national marketing quota of 2.9 million pounds is necessary to make available production of 1.4 million pounds. In accordance with section 312(b) of the Act, an increase in the computed quota by 20 percent to 3.5 million pounds is necessary in order to avoid undue restriction of marketings. This results in a national marketing quota of 3.5 million pounds.

In accordance with section 313(g) of the Act, the 1984–85 national marketing quota of 3.5 million pounds, divided by the 1979–83, 5-year national average yield of 1,773 pounds per acre, results in a 1984 national acreage allotment of 1,974.06 acres.

Pursuant to the provisions of Section 313(g) of the Act, a national acreage factor of 0.808 is determined by dividing the national acreage allotment, less a national reserve of 19.7 acres, by the total of the 1984 preliminary farm acreage allotments. The preliminary farm acreage allotments reflect the

factors specified in section 313(g) of the Act for apportioning the national allotment, less the national reserve, to old farms.

Cigar-Filler and Binder Tobacco

The yearly average quantity of cigar-filler and binder tobacco produced in the United States which is estimated to have been consumed in the United States during the 10 years preceding the 1983–84 marketing year was approximately 23.2 million pounds. The average annual quantity of cigar-filler and binder tobacco produced in the United States and exported from the United States during the 10 marketing years preceding the 1983–84 marketing year was less than .1 million pounds. Domestic use is erratic, while exports are steady.

Accordingly, a normal year's domestic consumption has been set at 26.7 million pounds while a normal year's exports has been set at 0.05 million pounds. Application of the formula prescribed by section 301(b)(14)(B) the Act results in a reserve supply level of 77.2 million pounds.

Manufacturers and dealers report stocks of cigar-filler and binder tobacco held on October 1, 1983 of 66.2 million pounds. The 1983 cigar-filler and binder crop is estimated to be 18.0 million pounds. Therefore, the total supply of cigar-filler and binder tobacco for the 1983–84 marketing year is 84.2 million pounds. During the 1983–84 marketing year, it is estimated that disappearance will total about 21.0 million pounds. By deducting this disappearance from the total supply, a carryover of 63.2 million pounds at the beginning of the 1984–85 marketing year is obtained.

The difference between the reserve supply level and the estimated carryover on October 1, 1984 is 14.0 million pounds. This represents the quantity of cigar-filler and binder tobacco which may be marketed which will make available during such marketing year a supply equal to the reserve supply level. Because about 76 percent of the announced national marketing quotas over the past 5 years have been produced, it is hereby determined that the 1984–85 national marketing quota of 18.5 million pounds is necessary to make available production of 14.0 million pounds. Increasing the quota by 20 percent in accordance with section 312(b) of the Act to 22.2 million pounds, is necessary to avoid undue restriction of marketings. This results in the 1984–85 national marketing quota of 22.2 million pounds.

In accordance with section 313(g) of the Act, the 1984–85 national marketing quota of 22.2 million pounds, divided by the 1979–83, 5-year national average yield of 1,915 pounds per acre, results in the 1984–85 national acreage allotments of 11,592.69 acres.

Pursuant to the provisions of section 313(g), a national acreage factor of 0.90 is determined by dividing the national acreage allotment, less a national reserve of 70 acres, by the total of the 1984 preliminary farm acreage allotments. The preliminary farm acreage allotments reflect the factors specified in section 313(g) for apportioning the national acreage allotment, less the national reserve, to old farms.

Reasons for Immediate Implementation

Since section 312 of the Act requires that the amount of the national marketing quotas for the 1984–85 marketing year for the minor kinds of tobacco be announced by February 1, 1984, it is hereby determined that no further public rulemaking is required. Therefore, this notice shall become effective February 1, 1984.

Determinations—Proclamations of National Marketing Quotas

1. Cigar-binder (Types 51–52)

Since the 1983–84 marketing year is the last of 3 consecutive years for which marketing quotas previously proclaimed will be in effect for cigar-binder (types 51 & 52) tobacco, a national marketing quota for such kind of tobacco for each of the 3 marketing years beginning October 1, 1984, October 1, 1985, and October 1, 1986 is hereby proclaimed.

2. Cigar-filler and Binder (Types 42–44; 53–55)

Since the 1983–84 marketing year is the last of 3 consecutive years for which marketing quotas previously proclaimed will be in effect for cigar-filler and binder (types 42–44; 53–55) tobacco, national marketing quota for such kind of tobacco for each of the 3 marketing years beginning October 1, 1984, October 1, 1985, and October 1, 1986 is hereby proclaimed.

Method and Period for Holding Referenda

It is hereby determined and announced that separate referenda of farmers engaged in 1983 production of cigar-binder (types 51 & 52) tobacco and 1983 production of cigar-filler and binder (types 42–44; 53–55) will be conducted by mail ballot during the period February 27—March 1, 1984 inclusive. If more than 66⅔ percent of those voting favor quotas, then quotas will be in effect for the next three marketing years beginning October 1, 1984.

Determinations 1984–85 Marketing Year

For cigar-binder (types 51 & 52) tobacco for the marketing year October 1, 1984:

(a) *Reserve supply level.* The reserve supply level for cigar-binder (types 51 & 52) tobacco is 8.4 million pounds.

(b) *Total supply.* The total supply of cigar-binder (types 51 & 52) tobacco for the marketing year beginning October 1, 1983 is 10.0 million pounds.

(c) *Carryover.* The estimated carryover of cigar-binder (types 51 & 52) tobacco for the marketing year beginning October 1, 1984 is 7.0 million pounds.

(d) *National marketing quota.* The amount of cigar-binder (types 51 & 52) tobacco which will make available during the marketing year beginning October 1, 1984 a supply equal to the reserve supply level of such tobacco is 1.4 million pounds. Because producers have been producing about 47 percent of the announced national acreage allotment over the past 5 years, it is hereby determined that a national marketing quota of 2.9 million pounds is necessary to make available production of 1.4 million pounds. Accordingly, a national marketing quota of 2.9 million pounds is hereby announced. It is further determined, however, that a national marketing quota in the amount of 2.9 million pounds would result in undue restriction of marketings during the 1984–85 marketing year in adjusting the total supply to the reserve supply level. Accordingly, such amount is hereby increased by 20 percent. Therefore, the amount of the national marketing quota for cigar-binder (types 51 & 52) tobacco in terms of the total quantity of such tobacco which may be marketed during the marketing year beginning October 1, 1984, is 3.5 million pounds.

(e) *National acreage allotment.* The national acreage allotment is 1,974.06 acres.

(f) *National acreage factor.* The national acreage factor for use in determining farm acreage allotments for the 1984–85 marketing year is 0.808.

(g) *National reserve.* The national acreage reserve is 19.7 acres of which 5.0 acres are made available for new farms, and 14.7 acres are for making corrections in adjusting inequities in old farm allotments.

For cigar-filler and binder (types 42–44, 53–55) tobacco for the marketing year October 1, 1984:

(a) *Reserve supply level.* The reserve supply for cigar-filler and binder (types 42–44, 53–55) tobacco is 77.2 million pounds.

(b) *Total supply.* The total supply of cigar-filler and binder (types 42–44, 53–55) tobacco for the marketing year beginning October 1, 1984 is 84.2 million pounds.

(c) *Carryover.* The estimated carryover of cigar-filler and binder (types 42–44, 53–55) tobacco for the marketing year beginning October 1, 1984 is 63.2 million pounds.

(d) *National marketing quota.* The amount of cigar-filler and binder (types 42–44, 53–55) tobacco which will make available during the marketing year beginning October 1, 1984, a supply equal to the reserve supply level of such tobacco is 14.0 million pounds. Because producers have been producing about 76 percent of the announced national acreage allotment over the past 5 years, it is hereby determined that a national marketing quota of 18.5 million pounds is necessary to make available production of 14.0 million pounds. Accordingly, a national marketing quota of 18.5 million pounds is hereby announced. It is further determined, however, that a national marketing quota in the amount of 18.5 million pounds would result in undue restriction of marketings during the 1985–85 marketing year in adjusting the total supply to the reserve supply level. Accordingly, such amount is hereby increased by 20 percent. Therefore, the amount of the the national marketing quota for cigar-filler and binder (types 42–44; 53–55) tobacco in terms of the total quantity of such tobacco which may be marketed during the marketing year beginning October 1, 1984, is 22.2 million pounds.

(e) *National acreage allotment.* The national acreage allotment is 11,592.69 acres.

(f) *National acreage factor.* The national acreage factor for use in determining farm acreage allotments for the 1984–85 marketing year is 0.90.

(g) *National reserve.* The national acreage reserve is 70 acres, of which 65 acres are made available for 1984 new farms, and 5 acres are made available for making corrections and adjusting inequities in old farm allotments.

For fire-cured (type 21) tobacco for the marketing year October 1, 1984:

(a) *Reserve supply level.* The reserve supply level for fire-cured (type 21) tobacco is 14.4 million pounds.

(b) *Total supply.* The total supply of fire-cured (type 21) tobacco for the marketing year beginning October 1, 1983, is 15.1 million pounds.

(c) *Carryover.* The estimated carryover of fire-cured (type 21) tobacco for the marketing year beginning October 1, 1984, is 10.6 million pounds.

(d) *National marketing quota.* The amount of fire-cured (type 21) tobacco which will make available during the marketing year beginning October 1, 1984 a supply equal to the reserve supply level of such tobacco is 3.8 million pounds. Because producers have been producing about 47 percent of the announced national marketing quota during the past 5 marketing years, a national marketing quota of 8.0 million pounds is hereby announced.

It is further determined, however, that a national marketing quota in the amount of 8.0 million pounds would result in undue restriction of marketings during the 1984–85 marketing year. Accordingly, such amount is hereby increased by 20 percent. Therefore, the amount of the national marketing quota for fire-cured (type 21) tobacco in terms of the total quantity of such tobacco which may be marketed during the marketing year beginning October 1, 1984 is 9.6 million pounds.

(e) *National acreage allotment.* The national acreage allotment is 8,751.14 acres.

(f) *National acreage factor.* The national acreage factor for use in determining farm acreage allotments is .95.

(g) *National reserve.* The national acreage reserve is 55 acres, of which 15.0 acres are made available for 1984 new farms, and 40.0 acres are made available for making corrections and adjusting inequities in old farms allotments.

For fire-cured (types 22 & 23) tobacco for the marketing year October 1, 1984:

(a) *Reserve supply level.* The reserve supply level for fire-cured (types 22 & 23) tobacco is 89.1 million pounds.

(b) *Total supply.* The total supply of fire-cured (types 22 & 23) tobacco for the marketing year beginning October 1, 1983, is 99.4 million pounds.

(c) *Carryover.* The estimated carryover of fire-cured (types 22 & 23) tobacco for the marketing year beginning October 1, 1984, is 60.4 million pounds.

(d) *National marketing quota.* The amount of fire-cured (types 22 & 23) tobacco which will make available during the marketing year beginning October 1, 1984, a supply equal to the reserve supply level of such tobacco is 28.7 million pounds. Because producers have been producing about 81 percent of the announced national marketing quota during the past 5 marketing years, it is hereby determined that a national marketing quota for the 1984–85 marketing year of 35.3 million pounds is necessary to make available production of 28.7 million pounds. Accordingly, the 1984–85 national marketing quota of 35.3 million pounds is hereby announced. It is further determined, however, that the 1984–85 national marketing quota in the amount of 35.3 million pounds would result in undue restriction of marketings during the 1984–85 marketing year. Accordingly, such amount is hereby increased by 20 percent. Therefore, the amount of the 1984–85 national marketing quota for fire-cured (typse 22 & 23) tobacco in terms of the total quantity of such tobacco which may be marketed during the marketing year beginning October 1, 1984, is 42.4 million pounds.

(e) *National acreage allotment.* The national acreage allotment is 24,737.46 acres.

(f) *National acreage factor.* The national acreage factor for use in determining farm acreage allotments for the 1984–85 marketing year is 1.10.

(g) *National reserve.* The national reserve is 130.0 acres of which 15.0 acres are made available for 1984 new farms, and 115 acres are made available for making corrections and adjusting inequities in old farm allotments.

For dark air-cured tobacco for the marketing year October 1, 1984:

(a) *Reserve supply level.* The reserve supply level for dark air-cured tobacco is 48.8 million pounds.

(b) *Total supply.* The total supply of dark air-cured tobacco for the 1984–85 marketing year beginning October 1, 1983, is 54.4 million pounds.

(c) *Carryover.* The estimated carryover of dark air-cured tobacco for the 1984–85 marketing year beginning October 1, 1984, is 38.4 million pounds.

(d) *National marketing quota.* The amount of dark air-cured tobacco which will make available during the 1984–85 marketing year beginning October 1, 1984, a supply equal to the reserve supply level of such tobacco is 10.4 million pounds. Because producers have been producing only about 77 percent of the announced national marketing quota during the past 5 marketing years, it is hereby determined that the 1984–85 national marketing quota of 13.5 million pounds is necessary to make available production of 10.4 million pounds. Accordingly, the 1984–85 national marketing quota of 13.5 million pounds is hereby announced. It is determined, however, that a national marketing quota in the amount of 13.5 million pounds would result in undue restriction of marketings during the 1984–85 marketing year. Accordingly, such amount is hereby increased by 20 percent. Therefore, the amount of the 1984–85 national marketing quota for dark air-cured (types 35 & 36) tobacco in terms of the total quantity of such

tobacco which may be marketed during the marketing year beginning October 1, 1984, is 16.2 million pounds.

(e) *National acreage allotment.* The national acreage allotment is 9,637.12 acres.

(f) *National acreage factor.* The national acreage factor for use in determining farm acreage allotments for the 1984–85 marketing year is 1.0.

(g) *National reserve.* In accordance with 313(g) of the Act the national acreage reserve is 45.0 acres, of which 10.0 acres are made available for the 1984 new farms, and 35 acres are made available for making corrections and adjusting inequities in old farm allotments.

For Virginia sun-cured tobacco for the marketing year October 1, 1984:

(a) *Reserve supply level.* The reserve supply level for Virginia sun-cured tobacco is 1,724 thousand pounds.

(b) *Total supply.* The total supply of Virginia sun-cured tobacco for the marketing year beginning October 1, 1983, is 1,941 thousand pounds.

(c) *Carryover.* The estimated carryover of Virginia sun-cured tobacco for the marketing year beginnning October 1, 1984, is 1,141 thousand pounds.

(d) *National marketing quota.* The amount of Virginia sun-cured tobacco which will make available during the marketing year beginning October 1, 1984, a supply equal to the reserve level of such tobacco is 583 thousand pounds. Because producers have been producing less than half of the announced national acreage allotment over the past 5 years, it is hereby determined that a national marketing quota of 1,166 thousand pounds is necessary to make available production of 583 thousand pounds. Accordingly, a national marketing quota of 1,166 thousand pounds is hereby announced. It is further determined, however, that a national marketing quota in the amount of 1,166 thousand pounds would result in undue restriction of marketings during the 1984–85 marketing year. Accordingly, such amount is hereby increased by 20 percent. Therefore, the amount of the national marketing quota for sun-cured (type 37) tobacco in terms of the total quantity of such tobacco which may be marketed during the marketing year beginning October 1, 1984, is 1,399 thousand pounds.

(e) *National acreage allotment.* The national acreage allotment is 1,277.19 acres.

(f) *National acreage factor.* The national acreage factor for use in determining farm acreage allotments for the 1984–85 marketing year is 1.0.

(f) *National reserve.* The national acreage reserve is 8 acres, of which 4.0 acres are made available for 1984 new farms, and 4.0 acres are made available for making corrections and adjusting inequities in old farm allotments.

Authority: Secs. 301, 312, 313, 375, 52 Stat. 38, as amended, 46, as amended, 66, as amended; 7 U.S.C. 1301, 1312, 1313, 1375.

Signed at Washington, D.C. on February 13, 1984.

John R. Block,

Secretary.

[FR Doc. 84-4365 Filed 2-16-84; 8:45 am]

BILLING CODE 3410-05-M

Forest Service

Stanislaus National Forest Grazing Advisory Board; Meeting

The Stanislaus National Forest Grazing Advisory Board will meet at 8:00 p.m., on March 21, 1984, in Conference Room–B, of the Forest Supervisor's Office, 19777 Greenley Road, Sonora, California. The purpose of this meeting is to consider (1) priorities for use of range betterment funds, and (2) allotment management plans. This is the Board's fourth semi-annual meeting.

The meeting will be open to groups and individuals who have an interest in range management. Persons who wish to attend should notify me at 19777 Greenly Road, Sonora, California 95370, (209) 532–3671. Written statements may be filed with the committee before or after the meeting.

The committee has not established rules for public participation.

Dated: February 9, 1984.

Blaine L. Cornell,

Forest Supervisor.

[FR Doc. 84-4364 Filed 2-16-84; 8:45 am]

BILLING CODE 3410-11-M

DEPARTMENT OF COMMERCE

International Trade Administration

President's Export Council; Open Meeting

A meeting of the President's Export Council's Services Subcommittee will be held March 6, 1984, 10:00 a.m., Room 6802, 14th Street and Constitution Avenue, NW., Washington, D.C. The Council's purpose is to advise the President on matters relating to United States export trade.

Agenda: Introduction to and overview of international leasing, U.S. and foreign government policies and practices that affect international leasing, and other trade-related concerns of the international leasing sector.

The meeting will be open to the public with a limited number of seats available. For further information or copies of the minutes contact Angi Knapp (202) 377–1125, H3213, U.S. Department of Commerce, Washington, D.C. 20230.

Dated: February 15, 1984.

Henry Misisco,

Acting Director, Office of Planning and Coordination.

[FR Doc. 84-4357 Filed 2-16-84; 8:45 am]

BILLING CODE 3510-DR-M

National Oceanic and Atmospheric Administration

Marine Mammals; Issuance of General Permits; Embassy of the Republic of Korea, et al.

On February 1, 1984, general permits to incidentally take marine mammals during commercial fishing operations in 1984 were issued to:

1. The Embassy of the Republic of Korea, 2320 Massachusetts Avenue, NW., Washington, D.C. 20008 in Category 1: Towed or Dragged Gear, to take 95 northern sea lions, 5 northern fur seals, 15 harbor seals and 5 cetaceans.

2. The Hochseefischeri Nordstern A.G., 2850 Bremerhaven, Am Seedeich, West Germany in Category 1: Towed or Dragged Gear, to take 24 northern sea lions, 1 northern fur seal, 10 harbor seals and 5 cetaceans.

All takings are incidental to commercial fishing operations within the United States Fishery Conservation Zone, pursuant to 50 CFR 216.24 (45 FR 72187–72196).

The general permits are available for public review in the Office of the Assistant Administrator for Fisheries, 3300 Whitehaven Street, NW., Washington, D.C.

Dated: February 9, 1984.

Carmen J. Blondin,

Deputy Assistant Administrator for Fisheries Resource Management, National Marine Fisheries Service.

[FR Doc. 84-4374 Filed 2-16-84; 8:45 am]

BILLING CODE 3510-22-M

Marine Mammals; Receipt of Application for Permit; Dr. Bruce R. Mate

Notice is hereby given that an Applicant has applied in due form for a Permit to take marine mammals as authorized by the Marine Mammal Protection Act of 1972 (16 U.S.C. 1361–

1407), the Regulations, Governing the Taking and Importing of Marine Mammals (50 CFR Part 216), the Endangered Species Act of 1973 (16 U.S.C. 1531–1543), the National Marine Fisheries Service regulations governing endangered fish and wildlife permits (50 CFR Parts 217–222).

1. Applicant:

a. Name: Dr. Bruce R. Mate (P129F).

b. Address: Marine Science Center, Oregon State University, Marine Science Drive, Newport Oregon 97365.

2. Type of Permit: Scientific Research/ Scientific Purposes.

3. Name and Number of Animals: Bowhead whale (*Balaena mysticetus*), 840.

4. Type of Take: Up to 800 whales by potential harassment over 4 years while attempting to tag up to 40 whales for radio/satellite monitoring.

5. Location of Activity: Bering, Chukchi and Beaufort Sea Alaska.

6. Period of Activity: 4 Years.

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 Commerce, 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 connection with the above application are available for review in the following offices:

Assistant Administrator for Fisheries, National Marine Fisheries Service, 3300 Whitehaven Street NW., Washington, D.C.;

Regional Director, National Marine Fisheries Service, Northwest Region, 7600 Sand Point Way NE., Seattle Washington, 98115; and

Regional Director, National Marine Fisheries Service, Alaska Region, P.O. Box 1668, Juneau, Alaska 99802.

Dated: February 13, 1984.

Carmen J. Blondin,

Deputy Assistant Administrator for Fisheries Resource Management, National Marine Fisheries Service.

[FR Doc. 84-4375 Filed 2-16-84; 8:45 am]

BILLING CODE 3510-22-M

Marine Mammals; Receipt of Application for Permit; Northwest and Alaska Fisheries Center

Notice is hereby given that an Applicant has applied in due form for a Permit to take marine mammals as authorized by the Marine Mammal 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:

a. Name: Northwest and Alaska Fisheries Center (P77#9).

b. Address: National Marine Fisheries Service, NOAA, 2725 Montlake Blvd., East, Seattle, Washington 98112.

2. Type of Permit: Scientific Research.

3. Name and Number of Animals: Northern elephant seal (*Mirounga angustirostris*), 90/yr=270.

4. Type of Take: Capture, immobilize, stomach lavage and release for food habits study.

5. Location of Activity: San Miguel Island, California.

6. Period of Activity: 3 Years.

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 of 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 Commerce, 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 connection with the above application are available for review in the following offices:

Assistant Administrator for Fisheries, National Marine Fisheries Service, 3300 Whitehaven Street NW., Washington, D.C.

Regional Director, National Marine Fisheries Service, Northwest Region, 7600 Sand Point Way, N.E. Seattle Washington, 98115; and

Regional Director, National Marine Fisheries Service, Southwest Region, 300 South Ferry Street, Terminal Island, California 90731.

Dated: February 13, 1984.

Carmen J. Blondin,

Deputy Assistant Administrator for Fisheries Resource Management, National Marine Fisheries Service.

[FR Doc. 84-4376 Filed 2-16-84; 8:45 am]

BILLING CODE 3510-22-M

COMMITTEE FOR PURCHASE FROM THE BLIND AND OTHER SEVERELY HANDICAPPED

Procurement List 1984 Addition and Deletions

AGENCY: Committee for Purchase from the Blind and Other Severely Handicapped.

ACTION: Addition to and deletions from procurement list.

SUMMARY: This action adds to and deletes from Procurement List 1984 commodities to be produced by and services to be provided by workshops for the blind and other severely handicapped.

EFFECTIVE DATE: February 17, 1984.

ADDRESS: Committee for Purchase from the Blind and Other Severely Handicapped, Crystal Square 5, Suite 1107, 1755 Jefferson Davis Highway, Arlington, Virginia 22202.

FOR FURTHER INFORMATION CONTACT: C. W. Fletcher, (703) 557–1145.

SUPPLEMENTARY INFORMATION: On November 25, December 9, and December 23, 1983, the Committee for Purchase from the Blind and Other Severely Handicapped published notices (48 FR 53148, 48 FR 55157, and 48 FR 56820) of proposed addition to and deletions from Procurement List 1984, October 18, 1983 (48 FR 48415).

Addition

After consideration of the relevant matter presented, the Committee has determined that the service listed below is suitable for procurement by the Federal Government under 41 U.S.C. 46–48c, 85 Stat. 77.

I certify that the following action will not have a significant impact on a substantial number of small entities. The major factors considered were:

a. The action will not result in any additional reporting, recordkeeping or other compliance requirement.

b. The action will not have a serious economic impact on any contractor for the service listed.

c. The action will result in authorizing a small entity to provide a service procured by the Government.

Accordingly, the following service is hereby added to Procurement List 1984:

SIC 0782

Grounds Maintenance, Social Security Administration, Computer Center, 6201 Security Boulevard, Baltimore, Maryland

Deletions

After consideration of the relevant matter presented, the Committee has determined that the commodities and services listed below are no longer suitable for procurement by the Federal Government under 41 U.S.C. 46–48c, 85 Stat. 77.

Accordingly, the following commodities and services are hereby deleted from Procurement List 1984:

Class 1430

Circuit Card Assembly: 1430–00–421–4036

Class 7510

Refill, Pocket Planning Set: 7510–01–113–2079

SIC 0782

Ground Maintenance, Federal Service Center, 4747 Eastern Avenue, Bell, California

SIC 7349

Janitorial/Custodial, U.S. Customs, 160–19 Rockaway Boulevard, Jamaica, New York
Janitorial/Custodial, U.S. Army Reserve Center, Williamsburg, Virginia

SIC 7399

Packaging-Canteen, Water, Disposable (8465–01–062–5854), General Services Administration, Region 8, Denver, Colorado.

C. W. Fletcher,

Executive Director.

[FR Doc. 84–4390 Filed 2–16–84; 8:45 am]

BILLING CODE 6820–33–M

Procurement List 1984; Proposed Additions

AGENCY: Committee for Purchase from the Blind and Other Severely Handicapped.

ACTION: Proposed additions to procurement list.

SUMMARY: The Committee has received proposals to add to Procurement List 1984 commodities to be produced by a services to be provided by workshops for the blind and other severely handicapped.

Comments must be received on or before: March 21, 1984.

ADDRESS: Committee for Purchase from the Blind and Other Severely Handicapped, Crystal Square 5, Suite 1107, 1755 Jefferson Davis Highway, Arlington, Virginia 22202.

FOR FURTHER INFORMATION CONTACT: C. W. Fletcher, (703) 557–1145.

SUPPLEMENTARY INFORMATION: This notice is published pursuant to 41 U.S.C. 47(a)(2), 85 Stat. 77. Its purpose is to provide interested persons an opportunity to submit comments on the possible impact of the proposed actions.

If the Committee approves the proposed additions, all entities of the Federal Government will be required to procure the commodities and services listed below from workshops for the blind or other severely handicapped.

It is proposed to add the following commodities and services to Procurement List 1984, October 18, 1983 (48 FR 48415):

Class 5120

Screwdriver, Cross Tip: 5120–00–240–8716, 5120–00–764–8102, 5120–00–832–6219, 5120–00–764–8098, 5120–00–237–8172
Screwdriver, Flat Tip: 5120–00–905–6730, 5120–00–010–7913, 5120–00–042–6837, 5120–00–010–7915, 5120–00–010–7914, 5120–00–555–2063, 5120–00–905–6729, 5120–00–010–7916, 5120–00–832–6223, 5120–00–782–4564, 5120–00–764–8058, 5120–00–764–8059, 5120–00–237–6985, 5120–00–278–1276, 5120–00–764–8061, 5120–00–278–1283

Class 7530

Jacket, Filing, Wallet: 7530–00–285–2913, 7530–00–285–2914

Class 8415

Cover, Helmet, Chemical Protective: 8415–01–111–9028

SIC 0782

Grounds Maintenance, U.S. Geological Survey, 341 Middlefield Road, Menlo Park, California
Grounds Maintenance, Veterans Administration Medical Center, 3801 Miranda Avenue, Palo Alto, California

SIC 7218

Laundry Service, Hill Air Force Base, Utah

SIC 7349

Janitorial/Custodial, U.S. Army Reserve Facility, 701 North Columbia Avenue, Medford, Oregon
Janitorial/Custodial, U.S. Army Reserve Facility, 14631 S.E. 1092nd Street, Renton, Washington.

C. W. Fletcher,

Executive Director.

[FR Doc. 84–4389 Filed 2–16–84; 8:45 am]

BILLING CODE 6820–33–M

CONGRESSIONAL PANEL ON SOCIAL SECURITY ORGANIZATION

Congressional Panel on Social Security Organization; Meeting

Correction

In FR Doc. 84–3836 beginning on page 5369, in the issue of Monday, February 13, 1984, make the following corrections.

1. In the third column, in the table, the second entry under the heading "Time", "3:00 a.m.–5:00 p.m." should read "3:00 p.m.–5:00 p.m."

2. In the fifth entry "2:00 a.m.–5:00 p.m." should read "2:00 p.m.–5:00 p.m."

BILLING CODE 1505–01–M

DEPARTMENT OF DEFENSE

Office of the Secretary

Privacy Act of 1974; Systems of Records: Amended Systems

AGENCY: DOD.

ACTION: Amendment of a notice for a system of records.

SUMMARY: The Office of the Secretary of Defense (OSD) proposes to amend the notice for a system of records subject to the Privacy Act of 1974. The system notice is amended as set forth below, followed by the amended system notice in its entirety.

DATES: This shall be effective without further notice on March 19, 1984 unless comments are received which would result in a contrary determination.

ADDRESS: Send any comments to the System Manager identified in the system notice.

FOR FURTHER INFORMATION CONTACT: Norma Cook, Privacy Act Officer, ODASD(A), Room 5C–315, Pentagon, Washington, D.C. 20301. Telephone: 202/695–0970.

SUPPLEMENTARY INFORMATION: The Office of the Secretary of Defense (OSD) systems of records notices as prescribed by the Privacy Act of 1974, Title 5, United States Code Section 552a (Pub. L. 93–579; 44 Stat. 1896, *et seq.*) have been published in the **Federal Register** at: FR Doc. 83–12048 (48 FR 25827) June 6, 1983

The proposed amendments are not within the purview of the provisions of 5 U.S.C. 552a(o) of the Act which requires

the submission of an altered system report.

M. S. Healy,

OSD Federal Register Liaison Officer, Department of Defense.

February 14, 1984.

Amendments

DMRA&L 22.0

System name:

DoD Dependent Children's School Program Files (48 FR 25827, June 6, 1983).

Changes:

Add the following heading *"PURPOSE(S)"* before the heading *Routine Uses of Records Maintained in the System, Including Categories of Users and Purposes of Such Uses.*

Delete the heading *"Routine uses of Records Maintained in the System, Including Categories of Users and Purpose of Such Uses."*

Delete the heading *"Internal Users, Uses, and purpose."*

Delete the last Paragraph of the above heading "4. Provide data of other government Agencies and Congress When a Specific Authorized Need requires it."

Delete the heading *"External Users, Uses, and Purposes"* and add the heading *"Routine Uses of Records Maintained in the System, Including Categories of Users and Purpose of such Uses."*

Add fourth Paragraph to the above heading "Provide data to other government agencies and Congress when specific authorized need requires it."

Add the following heading: *"Disclosure to Consumer Reporting Agencies."*

Add the following Paragraph Under the above heading.

"Disclosure pursuant to 5 U.S.C. 552a(b)(12), may be made from this system to 'consumer reporting agencies' as defined in the Fair Credit Reporting Act (15 U.S.C. 1681a(f)) or the Federal Claims Collection Act of 1966 (31 U.S.C. 3701(a)93))."

Delete first three words under the heading *System Manager and Address;* and add "Dr. Beth Stephens".

As revised, System DMRA&L 22.0 reads as follows:

DMRA&L 22.0

SYSTEM NAME:

DoD Dependent Children's School Program Files.

SYSTEM LOCATION:

Active Students—DoD operated overseas dependents schools, regional offices, and the Office of Dependents Schools (ODS), Alexandria, Virginia.

Former High School Students—Permanent records (high school transcripts) are retained at the school for 4 years subsequent to graduation, transfer, or termination, then forwarded to the regional office for 1 year where they are complied and forwarded to the Washington National Records Center (WNRC) except Panama. Records for the Panama region are retired to the East Point, Georgia, Federal Archieves Records Center (FARC).

Former Panama Canal College Students—Permanent records (college transcripts) are retained at the college for 10 years, then retired to East Point FARC.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Students in the DoD operated overseas dependent schools.

CATEGORIES OF RECORDS IN THE SYSTEM:

A. *Enrollement files.* Documents relating to the admission, registration, and departure of dependent school students. Included are pupil enrollment applications, course preference, admission cards, drop cards, and similar or related documents.

B. *Daily-attendance register files.* Documents reflecting the daily attendance of pupils at dependent schools. Included are forms, printouts, bound registers and similar or related documents.

C. *Elementary school academic records.* Documents reflecting the standardized achievement, mental ability, yearly grade average, attendance of each student and the teachers' comments. Included are forms, notes, and similar or related documents.

D. *Elementary school report card files.* Documents reflecting grades, personality traits, and promotion of failure. Included are report cards and similar or related documents.

E. *Elementary school teacher class register files.* Documents reflecting daily, weekly, semester, or annual scholastic grades and averages, absence and tardiness data.

F. *Elementary school student files.* Documents pertaining to individual elementary school students. Included in each folder are reading and health records; individual education plans; intelligence quotient; achievement, aptitude, and similar test results; notes related to pupil's progress and characteristics; and similar matters used by counselors and successive teachers.

G. *Secondary school absentee files.* Documents reflecting absence of students. Included are homeroom teachers' registers, secondary school daily attendance records of absentees reported by teachers, tardy slips for admission of students to classroom, transfer slips notifying teachers of new class or homeroom assignment, notices of change by school principal to teacher upon change of classroom, student applications for permission to be absent, student pass slips, and similar or related documents

H. *Secondary school academic record files.* Documents reflecting student grades and credits earned. Included are forms, notes, and similar or related documents.

I. *Secondary school report card files.* Documents reflecting scholastic grades, personality traits, and promotion or failure. Included are report cards and related documents.

J. *Secondary school teacher class register files.* Documents reflecting daily, weekly, semester, or annual scholastic marks and averages, absence and tardiness, and withdrawal data. Included are class registers and similar or related documents.

K. *Secondary school class reporting files.* Documents reflecting teacher reports to principals and used as source documents for preparing secondary school academic record cards. Included are forms, correspondence, and similar or related documents.

L. *Credit transfer certificate files.* Documents reflecting secondary school scholastic credits earned. Included are certificates and similar or related documents.

M. *Secondary school student files.* Documents pertaining to individual secondary school students. Included in each folder are student health records; individual education plans; absence reports and correspondence with parents pertaining to absence; records of achievement and aptitude tests; notes concerning participation in extracurricular activities, hobbies, and other special interests or activities of the student; and, miscellaneous memorandum used by student counselors.

N. *College absence, withdrawal, and add files.* Student applications for permission to be absent from final exams. Student drop and add class records and administrative withdrawal letter.

O. *College academic record files.* Documents reflecting student grades and credits earned. Included are forms, notes, and similar or related documents.

P. *College report card files.* Documents reflecting scholastic grades and promotion of failure. Included are report cards and related documents.

Q. *College teacher class register files.* Documents reflecting daily, weekly, semester, or annual scholastic marks and averages, absence and withdrawal data. Included are class registers and similar or related documents.

R. *College class reporting files.* Documents reflecting teacher reports to Registrar and used as source documents for preparing college transcripts. Included are forms, correspondence, and similar or related documents.

S. *Credit transfer certificate files.* Documents reflecting college scholastic credits earned. Included are certificates and similar or related documents.

T. *College student files.* Documents pertaining to individual college students. Included in each folder are absence reports, records of achievement, and aptitude tests.

U. *Automated support files.* Automated date files are composed of records containing the following information (varies by regional system): Student registration data-student identification number, student name, sex, grade level, bus number, date of enrollment, date of birth, course numbers and names, teachers, credit, grades received, dates of absences, and sponsor's name, status, rank, date of rotation, organization, location of unit, local address, emergency address and phone.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Recurring provisions of the DoD Appropriations Act and Department of Defense Directive 1342.6, "Department of Defense Dependent's Schools," dated October 17, 1978, with change 1.

PURPOSE(S):

A. Dependent children's school program files (general):

1. Records of students attending DoD operated overseas dependent schools are used by school officials, including teachers, to:

a. Determine the eligibility of children to attend these schools;

b. Schedule children for transportation;

c. Record daily and/or class attendance of students and date(s) of withdrawal;

d. Determine tuition paying students and record status of payments;

e. Determine students located in areas not serviced by dependents schools so that alternative arrangements for education can be made and payment made, as required;

f. Monitor special education services required by and received by the student; and,

g. Used to develop and maintain reading and health records, including school related medical needs.

2. Records may also be released to other officials of the Department of Defense requiring information for operation of the Department (including defense investigative agencies) on a case-by-case basis in accordance with established policies and procedures.

B. Dependent children's school program files (elementary):

1. Used by school officials, including teachers, in the current and/or gaining school to develop and provide an educational program for elementary students by school personnel cited above.

2. Used in the following manner to record:

a. Teacher or standardized to record;

b. Attendance, absences, and/or tardiness of each student;

c. Recommendations for promotion or retention including teacher comments;

d. Daily, weekly, semester, or annual grades; and,

e. Notes related to the individual pupil's progress and learning characteristics useful to professional school personnel in counseling the student and in the determination of his/her proper placement.

C. Department children's school program files (secondary):

1. Used by school officials, including teachers, in the current and/or gaining school to develop and provide an education program for secondary students.

2. Documents are used by school personnel cited above in the following manner to:

a. Record teacher and/or standardized test data;

b. Record attendance, absences, and/or tardiness of each student;

c. Form the basis for a decision on a student request for permission to be absent from a class or classes;

d. Determine proper class or grade placement or graduation;

e. Determine scholastic grades and/or grade point average;

f. Form the basis for school recommendations for student financial aid for postsecondary education;

g. For the basis for preparing the secondary school transcript;

h. Determine secondary school academic credits earned; and,

i. Note special interest or hobbies of the student.

3. Used by DoD recruiting officials to determine eligibility for military service.

D. Dependent children's school program files (college):

1. Used by school officials, including teachers, in the current and/or gaining school to develop and provide an educational program for college students.

2. Documents are used by school personnel cited above in the following manner to:

a. Record teacher and/or standardized test data;

b. Record attendance and absences of each student;

c. Form the basis for a decision on a student request for permission to be absent from a class or classes;

d. Determine proper class or grade placement or graduation;

e. Determine scholastic grades and/or grade point average;

f. Form the basis for school recommendations for student financial aid for college education;

g. Form the basis for preparing the college transcript; and,

h. Determine college academic credits earned.

3. Used by DoD recruiting officials to determine eligibility for military service.

E. Automated support. Automated support is used by school and regional officials (where applicable) to:

1. Provide academic data to each student upon request, provide report cards, etc., at the end of each grading period, provide transcripts upon request, and provide hard copy for manual files.

2. Provide academic data within the region and to ODS.

3. Provide data within the Department of Defense on a need-to-know basis.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

Documents of students attending the DoD overseas dependent schools may be used by authorized Federal representatives for employment purposes.

Academic data may be provided to other educational institutions and employers or prospective employers in accordance with current policies and procedures.

Student records and test results may be used by agencies contracted by DoDDS to evaluate various aspects of the system and student population. Contractors will be informed of their obligations under the Privacy Act in accordance with current policies and procedures.

Provide data to other government agencies and Congress when a specific authorized need requires it.

DISCLOSURE TO CONSUMER REPORTING AGENCIES:

Disclosures pursuant to 5 U.S.C. 552a(b)(12). Disclosures pursuant to 5

U.S.C 552a(b)(12), may be made from this system to Consumer reporting agencies as defined in the Fair Credit Reporting Act (15 U.S.C. 1681a(f) or the Federal Claims Collection Act of 1966 (31 U.S.C. 3701(a)(3)).

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Files are paper records in file folders.

RETRIEVABILITY:

A. Elementary school academic records and secondary school and college academic records (transcripts) are filed alphabetically by school, school year, and last name of student.

B. Elementary, secondary, and college teacher class register files are filed by school, school year, and last name of teacher.

C. Remaining dependent school student files are filed by school, school year, and last name of student.

D. The automated files are indexed by a variety of data, depending upon the region and school involved (some have regionally assigned student identification numberes, others are by last name of student). Also, any combination of data in the file can be used to select individual records. Only authorized personnel have required information to access the system or process job.s

SAFEGUARDS:

Paper records are maintained in files accessible only to authorized personnel.

Authorized records:

A. *Description of the automated process.* Current hard copy records of all information are kept in locked file cabinets in limited access school offices. Computer-produced student records and reports become an integral part of the manual system and are retained in limited access school offices and/or locked cabinets. Computer disks, tapes, etc., are maintained in limited access areas within the various computer centers, regional offices, and/or schools. Approved special requests for data can be supported by ad hoc inquiry. Any combination of data can be used to select individual records for special processing.

B. *Physical safeguards.* Computer facilities and remote terminals are located in schools and regional offices throughout the school system. Particular regional systems vary; however, the same basic safeguards are employed (in various combinations) in all the systems. Computer hardware disk cards and other materials are secured in locked facilities after normal duty hours or are maintained in secure military computer centers. During school hours, storage media is stored in areas where access can be monitored. On-line access is protected by combinations of the following various factors: (1) Users must have file and/or disk names; (2) users must have possession or approval to gain possession of appropriate disk(s); and, (3) users must have specifically designed codes and/or keys to permit read/write operations.

C. *Storage media.* Hard copy files are stored in the school offices of each participating school and regional offices. Computer files are stored on magnetic tape and disks, as outlined above.

D. *Risk analysis.* All personal information which is collected and/or maintained for this system is stored in locations adequately secure for such information. Administrative safeguards have been instituted to prevent access to information in the automated systems.

RETENTION AND DISPOSAL:

A. *Enrollment files.* Maintained at the respective school for 1 year after graduation, withdrawal, transfer, or death of the student, then destroyed.

B. *Daily attendance register files.* Destroyed after reviewing attendance registers for the next school year.

C. *Elementary school academic record files.* When a student transfers to another school, this file is forwarded by mail to officials of the receiving school on request in accordance with current regulations, or destroyed at the school 5 years after graduation, death, or withdrawal of the student.

D. *Elementary school report card files.* Released to parents or students at the end of the school year or on transfer of the student.

E. *Elementary school teacher class register files.* Destroyed at the school concerned after 5 years.

F. *Elementary school student files.* 1. When a student tranfers to another school, the reading and health records are released to the parent or student (if over 18 years of age) for hand-carrying to the receiving school.

2. Remaining documents pertaining to the students are forwarded by mail to the officials of the receiving school or the parent/guardian on request in accordance with current regulations; if not requested documents, are destroyed at the school concerned 1 year after graduation, death, or withdrawal of the student.

G. *Secondary school absentee files.* Destroyed at the school after 1 year.

H. *Secondary school academic record files (high school transcript).* 1. Permanent file.

2. When a student transfers to another DoD dependents school, this film (transcript) is forwarded by mail to officials of the receiving school on request.

3. When a student transfers to a non-DoD school, a copy of the transcript is forwarded to the receiving school on request in accordance with current regulations.

4. Files not forwarded to another DoD school are retained at the school concerned for 4 years, the regional office for 1 year and then retired to the WNRC (or East Point FARC if in the Panama region) for an additional 60 years.

I. *Secondary school report card files.* Released to parents of students or student (if over 18 years of age) at the end of the school year or on transfer of student.

J. *Secondary school teacher class register files.* Retained at the school concerned for 5 years and then destroyed.

K. *Secondary school class reporting files.* Destroyed at the school after 1 year.

L. Credit transfer certificate files. Destroyed at the school after 1 year.

M. *Secondary school student files.* 1. Retained at the school concerned for 2 years after graduation, death, or withdrawal of the student.

2. When a student transfers to another school:

a. A copy of the record may be released to the parents or student (if over 18 years of age) for hand-carrying to the receiving school.

b. An official copy of the record will be forwarded to the receiving school in accordance with current regulations upon request. (The original record is retained at the school.)

N. *College absentee files.* Destroyed at the school after 1 year.

O. *College academic record files (college transcripts).* 1. Permanent file.

2. When a student transfers to another college or university, this file (transcript) is forwarded by mail to officials of the receiving school upon receipt of an authorized request.

3. Original files (transcripts) are retained at the college for 10 years then retired to East Point FARC.

P. *College report card files.* Released to student at the end of the semester or school year, or on transfer of student.

Q. *College teacher class register files.* Retained at the school for 5 years and then destroyed.

R. *College class reporting files.* Destroyed at the school after 1 year.

S. *Credit transfer certificate files.* Destroyed at the school after 1 year.

T. *College school student files.* 1. Retained at the school for 2 years.

2. When a student transfers to another school:

a. A copy of the record may be released to the parents or student (if 18 years of age) for hand-carrying to the receiving school.

b. An official copy of the record will be forwarded to the receiving school upon request pending receipt of authorized request. (The original record is retained at the school.)

U. *Automated files.* Automated files are normally retained for 1 year. However, this may vary as all information is documented in the manual files and the information in automated form may be destroyed earlier or later than 1 year for various internal purposes.

SYSTEM MANAGER AND ADDRESS:

Dr. Beth Stephens, Director, Department of Defense Dependents Schools, 2461 Eisenhower Avenue, Alexandria, Virginia 22331, telephone: (202) 325–0188.

NOTIFICATION PROCEDURE:

Information may be obtained from officials of the school concerned or from the System Manager.

RECORD ACCESS PROCEDURES:

A. Written requests for information on the records system and for instructions concerning personal visits may be forwarded to the principal of the school within 4 years after graduation, transfer, withdrawal, or death of student.

B. The fifth year, the principal should be contacted for elementary records or the System Manager for secondary records.

C. Subsequently, all requests for secondary records may be forwarded to the Department of the Army, HQ DA (DAAG–AMR), Washington, D.C. 20310, except for information from schools in Panama. These requests should be sent to: Director, DoDDS—Panama, APO Mami 34002.

D. All requests for college records should be sent to the college for the first 10 years, then to the Director, DoDDS—Panama, address above.

CONTESTING RECORD PROCEDURES:

The Agency's rules for access to records and for contesting contents and appealing initial determinations by the individual concerned are contained in 32 CFR Part 286b, and OSD Administrative Instruction 81.

RECORD SOURCE CATEGORIES:

Information is obtained from the individuals concerned and their parents/guardians, teachers, and school administrators.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

[FR Doc. 84–4418 Filed 2–16–84; 8:45 am]

BILLING CODE 3810–01–M

Office of the Secretary of Defense

Defense Intelligence Agency Advisory Committee; Closed Meeting

Pursuant to the provisions of subsection (d) of Section 10 of Pub. L. 2–463, 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: Thursday, 8 March 1984, Rosslyn, VA.

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 Arms Control Verification.

Dated: February 14, 1984.

M.S. Healy,

OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 84–4402 Filed 2–16–84; 8:45 am]

BILLING CODE 3810–01–M

Special Operations Policy Advisory Group; Meeting

The Special Operations Policy Advisory Group (SOPAG) will meet in closed session 29 February 1984 in the Pentagon, Arlington, Virginia.

The mission of the SOPAG is to advise the Office of the Secretary of Defense on key policy issues related to the development and maintenance of effect Special Operations Forces.

A meeting of the SOPAG has been scheduled for 29 February 1984 to discuss sensitive, classified topics.

In accordance with Section 10(d) of Pub. L. 92–463, the "Federal Advisory Committee Act," and Section 552b(c)(1) of Title 5, United States Code, this meeting will closed to the public.

Dated: February 14, 1984.

M. S. Healy,

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

[FR Doc. 84–4401 Filed 2–16–84; 8:45 am]

BILLING CODE 3810–01–M

Department of the Army

Army Science Board; Meeting Change

The following change has occurred for the meeting of the Army Science Board Ad Hoc Subgroup on the Army's LXH Aircraft Program which was originally announced in the **Federal Register** issue of Thursday, January 26, 1984 (49 FR 3239), FR Doc. No. 84–2201:

Dates of Meeting: Tuesday, Wednesday, and Thursday, 20, 21, and 22 March 1984 (instead of Tuesday through Thursday, 21–23 February 1984).

Sally A. Warner,

Administrative Officer.

[FR Doc. 84–4404 Filed 2–14–84; 4:12 pm]

BILLING CODE 3710–08–M

Army Science Board's Closed Meeting

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), announcement is made of the following Committee Meeting:

Name of the committee: Army Science Board (ASB).

Dates of meeting: Thursday & Friday, 8 & 9 March 1984.

Times: 0830–1700 hours (Closed).

Place: Washington, D.C. area—exact location to be determined

Agenda: The Army Science Board Ad Hoc Subgroup on Light Equipment will meet for classified briefings and discussions. This meeting will be closed to the public in accordance with Section 552b(c) of Title 5, U.S.C., specifically subparagraph (1) thereof, and Title 5, U.S.C., Appendix 1, subsection 10(d). The classified and nonclassified matters to be discussed are so inextricably intertwined so as to preclude opening any portion of the meeting. The Army Science Board Administrative Officer, Sally Warner, may be contacted for further information at (202) 695–3039 or 695–7046.

Sally A. Warner,

Administrative Officer.

[FR Doc. 84–4415 Filed 2–16–84; 8:45 am]

BILLING CODE 3710–08–M

Army Science Board; Closed Meeting

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), announcement is made of the following Committee Meeting:

Name of the committee: Army Science Board (ASB).

Dates of meeting: Tuesday & Wednesday, 13 & 14 March 1984.

Times: 0830–1700 hours (Closed).

Place: The Pentagon, Washington, D.C.

Agenda: The Army Science Board Manning a Ready Force Subpanel of the 1984 Summer Study on Leading and Manning Army 21 will

meet for classified briefings and discussions addressing the following (1) How can high technology improve mobilization?; (2) Explore Army Reserve and Army National Guard view of mobilization from a personnel standpoint; and, (3) Manpower and manning requirements for Army 21. This meeting will be closed to the public in accordance with Section 552b(c) of Title 5, U.S.C., specifically subparagraph (1) thereof, and Title 5, U.S.C., Appendix 1, subsection 10(d). The classified and nonclassified matters to be discussed are so inextricably intertwined so as to preclude opening any portion of the meeting. The Army Science Board Administrative Officer, Sally Warner, may be contacted for further information at (202) 695–3039 or 695–7046.

Sally A. Warner,

Administrative Officer.

[FR Doc. 84–4416 Filed 2–16–84; 8:45 am]

BILLING CODE 3710–08–M

Army Science Board; Closed Meeting

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), announcement is made of the following Committee Meeting:

Name of the committee: Army Science Board (ASB).

Dates of meeting: Thursday & Friday, 15&16 March 1984.

Times: 0830–1700 hours (Closed).

Place: 15 March 1984—The Pentagon, Washington, DC. 16 March 1984—U.S. Army Intelligence and Security Command, Arlington, Virginia.

Agenda: The Army Science Board Personnel Factors in Weapons System Performance Subpanel of the 1984 Summer Study on Leading and Manning Army 21 will meet for classified and proprietary briefings and discussions on personnel problems with specific weapon systems, hardware-manpower methodology, program manager training, and human technologies. This meeting will be closed to the public in accordance with Section 552b(c) of Title 5, U.S.C., specifically subparagraphs (1 and 4) thereof, and Title 5, U.S.C. App. 1, subsection 10(d). The classified/nonclassified and proprietary/nonproprietary matters to be discussed are so inextricably intertwined so as to preclude opening any portion of the meeting. The Army Science Board Administrative Officer, Sally Warner, may be contacted for further information at (202) 695–3039 or 695–7046.

Sally A. Warner,

Administrative Officer.

[FR Doc. 84–4417 Filed 2–16–84; 8:45 am]

BILLING CODE 3710–08–M

Army Science Board; Open Meeting

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), announcement is made of the following Committee Meeting:

Name of the committee: Army Science Board (ASB).

Date of meeting: Wednesday, 21 March 1984.

Time: 0830–1700 hours (Open).

Place: Fort Belvoir, Virginia.

Agenda: The ASB Leadership Subpanel of the 1984 Summer Study on Leading and Manning Army 21 will meet for briefings and discussions on leadership development programs and techniques. This meeting is open to the public. Any interested person may attend, appear before, or file statements with the committee at the time and in the manner permitted by the committee. For further information please contact Sally Warner, the ASB Administrative Officer, at (202) 695–3039 or 695–7046.

Sally A. Warner,

Administrative Officer.

[FR Doc. 84–4419 Filed 2–16–84; 8:45 am]

BILLING CODE 3710–08–M

Army Science Board; Open Meeting

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L 92–463), announcement is made of the following Committee Meeting:

Name of the committee: Army Science Board (ASB).

Date of meeting: Friday, 23 March 1984.

Time: 0830–1700 hours (Open).

Place: Fort Lee, Virginia.

Agenda: The ASB Leadership Subpanel of the 1984 Summer Study on Leading and Manning Army 21 will meet for briefings and discussions on leadership development programs and techniques. This meeting is open to the public. Any interested person may attend, appear before, or file statements with the committee at the time and in the manner permitted by the committee. For further information please contact Sally Warner, the ASB Administrative Office, at (202) 695–3039 or 695–7046.

Sally A. Warner,

Administrative Officer.

[FR Doc. 84–4420 Filed 2–16–84; 8:45 am]

BILLING CODE 3710–08–M

United States Army Medical Research and Development Advisory Committee, Subcommittee on Medical Entomology; Partially Closed Meeting

In accordance with Section 10(a)(2) of the Federal Advisory Committee Act (5 U.S.C. Appendix, Sections 1–15), announcement is made of the following Subcommittee Meeting:

Name of Committee: United States Army Medical Research and Development Advisory Committee, Subcommittee on Medical Entomology

Date of meeting: March 12, 1984.

Time and place: 0830 hrs, Bldg 1425, Conference Room, US Army Medical Research Institute of Infectious Diseases, Fort Detrick, Frederick, MD.

Proposed agenda: This meeting will be open to the public from 0830–1015 hrs for the administrative review and discussion of the scientific research program of the Medical Entomology Group, Walter Reed Army Institute of Research. Attendance by the public at open sessions will be limited to space available.

In accordance with the provisions set forth in Section 552b(c)(6), US Code, Title 5 and Section 1–15 of Appendix, the meeting will be closed to the public from 1030–1630 hrs for the review, discussion and evaluation of individual programs and projects conducted by the US Army Medical Research and Development Command, including consideration of personnel qualifications and performance, the competence of individual investigators, medical files of individual research subjects, and similar items, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Dr. Howard Noyes, Associate Director for Research Management, Walter Reed Army Institute of Research, Bldg 40, Room 1111, Walter Reed Army Medical Center, Washington, DC 20307 (202/576–2436) will furnish summary minutes, roster of Subcommittee members and substantive program information.

For the Commander.

Fred C. Brand

Colonel, MSC, Executive Officer.

[FR Doc. 84–4414 Filed 2–16–84; 8:45 am]

BILLING CODE 3710–92–M

United States Army Medical Research and Development Advisory Committee, Subcommittee on Trauma; Partially Closed Meeting

In accordance with Section 10(a)(2) of the Federal Advisory Committee Act (5 U.S.C. Appendix, Section 1–15), announcement is made of the following subcommittee meeting:

Name of committee: United States Army Medical Research and Development Advisory Committee, Subcommittee on Trauma.

Date of meeting: March 12 and 13, 1984.

Time and place: 0830 hrs, Marriott Hotel, San Antonio, Texas.

Proposed agenda: This meeting will be open ot the public from 0830–1030 hrs on March 12 and from 1300–1700 hrs March 13 for the administrative review and discussion of the scientific research program of the Trauma Group, Letterman Army Institute of Research. Attendance by the public at open sessions will be limited to space available.

In accordance with the provisions set forth in Section 552b(c)(6), U.S. Code, Title 5 and Section 1–15 of Appendix, the meeting will be closed to the public from 1040–1200 hrs and 1300–1700 hrs on March 12, and from 0800–1200 hrs on March 13, for the review, discussion and evaluation of individual programs and projects conducted by the U.S. Army Medical Research and Development Command, including consideration of personnel qualifications and performance, the competence of individual investigators, medical files of individual research subjects,

and similar items, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Dr. Ryan Neville, Assistant Director, Research Contract Management, Letterman Army Institute of Research, Presidio of San Francisco, CA 94129 (415/561-4367) will furnish summary minutes, roster of subcommittee members and substantive program information.

For the Commander.

Fred C. Brand,

Colonel, MSC, Executive Officer.

[FR Doc. 84-4413 Filed 2-16-84; 8:45 am]

BILLING CODE 3710-92-M

DEPARTMENT OF EDUCATION

Office of Postsecondary Education

List of Accrediting Agencies To Be Reviewed

AGENCY: Department of Education.

ACTION: Notice—List of accrediting agencies to be reviewed under a special procedure.

SUMMARY: The Secretary lists nationally recognized accrediting agencies with the assistance of recommendations from the National Advisory Committee on Accreditation and Institutional Eligibility. Recommendations to the Secretary concerning renewal of recognition of accrediting agencies already on the list is handled under a special review procedure. The list of agencies to which the Advisory Committee has applied this procedure is composed of (1) agencies that were awarded the full four-year recognition period in their last review and (2) agencies that have submitted interim reports. The Advisory Committee is relying on the Eligibility and Agency Evaluation Staff analyses of these agencies and public comment on the analyses to formulate recommendations to the Secretary.

DATE: Comments on these analyses must be received no later than March 19, 1984.

ADDRESS: Comments may be submitted to Richard J. Rowe, Director, Eligibility and Agency Evaluation Staff, Office of Postsecondary Education, 400 Maryland Avenue, SW., (Room 3030, ROB-3), U.S. Department of Education, Washington, D.C. 20202.

FOR FURTHER INFORMATION CONTACT: Richard J. Rowe, Telephone: (202) 245-9873.

SUPPLEMENTARY INFORMATION: This document is intended to advise the public that the National Advisory Committee on Accreditation and Institutional Eligibility, in making recommendations to the Secretary regarding his responsibility for listing accrediting agencies as required by 20 U.S.C. 1141(a), 20 U.S.C. 1094(b)(3) and other statutes, is following a special review procedure regarding some agencies.

Usually the Advisory Committee reviews in detail each report and petition and each staff analysis and hears oral presentations from the petitioning agencies and interested third parties before formulating the recommendations to the Secretary regarding the accrediting agencies.

The special procedure for reviewing agency petitions and interim reports will reduce the depth of review by the Advisory Committee of agencies that were awarded the full four-year recognition period in their last review, and of agencies which have submitted interim reports. The Advisory Committee will use both staff analyses and public comment before submitting final recommendations to the Secretary regarding the list of these agencies as required under 34 CFR Part 603.

This notice provides the names of the agencies being reviewed under this special procedure. The Department's Eligibility and Agency Evaluation Staff has prepared analyses of the petitions and reports of these agencies according to the criteria in 34 CFR 603.6, and has prepared recommendations on them.

The public is offered an opportunity to comment on these analyses before the Advisory Committee makes final recommendations to the Secretary.

The reports and petitions of the following agencies are being reviewed:

Petitions for Recognition As Nationally Recognized Accrediting Agencies and Associations

A. Petitions for Continuation of Recognition

American Dental Association, Commission on Dental Accreditation

Proposed Recommendation: Continue recognition for a period of four years.

Society of American Foresters

Proposed Recommendation: Continue recognition for a period of four years.

B. Interim Reports

American College of Nurse-Midwives, Division of Accreditation

Proposed Recommendation: Accept the report.

Association of Advanced Rabbinical and Talmudic Schools, Accreditation Commission

Proposed Recommendation: Accept the report.

National Association of Schools of Theatre, Commission on Accreditation

Proposed Recommendation: Accept the report.

Invitation to Comment

A copy of the analysis of any of the reports and petitions submitted by the agencies listed in this Notice may be obtained from Richard J. Rowe.

Dated: February 13, 1984.

T. H. Bell,

Secretary of Education.

[FR Doc. 84-4421 Filed 2-16-84; 8:45 am]

BILLING CODE 4000-01-M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP82-119-007]

Algonquin Gas Transmission Co.; Amendment to Application

February 14, 1984.

Take notice that on January 26, 1984, Algonquin Gas Transmission Company (Algonquin Gas), 1284 Soldiers Field Road, Boston, Massachusetts 02135, filed in Docket No. CP82-119-004 an amendment to its application in Docket No. CP82-119-000 for a certificate of public convenience and necessity pursuant to Section 7(c) of the Natural Gas Act authorizing the transportation and sale for resale of natural gas from domestic supply sources and the construction and operation of facilities therefor, all as more fully set forth in the amendment on file with the Commission and open to public inspection.

Algonquin proposes in the instant amendment to purchase up to 63,360 MMBtu per day of domestic gas supplies from Consolidated Gas Supply Corporation (Consolidated) and up to 18,760 MMBtu per day of domestic gas supplies from National Fuel Gas Supply Corporation (National Fuel). In the case of the purchase from Consolidated, Algonquin would cause the gas to be transported from Consolidated's facilities to the facilities of Algonquin by Texas Easter Transmission Corporation (Texas Eastern). Algonquin would then sell such gas to its customers under proposed Rate Schedule F-2. In the case of National Fuel, Algonquin would cause the gas to be transported from National Fuel's facilities to the facilities of Algonquin by Transcontinental Gas Pipe Line Corporation (Transco). Algonquin would then sell such gas to its customers under proposed Rate Schedule F-3. All of Algonquin's customers would purchase some gas under each rate schedule by November 1, 1986.

Algonquin proposes to render service under Rate Schedules F-2 and F-3 to certain of its customers which have

chosen to receive such service. Quantities available from Consolidated and National Fuel have been apportioned on a *pro rata* basis between Rate Schedule F–2 and Rate Schedule F–3, and customers are assigned maximum daily entitlements to service under each rate schedule on such basis. Algonquin requests authority to recover, on a current cost basis, all charges imposed by Consolidated, National Fuel, Texas Eastern, and Transco, for the services underlying Rate Schedules F–2 and F–3, and for authority to flow through, on a current cost basis, any changes in charges or conditions of service made by the companies supplying the services underlying Rate Schedules F–2 and F–3.

Algonquin proposes to make the following sales:

	Predevelopment period for the period *November 1, 1984–October 31, 1985*		
	F–2	*F–3*	*Total*
Boston Gas Co			
Bristol and Warren Gas Co	215	175	390
Colonial Gas Co	1,376	1,122	2,498
Commonwealth Gas Co	6,620	5,393	12,013
The Connecticut Light & Power Co			
Connecticut Natural Gas Corp	4,475	3,644	8,119
Granite State Gas Transmission, Inc			
Town of Middleborough, Mass	72	58	130
North Attleboro Gas Co	33	27	60
City of Norwich, Conn	526	429	955
The Pequot Gas Co	65	54	121
Providence Gas Co	1,653	1,347	3,000
South County Gas Co	145	118	263
The Southern Connecticut Gas Co	2,964	2,415	5,379
Total	18,146	14,782	32,928

	November 1, 1985–October 31, 1986		
	F–2	*F–3*	*Total*
Boston Gas Co			
Bristol and Warren Gas Co	225	165	390
Colonial Gas Co	1,440	1,058	2,498
Commonwealth Gas Co	6,927	5,086	12,013
The Connecticut Light & Power Co			
Connecticut Natural Gas Corp	4,682	3,437	8,119
Granite State Gas Transmission, Inc			
Town of Middleborough, Mass	75	55	130
North Attleboro Gas Co	46	34	80
City of Norwich, Conn	551	404	955
The Pequot Gas Co	70	51	121
Providence Gas Co	2,883	2,117	5,000
South County Gas Co	152	111	263
The Southern Connecticut Gas Co	3,102	2,277	5,379
Total	20,153	14,795	34,948

	November 1, 1986–Termination		
	F–2	*F–3*	*Total*
Boston Gas Co	21,138	6,259	27,397
Bristol and Warren Gas Co	301	89	390
Colonial Gas Co	1,928	570	2,498
Commonwealth Gas Co	10,237	3,031	13,268
The Connecticut Light & Power Co	5,792	1,768	7,740
Connecticut Natural Gas Corp	6,264	1,855	8,119
Granite State Gas Transmission Inc	5,200	1,540	6,740
Town of Middleborough, Mass	116	34	150
North Attleboro Gas Co	77	23	100
City of Norwich, Conn	737	218	955
The Pequot Gas Co	93	28	121
Providence Gas Co	6,172	1,828	8,000
South County Gas Co	203	60	263
The Southern Connecticut Gas Co	4,922	1,457	6,379
Total	63,360	18,760	82,120

Algonquin also request authority to construct and operate facilities necessary to render service under proposed Rate Schedules F–2 and F–3. These facilities consist of certain pipeline looping and replacement, including 10.3 miles of loop on Algonquin's M system from its mainline in Chesire, Connecticut, to the Farmington, Connecticut, meter station, 1.8 miles of loop on its C1 system in North Haven, Connecticut, and 0.12 mile of pipeline on its B1 system in Naugatuck, Connecticut. Such facilities also would include four 3,830 h.p. turbine engine compressor units at Hanover, New Jersey, Stoney Point, New York, and Cromwell, Connecticut; miscellaneous meter and regulator station modifications at various points including Hanover, New Jersey; and a new interconnection with Transco near Centerville, New Jersey. Algonquin estimates the cost of these facilities to be $49.6 million.

Construction would preceed in stages, reaching full firm service November 1, 1986. Algonquin proposes to charge a $19.53 per MMBtu demand charge and a $.1474 per MMBtu commodity charge when all proposed facilities have been constructed. For interim years beginning November 1, 1984, Algonquin proposes to charge rates which reflect the cost of the facilities installed to provide service at that time. For the period beginning November 1, 1984, Algonquin proposes to deliver 18,146 MMBtu per day under proposed Rate Schedules F–2 and 14,782 MMBtu per day under proposed Rate Schedule F–3. Algonquin request permission to adjust the rates for service under Rate Schedules F–2 and F–3 to reflect the cost of facilities installed at each build-up stage of service.

Algonquin states that this amendment is filed to implement agreements by Algonquin and its customers in Phase 1a of the *Boundary Gas, Inc.*, Docket No. CP81–107–000, *et al.*, proceedings.

Any person desiring to be heard or to make any protest with reference to said amendment should on or before February 23, 1984, file with the Federal Energy Regulatory Commission, Washington, D.C. 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.214 or 385.211) and the Regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's Rules. Persons who have heretofore filed need not file again.

Kenneth F. Plumb,

Secretary.

[FR Doc. 84–4428 Filed 2–16–84; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. CP84–226–000]

Columbia Gas Transmission Corp. and Columbia Gulf Transmission Co.; Request Under Blanket Authorization

February 13, 1984.

Take notice that on February 7, 1984, Columbia Gas Transmission Corporation (Columbia), P.O. Box 1273, Charleston, West Virginia 25325–1273 and Columbia Gulf Transmission Company (Columbia Gulf,), P.O. Box 683, Houston, Texas 77001, filed in Docket No. CP84–226–000 a joint request pursuant to Section 157.205 of the Regulations under the Natural Gas Act (18 CFR 157.205) that they propose to transport natural gas on behalf of WESTVACO Corporation (WESTVACO) for use as boiler fuel under authorizations issued in Docket Nos. CP83–76–000 and CP83–496–000, respectively, pursuant to Section 7 of the Natural Gas Act, all as more fully set forth in the request on file with the Commission and open to public inspection.

Columbia and Columbia Gulf propose to transport for one year up to 4,625 dt equivalent of natural gas per day for WESTVACO. It is indicated that Exxon Corporation (Exxon) and Delhi Gas Pipeline Corporation (Delhi) would deliver natural gas to Columbia Gulf and that Columbia Gulf would transport and deliver equivalent volumes to Columbia. It is further stated that in turn Columbia would transport and deliver equivalent volumes of natural gas to Columbia Gas of West Virginia, Inc. (CWV), in Beryle, West Virginia. Columbia states that it has released the Exxon gas and that these supplies are subject to the ceiling price provisions of Sections 102 and 103 of the Natural Gas Policy Act of 1978. It is also stated that the gas sold by Delhi to WESTVACO

would not be release gas. It is further indicated that WESTVACO would purchase this natural gas from Exxon and Delhi and that CWV is the distribution company serving WESTVACO in Beryle, West Virginia.

For this transportation it is stated that Columbia Gulf would charge WESTVACO its average system-wide onshore or offshore transmission cost, exclusive of company-use and unaccounted-for gas, currently 26.19 cents per dt equivalent and 44.63 cents per dt equivalent, respectively. Columbia Gulf would retain 2.58 percent and 3.33 percent of the gas delivered to it from onshore and offshore, respectively, for company-use and unaccounted-for gas. It is also stated that Columbia would charge WESTVACO its average system-wide storage and transmission cost, exclusive of company-use and unaccounted-for gas, currently 40.11 cents per dt. In addition Columbia would retain 2.85 percent of the gas delivered to it for company-use and unaccounted-for gas. Columbia also states that it would collect the GRI funding unit charge of 1.21 cents per dt.

Any person or the Commission's staff may, within 45 days after issuance of the instant notice by the Commission, file pursuant to Rule 214 of the Commission's Procedural Rules (18 CFR 385.214) a motion to intervene or notice of intervention and, pursuant to § 157.205 of the Regulations under the Natural Gas Act (18 CFR 157.205) a protest to the request. If no protest is filed within the time allowed therefor, the proposed activity shall be deemed to be authorized effective the day after the time allowed for filing a protest. If a protest is filed and not withdrawn within 30 days after the time allowed for filing a protest, the instant request shall be treated as an application for authorization pursuant to Section 7 of the Natural Gas Act.

Kenneth F. Plumb,

Secretary.

[FR Doc. 84-4430 Filed 2-16-84; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. CP84-228-000]

Columbia Gas Transmission Corp. and Columbia Gulf Transmission Co.; Notice of Request Under Blanket Authorization

February 13, 1984.

Take notice that on February 7, 1984, Columbia Gas Transmission Corporation (Columbia), P.O. Box 1273, Charleston, West Virginia 25325-1273, and Columbia Gulf Transmission Company (Columbia Gulf), P.O. Box 683, Houston, Texas 77001, filed in Docket No. CP84-228-000 a joint request pursuant to § 157.205 of the Regulations under the Natural Gas Act (18 CFR 157.205) that they propose to transport natural gas on behalf of Howmet Aluminum Corporation (Howmet) under authorizations issued in Docket Nos. CP83-76-000 and CP83-496-000, respectively, pursuant to Section 7 of the Natural Gas Act, all as more fully set forth in the request on file with the Commission and open to public inspection.

Columbia and Columbia Gulf propose to transport for one year up to 3,000 dt equivalent of natural gas per day for Howmet. It is indicated that Exxon Corporation would deliver natural gas to Columbia Gulf and that Columbia Gulf would transport and deliver equivalent volumes to Columbia. It is further stated that in turn Columbia would transport and deliver equivalent volumes of natural gas to UGI Corporation (UGI) in Lancaster, Pennsylvania. Columbia states that it has released this gas and that these supplies are subject to the ceiling price provisions of Sections 102 and 103 of the Natural Gas Policy Act of 1978. It is further indicated that Howmet would purchase this released natural gas from Exxon and the UGI is the distribution company serving Howmet in Lancaster, Pennsylvania, and that Howmet would use these volumes in melting of aluminum, painting, annealing and space heating of buildings in its Lancaster, Pennsylvania, plant.

For this transportation it is stated that Columbia Gulf would charge Howmet its average system-wide onshore or offshore transmission cost, exclusive of company-use and unaccounted-for gas, currently 26.19 cents per dt equivalent and 44.63 cents per dt equivalent, respectively. Columbia Gulf would retain 2.58 percent and 3.33 percent of the gas delivered to it from onshore and offshore, respectively, for company-use and unaccounted-for gas. It is also stated that Columbia would charge Howmet its average system-wide storage and transmission cost, exclusive of company-use and unaccounted-for gas, currently 40.11 cents per dt. In addition Columbia would retain 2.85 percent of the gas delivered to it for company-use and unaccounted-for gas. Columbia also states that it would collect the GRI funding unit charge of 1.21 cents per dt.

Any person or the Commisson's staff may, within 45 days after issuance of the instant notice by the Commission, file pursuant to Rule 214 of the Commission's Procedural Rules (18 CFR 385.214) a motion to intervene or notice of intervention and pursuant to § 157.205 of the Regulations under the Natural Gas Act (18 CFR 157.205) a protest to the request. If no protest is filed within the time allowed therefor, the proposed activity shall be deemed to be authorized effective the day after the time allowed for filing a protest. If a protest is filed and not withdrawn within 30 days after the time allowed for filing a protest, the instant request shall be treated as an application for authorization pursuant to Section 7 of the Natural Gas Act.

Kenneth F. Plumb,

Secretary.

[FR Doc. 84-4431 Filed 2-16-84; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. CP84-7-001]

National Fuel Gas Supply Corp.; Amendment to Application

February 14, 1984.

Take notice that on January 31, 1984, National Fuel Gas Supply Corporation (National Fuel), 10 Lafayette Square, Buffalo, New York 14203, filed in Docket No. CP84-7-001 an amendment to its application in Docket No. CP84-7-000 for a certificate of public convenience and necessity pursuant to Section 7(c) of the Natural Gas Act authorizing the sales in interstate commerce of natural gas for resale to certain purchasers in New Jersey, New York, and the New England area, as more full set forth in the amendment which is on file with the Commission and open to public inspection.

National Fuel proposes to make the following sales:

Purchaser	Commencement through Oct. 31, 1984, interruptible (dt/d)	Nov. 1, 1984 through Oct. 31, 1986, firm (dt/d)	Nov. 1, 1986 to termination firm (dt/d)
Algonquin Gas Transmission Company [1]	14,782	14,795	18,760
The Brooklyn Union Gas Company	0	0	3,250
Consolidated Edison Company of New York, Inc.	5,500	5,500	3,800
Elizabethtown Gas Company	1,000	1,000	1,090
New Jersey Natural Gas Company	0	0	3,250
Public Service Electric and Gas Company	15,500	15,500	9,850
Total	36,782	36,795	40,000

[1] Deliveries from November 1, 1984, through October 31, 1985, would be interruptible, since Algonquin, it is said, would not have the necessary facilities to provide firm deliveries to its customers during this period.

Service through October 31, 1984, would be at the effective 100% load factor Rate Schedule RO rate. From

November 1, 1984, through October 31, 1992, service would be at the effective rate contained in National Fuel's Rate Schedule RO. With regard to deliveries to Algonquin Gas Transmission Company from November 1, 1984, through October 31, 1985, National Fuel proposes to charge the rate specified in its Rate Schedule RO, expressed as a commodity rate and calculated on an imputed 70% load factor basis.

The amendment states that National Fuel will deliver the gas for the account of the purchasers or Transcontinental Gas Pipe Line Corporation at the existing points of interconnection between their facilities. The amendment further states that the source of the gas proposed to be sold is National Fuel's general system supply and that this gas is surplus to the needs of National's Fuel's customers.

National Fuel states that this amendment is filed to implement agreements arrived at by National Fuel and the buyers in Phase Ia of the *Boundary Gas, Inc.*, Docket No. CP81–107–000, *et al.*, proceedings.

Any person desiring to be heard or to make any protest with reference to said amendment should on or before February 23, 1984 file with the Federal Energy Regulatory Commission, Washington, D.C. 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.214 or 385.211) and the Regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's Rules. Persons who have heretofore filed need not file again.

Kenneth F. Plumb,

Secretary.

[FR Doc. 84–4432 Filed 2–16–84; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. CP80–22–006]

Northern Natural Gas Co.; Petition for Authority for Specified Accounting and Rate Treatment for Settlement Payments Made to Consolidated Natural Gas, Limited, in Lieu of Contractual Take-or-Pay Deficiency Payment Obligations

February 14, 1984.

Take notice that on February 7, 1984, Northern Natural Gas Company, Division of InterNorth, Inc. (Northern) filed a petition pursuant to Sections 3 and 4 of the Natural Gas Act, and Parts 153 and 154 of the Commission's Regulations requesting the Commission issue an Order *first*, finding that the gas purchase contract amendments between Northern, Consolidated Natural Gas, Limited (Consolidated) and TransCanada Pipeline Limited (TransCanada) are just and reasonable; *second*, finding that the incurrence of settlement costs associated with the contract amendments are prudent; and *third*, that such settlement costs are considered to be part of the total cost of purchasing Canadian gas, and authorizing Northern to record such amount in accordance with Northern's approved Purchase Gas Adjustment Tariff (PGA).

As more fully set out in the petition, Northern states that the amend contracts with Consolidated implement a settlement reached with its Canadian supplier, TransCanada, wherein certain take-or-pay claims are waived. In total, the contract amendment, when compared to the terms of the original contract will enable Northern to reduce its purchases from Canada by approximately $240 million over the contract period. This reduction in Canadian gas purchase costs will be partially offset by the cost of increased purchases of domestic gas which is priced considerably lower than Canadian gas. Northern further states that because of the reduced level of gas to be purchased by Northern, Consolidated and TransCanada will incur contractual volume deficiency obligations with its respective suppliers. In consideration of these obligations, Northern has agreed to make certain settlement payments to Consolidated who, in turn, will make payment of the same amount to TransCanada in lieu of contractual deficiency payment obligations. Based on present estimates, the total settlement payments payable to TransCanada will be approximately $29 million for the four contract years ending October 31, 1983.

In addition, Northern has requested that the Commission, in its order accepting the proposed tariff revisions: determine the revised tariff to be just and reasonable and in the public interest; find that incurrence of costs associated with the settlement is prudent and that the settlement payments are costs of purchasing Canadian gas. The various contract amendments executed to implement this settlement provide that all governmental and regulatory approvals must be obtained by May 15, 1984 or the Agreement terminates and is of no further force or effect.

Any person desiring to be heard or to protest said filing should file a petition to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). All such petitions or protests should be filed on, or before February 27, 1984. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a petition to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 84–4433 Filed 2–16–84; 8:45 am]

BILLING CODE 6717-01-M

[Docket Nos. ER84–198–000, et al.]

Puget Sound Power and Light Co., et al.; Order Accepting Rates for Filing Subject To Refund or Adjustment, Noting Interventions, and Deferring Establishment of Procedures

Issued: February 10, 1984.

On January 6, 1984, December 15, 1983, and December 13, 1983, Puget Sound Power and Light Company (Puget), Portland General Electric Company (Portland), and Montana Power Company (Montana) filed in Docket Nos. ER84–198–000, ER84–163–000, and ER84–156–000, respectively, pursuant to § 35.13(c) of the Commission's regulations (18 CFR 35.13(c)), revised Average System Cost (ASC) rates applicable to exchange sales made to the Bonneville Power Administration (BPA), under the terms of the Pacific Northwest Electric Power Planning and Conservation Act (Northwest Power Act).[1] The Northwest Power Act authorizes participating electric utility systems to sell to BPA at "average system cost" amounts of energy equivalent to their residential customers' loads and to repurchase such energy from BPA at BPA's lower preference rate.

[1] *See* Attachment for rate schedule designations.

The Commission issued a Final Rule [2] governing these exchanges on October 6, 1983. Under the established procedures, which are in substance identical to those provided for in the Commission's interim rule, jurisdictional utilities must file each ASC rate proposal with BPA. That rate is to be reviewed by BPA within 120 days. If BPA's review results in an ASC determination different from that developed by the utility, BPA is to issue a report of its findings, together with the ASC rate to be used by the utility. The utility's proposed ASC rate, BPA's report, and BPA's adjusted ASC rate, if any, must then be filed with the Commission for review. The final rules further provide that such filings are subject to the procedures applicable to other filings under section 205 of the Federal Power Act, as the Commission deems appropriate. The Commission may order changes in an ASC rate which was not determined in compliance with the final rules. The three filings addressed by this order represent the first ASC rates to be processed under the final rule.

Montana's revised ASC rate covers exchange sales to BPA for the exchange period beginning June 30, 1983. The filing includes BPA's written report and redetermination of Montana's ASC proposal. Montana also submitted objections to certain of BPA's adjustments to the ASC rate.[3]

Portland's revised ASC rate applies to the exchange period beginning July 29, 1983, and reflects Portland's quarterly Power Cost Adjustment (PCA) authorized by the Public Utility Commission of Oregon. Portland does not contest BPA's adjustments in this proceeding. However, the ASC rate represents a power cost adjustment to a base rate which has been contested by Portland in Docket No. ER83-540-000. Accordingly, Portland's objections in Docket No. ER83-540-000 apply equally to the instant dockets.[4]

Puget's revised ASC rate applies to the period beginning August 2, 1983. In addition to BPA's report, Puget also submitted a summary of BPA adjustments in this and Puget's other pending ASC proceedings [5] to which Puget objects.[6] Also, Puget moves for consolidation of all of its pending ASC proceedings and requests expedited review, including "an independent audit" by the Commission staff, a settlement conference, and the initiation of a hearing.

Notices of the filings were published in the **Federal Register**, with comments due by January 13, 1984, January 19, 1984, and February 1, 1984, in Docket Nos. ER84-156-000, ER84-163-000, and ER84-198-000, respectively. Timely interventions were filed by BPA and by BPA's Direct Service Industrial Customers (DSIs) [7] in all three dockets.

Neither BPA nor the DSIs raise any issues not previously identified in other pending Portland and Montana ASC proceedings.[8] In Docket No. ER84-198-000, the DSI's raise several issues advanced in other Puget ASC dockets and also several new issues regarding reconcilation of Puget's filing in Docket No. ER84-198-000 with its latest rate order from the Washington Commission.[9] BPA has raised no new issues in Docket No. ER84-198-000. BPA and the DSI's also state their intention to file written comments in the future and reserve the right to request a hearing or oral argument.

BPA and the DSIs also filed timely answers in opposition to Puget's motion for consolidation and request for expedited review. They allege that Puget is seeking preferential treatment and seeking to avoid the procedures established in Order No. 337 for resolution of contested generic issues.

On February 1, 1984, the Washington Utilities and Transportation Commission filed a motion in Docket No. ER84-198-000 for an order convening a Joint State Board, pursuant to section 9(g) of the Northwest Power Act, for purposes of reviewing ASC rates that will affect residential customers in the State of Washington.

Discussion

Under Rule 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.214), the unopposed interventions serve to make BPA and the DSIs parties to the proceedings in Docket Nos. ER84-163-000, ER84-156-000 and ER84-198-000.

As noted the filings in these proceedings are the first ASC filings to be considered subsequent to the effective date of the final rules regarding the ASC methodology. In each instance where ASC rates were accepted for filing under the interim rules, the filing utility and/or the DSIs have objected to certain of BPA's adjustments. Our policy under the interim rules was to hold in abeyance any decision on contested issues and procedures until the final rules were issued. In addition, we have stated that the determinations will be made "with such assistance from the Joint Board as the Commission determines to be appropriate." *See*, 17 FERC ¶ 61,005. We have also granted parties sixty days from the effective date (January 10, 1984) of our Final Rule, on the ASC methodology in which to file comments as to whether they intend to pursue issues previously raised.[10] When these filings are received, we may find that there are common questions of law or fact that will lend themselves to consolidated or generic proceedings. At such time, we can best determine what procedures will most efficiently and most expeditiously resolve these cases, and what the appropriate role of the Joint Board should be in assisting the Commission in its determinations.

We shall therefore accept for filing the BPA adjusted ASC rates for Puget, Portland, and Montana in Docket Nos. ER84-198-000, ER84-163-000, and ER84-156-000, respectively. The rates shall become effective, subject to refund or further adjustment, as of August 2, 1983, July 29, 1983, and June 30, 1983, respectively.

While we do not wish to impede a prompt resolution of the issues in these proceedings, we decline to formally

[2] Order No. 337, Docket No. RM81-41-000, Sales of Electric Power to the Bonneville Power Administration: Methodology and Filing Requirements; Final Rule, 25 FERC ¶ 61,055. The final rules became effective on January 10, 1984.

[3] The adjustments contested by Montana include: (1) Exclusion of the cost of certain new load from the ASC; (2) exclusion from ASC of costs relating to radial lines; (3) BPA's use of gross plant ratios to functionalize general plant maintenance; and (4) BPA's loss factor adjustments.

[4] The major issue in Docket No. ER83-540-000 relates to alleged terminated plant costs excluded by BPA from Portland's ASC rate. BPA has adjusted Portland's revised ASC rate in the instant docket to reflect the same adjustment to Portland's base rate as that made in Docket No. ER83-540-000.

[5] Puget's other pending ASC proceedings are in Docket Nos. ER82-448-000, ER82-715-000, ER83-44-000, ER83-45-000, ER83-46-000, ER83-187-000, ER83-334-000, ER83-541-000, ER83-567-000, ER83-706-000, and ER84-40-000.

[6] Puget objects to, *inter alia*, BPA's treatment of the Washington Public Utility Tax, terminated plant costs, functionalization, plant investment, working capital, administrative and general expenses, regulatory expenses, radial lines, and Federal income taxes.

[7] The DSIs are Aluminum Company of America, ARCO Metals Company, The Carborundum Company, Georgia-Pacific Corporation, Intalco Aluminum Corporation, Kaiser Aluminum and Chemical Corporation, Maritn Marietta Alumninum, Inc., Oregon Metalurgical Corporation, Pacific Carbide and Alloys Co., Pennwalt Corporation, and Reynolds Metal Company.

[8] Portland has other ASC proceedings pending in Docket Nos. ER83-540-000, ER84-42-000, ER82-533-000, ER82-539-000, and ER83-573-000, and ER82-462-000. Montana has other ASC proceedings pending in Docket No. ER83-386-000.

[9] These issues include functionalization of attritian allowance, purchased power, transmission operation and maintenance expenses and depreciation.

[10] *See* Order No. 337, 25 FERC ¶ 61,055.

expedite the proceedings at this time. The ASC rates will be collected subject to refund or adjustment; therefore, no prejudice should result to the parties pending resolution of these cases.

Puget's pleadings are not entirely clear as to what is contemplated in its request for an "independent audit" by the Commission staff. Puget may wish to further articulate its request. In any event, we find in light of the discussion above that it would be premature to act on Puget's request for an audit at this time.

The Commission orders:

(A) Puget's, Portland's, and Montana's ASC rates in Docket Nos. ER84–198–000, ER84–163–000, and ER84–156–000, respectively, as adjusted by BPA, are hereby accepted for filing, to become effective as of August 2, 1983, July 29, 1983, and June 30, 1983, respectively, subject to refund or further adjustment, pending further proceedings to be established as discussed in the body of this order.

(B) Action on the Washington Commission's motion to convene a Joint State Board is hereby deferred as discussed in the body of this order.

(C) The Secretary shall promptly publish this order in the **Federal Register.**

By the Commission.

Kenneth F. Plumb,

Secretary.

RATE SCHEDULE DESIGNATIONS

Designation	Description
Docket No. ER84–156–000	
Montana Power Company	
Supplement No. 5 to Supplement No. 3 to Montana Power Company/Bonneville Power Administration Service Agreement under Pacific Northwest Electric Power Planning and Conservation Act FERC Electric Tariff Original Volume No. 1 (Supersedes Supplement No. 4 to Supplement No. 3).	Revised ASC for Montana Jurisdiction with BPA Report.
Docket No. ER84–163–000	
Portland General Electric Company	
Supplement No. 11 to Supplement No. 3 to Portland General Electric Company/Bonneville Power Administration Service Agreement under Pacific Northwest Electric Power Planning and Conservation Act FERC Electric Tariff Original Volume No. 1 (Supersedes Supplement No. 10 to Supplement No. 3).	Revised ASC for Oregon Jurisdiction with BPA Report.
Docket No. ER84–198–000	
Puget Sound Power & Light Company	
Supplement No. 11 to Supplement No. 3 to Puget Sound Power & Light Company/Bonneville Power Administration Service Agreement under Pacific Northwest Electric Power Planning and Conservation Act FERC Electric Tariff Original Volume No. 1 (Supersedes Supplement No. 10 to Supplement No. 3).	Revised ASC for Washington Jurisdiction with BPA Report.

[FR Doc. 84–4341 Filed 2–16–84; 8:45 am]

BILLING CODE 6717–01–M

[Docket Nos. RP82–57–013 and RP3–52–007]

United Gas Pipeline Co.; Proposed Changes in FERC Gas Tariff

February 14, 1984

Take notice that United Gas Pipeline Company (United), on February 3, 1984, tendered for filing Sixty-Fifth Revised Sheet No. 4, Thirteenth Revised Sheet No. 4–C, and First Revised Sheet No. 4–D to its FERC Gas Tariff, First Revised Volume No. 1.

United states that these sheets are submitted to implement the approved Interim Settlement Agreement in Docket Nos. RP82–57–012 and RP83–52–006. United requests waiver of § 154.22 of the Code of Federal Regulations to permit these tariff sheets to be effective January 1, 1984.

Copies of the filing will be served upon United's jurisdictional customers and the public service commissions of the states of Alabama, Florida, Louisiana and Mississippi, and the Texas Railroad Commission.

Any person desiring to be heard or to protest said filing should file a petition to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, D.C. 20426, in accordance with §§ 385.214 and 385.211 of this chapter. All such petitions or protests should be filed on or before February 24, 1984. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a petition to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 84–4437 Filed 2–16–84; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. ER84–108–000]

Virginia Electric and Power Co.; Order Accepting for Filing and Suspending Rates, Noting Interventions, Granting Waiver of Notice Requirements, and Establishing Hearing Procedures

Issued: February 10, 1984.

On November 21, 1983, as completed on December 14, 1983, Virginia Electric and Power Company (VEPCO) tendered for filing an Interconnection and Operating Agreement with Old Dominion Electric Cooperative (Old Dominion) to supersede individual rate schedules with 10 Virginia electric cooperatives.[1] VEPCO proposes to cease serving the individual members of Old Dominion [2] and to begin service directly to Old Dominion under the proposed rates as of the closing date of VEPCO's sale to Old Dominion of an 11.6% ownership interest in the North Anna nuclear generating Unit Nos. 1 and 2.[3] The proposed rates reflect two phases, the second of which includes allowances for construction work in progress (CWIP). These rates were derived using the cost of service underlying the filed rates to the individual electric cooperatives which are currently under investigation in Docket Nos. ER83–430–000 and ER83–618–000. However, the cost of service has been adjusted to exclude all costs associated with the North Anna units.[4]

VEPCO requests waiver of the notice requirements to allow the proposed non-CWIP rates to become effective, subject to refund, as of the closing date for the sale of the North Anna units and to allow the proposed CWIP rates to become effective on January 31, 1984, subject to refund, to coincide with the

[1] *See* Attachment for rate schedule designations. Although VEPCO's original filing was submitted on November 21, 1983, the filing was not completed until December 14, 1983, when the company tendered various amendments and corrections to its original submittal.

[2] The members of Old Dominion are BARC, Community, Mecklenburg, Northern Neck, Northern Virginia, Prince George, Rappahannock, Shenandoah Valley, and Southside Electric Cooperatives. VEPCO states that the instant filing will not supersede agreements with the Central Virginia on Craig-Botetourt Electric Cooperatives, since these cooperatives have elected not to remain members of Old Dominion.

[3] As contemplated in the filing, the partial sale of the North Anna units to Old Dominion was consummated on December 21, 1983.

[4] The rates currently on file were also submitted in two phases. Rates excluding allowances for CWIP were accepted for filing and suspended for five months to become effective on October 31, 1983, subject to refund, in a Commission order issued on May 27, 1983, in Docket No. ER83–430–000, 23 FERC ¶61,289, *clarified*, 24 FERC ¶61.0185. The CWIP phase was suspended to become effective on January 31, 1984, subject to refund, by Commission order issued on August 30, 1983, in Docket No. ER83–618–000, 24 FERC ¶61,265. The currently proposed rates include a transmission service charge, supplemental power charges, separate charges for service at the bear Island delivery point, a charge for reserve power, and an excess facilities charge. The proposed supplemental power rates and rates for service at Bear Island reflect both a CWIP and non-CWIP phase, similar to the rates filed in Docket Nos. ER83–430–000 and ER83–618–000. The proposed transmission, reserve power, and excess facilities charges do not include a CWIP component. The proposed rates for service at Bear Island and the excess facilities charge are essentially identical to the rates filed for such services in Docket Nos. ER83–430–000 and ER83–618–000.

effective date of VEPCO's previously filed CWIP rates. VEPCO also requests that this docket not be consolidated with Docket Nos. ER83–430–000 and ER83–618–000, stating that a settlement in principle has been reached in those dockets and that consolidation would delay prompt resolution of the proceedings. In view of the fact that the proposed rates are based on the same cost of service as the rates currently under investigation, VEPCO requests that any hearing on the proposed rates be held in abeyance until Docket Nos. ER83–430–000 and ER83–618–000 are resolved, noting that resolution of those dockets will eliminate many of the common issues.

Notice of VEPCO's filing was published in the **Federal Register**, with comments due on or before December 30, 1983.[5] Old Dominion and Bear Island Paper Company (BI) filed timely motions to intervene. BI states that it is a high load factor industrial customer which purchases power furnished by VEPCO to Rappahannock Electric Cooperative. Although BI raises no specific cost of service issues, the company requests that the proposed rates be suspended for at least one day and set for hearing.

Old Dominion requests suspension of the proposed rates, but concurs with VEPCO's requested effective dates. Additionally, Old Dominion requests that this docket be considered in two phases, separating the non-CWIP rates from the CWIP rates. In support of its request for suspension, Old Dominion raises several cost of service issues which are currently being addressed in Docket Nos. ER83–430–000 and ER83–618–000, as well as various issues that are directly related only to the instant filing.[6]

Discussion

Under Rule 214(c)(1) of the Commission's Rules of Practice and Procedure (18 CFR 385.214), the timely motions to intervene serve to make BI and Old Dominion parties to this proceeding.

Our preliminary review of VEPCO's filing and the pleadings indicates that VEPCO's proposed rates have not been shown to be just and reasonable and may be unjust, unreasonable, unduly discriminatory or preferential, or otherwise unlawful. Accordingly, we shall accept the proposed rates for filing and suspend them as ordered below.

In *West Texas Utilities Company*, Docket No. ER82–23–000, 18 FERC ¶ 61,189 (1982), we explained that where our preliminary examination indicates that proposed rates may be unjust and unreasonable and may be substantially excessive, as defined in *West Texas*, we would generally impose a five month suspension. In the instant proceeding, our examination suggests that VEPCO's proposed rates may result in substantially excessive revenues. However, we note that the proposed supplemental power rate is lower than the current firm service rate for the individual members of Old Dominion. In addition, Old Dominion requires the added transmission and reserve services included in the current filing in order to receive the benefits of its North Anna entitlement. Finally, we note that VEPCO and Old Dominion are in agreement with respect to the proposed effective dates. Under these circumstances, we find that good cause exists to waive the notice requirements and to suspend the rates for a nominal period. Accordingly, we shall suspend the proposed non-CWIP supplemental charges, non-CWIP charges for service to the Bear Island delivery point, and the reserve power, transmission, and excess facilities charges, to become effective, subject to refund, as of December 21, 1983, the closing date of the sale of the North Anna facilities. The rates reflecting CWIP will be suspended to become effective, subject to refund, on January 31, 1984.

Since the rates in the instant filing are derived from the cost of service at issue in Docket Nos. ER83–430–000 and ER83–618–000, many of the matters raised by the intervenors here may be resolved in the earlier proceeding. Furthermore, we are informed that the parties to the prior dockets have reached a settlement in principle. Therefore, we shall grant VEPCO's request to hold the hearing in this docket in abeyance pending the outcome of Docket Nos. ER83–430–000 and ER83–618–000. However, the Chief Administrative Law Judge shall have the discretion to commence proceedings when appropriate and to consolidate this proceeding with Docket Nos. ER83–430–000 and ER83–618–000, in the event that settlement of the earlier case does not occur. In addition, at such time as a hearing is convened, the presiding judge may consider the appropriateness of Old Dominion's request for phasing.

The Commission orders:

(A) VEPCO's request for waiver of the notice requirements is hereby granted.

(B) VEPCO's proposed non-CWIP supplemental charges, non-CWIP charges for service to the Bear Island delivery point, and the reserve power, transmission, and excess facilities charges are hereby accepted for filing and suspended, to become effective, subject to refund, as of December 21, 1983. The proposed rates reflecting CWIP are hereby accepted for filing and suspended, to become effective, subject to refund, on January 31, 1984.

(C) Pursuant to the authority contained in and subject to the jurisdiction conferred upon the Federal Energy Regulatory Commission by section 402(a) of the Department of Energy Organization Act and by the Federal Power Act, particularly sections 205 and 206 thereof, and pursuant to the Commission's Rules of Practice and Procedure and the regulations under the Federal Power Act (18 CFR, Ch. I), a public hearing shall be held concerning the justness and reasonableness of VEPCO's rates.

(D) The hearing in this docket shall be held in abeyance pending resolution of Docket Nos. ER83–430–000 and ER83–618–000. However, the Chief Administrative Law Judge is authorized to convene a hearing or to consolidate these proceedings, as noted in the body of this order, and to rule on all motions (except motions to dismiss) pending assignment of a presiding administrative law judge.

(E) The Secretary shall promptly publish this order in the **Federal Register.**

By the Commission.

Kenneth F. Plumb,

Secretary.

VIRGINIA ELECTRIC AND POWER COMPANY
RATE SCHEDULE DESIGNATIONS

[Docket No. ER84–108–000]

Designation	Description
(1) Rate Suchedule FERC No. 106 (Supersedes Rate Schedules Nos. 76,77,79,80,82,83,84,85,86 and 101, as supplemented).	Interconnection and Operating Agreement.
(2) Supplement No. 1 to Rate Schedule FERC No. 106.	Appendix B—Transmission Service Charge.
(3) Supplement No. 2 to Rate Schedule FERC No. 106.	Appendix C—Charges for Capacity and Energy Purchases by VEPCO,
(4) Supplement No. 3 to Rate Schedule FERC No. 106.	Compliance Appendix E—Charges for purchases by Old Dominion.
(5) Supplement No. 4 to Rate Schedule FERC No. 106.	Charges at Bear Island Delivery Point.
(6) Supplement No. 5 to Rate Schedule FERC No. 106 (Supersedes Supplement No. 3).	CWIP Appendix E—Charges for Purchases by Old Dominion.
(7) Supplement No. 6 to Rate Schedule FERC No. 106 (Supersedes Supplement No. 4.	Charges at Bear Island Delivery Point Including CWIP
(8) Supplement No. 7 to Rate Schedule FERC No. 106.	Appendix G—Charges for Reserve Capacity.

[5] 48 FR 56637 (1983).

[6] The additional issues raised by Old Dominion include: (1) The method for determining the transmission and distribution service rates; (2) treatment of reserve capacity revenues; and (3) determination of the cash working capital allowance.

VIRGINIA ELECTRIC AND POWER COMPANY
RATE SCHEDULE DESIGNATIONS—Continued

[Docket No. ER84-108-000]

Designation	Description
(9) Supplement No. 8 to Rate Schedule FERC No. 106.	Appendix H—Facilities Charges.
(10) Supplement No. 9 to Rate Schedule FERC No. 106.	Appendix K—Power Factor.
(11) Supplement No. 10 to Rate Schedule FERC No. 106.	Appendix L—North Anna Nuclear Production Operation and Maintenance Expenses.

[FR Doc. 84-4342 Filed 2-16-84; 8:45 am]
BILLING CODE 6717-01-M

Blanket Notice of Determination Under the Natural Gas Policy Act for OCS Leases Issued on or After April 20, 1977

February 13, 1984.

On September 27, 1983, the Federal Energy Regulatory Commission (Commission) issued Order No. 336 under Docket Nos. RM83-3 and RM81-12 (48 FR 44508 September 29, 1983). In that order, the Commission amended its regulations relating to filing requirements for well category applications under the Natural Gas Policy Act of 1978 (NGPA). The determination process for natural gas produced from a new lease, i.e., a lease entered into on or after April 20, 1977, on the Outer Continental Shelf (OCS), and qualifying as new natural gas under Section 102 of the NGPA, was amended in two respects. First, the Commission eliminated the requirement that a determination be made for each well producing gas from a new OCS lease. Second, in lieu of filing an application for each well, the Commission now permits the grant of a new OCS lease to constitute the requisite jurisdictional agency determination that the gas is produced from a new OCS lease.

Under the new procedures, the U.S. Department of Interior, Minerals Management Service (MMS), must file within 60 days of the grant of the lease a notice of determination which includes the lease number, the area and block number, and the date on which the OCS lease was issued by the Secretary of the Interior. This determination is subject to Commission review in the same manner as other jurisdictional agency determinations.

The Commission also adopted a blanket notice of determination procedure that allows new leases that have been granted by the MMS prior to the effective date of Order No. 336 to take advantage of this new rule. Pursuant to Section 274.104(c) of the Commission's regulations, as revised by Order No. 336, notice is hereby given that on January 23, 1984, the MMS notified the Commission that the following leases in the Alaska OCS region, listed by date of sale, were granted on or after April 20, 1977, and therefore qualify as new OCS leases under Section 102 of the NGPA:

Alaska OCS Region

Date of Sale	*Lease Numbers*
12-01-77	OCS-Y-0083 to 0140
12-01-77	OCS-Y-0142 to 0145
12-01-77	OCS-Y-0147 to 0161
12-01-77	OCS-Y-0163 to 0165
12-01-77	OCS-Y-0167 to 0173
08-01-80	OCS-Y-0175
07-01-80	OCS-Y-0176
08-01-80	OCS-Y-0177 to 0188
07-01-80	OCS-Y-0189 to 0193
08-01-80	OCS-Y-0194 to 0198
12-01-80	OCS-Y-0199 to 0207
12-01-80	OCS-Y-0209 to 0212
12-01-80	OCS-Y-0214 to 0235
08-01-81	OCS-Y-0236
11-01-81	OCS-Y-0241 to 0253
12-01-82	OCS-Y-0254 to 0320
12-01-82	OCS-Y-0322 to 0329
12-01-82	OCS-Y-0331 to 0349
12-01-82	OCS-Y-0351 to 0371
12-01-82	OCS-Y-0373 to 0378
06-01-83	OCS-Y-0379 to 0380
06-01-83	OCS-Y-0382
06-01-83	OCS-Y-0384 to 0385
06-01-83	OCS-Y-0387 to 0427
06-01-83	OCS-Y-0429 to 0431
06-01-83	OCS-Y-0433 to 0442

On February 8, 1984, the Atlantic OCS Region Office of the MMS notified the Commission that the following leases in the Atlantic OCS Region, listed by date of sale, were granted on or after April 20, 1977, and therefore qualify as new OCS leases under Section 102 of the NGPA:

Atlantic OCS Region

South Atlantic Sale #43: 03-28-78

OCS-A-0663 to 0664
OCS-A-0666
OCS-A-0669 to 0689
OCS-A-0691 to 0693
OCS-A-0695 to 0696
OCS-A-0698 to 0706
OCS-A-0709 to 0713

Mid Atlantic Sale #49: 2-28-79

OCS-A-0102 to 0109
OCS-A-0111 to 0115
OCS-A-0117
OCS-A-0119 to 0120
OCS-A-0122 to 0125
OCS-A-0127 to 0145
OCS-A-0219

North Atlantic Sale #42: 12-18-79

OCS-A-0146 to 0147
OCS-A-0149 to 0154
OCS-A-0156 to 0159
OCS-A-0162 to 0164
OCS-A-0166 to 0184
OCS-A-0187 to 0194
OCS-A-0196 to 0204
OCS-A-0207 to 0218

South Atlantic Sale #56: 08-04-81

OCS-A-0220 to 0240
OCS-A-0242 to 0244
OCS-A-0247 to 0251
OCS-A-0254 to 0258
OCS-A-0261 to 0273

Mid Atlantic Sale: #59: 12-08-81

OCS-A-0274 to 0275
OCS-A-0297
OCS-A-0305
OCS-A-0308 to 0320
OCS-A-0323 to 0324
OCS-A-0327 to 0328
OCS-A-0330 to 0333
OCS-A-0335 to 0337
OCS-A-0339
OCS-A-0341
OCS-A-0343 to 0345
OCS-A-0347 to 0348
OCS-A-0350
OCS-A-0353 to 0354
OCS-A-0356 to 0357
OCS-A-0359 to 0367
OCS-A-0369 to 0370

Resale #2: 08-05-82

OCS-A-0372 to 0374
OCS-A-0376 to 0383
OCS-A-0385 to 0399

April 1983 Lease Offering #76:

OCS-A-0401 to 0409
OCS-A-0411 to 0414
OCS-A-0416 to 0439

South Atlantic Sale: #78: 07-26-83

OCS-A-0440 to 0450

A complete list of OCS lease numbers, with the area and block numbers and date on which each lease was issued by the Secretary of the Interior is available for inspection 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 this notice in the **Federal Register.**

Kenneth F. Plumb,

Secretary.

[FR Doc. 4339 Filed 2-16-84; 8:45 am]
BILLING CODE 6717-01-M

Notice of Determination Under the Natural Gas Policy Act for OCS Leases Issued on or After April 20, 1977

On September 27, 1983, the Federal Energy Regulatory Commission (Commission) issued Order No. 336 under Docket Nos. RM83-3 and RM81-12 (48 FR 44508 September 29, 1983). In that order, the Commission amended its regulations relating to filing requirements for well category applications under the Natural Gas Policy Act of 1978 (NGPA). The determination process for natural gas

produced from a new lease, i.e., a lease entered into on or after April 20, 1977, on the Outer Continental Shelf (OCS), and qualifying as new natural gas under Section 102 of the NGPA, was amended in two respects. First, the Commission eliminated the requirement that a determination be made for each well producing gas from a new OCS lease. Second, in lieu of filing an application for each well, the Commission now permits the grant of a new OCS lease to constitute the requisite jurisdictional agency determination that the gas is produced from a new OCS lease.

Under the new procedures, the U.S. Department of Interior, Minerals Management Service (MMS), must file within 60 days of the grant of the lease a notice of determination which includes the lease number, the area and block number, and the date on which the OCS lease was issued by the Secretary of the Interior. This determination is subject to Commission review in the same manner as other jurisdictional agency determinations.

On February 6, 1984, the Commission received notice from MMS, Gulf of Mexico OCS Region, that on January 5, 1984, MMS conducted a lease offering for the Eastern Gulf of Mexico. Included in this offering were lease numbers OCS–G–6390 through OCS–G–6545. Pursuant to Order No. 336, these leases have been determined to qualify under NGPA Section 102(c)(1)(A), as new OCS leases granted on or after April 20, 1977.

A complete list of OCS lease numbers, with the area and block numbers for this sale is available for inspection 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 this notice in the Federal Register.

Kenneth F. Plumb,

Secretary.

[FR Doc. 84–4340 Filed 2–16–84; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. QF84–147–000]

Alcon (Puerto Rico). Inc.; Application For Commission Certification of Qualifying Status of a Cogeneration Facility

February 14, 1984.

On January 27, 1984, Alcon (Puerto Rico), Inc., (Applicant) of P.O. Box 3000, Humacao, Puerto Rico 00661, submitted for filing an application for certification of a facility as a qualifying facility pursuant to § 292.207 of the Commission's regulations. No determination has been made that the submittal constitutes a complete filing.

The topping-cycle cogeneration facility will be located at the Applicant's facility at Road 925, Barrio Junquitos, Humacao, Puerto Rico. The facility will consist of two diesel generator sets. The primary energy source for the facility will be No. 5 fuel oil. The useful thermal energy output will be in the form of chilled water for air conditioning and steam for production processes. The electric power production capacity of the facility will be 1820 kilowatts.

Any person desiring to be heard or objecting to the granting of qualifying status should file a petition to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, D.C. 20426, in accordance with rules 211 and 214 of the Commission's Rules of Practice and Procedure. All such petitions or protests must be filed within 30 days after the date of publication of this notice and must be served on the applicant. Protests will be considered by the Commission in determining the appropriate action to be taken but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a petition to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 84–4427 Filed 2–16–84; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. QF84–155–000]

Cogenic Energy Systems Inc.—Freehold Area Y.M.C.A.; Application for Commission Certification of Qualifying Status of a Cogeneration Facility

February 14, 1984.

On January 30, 1984, Cogenic Energy Systems Inc., (Applicant) of 307 South Leadbetter Road, Ashland, Virginia 23005, submitted for filing an application for certification of a facility as a qualifying cogeneration facility pursuant to § 292.207 of the Commission's regulations. No determination has been made that the submittal constitutes a complete filing.

The topping-cycle cogeneration facility will be located at the Greater Freehold Area Y.M.C.A., East Freehold Road, Freehold, New Jersey. The facility will consist of an internal combustion engine generator unit with waste heat recovery from both jacket water and exhaust gases. The primary energy source for the facility will be natural gas. The electric power production capacity of the facility will be 100 kilowatts.

Any person desiring to be heard or objecting to the granting of qualifying status should file a petition to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, D.C. 20426, in accordance with rules 211 and 214 of the Commission's Rules of Practice and Procedure. All such petitions or protests must be filed within 30 days after the date of publication of this notice and must be served on the applicant. Protests will be considered by the Commission in determining the appropriate action to be taken but will not serve to make protestants parties to the proceeding. Any person wishing to bcome a party must file a petition to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 84–4429 Filed 2–16–84; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. QF84–158–000]

Owens-Illinois, Inc.—Big Island Facility; Application for Commission Certification of Qualifying Status of a Cogeneration Facility

February 14, 1984.

On January 30, 1984, Owens-Illinois, Inc., (Applicant) of One SeaGate, Toledo, Ohio 43666, submitted for filing an application for certification of a facility as a qualifying cogeneration facility pursuant to § 292.207 of the Commission's regulations. No determination has been made that the submittal constitutes a complete filing.

The topping-cycle cogeneration facility is located at the Applicant's pulp and paper corrugated medium mill in Big Island, Virginia. The facility consists of two boilers and a steam turbine generator. The primary energy source for the facility is biomass in the form of bark and wood refuse, supplemented by coal and fuel oil. The useful thermal energy output, which is the form of steam at two separate pressure levels, is utilized in pulp and paper production processes. The electric power production capacity of the facility is 8 megawatts. The present steam turbine generator was installed in 1965.

Any person desiring to be heard or objecting to the granting of qualifying status should file a petition to intervene

or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, D.C. 20426, in accordance with rules 211 and 214 of the Commission's Rules of Practice and Procedure. All such petitions or protests must be filed within 30 days after the date of publication of this notice and must be served on the applicant. Protests will be considered by the Commission in determining the appropriate action to be taken but will not serve to make protestants parties to the proceeding. Any person wishing to bcome a party must file a petition to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 84-4434 Filed 2-16-84; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. QF84-149-000]

Owens-Illinois, Inc.—Valdosta Facility; Application for Commission Certification of Qaulifying Status of a Cogeneration Facility

February 14, 1984.

On January 27, 1984, Owens-Illinois, Inc., (Applicant) of One SeaGate, Toledo, Ohio 43666, submitted for filing an application for certification of a facility as a qualifying facility pursuant to § 292.207 of the Commission's regulations. No determination has been made that the submittal constitutes a complete filing.

The topping-cycle cogeneration facility is located at the Applicant's pulp and paper corrugated linerboard mill near Valdosta, Georgia. The facility consists of six boilers and two turbine generators. The useful thermal energy output, which is in the form of steam at two separate pressure levels, is utilized in pulp and paper production processes. The primary energy source of the facility is biomass which is in the form of bark, wood refuse, and dry black liquor solids, supplemented by natural gas and fuel oil/reprocessed oil. The electric power production capacity of the facility is 15 megawatts. The facility began operation as a cogeneration facility in 1953.

Any person desiring to be heard or objecting to the granting of qualifying status should file a petition to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, D.C. 20426, in accordance with rules 211 and 214 of the Commission's Rules of Practice and Procedure. All such petitions or protests must be filed within 30 days after the date of publication of this notice and must be served on the applicant. Protests will be considered by the Commission in determining the appropriate action to be taken but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a petition to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 84-4435 Filed 2-16-84; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. OF84-75-000]

Turbo Gas and Electric, Ltd.; Amendment to Application for Commission Certification of Qualifying Status of a Small Power Production Facility

February 14, 1984.

On January 30, 1984, Turbo Gas and Electric, Ltd., (Applicant), 91 Newbury Street, 3rd Floor, Boston, Massachusetts 02116, submitted for filing an amended application for certification of a facility as a qualifying small power production facility pursuant to § 292.207 of the Commission's regulations. The original application was filed November 28, 1983. No determination has been made that the submittal constitutes a complete filing.

The amendment changes the capacity of the facility from 1000 kilowatts to 1500 kilowatts. The facility, as changed, will heat outlet gas from the turbo expander facility using natural gas and other energy sources including biomass, waste, renewable resources, and geothermal resources. (In the original application, gas was preheated using natural gas exclusively.)

Any person desiring to be heard or objecting to the granting of qualifying status should file a petition to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, D.C. 20426, in accordance with rules 211 and 214 of the Commission's Rules of Practice and Procedure. All such petitions or protests must be filed within 30 days after the date of publication of this notice and must be served on the applicant. Protests will be considered by the Commission in determining the appropriate action to be taken but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a petition to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 84-4436 Filed 2-16-84; 8:45 am]

BILLING CODE 6717-01-M

ENVIRONMENTAL PROTECTION AGENCY

[OPTS-51506; BH-FRL 2528-6]

Certain Chemicals; Premanufacture Notices

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: Section 5(a)(1) of the Toxic Substances Control Act (TSCA) requires any person who intends to manufacture or import a new chemical substance to submit a premanufacture notice (PMN) to EPA at least 90 days before manufacture or import commences. Statutory requirements for section 5(a)(1) premanufacture notices are discussed in EPA statements of the final rule published in the **Federal Register** of May 13, 1983 (48 FR 21722). This notice announces receipt of twenty PMNs and provides a summary of each.

DATES: Close of Review Period:

PMN 84-359—April 25, 1984.

PMN 84-378, 84-379, 84-380 and 84-381—May 2, 1984.

PMN 84-382—May 5, 1984.

PMN 84-383, 84-384, 84-385, 84-386, 84-387, 84-388, 84-389, 84-390 and 84-391—May 6, 1984.

PMN 84-392, 84-393 and 84-394—May 7, 1984.

PMN 84-395 and 84-396—May 8, 1984.

Written comments by:

PMN 84-359—March 26, 1984.

PMN 84-378, 84-379, 84-380 and 84-381—April 2, 1984.

PMN 84-382—April 5, 1984.

PMN 84-383, 84-384, 84-385, 84-386, 84-387, 84-388, 84-389, 84-390 and 84-391—April 6, 1984.

PMN 84-392, 84-393 and 84-394—April 7, 1984.

PMN 84-395 and 84-396—April 8, 1984.

ADDRESS: Written comments, identified by the document control number "[OPTS-51506]" and the specific PMN number should be sent to: Document Control Officer (TS-793), Office of Toxic Substances, Office of Pesticides and Toxic Substances, Environmental Protection Agency, Rm. E-409, 401 M St., SW., Washington, D.C. 20460. (202-382-3532).

FOR FURTHER INFORMATION CONTACT: Margaret Stasikowski, Acting Chief, Premanfacture Notice Management Branch, Chemical Control Division (TS–794), Office of Toxic Substances, Environmental Protection Agency, Rm. E–216, 401 M St., SW., Washington DC 20460 (202–382–3729).

SUPPLEMENTARY INFORMATION: The following notice contains information extracted from the non-confidential version of the submission provided by the manufacturer on the PMNs received by EPA. The complete non-confidential document is available in the Public Reading Room E–107 at the above address.

PMN 84–359

Importer. American Hoechst Corporation.
Chemical. (S) 2,2-bis(4-(3-di(cocoalkylpolyoxyethyl)amino-2-hydroxypropoxy)phenyl)propane, ethoxylated.
Use/Import. (S) Surfactant for dispersion preparations for industrial, commercial and consumer use. Import range: 300–400 kg/yr.
Toxicity Data. No data submitted.
Exposure. Processing and use: dermal, a total of 40 workers, up to 20 manhours/yr.
Environmental Release/Disposal. No release.

PMN 84–378

Manufacturer. Confidential.
Chemical. (G) Aromatic sulfonate of substituted heteropolycycle.
Use/Production. (G) Open, non-dispersive use. Prod. range: Confidential.
Toxicity Data. No data on the PMN substance submitted.
Exposure. Confidential.
Environmental Release/Disposal. Confidential. Disposal by navigable waterway.

PMN 84–379

Manufacturer. Confidential.
Chemical. (G) Aromatic sulfonate of substituted heteropolycycle.
Use/Import. (G), non-dispersive use. Prod. range: Confidential.
Toxicity Data. No data on the PMN substance submitted.
Exposure. Confidential.
Environmental Release/Disposal. Disposal by navigable waterway.

PMN 84–380

Manufacturer. Confidential.
Chemical. (G) Aromatic sulfonate of substituted heteropolycycle.
Use/Import. (G) Open, non-dispersive use. Prod. range: Confidential.
Toxicity Data. No data on the PMN substance submitted.
Exposure. Confidential.
Environmental Release/Disposal. Confidential. Disposal by navigable waterway.

PMN 84–381

Manufacturer. Monsanto Company.
Chemical. (G) Polyphenyl ether.
Use/Production. (S) Industrial chemical intermediate. Prod. range: Confidential.
Toxicity Data. No data on the PMN substance submitted.
Exposure. Confidential.
Environmental Release/Disposal. Less than 0.01–14 kg/batch released to drum with 0.1 gk/batch to air. Disposal by incineration and landfill.

PMN 84–382

Manufacturer. ALCOLAC INC.
Chemical. (S) 2-propenoic acid 3-(2-hydroxyethoxy) 3-oxypropyl ester.
Use/Production. (S) Industrial reactive dilvent for radiation curable coatings and adhesives. Prod. range: Confidential.
Toxicity Data. Irritation: Skin—severe, Eye—Extreme.
Exposure. Manufacture: dermal, a total of 3 workers, up to 15 hrs/da, up to 12 da/yr.
Environmental Release/Disposal. 12 kg/batch released to land. Disposal by publicly owned treatment works (POTW) and landfill.

PMN 84–383

Manufacturer. Confidential.
Chemical. (G) Linseed based alkyd.
Use/Production. (G) The new substance will function as an ingredient in inks which are commercially applied to various substrates in an open use. Prod. range: 250,000–360,000 kg/yr.
Toxicity Data. No data submitted.
Exposure. Manufacture and processing: dermal, a total of 99 workers, up to 9 hrs/da, up to 250 da/yr.
Environmental Release/Disposal. 0.3–90 kg/yr released to land. Disposal by incineration and landfill.

PMN 84–384

Importer. Confidential.
Chemical. (G) Substituted cyclohexane and cyclohexene esters.
Use/Import. (G) Highly dispersive use. Import range: Confidential
Toxicity Data. Acute oral: 8,000 mg/kg; Acute dermal: 4,000 mg/kg; Irritation: Skin—Slight, Eye—Moderate, Phototoxicity: Negative; Skin sensitization: Non-sensitizer.
Exposure. Confidential.
Environmental Release/Disposal. Confidential. Disposal by POTW.

PMN 84–385

Manufacturer. Confidential.
Chemical. (G) Substituted phenylmagnesium chloride.
Use/Production. (G) Chemical intermediate. Prod. range: Confidential.
Toxicity Data. No data submitted.
Exposure. Confidential.
Environmental Release/Disposal. Confidential.

PMN 84–386

Manufacturer. Confidential.
Chemical. (G) Substituted phenylmagnesium chloride.
Use/Production. (G) Chemical intermediate. Prod. range: Confidential.
Toxicity Data. No data submitted.
Exposure. Confidential.
Environmental Release/Disposal. Confidential.

PMN 84–387

Manufacturer. Confidential.
Chemical. (G) Substituted benzyl alcohol.
Use-Production. (G) Chemical intermediate. Prod. range: Confidential.
Toxicity Data. Acute oral: 500 mg/kg; Acute dermal: 200 mg/kg; Irritation: Skin—Non-irritant; Ames Test: Not mutagenic.
Exposure. Confidential.
Environmental Release/Disposal. Confidential.

PMN 84–388

Manufacturer. Confidential.
Chemical. (G) Reaction product of a phenol-formaldehyde polymer, a carbocyclic anhydride, and an amine.
Use/Production. (G) Molding compound additive. Prod. range: Confidential.
Toxicity Data. No data submitted.
Exposure. Confidential.
Environmental Release/Disposal. Confidential.

PMN 84–389

Manufacturer. Confidential.
Chemical. (G) Urethane acrylate.
Use/Production. (G) Resin coating. Prod. range: 40,000–250,000 kg/yr.
Toxicity Data. No data submitted.
Exposure. Confidential.
Environmental Release/Disposal. Confidential.

PMN 84–390

Importer. Confidential.
Chemical. (G) Benzoic acid, 2-[(6-[(4-chloro-6-[(4-((substituted)azo)phenyl)amino)-1,3,5-triazin-2-yl)amino)-1-hydroxy-3-sulfo-2-naphthalenyl)azo-, chromium complex.

Use/Import. (S) Commercial dyes for cellulosic fibres. Import range: Confidential.

Toxicity Data. Ames Test: Negative; TLm 48 hr (Orange medaka)—Above 1,000 parts per million (ppm).

Exposure. No data submitted.

Environmental Release/Disposal. No data submitted.

PMN 84–391

Importer. Confidential.

Chemical. (G) Cuprate(5-), [5-hydroxy-2-[[4-[[5-hydroxy-6-[[2-methoxy-5-(substituted)phenyl]azo]-7-sulfo-2-naphthalenyl]amino]-6-[(3-sulfophenyl]aminol]-1,3,5-triazin-2-yl]amino]-6-[(2-hydroxy-5-sulfophenyl)]azo-1,7-naphthalenedisulfonato(7-)], pentasodium.

Use/Import. (S) Commercial dyes for cellulosic fibres. Import range: Confidential.

Toxicity Data. TLm 48 hr (Orange medaka)—Above 1,000 ppm; Ames Test: Negative.

Exposure. No data submitted.

Environmental Release/Disposal. No data submitted.

PMN 84–392

Manufacturer. Milliken Chemical.

Chemical. (G) Alkoxylated cycloaliphatic diamine.

Use/Production. (G) Disubstituted cyclohexane. Prod. range: Confidential.

Toxicity Data. No data submitted.

Exposure. Confidential.

Environmental Release/Disposal. Confidential.

PMN 84–393

Manufacturer. Confidential.

Chemical. (G) 2-Chloro-N-methyl-N-substituted acetamide.

Use/Production. (G) Starch modifier. Prod. range: Confidential.

Toxicity Data. Acute oral: 0.33 g/kg; Acute dermal: Males—1.39 g/kg, Females—1.60 g/kg; Irritation: Skin—Severe, Eye—Moderate to severe.

Exposure. Confidential.

Environmental Release/Disposal. Confidential. Disposal by POTW.

PMN 84–394

Manufacturer. Minnesota Mining and Manufacturing Company.

Chemical. (G) Polymer of ethylene oxide, propylene oxide, and aliphatic isocyanate.

Use/Production. (G) Sealant. Prod. range: Confidential.

Toxicity Data. Acute oral: > 5,000 mg/kg; Irritation: Skin-Non-irritant, Eye—Minimal; Ames Test: Non-mutagenic, LC_{50} 96 hour (Fathead minnow)— > 10,000 mg/1.

Exposure. Manufacturer: dermal, a total of 9 workers.

Environmental Release/Disposal. 25 kg released. Disposal by incineration.

PMN 84–395

Manufacturer. Confidential.

Chemical. (G) Dimer acids, dicarboxylic acid, diamines polyamide resin.

Use/Production. (G) Hot melt adhesive in a contained use. Prod. range: Confidential.

Toxicity Data. No data submitted.

Exposure. Manufacture: dermal and inhalation, a total of 4 workers.

Environmental Release/Disposal. Less than 0.1 kg/batch released to water with 2 kg/batch to land. Disposal by landfill and state approved treatment system.

PMN 84–396

Importer. Ajinomoto U.S.A., Inc.

Chemical. (S) Dipentaerythritol, adipic acid ester.

Use/Import. (S) Industrial stabilizer and lubricant for PVC. Import range: 5,000–10,000 kg/yr.

Toxicity Data. Acute oral: > 50 g/kg; Ames Test: Not mutagenic.

Exposure. Manufacture: A total of 10 workers.

Environmental Release/Disposal. No data submitted.

Dated: Feburary 10, 1984.

V. Paul Fuschini,

Acting Director, Information Management Division.

[FR Doc. 84–4219 Filed 2–16–84; 8:45 am]

BILLING CODE 6560–50–M

[OPTS–59146; TSH–FRL 2528–5]

Certain Chemicals; Premanufacture Exemption Applications

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: EPA may upon application exempt any person from the premanufacturing notification requirements of section 5 (a) or (b) of the Toxic Substances Control Act (TSCA) to permit the person to manufacture or process a chemical for test marketing purposes under section 5(h)(1) of TSCA. Requirements for test marketing exemption (TME) applications, which must either be approved or denied within 45 days of receipt, are discussed in EPA's final rule published in the **Federal Register** of May 13, 1983 (48 FR 21722). This notice, issued under section 5(h)(6) of TSCA, announces receipt of fours applications for exemptions, provides a summary, and requests comments on the appropriateness of granting each of the exemptions.

DATE: Written comments by March 5, 1984.

ADDRESS: Written comments, identified by the document control number "[OPTS–59146]" and the specific TME number should be sent to: Document Control Officer (TS–793), Information Management Division, Office of Toxic Substances, Office of Pesticides and Toxic Substances, Environmental Protection Agency, Rm. E–409, 401 M Street, SW, Washington, DC 20460.

FOR FURTHER INFORMATION CONTACT: Margaret Stasikowski, Acting Chief, Premanufacture Notice Management Branch, Chemical Control Division (TS–794), Office of Toxic Substances, Office of Pesticides and Toxic Substances, Environmental Protection Agency, Rm. E–216, 401 M Street, SW, Washington, DC 20460.

SUPPLEMENTARY INFORMATION: The following notice contains information extracted from the non-confidential version of the submission provided by the manufacturer on the TMEs received by EPA. The complete non-confidential document is available in the Public Reading Room E–107 at the above address.

TME 84–26

Close of Review Period. March 21, 1984.

Manufacturer. Confidential.

Chemical. (G) Polyamic resin solution.

Use/Production. (G) Specialty coatings.

Toxicity Data. No data submitted.

Exposure. Manufacture: a total of 4 workers.

Environmental Release/Disposal. No release.

TME 84–27

Close of Review Period. March 21, 1984.

Manufacturer. Confidential.

Chemical. (G) Polyamic resin solution.

Use/Production. (G) Speciality coatings.

Toxicity Data. No data submitted.

Exposure. Manufacture: a total of 4 workers.

Environmental Release/Disposal. No release.

TME 84–28

Close of Review Period. March 22, 1984.

Manufacturer. Confidential.

Chemical. (G) Alkyl polyether.

Use/Production. (G) Industrial polyurethane. Prod. range: 20,000 kg. 6 months.

Toxicity Data. No data submitted.

Exposure. Manufacturer: dermal, a total of 10 workers, up to 2 hrs/da, up to 6 da/yr.

Environmental Release/Disposal. Release to land. Disposal by landfill.

TME 84-29

Close of Review Period. March 22, 1984.

Manufacturer. Confidential.

Chemical. (G) Urethane acrylate.

Use/Production. (G) Resin coating. Prod. range: 20,000 lbs. 1 year.

Toxicity Data. No data on the TME substance submitted.

Exposure. Manufacture, processing and use: dermal, a total of 30 workers.

Environmental Release/Disposal. Confidential.

Dated: February 10, 1984.

V. Paul Fuschini,

Acting Director, Information Management Division.

[FR Doc. 84-4218 Filed 2-16-84; 8:45 am]

BILLING CODE 6560-50-M

[ER-FRL-2528-2]

Availability of Environmental Impact Statements Filed February 6 Through February 10, 1984 Pursuant to 40 CFR 1506.9

Responsible agency: Office of Federal Activities, General Information (202) 382-5073 or (202) 382-5075.

EIS No. 840051, Draft, FHW, MI, Detroit Travel Information Center Construction and Associated Roadway Improvements, I-75 at Ambassador Bridge, Wayne Co. Due: Apr. 2, 1984.

EIS No. 840052, Draft, OSM, MT, Montco Surface Coal Mine, Permit, Rosebud County, Due: Apr. 9, 1984.

EIS No. 840053, Draft, EPA, REG, Natural Gas Production Industry, VOC Equipment Leaks, Emissions Standards, Due: Apr. 2, 1984.

EIS No. 840054, Draft, EPA, REG, Natural Gas Production Industry, S02 Emissions Standards, Due: Apr. 2, 1984.

EIS No. 840055, Draft, DOE, WY, Thermopolis-Alcova-Casper Transmission Line Project, Approval, Hot Springs and Natrona Counties, Due: Apr. 6, 1984.

EIS No. 840056, Draft, BLM, ND, North Dakota Livestock Grazing Management Plan, Dickinson District, Due: Apr. 13, 1984.

Amended Notices:

EIS No. 840015, Draft, MMS, AK, 1984 Gulf of Alaska/Cook Inlet OCS Gas and Oil Sale, Leasing, Due: Mar. 20, 1984. Published FR 01-27-84—Review extended.

EIS No. 840003, Draft, NOA, HI, Hawaii Humpback Whale National Marine Sanctuary, Designation, Due: Mar. 20, 1984. Published FR 1-27-84. Clarification: Official filing date Jan. 10, 1984; Official review period began Jan. 20, 1984; Review extended.

Dated February 14, 1984.

David G. Davis,

Acting Director, Office of Federal Activities.

[FR Doc. 84-4412 Filed 2-16-84; 8:45 am]

BILLING CODE 6560-50-M

FEDERAL COMMUNICATIONS COMMISSION

[MM Docket No. 84-53, et al.; File No. BP-821109AC]

Newport Broadcasting et al.; Hearing Designation Order

In the matter of applications of Benita Soho d.b.a. Newport Broadcasting, KMAP, South Saint Paul, Minnesota (MM Docket No. 84-53; File No. BP-821109AC), Has: 1370 kHz, 500 W, DA-D. Req: 1100 kHz, 2.5 kW, D; Benito Juarez Sandoval, Newport, Minnesota (MM Docket No. 84-54; File No. BP-83037AC), Req: 1100 kHz, 1 kW, D; and Frontier Radio Corporation, Madison Lake, Minnesota (MM Docket No. 84-55; File No. BP-830324AI), Req: 1100 kHz, 0.5 kW, D, for construction permit.

Adopted: January 24, 1984.
Released: February 3, 1984.

By the Chief, Mass Media Bureau.

1. The Commission, by the Chief, Mass Media Bureau, acting pursuant to delegated authority, has under consideration the above-captioned mutually exclusive applications.[1] [2]

2. *Newport Broadcasting (KMAP).* Pursuant to special temporary authority granted it by the Commission, this station has been off the air since October 1982. The STA reflects difficulties caused by a malfunctioning directional antenna system which required major repair and the necessity to financially rehabilitate the station. In December, 1983, Newport Broadcasting sought an extension of its STA on grounds that a prior claim to its existing transmitter site had been recognized and the applicant advised that once title to the site was perfected, KMAP would be required to vacate the premises. As the site in question is the one specified by Newport here, an issue is raised as to whether reasonable assurance of its availability remains. In addition, while Newport furnished this information in its STA request, it failed to amend the pending application with respect to the impending loss of the transmitter site. An amendment will be required.

3. Except as indicated by the issues specified below, the applicants are qualified to construct and operate as proposed. However, since the proposals are mutually exclusive, they must be designated for hearing in a consolidated proceeding. Although the applications are for different communities, they would serve substantial areas in common. Therefore, in addition to determining pursuant to section 307(b) of the Communications Act of 1934, as amended, which of the proposals would best provide a fair, efficient and equitable distribution of radio service, a contingent comparative issue will be specified.

4. Accordingly, it is ordered, that pursuant to section 309(e) of the Communications Act of 1934, as amended, the applications are designated for hearing in a consolidated proceeding, at a time and place to be specified in a subsequent order, upon the following issues:

1. To determine with respect to Newport Broadcasting whether the applicant has reasonable assurance of the availability of a transmitter site for its use.

2. To determine the areas and populations which would receive primary service from each proposal, and the availability of other primary aural service to such areas and populations.

3. To determine in light of section 307(b) of the Communications Act of 1934, as amended, which of the proposals would better provide a fair, efficient and equitable distribution of radio service.

4. To determine, in the event it be concluded that a choice among applicants should not be based solely on considerations relating to section 307(b), which of the proposals would on a comparative basis best serve the public interest.

5. To determine, in light of the foregoing issues which of the applications should be granted.

5. It is further ordered that Newport Broadcasting shall amend its application as specified in paragraph 2 above within 30 days of the release of this Order.

6. It is further ordered, that the amendment to the Benito Juarez Sandoval application dated September 1, 1983 is accepted for filing.

7. It is further ordered, that to avail themselves of the opportunity to be heard and pursuant to section 1.221(c) of

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[1] We have by separate action denied an informal objection to the application of Benita Soho d.b.a. Newport Broadcasting on grounds that the allegations raised—namely failure to honor contractual obligations—are not properly within our jurisdiction. Should the objector choose to pursue this claim in court, Newport Broadcasting must of course, report such action to us.

[2] We will accept pursuant to Section 1.65 of our Rules, a September 1, 1983 amendment filed by Benito Juarez Sandoval, updating ownership information.

the Commission's Rules, the applicants shall within 20 days of the mailing of this Order, in person or by attorney, file with the Commission in triplicate, a written appearance stating an intention to appear on the date fixed for the hearing and to present evidence on the issues specified in this Order.

8. It is further ordered, that pursuant to section 311(a)(2) of the Communications Act of 1934, as amended, and § 73.3594 of the Commission's Rules, the applicants shall give notice of the hearing within the time and in the manner prescribed in such Rules, and shall advise the Commission of the publication of such notice as required by § 73.3594(g) of the Rules.

Federal Communications Commission.

W. Jan Gay,

Assistant Chief, Audio Services Division, Mass Media Bureau.

[FR Doc. 84-4348 Filed 2-16-84; 8:45 am]

BILLING CODE 6712-01-M

[MM Docket No. 84-75 et al.; File No. BPCT-830818KN]

Ideal Licensee, Ltd., et al.; Hearing Designation Order

In the matter of Applications of Ideal Licensee, Ltd., Dallas, Texas (MM Docket No. 84-75; File No. BPCT-830818KN), Jacquelin Stout, et al. d.b.a. Metroplex Television Broadcasting, Ltd., Dallas, Texas (MM Docket No. 84-76; File No. BPCT-830926KF), Melinda Guzman, Dallas, Texas (MM Docket No. 84-77; File No. BPCT-831014KE), David A. and Dolores Hernandez d.b.a. El Canal De La Comunidad, Dallas, Texas (MM Docket No. 84-78; File No. BPCT-831017KF), Dallas 58 Inc., Dallas, Texas (MM Docket No. 84-79; File No. BPCT-831017KG), Metroplex Broadcasting Company, Inc., Dallas, Texas (MM Docket No. 84-80; File No. BPCT-831017KJ), High Tech Industries, Inc., Dallas, Texas (MM Docket No. 84-81; File No. BPCT-831018KG), Associated Communications Corporation, Dallas, Texas (MM Docket No. 84-82; File No. BPCT-831018KH), Ark Communications Corp., Dallas, Texas (MM Docket No. 84-83; File No. BPCT-831018KI) and Texas Women in Broadcasting, Inc., Dallas, Texas (MM Docket No. 84-84; File No. BPCT-831018KJ) for construction permit.

Adopted: Janaury 27, 1984.

Released: February 9, 1984.

By the Chief, Mass Media Bureau:

1. The Commission, by the Chief, Mass Media Bureau, acting pursuant to delegated authority, has before it the above-captioned mutually exclusive applications for authority to construct a new commercial television station to operate on Channel 58, Dallas, Texas.

2. The effective radiated visual power, antenna height above average terrain and other technical data submitted by each applicant indicates that there would be a significant difference in the size of the areas and populations that they propose to serve. Consequently, for the purpose of comparison, the areas and populations which would be within each predicted 64 dBu (Grade B) contour, together with the availability of other television service of Grade B or greater intensity, will be considered under the standard comparative issue, for the purpose of determining whether a comparative preference should accrue to any of the applicants.

3. Section 73.685(f) of the Commission's Rules requires an applicant proposing to use a directional antenna to include a tablulation of relative field pattern, oriented so that 0° corresponds to True North and tabluated at least every 10° plus any minima or maxima. Melinda Guzman, Dallas 58, Inc. and Metroplex Broadcasting Company, Inc. have not supplied this data. Accordingly, the applicants will each be required to submit an amendment with the appropriate information to the presiding Administrative Law Judge and a copy to the TV Branch, Mass Media Bureau, within 20 days after the date of the release of this Order.

4. No determination has been reached that the tower heights and locations proposed by Melinda Guzman, Dallas 58, Inc. and Texas Women in Broadcasting, Inc.[1] would not constitute a hazard to air navigation. Accordingly, an issue regarding this matter will be specified.

5. Section 73.636(a)(1) of the Commission's Rules states that no license for a television broadcast station shall be granted to any party if such party directly or indirectly controls one or more broadcast stations and the grant of such license will result in the Grade A contour of the proposed television station encompassing the entire community of license of an AM and/or FM broadcast station or would result in overlap of the Grade B contours of an existing TV station and the proposed television station. Note 8 to this rule provides, *inter alia*, that applications for UHF television facilities ". . . will be handled on a case-by-case basis in order to determine whether common ownership operation or control of the stations in question would be in the public interest." Mark Rodriquez, Jr. limited partner in Ideal Licensee, Ltd., is employed by KESS(FM), Ft. Worth-Dallas, Texas, in a management position. Although the Commission has determined that preferred stock ownership does not involve sufficient indicia of control of a television applicant to violate the multiple ownership rules, see *Cleveland Television, Corp.*, 52 RR 2d 581 (Rev. Bd., 1982), this policy has not been extended to limited partnership interests. Accordingly, an appropriate issue will be specified to determine whether Mark Rodriquez, Jr.'s connection with Station KESS(FM), Ft. Worth-Dallas, and his interest in the proposed television station would be consistent with the public interest.[2]

6. Section III, Items 1 and 2, FCC Form 301, permits certification of financial qualifications. ACC answered "no" to Item 1 indicating that it does not have sufficient net liquid assets on hand or available from committed sources to construct and operate the requested facilities for three months without revenue. However, ACC has answered "yes" to Item 2, indicating that it has reasonable assurance of present firm intentions to furnish capital or purchase capital stock by parties to the application, etc. These apparent inconsistent responses require clarification. Accordingly, the applicant will be given 20 days from the release date of this Order to review its financial proposal in light of Commission requirements, to make any changes that may be necessary, and, if appropriate, to submit a positive response to Item 1 to the presiding Administrative Law Judge in the manner called for in Section III, Form 301, as to its financial qualifications. If the applicant cannot make the certification, it shall so advise the Administrative Law Judge who shall then specify an appropriate issue.

7. Dallas 58, Inc. proposes to use a directional antenna. Section 73.685(e) of the Commission's Rules limits the maximum-to-minimum ratio of a UHF directional antenna to 15dB. Dallas 58, Inc. proposes a directional antenna with maximum-to-minimum ratio of 18.5 dB. Accordingly, an issue regarding this matter will be specified.

8. Except as indicated by the issues specified below, the applicants are qualified to construct and operate as proposed. Since the applications are mutually exclusive, the Commission is unable to make the statutory finding that their grant will serve the public interest, convenience, and necessity. Therefore, the applications must be designated for hearing in a consolidated

[1] The Commission is not in receipt of FAA's determination for the tower proposed by Dallas 58, Inc.

[2] We note that the Commission is currently examining the limited partnership interest question with respect to the multiple ownership rules. See *Notice of Proposed Rulemaking in MM Docket No. 83-46*, 48 FR 32773 (1983).

proceeding on the issues specified below.

9. Accordingly, it is ordered, that pursuant to section 309(e) of the Communications Act of 1934, as amended, the applications are designated for hearing in a consolidated proceeding, to be held before an Administrative Law Judge at a time and place to be specified in a subsequent Order, upon the following issues:

1. To determine with respect to Melinda Guzman, Dallas 58, Inc. and Texas Women in Broadcasting, Inc., whether the tower height and location proposed by each would constitute a hazard to air navigation.

2. To determine with respect to Dallas 58, Inc., whether circumstances exist to warrant a waiver of § 73.685(e) of the Commission's Rules.

3. To determine with respect to Ideal Licensee, Ltd., whether the connections of Mark Rodriquez, Jr. with station KESS(FM), Ft. Worth-Dallas, Texas, and his interest in the proposed television station would be consistent with the public interest.

4. To determine which of the proposals would, on a comparative basis, best serve the public interest.

5. To determine, in light of the evidence adduced pursuant to the foregoing issues, which of the applications should be granted.

10. It is further ordered, that, Associated Communications Corp. shall within 20 days of the date of release of this Order, review its financial proposal in light of Commission requirements, make such changes as may be necessary, and inform the presiding Administrative Law Judge whether its response to Section III, Item 1, FCC Form 301, is correct and, if it is, shall inform the Administrative Law Judge that certification of financial qualifications cannot be made.

11. It is further ordered, that, Melinda Guzman, Dallas 58, Inc. and Metroplex Broadcasting Company, Inc. shall each submit an amendment providing the information required by § 73.685(f) of the Commission's Rules, to the presiding Administrative Law Judge and a copy to TV Branch, Mass Media Bureau, within 20 days after the date of the release of this Order.

12. It is further ordered, that the Federal Aviation Administration is made a party respondent to this proceeding with respect to issue 1.

13. It is further ordered, that, to avail themselves of the opportunity to be heard, the applicants and party respondent herein shall, pursuant to § 1.221(c) of the Commission's Rules, in person or by attorney, within 20 days of the mailing of this Order, file with the Commission in triplicate, a written appearance stating an intention to appear on the date fixed for the hearing and to present evidence on the issues specified in this Order.

14. It is further ordered, that the applicants herein shall, pursuant to section 311(a)(2) of the Communications Act of 1934, as amended, and § 73.3594 of the Commission's Rules, give notice of the hearing within the time and in the manner prescribed in such Rule, and shall advise the Commission of the publication of such notice as required by § 73.3594(g) of the Rules.

Federal Communications Commission.

Roy J. Stewart,

Chief, Video Service, Division, Mass Media Bureau.

[FR Doc. 84-4350 Filed 2-16-84; 8:45 am]

BILLING CODE 6712-01-M

[MM Docket Nos. 84-85 and 84-86; File Nos. BPCT-830913KH and BPCT-831110KI]

Tarzan Television Co. and TRG Broadcasting Systems, Inc., Hearing Designation Order

In the matter of Applications of Tarzan Television Company, Jacksonville, Texas (MM Docket No. 84-85; and File No. BPCT-830913KH) TRG Broadcasting Systems, Inc., Jacksonville, Texas (MM Docket No. 84-86; File No. BPCT-831110KI) for construction permit.

Adopted: January 27, 1984. Released: February 9, 1984.

By the Chief, Mass Media Bureau.

1. The Commission, by the Chief, Mass Media Bureau, acting pursuant to delegated authority, has before it the above-captioned mutually exclusive applications of Tarzan Television Company (Tarzan) and TRG Broadcasting Systems, Inc. (TRG) for authority to construct a new commercial television station on Channel 56, Jacksonville, Texas.

2. On November 1, 1983, the Association of Maximum Service Telecasters, Inc. filed an informal objection to the application of Tarzan on the ground that its proposed transmitter site will be short-spaced 1 mile to station KLMG-TV, Channel 51, Longview, Texas. Section 73.610 of the Commission's Rules required a minimum separation of 20 miles between a station operating on Channel 56 and a station or city to which Channel 51 is allocated. Accordingly, an issue will be specified to determine whether circumstances exist warranting a waiver of the rule. In assessing the circumstances to determine whether a waiver is warranted, the Administrative Law Judge should consider the fact that TRG has specified a fully-spaced site.

3. Section 73-636(a)(1) of the Commission's Rules provides that no license for a televison broadcast station shall be granted to any party if such party directly or indirectly owns, operates or controls one or more FM broadcast stations and the grant of such license will result in the Grade A contour of the proposed television station encompassing the entire community of license of the FM broadcast station. However, Note 8 to this rule provides, *inter alia*, that applications for UHF television facilities ". . . will be handled on a case-by-case basis in order to determine whether common ownership, operation or control of the stations in question would be in the public interest." George Gunter, Tarzan's general partner (55 percent), is the sole owner of a proposed FM broadcast station (BPH-820916AG) for Jacksonville, Texas. The FM application has been designated for comparative hearing (Docket No. 83-1305). That proceeding has not yet been concluded. Accordingly, an issue will be specified to determine whether common ownership, operation or control of the stations in question would be in the public interest. If, however, the facts underlying this issue change (e.g., Mr. Gunter does not obtain the FM construction permit), the Administrative Law Judge need not try or decide the issue if he or she believes such a course is consistent with the orderly conduct of the hearing.

4. Tarzan is a limited partnership, but it has failed to list the limited partners in its application. Tarzan will be required to submit a list of limited partners to the presiding Administrative Law Judge within 20 days after this Order is released.

5. The effective radiated visual power, antenna height above average terrain and other technical data submitted by the applicants indicate that there would be a significant difference in the size of the areas and populations that they propose to serve. Consequently, for the purpose of comparison, the areas and populations which would be within each predicted 64 dBu (Grade B) contour, together with the availability of other television service of Grade B or greater intensity, will be considered under the standard comparative issue, for the purpose of determining whether a comparative preference should accrue to either of the applicants.

6. Section 76.501(a)(2) of the Commission's Rules prohibits direct or indirect ownership of both a cable television system and a television broadcast station if the station would place a Grade B contour over any part of the service area of the cable television system. Robert Gilchrist, 100 percent

owner of TRG Broadcasting Systems, Inc., owns 100 percent of the stock of several cable television systems: Turnertown Cable T.V., Turnertown, Texas; Laneville Cable T.V., Inc., Laneville, Texas; New Summerfield Cable T.V., Inc., New Summerfield, Texas; Mount Enterprise Cable T.V., Inc., Mount Enterprise, Texas, and 45 percent of the stock of New London Cable T.V., Inc., New London, Texas. These cable systems are within the predicted Grade B contour of the proposed station. Consequently, grant of TRG's application would violate the rule. However, Mr. Gilchrist has represented to the Commission that he would divest himself of his interest in the cable television systems in the event that he is the successful applicant. Accordingly, any grant of a construction permit to TRG will be conditioned upon Mr. Gilchrist's divesture of all interest in, and connection with, the cable television systems.

7. The Commission is not in receipt of a determination from the Federal Aviation Administration that the tower height and location proposed by TRG would not constitute a hazard to air navigation. Accordingly, an issue regarding this matter will be specified.

8. Section 73.685(f) of the Commission's Rules requires an applicant proposing to use a directional antenna to include a tabulation of relative field pattern, oriented so that 0 degree corresponds to True North and tabulated at least every 10 degrees plus any minima or maxima. TRG has not supplied this data. Accordingly, the applicant will be required to submit an amendment with the appropriate information, to the presiding Administrative Law Judge and a copy to the TV Branch, Mass Media Bureau, within 20 days after the date of the release of this Order.

9. Section 73.682(a)(15) of the Commission's Rules states that the effective radiated power of the aural transmitter shall not be less than 10 percent nor more than 20 percent of the peak radiated power of the visual transmitter. TRG's aural power is only 1% of the visual. The applicant will be required to correct this situation by an appropriate amendment.

10. Except as indicated by the issues specified below, the applicants are qualified to construct and operate as proposed. Since the applications are mutually exclusive, the Commission is unable to make the statutory finding that their grant will serve the public interest, convenience, and necessity. Therefore, the applications must be designated for hearing in a consolidated proceeding on the issues specified below.

11. Accordingly, it is ordered, that pursuant to section 309(e) of the Communications Act of 1934, as amended, the applications are designated for hearing in a consolidated proceeding, to be held before an Administrative Law Judge at a time and place to be specified in a subsequent Order, upon the following issues:

1. To determine with respect to Tarzan Televison Company:

(a) Whether the application is consistent with § 73.610 of the Commission's Rules and, if not, whether circumstances exist which would warrant a waiver of the rule;

(b) If necessary (see paragraph 3), whether common ownership, operation or control of the FM station proposed in (Docket No. 83-1305) Jacksonville, Texas and the proposed television station would be in the public interest.

2. To determine with respect to TRG Broadcasting Systems, Inc. whether there is a reasonable possibility that the tower height and location proposed would constitute a hazard to air navigation.

3. To determine which of the proposals would, on a comparative basis, better serve the public interest.

4. To determine, in light of the evidence adduced pursuant to the foregoing issues, which of the application should be granted.

12. It is further ordered, that Association of Maximum Service Telecasters, Inc., is made a party respondent to this proceeding with respect to issue 1(a).

13. It is further ordered, that Tarzan shall submit a list of limited partners to the presiding Administrative Law Judge within 20 days after this Order is released.

14. It is further ordered, that in the event of a grant of TRG Broadcasting Systems, Inc.'s application, it will be conditioned as follows:

Prior to the commencement of operation of the television station authorized herein, permittee shall certify to the Commission that Robert Gilchrist has divested himself of all interest in, and connection with Turnertown Cable T.V., Turnertown, Texas; Laneville Cable T.V., Inc., Laneville, Texas; New Summerfield Cable T.V., Inc., New Summerfield, Texas; Mount Enterprise Cable T.V., Inc., Mount Enterprise, Texas, and New London Cable T.V., Inc., New London, Texas.

15. It is further ordered, that TRG Broadcasting Systems, Inc. shall submit an amendment providing the information required by § 73.685(f) of the Commission's Rules, to the presiding Administrative Law Judge and a copy to TV Branch, Mass Media Bureau, within 20 days after this Order is released.

16. It is further ordered, that TRG Broadcasting Systems, Inc. shall submit to the presiding Administrative Law Judge, within 20 days after this Order is released, an appropirate amendment that demonstrates compliance with § 73.685(a)(15) of the Commission's Rules.

17. It is further ordered, that the Federal Aviation Administration is made a party respondent to this proceeding with respect to issue 2.

18. It is further ordered, that, to avail themselves of the opportunity to be heard, the applicants and parties respondent herein shall, pursuant to § 1.221(c) of the Commission's Rules, in person or by attorney, within 20 days of the mailing of this Order, file with the Commission in triplicate, a written appearance stating an intention to appear on the date fixed for the hearing and to present evidence on the issues specified in this Order.

19. It is further ordered, that the applicants herein shall, pursuant to section 311(a)(2) of the Communications Act of 1934, as amended, and § 73.3594 of the Commission's Rules, give notice of the hearing within the time and in the manner prescribed in such Rule, and shall advise the Commission of the publication of such notice as required by § 73.3594(g) of the Rules.

Federal Communications Commission.

Roy J. Stewart,

Chief, Video Services Division.

[FR Doc. 84-4349 Filed 2-16-84; 8:45 am]

BILLING CODE 6712-01-M

[MM Docket Nos. 84-87 and 84-88] File Nos. BPCT-830310KE and BPCT-830506LW]

Chrysostom Corp. and Harriscope Broadcasting Corp.; Hearing Designation Order

In the matter of Applications of The Chrysostom Corporation, Sheridan, Wyoming (MM Docket No. 84-87; File No. BPCT-830310KE) and Harriscope Broadcasting Corporation, Sheridan, Wyoming (MM Docket No. 84-88; File No. BPCT-830506LW) for construction permit.

Adopted: January 27, 1984. Released: February 7, 1984.

By the Chief, Mass Media Bureau.

1. The Commission, by the Chief, Mass Media Bureau, acting pursuant to delegated authority, has before it the above-captioned mutually exclusive applications for authority to construct a new commercial television broadcast station on Channel 7, Sheridan, Wyoming; petition to deny filed by The Chrysostom Corporation (Chrysostom); opposition filed by Harriscope

Broadcasting Corporation (Harriscope); and related pleadings.[1]

2. On July 7, 1983, Chrysostom Corporation filed a "Petition to Dismiss or Deny" the Harriscope application. Chrysostom's petition is, in effect, a predesignation petition to specify issues against a competing applicant. Such pleadings are no longer authorized. *Processing of Contested Broadcasting Applications*, 72 FCC 2d 202, 214 (1979). Accordingly, Chrysostom's petition will be dismissed. *See, e.g., Kay-Smith Enterprises*, 90 FCC 2d 105, 106 n.2 (1982).

3. Harriscope proposes to use a directional antenna with a maximum-to-minimum ratio of 26dB. Section 73.685(e) of Commission's Rules limits the maximum-to-minimum ratio of a VHF directional antenna to 10dB. A waiver has been requested. Accordingly, an appropriate issue will be specified to determine whether waiver of § 73.685(e) is warranted.

4. The effective radiated visual power, antenna height above average terrain and other technical data submitted by the applicants indicates that there would be a significant difference in the size of the areas and populations that they propose to serve. Consequently, for the purpose of comparison, the areas and populations which would be within each predicted 64 dBu (Grade B) contour, together with the availability of other television service of Grade B or greater intensity, will be considered under the standard comparative issue, for the purpose of determining whether a comparative preference should accrue to either of the applicants.

5. Except as indicated by the issues specified below, the applicants are qualified to construct and operate as proposed. Since the applications are mutually exclusive, the Commission is unable to make the statutory finding that their grant will serve the public interest, convenience, and necessity. Therefore, the applications must be designated for hearing in a consolidated proceeding on the issues specified below.

6. Accordingly, it is ordered, that pursuant to section 309(e) of the Communications Act of 1934, as amended, the applications are designated for hearing in a consolidated proceeding, to be held before an Administrative Law Judge at a time and place to be specified in a subsequent Order, upon the following issues:

1. To determine with respect to Harriscope Broadcasting Corporation whether circumstances exist which would warrant a waiver of § 73.685(e) of the Commission's Rules.

2. To determine which of the proposals would, on a comparative basis, better serve the public interest.

3. To determine, in light of the evidence adduced pursuant to the foregoing issues, which of the applications should be granted.

7. It is further ordered, that the petition to deny filed by Chrysostom Corporation is dismissed.

8. It is further ordered, that, to avail themselves of the opportunity to be hear, the applicants herein shall, pursuant to § 1.221(c) of the Commission's Rules, in person or by attorney, within 20 days of the mailing of this Order, file with the Commission in triplicate, a written appearance stating an intention to appear on the date fixed for the hearing and to present evidence on the issues specified in this Order.

9. It is further ordered, that the applicants herein shall, pursuant to section 311(a)(2) of the Communications Act of 1934, as amended, and § 73.3594 of the Commission's Rules, give notice of the hearing within the time and in the manner prescribed in such Rule, and shall advise the Commission of the publication of such notice as required by § 73.3594(g) of the Rules.

Federal Communications Commission.

Roy J. Stewart,

Chief, Video Services Division, Mass Media Bureau.

[FR Doc. 84-4351 Filed 2-16-84; 8:45 am]

BILLING CODE 6712-01-M

[1] Chrysostom also filed a "Petition for Leave to Amend" on October 3, 1983, accompanied by an amendment to eliminate short-spacing. Also, on October 31, 1983, Harriscope filed an opposition. Since the amendment eliminates the need for an issue, the amendment will be accepted, but Chrysostom will not be allowed to accure any comparative advantage since the amendment was filed after the "B" cut off date.

FEDERAL DEPOSIT INSURANCE CORPORATION

Information Collection Submitted to OMB for Review

AGENCY: Federal Deposit Insurance Corporation.

ACTION: Notice of information collection submitted to OMB for review and approval under the Paperwork Reduction Act of 1980

Title of information collection: Country Exposure Report.

Background: In accordance with requirements of the Paperwork Reduction Act of 1980 (44 U.S.C. Chapter 35), the FDIC hereby gives notice that it has submitted to the Office of Management and Budget a form SF-83, "Request for OMB Review," for the information collection system identified above.

ADDRESS: Written comments regarding the submission should be addressed to July McIntosh, Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, D.C. 20503 and to John Keiper, Federal Deposit Insurance Corporation, Washington, D.C. 20429.

FOR FURTHER INFORMATION CONTACT: Requests for a copy of the submission should be sent to John Keiper, Federal Deposit Insurance Corporation, Washington, D.C. 20429, telephone (202) 389-4351.

SUMMARY: This information collection submitted to OMB revises the Country Exposure Report (form FFIEC 009), OMB No. 3064-0017, to implement the requirements of the International Lending Supervision Act of 1983 (Pub. L. 98-181). The Act provides for greater public disclosure of country exposures of U.S. banks and requires the submission of Country Exposure Reports no fewer than four times each calendar year.

The principal change to the reporting requirement is the new Country Exposure Information Report (form FFIEC 009A) which is to be filed as a supplement to the quarterly Country Exposure Report. The information in this new report will be made available to the public. The only other reporting change is the replacement of a memorandum item in the existing Country Exposure Report with a new one in which banks will show exposures covered by U.S. Government guarantees.

It is planned that the amended reporting requirement will become effective with the reports filed for March 31, 1984, contingent upon the issuance of regulations by the three banking agencies (OCC, FRB, and the FDIC) as required by the Act.

The addition of the new report supplement (form FFIEC 009A) and the change from semi-annual reporting to quarterly reporting is expected to increase the annual reporting burden for each bank by approximately 64 hours.

Dated: February 10, 1984.

Federal Deposit Insurance Corporation.

Hoyle L. Robinson,

Executive Secretary.

[FR Doc. 84-4356 Filed 2-16-84; 8:45 am]

BILLING CODE 6714-01-M

Information Collection Submitted to OMB for Review

AGENCY: Federal Deposit Insurance Corporation.

ACTION: Notice of information collection submitted to OMB for review and approval under the Paperwork Reduction Act of 1980.

Title of Information Collection

Consolidated Reports of Condition and Income (Insured State Nonmember Commercial Banks).

Background

In accordance with requirements of the Paperwork Reduction Act of 1980 (44 U.S.C. Chapter 35), the FDIC hereby gives notice that it has submitted to the Office of Management and Budget a form SF–83, "Request for OMB Review," for the information collection system identified above.

ADDRESS: Written comments regarding the submission should be addressed to Judy McIntosh, Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, D.C. 20503 and to John Keiper, Federal Deposit Insurance Corporation, Washington, D.C. 20429.

FOR FURTHER INFORMATION CONTACT: Requests for a copy of the submission should be sent to John Keiper, Federal Deposit Insurance Corporation, Washington, D.C. 20429, telephone (202) 389–4351.

SUMMARY: The FDIC is submitting for OMB approval changes to the consolidated Reports of Condition and Income (Call Reports) filed quarterly by insured state nonmember commercial banks. This change emanates solely from the requirements set forth in Section 905 of the International Lending Supervision Act of 1983. The following new items would first appear on the reports to be submitted as of March 31, 1984:

(1) Reports of Condition, Schedule RC, Balance Sheet, item 4(c) "Allocated transfer risk reserve,"
(2) Report of Income, Schedule RI, Income Statement, item 4(b), "Provision of allocated transfer risk," and
(3) Report of Income, Schedule RI–B, Part II, Column B, "Changes in allocated transfer risk reserve."

The first two items are to be added on all four sets of the report forms while the third change would affect only the FFIEC 031 and the FFIEC 032.

Because of the relatively few banks that would be required to create a separate allocated transfer risk reserve, the overall burden resulting from this proposal will be negligible and the total annual burden associated with the commercial bank Call Report will be unchanged.

Dated: February 14, 1984.

Federal Deposit Insurance Corporation.

Hoyle L. Robinson,

Executive Secretary.

[FR Doc. 84–4422 Filed 2–16–84; 8:45 am]

BILLING CODE 6714–01–M

FEDERAL ELECTION COMMISSION

Clearinghouse on Election Administration Clearinghouse Advisory Panel; Meeting

In accordance with the provisions of the Federal Advisory Committee Act (5 U.S.C. App. I) and Office of Management and Budget Circular A–63, as revised, the Federal Election Commission announces the following Advisory Panel meeting:

Name: Federal Election Commission Clearinghouse Advisory Panel.

Date: 6–7 March 1984.

Place: Quality Inn, 415 New Jersey Ave., NW., Washington, DC.

Time: 0900–1200; 1400–1700 on 6 March 1984; 0900–1200– 1400–1530 on 7 March 1984.

Proposed Agenda: Discussion sessions addressing Clearinghouse research projects, status report on Voting Systems Standards Project, discussion of technical election assistance to foreign governments, regional conference wrap-up report and status report on State Workshop Program.

Purpose of the Meeting: The Panel will discuss the agenda items as well as present their views on problems in the Administration of federal elections, and formulate recommendations to the Federal Election Commission Clearinghouse for its future program development.

The Advisory Panel meeting is open to the public depending on available space. Any member of the public may file a written statement with the Panel before, during, or after the meeting. To the extent that time permits, the Panel Chairman may allow public presentation or oral statements at the meeting.

All communications regarding this Advisory Panel should be addressed to Dr. Gary Greenhalgh, Clearinghouse on Election Administration, Federal Election Commission, 1325 K Street, NW., Washington, DC 20463.

Dated: February 13, 1984.

Lee Ann Elliott,

Chairman, Federal Election Commission.

Attest:

Marjorie W. Emmons,

Secretary of the Commission.

[FR Doc. 84–4280 Filed 2–16–84; 8:45 am]

BILLING CODE 6715–01–M

FEDERAL EMERGENCY MANAGEMENT AGENCY

Privacy Act of 1974; Addition of New Routine Use to An Existing System of Records

AGENCY: Federal Emergency Management Agency.

ACTION: Proposed addition of a new routine use to an existing FEMA system of records entitled, "National Flood Insurance Application and Related Documents Files—FEMA/FIA–2."

SUMMARY: The purpose of this proposal is to give notice that an additional routine use "to Write-Your-Own companies as authorized in 44 CFR 62.63 to avoid duplication of benefits following a flooding event or disaster and for carrying out the purposes of the National Flood Insurance Program" is being proposed to be added to the National Flood Insurance Application and Related Documents Files. In addition, the Associate Director, Office of State and Local Programs and Support is being deleted from the routine use section and the Federal Insurance Administrator is being replaced. This action is necessitated as a result of an agency realignment of functions.

In an effort to economize on the cost of publication in the **Federal Register**, we are publishing only the sections of the system of records affected by this notice. For clarification purposes, the entire text of the routine use section is being reprinted. The remaining portions of the system can be viewed in the November 26, 1982, **Federal Register**, 47 FR 53492.

DATE: Any interested parties may submit written comments regarding this proposal. To be considered, comments must be received on or before March 19, 1984. Unless comments are received on or before that date which would result in a contrary determination, the routine use will become effective as proposed without further notice on March 19, 1984.

ADDRESS: Address comments to the Rules Docket Clerk, Federal Emergency Management Agency, Room 840, 500 C Street, SW., Washington, D.C. 20472. Comments received will be available for public inspection at the above address from 9 a.m. to 4 p.m. during normal working days.

FOR FURTHER INFORMATION CONTACT: Linda M. Keener, Office of Public Affairs, (202) 287–0313.

SUPPLEMENTARY INFORMATION: The National Flood Insurance Act of 1968, as amended (Pub. L. 90–448, 42 U.S.C. 4001) establishes the direction of having the

National Flood Insurance Program "carried out to the maximum extent practicable by the private insurance industry" (42 U.S.C. 4001) and authorizes the Director, FEMA, to "encourage and arrange for * * * appropriate financial participation and risk sharing in the program by insurance companies" (42 U.S.C. 4011). Clearly, the rationale for the enabling legislation recognizes the benefits to be derived from the operation of a national program of flood insurance by private sector property insurers, who are the traditional providers of insurance to the public.

To assist private sector property insurers improve insurance services to their policyholders, FEMA issued a final rulemaking effective November 15, 1983, to establish a "Write-Your-Own" (WYO) program of flood insurance whereby an individual insurer will be able to market Federal flood insurance coverage under its own name to any of its applicants for insurance or policyholders, who are insured by the company against other property insurance perils, e.g., under a homeowners policy.

The purpose of this proposed routine use is allow FEMA to share claims data with the WYO companies to avoid duplication of benefits following a flooding event or disaster and for carrying out the purposes of the National Flood Insurance Program.

Based on the above reasons, the Federal Emergency Management Agency finds it necessary to include the following routine use in the "National Flood Insurance Application and Related Documents Files." (The new language is underlined).

FEMA/FIA-2

SYSTEM NAME:

National Flood Insurance Application and Related Documents Files.

* * * * *

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSE OF SUCH USES:

To property loss reporting bureaus, State insurance departments, and insurance companies investigating fraud or potential fraud in connection with claims, subject to the approval of the Office of Inspector General, FEMA; for use of insurance agents, brokers, and adjusters, and lending institutions for carrying out the purposes of the National Flood Insurance Program; to Small Business Administration, the American Red Cross, the Farmers Home Administration, State and local government individual and family grant and assistance agencies, including but not limited to the State of Ohio Disaster Services Agency and the Johnstown, Pennsylvania Redevelopment Authority for determining eligibility for benefits and for verification of nonduplication of benefits following a flooding event or disaster; *to Write-Your-Own companies as authorized in 44 CFR 62.63 to avoid duplication of benefits following a flooding event or disaster and for carrying out the purposes of the National Flood Insurance Program;* to State and local government individual and family grant agencies so as to permit such agencies to assess the degree of financial burdens toward residents such as States and local governments might reasonably expect to assume in the event of a flooding disaster, and to further the flood insurance marketing activities of the National Flood Insurance Program; to State and local government individual and family grant and assistance agencies which furnish to the Federal Insurance Administration the names and addresses of policyholders for purposes consistent with the relocation projects of the Federal Insurance Administration and acquisition projects under the National Flood Insurance Program carried out pursuant to Section 1362 of the National Flood Insurance Act of 1973, as amended, and to State and local government agencies who provide the names and addresses of policyholders and a brief general description of their plan for acquiring and relocating their flood prone properties for review by the Federal Insurance Administrator, to ensure that their State and/or local government agency is engaged in flood plain management improved real property acquisition and relocation projects consistent with the National Flood Insurance Program; and, upon the approval by the Federal Insurance Administrator, that the use is in furtherance of the flood plain management and hazard mitigation goals of the Agency, to State and local government agencies and municipalities to review National Flood Insurance Program policy and claim files to assist them in hazard mitigation and flood plain management activities and in monitoring compliance with the flood plain management measures duly adopted by the community.

Additional routine uses may include Nos. 1, 5, 6, and 8 of Appendix A.

* * * * *

Dated: February 13, 1984.

Russell B. Clanahan,

Acting Director, Office of Public Affairs, Federal Emergency Management Agency.

[FR Doc. 84-4378 Filed 2-16-84; 8:45 am]

BILLING DATE 6718-01-M

FEDERAL RESERVE SYSTEM

Amboy-Madison Bancorpration; et al.; Formation of; Acquisitions by; and Mergers of Bank Holding Companies

The companies listed in this notice have applied for the Board's approval under section 3 of the Bank Holding Company Act (12 U.S.C. 1842) and § 225.14 of the Board's Regulation Y (49 FR 794) to become a bank holding company or to acquire a bank or bank holding company. The factors that are considered in acting on the applications are set forth in section 3(c) of the Act (12 U.S.C. 1842(c)).

Each application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank or to the offices of the Board of Governors. Any comment on an application that requests a hearing must include a statement of why a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute and summarizing the evidence that would be presented at a hearing.

Unless otherwise noted, comments regarding each of these applications must be received not later than March 14, 1984.

A. **Federal Reserve Bank of New York** (A. Marshall Puckett, Vice President) 33 Liberty Street, New York, New York 10045:

1. *Amboy-Madison Bancorporation,* Old Bridge, New Jersey; to become a bank holding company by acquiring 100 percent of the voting shares of Amboy-Madison National Bank, Old Bridge, New Jersey.

2. *Westport Bancorp, Inc.,* Westport, Connecticut; to become a bank holding company by acquiring 100 percent of the voting shares of The Westport Bank and Trust Company, Westport, Connecticut.

B. **Federal Reserve Bank of Atlanta** (Robert E. Heck, Vice President) 104 Marietta Street, NW., Atlanta, Georgia 30303:

1. *Pan American Banks Inc.,* Miami, Florida; to acquire 100 percent of the voting shares or assets of Royal Trust

Bank of Jacksonville, Jacksonville, Florida.

C. **Federal Reserve Bank of Chicago** (Franklin D. Dreyer, Vice President) 230 South LaSalle Street, Chicago, Illinois 60690:

1. *First Indiana Bancorp,* Elkhart, Indiana; to directly acquire 11.17 percent of State Bank of Syracuse and 17.73 percent of First Charter Financial Corporation, Syracuse, Indiana, and thereby indirectly acquire 68.18 percent of Syracuse Bancorp and 83.31 percent of State Bank of Syracuse, both located in Syracuse, Indiana.

D. **Federal Reserve Bank of Kansas City** (Thomas M. Hoenig, Vice President) 925 Grand Avenue, Kansas City, Missouri 64198:

1. *American Bank Corporation,* Denver, Colorado; to acquire 100 percent of the voting shares or assets of First State Bank at Afton, Afton, Wyoming.

E. **Federal Reserve Bank of San Francisco** (Harry W. Green, Vice President) 101 Market Street, San Francisco, California 94105:

1. *Rio Salado Bancorp,* Tempe, Arizona; to become a bank holding company by acquiring 90 percent of the voting shares of Rio Salado Bank, Tempe, Arizona.

Board of Governors of the Federal Reserve System, February 13, 1984.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 84-4440 Filed 2-16-84; 8:45 am]

BILLING CODE 6210-01-M

Kimberly Leasing Corp.; Acquisition of Bank Shares by a Bank Holding Company

The company listed in this notice has applied for the Board's approval under section 3(a)(3) of the Bank Holding Company Act (12 U.S.C 1842(a)(3)) to acquire voting shares or assets of a bank. The factors that are considered in acting on the application are set forth in section 3(c) of the Act (12 U.S.C. 1842(c)).

The application may be inspected at the offices of the Board of Governors, or at the Federal Reserve Bank indicated. With respect to the application, interested persons may express their views in writing to the address indicated. Any comment on the application that requests a hearing must include a statement of why a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute and summarizing the evidence that would be presented at a hearing.

A. **Federal Reserve Bank of Minneapolis** (Bruce J. Hedblom, Vice President) 250 Marquette Avenue, Minneapolis, Minnesota 55480:

1. *Kimberly Leasing Corporation,* Rush City, Minnesota; to acquire 99.4 percent of the voting shares or assets of Security State Bank of Pillager, Pillager, Minnesota. Comments on this application must be received not later than March 13, 1984.

Board of Governors of the Federal Reserve System, February 13, 1984.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 84-4441 Filed 2-16-84; 8:45 am]

BILLING CODE 6210-01-M

Manufacturers Hanover Corp.; Proposed Acquisition of Manufacturers Hanover Money Market Corp.

Manufacturers Hanover Corporation, New York, New York, has applied, pursuant to section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) and § 225.4(b)(2) of the Board's Regulation Y (12 CFR 225.4(b)(2)), for permisson to acquire voting shares of Manufacturers Hanover Money Market Corp., New York, New York.

Applicant states that the proposed subsidiary would engage in the activities of underwriting, dealing in, brokering, purchasing and selling such obligations of the United States government and its various agencies, general obligations of various states and political subdivisions thereof and other such obligations, including money market instruments such as certificates of deposit, bankers acceptances and commercial paper to the extent a state member bank is permitted to do so.

These activities would be performed from offices of Applicant's subsidiary in Chicago, Illinois; Miami, Florida; Los Angeles, California; Atlanta, Georgia; and Houston, Texas and the geographic area to be served is the entire United States. Such activities have been specified by the Board in § 225.4(a) of Regulation Y as permissible for bank holding companies, subject to Board approval of individual proposals in accordance with the procedures of § 225.4(b).

Interested persons may express their views on the question whether consummation of the proposal can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices." Any request for a hearing on this question must be accompanied by a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

The application may be inspected at the offices of the Board of Governors or at the Federal Reserve Bank of New York.

Any views or requests for hearing should be submitted in writing and received by William W. Wiles, Secretary, Board of Governors of the Federal Reserve System, Washington, D.C., not later than March 14, 1984.

Board of Governors of the Federal Reserve System, February 13, 1984.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 84-4442 Filed 2-16-84; 8:45 am]

BILLING CODE 6210-01-M

Shawmut Corporation, et al.; Applications to engage de novo in Permissible Nonbanking Activities

The companies listed in this notice have filed an application under § 225.23(a)(1) of the Board's Regulation Y (49 FR 794) for the Board's approval under section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) and § 225.21(a) of Regulation Y (49 FR 794) to commence or to engage *de novo,* either directly or through a subsidiary, in a nonbanking activity that is listed in § 225.25 of Regulation Y as closely related to banking and permissible for bank holding companies. Unless otherwise noted, such activities will be conducted throughout the United States.

Each application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether consummation of the proposal can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices." Any request for a hearing on this question must be accompanied by a statement of the

reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

Unless otherwise noted, comments regarding the applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than March 8, 1984.

A. **Federal Reserve Bank of Boston** (Richard E. Randall, Vice President) 600 Atlantic Avenue, Boston, Massachusetts 02106:

1. *Shawmut Corporation*, Boston, Massachusetts; to engage *de novo* through its subsidiary, SHA Corp., doing business as One Federal Asset Management, in investment advisory activities including portfolio investment advice and management for institutional and employee benefit account customers; and investment advisory service to and management of accounts supervised by the Applicant's subsidiary banks. In addition, One Federal Asset Management will serve as an investment adviser to an investment company or companies that may be organized by the Applicant, or any of its subsidiaries, to the extent permitted by law; provide portfolio investment advice or management to a limited number of personal trust or investment management agency customers; and furnish general economic information and advice, general economic statistical forecasting services, and industry and company studies to the foregoing parties.

B. **Federal Reserve Bank of New York** (A. Marshall Puckett, Vice President) 33 Liberty Street, New York, New York 10045:

1. *The Chase Manhattan Corporation*, New York, New York; to engage *de novo* through its subsidiary, Chase Home Mortgage Corporation, in making or acquiring, for its own account and for the account of others, loans and other extensions of credit, including but not limited to, first and second mortgage loans secured by one-to-four family residential properties; servicing loans and other extensions of credit for any person; and offering credit life insurance, accident and health insurance and disability insurance directly related to the proposed lending and servicing activities.

2. *The Chase Manhattan Corporation*, New York, New York; to engage *de novo* through its subsidiary, Chase Commerical Corporation, in making or acquiring, for its own account and for the account of others, loans and other extensions of credit, such as would be made by a commerical finance or equipment finance company, including business installment lending as well as unsecured commerical loans; servicing loans and other extensions of credit; leasing on a full payout basis personal property or acting as agent, broker or advisor in leasing such property, including the leasing of motor vehicles.

3. *The Chase Manhattan Corporation*, New York, New York; to engage through its subsidiary, Chase Manhattan Financial Services, Inc., in making or acquiring, for its own account and for the account of others, loans and other extensions of credit, both secured, and unsecured, including, but not limited to, consumer and business lines of credit, installment loans for personal, household and business purposes and mortgage loans secured by real property; servicing loans and other extensions of credit; and acting as insurance agent for credit life insurance and credit accident and health insurance directly related to such lending and servicing activities.

4. *Republic New York Corporation*, New York, New York; Saban, S.A., Panama City, Republic of Panama; Trade Development Bank Holding, S.A., City of Luxembourg, Grand Duchy of Luxembourg; Trade Development Finance (Netherlands Antilles) N.V., Curacao, The Netherlands Antilles; and Trade Development Holland Holdings, B.V., Amsterdam The Netherlands; to engage *de novo* through their subsidiary, Republic Clearing Corp., in the execution and clearance of futures contracts and options on futures contracts in gold and silver bullion, foreign exchange, U.S. Government Securities, and money market instruments on major commodity exchanges.

c. **Federal Reserve Bank of Richmond** (Lloyd W. Bostian, Jr., Vice President) 701 East Byrd Street, Richmond, Virginia 23261:

1. *The Palmer National Bancorp, Inc.*, Washington, D.C.; to engage directly in making, acquiring, and servicing loans and other extensions of credit for its own account and for the account of others.

Board of Governors of the Federal Reserve System, February 13, 1984.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 84-4439 Filed 2-16-84; 8:45 am]

BILLING CODE 6210-01-M

Van Alstyne Financial Corp.; Formation of a Bank Holding Company

The company listed in this notice has applied for the Board's approval under section 3(a)(1) of the Bank Holding Company Act (12 U.S.C. 1842(a)(1)) to become a bank holding company by acquiring voting shares or assets of a bank. The factors that are considered in acting on the application are set forth in section 3(c) of the Act (12 U.S.C. 1842(c)).

The application may be inspected at the offices of the Board of Governors, or at the Federal Reserve Bank indicated. With respect to the application, interested persons may express their views in writing to the address indicated. Any comment on the application that requests a hearing must include a statement of why a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute and summarizing the evidence that would be presented at a hearing.

A. **Federal Reserve Bank of Dallas** (Anthony J. Montelaro, Vice President) 400 South Akard Street, Dallas, Texas 75222:

1. *Van Alstyne Financial Corporation*, Van Alstyne, Texas; to become a bank holding company by acquiring at least 80 percent of the voting shares of First National Bank of Van Alstyne, Van Alstyne, Texas. Comments on this application must be received not later than March 13, 1984.

Board of Governors of the Federal Reserve System, February 13, 1984.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 84-4443 Filed 2-16-84; 8:45 am]

BILLING CODE 6210-01-M

FEDERAL TRADE COMMISSION

Delegation of Authority

SUMMARY: This notice sets forth a delegation from the Commission to the Directors of the Bureaus of Competition and Consumer Protection of limited authority to close investigations which they have approved, including those in which compulsory process has been authorized, absent a Commission directive to the contrary. The Commission retains sole authority to close investigations that were initiated by its direction. This delegation supersedes the previous delegations, insofar as they concern closing investigations, published at 27 FR 481 (1962), 32 FR 16121 (1967) and 35 FR 10627 (1970).

EFFECTIVE DATE: February 17, 1984.

FOR FURTHER INFORMATION CONTACT: Bruce G. Freedman, (202) 523-3487, Deputy Assistant General Counsel,

Federal Trade Commission, 6th Street and Pennsylvania Avenue NW., Washington, D.C. 20580.

Delegation: Pursuant to the authority provided by the provisions of Reorganization Plan No. 4 of 1961 (26 FR 6191), the Federal Trade Commission, on September 15, 1983, voted to delegate to the Directors of the Bureaus of Competition and Consumer Protection, severally, and without power of redelegation, the authority to close investigations which they have approved, including those in which the Commission has previously authorized use of compulsory process: *Provided,* that the closing under the foregoing delegation of any investigation in which the Commission has authorized compulsory process shall not be effective until the file has been transmitted to the Secretary and the Secretary shall have advised the Commission of the direction to close and no one member, within 3 working days thereafter, shall have objected to the closing. If, upon the expiration of the 3-day period, no Commissioner shall have objected, the Secretary shall enter upon the records of the Commission the closing of the matter and take such other action as the closing requires.

Investigations that have been initiated by direction of the Commission may be closed only by the Commission.

By direction of the Commission, Commissioners Pertschuk and Bailey voting in the negative.

Dated: February 8, 1984.

Emily H. Rock,

Secretary.

Dissenting Statement of Commissioner Patricia P. Bailey—Delegation of Authority Re Closing of Investigations and Petitions To Quash

February 8, 1984.

In the first of these two proposed changes in Commission rules, the Commission majority delegates to Commission senior staff the authority to determine that material subpoenaed by majority vote of the Commission does not present sufficient "reason to believe" a law violation has occurred, or that even if it does, it is not in the "public interest" to pursue the case. This is a delegation of substantial, substantive, policy-making power to the senior staff. This is authority not only to terminate ongoing law enforcement investigations conducted with the authority of subpoenas bearing the signatures of Commissioners, it is also a potential deterrent to staff initiative to propose new investigative activity. Such delegation reverses a short-lived trend towards management of this agency "from the top down."

Where as a Commissioner, by approving a request for compulsory process, I have voted to intrude our jurisdiction into private corporate records, I have begun a process of inquiry into the distinct possibility that I might come eventually to see "reason to believe" that a law violation exists that it may be in the public interest to pursue. This decision is the very essence of the Commission's statutory power. Thus this delegation raises troubling concerns. For example, if I follow the practice of applying *per se* standards to certain kinds of violations, such as resale price maintenance, I may now find that the subject of my inquiry has failed some different legal standard applied by the staff Bureau chief. Or, I may belatedly discover that the case was judged "too small" to justify further resource commitments by the Bureau, or that the industry that forms the context of an investigation is not an "appropriate target" of antitrust concern. On the other side of the FTC docket, I might believe a specified inquiry into deceptive practices is appropriate, only to find that a staff Bureau Director has determined that deception has a newer and different meaning than I understand the law currently to provide.

I regard all this sort of decision-making as my statutory prerogative, and not that of the staff Bureau Directors.

The new policy also offers fewer guarantees to those that are subject to Commission investigations. I do not see how a company subject to compulsory process can draw the same degree of comfort from a staff person's unilateral decision to close that it may now feel from a closing letter that comes "By Direction of the Commission" after a Commission level decision that use of compulsory process has resulted in a determination not to sue. The proponents of this reform have eliminated the tangible value that a Commission closing letter has represented in prior practice.

Two features of this "reform",—packaged as a way to eliminate delays rather than as the substantive change it really is—operate to ameliorate the effects of this rule. Ironically, however, both these saving features may lead to new delays. First, a Bureau director's decision to close a formal investigation in which compulsory process has been authorized by the Commission involves a three-day "negative option" during which the Commissioners may try at second guessing the Bureau chief's pending decision, based on whatever explanation for closing might be proffered. Second, Section 1(b) of Reorganization Plan No. 4 of 1961 provides that two Commissioners may direct that a matter be subjected to full Commission review.

The second proposed rules change is to delegate to the "petitions to quash" or "subpoena Commissioner" the personal unilateral authority to dispose of or modify aspects of respondents' compliance with subpoena duces tecum and civil investigative demands that are signed, in a substantial number of instances, by a Commissioner other than the one handling petitions to quash. I have less objection to this proposed change than to the one affording staff personnel the right to terminate investigations, but I am sufficiently concerned to oppose the change.

The proposed rules change does *not* reflect the Commission's actual decision (to which I dissented at the time) that only "noncontroversial" petitions to quash be subject to the delegation. *All* petition to quash resolution powers are being delegated to one Commissioner. While the rules change contemplates the submission to the Commission for approval those petitions to quash that the delegated Commissioner personally deems appropriate for such treatment, I would prefer a simpler streamlining of procedure that simply grants the delegated Commissioner the power to deny petitions to quash. These sorts of dispositions have been the bulk of the work in this area in the past, and if the purpose of this rules change is merely to reduce delay, allowing prompt disposition of petition denials should be sufficient to achieve such a goal.

The recent law requiring a Commissioner to sign a subpoena is based on Congress' concept that individual Commissioners should be held accountable for compulsory FTC demands for private property. If a Commissioner is accountable for the subpoenas he or she signs, that Commissioner always should be part of any decision that implies such a subpoena has swept too broadly. Where a subpoena has been issued, I believe it inappropriate to later declare portions of such a subpoena as irrelevant or burdensome without full consultation with the signatory Commissioner, and full Commission review. Although I have every confidence that this delegation will be administered with sensitivity, it has a potential to undermine the collegial operation of the Commission, and to allow the sort of "forum

shopping" and delay we should not wish to encourage.

[FR Doc. 84-4388 Filed 2-16-84; 8:45 am]

BILLING CODE 6750-01-M

Granting of Request for Early Termination of the Waiting Period Under the Premerger Notification Rules

Section 7A of the Clayton Act, 15 U.S.C. 18a, as added by Title II of the Hart-Scott-Rodino Antitrust Improvements Act of 1976, requires persons contemplating certain mergers or acquisitions to give the Federal Trade Commission and the Assistant Attorney General advance notice and to wait designated periods before consummation of such plans. Section 7A (b) (2) of the Act permits the agencies, in individual cases, to terminate this waiting period prior to its expiration and requires that notice of this action be published in the **Federal Register.**

The following transactions were granted early termination of the waiting period provided by law and the premerger notification rules. The grants were made by the Federal Trade Commission and the Assistant Attorney General for the Antitrust Division of the Department of Justice. Neither agency intends to take any action with respect to these proposed acquisitions during the applicable waiting period:

Transaction	Waiting period terminated effective
(1) 83-1109—Hoechst Aktiengesellschaft's proposed acquisition of voting securities of The Exolon Co.	Jan. 27, 1984.
(2) 83-1110—Dr. Alexander Wacker Familiengesellschaft, (Wacker Chemie GmbH) proposed acquisition of voting securities of Exolon Co.	Do.
(3) 84-0033—Gelco Corp.'s proposed acquisition of assets of Newell Leasing Systems, Inc., Newell Newco, Inc., Omnicor, Inc., (Howard F. Newell and Jerome P. Stanoch, UPE's).	Do.
(4) Royal Insurance Plc's proposed acquisition of voting securities of Silvey Corp.	Do.
(5) 84-0039—Peachtree Holding Corp.'s proposed acquisition of Royal Crown Cos., Inc.	Do.
(6) 84-0040—Pennzoil Co.'s proposed acquisition of voting securities of Getty Oil Co.	Do.
(7) 84-0022—American Financial Corp.'s proposed acquisition of voting securities of The Circle K Corp.	Jan. 30, 1984.
(8) 84-0011—Naturin-Werk Becker & Co.'s proposed acquisition of assets of Hansen Trust PLC.	Jan. 31, 1984.
(9) 84-0038—Ladbroke Group PLC's proposed acquisition of voting securities of Turf Paradise Inc.	Do.
(10) 83-1117—Worthington Industries Inc.'s proposed acquisition of assets of National Rolling Mills, Inc.	Feb. 2, 1984.
(11) 84-0045—General Foods Corp.'s proposed acquisition of voting securities of Ronzoni Corp.	Do.
(12) 84-0049—Seaboard Flour Corp.'s proposed acquisition of assets of Central Soya Co., Inc.	Do.
(13) 84-0052—Royal Dutch Petroleum Co. proposed acquisition of assets of Marathon Oil Co., (United States Steel Corp., UPE).	Do.
(14) 84-0053—Harvard Industries Inc., (Dr. William D. Hurley, UPE) proposed acquisition of voting securities of Harman Automotive, Inc., (Beatrice Foods Division, UPE).	Do.
(15) 84-0061—Richard A. Bernstein proposed acquisition of voting securities of Western Publishing Co., (Mattel, Inc., UPE).	Feb. 3, 1984.
(16) 84-0037—DWG Corp.'s proposed acquisition of voting securities of Royal Crown Cos., Inc.	Do.
(17) 84-0051—The Dow Chemical Co.'s proposed acquisition of voting securities of Magma Power Co.	Do.
(18) 84-0062—Hillenbrand Industries Inc.'s proposed acquisition of voting securities of Medeco Security Locks, Inc.	Do.
(19) 84-0024—J. B. Haralson's proposed acquisition of assets of Mountain States Financial Corp., (The Dale J. Bellamah Foundation, UPE)..	Feb. 6, 1984.
(20) 84-0060—Damson Oil Corp.'s proposed acquisition of voting securities of Dorchester Gas Corp.	Feb. 7, 1984.
(21) 84-0076—Interco Inc.'s proposed acquisition of voting securities of Abe Schrader Corp.	Do.
(22) Transaction No. 84-0070—The Penn Central Corp.'s proposed acquisition of voting securities of Solid State Scientific, Inc., (Mattel, Inc., UPE).	Feb. 8, 1984.
(23) Transaction No. 84-0027—Craig O. McCaw as voting trustee of MFC, Inc.'s proposed acquisition of voting securities of Home Theatres, Inc.	Do.

FOR FURTHER INFORMATION CONTACT:
Patricia A. Foster, Compliance Specialist, Premerger Notification Office, Bureau of Competition, Room 301, Federal Trade Commission, Washington, D.C. 20580, (202) 523-3894.

By direction of the Commission.

Emily H. Rock,

Secretary.

[FR Doc. 84-4386 Filed 2-16-84; 8:45 am]

BILLING CODE 6750-01-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Office of the Secretary

Agency Forms Submitted to the Office of Management and Budget for Clearance

Each Friday the Department of Health and Human Services (HHS) publishes a list of information collection packages it has submitted to the Office of Management and Budget (OMB) for clearance in compliance with the Paperwork Reduction Act (44 U.S.C. Chapter 35). The following are those packages submitted to OMB since the last list was published on February 10.

Public Health Service

Health Resources and Services Administration

Subject: Health Resources and Services Administration Non-Competing Training Grant Application and Supplements (0915-0061)—Revision.
Respondents: Educational institutions.
Subject: Health Resources and Services Administration Competing Training Grant Application and Supplements (0915-0060)—Revision.
Respondents: Educational institutions.
OMB Desk Officer: Fay S. Iudicello.

Centers for Disease Control

Subject: Tuberculosis Statistics and Program Evaluation Activity (0920-0026)—Extension/No Change.
Respondents: State and local health departments.
OMB Desk Officer: Fay S. Iudicello.

Food and Drug Administration

Subject: Color Additive Petitions—Existing Collection.
Respondents: Businesses.
OMB Desk Officer: Bruce Artim.

Social Security Administration

Subject: Application for the Collection of Delinquent Child Support Payments by the Internal Revenue Service (0960-0281)—Revision.
Respondents: State child support enforcement agencies.
Subject: Request for Correction of Earnings Record (0960-0029)—Extension/No Change.
Respondents: Individuals.
OMB Desk Officer: Milo Sunderhauf.

Copies of the above information collection clearance packages can be obtained by calling the HHS Reports Clearance Officer on 202-245-6511.

Written comments and recommendations for the proposed information collections should be sent directly to the appropriate OMB Desk Officer designated above at the following address: OMB Reports Management Branch, New Executive Office Building, Room 3208; Washington, D.C. 20503, Attn: (name of OMB Desk Officer).

Dated: February 13, 1984.

Robert F. Sermier,

Deputy Assistant Secretary for Management Analysis and Systems.

[FR Doc. 84-4408 Filed 2-16-84; 8:45 am]

BILLING CODE 4150-04-M

Food and Drug Administration

[Docket No. 84M-0031]

Wampole Laboratories; Premarket Approval of AFP-TEST®

AGENCY: Food and Drug Administration.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing its approval of the application for premarket approval under the Medical Device Amendments of 1976 of the AFP-TEST® (Farr Technique) sponsored by Wampole Laboratories, Division of Carter-Wallace, Inc., Cranbury, NJ. After reviewing the recommendation of the Immunology Device Section of the Immunology and Microbiology Devices Panel, FDA notified the sponsor that the application was approved because the device had been shown to be safe and effective for use as recommended in the submitted labeling.

DATE: Petitions for administrative review by March 19, 1984.

ADDRESS: Requests for copies of the summary of safety and effectiveness data and petitions for administrative review may be sent to the Dockets Management Branch (HFA-305), Food and Drug Administration, Rm. 4-62, 5600 Fishers Lane, Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: Charles H. Kyper, National Center for Devices and Radiological Health (HFZ-402), Food and Drug Administration, 8757 Georgia Ave., Silver Spring, MD 20910, 301-427-7445.

SUPPLEMENTARY INFORMATION: On December 16, 1976, Wampole Laboratories, Division of Carter-Wallace, Inc., Cranbury, NJ 08512, submitted to FDA an application for premarket approval of the AFP-TEST® (Farr Technique). The AFP-TEST® (Farr Technique) is an in vitro device indicated for the quantitative measurement of alpha-fetoprotein (AFP) in maternal serum (gestational weeks 15 to 20) and amniotic fluid (gestational weeks 15 to 20). Test results, when used in conjunction with ultrasonography, or amniography, and amniotic fluid acetylcholinesterase testing, are a safe and effective aid in the detection of open neural tube defects. The application was reviewed by the Immunology Device Section of the Immunology and Microbiology Devices Panel, and FDA advisory committee, which recommended approval of the application. On January 13, 1984, FDA approved the application by a letter to the sponsor from the Acting Director, Office of Device Evaluation of the National Center for Devices and Radiological Health.

A summary of the safety and effectiveness data on which FDA's approval is based is on file in the Dockets Management Branch (address above) and is available upon request from that office. A copy of all approved final labeling is available for public inspection at the National Center for Devices and Radiological Health—contact Charles H. Kyper (HFZ-402), address above. Requests should be identified with the name of the device and the docket number found in brackets in the heading of this document.

Opportunity for Administrative Review

Section 515(d)(3) of the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 360e(d)(3)) authorizes any interested person to petition, under section 515(g) of the act (21 U.S.C 360e(g)), for administrative review of FDA's decision to approve this application. A petitioner may request either a formal hearing under Part 12 (21 CFR Part 12) of FDA's administrative practices and procedures regulations or a review of the application and of FDA's action by an independent advisory committee of experts. A petition is to be in the form of a petition for reconsideration of FDA's action under § 10.33(b) (21 CFR 10.33(b)). A petitioner shall identify the form of review requested (hearing or independent advisory committee) and shall submit with the petition supporting data and information showing that there is a genuine and substantial issue of material fact for resolution through administrative review. After reviewing the petition, FDA will decide whether to grant or deny the petition and will publish a notice of its decision in the **Federal Register.** If FDA grants the petition, the notice will state the issues to be reviewed, the form of review to be used, the persons who may participate in the review, the time and place where the review will occur, and other details.

Petitioners may, at any time on or before March 19, 1984, file with the Dockets Management Branch (address above) two copies of each petition and supporting data and information, identified with the name of the device and the docket number found in brackets in the heading of this document. Received petitions may be seen in the office above between 9 a.m. and 4 p.m., Monday through Friday.

Dated: February 10, 1984.

William F. Randolph,

Acting Associate Commissioner for Regulatory Affairs.

[FR Doc. 84-4354 Filed 2-16-84; 8:45 am]

BILLING CODE 4160-01-M

[Docket No. 84M-0032]

Kallestad Laboratories, Inc.; Premarket Approval of Quantitope® ^{125} I-AFP RIA Kit

AGENCY: Food and Drug Administration.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing its approval of the application for premarket approval under the Medical Device Amendments of 1976 of the Quantitope® ^{125} I-AFP RIA Kit sponsored by Kallestad Laboratories, Inc., Chaska, MN. After reviewing the recommendation of the Immunology Device Section of the Immunology and Microbiology Devices Panel, FDA notified the sponsor that the application was approved because the device had been shown to be safe and effective for use as recommended in the submitted labeling.

DATE: Petitions for administrative review by March 19, 1984.

ADDRESS: Requests for copies of the summary of safety and effectiveness data and petitions for administrative review may be sent to the Dockets Management Branch (HFA-305), Food and Drug Administration, Rm. 4-62, 5600 Fishers Lane, Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: Charles H. Kyper, National Center for Devices and Radiological Health (HFZ-402), Food and Drug Administration, 8757 Georgia Ave., Silver Spring, MD 20910, 301-427-7445.

SUPPLEMENTARY INFORMATION: On January 19, 1981, Kallestad laboratories, Inc., Chaska, MN 55318, submitted to FDA an application for premarket approval of the Quantitope® ^{125} I-AFP RIA Kit. The Quantitope® ^{125} I-AFP RIA Kit is an in vitro device indicated for the quantitative measurement of alpha-fetoprotein (AFP) in maternal serum (gestational weeks 15 to 20) and amniotic fluid (gestational weeks 15 to 22). Test results, when used in conjunction with ultrasonography, or amniography, and amniotic fluid acetylcholinesterase testing, are a safe and effective aid in the detection of fetal open neural tube defects. The application was reviewed by the Immunology Device Section of the Immunology and Microbiology Devices

Panel, an FDA advisory committee, which recommended approval of the application. On January 13, 1984, FDA approved the application by a letter to the sponsor from the Acting Director, Office of Device Evaluation of the National Center for Devices and Radiological Health.

A summary of the safety and effectiveness data on which FDA's approval is based is on file in the Dockets Management Branch (address above) and is available for public inspection at the National Center for Devices and Radiological Health—contact Charles H. Kyper (HFZ–402), address above. Requests should be identified with the name of the device and the docket number found in brackets in the heading of this document.

Opportunity for Administrative Review

Section 515(d)(3) of the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 360e(d)(3)) authorizes any interested person to petition, under section 515(g) of the act (21 U.S.C. 360e(g)), for administrative review of FDA's decision to approve this application. A petitioner may request either a formal hearing under Part 12 (21 CFR Part 12) of FDA's administrative practices and procedures regulations or a review of the application and of FDA's action by an independent advisory committee of experts. A petition is to be in the form of a petition for reconsideration of FDA's action under § 10.33(b) (21 CFR 10.33(b)). A petitioner shall identify the form of review requested (hearing or independent advisory committee) and shall submit with the petition supporting data and information showing that there is a genuine and substantial issue of material fact for resolution through administrative review. After reviewing the petition, FDA will decide whether to grant or deny the petition and will publish a notice of its decision in the Federal Register. If FDA grants the petition, the notice will state the issues to be reviewed, the form of review to be used, the persons who may participate in the review, the time and place where the review will occur, and other details.

Petitioners may, at any time on or before March 19, 1984, file with the Dockets Management Branch (address above) two copies of each petition and supporting data and information, identified with the name of the device and the docket number found in brackets in the heading of this document. Received petitions may be seen in the office above between 9 a.m. and 4 p.m., Monday through Friday.

Dated: February 10, 1984.

William F. Randolph,

Acting Associate Commissioner for Regulatory Affairs.

[FR Doc. 84–4355 Filed 2–16–84; 8:45 am]

BILLING CODE 4160–01–M

Small Business Participation; Open Meeting

AGENCY: Food and Drug Administration.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing a forthcoming small business exchange meeting to be chaired by Lynn A. Campbell, Director, San Juan District Office.

DATE: Friday, March 16, 1984, at 1 p.m.

ADDRESS: The meeting will be held at the Mayaguez Medical Center Lounge Area Room, Road No. 2, Mayaguez, RP.

FOR FURTHER INFORMATION CONTACT:

Persons in Puerto Rico should contact: Sonia De La Torre, Food and Drug Administration P.O. Box S–4427, Old San Juan Station, San Juan, PR 00905, 809–753–4495

Other interested persons should contact: George Walden, Small Business Representative, Food and Drug Administration, 20 Evergreen Place, East Orange, NJ 07018. 201–645–6466.

SUPPLEMENTARY INFORMATION: The purpose of this meeting is to encourage dialogue between small businesses and FDA officials. The meeting will provide a forum for the owners and managers of small businesses to express their concerns about FDA, encourage discussion about the effects of regulation and regulatory alternatives, convey knowledge about the agency's operations and procedures, and increase participation by small business persons in FDA's decisionmaking process.

Dated: February 10, 1984.

William F. Randolph,

Acting Associate Commissioner for Regulatory Affairs.

[FR Doc. 84–4345 Filed 2–16–84; 8:45 am]

BILLING CODE 4160–01–M

Health Care Financing Administration

Medicare Program; Reissuance of the Wage Index in the 1981 Schedule of Limits on Hospital Per Diem Inpatient General Routine Operating Costs

AGENCY: Health Care Financing Administration (HCFA), HHS.

ACTION: Proposed notice.

SUMMARY: We are reissuing for public comment the change in the types of data that were used to calculate the wage index that was contained in the schedules of limits on hospital per diem inpatient general routine operating costs reimbursable under Medicare that were applicable to cost reporting periods beginning on or after July 1, 1981 and for cost reporting periods ending after September 30, 1981. The cost limits for cost reporting periods beginning on or after October 1, 1982 are governed by the notice published in the Federal Register on September 30, 1982 (47 FR 43296) and August 30, 1983 (48 FR 39426) and are not affected by this reissuance. The wage index was originally issued as part of the schedule of limits published on June 30, 1981 (46 FR 33637) and September 30, 1981 (46 FR 48010) and is being reissued as the result of the April 29, 1983 decision of the United States District Court for the District of Columbia in the case of *District of Columbia Hospital Association, et al. v Heckler, et al.* (No. 82–2520 DDC). The District Court held that the 1981 schedule of hospital cost limits was invalid for failure to comply with the Administrative Procedure Act insofar as the schedule incorporated or was formulated by using a wage index that was calculated by excluding Federal government hospital wage data.

DATES: To assure consideration comments must be received by March 19, 1984.

ADDRESS: Address comments in writing to: Health Care Financing Administration, Department of Health and Human Services, Attention: BERC–276–P, P.O. Box 26676, Baltimore, Maryland 21207.

If you prefer, you may deliver your comments to Room 309–G Hubert H. Humphrey Building, 200 Independence Ave., SW., Washington, D.C., or to Room 132, East Hight Rise Building, 6325 Security Boulevard, Baltimore, Maryland 21207. In commenting, please refer to BERC–276–P.

Comments will be available for public inspection as they are received, beginning approximately three weeks from today, in Room 309–G of the Department's offices at 200 Independence Ave., SW., Washington, D.C. 20201, on Monday through Friday of each week from 8:30 a.m. to 5:00 p.m. (Phone: 202–245–7890).

FOR FURTHER INFORMATION CONTACT: Marilyn Koch, 301–594–9343.

SUPPLEMENTARY INFORMATION:

I. Background

Section 1861(v)(1) of the Social Security Act (42 U.S.C. 1395x(v)(1)) as amended by Section 223 of Pub. L. 92–603, the Social Security Amendments of 1972, authorizes the Secretary to set prospective limits on the costs that are reimbursed under Medicare. These limits may be applied to direct or indirect overall costs or to costs incurred for specific items or services furnished by a Medicare provider, and may be based on estimates of the cost necessary for the efficient delivery of needed health services.

Regulations implementing this authority are set forth at 42 CFR 405.460. Under this authority, we published limits on hospital per diem inpatient general routine service costs annually from 1974 through 1978, and limits on hospital per diem inpatient general routine operating costs in 1979, 1980, and 1981.

On June 30, 1981, we published in the **Federal Register** (46 FR 33637) a schedule of limits on hospital per diem inpatient general routine operating costs applicable to cost reporting periods beginning on or after July 1, 1981. A revised schedule of limits incorporating changes made by the Omnibus Budget Reconciliation Act of 1981 (Pub. L. 96–499) was published on September 30, 1981, (46 FR 48010), effective for cost reporting periods ending after September 30, 1981. For cost reporting periods that began before October 1, 1981, the limits in the September 30, 1981 notice applied only to the portion of the cost reporting period that occurred after September 30, 1981. In these notices, we described the scope of the cost limits and explained our methodology for deriving and applying the limits.

The June 30, 1981, notice (46 FR 33637) was published as a final notice without a prior notice and comment period. In the preamble to that notice, we stated that "in developing the revised limits, we followed the same methodology we used to develop the current limits," except for "minor technical changes in the types of data we used to calculate the wage index and the market basket values." The preamble went on to state that data from Federal government hospitals were excluded from the wage index to improve the accuracy of the wage index adjustment because Federal hospitals typically use national pay scales that do not necessarily reflect area wage levels (46 FR 33699). We determined that, while this wage adjustment would negatively affect only a few hospitals in only a relatively few standard metropolitan statistical areas (SMSAs), it would prevent an unwarranted distribution of public funds to certain hospitals and also prevent the distorting effect of Federal wage scales on the entire wage index. Thus, we determined that use of the notice and comment procedures of the Administrative Procedure Act (APA) with respect to the calculation of the wage index was both unnecessary and contrary to the public interest. We therefore concluded that under the good cause exception of 5 U.S.C. 553(b)(B) of the APA, there was adequate justification to waive these procedures.

On April 29, 1983, the District Court for the District of Columbia in the case of *District of Columbia Hospital Association, et al* v. *Heckler, et al.* (No. 82–2520 DDC) declared the exclusion of Federal hospital wage data from the wage index without prior notice and comment to be a violation of the APA. The court declared invalid the 1981 hospital cost limit schedule insofar as it incorporated or was formulated by using a hospital wage index that excluded Federal government hospital data. As part of this decision on April 29, 1983, the District Court for the District of Columbia ordered us to publish a notice in the **Federal Register** stating that the 1981 schedule of hospital cost limits had been declared invalid with respect to the wage index. We published this notice in the **Federal Register** on September 2, 1983 (48 FR 39998).

The purpose of the reissuance of the wage index as set forth below, is to seek public comments solely on the exclusion of Federal government hospital wage data from the index. All other aspects of the cost limit methodology, as published in the June 30, 1981 (46 FR 33637) and September 30, 1981 (46 FR 48010) notices, remain in effect and unchanged.

II. Explanation of the Wage Index Methodology

The use of the wage index as one component in the setting of cost limits was first introduced in 1979 to replace per capita income as an indicator of area variations in wage levels. In developing the cost limit schedules for the June 30, 1981 and September 30, 1981 notices, we used a hospital wage index to reflect area-by-area differences in the labor-related component of hospital costs (wages and salaries, employee benefits, professional fees, costs of business services, and other miscellaneous expenses). We developed this index from hospital wage data obtained from the Bureau of Labor Statistics (BLS). The data used are those for the "hospital industry," a standard BLS reporting category. The wage index we used for the limits in the June 30, 1981 and September 30, 1981 notices was based on data for calendar year 1979, which were the lastest available data. We have used the same data for this proposed reissued wage index.

To calculate this index, we first computed the average hospital wage for each Standard Metropolitan Statistical Area (SMSA) or New England County Metropolitan Area (NECMA) and non-SMSA/non-NECMA. We then calculated the national average hospital wages for all SMSAs or NECMAs, and a separate national average hospital wage for all non-SMSAs/non-NECMAs. We then divided the average wage level for each area by the appropriate national average (SMSA/NECMA or non-SMSA/non-NECMA). These calculations resulted in an index value for each SMSA or NECMA that reflects the wage level for that area relative to the national average for all SMSAs/NECMAs, and an index value for each non-SMSA/non-NECMA that reflects the wage level for that area relative to the national average for all non-SMSAs/non-NECMAs (see Table IA and IB).

In addition to being based on more current data, the wage index we used in the June 30, 1981 and September 30, 1981 notices differed in two ways from the wage index used in developing the 1980 hospital cost limits. First, we used approximate rather than actual index values for 26 areas. (These approximate values are identified by asterisks in Table IA). We made this change because the BLS, which supplies the data on wages and numbers of employees that we use to calculate the wage index, informed us that its confidentiality requirements prohibited it from disclosing actual data for areas that included fewer than three reporting units. (A reporting unit need not have been a single hospital. Reporting unit was (and is currently) defined by the BLS as the smallest unit for which data are recorded on the employer's contribution report. For example, two facilities in the same area owned by one employer could have appeared as one reporting unit.)

To make it possible to calculate limits for these areas, we asked the BLS to identify the areas having wage index values numerically closest to, but not less than, the areas for which it could not supply actual data. In the case of each area for which actual data were unavailable, we substituted the wage index value identified by the BLS as being closest to the actual value. We stated our belief that the use of approximate rather than actual values for these areas would not affect the accuracy of the limit significantly, and would assure that no hospital's limit

was reduced because actual data for its area were unavailable.

Second, in developing the wage index used for the limits in the June 30, 1981 and September 30, 1981 notices, we excluded data from Federal government hospitals. In this proposed reissuance of the 1981 wage index, we are continuing to exclude data from Federal hospitals from the wage data.

As a result of prior schedules that were issued, we received correspondence concerning the inequity of including Federal hospital wages in developing the wage index. We examined this issue and found that including Federal hospital wages resulted in wage index values that were unrealistically low in areas without Federal hospitals in comparison to adjacent areas with Federal hospitals. The reason for this is that including Federal hospital wages in the data raises the national average hospital wage for all SMSAs/NECMAs and the national average hospital wage for all non-SMSAs/non-NECMAs. However, in determining the wage index for an adjacent area, the area's average wage would be divided by this higher national average resulting in a lower wage index. Yet these adjacent areas with an unrealistically low wage index were competing for the same employees as those areas whose only difference in average wages was the fact that a Federal hospital was located in the SMSA or non-SMSA. Including Federal hospital wage data resulted in wage indexes that did not reflect the differences in wages from area to area. Therefore, in order to correct this inaccuracy, we excluded Federal hospital data from the 1981 wage index.

The exclusion of Federal hospital data is technical in nature. It is designed to improve the accuracy of the wage index so that the index accurately reflects actual differences in wages from one area to another area. It is the purpose of hospital limits to ensure that the Medicare program reimburses providers only for those costs necessary in the efficient delivery of needed health services (42 U.S.C. 1395x(v)(1)(A)). The hospital wage index is but one component of the methodology used to establish limits on hospital inpatient routine operating costs. The wage index serves to reflect area-by-area differences in the labor related component of hospital costs. The more accurate the wage index, the more accurately it reflects these area-by-area differences and thus, ultimately, the more accurate the cost limits. In turn, this means that in accordance with Congressional intent, reimburesment is limited to those costs necessary in the effecient delivery of services. Therefore, we believe that in 1981 we were correct in improving the accuracy of the hospital wage index by excluding the wage data of Federal government hospitals. We concluded that the exclusion of Federal government hospital data would improve the accuracy of the wage index because most Federal hospitals characteristically employ physicians and other high salaried professionals whose salaries are based on national rather than local wage scales. This factor tends to overstate the average hospital wage in areas with Federal institutions as compared to areas without such Federal facilities. Since the purpose of the wage index is to reflect area-by-area differences in the labor-related component of hospital costs, the exclusion of Federal hospital data better enables the wage index to accurately reflect area-by-area labor-related costs.

To the extent hospitals must pay employees wage rates similar to those of Federal facilities to attract qualified personnel, this competitive behavior is reflected in the non-Federal BLS data used to calculate the wage index. That is, if non-Federal hospitals in an area pay wage rates relatively equivalent with those of Federal hospitals, the exclusion of Federal wages would have little effect on the wage index. If wages paid to Federal hospital employees are higher than most area hospital wage levels, then the inclusion of Federal data results in most hospitals receiving a higher Medicare cost limit than is warranted based on their expected costs. Such a result defeats the purpose of the cost limits, which is to limit a provider's reimbursement to only those costs necessary in the efficient delivery of needed health services. Therefore, reissuance of the wage index excluding Federal hospital data reflects Congressional intent to limit hospital reimbursement to those costs necessary in the efficient delivery of services.

The reissuance of the wage index excluding Federal hospital data also avoids placing an unwarranted hardship and burden on intermediaries and many hospitals, while it would impose only a minimal burden on a few hospitals. The inclusion of Federal data in the wage index at this point in time would result in overpayments to many hospitals. As explained previously if we were to include Federal data now, we would have to recompute the national average hospital wage for all SMSAs or NECMAs and the national average hospital wage for all non-SMSAs/non-NECMAs. Both of these averages would be higher if the Federal hospital wage data were included. If the average wage level in an area without Federal hospitals were divided by the recomputed higher national average hospital wage, a lower wage index would result for that area. In this case, we would instruct the intermediaries to recompute the cost limits for those hospitals in areas with revised wage indexes and to recoup any overpayments that would result from the recomputation of the cost limits. We realize that this would create a hardship and burden on both hospitals and intermediaries. Intermediaries would have to review and revise already settled cost reports and reissue notices of program reimbursement (NPRs). Hospitals would be faced with overpayments as the result of these revised cost reports and may have to borrow money to repay the government. In contrast, those few hospitals that would receive less reimbursement if Federal hospital data are excluded from the wage index would not be unduly harmed or burdened by the reissuance of the wage index since these hospitals could only have relied on the wage index as published on June 30, 1981 and September 30, 1981 for reimbursement purposes. Since these limits are prospectively established and published in advance, all hospitals knew before the beginning of their respective cost reporting periods what their cost limit would be. No hospital could have reasonably relied on a wage index that included Federal hospital data after the June 30, 1981 **Federal Register** notice. No hospital nor intermediary would be unduly harmed by this reissuance of the wage index. This proposed notice would simply put the previously set cost limits back into effect.

In summary, we believe that the exclusion of Federal hospital data from the wage index more accurately reflects actual hospital experience. We wish to note that the data used to develop the wage index were supplied by the BLS, and are the most reliable data available. All hospitals are required under State unemployment compensation laws to report these data. If we discover that we or the BLS have made an error based on data received from hospitals that results in an incorrect wage index for any area, we will publish corrected indexes in the **Federal Register** and will direct the Medicare intermediaries to recalculate the limits. However, the BLS has advised us that they are unable to correct any inaccuracies in the wage index that may result from a hospital's failure to report the required wage data.

It should be noted that from the time the original notice was published on June 30, 1981, BLS has advised us of various reporting errors in the wage and employment data. In addition on June 19, 1981, the Office of Management and Budget (OMB) announed the designation of new SMSAs and NECMAs as well as revisions in metropolitan classifications based on the results of the 1980 census. We have issued instructions to the intermediaries advising them of these changes. However, in those situations where the corrected data resulted in a lower wage indexes for an area, we continued to use the higher wage index. The wage index which are shown in Tables I–A and I–B reflect the corrections that have been made since June 30, 1981.

III. Impact Analyses

A. Executive Order 12291 and Regulatory Flexibility Act

Executive Order 12291 requires us to prepare and publish a regulatory impact analyses for any regulations that are likely to have an annual effect on the economy of $100 million or more, cause a major increase in costs or prices, or meet other threshold criteria that are specified in that order. In addition, the Regulatory Flexibility Act (Pub. L. 96–354) requires us to prepare and publish a regulatory flexibility analyses for regulations unless the Secretary certifies that the regulations will not have a significant economic impact on a substantial number of small entities. (For purposes of the Regulatory Flexibility Act, small entities include all nonprofit and most for-profit hospitals.) Under both the Executive Order and the Regulatory Flexibility Act, such analyses must, when prepared, show that the agency issuing the regulations has examined alternatives that might minimize unnecessary burden or otherwise ensure the regulations to be cost-effective.

We have determined that this proposed notice, if implemented, would not meet the criteria of either E.O. 12291 or the Regulatory Flexibility Act. We considered two alternatives:

- To republish area wage indexes calculated as published in 1981 with no change in methodology; or
- To publish area wage indexes recalculated to incorporate Federal hospitals in the base data.

In the process of reviewing these alternatives, we considered their comparative impacts on hospital cost reporting periods subject to the cost limits published in 1981. We found that if we included Federal hospitals in the area wage index determinations, we would have to recalculate both urban SMSAs/NECMAs and rural national average hospital wage levels, as well as the means used to determine the per diem limits for each group (published as Tables I and II in the 1981 notices). This would affect the limit for every hospital subject to the limits, although only to a relatively small degree. The limits for some groups would increase, while the limits for other groups would decrease.

The effect on a particular hospital would be the result of multiplying the per diem limit for the hospital's group by the hospital's revised area wage index. If both the limit and index for a hospital increased or decreased, the effect would of course be multiplied, while if they moved in opposite directions, the changes would tend to cancel out.

We determined that the net effect on overall program expenditures would be relatively small, due to the tendency of increases and decreases in limits and indexes to cancel each other out in the aggregate. A change of area wage indexes to incorporate Federal hospitals in the base data would have the primary effect of redistributing marginal advantages and disadvantages. However, if Federal wages were included, more hospitals would be adversely affected, although the impact on the majority of individual hospitals would be relatively small. Including Federal hospital wage data would benefit those few hospitals located in an area with Federal hospital employees. We estimate that very few hospitals would have their annual reimbursement affected by more than $5,000. In the aggregate, the reissuance of wage indexes excluding Federal hospitals would result in smaller net disadvantage to hospitals as a whole, and is more cost beneficial to the hospitals.

Since the use of the wage index methodology as initially published in 1981 does not meet any of the criteria for identifying a major rule under E.O. 12291, we have determined that this notice is not a major rule and that a regulatory impact analysis is not required. In addition, the Secretary certifies under section 603(b) of the Regulatory Flexibility Act, that this notice will not result in a significant economic impact on a substantial number of small entities, and that a regulatory flexibility analysis is not required.

B. Paperwork Burden

This notice contains no information collection requirements, and therefore, is not subject to review by the Office of Management and budget under the Paperwork Reduction Act of 1980 (44 U.S.C. 3507).

IV. Wage Index Tables

TABLE I–A.—WAGE INDEX FOR URBAN AREAS

SMSA area	Wage index
Abilene, TX	[6]0.9485
Akron, OH	[6]1.0417
Albany, GA	[6].8556
Albany-Schenectady-Troy, NY	.9624
Albuquerque, MN	[6]1.0009
Alexandria, LA	[5].9218
Allentown-Bethlehem-Easton, PA–NJ	[6]1.0569
Altoona, PA	1.0219
Amarillo, TX	.9233
Anaheim-Santa Ana-Garden Grove, CA	[6]1.2115
Anchorage, AK	[6]1.6461
Anderson, IN	[6].9812
Anderson, SC	[2].8814
Ann Arbor, MI	[5 6]1.2446
Anniston, AL	[6].8400
Appleton-Oshkosh, WI	[6]1.0124
Asheville, NC	.9678
Athens, GA	[2].8812
Atlanta, GA	.9162
Atlantic City, NJ	[6]1.0174
Augusta, GA–SC	.9237
Austin, TX	[6].9859
Bakersfield, CA	[6]1.1223
Baltimore, MD	[5]1.1698
Bangor, ME	[2].9239
Baton Rouge, LA	[6].8813
Battle Creek, MI	1.0229
Bay City, MI	[6]1.1238
Beaumont-Port Arthur-Orange, TX	[6].8530
Bellingham, WA	[2]1.0124
Benton Harbor, MI	[2].8569
Billings, MT	[* 5 6].9506
Biloxi-Gulfport, MS	.8143
Binghamton, NY–PA	[6].9769
Birmingham, AL	.9658
Bismarck, ND	[5 6].9118
Bloomington, IN	[* 6].9481
Bloomington-Normal, IL	[5 6].8913
Boise City, ID	.9834
Boston-Lowell-Brockton-Lawrence-Haverhill, MA–NH	[3 5]1.1277
Bradenton, FL	[* 6].8631
Bremerton, WA	[2].8899
Bridgeport-Stamford-Norwalk-Danbury, CT	[6]1.1647
Brownsville-Harlingen-San Benito, TX	[6].9312
Bryan-College Station, TX	[6].8377
Buffalo, NY	[6].9926
Burlington, NC	[6].8899
Burlington, VT	[3].9441
Canton, OH	[6].9447
Caspar, WY	[2]1.0506
Cedar Rapids, IA	[* 6].9193
Champaign-Urbana-Rantoul, IL	[5]1.1197
Charleston-North Charleston, SC	.9751
Charleston, WV	[6]1.0628
Charlotte-Gastonia, NC	[6].9456
Charlottesville, VA	[2].9943
Chattanooga, TN–GA	[5]1.0226
Chicago, IL	[5]1.2061
Chico, CA	[2]1.0327
Cincinnati, OH–KY–IN	[5 6]1.0819
Clarksville-Hopkinsville, TN–KY	[6].8397
Cleveland, OH	[6]1.1957
Colorado Springs, CO	[6].9743
Columbia, MO	1.1712
Columbia, SC	[6].9743
Columbus, GA–AL	[6].9021
Columbus, OH	[6]1.1184
Corpus Christi, TX	[6].9337
Cumberland, MD–WV	[2].8594
Dallas-Fort Worth, TX	[6].9403
Danville, VA	[2].8807
Davenport-Rock Island-Moline, IA–Ill	[6].8380
Dayton, OH	1.1064
Daytona Beach, FL	[6].9423
Decatur, IL	[5 6].9506
Denver-Boulder, CO	1.0960
Des Moines, IA	1.0176
Detroit, MI	[6]1.2260
Dubuque, IA	[6].9426
Duluth-Superior, MN–WI	[6].9193
Eau Claire, WI	[6].9806
El Paso, TX	.8714
Elkhart, IN	[5 6].8372
Elmira, NY	[6].9642
Enid, OK	[5 6].8785
Erie, PA	.9652
Eugene-Springfield, OR	[6].9639
Evansville, IN–KY	[6]1.0742

TABLE I-A.—WAGE INDEX FOR URBAN AREAS—Continued

SMSA area	Wage index
Fargo-Moorhead, ND-MN	[5] [6] .9478
Fayetteville, NC	*.8353
Fayetteville-Springdale, AR	.7997
Flint, MI	[6] 1.1919
Florence, AL	[6] .8056
Florence, SC	[3] .8328
Fort Collins, CO	[6] 8353
Fort Lauderdale-Hollywood, FL	[6] 1.0506
Fort Myers, FL	[6] .9391
Fort Smith, AR-OK	[6] .8899
Fort Wayne, IN	[5] .8985
Fort Walton Beach, FL	[3] .7997
Fresno, CA	1.1265
Gadsden, AL	[6] .9264
Gainsville, FL	[6] .9019
Galveston-Texas City, TX	[6] 1.0607
Gary-Hammond-East Chicago, IN	[6] 1.1664
Glen Falls, NY	[2] .9023
Grand Forks, ND-MN	[6] .8779
Grand Rapids, MI	[6] .9463
Grand Falls, MT	*[6] .9162
Greeley, CO	*[6] .9312
Green Bay, WI	[6] .9740
Greensboro-Winston-Salem-High Point, NC	[6] .9232
Greenville-Spartanburg, SC	[6] .9371
Hagerstown MD	[3] 1.0742
Hamilton-Middleton, OH	[6] 1.0620
Harrisburg, PA	1.0534
Hartford-New Britain-Bristol, CT	[5] [6] 1.1601
Hickory, NC	[3] .8454
Honolulu, HI	1.1645
Houston, TX	1.0630
Huntington-Ashland, WV-KY-OH	.9270
Huntsville, AL	[6] .8593
Indianapolis, IN	[5] [6] 1.0519
Iowa City, IA	[5] [6] 1.1780
Jackson, MI	*[6] 1.0173
Jackson, MS	.8699
Jacksonville, FL	[6] .9331
Jacksonville, NC	[3] .8936
Janesville-Beloit, WI	[6] .8579
Jersey City, NJ	1.1180
Johnson City-Kingsport-Bristol, TN-VA	[5] .8786
Johnstown, PA	[6] 1.0445
Joplin, MO	[2] .8500
Kalamazoo-Portage, MI	[6] 1.1695
Kankakee, IL	[6] 1.0073
Kansas City, MO-KS	[5] .9427
Kenosha, WI	*[5] [6] 1.0789
Killeen-Temple, TX	.8868
Knoxville, TN	[6] .9100
Kokomo, IN	[5] [6] .9846
La Crosse, WI	*[6] .9016
Lafayette, LA	[6] .8622
Lafayette-West Lafayette, IN	[6] .9141
Lake Charles, LA	[6] .8706
Lakeland-Winter Haven, FL	[6] .9749
Lancaster, PA	[6] 1.0674
Lansing-East Lansing MI	[6] 1.0811
Laredo, TX	*[6] .8593
Las Cruces, NM	*[6] .6129
Las Vegas, NV	[6] 1.1884
Lawrence, KS	*[6] .9193
Lawton, OK	*.8377
Lewiston-Auburn, ME	*[6] .8899
Lexington-Fayette, KY	.9016
Lima, OH	[6] .9932
Lincoln, NE	.9259
Little Rock-North Little Rock, AR	1.0205
Long Branch-Asbury Park, NJ	[6] 1.0648
Long View, TX	.8129
Lorain-Elyria, OH	[6] 1.0207
Los Angeles-Long Beach, CA	[6] 1.2899
Louisville, KY-IN	[5] .9920
Lubbock, TX	[6] .9042
Lynchburg, VA	[6] .8876
Macon, GA	[6] .9637
Madison, WI	1.0257
Manchester-Nashua, NH	[3] .9441
Mansfield, OH	[6] .9196
McAllen-Pharr-Edinburg, TX	[6] .8165
Medford, OR	[3] .9668
Melbourne-Titusville-Cocoa, FL	[6] .9374
Memphis, TN-AR-MS	1.0371
Miami, FL	1.1050
Midland, TX	*[6] .9141
Milwaukee, WI	1.0080
Minneapolis-St. Paul, MN-WI	.9802
Mobile, AL	[6] .9416
Modesto, CA	[5] [6] 1.0508

TABLE I-A.—WAGE INDEX FOR URBAN AREAS—Continued

SMSA area	Wage index
Monroe, LA	[6] .9451
Montgomery, AL	.9626
Muncie, IN	*[6] .9852
Muskegon-Norton Shores-Muskegon Heights, MI	[6] .9658
Nashville-Davidson, TN	1.0187
Nassau-Suffolk, NY	[6] 1.2758
New Bedford-Fall River, MA	[6] .9687
New Brunswick-Perth Amboy-Sayreville, NJ	[6] 1.0409
New Haven-Waterbury-Meriden, CT	1.0990
New London-Norwich, CT	[6] 1.0903
New Orleans, LA	.9644
New York, NY-NJ	[6] 1.3956
Newark, NJ	1.2099
Newark, OH	[3] .9592
Newburgh-Middletown, NY	[3] 1.0789
Newport News-Hampton, VA	[5] .8974
Norfolk-Virginia Beach-Portsmouth, VA-NC	[6] .9887
Northeast Pennsylvania	1.0598
Ocala, FL	[3] .9306
Odessa, TX	*[5] [6] .9506
Oklahoma City, OK	.9252
Olympia, WA	[3] 1.0142
Omaha, NE-IA	[5] .9425
Orlando, FL	[6] .9087
Owensboro, KY	*[5] [6] .8377
Oxnard-Simi Valley-Ventura, CA	[6] 1.3788
Panama City, FL	*[6] .8777
Parkersburg-Marietta, WV-OH	[6] 1.0461
Pascagoula-Moss Point, MS	[5] [6] 1.1547
Paterson-Clifton-Passic, NJ	[6] 1.0959
Pensacola, FL	.8841
Peoria, IL	[5] [6] 1.1130
Petersburg-Colonial Heights-Hopewell, VA	[6] .9484
Philadelphia, PA-NJ	[6] 1.1810
Phoenix, AZ	[6] 1.1100
Pine Bluff, AR	*[6] .7997
Pittsburgh, PA	[6] 1.1275
Pittsfield, MA	[5] [6] 1.0276
Portland, ME	[3] [6] 1.0032
Portland, OR-WA	[5] [6] 1.1034
Portsmouth-Dover-Rochester, NH-ME	[3] .8115
Poughkeepsie, NY	[5] 1.1151
Providence-Warwick-Pawtucket, RI	[3] [6] 1.0349
Provo-Orem, UT	[6] .9454
Pueblo, Co	[5] [6] 1.0981
Racine, WI	[6] .9240
Raleigh-Durham, NC	1.0173
Rapid City, SD	[3] .8680
Reading, PA	[6] 1.0101
Redding, CA	[2] 1.0271
Reno, NV	1.2428
Richland-Kennewick, WA	[5] [6] .9935
Richmond, VA	.9252
Riverside-San Bernadino-Ontario, CA	[6] 1.1729
Roanoke, VA	[6] .9614
Rochester, MN	.9852
Rochester, NY	[6] 1.0653
Rockford, IL	[5] [6] 1.0222
Rock Hill, SC	[3] .9136
Sacramento, CA	[5] [6] 1.2231
Saginaw, MI	[6] 1.1279
St. Cloud, MN	.8680
St. Joseph, MO	[6] .9749
St. Louis, MO-IL	[6] .9977
Salem, OR	[4] .9975
Salinas-Seaside-Monterey, CA	[6] 1.1083
Salisbury-Concord, NC	[6] 1.2428
Salt Lake City-Ogden, UT	[3] 1.0368
San Angelo, TX	[6] .8550
San Antonio, TX	[6] .8364
San Diego, CA	.9509
San Francisco-Oakland, CA	1.1113
San Jose, CA	[6] 1.3153
Santa Barbara-Santa Maria-Lompoc, CA	1.3055
Santa Cruz, CA	[5] [6] 1.0628
Santa Rosa, CA	[5] [6] 1.0985
Sarasota, FL	[6] 1.4037
Savannah, GA	[5] [6] .9835
Seattle-Everett, WA	[6] .9414
Sharon, PA	[6] 1.0500
Sheboygan, WI	[2] .9618
Sherman-Denison, TX	[2] .8439
Shreveport, LA	[6] .8277
Sioux City, IA-NE	.9292
Sioux Falls, SD	.9306
South Bend, IN	.8844
Spokane, WA	[5] .9156
Springfield, IL	1.0921
	[5] [6] 1.0230

TABLE I-A.—WAGE INDEX FOR URBAN AREAS—Continued

SMSA area	Wage index
Springfield, MO	.8933
	[4] 8932
Springfield, OH	[6] .9821
Springfield-Chicopee-Holyoke, MA	[5] [6] 1.0285
State College, PA	[2] 1.1034
Steubenville-Weirton, OH-WV	[5] [6] .9750
Stockton, CA	[6] 1.3046
Syracuse, NY	[6] 1.3209
Tacoma, WA	[5] 1.0558
Tallahassee, FL	*[5] [6] .9264
Tampa-St. Petersburg, FL	.9898
Terre Haute, IN	[5] [6] .8734
Texarkana, TX-Texarkana, AR	[6] 1.0929
Toledo, OH-MI	[6] 1.1157
Topeka, KS	1.0602
Trenton, NJ	[6] 1.1708
Tucson, AZ	.9977
Tulsa, OK	[6] .9626
Tuscaloosa, AL	1.0142
Tyler, TX	[6] .9481
Utica-Rome, NY	[6] 1.0145
Vallejo-Fairfield-Napa, CA	[6] 1.5862
Victoria, TX	[2] .8356
Vineland-Millville-Bridgeton, NJ	[6] 1.0083
Visalia-Tulare-Porterville, CA	[2] 1.3627
Waco, TX	.8593
Washington, DC-MD-VA	[5] 1.1547
Waterloo-Cedar Falls, IA	[6] .8631
Wausau, WI	[2] .9769
West Palm Beach-Boca Raton, FL	[6] .9632
Wheeling, WV-OH	[5] [6] 1.0158
Wichita, KS	1.0248
Wichita Falls, TX	[6] .8282
Williamsport, PA	[6] .9749
Wilmington, DE-NJ-MD	[5] 1.0917
Wilmington, NC	[6] .8936
Worcester-Fitchburg-Leominster, MA	[5] [6] .9769
Yakima, WA	[6] .9523
York, PA	[6] .9884
Youngstown-Warren, OH	[6] 1.1090
Yuba City, CA	[2] 1.0726

*Approximate value for area.

[1] Effective June 19, 1981, no longer qualified as an SMSA.

[2] Effective June 19, 1981, newly designated SMSAs.

[3] Effective June 19, 1981, new and revised NECMA's.

[4] Recomputed wage index in parentheses based on corrected reporting data from BLS lower than published index.

[5] Revised wage index based on corrected reporting data from BLS.

[6] Including Federal hospital wage data in the computation of the index results in lower wage index for the SMSA/NECMA than the one being issued here for comment.

TABLE I-B.—WAGE INDEX FOR RURAL AREAS

Non-SMSA area	Wage Index
Alabama	.8960
Alaska	1.5579
Arizona	1.0289
Arkansas	[4] .8686
California	[4] 1.2415
Colorado	.8990
Connecticut	[3] [4] 1.1817
Delaware	[4] 1.0370
Florida	[4] .9980
Georgia	[4] .9463
Hawaii	[3] [4] 1.3452
Idaho	[4] .9669
Illinois	[3] [4] .9650
Indiana	[3] 9863
Iowa	[4] .9220
Kansas	[3] .9009
Kentucky	[3] [4] .9233
Louisiana	[4] .9216
Maine	[4] .9926
Maryland	[4] 1.1028
Massachusetts	[4] 1.1722
Michigan	[3] [4] 1.1535
Minnesota	[4] .9052
Mississippi	[4] .8751
Missouri	[4] .9156
	[2] .9151
Montana	[3] .9595
Nebraska	[4] .8130
Nevada	[4] 1.0790
New Hampshire	[3] [4] 1.1301
New Jersey	[4] 1.0820

TABLE I-B.—WAGE INDEX FOR RURAL AREAS—Continued

Non-SMSA area	Wage Index
New Mexico	1.0073
New York	[4]1.0327
North Carolina	[4].9917
North Dakota	[4].9045
Ohio	1.0086
Oklahoma	.9111
Oregon	1.0673
Pennsylvania	[2] [4]1.1371
Rhode Island	([1])
South Carolina	[4].9180
South Dakota	[3] [4].8237
Tennessee	[4].8779
Texas	.8979
Utah	[3] [4].8552
Vermont	.9993
Virginia	[4].9792
Washington	1.0465
West Virginia	[3]1.0123
Wisconsin	.9179
Wyoming	1.0402

[1] Not applicable. All of Rhode Island is classified as urban.
[2] Recomputed wage index lower than the published index.
[3] Revised wage index based on corrected reporting data from BLS.
[4] Including Federal hospital wage data in the computation of the index results in a lower wage index for the State than the one being issued here for comment.

Sec. 1102, 1814(b), 1861(v)(1), 1866(a), and 1871 of the Social Security Act (42 U.S.C. 1302, 1395f(b), 1395x(v)(1), 1395cc(a), 1395hh, and 42 CFR 405.460)

(Catalog of Federal Domestic Assistance Program No. 13.773; Medicare-Hosptial Insurance)

Dated: November 17, 1983

Carolyne K. Davis,

Administrator, Health Care Financing Administration.

Approved: February 8, 1984.

Margaret M. Heckler,

Secretary.

[FR Doc. 84-4107 Filed 2-16-84; 8:45 am]

BILLING CODE 4120-03-M

Public Health Service

Privacy Act of 1974; System of Records

AGENCY: Department of Health and Human Services; Public Health Service.

ACTION: Notification of a new system of records: 09-30-0046, "Survey of Alcohol Use Among Youth and Young Adults, HHS/ADAMHA/NIAAA".

SUMMARY: In accordance with the requirements of the Privacy Act, the Public Health Service (PHS) is publishing notice of a proposal to establish a new system of records entitled, "Survey of Alcohol Use Among Youth and Young Adults, HHS/ADAMHA/NIAAA," to create a single comprehensive research data base so that critical issues associated with alcohol use among 16- to 27-year-olds can be analyzed. PHS invites interested persons to submit comments on the proposed routine uses on or before March 19, 1984.

DATES: PHS has sent a Report of a New System to the Congress and to the Office of Management and Budget (OMB) on February 8, 1984 PHS has requested that OMB grant a waiver of the usual requirement that a system of records not be put into effect until 60 days after the report is sent to OMB and Congress (If this waver is granted, PHS will publish a notice to that effect in the **Federal Register.**)

ADDRESS: Address comments to: Project Officer, Survey of Alcohol Use Among Youth and Young Adults, National Institute on Alcohol Abuse and Alcoholism, 5600 Fishers Lane, Room 14C-26, Rockville, MD 20857.

The public may inspect the comments we receive, at the above address, from 8:30 a.m. to 4:30 p.m., Monday through Friday, except holidays.

FOR FURTHER INFORMATION CONTACT: Thomas C. Harford, Ph.D, National Institute on Alcohol Abuse and Alcoholism, 5600 Fishers Lane, Room 14C-26, Rockville, MD 20857, Telephone: (301) 443-4897.

SUPPLEMENTARY INFORMATION: The purpose of the system is to create a comprehensive research data base so that critical issues associated with alcohol use among 16- to 27-year olds can be analyzed. Among these issues are age-related variations in drinking levels and problem behaviors; differences between males and females and blacks and nonblacks in ages when alcohol use begins and when certain long-term consequences are experienced; appropriate measurement of drinking behavior for this age group levels and nature of impact of drinking contexts, social networks, and alcohol availability on young persons' drinking behavior; and the marginal contibutions of alcohol to young persons' already high risk for certain negative experiences (e.g., traffic accidents). Results of these analyses will be used by the National Institute on Alcohol Abuse and Alcoholism (NIAAA) to determine the most appropriate questions for measuring drinking for this age group and to identify the factors related to alcohol use among youth and young adults that are most amenable to prevention or intervention efforts.

The NIAAA contractor—the Research Triangle Institute of Research, Triangle Park, North Carolina—will conduct a survey of a representative sample of 16- to 27-year-old residents of the Baton Rouge, Louisiana Standard Metropolitan Statistical area. Data for the study with be developed from face-to-face and self-administered interviews will voluntary participants. Informed consent will be obtained from all participants; signed informed consent will be obtained from parents of participants who are minors. Confidentially will be discussed when obtaining informed consent. NIAAA has provided for thorough protection of the records. We will require the contractor to set up physical safeguards, as described in the system notice, to protect the security, confidentiality, and integrity of the records. For example, only authorized contractor staff will have access to personally-identified information. The contractor staff will edit the date and enter them into computer files. Computer files and paper records containing personally identifying information will be destroyed following verification and data processing activities specified by the study design. The contractor will provide to NIAAA only aggregated statistical summaries, tables, and analyses and computer tapes of the individual records that have been stripped of personal identifiers. The system of records will exist only until data collection and processing activities for the study have been completed—about five months. When the contractor destroys the computer files used in generating screening assignments and in generating interviewing assignment, original forms, and cross-reference lists, the system of records will no longer exist.

NIAAA proposes two routine uses for this system of records. The first routine use permitting disclosure to a congressional office is proposed to allow subject individuals to obtain assistance from their representatives in Congress, should they so desire. Such disclosure would be made only pursuant to a written request of the individual and is thus compatible with the purpose of the system. Routine use No. 1 reads as follows:

"1. Disclosure may be made to a congressional office from the record of an individual in response to a verified inquiry from a congressional office made at the written request of that individual."

NIAAA has contracted with the Research Triangle Institute (RTI) of Research Triangle Park, North Carolina: (1) To conduct this study among youth and young adults regarding their alcohol and drug consumption, (2) to process and analyze the data, and (3) to submit the data to NIAAA in aggregated statistical summary tables and analyses. The contractor is bound by terms of the contract to take all necessary steps to protect the records from any disclosure, intentional or accidental, except to

NIAAA. Using a contractor as outlined above increases NIAAA's efficiency and effectiveness in carrying out its legislated mandate and, thus, is compatible with the purpose of the system.

The proposed routine use No. 2 will permit the contractor to develop the records and reads as follows:

"2. NIAAA has contracted with the Research Triangle Institute to collect, analyze, aggregate and otherwise refine records in the system. The contractor will disclose records from this system only to NIAAA and is required to maintain in Privacy Act safeguards with respect to such records."

The following notice is written in the present, rather than future tense, in order to avoid the unnecessary expenditure of public funds to republish the notice after the system has become effective.

Dated: February 10, 1984.

Wilford J. Forbush,

Deputy Assistant Secretary for Health Operations and Director, Office of Management.

SYSTEM NAME

Survey of Alcohol Use Among Youth and Young Adults, HHS/ADAMHA/NIAAA.

SECURITY CLASSIFICATION

None.

SYSTEM LOCATION

Research Triangle Institute P.O. Box 12194—Cornwallis Road, Research Triangle Park, NC 27709.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM

Normal youth and young adults aged 16 to 27, in the Baton Rouge, Louisiana, Standard Metropolitan Statistical Area, who have volunteered to participate in the study during the winter and spring of 1984.

CATEGORIES OF RECORDS IN THE SYSTEM

An original and amended listing of Baton Rouge area household residents, parental consent forms, and screening and other data collection forms completed during the winter and spring of 1984 containing: (1) Personal characteristics such as age, date of birth, education, race, national origin, sex, marital status; (2) information on drinking experience, such as type and amount of alcoholic beverage(s) consumed, frequency of consumption, context of drinking; (3) drug use; and (4) leisure time and other activities.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM

42 U.S.C. 4591, Section 501 of the Comprehensive Alcohol Abuse and Alcoholism Prevention, Treatment and Rehabilitation Act of 1970.

PURPOSE(S)

The purpose of the system is to create a comprehensive research data base so that critical issues associated with alcohol use among 16- to 27-year-olds can be analyzed. Results of these analyses will be used by the National Institute on Alcohol Abuse and Alcoholism (NIAAA) to determine the most appropriate questions for measuring drinking for this age group and to identify the factors related to alcohol use among youth and young adults that are most amendable to prevention or intervention efforts.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES

1. Disclosure may be made to a congressional office from the record of an individual in response to a verified inquiry from a congressional office made at the written request of that individual.

2. NIAAA has contracted with the Research Triangle Institute to collect, analyze, aggregate, or otherwise refine records in the system. The contractor will disclose records from this system only to NIAAA and is required to maintain Privacy Act safeguards with respect to such records.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM

STORAGE

Data collection forms and magnetic tapes and disks will be stored in closed cabinets in a locked room with controlled accessibility.

RETRIEVABILITY

The records will be indexed and retrieved by subject-participant's name and unique numeric identifier. In order to relate the data collected to specific individuals, however, the contractor will use the link file discussed under Safeguards.

SAFEGUARDS

The safeguards which follow are in accordance with the DHHS Chapter 45–13 and supplementary Chapter PHS.hf: 45–13 in the HHS General Administration Manual and Part 6, "ADP System Security" in the HHS ADP Systems Security Manual.

Physical Security: The contractor stores individually identified forms in a locked room with controlled entry; i.e., only on the written authority of the professional staff member in charge of data handling and processing operations. The contractor staff enter the collected information onto computer tape or disks as soon after contact with the subject-participant as possible, and store the computerized records in a secured area with access limited as above.

Technical Security: Access to the computerized records is protected by a computerized password routine which is changed periodically. In addition, the project staff complies with the contractor's (Research Triangle Institute) standard procedures for safeguarding data. The link file system that identifies individuals with personal data has three components: (1) Identification information, (2) data base information, and (3) the link file, which contains identifying number pairs which match data with individuals. The advantage of this system is that one may use the baseline data directly for report generation and other purposes without accessing the personal information or link files.

Administrative Security: The data management task leader, the project leader, or the project director provide technical supervision of all data collection and processing activities and are the authorized contractor staff who supervise access to the records (computerized and hard copy files) in the system. The contractor provides only aggregated data tabulations in reports to NIAAA and the public. The contractor will furnish to NIAAA a computer tape file containing only data base information on subject-participants without identification information. The contractor who maintains records in this system has been instructed to make no further disclosure of the records except as authorized by the system manager and permitted by the Privacy Act. Privacy Act requirements have been specifically included in the contract for this project. The NIAAA project officer and contract officer will oversee compliance with these requirements.

RETENTION AND DISPOSAL

The contractor staff destroys data collection forms by shredding immediately after they complete direct entry on magnetic tape or disk storage and verify the information. The contractor will destroy individual identification and link files by shredding or burning at the termination of the data collection and processing phases of the project, approximately five months after the system is initiated. NIAAA will retain the data base records on data tapes for research purposes. These tapes will not have any individually identifiable information.

SYSTEM MANAGER AND ADDRESS

Project Officer, Survey of Alcohol Use Among Youth and Young Adults, National Institute on Alcohol Abuse and Alcoholism, 5600 Fishers Lane, Room 14C-26, Rockville, MD 20857.

NOTIFICATION PROCEDURE

To determine if a record exists, contact the contractor:

Project Director, Survey of Alcohol Use Among Youth and Young Adults, Research Triangle Institute, P.O. Box 12194—Cornwallis Road, Research Triangle Park, NC 27709.

Requesters should provide verifiable proof of identity—such as notarized original signature—for mail requests, inquiries, and responses; or driver's license with picture for in-person inquiries and requests.

RECORD ACCESS PROCEDURE

Same as notification procedure. Requesters should also reasonably specify the record contents being sought.

CONTESTING RECORD PROCEDURES

Contact the System Manager at the address above and reasonably identify the record, specify the information being contested, and state the corrective action being sought, with supporting justification.

RECORD SOURCE CATEGORIES

The subject individuals are the sole source of the information in the records.

SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE PRIVACY ACT

None.

[FR Doc. 84-4377 Filed 2-16-84; 8:45 am]
BILLING CODE 4160-20-M

Centers for Disease Control

National Institute for Occupational Safety and Health; Research and Demonstration Grants Relating to Occupational Safety and Health; Availability to Funds for Fiscal Year 1984

The National Institute for Occupational Safety and Health (NIOSH), Centers for Disease Control (CDC), announces the availability of funds in Fiscal Year 1984 for research and demonstration project grants relating to occupational safety and health. This grant program is authorized by section 20(a)(1) of the Occupational Safety and Health Act of 1970 (29 U.S.C. 669(a)(1)) and section 501 of the Federal Mine Safety and Health Act of 1977 (30 U.S.C. 951). Program regulations applicable to these grants are in Part 87, "National Institute for Occupational Safety and Health Research and Demonstration Grants," of Title 42, Code of Federal Regulations. Except as otherwise indicated, the basic grant administration policies of the Department of the Health and Human Services and the Public Health Service are applicable to this program. Applications responsive to this announcement are not subject to Executive Order NO. 12372, Intergovernmental Review of Federal Programs.

Research Project Grants

A research project grant application should be designed to establish discover, develop, explain, or confirm information relating to occupational safety and health, including innovative methods, techniques, and approaches for dealing with occupational safety and health problems. These studies may generate information that is readily available to solve problems or contribute to a better understanding of underlying causes and mechanisms.

Demonstration Project Grants

A demonstration project grant application should address, either on a pilot or full-scale basis, the technical or economic feasibility or application of (1) a new or improved occupational safety and health procedure, method, technique, or system; or (2) an innovative method, technique, or approach for preventing occupational safety and health problems.

Small Grants

A small grant application is intended to provide financial support to carry out exploratory or pilot studies, to develop or test new techniques or methods, or to analyze data previously collected. This small grant program is intended for pre-doctoral graudate students, post-doctoral researchers (within 3 years following completion of doctoral degree or completion or residency or public health training), and junior faculty members (no higher than assistant professor). If university policy requires that a senior person be listed as principal investigator, the application should specify that the funds are for the use of a particular student or junior-level person and should include appropriate justification for this arrangement. Although biographical sketches are required only for the person actually doing the work, the application should indicate who will be supervising the research. Small grant applications should be identified as such on the application form.

The total small grant award may comprise direct costs of up to $15,000 per year and additional indirect costs, as appropriate. The grants may be awarded for up to 2 years and are thereafter continued by competitive renewal as a regular research grant. Salary of the principal investigator, as well as that of the junior investigator, if university policy requires a senior person to be listed as the principal investigator, will not be allowed on a small grant, although salaries can be requested for necessary support staff such as laboratory technicians, interviewers, etc.

Program Project Grants

NIOSH will also accept applications for program project grants, but only after eligible applicants discuss with the individuals listed under **"FOR FURTHER INFORMATION CONTACT."**

Programmatic Interest

Examples of work-related programmatic interest to NIOSH, which are applicable to all of the above types of grants, are listed below. The conditions or examples listed under each category are selected examples and not comprehensive definitions of the category. However, investigators may apply in any areas related to occupational safety and health.

1. Occupational lung diseases: Asbestosis, byssinosis, silicosis, coal workers' pneumoconiosis, lung cancer, and occupational asthma;
2. Musculoskeletal injuries: Disorders of the back, trunk, upper extremity, neck, and lower extremity; and traumatically-induced Raynaud's phenomenon;
3. Occupational cancers (other than lung): Leukemia; mesothelioma; and cancers of the bladder, nose, and liver;
4. Amputations, fractures: eye losses, lacerations, and traumatic deaths;
5. Cardiovascular diseases: Hypertension, coronary artery disease, and acute myocardial infarction;
6. Disorders of reproduction: Infertility, spontaneous abortion, and teratogenesis;
7. Neurotoxic disorders: Peripheral neuropathy, toxic encephalitis, psychoses, and extreme personality changes (exposure-related);
8. Noise-induced loss of hearing;
9. Dermatologic conditions: Dermatoses, burns (scaldings), chemical burns, and contusions (abrasions);
10. Psychologic disorders: Neuroses, personality disorders, alcoholism, and drug dependency;
11. Control technology research: Application of scientific principles to control strategies, preconstruction review, technology forcing/new source performance concepts, technology

transfer, substitution, unit operations approaches; and

12. Respirator research: New and innovative respiratory protective devices; techniques to predict performance; effectiveness of respirator programs; physiologic and ergonomic factors; medical surveillance strategies; psychological and motivational aspects; effectiveness of sorbents and filters, including chemical and physical properties.

Applications submitted in response to this announcement will be reviewed for their responsiveness and relevance to occupational safety and health. Potential applicants with questions concerning the acceptability of their proposed work should contact the individuals listed in this announcement under **"FOR FURTHER INFORMATION CONTACT."**

Eligibility Requirements

Eligible applicants include nonprofit and for-profit organizations. Thus, universities, colleges, research institutions, other public and private organizations, including State and local governments, and small, minority and/or woman-owned businesses, are eligible for these research and demonstration grants. For-profit organizations will be required to submit a certification as to their status as part of their application.

Availability of Funds

In Fiscal Year 1984, $6,501,000 will be available to award grants. It is estimated that $3.8 million of this amount will support continuation grants, and $400,000 will be funded in the Special Emphasis Research Career Award (SERCA) program. NIOSH published information about the SERCA program in the **Federal Register** on December 13, 1983 (48 FR 55515). Grants are usually funded for 12 months in project periods of up to 5 years—2 years for small grants. Continuation awards within the project period are made on the basis of satisfactory progress and on the availability of funds. Grantees will be expected to cost share a minimum of 5 percent.

Criteria for Review

Applications will be evaluated by a dual review process. The primary (peer) review is based on scientific merit and significance of the project, competence of the proposed staff in relation to the type of research involved, feasibility of the project, likelihood of its producing meaningful results, appropriateness of the proposed project period, adequacy of the applicant's resources available for the project, and appropriateness of the budget request.

Demonstration project grant applications will be reviewed additionally on the basis of the following criteria:

- Degree to which project objectives are clearly established, obtainable, and for which progress toward attainment can and will be measured;
- Availability, adequacy, and competence of personnel, facilities, and other resources needed to carry out the project;
- Degree to which the project can be expected to yield or demonstrate results that will be useful and desirable on a national or regional basis; and
- Extent of cooperation expected from industry, unions, or other participants in the project, where applicable.
- Small grant applications will be reviewed additionally on the basis of the following criterion:
- The review process will take into consideration the fact that the applicants do not have extensive experience with the grant process.

A secondary review will also be conducted in which the factors to be considered will include:

- The results of the initial review;
- The significance of the proposed study to the research programs of NIOSH;
- National needs and program balance; and
- Policy and budgetary consideration.

Applications

Applications should be submitted on Form PHS–398 (revised May 1982) or on PHS–5161–1 for State and local government applicants to the address below: Division of Research Grants, National Institutes of Health, Westwood Building, Room 240, Bethesda, Maryland 20205.

The instructions in the application packet should be followed concerning deadlines for either delivering or mailing the application. Forms should be available from the institutional business offices or from the CDC Procurement and Grants Office, Centers for Disease Control, 255 E. Paces Ferry Road, Room 107A, Atlanta, Georgia 30305.

FOR FURTHER INFORMATION CONTACT.

For technical information: Roy M. Fleming, Sc.D., Chief, Grants Administration, and Review Branch, NIOSH, Bldg. 1, Room 3053, Centers for Disease Control, Atlanta, Georgia 30333, Telephone: (404) 329–3343 or FTS 236–3343.

For application procedures: Leo A. Sanders, Chief, Grants Management Branch, Procurement and Grants Office, Centers for Disease Control, Atlanta, Georgia 30333, Telephone: (404) 262–6575 or FTS 236–6575.

(This program is described in the Catalog of Federal Domestic Assistance Program No. 13.262, Occupational Safety and Health Research Grants)

Dated: February 7, 1984.

J. Donald Millar,

Director, National Institute for Occupational Safety and Health.

[FR Doc. 84–4424 Filed 2–16–84; 8:45 am]

BILLING CODE 4160–19–M

DEPARTMENT OF THE INTERIOR

Office of the Secretary

Presidential Commission on Indian Reservation Economies; Public Hearings and Site Visits

AGENCY: Presidential Commission on Indian Reservation Economies, Interior.

ACTION: Notice of meetings.

SUMMARY: This notice sets forth the dates, time and location of forthcoming hearings and site visits of the Presidential Commission on Indian Reservation Economies for March 1984:

1. *March 1, 1984 (Thursday)—Hearing:* Hilton Inn, 445 Mt. Rushmore Road, Rapid City, South Dakota 57701; Time: 9:00 a.m.—5:00 p.m.
2. *March 2, 1984 (Friday)—Site Visit:* Oglala Sioux Tribe—Reservation Pine Ridge, South Dakota.
3. *March 5, 1984 (Monday)—Hearing:* MGM-Grand Hotel, 2500 E. Second Street, Reno, Nevada 89585; Time: 9:00 a.m.—5:00 p.m.
4. *March 6, 1984 (Tuesday)—Site Visit* Paiute Tribe—Reservation, Pyramid Lake, Nevada
Washo, Paiute, Shoshone Tribes, Reno-Sparks Indian Colony, Reno, Nevada 89585

The purpose of the hearings will be to receive both oral and written testimony from Indian leaders, Indian businessmen and other representatives from the tribal, public and private sectors concerning the development and sustainment of viable economic enterprises within Indian reservation environments. The site visits will enable the Commission to witness first hand both problems and successes associated with economic and business development on Indian reservations.

Parties interested in testifying at a hearing should present their testimony in writing either in advance of the

hearing or at the onsite registration for the hearing. An oral summary of the testimony may be given at the hearing. Those desiring to submit written testimony and make an oral presentation should submit in writing a brief statement of the general nature of the testimony to be presented, the names and addresses of proposed participants and an indication of the approximate time required to make their presentation. This information should be sent to Tanna Chattin, Director, Office of Public, Tribal and Governmental Affairs, Presidential Commission on Indian Reservation Economies, Suite 765, 1717 H Street, Northwest, Washington, D.C. 20006. Questions regarding testimony or registration procedures may also be directed to Ms. Chattin at (202) 653–2436. The agenda for oral testimony will be completed five days in advance of each hearing.

Any person attending a hearing who has not requested an opportunity to speak five days in advance of the meeting, will be allowed to make an oral presentation at the conclusion of the hearing, if time permits and at the discretion of the Co-Chairman.

FOR FURTHER INFORMATION CONTACT: Eric Rudert, Deputy Director, Presidential Commission on Indian Reservation Economies, 1717 H Street, Northwest, Suite 765, Washington, D.C. 20006. Telephone (202) 653–2436.

Dated: February 13, 1984.

Eric Rudert,

Deputy Director, Presidential Commission on Indian Reservation Economies.

[FR Doc. 84–4222 Filed 2–16–84; 8:45 am]

BILLING CODE 4310–02–M

Bureau of Land Management

[U–53729]

Utah; Order Providing for Opening of Lands

Correction

In FR Doc. 84–2811 appearing on page 4157 in the issue of Thursday, February 2, 1984, make the following correction.

After the thirty-first line of the legal description for Salt Lake Meridian, Utah, add the line:

"Sec. 29, all ;".

BILLING CODE 1505–01–M

[NM 12253]

New Mexico; Proposed Reinstatement of Terminated Oil and Gas Lease

Under the provisions of Pub. L. 97–451, TXO Production Corporation petitioned for reinstatement of oil and gas lease NM 12253 covering the following described lands located in Chaves County, New Mexico:

T. 6 S., R. 26 E., NMPM.
Sec. 34: N½, E½SW¼, SE¼;
Sec. 35: N½NE¼, SE¼NE¼, NE¼NW¼, E½SE¼.
Containing 800.00 acres.

It has been shown to my satisfaction that failure to make timely payment of rental was due to inadvertence.

No valid lease has been issued affecting the lands. Payment of back rentals and administrative cost of $500.00 has been paid. Future rentals shall be at the rate of $5.00 per acre per year and royalties shall be at the rate of 16⅔ percent. Reimbursement for the cost of publication of this notice shall be paid by the lessee.

Reinstatement of the lease will be effective as of the date of termination, September 1, 1981.

Dated: February 10, 1984.

S. Gene Day,

Acting State Director.

[FR Doc. 84–4425 Filed 2–16–84; 8:45 am]

BILLING CODE 4310–FB–M

[NM 12846]

New Mexico; Proposed Reinstatement of Terminated Oil and Gas Lease

Under the provisions of Pub. L. 97–451, Gulf Oil Corporation petitioned for reinstatement of oil and gas lease NM 12846 covering the following described lands located in Lea County, New Mexico.

T. 22 S., R. 33 E., NMPN.
Sec. 13: SE¼;
Sec. 15: SE¼;
Sec. 23: NE¼;
Sec. 25: SE¼;
Sec. 26: NW¼.
Containing 800.00 acres.

It has been shown to my satisfaction that failure to make timely payment of rental was due to inadvertance.

No valid lease has been issued affecting the lands. Payment of back rentals and administrative cost of $500.00 has been paid. Future rentals shall be at the rate of $5.00 per acre per year and royalties shall be at the rate of 16⅔ percent. Reimbursement for the cost of publication of this notice shall be paid by the lessee.

Reinstatement of the lease will be effective as of the date of termination, January 2, 1982.

Dated: February 10, 1984.

S. Gene Day,

Acting State Director.

[FR Doc. 84–4426 Filed 2–16–84; 8:45 am]

BILLING CODE 4310–FB–M

Bureau of Reclamation

[INTFES 84–4]

Regulatory Storage Division, Central Arizona Project, Arizona; Availability of Final Environmental Statement

Pursuant to section 102(2)(C) of the National Environmental Policy Act of 1969, as amended, the Department of the Interior has prepared a final environmental statement on the environmental consequences of constructing and operating the Regulatory Storage Division of the Central Arizona Project, including concurrent and coincident aspects of the Bureau of Reclamation's Safety of Dams program for the Salt and Verde Rivers.

Copies of the statement are available for inspection at the following locations:

Director, Office of Environmental Affairs, Bureau of Reclamation, Department of the Interior, 18th and C Streets, NW., Room 7622, Washington, D.C. 20240, Telephone (202) 343–4991

Library Branch, Division of Management Support, Engineering and Research Center, Room 450, Building 67, Denver Federal Center, Denver, CO 80225, Telephone: (303) 234–3019

Office of the Regional Director, Bureau of Reclamation, Nevada Highway and Park Street, Boulder City, NV 89005, Telephone (702) 193–8411,

Arizona Projects Office, Bureau of Reclamation, Suite 2200 Valley Center, 201 North Central Avenue, Phoenix, AZ 85073, Telephone: (602) 261–3577

Libraries

Phoenix City Library, 12 East McDowell Road, Phoenix, AZ 85004

Tucson City Library, 200 South Sixth Avenue, Tucson, AZ 85701

Single copies of the final statement may be obtained on request to the Commissioner of Reclamation or the Regional Director at the addresses listed above, at no charge. Please refer to the statement number above.

Dated: February 10, 1984

Bruce Blanchard,

Director, Environmental Project Review.

[FR Doc. 84–4279 Filed 2–16–84; 8:45 am]

BILLING CODE 4310–09–M

Quarterly Status Tabulation of Water Service and Repayment Contract Negotiations; Proposed Contractual Actions Pending Through March 1984

Pursuant to section 226 of the Reclamation Reform Act of 1982 (96 Stat. 1273), and to § 426.20 of the rules and regulations published in the **Federal Register** December 6, 1983, Vol. 48, page 54785, the Bureau of Reclamation will publish notice of proposed irrigation or amendatory irrigation contract actions in newspapers of general circulation in the affected area at least 60 days prior to contract execution. The Bureau of Reclamation announcements of irrigation contract actions will be published in newspapers of general circulation in the areas determined by the Bureau of Reclamation to be affected by the proposed action. Announcements may be in the form of news releases, legal notices, official letters, memorandums, or other forms of written material. Meetings, workshops, and/or hearings may also be used, as appropriate, to provide local publicity. The public participation requirements do not apply to proposed contracts for the sale of surplus of interim irrigation water for a term of 1 year or less. The Secretary or the district may invite the public to observe any contract proceedings. All public participation procedures will be coordinated with those involved in complying with the National Environmental Policy Act if the Bureau determines that the contract action may or will have "significant" environmental effects.

Pursuant to the "Final Revised Public Participation Procedures" for water service and repayment contract negotiations, published in the **Federal Register** February 22, 1982, Vol. 47, page 7763, a tabulation is provided below of all proposed contractual actions in each of the seven Reclamation regions. Each proposed action listed is, or is expected to be, in some stage of the contract negotiation process during January, February, or March of 1984. When contract negotiations are completed, and prior to execution, each proposed contract form must be approved by the Secretary, or pursuant to delegated or redelegated authority, the Commissioner of Reclamation or one of the Regional Directors. In some instances, congressional review and approval of a report, water rate, or other terms and conditions of the contract may be involved. The identity of the approving officer and other information pertaining to a specific contract proposal may be obtained by calling or writing the appropriate regional office at the address and telephone numbers given for each region.

This notice is one of the variety of means being used to inform the public about proposed contractual actions. Some of the actions listed have been publicized in the **Federal Register** previously. When this is the case, the date of publication is given. Individual notice of intent to negotiate, and other appropriate announcements, will be made in the **Federal Register** for those actions found to have widespread public interest.

Acronym Definitions Used Herein

(FR) Federal Register
(ID) Irrigation District
(IDD) Irrigation and Drainage District
(M&I) Municipal and Industrial
(D&MC) Drainage and Minor Construction
(R&B) Rehabilitaiton and Betterment
(O&M) Operation and Maintenance
(CVP) Central Valley Project
(P–SMBP) Pick-Sloan Missouri Basin Program
(CRSP) Colorado River Storage Project
(SRPA) Small Reclamation Projects Act
(SOFAR) Southern Fork American River

Pacific Northwest Region

Bureau of Reclamation, 550 West Fort Street, Box 043, Boise, ID 83724, telephone (208) 334–9011.

1. Boise Cascade Corporation, Columbia Basin Project, Washington; Industrial water service contract; 250 acre-feet; FR notice published April 7, 1980, Vol. 45, page 23531.

2. Boise Project Board of Control, Boise Project, Idaho-Oregon; Irrigation repayment contract; 22,800 acre-feet of stored water in Arrowrock Reservoir.

3. Douglas County, Oregon; SPRA loan repayment contract; $11,605,000 proposed loan obligation. Loan application also includes a request for $14,395,000 in grant funds towards anadromous fish enhancement, recreation, fish and wildlife functions.

4. Miscellaneous Water Users, Pacific Northwest Region, Idaho, Oregon and Washington; Temporary (interim) water service contracts for surplus project water; Maximum of 10,000 acre-feet annually per contractor for irrigation and maximum of 2,000 acre-feet annually per M&I contractor for terms of up to 2 years.

5. Rouge River Basin water users, Rogue River Basin Project, Oregon; Water service contracts; $5 per acre-foot or $20 minimum per annum, not to exceed 320 acres or 1,000 acre-feet of water per contractor for terms up to 40 years.

6. Willamette Basin water users, Willamette Basin Project, Oregon; Water service contracts; $1.25 per acre-foot or $20 minimum per annum, not to exceed 320 acres or 1,000 acre-feet of water annually per contractor for terms up to 40 years.

7. Granger ID, Yakima Project, Washington; R&B loan repayment contract; $1,111,000 proposed obligation.

8. Washington Water Power Company, Inc., Columbia Basin Project, Washington; Industrial water service contract; 32,000 acre-feet of water per year from Franklin D. Roosevelt Lake for the proposed Creston Powerplant; FR notice published December 11, 1982, Vol. 46, page 60658.

9. Cascade Reservoir water users, Boise Project, Idaho; Irrigation repayment contracts; 57,251 acre-feet of stored water in Cascade Reservoir.

10. Boise Water Corporation, Boise Project, Idaho; Short-term (2 years) M&I water service contract; up to 5,000 acre-feet annually from stored water in Lucky Peak Reservoir.

11. Grandview I.D. Yakima Project, Washington; R&B loan repayment contract; $1,054,000 proposed obligation.

12. Irrigation Districts and Similar Water User Entities; Amendatory repayment and water service contracts; Purpose is to conform to the Reclamation Reform Act of 1982 (Pub. L. 97–293).

Mid Pacific Region

Bureau of Reclamation, (Federal Office Building) 2800 Cottage Way, Sacramento, CA 95825, telephone (916) 484–4680.

1. 2047 Drain Water Users Association, CVP, California; Water right settlement contract; FR notice published July 25, 1979, Vol. 44, page 43535.

2. Tuolumne Regional Water District, CVP, California; Water service contract; 3,200 acre-feet from New Melones Reservoir; FR notice published February 5, 1982, Vol. 47, page 5473.

3. Calaveras County Water District, CVP, California; Water service contract; 500 acre-feet from New Melones Reservoir; FR notice published February 5, 1982, Vol. 47, page 5473.

4. Miscellaneous Water Users, Mid-Pacific Region, California, Oregon, and Nevada; Temporary (interim) water service contracts for surplus project water; Maximum of 10,000 acre-feet annually per contractor for irrigation and maximum of 2,000 acre-feet annually per M&I contractor for terms up to 2 years.

5. State of California, Department of Water Resources, CVP, California; Interim water service contract for approximately 500,000 acre-feet.

6. Pacheco Water District, CVP, California; Amendatory water service contract providing for a change in point of delivery from Delta-Mendota Canal to the San Luis Canal.

7. City of Redding, CVP, California; Agreement for operation of the City of Redding's Lake Redding Power Project and resolution of potential impacts on Keswick Powerplant.

8. South San Joaquin ID and Oakdale ID, CVP, California; Operating agreement for conjunctive operation of New Melones Dam and Reservoir on the Stanislaus River; FR notice published June 6, 1979, Vol. 44, page 32483.

9. San Luis Water District, CVP, California; Amendatory water service contract providing for a change in point of delivery from Delta-Mendota Canal to the San Luis Canal.

10. The Westside Irrigation District, CVP, California; Amendment to existing water service contract to provide for transportation of District owned water rights through the Delta-Mendota Canal.

11. Oakdale Irrigation District, SRPA, California; Loan repayment contract; $17,845,000 proposed obligation.

12. Lindsay-Strathmore Irrigation District, CVP, California; Amendatory Water service contract providing for M&I use to the City of Lindsay.

13. County of Colusa, CVP, California; Contract for M&I water service (40 acre-feet).

14. Irrigation Districts and Similar Water User Entities; Amendatory repayment and water service contracts; Purpose is to conform to the Reclamation Reform Act of 1982 (Pub. L. 97–293).

15. County of San Benito, San Felipe Division, CVP, California; Repayment recreation agreement will provide recreation facilities in an area that now has a deficit of recreation areas.

16. Santa Barbara County, Cachuma Project, California; Recreation Management Agreement will provide funds for recreation development to a project with heavy visitor use.

Upper Colorado Region

Bureau of Reclamation, P.O. Box 11568, (125 South State Street) Salt Lake City, UT 84147, telephone (801) 524–5435.

1. Miscellaneous water users, Upper Colorado Region, Utah, Wyoming, Colorado, and New Mexico; Temporary (interim) water service contracts for surplus project water; Maximum of 10,000 acre-feet annually per contractor for irrigation and maximum of 2,000 acre-feet annually per M&I contractor for terms up to 2 years.

2. Fontenelle (Chevron) State of Wyoming, Seedskadee Project, Wyoming; Water sales contract for 22,500 acre-feet per year for industrial use. Environmental Impact Statement under preparation; approval pending outcome and compliance with Section 7, Endangered Species Act. FR notice published January 26, 1983, Vol. 48, No. 18, page 3662.

3. Animas-La Plata Conservancy District, Animas-La Plata Project, Colorado; Water service contract; 9,200 acre-feet per year for M&I use; 72,200 acre-feet per year for irrigation; FR notice published April 17, 1981, Vol. 46, No. 74, page 22474.

4. La Plata Conservancy District, Animas-La Plata Project, New Mexico; Water service contract; 16, 000 acre-feet per year for irrigation; FR notice published April 17, 1981, Vol. 46, No. 74, page 22474.

5. City of Farmington, Animas-La Plata Project, New Mexico; M&I water service contract; 19,700 acre-feet per year; FR notice published April 17, 1981, Vol. 46, No. 74, page 22474.

6. City of Aztec, Animas-La Plata Project, New Mexico; M&I water service contract; 5,800 acre-feet per year; FR notice published April 17, 1981, Vol. 46, No. 74, page 22474.

7, City of Bloomfield, Animas-La Plata Project, New Mexico; M&I water service contract; 5,300 acre-feet per year; FR notice published April 17, 1981, Vol. 46, No. 74 page 22474.

8. Preston-Whitney Irrigation Company, North Cache Water Development Project, Idaho; Small Reclamation Projects Act, Pub. L. 84–984; Repayment contract for $26,000,000; Federal loan to convert open ditch system with individual pumps for sprinkler pressurization to a closed pipe gravity pressurized system; FR notice published April 26, 1983, Vol. 48, No. 81, page 18907.

9. Central Utah Project, Bonneville Unit, Utah; Supplemental M&I repayment contract for 99,000 acre-feet year; Negotiations anticipated to be reactivated; FR notice published August 22, 1980, Vol. 45, No. 165, page 56199.

10. Central Utah Project, Bonneville Unit, Utah; $34,000,000 D&MC Contract—Duchesne River Area Canals rehabilitation to meet 1987 construction commitment. Repayment covered under executed repayment contract.

11. Ogden River Water Users Association, Weber Basin Project, Utah; Amendatory Emergency Loan of $250,000 for canal repair; Negotiations have been completed and execution of contract expected in January 1984.

12. Irrigation Districts and Similar Water User Entities; Amendatory repayment and water service contracts; Purpose is to conform to the Reclamation Reform Act of 1982 (Pub. L. 97–293).

Lower Colorado Region

Bureau of Reclamation, P.O. Box 427, (Nevada Highway and Park Street) Boulder City, NV 89005, telephone (702) 293–8536.

1. City of Yuma, Boulder Canyon Project, Arizona; Supplemental and amendatory M&I water service contract; 3,613 acre-feet per year.

2. Agricultural and M&I water users, Central Arizona Project, Arizona; Water service subcontracts; A certain percent of available supply for irrigation entities and up to 640,000 acre-feet per year for M&I use.

3. Roosevelt Water Conservation District, Higley, Arizona; R&B loan contract; $7,474,424; FR notice published March 30, 1979, Vol. 44, page 19048.

4. Agricultural and M&I water users, Central Arizona Project, Arizona; Contracts for repayment of Federal expenditures for construction of distribution systems.

5. Contracts with 16 agricultural entities located near the Colorado River in Arizona; Boulder Canyon Project; Water service contracts for up to 27,894 acre-feet per year total.

6. Fallbrook Public Utility District, Santa Margarita Project, California; repayment and water service contract; $46,000,000 total obligation.

7. Gila River Indian Community, CAP, Arizona; Water service contract; Contract for delivery of up to 173,100 acre-feet per year.

8. Yuma-Mesa Irrigation and Drainage District, Gila Project Arizona; Amendatory contract to allow the district to market up to 7,000 acre-feet of water per year for M&I purposes.

9. Hillcrest Water Company, Boulder Canyon Project, Arizona; Contract for delivery of 84 acre-feet of water per year to serve existing mobile home park pursuant to recommendation by Arizona Department of Water Resources.

10. Sunset Mobile Home Park, Boulder Canyon Project, Arizona; M&I water service contract for delivery of 30 acre-feet of water per year pursuant to recommendation of Arizona Department of Water Resources.

11. Irrigation Districts and Similar Water User Entities; Amendatory repayment and water service contract; Purpose is to conform to the Reclamation Reform Act of 1982 (Pub. L. 97–293).

12. Santa Ana Watershed Project Authority, Riverside, California; Contract for the repayment of a $14,917,000 Small Reclamation Projects Act loan.

13. Yuma County Water Users Association, Valley Division, Yuma Project, Arizona; Amendatory contract for the advancement of $1,500,000 to the association by the United States on a nonreimbursable basis for the construction of new headquarters facilities and accompanying relocation costs.

Southwest Region

Bureau of Reclamation, Commerce Building, Suite 201, 714 South Tyler, Amarillo, TX 79101, telephone (806) 378–5430.

1. City of Belen, San Juan-Chama Project, New Mexico; M&I water service contract for 500 acre-feet annually. FR notice published April 26, 1982, Vol. 47, page 1782.

2. Fort Cobb Reservoir Master Conservancy District, Washita Basin Project, Oklahoma; Amendatory repayment contract to convert 4,700 acre-feet of irrigation water to M&I use; FR notice published August 13, 1981, Vol. 46, page 40940.

3. Foss Reservoir Master Conservancy District, Washita Basin Project, Oklahoma; Amendatory repayment contract for remedial work. Necessity of amendment is dependent upon outcome of pending Safety of Dams legislation, S. 956 and H.R. 3208.

4. Vermejo Conservancy District, Veremjo Project, New Mexico; Amendatory contract to relieve the district of further repayment obligation, presently exceeding $2 million, pursuant to Pub. L. 96–550.

5. State of Colorado, Closed Basin Division, San Luis Valley Project; Repayment contract for State's share of costs associated with development of recreation facilities and certain fish and wildlife facilities; Obligation will be negotiated in accordance with the Federal Water Project Recreation Act (Pub. L. 98–72), as amended; FR notice published February 12, 1982, Vol. 47, page 6493.

6. Harlingen Irrigation District, Lower Rio Grande Valley, Texas; R&B loan contract; $3 million potential obligation; Amendment of existing, SRPA repayment contract is a major issue.

7. Irrigation Districts and Similar Water User Entities; Amendatory repayment and water service contracts; Purpose is to conform to the Reclamation Reform Act of 1982 (Pub. L. 97–293).

Upper Missouri Region

Bureau of Reclamation, P.O. Box 2553, Federal Building, 316 North 26th Street, Billings, Montana 59103, Telephone (406) 657–6413.

1. Miscellaneous Water Users, Upper Missouri Region, Montana, Wyoming, North Dakota, and South Dakota; Temporary (interim) water service contracts for surplus project water; Maximum of 10,000 acre-feet annually per contractor for irrigation and maximum of 2,000 acre-feet annually per M&I contractor for terms of up to 2 years.

2. Individual Irrigators, Canyon Ferry Unit, P–SMBP, Montana; Irrigation water service contracts not to exceed 320 acres of 1,000 acre-feet of water annually per contractor for terms up to 40 years.

3. Crook County ID (formerly Belle Fourche-Wymoing Water Association), Keyhole Unit, P–SMBP, Wyoming; Repayment contract for irrigation storage; 10 percent (presently 18,500 acre-feet) of Keyhole Reservoir storage space as provided by Belle Fourche River Compact; FR notice published August 21, 1980, Vol. 45, Page 55842.

4. Belle Fourche Irrigation District, Belle Fourche Unit, P–SMBP, South Dakota; Repayment contract covering construction and rehabilitation of existing irrigation facilities authorized by Pub. L. 98–157.

5. Town of Kirby, Boysen Unit, P–SMBP, Wyoming; Water service contract for municipal water services; Water entitlement not expected to exceed 50 acre-feet annually.

6. Nokota Company, Lake Sakakawea, P–SMBP, North Dakota; Industrial water service contract; Up to 16,800 acre-feet of water annually; FR notice published May 5, 1982, Vol. 47, Page 19472.

7. State of Wyoming, Buffalo Bill Dam Modifications, P–SMBP, Wyoming; Contract with State of Wyoming for division of additional water impounded, sharing of revenues, and sharing of costs to construct, operate, and maintain modification of the existing Buffalo Bill Dam and Reservoir.

8. Helena Valley ID, P–SMBP, Montana; R&B loan repayment contract; Up to $2.2 million.

9. Fort Shaw ID, Sun River Project, Montana; R&B loan repayment contract; Up to $1.5 million.

10. Glasgow Irrigation District, Milk River Project, Montana; Rehabilitation and Betterment Act loan repayment contract; Loan amount up to $2.2 million.

11. Irrigation Districts and Similar Water User Entities; Amendatory repayment and water service contracts; Purpose is to conform to the Reclamation Reform Act of 1982 (Pub. L. 97–293).

12. City of Huron, James Diversion Dam, P–SMBP, South Dakota; Agreement for continued use of James Diversion Dam and Reservoir facilities and operation and maintenance arrangements; Contract term 20 years.

13. Shoshone Irrigation District, Shoshone Project, Wyoming; Cost escalation loan under Small Reclamation Projects Act to provide funds to complete Garland Canal Power Project; Loan amount $214,000; Contract term 40 years.

14. Individual Irrigators, Garrison Diversion Unit, P-SMBP, North Dakota; Use of surplus capacity in water supply system to deliver water to nonproject lands for terms up to 10 years.

Lower Missouri Region

Bureau of Reclamation, P.O. Box 25247 (Building 20, Denver Federal Center), Denver, Colorado 80225, telephone (303) 234–3327.

1. H&RW ID, Frenchman-Cambridge Unit, P-SMBP, Nebraska; Amendatory water service contract; $1,200,000 outstanding; FR notice published February 5, 1982, Vol. 47, Page 5472.

2. Central Nebraska Public Power and ID, Glendo Unit, P-SMBP, Nebraska; Irrigation water service contract; 8,000 acre-feet; FR notice published December 30, 1983, Vol. 48, Page 57632.

3. Purgatoire River Water Conservancy District, Trinidad Project, Colorado; Amendatroy repayment contract for extension of the development period and revision of the repayment determination methodology; FR notice published August 6, 1982, Vol. 47, page 34206.

4. Casper-Alcova ID, Kendrick Project, Wyoming; Amendatory contract to provide water service to subdivided district lands; FR notice published November 24, 1980, Vol. 45, page 77522.

5. Corn Creek ID, Mitchell ID, Earl Michael, Glendo Unit, P-SMBP, Wyoming, and Nebraska; Irrigation water service contracts. FR notice published January 26, 1983, Vol. 48, page 3662.

6. Town of Breckenridge, Colorado-Big Thompson Project, Colorado; Storage in Green Mountain Reservoir. FR notice published January 26, 1983, Vol. 48, page 3662.

7. Pueblo West Metropolitan District, Fryingpan-Arkansas Project, Colorado; Use of municipal outlet of Pueblo Dam for conveyance service; FR notice published January 26, 1983, Vol. 48, page 3662.

8. Miscellaneous water users, Lower Missouri Region, Southeastern Wyoming, Colorado, Nebraska, and northern Kansas; Temporary (interim) water service contracts for surplus project water, maximum of 10,000 acre-feet annually per contractor for irrigation and maximum of 2,000 acre-

feet annually per M&I contractor for terms up to 2 years; FR notice first published on February 16, 1982, Vol. 47, page 6725.

9. Ruedi Reservoir, Fryingpan-Arkansas Project, Colorado; Second round of proposed contract negotiations for sale of water from the regulatory capacity of Ruedi Reservoir; FR notice published April 26, 1983, Vol. 48, page 18909.

10. Irrigation Districts and Similar Water User Entities; Amendatory repayment and water service contracts; Purposes is to conform to the Reclamation Reform Act of 1982 (Pub. L. 97–293); FR notice published October 31, 1983, Vol. 48, page 50178.

11. Lower South Platte Water Conservancy District, Centeral Colorado Water Conservancy District, and the Colorado Water Resources and Power Development Authority, P-SMBP, Narrows Unit, Colorado; Water service contracts for repayment of costs; FR notice published August 3, 1983, Vol. 48, page 35182.

12. CF&I Steel Corporation (formerly Colorado Fuel and Iron Corporation), Fryingpan-Arkansas Project, Colorado; Amendment of Contract No. 6–07–70-W0089 to include provision for assignment of part of the replacement storage contract to third parties when CF&I Steel Corporation sells storage space.

13. Board of Water Works of Pueblo, Fryingpan-Arkansan Project, Colorado; Negotiate and execute a 6,000 acre-foot 1984 temporary storage contract.

Opportunity for public participation and receipt of comments on contract proposals will be facilitated by adherence to the following procedures:

(1) Only persons authorized to act on behalf of the contracting entities may negotiate the terms and conditions of a specific contract proposal.

(2) Advance notice of meetings or hearings will be furnished to those parties that have made a timely written request for such notice to the appropriate regional or project office of the Bureau of Reclamation.

(3) All written correspondence regarding proposed contracts will be made available to the general public pursuant to the terms and procdures of the Freedom of Information Act (80 Stat. 383), as amended.

(4) Written comments on a proposed contract or contract action must be submitted to the appropriate Bureau of Reclamation officials at locations and within time limits set forth in the advance public notices.

(5) All written comments received and testimony presented at any public hearings will be reviewed and summarized by the appropriate regional office for use by the contract approving authority.

(6) Copies of specific proposed contracts may be obtained from the appropriate Regional Director or his designated public contact as they become available for review and comment.

(7) In the event modifications are made in the form of proposed contract, the appropriate Regional Director shall determine whether republication of the notice and/or extension of the 60-day comment period is necessary.

Factors which shall be considered in making such a determination shall include, but are not limited to: (i) The significance of the impact(s) of the modification and (ii) the public interest which has been expressed over the course of the negotiations. As a minimum, the Regional Director shall furnish revised contracts to all parties which requested the contract in response to the initial public notice.

Dated: February 11, 1984.

Robert A. Olson,

Acting Commissioner of Reclamation.

[FR Doc. 84–4385 Filed 2–16–84; 8:45 am]

BILLING CODE 4310–09–M

INTERSTATE COMMERCE COMMISSION

[Docket No. AB–39 (Sub-4)]

St. Louis Southwestern Railway Co.; Abandonment in Arkansas County, AR; Findings

The Commission has issued a certificate authorizing the St. Louis Southwestern Railway Company to abandon its line of railroad extending from milepost 262.00 near Indiana, to milepost 268.10 at Gillett, a distance of 6.1 miles in Arkansas County, AR. The abandonment certificate will become effective 30 days after this publication unless the Commission also finds that: (1) A financially responsible person has offered financial assistance (through subsidy or purchase) to enable the rail service to be continued; and (2) it is likely that the assistance would fully compensate the railroad.

Any financial assistance offer must be filed with the Commission and the applicant no later than 10 days from publication of this Notice. The following notation shall be typed in bold face on the lower left-hand corner of the envelope containing the offer: "Rail Section, AB–OFA." Any offer previously made must be remade within this 10-day period.

Information and procedures regarding financial assistance for continued rail service are contained in 49 U.S.C 10905 and 49 CFR 1152.27.

James H. Bayne,

Acting Secretary.

[FR Doc. 84–4358 Filed 2–16–84; 8:45 am]

BILLING CODE 7035–01–M

DEPARTMENT OF JUSTICE

Office of Juvenile Justice and Delinquency Prevention Coordinating Council; Meeting

The quarterly meeting of the Coordinating Council on Juvenile Justice and Delinquency Prevention will be held in Washington, D.C. on March 29, 1984. The meeting will take place at the Department of Housing and Urban Development, Room 10233, 451 Seventh Street, SW. from 9:30 a.m. to 12 noon. The public is welcome to attend.

The agenda will include matters related to the coordination of the Federal effort in the area of juvenile justice and delinquency prevention.

For further information, please contact Roberta Dorn, Office of Juvenile Justice and Delinquency Prevention, 633 Indiana Avenue, NW., Washington, D.C. 20531, (202) 724–7655.

Dated: February 13, 1984.

Approved:

Alfred S. Regnery,

Administrator, Office of Juvenile Justice and Delinquency Prevention.

[FR Doc. 84–4382 Filed 2–16–84; 8:45 am]

BILLING CODE 4410–18–M

National Advisory Committee; Meeting

The thirtieth quarterly meeting of the National Advisory Committee for Juvenile Justice and Delinquency Prevention will be held in Los Angeles, California on March 14–15, 1984.

The meeting will be held at the Beverly Pavilion Hotel, Room 402, 9360 Wilshire Boulevard, Los Angeles beginning at 9:00 a.m. on March 14 and concluding no later than 12 noon on March 15. The public is welcome to attend.

The agenda will include discussion and topics related to the redirection of the Federal effort in juvenile justice.

For further information, please contact Roberta Dorn, Office of Juvenile Justice and Delinquency Prevention, 633 Indiana Avenue, NW., Washington, D.C. 20531, (202) 724–7655.

Dated: February 13, 1984.

Approved:

Alfred S. Regnery,

Administrator, Office of Juvenile Justice and Delinquency Prevention.

[FR Doc. 84-4383 Filed 2-16-84; 8:45 am]

BILLING CODE 4410-18-M

DEPARTMENT OF LABOR

Bureau of Labor Statistics

Meeting of the Business Research Advisory Council

The regular winter meeting of the Business Research Advisory Council will be held at 1:30 p.m., March 14, 1984, in Room N-3437 of the Frances Perkins Department of Labor Building, 200 Constitution Avenue, NW., Washington, D.C.

The Business Research Advisory Council and its committees advise the Bureau of Labor Statistics with respect to technical matters associated with the Bureau's programs. Membership consists of technical officers from American business and industry. The agenda for the meeting is as follows:

1. Chairperson's Opening Remarks—Warren H. Bacon
2. Commissioner's Remarks—Janet L. Norwood
3. Committee Reports:
   (a) Wages and Industrial Relations
   (b) Economic Growth
   (c) Price Indexes
4. Other Business
5. Chairperson's Closing Remarks

This meeting is open to the public. It is suggested that persons planning to attend as observers contact Janice D. Murphey, Liaison, Business Research Advisory Council on Area Code (202) 523-1347.

Signed at Washington, D.C., this 13th day of February 1984.

Janet L. Norwood,

Commissioner of Labor Statistics.

[FR Doc. 84-4396 Filed 2-16-84; 8:45 am]

BILLING CODE 4510-24-M

Business Research Advisory Council Committee; Meetings and Agenda

The regular winter meetings of committees of the Business Research Advisory Council will be held on March 13 and 14, 1984.

The committees will meet in Room N-3437, Frances Perkins Department of Labor Building, 200 Constitution Avenue, NW., Washington, D.C.

The Business Research Advisory Council and its committees advise the Bureau of Labor Statistics with respect to technical matters associated with the Bureau's programs. Membership consists of technical officers from American business and industry.

The schedule and agenda of the meetings are as follows:

Tuesday, March 13

9:30 a.m.—Committee on Economic Growth

1. Review of the Status of the Economic Growth Program
2. Status of BLS State and Area Projections Program
3. Discussion of How Technological Change Enters BLM Projections
4. Other Business

1:30 p.m.—Committee on Price Indexes

1. Status Report On Consumer Price Index Revision
2. Status Report On International Price Program
3. Status Report On Producer Price Indexes
4. Status Report On Consumer Expenditures
5. Other Business

Wednesday, March 14

10:00 a.m.—Committee on Wages and Industrial Relations

1. Election of Committee Officers
2. Review of 1985 Budget for Wages and Industrial Relations
3. Collective Bargaining Settlements in 1983
4. Special Research on the Level of Employee Benefits
5. Data Needs for Collective Bargaining, Discussion Topic (Mr. Tom Swan)
6. Other business

The meetings are open to the public. It is suggested that persons planning to attend these meetings as observers contact Janice D. Murphey, Liaison, Business Research Advisory Council on Area Code (202) 523-1347.

Signed At Washington, D.C., this 13th day of February 1984.

Janet L. Norwood,

Commissioner of Labor Statistics.

[FR Doc. 84-4397 Filed 2-16-84; 8:45 am]

BILLING CODE 4510-24-M

Employment and Training Administration

[TA-W-14, 648]

Endicott Forging & Mfg. Co., Inc., Endicott, New York; Negative Determination on Reconsideration

On January 12, 1984, the Department issued an Affirmative Determination Regarding Application for Reconsideration for workers and former workers at Endicott Forging & Manufacturing Company, Inc., Endicott, New York. This determination was published in the **Federal Register** on January 20, 1984 (49 FR 2559).

The company in its application for reconsideration claimed that certain steel forging sales were lost to foreign firms supplying Endicott's customers. It also reported that the Department of Commerce recently certified the firm for trade adjustment assistance.

Investigation findings, which served as the bases for the Department's determination, show that the Endicott Forging and Manufacturing Company produced steel forgings and that the worker petition did not meet the "contributed importantly" test of Section 222 of the Group Eligiblity Requirements of the Trade Act of 1974. The "contributed importantly" test is usually demonstrated through a survey of the firm's customers which reflects the extent to which customers shifted purchases to foreign sources. Results of the Department's survey of Endicott's major customers show that those customers that decreased purchases from Endicott either did not import steel forgings or decreased their purchases of imported steel forgings in 1982 compared to 1981 and in the January through June period of 1983 compared to the same period in 1982. The one customer which increased its import purchases in the first six months of 1983 compared to the same period in 1982 also had increased purchases from Endicott.

On reconsideration, the scope and results of the customer survey were reviewed to ascertain whether they supported a change in the Department's determination. The scope of the survey was sound and the results which were attested to by responsible officials of the firms surveyed did not substantiate that imports of steel forgings contributed importantly to worker separations at Endicott.

With respect to certain sales of forging parts lost to foreign firms supplying Endicott's customers, investigation findings show that most of these sales were lost in 1981 and therefore not applicable to the Department's determination. Section 233(b)(1) of the Act does not permit the certification of workers separated more than one year prior to the date of the petition on which a certification is issued. The date of the Endicott petition is May 13, 1983. The remaining sales of

the forging part numbers in question in 1982 and 1983 did not account for a sufficient percent of Endicott's sales to provide a basis for certification. Production workers at Endicott are not separately identifiable by forging part number.

Conclusion

After reconsideration, I reaffirm the original denial eligibility to apply for adjustment assistance to workers and former workers of the Endicott Forging & Manufacturing Co., Inc., Endicott, New York.

Signed at Washington, D.C., this 7th day of February 1984.

Robert O. Deslongchamps,

Director, Office of Legislation and Actuarial Service, UIS.

[FR Doc. 84-4393 Filed 2-16-84; 8:45 am]

BILLING CODE 4510-30-M

Investigations Regarding Certifications of Eligibility to Apply for Worker Adjustment Assistance

Petitions have been filed with the Secretary of Labor under Section 221(a) of the Trade Act of 1974 ("the Act") and are identified in the Appendix to this notice. Upon receipt of these petitions, the Director of the Office of Trade Adjustment Assistance, Employment and Training Administration, has instituted investigations pursuant to Section 221(a) of the Act.

The purpose of each of the investigations is to determine whether the workers are eligible to apply for adjustment assistance under Title II, Chapter 2, of the Act. The investigations will further relate, as appropriate, to the determination of the date on which total or partial separations began or threatened to begin and the subdivision of the firm involved.

The petitioners or any other persons showing a substantial interest in the subject matter of the investigations may request a public hearing, provided such request is filed in writing with the Director, Office of Trade Adjustment Assistance, at the address shown below, not later than February 27, 1984.

Interested persons are invited to submit written comments regarding the subject matter of the investigations to the Director, Office of Trade Adjustment Assistance, at the address shown below, not later than February 27, 1984.

The petitions filed in this case are available for inspection at the Office of the Director, Office of Trade Adjustment Assistance, Employment and Training Administration, U.S. Department of Labor, 601 D Street NW., Washington, D.C. 20213.

Signed at Washington, D.C. this 13th day of February 1984.

Marvin M. Fooks,

Director, Office of Trade Adjustment Assistance.

APPENDIX

Petitioner Union/workers or former workers of—	Location	Date received	Date of petition	Petition no.	Articles produced
Eastern Associated Coal Corp., Warton #4 Mine & Lightfoot #1 Mine (UMWA).	Wharton, WV	2/6/84	1/27/84	TA-W-15,204	Metallurgical coal, mining.
Glassboro Sportswear, Inc. (ILGWU)	Glassboro, NJ	2/3/84	1/26/84	TA-W-15,205	Contractor—ladies' blazers.
Laura of Dallas, Inc. (company)	Dallas, TX	2/3/84	1/30)/84	TA-W-15,206	Ladies' dresses & sportswear.
McQuay, Inc., Components Div. (IAMAW)	Milwaukee, WI	2/6/84	1/30/84	TA-W-15,207	Industrial & commercial heat transfer products.
Melville Footwear Mfg., Inc., Burnswick Div. (workers)	Brunswick, Maine	2/8/84	2/3/84	TA-W-15,208	Cuts & stitches components parts for women's boots.
Royal Coal Co. (workers)	Oak Hill, WV	2/6/84	2/2/84	TA-W-15,209	Metallurgical coal—mining.
TRW Bearings Div., TRW, Inc. (UAW)	Falconer, NY	2/684	1/2/84	TA-W-15,210	Roller & ball berings (aircraft industry).
TRW Bearings Div., TRW, Inc. (UAW)	Jamestown, NY	2/3/84	1/2/84	TA-W-15,210	Roller & ball bearings (agricultural & automobile industry).
US. Steel Corp., Atlanta Region, Jacksonville Sates Office (wkrs).	Fairless Hills, PA	2/9/84	1/3/84	TA-W-15,212	Steel wire & rod.
US. Steel Corp., Atlanta Region, Jacksonville Sates Office (wkrs).	Jacksonville, Fla	2/8/84	1/3/84	TA-W-15,213	Sales Office.

[FR Doc. 84-4395 Filed 2-16-84; 8:45 am]

BILLING CODE 4510-30-M

Revised Schedule of Remuneration for the UCX Program

Under Section 8521(a)(2) of Title 5 of the United States Code the Secretary of Labor is required to issue from time to time a Schedule for Remuneration specifying the pay and allowances for each pay grade of members of the military services. The schedules are used to calculate the base period wages and benefits payable under the program of Unemployment Compensation for Ex-Servicemembers (UCX Program).

The revised schedule published with this Notice reflects increases in military pay and allowances which were effective in January 1984. The revised schedule was issued on January 9, 1984, in Unemployment Insurance Program Letter No. 12-84, and is effective with respect to UCX first claims filed on or after April 1, 1984.

Accordingly, the following new Schedule of Remuneration, issued pursuant to 5 U.S.C. 8521(a)(2) and 20 CFR 614.12, applies to "First Claims" for UCX which are effective on and after April 1, 1984:

Pay grade	Monthly rate
(1) *Commissioned Officers:*	
O-10	$6,864
O-9	6,863
O-8	6,812
O-7	6,059
O-6	5,051
O-5	4,145
O-4	3,461
O-3	2,880
O-2	2,301
O-1	1,716
(2) *Warrant Officers:*	
W-4	3,205
W-3	2,663
W-2	2,260
W-1	1,923
(3) *Enlisted Personnel:*	
E-9	2,908
E-8	2,437
E-7	2,081
E-6	1,770
E-5	1,497
E-4	1,271
E-3	1,102
E-2	1,025
E-1	913

The publication of this new Schedule of Remuneration does not revoke any prior schedule or change the period of time any prior schedule was in effect.

Signed at Washington, D.C., on February 9, 1984.

Patrick J. O'Keefe,

Acting Deputy Assistant Secretary of Labor.

[FR Doc. 84-4394 Filed 2-16-84; 8:45 am]

BILLING CODE 4510-30-M

NATIONAL SCIENCE FOUNDATION

Advisory Committee for Advance Scientific Computing; Meeting

In accordance with the Federal Advisory Committee Act, as amended, Pub. L. 92-462, the National Science Foundation announces the following meeting:

Name: Advisory Committee for Advanced Scientific Computing.

Date and Time: March 5-6, 1984; 9:00 am to 5:00 pm each day.

Place: Room 540, National Science Foundation, 1800 G Street NW., Washington, D.C. 20550.

Type of Meeting: Part Open—Open March 5-9 am to noon; Closed March 5-noon to 5:00 pm; Closed March 6—9:00 am to 5:00 pm.

Contact Person: Dr. Edward F. Hayes, Controller, National Science Foundation, Washington, D.C. 20550, Telephone (202) 357-9418.

Summary of Minutes: May be obtained from Dr. Edward F. Hayes.

Purpose of Committee: To provide advice and recommendations concerning NSF support for advanced computing resources.

Agenda: The open session will be focused on planning. The closed session will involve review of pending proposals.

Reason for Closing: The closed session of the meeting will deal with a review of proposals containing the names of applicant institutions and principal investigators and privileged information from the files pertaining to the proposals. These matters are within exemptions (4) and (6) of U.S.C. 552b(c), Government in the Sunshine Act.

Authority to Close Meeting: This determination was made by the Committee Management Officer pursuant to provisions of Section 10(d) of Pub. L. 92-463. The Committee Management Officer was delegated the authority to make such determinations by the Director, NSF, on July 6, 1979.

M. Rebecca Winkler,

Committee Management Coordinator.

[FR Doc. 84-4406 Filed 2-16-84; 8:45 am]

BILLING CODE 7555-01-M

Committee Management Advisory Committee for Science and Engineering Education; Establishment

Pursuant to the Federal Advisory Committee Act (Pub. L. 92-463), it is hereby determined that the establishment of the Advisory Committee for Science and Engineering Education is necessary, appropriate, and in the public interest in connection with the performance of duties imposed upon the Director, National Science Foundation (NSF), and other applicable law. This determination follows consultation with the Committee Management Secretariat, General Services Administration, pursuant to Section 9(a) of the Federal Advisory Committee Act and other applicable issuances.

Name of Committee: Advisory Committee for Science and Engineering Education.

Purpose: To provide advice and recommendations concerning the Foundation's science and engineering education programs.

Effective Date of Establishment and Duration: This establishment is effective upon filing the charter with the Director, NSF, and with the standing committees of Congress having legislative jurisdiction of the Foundation. The Committee will operate for an initial period of two years.

Membership: Members of the Committee shall be chosen from among experts in the fields of science and engineering education in a mammer so as to provide appropriate balance among: various scientific and engineering disciplines, and institutional types, including educational institutions at all levels, industry and nonprofit organizations as appropriate.

Furthermore, those chosen shall reflect a balance derived from the consideration of other important indices, including the geographic location and sex of its members, and the participation of groups underrepresented in science and engineering.

Operation: The Commitltee will operate in accordance with provisions of the Federal Advisory Committee Act (Pub. L. 92-463), Foundation policy and procedures, GSA Interim Rule on Federal Advisory Committee Management, and other directives and instructions issued in implementation of the Act.

Edward A. Knapp,

Director.

February 14, 1984.

[FR Doc. 84-4405 Filed 2-16-84; 8:45 am]

BILLING CODE 7555-01-M

SECURITIES AND EXCHANGE COMMISSION

[File No. 22-12939]

General Foods Corp.; Application and Opportunity for Hearing

February 13, 1984.

Notice is hereby given that General Foods Corporation, a Delaware corporation (the "Company"), has filed an application under clause (ii) of Section 310(b)(1) of the Trust Indenture Act of 1939 (the "Act") for a finding by the Securities and Exchange Commission (the "Commission") that the trusteeship of Citibank, N.A. ("Citibank") under indentures of the Company dated July 1, 1970, March 1, 1974, June 15, 1981, and March 1, 1982, (collectively the "Qualified Indentures") heretofore qualified under the Act, and the trusteeship of Citibank under an indenture between The Delaware Economic Development Authority (the "Authority") and Citibank, Trustee, dated as of December 1, 1983 (the "1983 Indenture") which will not be qualified under the Act because of the exemption contained in Section 304(a)(4) of the Act, is not so likely to involve a material conflict of interest as to make it necessary in the public interest or for the protection of investors to disqualify Citbank from acting as trustee under the Qualified Indentures.

Section 310(b) of the Act provides, *inter alia*, that if a trustee under an indenture qualified under the Act has or shall acquire any conflicting interest (as defined in the Section), it shall within ninety days after ascertaining that it has such conflicting interest either eliminate such conflicting interest or resign. Subsection (1) of this Section provides, with certain exceptions that a trustee is deemed to have a conflicting interest if it is acting as trustee under another indenture of the same obligor. However, pursuant to clause (ii) of subsection (1), there may be excluded from the operation of this provision another indenture or indentures under which other securities of such obligor are outstanding, if the issuer shall have sustained the burden of proving on application to the Commission, and after opportunity for hearing thereon, that trusteeship under the indentures is not so likely to involve a material conflict of interest as to make it necessary in the public interest or for the protection of investors to disqualify such trustee from acting as trustee under one of such indentures.

The Company alleges that:

1. The Company has outstanding (as of October 1, 1983) the following debentures and notes (collectively the "Securities"):

(a) $20,282,000 principal amount of its 8⅞% Sinking Fund Debentures due July 1, 1990 issued under an indenture dated as of July 1, 1970 between the Company and Citibank, Trustee after giving effect to a sinking fund payment of $4,500,000 made on July 1, 1983. This indenture was filed as Exhibit 9(c) 2.3 to Registration Statement No. 2–37567 of the Company under the Securities Act of 1933 and has been qualified under the Act.

(b) $100,000,000 principal amount of its 7½% Notes due March 1, 1984, issued under an indenture dated as of March 1, 1974 between the Company and Citibank, Trustee. This indenture was filed as Exhibit 16(b) 2.2 to Registration Statement No. 2–50181 of the Company under the Securities Act of 1933 and has been qualified under the Act.

(c) $150,000,000 principal amount of its 6% Debentures due June 15, 2001 and $200,000,000 principal amount of its 7% Debentures due June 15, 2011 pursuant to two indentures both dated as of June 15, 1981, between the Company and Citibank, Trustee. The indentures applicable to the aforementioned obligations were filed as Exhibits 13(4)(a) and 13(4)(b), respectively, to Registration Statement No. 2–72815 of the Company under the Securities Act of 1933 and have been qualified under the Act.

(d) $150,000,000 14⅜% Notes due March 1, 1989 issued under an indenture dated as of March 1, 1982 between the Company and Citibank, Trustee. This indenture was filed as Exhibit 13(4) to Registration Statement No. 2–75968 under the Securities Act of 1933 and has been qualified under the Act.

2. On December 20, 1983, the Authority issued $3,300,000 aggregate principal amount of its 9% Pollution Control Revenue Bonds (General Foods Financial Corporation Project), Series 1983 (the "Bonds") pursuant to the 1983 Indenture. The proceeds of the sale of the Bonds have been loaned by the Authority to General Foods Financial Corporation, a wholly-owned subsidiary of the Company ("GFFC") pursuant to the terms of a Loan Agreement dated as of December 1, 1983 between the Authority and GFFC (the "Loan Agreement"). The obligations of GFFC under the Loan Agreement are unconditionally guaranteed by the Company. The Bonds are to be payable solely from revenues derived by the Authority from GFFC under the terms of the Loan Agreement. The rights and benefits of the Authority under the Loan Agreement have been assigned to the Trustee as security for payment of the Bonds. The Bonds are exempt from registration under the Securities Act of 1933 by virtue of an exemption contained in Section 3(a)(2) and the 1983 Indenture is not being qualified under the Act.

3. Section 7.08 of the Qualified Indentures provide in part as follows:

> Section 7.08. (a) If the Trustee has or shall acquire any conflicting interest as defined in this Section 7.08, it shall, within 90 days after ascertaining that it has such conflicting interest, either eliminate such conflicting interest or resign in the manner and with the effect specified in Section 7.10.
>
> (b) In the event that the Trustee shall fail to comply with the provisions of subsection (a) of this Section 7.08, the Trustee shall, within 10 days after the expiration of such 90 day period, transmit notice of such failure to the debentureholders in the manner and to the extent provided in subsection (c) of Section 5.04.
>
> (c) For the purposes of this Section 7.08 the Trustee shall be deemed to have a conflicting interest if
>
> (1) the Trustee is trustee under another indenture under which any other securities, or certificates of interest or participation in any other securities, of the Company, are outstanding, unless such other indenture is a collateral trust indenture under which the only collateral consists of Debentures issued under this Indenture, *provided that there shall be excluded from the operation of this paragraph any other indenture or indentures under which other securities, or certificates of interest or participation in other securities, of the Company are outstanding if* (i) this Indenture and such other indenture or indentures are wholly unsecured and such other indenture or indentures are hereafter qualified under the Trust Indenture Act of 1939, unless the Securities and Exchange Commission shall have found and declared by order pursuant to subsection (b) of Section 305 or subsection (c) of Section 307 of the Trust Indenture Act of 1939 that differences exist between the provisions of this Indenture and the provisions of such other indenture or indentures which are so likely to involve a material conflict of interest as to make it necessary in the public interest or for the protection of investors to disqualify the Trustee from acting as such under this Indenture or such other indenture or indentures, or (ii) *the Company shall have sustained the burden of proving, on application to the Securities and Exchange Commission and after opportunity for hearing thereon, that the trusteeship under this Indenture and such other indenture or indentures is not so likely to involve a material conflict of interest as to make it necessary in the public interest or for the protection of investors to disqualify the Trustee from acting as such under one of such indentures;* (Emphasis Supplied)

4. Execution of the 1983 Indenture may involve Citibank in a conflict of interest within the meaning of Section 7.08 of the Qualified Indentures since the 1983 Indenture is not being qualified under the Act and is not the subject of any other proceeding of the Commission.

5. The Company's obligations with respect to the Securities and the Bonds are wholly unsecured and rank on a parity with each other. However, the Company may, under certain conditions specified in Section 11.03 of the Qualified Indentures, be required to secure the Securities issued pursuant to the Qualified Indentures. The Company believes it is extremely unlikely that the Securities issued pursuant to the Qualified Indentures will ever become secured.

6. The only material differences between the Qualified Indentures and the 1983 Indenture and between the rights of the holders of the Securities and the holders of the Bonds relate to the fact that the Company is the issuer of the Securities whereas its payment obligations under the Bonds are through a guaranty by the Company to Citibank, Trustee, of GFFC's obligations under the Loan Agreement and also relate to differences between the Qualified Indentures and the 1983 Indenture as to aggregate principal amounts, dates of issue, denominations, interest rates, interest payment dates, maturity, form of registration, redemption provisions and procedures, Trustees' reports, conversion, provisions for conflicting interest of the Trustee and other provisions of a similar nature. The provisions of the 1983 Indenture also differ from the Qualified Indentures in providing for optional and mandatory redemption prior to maturity upon the occurrence of certain specified events, in not providing for Sinking Fund redemption, having different time periods upon which certain defaults become an "event of default", and having different convenants, conditions and provisions, reflecting the differing nature of the transaction.

7. No default has at any time existed under the Qualified Indentures or under the 1983 Indenture. It is possible that a default might arise under one of the Qualified Indentures or the 1983 Indenture without necessarily arising under both Qualified Indentures and the 1983 Indenture. Apart from any default, it is possible under the convenants in the Qualified Indentures that the Securities may in the future become secured under the Section 11.03 while the Bonds remain unsecured. If this should occur, a conflicting interest of Citibank might arise which would require either the elimination of such conflicting interest or the resignation of Citibank under the Qualified Indentures or the 1983 Indenture, but unless and until one of such events occur there will be no conflicting interest by reason of such convenants.

8. Such differences as exist between the Qualified Indentures and the 1983 Indenture are not so likely to involve a material conflict of interest as to make it necessary in the public interest or for the protection of investors to disqualify Citibank from acting as Trustee under the Qualified Indentures or the 1983 Indenture.

9. Under Section 7.08(c)(1) of the Qualified Indentures, Citibank is deemed to have a conflicting interest because it is acting as Trustee under the 1983 Indenture and the Qualified Indentures and because the 1983 Indenture has not been qualified under the Act, unless it is deemed not to have such a conflicting interest by reason of a finding by the Commission after an opportunity for a hearing that Citibank's acting as Trustee under the Qualified Indentures and the 1983 Indenture is not so likely to involve a material conflict of interest as to make it necessary in the public interest or for the protection of investors to disqualify Citibank from so acting.

10. The Company has waived (a) notice of hearing, (b) hearing on the issues raised by its application and (c) all rights to specify procedures under the Commission's Rules of Practice with respect to the application.

For a more detailed account of the matters of fact and law asserted, all persons are referred to said application, which is on file in the offices of the Commission at 450 Fifth Street, NW., Washington, D.C. 20549.

Notice is further given that an order granting this application may be issued by the Commission at any time on or after March 9, 1984, unless prior thereto a hearing upon the application is ordered by the Commission, as provided in clause (ii) of Section 310(b)(1) of the Trust Indenture Act of 1939, as amended. Any interested person may, not later than March 9, 1984 at 5:30 P.M., in writing, submit to the Commission, his views or any additional facts bearing upon this application or the desirability of a hearing thereon. Any such communication request should be addressed: Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, D.C. 20549, and should state briefly the nature of the interest of the person submitting such information or requesting a hearing, the reasons for such request, and the issues of fact and law raised by the application which he desires to controvert.

For the Commission, by the Division of Corporation Finance, pursuant to delegated authority.

George A. Fitzsimmons,

Secretary.

[FR Doc. 84-4468 Filed 2-16-84; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 34-20642; File No. SR-CBOE-84-07

Self-Regulatory Organizations; Proposed Rule Change by Chicago Board Options Exchange, Incorporated; Allocation Plan

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934, 15 U.S.C. 78s(b)(1), notice is hereby given that on February 6, 1984, the Chicago Board Options Exchange, Incorporated filed with the Securities and Exchange Commission the proposed rule change as described in Items I, II and III below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Text of the Proposed Rule Change.

Additions are *italicized*; deletions are bracketed.

ALLOCATION PLAN

A. through E.—no change.

F. At any time after the initial allocation, further allocations shall be held at the request or one or more options exchanges, [continuing the sequence described in A.5] whereby the four participating options exchanges would be able to select any unallocated eligible underlying stock [including new underlying stock becoming eligible for options trading by the occurrence of events or because an options exchange that had previously been allocated an underlying stock failed to commence the trading of options with respect thereto within six months of the date of selection] under the procedures set forth as follows:

1.—no change.

2. Each of the exchanges shall have 30 calendar days from the date of notification of a call for an allocation to provide the arbitrator with a list of desired underlying securities. Such list may not be changed once submitted to the arbitrator. Once the arbitrator has received lists from all the exchanges, he shall thereafter *(i)* serve copies of the selection lists on each of the exchanges *and (ii) establish the sequence for making stock selections, using the procedure set forth in Paragraph 2A below, and deliver notice to each of the exchanges* so that all exchanges receive *both* the *selection* lists *and selection sequence* on the same date.

2.A. For each allocation, the arbitrator, using the following procedure, shall establish the sequence for making stock selections by randomly matchnig a leter A through D with each of the four exchanges and using the order established below for up to four rounds. At the allocation, selection of eligible securities will then proceed in accordance with such order. If there are to be more than four rounds in an allocation, the arbitrator shall repeat the procedure, randomly matching the four letters to the four exchanges a second time to establish the selection order for rounds five through eight, and so on, depending on the number of rounds called for by the allocation. The selection order is as follows:

Round	Selection order
1	A B C D
2	D C B A
3	C D A B
4	B A D C

3. Through 9.—no change.

G. Though I.—no change

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the poposed rule change. The text of these statements may be examined at the places specified in Item IV below and is set forth in sections (A), (B), and (C) below.

(A) Self-Regulatory Organization's Statement of the Purpose of, and the Statutory Basis for, the Proposed Rule Change

The Chicago Board Options Exchange, Incorporated ("CBOE") proposes to amend the agreement previously entered into by the options exchanges and approved by the Securities and Exchange Commission on May 30, 1980 (*see* Securities Exchange Act Release No. 16863) and as amended on June 1, 1981 (*see* Securities Exchange Act Release No. 17833) and February 2, 1982 (*see* Securities Exchange Act Release No. 18464), concerning procedures for the selection and replacement of underlying securities for options trading. This agreement is also referred to as the "Allocation Plan."

The purpose of this proposed rule change is to amend the option

exchanges' Allocation Plan to establish a random order for making stock selections during an allocation. The American, Philadelphia and Pacific Stock Exchanges have filed similar amendments on January 16, 1984, February 1, 1984, and February 2, 1984. The proposed rule change is in furtherance of the Commission's request that the option exchanges create a plan that provides for the equitable allocation of new options among the options exchanges. The option exchanges have agreed to put this rule change into effect after the first allocation to take place after December 16, 1983. The proposed rule change is consistent with section 6(b)(5) of the Securities Exchange Act of 1934 (the Act), which provides in pertinent part that the rules of the Exchange be designed to promote just and equitable principles of trade.

(B) Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change creates any burden on competition that is not necessary or appropriate under the Act.

(C) Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants or Others

Comments have neither been solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) by order approve such proposed rule change, or

(B) institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submission should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, Washington, D.C. 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying the Commission's Public Reference Section, 450 Fifth Street NW., Washington, D.C. Copies of such filing will also be available for inspection and copying at the principal office of the above-mentioned self-regulatory organization. All submissions should refer to the file number in the caption above and should be submitted within 21 days after the date of this publication.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.

Dated: February 10, 1984.

George A. Fitzsimmons,

Secretary.

[FR Doc. 84-4469 Filed 2-16-84; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 34-20644; File No. SR-CBOE-84-04]

Self-Regulatory Organizations; Proposed Rule Change by Chicago Board Options Exchange, Incorporated; Option Contracts Open for Trading

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934, 15 U.S.C. 78s(b)(1), notice is hereby given that on January 30, 1984, the Chicago Board Options Exchange, Incorporated filed with the Securities and Exchange Commission the proposed rule change as described in Items I, II and III below, which Items have been prepared by the self-regulatory organizaiton. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Text of Proposed Rule Change

Additions are italicized; deletions are bracketed.

Option Contracts Open for Trading

Rule 5.5. The Securities Committee shall, from time to time, open for trading series of options in respect of underlying securities which have been approved by the Board in accordance with Rule 5.3. Only option contracts of series of options currently open for trading may be purchased or written on the Exchange. The opening of a new series of options shall not affect other series of options of the same class previously opened. On the business day prior to the expiration date of particular option series, the closing rotation for such series shall commence at [2:00 p.m.,] *3:00 p.m.* [except that the closing rotation for index option series shall commence at 3:00 p.m.]

II. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below and is set forth in sections (A), (B), and (C) below.

(A) Self-Regulatory Organization's Statement of the Purpose of, and the Statutory Basis for, the Proposed Rule Change

Under existing rules, the open trading on expiring options series other than index options stops at 2:00 p.m. on the Friday prior to expiration; open trading on expiring index option series stops at 3:00 p.m. The proposed rule change would permit open trading to continue until 3:00 p.m. on the Friday before expiration in all expiring series of options.

The proposed rule change would serve several purposes. First, the rule would conform the time for open trading in expiring options series. Second, the rule would eliminate the potential confusion to the public of disparate closing times for open trading in expiring options series. Third, the rule change would permit open trading in expiring equity option series to continue while the underlying stocks continue to trade. The Exchange has conferred with the American, Pacific and Philadelphia Stock Exchanges, all of whom are considering a comparable rule change.

(B) Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed amendment imposes any unnecessary burdens on competition.

(C) Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

Comments on the proposed rule change were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal**

Register or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) by order approve such proposed rule change, or

(B) institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street NW., Washington, D.C. 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying the Commission's Public Reference Section, 450 Fifth Street NW., Washington, D.C. Copies of such filing will also be available for inspection and copying at the principal office of the above-mentioned self-regulatory organization. All submissions should refer to the file number in the caption above and should be submitted within 21 days after the date of this publication.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.

Dated: February 10, 1984.

George A. Fitzsimmons,

Secretary.

[FR Doc. 84-4471 Filed 2-16-84; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 34-20636; File No. SR-PHLX 83-26]

Self-Regulatory Organizations; Proposed Rule Change by Philadelphia Stock Exchange, Inc.; Relating Procedures for Delivery and Pricing of Orders in Securities Which Compose an Index

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934, 15 U.S.C. 78s(b)(1) notice is hereby given that on December 19, 1983 the Philadelphia Stock Exchange, Inc. filed with the Securities and Exchange Commission the proposed rule change as described in Items I, II and III below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The proposed rule change which is described below, consists of procedures regarding the delivery and pricing of orders in Philadelphia Stock Exchange ("PHLX") traded securities which compose an index. Such procedures are proposed to be implemented on a nine-month pilot basis.

(a) Definitions:

(i) PRL means a combined round-lot and odd-lot order, and

(ii) eligible securities means those securities designated by the specialist.

(b) The PHLX proposes, on a trial basis, to utilize existing computer facilities to enable member organizations to electronically transmit, directly to the specialist post, market orders in eligible securities after the opening of trading in such securities. Such orders will be executed in accordance with the applicable rules of the PHLX as follows:

(A) Market orders (odd-lots, round-lots and PRL's up to 599 shares) will be executed at the best bid/offer quote among the American, Boston, Cincinnati, Midwest, New York, Pacific or Philadelphia Stock Exchanges.

(B) Market orders (round-lots and PRL's over 599 shares) will be executed in accordance with arrangements agreed upon by the specialist and the member organization transmitting the order.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The self-regulatory organization has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of such statements.

(A) Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

3. Self-Regulatory Organization's Statement on the Purpose and Statutory Basis for the Proposed Rule Change.

(a) *Purpose.* Member organizations of the PHLX have developed techniques for reflecting the performance of an index composed of equity securities by putting together a package of securities proportioned in such a fashion so as to form a hedge against price movement in the index itself with a high degree of mathematical accuracy. In using such techniques, member organizations will be able to hedge, with equity securities, index related transactions, e.g. in index options, index futures and options on index futures.

A major difficulty in using equity securities as a hedge in index related transactions is entry and execution of the orders in the equity securities which compose the hedge. For example, if the performance of a given index could be mirrored by positions in 17 of the securities composing the index, e.g., 600 shares of A; 138 shares of B; 328 shares of C; 300 shares of D; 97 shares of E and so forth, it would be necessary today to enter the 17 orders individually through a time consuming, inefficient and cumbersome process. Unless all of the orders are market orders, some may not be executed. The purpose of the method of order entry and execution described in Item 1 herein is to provide member organizations with an easy, efficient method of order entry and execution with timely reports. This method will be called Designated Underlying Index Transaction ("DUIT").

The personal computer of the member organization ("user") will allow the user to build and maintain a table of securities, constructed in such a manner so as to constitute a hedge in index related transactions. The purpose of the table is two-fold: (1) To calculate the value of shares required to compose such a hedge and (2) to calculate the number of shares of each security to be executed in order to effect the hedge.

When the user wishes to hedge an index related transaction with equity securities by means of a Designated Underlying Index Transaction, the necessary orders in the securities composing the hedge will be formatted and delivered in an automated fashion.

Since the purpose of the Designated Underlying Index Transaction program is to provide an easy, efficient method for entry and execution of orders in

equity securities which will a hedge an index related transaction, the program is not intended for any other use such as purchasing a package or group of securities without a corresponding index related transaction. Similarly, the orders in equity securities which will provide the hedge should be entered promptly by the user upon entry of the corresponding index related order(s).

Should a member organization use the Designated Underlying Index Transaction program for a purpose other than that for which it is intended or use it in a manner other than described herein, a specialist may withdraw the eligibility of one or more securities with respect to such member organization.

Given the nature of the Designated Underlying Index Transaction program and the prohibition against users entering orders to sell short in connection therewith, all orders entered under the program will be for the purchase or sale (long) of such securities. Accordingly the Exchange is requesting an exemption for the specialist from the short selling rules pursuant to paragraph (f) of SEC Rule 10a–1 with respect to principal short sales effected to fill orders entered under the Designated Underlying Index Transaction program at a price which represents a "minus" tick from the consolidated last sale.

Prior to the expiration of the nine-month pilot period, the Exchange expects to either submit a formal codification of the procedures described herein, revised as appropriate based on the Exchange's experience with the pilot, or request an extension of the time period for the pilot pending further study and evaluation. The Exchange may also terminate the experiment at any time.

(b) *Statutory basis for proposed rule change.* Implementation of the proposed rule change will be consistent with those provisions of the Securities Exchange Act of 1934 ("Act") which encourages the use of new data processing and communications techniques which create the opportunity for more efficient and effective market operations. See Sections 6(b)(5) and 11A(a)(1) of the Act.

Self-Regulatory Organization's Statement on Burden on Competition

The PHLX does not believe that any burdens will be placed on competition as a result of such change.

(C) Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

No comments on this proposed rule change have been solicits or received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) By order approve such proposed rule change, or

(B) Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street NW., Washington, D.C. 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street NW., Washington, D.C. 20549. Copies of such filing will also be available for inspection and copying at the principal office of the above-mentioned self-regulatory organization. All submissions should refer to the file number in the caption above and should be submitted within 21 days after the date of this publication.

For the Commission, by the Division of Market Regulation, Pursuant to delegated authority.

Dated: February 9, 1984.

George A. Fitzsimmons,

Secretary.

[FR Doc. 84-4470 Filed 2-16-84; 8:45 am]

BILLING CODE 8010-01-M

SMALL BUSINESS ADMINISTRATION

[Declaration of Disaster Loan Area No. 2114; Amdt. No. 1]

Texas; Declaration of Disaster Loan Area

Because certain victims of this disaster will be unable to determine their physical loss within the established deadline for filing applications, the above numbered declaration (49 FR 2041) is amended to extend the deadline for filing physical damage applications to May 8, 1984.

All other information remains the same, i.e., the termination date for filing applications for economic injury is October 8, 1984.

(Catalog of Federal Domestic Assistance Programs Nos. 59002 and 59008)

Dated: February 13, 1984.

Bernard Kulik,

Deputy Associate Administrator for Disaster Assistance.

[FR Doc. 84-4446 Filed 2-16-84; 8:45 am]

BILLING CODE 8025-01-M

VETERANS ADMINISTRATION

Agency Form Under OMB Review

AGENCY: Veterans Administration.

ACTION: Notice.

The Veterans Administration has submitted to OMB for review the following proposal for the collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35). This document contains a proposed extension and lists the following information: (1) The department of staff office issuing the form; (2) the title of the form; (3) the agency form number, if applicable; (4) how often the form must be filled out; (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 fill out the form; and (8) an indication of whether section 3504(h) of Pub. L. 96–511 applies.

ADDRESSES: Copies of the proposed form and supporting documents may be obtained from Patricia Views, Agency Clearance Officer (004A2), Veterans Administration, 810 Vermont Avenue, NW, Washington, DC 20420, (202) 389–2146. Comments and questions about the items on this list should be directed to the VA's OMB Desk Officer, Dick Eisinger, Office of Management and Budget, 726 Jackson Place, NW., Washington, DC 20503, (202) 395–6880.

DATES: Comments on the form should be directed to the OMB Desk Officer within 60 days of this notice.

Dated: February 13, 1984.

By direction of the Administrator.

Dominick Onorato,

Associate Deputy Administrator for Information Resources Management.

Extension

1. Department of Veterans Benefits
2. Certification of Attendance for Courses Not Leading to a Standard College Degree and Farm Cooperative Courses
3. VA Form 22–6553a
4. On occasion and monthly
5. Individuals or households, State or local governments, Non-profit institutions, Small businesses or organizations
6. 42,213 responses
7. 119,603 hours
8. Section 3504 does apply

[FR Doc. 84–4411 Filed 2–16–84; 8:45 am]

BILLING CODE 8320–01–M

Proposed Expansion of the National Cemetery at Florence, South Carolina; Finding of No Significant Impact

AGENCY: Veterans Administration.

ACTION: Notice of Finding of No Significant Impact.

SUMMARY: It is the intention of the VA (Veterans Administration) to expand the operation of the existing Florence National Cemetery by acquiring new additional acreage located near Florence, South Carolina.

The VA has assessed the potential environmental impacts that may occur resulting from the development of approximately 4.6 acres of land located in close proximity to the existing VA National Cemetery. The expansion project will involve acquisition of the land and construction of a maintenance building and yard, grading of land, construction of roads, drainage facilities, water distribution lines and gravesite control monumentation. It is estimated the project will provide approximately 3,000 gravesites and will provide sufficient burial area for continuation of interments. To date, no specific design has been accomplished, nor has a project cost estimate been determined.

Three alternatives and the option of "No Action" have been considered in the project development process.

The preferred alternative proposes the scope of the work as described above on a site located approximately 350 feet east of the existing cemetery entrance road and is situated on the oppossite roadside of National Cemetery Road (State Highway Route 13). The land would be acquired by donation.

Another alternative considered acquisition of adjacent land continguous with the existing cemetery. This option would require assembling privately owned parcels comprising approximately 30 acres. Because of both the legal and economical technicalities involved, it was determined that the potential success of land assembly would be minimal.

Another alternative land area within a portion of the South Carolina Mental Retardation Center campus was also considered. This alternative, consisting of approximately 6 acres, would require alteration of an existing campus road and granting of easement for landscape buffer. Otherwise, this alternative is similar to the proposed action in terms of location and terrain.

The "No Action" alternative would continue to insure the closure of the national cemetery as it currently exists. The cemetery has been closed to burials and accommodates only re-opening of partially utilized plots at this time.

The proposed project action will affect the human and natural environment to a minimal degree influencing only soils and air quality. Earthwork operations will expose bare soil to wind and water erosion. Disturbed soil during construction exhibits a high probability of significant erosion if not controlled. Impacts upon air quality include associated construction dust and fumes.

The mitigation of the described impacts will include erosion and sedimentation controls. During construction and operation, the project will adhere to applicable Federal, State, and local air quality standards. VA construction specifications will include Environmental Protection Specifications, Section EP, which will specifically address actions to avoid environmental effects.

Findings conclude the proposed action will not cause a significant effect on the physical and human environment and therefore does not require preparation of an Environmental Impact Statement. A determination of no effect has been received from the State of South Carolina Historic Preservation Officer, pursuant to Advisory Council on Historic Preservation Regulations, 36 CFR Part 800.

The significance of the identified impacts has been evaluated relative to the considerations of both context and intensity so defined by the Council on Environmental Quality, 40 CFR 1508.27.

An Environmental Assessment has been performed in accordance with the requirements of the National Environmental Policy Act Regulations, 40 CFR 1501.3 and 1508.9. A "Finding of No Significant Impact" has been reached based upon the information presented in this assessment.

The assessment is being placed for public examination at the Veterans Administration, Washington, DC. Persons wishing to examine a copy of the document may do so at the following office: Mr. William F. Sullivan, Director, Office of Environmental Affairs (088C), Room 423, Veterans Administration, 811 Vermont Avenue, NW., Washington, DC 20420, (202) 389–3316. Questions or requests for single copies of the Environmental Assessment may be addressed to the above office.

Dated: February 13, 1984.

By direction of the Administrator.

Everett Alvarez, Jr.,

Deputy Administrator.

[FR Doc. 84–4409 Filed 2–16–84; 8:45 am]

BILLING CODE 83201–01–M

Advisory Committee on Readjustment Problems of Vietnam Veterans; Meeting

The Veterans Administration gives notice under Pub. L. 92–463 that a meeting of the Advisory Committee on the Readjustment Problems of Vietnam Veterans will be held in room 119, VA Central Office, 810 Vermont Avenue, NW., Washington, D.C., on March 8 and 9, 1984. The March 8 meeting will begin at 9:00 a.m. and conclude at 4:30 p.m. The March 9 meeting will begin at 8:30 a.m. and adjourn at 4:30 p.m.

Both meetings will be open to the public to the seating capacity of the room. Anyone having questions concerning the meetings may contact Mr. Edward Lord, Assistant Director for Administration and Development, Readjustment Counseling Service, Veterans Administration Central Office, at phone number 202/389–3317.

Dated: February 9, 1984.

By direction of the Adminstration.

Rosa Maria Fontanez,

Committee Management Officer.

[FR Doc. 84–4410 Filed 2–16–84; 8:45 am]

BILLING CODE 8320–01–M

Sunshine Act Meetings

Federal Register
Vol. 49, No. 34
Friday, February 17, 1984

This section of the FEDERAL REGISTER contains notices of meetings published under the "Government in the Sunshine Act" (Pub. L. 94-409) 5 U.S.C. 552b(e)(3).

CONTENTS

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COUNCIL ON ENVIRONMENTAL QUALITY
February 14, 1984.

TIME AND DATE: Monday, February 27, 1984, 10:00 a.m.

PLACE: Conference Room, 722 Jackson Place, NW., Washington, D.C.

STATUS: Open.

MATTERS TO BE CONSIDERED:

1. To hear a report on the status of the contract(s) awarded by CEQ/OEQ to conduct a study to consider and define a National Center for Water Resources Research and a study to define and plan a National Clearinghouse for Water Resources Information.
2. Other business.

Dinah Bear,
General Counsel.
[FR Doc. 84-4445 Filed 2-14-84; 4:54 pm]
BILLING CODE 1414-53-M

2

FEDERAL MARITIME COMMISSION

TIME AND DATE: 9:00 a.m.—February 22, 1984.

PLACE: Hearing Room One—1100 L Street, NW., Washington, D.C. 20573.

STATUS: Parts of the meeting will be open to the public. The rest of the meeting will be closed to the public.

MATTERS TO BE CONSIDERED: Portion open to the public:

1. Agreement No. 93-32: Modification of North Europe-United States Pacific Coast Freight Conference and Agreement No. 5200-45: Modification of the Pacific Coast European Conference to delete the provisions limiting joint services to one vote.

Portion Closed to the public:

1. Docket No. 83-20: AABCO, Inc.—Petition for Declaratory Order.

CONTACT PERSON FOR MORE INFORMATION: Francis C. Hurney, Secretary,(202) 523-5725.

Francis C. Hurney,
Secretary.
[FR Doc. 84-4447 Filed 2-15-84; 9:37 am]
BILLING CODE 6730-01-M

3

FEDERAL MARITIME COMMISSION

"FEDERAL REGISTER" CITATION OF PREVIOUS ANNOUNCEMENT: February 10, 1984, 49 FR 5227.

PREVIOUSLY ANNOUNCED TIME AND DATE OF THE MEETING: 9:00 a.m., February 15, 1984.

CHANGE IN THE MEETING: Withdrawal of the following item from the open session:

3. Docket No. 81-50: Per Container Rates—Tariff Filing Regulations Applicable to Carriers and Conferences in the Foreign Commerce of the United States—Notice seeking further comment.

Francis C. Hurney,
Secretary.
[FR Doc. 84-4544 Filed 2-15-84; 3:31 pm]
BILLING CODE 6730-01-M

4

FEDERAL RESERVE SYSTEM

TIME AND DATE: 10:00 a.m., Wednesday, February 22, 1984.

PLACE: 20th Street and Constitution Avenue, NW., Washington, D.C. 20551.

STATUS: Closed.

MATTERS TO BE CONSIDERED:

1. Personnel actions (appointments, promotions, assignments, reassignments, and salary actions) involving individual Federal Reserve System employees.
2. Any items carried forward from a previously announced meeting.

CONTACT PERSON FOR MORE INFORMATION: Mr. Joseph R. Coyne, Assistant to the Board; (202) 452-3204.

Dated: February 14, 1984.

James McAfee,
Associate Secretary of the Board.
[FR Doc. 84-4444 Filed 2-14-84; 4:54 pm]
BILLING CODE 6210-01-M

federal register

Friday
February 17, 1984

Part II

Department of Labor

Employment Standards Administration, Wage and Hour Division

Minimum Wages for Federal and Federally Assisted Construction; General Wage Determination Decisions; Notice

DEPARTMENT OF LABOR

Employment Standards Administration, Wage and Hour Division

Minimum Wages for Federal and Federally Assisted Construction; General Wage Determination Decisions

General wage determination decisions of the Secretary of Labor specify, in accordance with applicable law and on the basis of information available to the Department of Labor from its study of local wage conditions and from other sources, the basic hourly wage rates and fringe benefit payments which are determined to be prevailing for the described classes of laborers and mechanics employed on construction projects of the character and in the localities specified therein.

The determinations in these decisions of such prevailing rates and fringe benefits have been made by authority of the Secretary of Labor pursuant to the provisions of the Davis-Bacon Act of March 3, 1931, as amended (46 Stat. 1494, as amended, 40 U.S.C. 276a) and of other Federal statutes referred to in 29 CFR 1.1 (including the statutes listed at 36 FR 306 following Secretary of Labor's Order No. 24–70) containing provisions for the payment of wages which are dependent upon determination by the Secretary of Labor under the Davis-Bacon Act; and pursuant to the provisions of part 1 of subtitle A of title 29 of Code of Federal Regulations, Procedure for Predetermination of Wage Rates (37 FR 21138) and of Secretary of Labor's Orders 12–71 and 15–71 (36 FR 8755, 8756). The prevailing rates and fringe benefits determined in these decisions shall, in accordance with the provisions of the foregoing statutes, constitute the minimum wages payable on Federal and federally assisted construction projects to laborers and mechanics of the specified classes engaged on contract work of the character and in the localities described therein.

Good cause is hereby found for not utilizing notice and public procedure thereon prior to the issuance of these determinations as prescribed in 5 U.S.C. 553 and not providing for delay in effective date as prescribed in that section, because the necessity to issue construction industry wage determination frequently and in large volume causes procedures to be impractical and contrary to the public interest.

General wage determination decisions are effective from their date of publication in the **Federal Register** without limitation as to time and are to be used in accordance with the provisions of 29 CFR Parts 1 and 5. Accordingly, the applicable decision together with any modifications issued subsequent to its publication date shall be made a part of every contract for performance of the described work within the geographic area indicated as required by an applicable Federal prevailing wage law and 29 CFR, Part 5. The wage rates contained therein shall be the minimum paid under such contract by contractors and subcontractors on the work.

Modifications and Supersedeas Decisions to General Wage Determination Decisions

Modifications and supersedeas decisions to general wage determination decisions are based upon information obtained concerning changes in prevailing hourly wage rates and fringe benefit payments since the decisions were issued.

The determinations of prevailing rates and fringe benefits made in the modifications and supersedeas decisions have been made by authority of the Secretary of Labor pursuant to the provisions of the Davis-Bacon Act of March 3, 1931, as amended (46 Stat. 1494, as amended, 40 U.S.C. 276a) and of other Federal statutes referred to in 29 CFR 1.1 (including the statutes listed at 36 FR 306 following Secretary of Labor's Order No. 24–70) containing provisions for the payment of wages which are dependent upon determination by the Secretary of Labor under the Davis-Bacon Act; and pursuant to the provisions of part 1 of subtitle A of title 29 of Code of Federal Regulations, Procedure for Predetermination of Wage Rates (37 FR 21138) and of Secretary of Labor's orders 13–71 and 15–71 (36 FR 8755, 8756). The prevailing rates and fringe benefits determined in foregoing general wage determination decisions, as hereby modified, and/or superseded shall, in accordance with the provisions of the foregoing statutes, constitute the minimum wages payable on Federal and federally assisted construction projects to laborers and mechanics of the specified classes engaged in contract work of the character and in the localities described therein.

Modifications and supersedeas decisions are effective from their date of publication in the **Federal Register** without limitation as to time and are to be used in accordance with the provisions of 29 CFR Parts 1 and 5.

Any person, organization, or governmental agency having an interest in the wages determined as prevailing is encouraged to submit wage rate information for consideration by the Department. Further information and self-explanatory forms for the purpose of submitting this data may be obtained by writing to the U.S. Department of Labor, Employment Standards Administration, Wage and Hour Division, Office of Government Contract Wage Standards, Division of Government Contract Wage Determinations, Washington, D.C. 20210. The cause for not utilizing the rulemaking procedures prescribed in 5 U.S.C. 553 has been set forth in the original General Determination Decision.

Modifications to General Wage Determination Decisions

The numbers of the decisions being modified and their dates of publication in the **Federal Register** are listed with each State.

Alaska: AK82-5125	Oct. 22, 1982.
Arizona: AZ83-5102	Mar. 4, 1983.
Maryland: MD83-3010	June 3, 1983.
Nebraska: NE83-4085	Dec. 9, 1983.
New York:	
NY81-3039	Apr. 4, 1980.
NY81-3030	May 1, 1981.
NY83-3013	Apr. 29, 1983.
Ohio: OH83-5127	Dec. 23, 1983.
Pennsylvania:	
PA81-3081	Oct. 23, 1981.
PA81-3086	Oct. 23, 1981.
PA81-3090	Dec. 18, 1981.
PA81-3010	Mar. 5, 1982.
PA81-3047	Oct. 14, 1983.
PA81-3051	Nov. 25, 1983.
PA81-3001	Aug. 19, 1983.
Puerto Rico: PR83-3031	July 29, 1983.
Wisconsin: WI83-2075	Sept. 23, 1983.

Supersedeas Decisions to General Wage Determinations Decisions

The numbers of the decisions being superseded and their dates of publication in the **Federal Register** are listed with each State. Supersedeas decision numbers are in parentheses following the numbers of the decisions being superseded.

Florida, Georgia, North Carolina, South Carolina, Virgina and Washington, D.C.: GA83-1035(FL84-1002).	Apr. 29, 1983.
Louisiana: LA83-4019 (LA84-4008)	Feb. 4, 1983.
Iowa: IA83-4056 (IA84-4006)	July 29, 1983.
Pennsylvania: PA81-3043 (PA84-3004)	July 17, 1981.
Texas: TX83-4053 (TX84-4007)	July 22, 1983.

Signed at Washington, D.C. this 10th day of February 1984.

James L. Valin,

Assistant Administrator.

BILLING CODE 4510-27-M

MODIFICATIONS

DECISION NO. AK82-5125 - Mod. #4
(47 FR 47150 - October 22, 1982)
Statewide, Alaska

	Basic Hourly Rates	Fringe Benefits
Omit:		
Carpenters:		
Area 1		
Lathers (statewide)		
Add:		
Carpenters:		
Area 1:		
Zone 1:		
Carpenter; Lather; Drywall Applicator	$26.00	5.55
Dewalt or similar type saw op., Saw filer; Nailing machine op., Power-actuated tool op., Marlite and Acoustic applicator; Floor-workers; Fire or flood repair work	26.54	5.55
Millwright	26.75	5.55
Zone 2:		
Carpenter; Lather; Drywall Applicator	27.04	5.55
DeWalt or similar type saw op., Saw filer; Nailing machine op., Power-actuated tool op., Marlite and Acoustic applicator; Floor-workers; Fire or flood repair work	27.58	5.55
Millwright	27.79	5.55
Zone 3:		
Carpenter; Lather; Drywall Applicator	27.69	5.55
DeWalt or similar type saw op., Saw filer; Nailing machine op., Power-actuated tool op., Marlite and Acoustic applicator; Floor-workers; Fire or flood repair work	28.23	5.55
Zone 3: Cont'd		
Millwright	$28.44	5.55
Lathers:		
Areas 2 and 3 Lathers	24.44	4.75
Carpenters Zone Descriptions:		
Zone 1: (0-15 Miles from Fairbanks Post Office)		
Zone 2: (15-35 Miles from Fairbanks Post Office)		
Zone 3: (35-50 Miles from Fairbanks Post Office)		

DECISION NO. AZ83-5102 - MOD. #6
(48 FR 9424 - March 4, 1983
Maricopa County, Arizona

	Basic Hourly Rates	Fringe Benefits
OMIT:		
Electricians:		
Electricians on projects having an electricial contract value of less than $20 million	$16.00	2.14+ 3%
Electricians on projects having an electrical contract value of $20 million or more	17.95	2.24+ 3%
ADD:		
Electricians	12.18	1.32

MODIFICATIONS

DECISION NO. MD83-3010- MOD. # 3
(48 FR 25100-JUNE 3,1983)
ANNE ARUNDEL (EXCLUDING THE D.C. TRAINING SCHOOL) BALTIMORE & BALTIMORE CITY, MARYLAND, & FOR HEAVY CONSTRUCTION IN HARFORD & HOWARD COUNTIES, MARYLAND

	Basic Hourly Rates	Fringe Benefits
CHANGE:		
ASBESTOS WORKERS	$16.63	4.38
BOILERMAKERS	19.50	3.09
CARPENTERS	13.45	2.56
PILEDRIVERS	13.30	2.71
ELECTRICIANS (ZONE 2)	16.85	3%+ 3.25
MASON TENDERS:		
MASON TENDERS	10.45	1.225
SCAFFOLD BUILDERS	10.70	1.225
PLUMBERS	16.28	4.16
POWER EQUIPMENT OPERATORS:		
GROUP 1	15.48	3.05
GROUP 2	13.90	3.05
GROUP 3	13.17	3.05
GROUP 4	12.48	3.05
GROUP 5	11.08	3.05
ROOFERS (REMAINDER OF JURISDICTION) SEE MOD. #1		
DATED JUNE 17,1983	11.85	1.75
SHEET METAL WORKERS	14.93	2.97
SPRINKLER FITTERS BALTIMORE CITY INCLUDING A 10 MILE RADIUS BEYOND THE CITY LIMITS	17.40	3.23
STEAMFITTERS	16.28	4.16
ADD:		
LABORERS (HEAVY CONSTRUCTION)		
LABORERS	7.75	1.225
POWER TOOL OPERATORS,FORM SETTER TENDER	7.85	1.225
JACK HAMMER OPERATOR,80 POUNDS & OVER	8.00	1.225
FORM SETTER	8.05	1.225
PIPELAYERS,WAGON DRILL OPRS. AIR TRACK DRILLERS,BURNERS (DEMOLITION) CONCRETE		
SURFACER TENDER	8.25	1.225
CONCRETE SURFACER	9.02	1.225

DECISION NO.NY81-3039
MOD NO. #8
(45 FR 23264 - April 4, 1980)
Monroe County, New York

	Basic Hourly Rates	Fringe Benefits
CHANGE:		
SPRINKLER FITTERS	16.92	3.23

DECISION #NE83-4085 - MOD. #3
(48 FR 55258 - December 9, 1983) Douglas, Sarpy, and Cass Counties, Nebraska

	Basic Hourly Rates	Fringe Benefits
CHANGE:		
Laborers:		
Common Laborers	10.41	1.80
Buggymobile opers., mortar mixers, mason tenders	10.585	1.80
Plasterers tenders	10.795	1.80

DECISION NO. NY83-3013 - MOD. #2
(48 FR 19560 - April 29, 1983)
CONNECTICUT, DELAWARE, MAINE, MARYLAND, MASSACHUSETTS, NEW HAMPSHIRE, NEW JERSEY, NEW YORK, PENNSYLVANIA & RHODE ISLAND

CHANGE:

	Basic Hourly Rates	Fringe Benefits
DIPPER & CLAMSHELL DREDGES:		
Operator	15.42	2.03+ 7%+a
Engineer	15.30	2.03+ 7%+a
Craneman	15.01	2.03+ 7%+a
Maintenance Engineer	14.80	2.03+ 7%+a
Welder	14.59	2.03+ 7%+a
Mate	13.89	2.03+ 7%+a
Fireman and Oiler	12.84	2.03+ 7%+a
Deckhand, Handyman and Tug Deckhand	15.54	2.03+ 7%+a
Scowman and Rodman	12.40	2.03+ 7%+a
HYDRAULIC DREDGES:		
Leverman	15.16	2.03+ 7%+a
Engineer and Derrick Operator	15.01	2.03+ 7%+a
Maintenance Engineer	14.80	2.03+ 7%+a
Boilerman; Dredge Carpenter; Dredge Blacksmith; Electricians and Dredge Welder	14.59	2.03+ 7%+a
Spider Barge Operator	14.46	2.03+ 7%+a
Mate	13.89	2.03+ 7%+a
Fireman and Oiler	12.84	2.03+ 7%+a
Tug Deckhand	12.54	2.03+ 7%+a
Deckhand; Handyman; Shoreman and Rodman	12.40	2.03+ 7%+a
COMPANY LEAD DREDGEMAN:		
Lead Dredgeman	15.16	2.03+ 7%+a
TUG BOATS over 400 H.P. (with master or captain having license endorsed for 200 miles off shore):		
Tug Engineer	14.53	2.03+ 7%+a
Tug Deckhand	12.59	2.03+ 7%+a
TUG BOATS over 400 H.P. (without master or captain having license endorsed for 200 miles off shore):		
Tug Engineer	13.98	2.03+ 7%+a
Tug Deckhand	12.54	2.03+ 7%+a

DECISION NO. NY81-3030 - MOD. #13
(46 FR 24850 - May 1, 1981
CATTARAUGUS, CHAUTAUQUA & ERIE COUNTIES, NEW YORK

CHANGE:

	Basic Hourly Rates	Fringe Benefits
ASBESTOS WORKERS	17.35	3.51
BRICKLAYERS		
Erie County & Cattaraugus County (the Township of Perrysburg and the town of Gowanda in Persia Township)		
Bricklayers, Stonemasons, Painters, Cleaners & Caulkers	16.66	5.00
Marble Masons	16.375	5.00
Terrazzo Workers & Tile Setters	16.28	5.00
Chautauqua County & Cattaraugus County (Remainder of County)	13.24	2.98
SPRINKLER FITTERS:		
Erie County	15.54	5.21
Chautauqua County & Cattaraugus County	16.92	3.23

DECISION NUMBER OH83-5127 - MOD. #3
(48 FR 56903 - December 23, 1983)
Adams, Allen,... Wood, & Wyandot Counties, Ohio

	Basic Hourly Rates	Fringe Benefits
Change:		
Asbestos Workers:		
Area 2	$17.70	$2.32
Area 9	18.80	2.75
Boilermakers:		
Area 2	20.425	3.23
Bricklayers; Caulkers; Cleaners; Pointers; & Stonemasons:		
Area 13	16.60	2.86
Carpenters:		
Area 1	14.93	3.33
Area 7	16.40	3.57
Area 8:		
Exclu. Nursing Homes	18.01	1.81
Nursing Homes	12.61	1.81
Area 9	19.31	2.73
Area 12	17.40	3.49
Cement Masons:		
Area 9	17.73	3.30
Area 12	18.23	2.86
Electricians:		
Area 8:		
Electricians	18.00	45%
Cable Splicers	18.50	45%
Area 12	18.24	15.5%+ 1.30
Area 14:		
Electricians	20.00	3.3%+ 3.00
Cable Splicers	23.00	3.3%+ 3.00
Area 16	17.78	3.2%+ 1.25
Area 20	19.11	9.7%+ 1.51
Area 23:		
Electricians	19.51	3.2%+ 2.05
Cable Splicers	20.88	3.2%+ 2.05
Elevator Constructors:		
Area 8:		
Elevator Constructors	17.25	2.69 +e+f
Helpers	70%JR	2.69 +e+f
Helpers (Prob.)	50%JR	
Ironworkers:		
Area 9	17.06	3.61
Area 10	19.46	3.44
Lathers:		
Area 2	$15.76	$3.52
Area 4	16.40	3.57
Area 5:		
Exclu. Nursing Homes	18.01	1.81
Nursing Homes	12.61	1.81
Area 7	19.31	2.73
Marble Setters; Terrazzo Workers; & Tile Setters:		
Area 11:		
Marble Setters	16.60	2.86
Area 15:		
Terrazzo Workers & Tile Setters	16.90	2.36
Millwrights:		
Area 8	19.31	2.73
Painters:		
Area 18:		
Brush; Paperhangers; & Rollers	16.65	2.42
Structural Steel; Drywall Finishers & Tapers	17.40	2.42
Spray	17.50	2.42
Piledrivermen:		
Area 1	15.32	3.33
Area 7	16.99	17%
Area 8	16.40	3.57
Area 9	19.31	2.73
Pipefitters; Plumbers; & Steamfitters:		
Area 12	17.57	5.66
Area 13	19.20	3.72
Roofers:		
Area 3	17.24	3.11
Area 4	14.03	2.70
Area 5	18.15	1.58
Sheet Metal Workers:		
Area 3	17.51	3.30+1
Area 7	17.805	3.905
Area 10	16.46	2.57+1
Soft Floor Layers:		
Area 1	14.93	3.33
Area 7	14.40	3.57
Area 8	17.54	2.91
Laborers:		
Area 11:		
Exclu. Apartments, Condominiums, & Nursing Homes:		
Group 1	13.02	3.00
Group 2	13.14	3.00
Group 3	13.165	3.00
Group 4	13.17	3.00
Group 5	13.195	3.00
Group 6	13.255	3.00
Group 7	13.31	3.00

DECISION NUMBER OH83-5127 (Cont'd)

	Basic Hourly Rates	Fringe Benefits
Change (Cont'd):		
Laborers (Cont'd):		
Area 11 (Cont'd):		
Group 8	$13.425	$3.00
Group 9	13.67	3.00
Apartments, Condominiums, & Nursing Homes	70%JR	3.00
Line Construction:		
Area 12:		
Cable Splicers; Linemen; Operators - Poledigging Equipment	19.50	.85+ 10½%
Groundmen	15.60	.85+ 10½%
Area 16:		
Cable Splicers; Equipment Ops.; & Linemen	17.78	1.25+ 3½%
Truck Drivers (Winch) Groundman; Groundmen	11.56	1.25+ 3½%
Area 22:		
Linemen	19.51	1.99+ 3½%
Cable Splicers	20.88	1.99+ 3½%
Equipment Operators	14.63	1.99+ 3½%
Truck Drivers; Groundman	9.76	1.99+ 3½%
Truck Drivers:		
Area 3:		
Group 1	$13.50	$92.03q
Group 2	13.51	92.03q
Group 3	13.55	92.03q
Group 4	13.58	92.03q
Group 5	13.60	92.03q
Group 6	13.70	92.03q
Group 7	13.78	92.03q
Group 8	13.83	92.03q
Group 9	13.86	92.03q
Group 10	14.13	92.03q
Group 11	14.20	92.03q
Group 12	14.23	92.03q
Area 9:		
Group 1	13.28	53.00q
Group 2	13.29	53.00q
Group 3	13.33	53.00q
Group 4	13.36	53.00q
Group 5	14.05	53.00q
Group 6	13.36	53.00q
Group 7	13.85	53.00q
Group 8	13.94	53.00q

DECISION NO. PA81-3081 - MOD. #5
(46 FR 52080 - October 23, 1981)
Sullivan County, Pennsylvania

CHANGE:

	Basic Hourly Rates	Fringe Benefits
Asbestos Workers	16.33	2.31
Electricians:		
Western part of County	13.06	3.57
Plumbers & Steamfitters	17.06	2.44
Soft Floor Layers	11.94	2.25

DECISION NO. PA81-3066 - MOD. #11
(46 FR 52082 - October 23, 1981)
Cumberland, Dauphin, Perry, Juniata, New Cumberland Depot, in York County, Pennsylvania

CHANGE:

LINE CONSTRUCTION:		
Linemen	14.74	.80+3 3/8%
Groundmen	8.77	.80+3 3/8%
Winch Truck operator	10.26	.80+3 3/8%

DECISION NO. PA81-3090 - MOD. #9
(46 FR 61813 - December 18, 1981)
Lycoming County, PA

CHANGE:

CARPENTERS	13.22	2.25
ELECTRICIANS	13.06	3.57
MILLWRIGHTS	16.57	2.25
SOFT FLOOR LAYERS	11.94	2.25

DECISION NO. PA82-3010
MOD NO. 11
(47 FR 9684 - March 5, 1982)
Clinton, Centre, Huntingdon, Fulton and Mifflin Counties, PA

CHANGE:

	Basic Hourly Rates	Fringe Benefits
ELECTRICIANS:		
Clinton County in its entirety; Townships in Centre County Burnside, Curtin, Liberty, Howard, Marion, Walker, Miles and Haines	13.06	3.57
Line Construction		
Mifflin County		
Lineman	14.74	.80+3 3/8%
Winch Truck Operator	10.26	.80+3 3/8%
Groundman	8.77	.80+3 3/8%
PLASTERERS:		
Fulton County	11.90	2.21
PLUMBERS & STEAMFITTERS:		
Centre, Mifflin & Fulton Counties	17.05	2.39
ROOFERS:		
Composition (Centre County)	12.61	2.10
SHEET METAL WORKERS:		
Centre, Huntingdon, Fulton and Mifflin Counties, Pennsylvania	15.23	4.39

MODIFICATIONS

DECISION NO. PA83-3047 - MOD. NO. 1 (48 FR 46922 - October 14 1983) Luzerne County, PA	Basic Hourly Rates	Fringe Benefits
CHANGE:		
CARPENTERS: Hazleton, Freeland, Black Creek, Butlers, Dennison, Foster, Hazle, Hollenback, Nescpeck, Sugarloaf and lower part of Salem Twps.	14.50	2.25

DECISION NO. PA83-3051 - MOD. NO. 1 (48 FR 53264 - November 25, 1983) Franklin County, PA	Basic Hourly Rates	Fringe Benefits
CHANGE:		
IRONWORKERS	17.265	3.745
LINE CONSTRUCTION:		
Linemen	14.74	.80+3 3/8%
Winch Truck Operator	10.26	.80+3 3/8%
Groundman	8.77	.80+3 3/8%
PLASTERERS	11.90	2.21
PLUMBERS	17.05	2.39

DECISION NO. PR83-3031 - MOD. #2 (48 FR 34632 July 29, 1983) Puerto Rico, Island Wide	Basic Hourly Rates	Fringe Benefits
CHANGE:		
PLUMBERS & PIPEFITTERS	4.21	
PLUMBERS & PIPEFITTERS HELPERS	3.70	

DECISION NO. PA83-3001 - MOD. #4 (48 FR 37805 - August 19, 1983) Adams, Berks, Bradford, Carbon, Columbia, Cumberland, Dauphin, Juniata, Lackawanna, Lancaster, Lebanon, Lehigh, Luzerne, Lycoming, Monroe, Montour, Northampton, Northumberland, Perry, Pike, Schuylkill, Snyder, Sullivan, Susquehanna, Tioga, Union, Wayne, Wyoming and York Counties Pennsylvania	Basic Hourly Rates	Fringe Benefits
CHANGE:		
LINE CONSTRUCTION: Northampton County		
Lineman	17.08	.80+3 3/8%
Winch Truck Operator	11.96	.80+3 3/8%
Truck Driver	11.10	.80+3 3/8%
Groundman	10.25	.80+3 3/8%

Decision #WI83-2075-Mod #2 (48 FR-43536- September 23, 1983) Barron, Dunn, Polk and St. Croix Counties, Wisconsin	Basic Hourly Rates	Fringe Benefits
Change		
Ironworkers: Structural, Ornamental and Reinforing	17.10	2.39

SUPERSEDEAS DECISION

STATES: FLORIDA (All counties on the Atlantic Coast & Gulf Coast West to the Aucilla River & All tributary waterways), GEORGIA (West to the Aucilla & Ocumulgee Rivers within the Jacksonville & Savannah Districts of the Corps of Engineers), NORTH CAROLINA, SOUTH CAROLINA, VIRGINIA, & WASHINGTON, D.C.

DECISION NUMBER: FL84-1002 DATE: DATE OF PUBLICATION

Supersedes Decision Number GA83-1035 dated April 29, 1983 in 48 FR 19563

DESCRIPTION OF WORK: DREDGING PROJECTS.

	Basic Hourly Rates	Fringe Benefits
HYDRAULIC DREDGES 20" & OVER:		
Leverman	$11.47	2.03+a
Engineer	11.36	2.03+a
Mate	10.27	2.03+a
Welder	10.60	2.03+a
Derrick Operator	10.97	2.03+a
Spill Barge Operator	10.75	2.03+a
Spider Barge Operator	10.75	2.03+a
Tug Master	10.20	2.03+a
Tug Mate	9.76	2.03+a
Tug Deckhand	8.18	2.03+a
Carpenter	10.89	2.03+a
Electrician	11.15	2.03+a
Machinist	10.81	2.03+a
Steward	8.97	2.03+a
Oiler & Fireman	8.71	2.03+a
Deckhand	8.18	2.03+a
Shoreman	8.04	2.03+a
Second Cook	8.18	2.03+a
Messman	8.04	2.03+a
HYDRAULIC DREDGES UNDER 20":		
Leverman	9.92	2.03+a
Engineer	9.45	2.03+a
Welder	9.60	2.03+a
Mate	8.60	2.03+a
Oiler & Fireman	8.11	2.03+a
Deckhand	7.70	2.03+a
Launchman	8.19	2.03+a
Shoreman	7.56	2.30+a
Spill Barge Operator	8.81	2.30+a
Spider Barge Operator	8.81	2.30+a
CLAMSHELL DREDGES:		
Operator	11.40	2.03+a
Engineer	10.78	2.03+a
Welder	10.46	2.03+a
Mate	10.08	2.03+a
Fireman & Oiler	8.71	2.03+a
Deckhand	8.18	2.03+a
Launchman	8.71	2.03+a
Scowman	8.30	2.03+a

	Basic Hourly Rates	Fringe Benefits
DIPPER DREDGES:		
Operator	$11.52	2.03+a
Crane man	11.01	2.03+a
Engineer	11.24	2.03+a
Welder	10.60	2.03+a
Mate	10.27	2.03+a
Fireman & Oiler	8.71	2.03+a
Deckhand	8.18	2.03+a
Launchman	8.71	2.03+a
Scowman	8.30	2.03+a
TUGS (TENDING DIPPER & CLAMSHELL DREDGES):		
Tug Master	10.38	2.03+a
Tug Mate	9.85	2.03+a
Engineer	10.38	2.03+a
Assistant Engineer	9.66	2.03+a
Deckhand	8.07	2.03+a
Cook	8.30	2.03+a
STEWARD DEPARTMENT (ON DIPPER & CLAMSHELL DREDGES & ON HYDRAULIC DREDGES UNDER 20"):		
Cook	8.11	2.03+a
Mess Cook	7.64	2.03+a
Messman & Janitor	7.53	2.03+a
DRILL BOATS:		
Driller, Blaster & Operator Engineer	11.36	2.03+a
Helper	8.71	2.03+a

FOOTNOTE: a - SIX PAID HOLIDAYS: New Year's Day, Memorial Day, Independence Day, Labor Day, Thanksgiving Day, Christmas Day. Plus VACATION CONTRIBUTION of 7% of straight time pay for all hours worked.

Unlisted classifications needed for work not included within the scope of the classifications listed may be added after award only as provided in the labor standards contract clauses (29 CFR 5.5 (a)(1)(ii)(A)).

SUPERSEDEAS DECISION

STATE: Louisiana PARISH Calcasieu
DECISION NO.: LA84-4008 DATE: Date of Publication
Supersedes Decision NO. LA83-4019, dated February 4, 1983, in 48 FR 5448.
DESCRIPTION OF WORK: Residential Projects consisting of single family homes & apartments up to & including 4 stories.

	Basic Hourly Rates	Fringe Benefits
ASBESTOS WORKERS	18.645	2.335
BRICKLAYERS & STONE-MASONS	16.10	2.32
CARPENTERS:		
Carpenters, piledrivermen & soft floor layers	10.72	1.60
Millwrights	18.47	.07
CEMENT MASONS	16.17	
ELECTRICIANS:		
New & old single or multiple family residence & apt. complex not to exceed 12 units		
2-story walk-ups	10.90	2.00+ 3-5/10%
Other electricians:		
Electricians	17.70	2.00+ 3-5/10%
Cable splicers	18.20	"
ELEVATOR CONSTRUCTORS:		
Mechanics	14.82	3.00+ a
Helpers	70%JR	"
Helpers (Prob.)	50%JR	
GLAZIERS	15.25	.02+b
IRONWORKERS	16.10	2.42
LABORERS	8.10	.94
LATHERS	10.72	1.60
MARBLE & TERRAZZO WORKERS	16.10	2.32
PAINTERS	13.75	.60
PLASTERERS	17.11	
PLUMBERS & PIPEFITTERS	17.98	3.00
ROOFERS:		
Roofers	15.70	.20
Roofers helpers remove old roofing, hustle material & cleanup under supervision of journeymen	12.30	.20
SHEET METAL WORKERS	17.28	3%+3.12
SPRINKLER FITTERS	15.07	3.23
TILE SETTERS	14.07	1.70
TRUCK DRIVERS:		
Pickup drivers	13.27	.70
Stake bodies, dumps, trailer trucks, winch truck & Mississippi wagon	14.16	.70
POWER EQUIPMENT OPERATORS:		
Group 1	16.40	2.50
Group 2	11.56	2.50
Group 3	16.65	2.50
Group 4	16.90	2.50
Group 5	17.15	2.50
Group 6	17.40	2.50
Group 7	17.90	2.50
WELDERS: Receive rate prescribed for craft performing operation to which welding is incidental.		

Unlisted classifications needed for work not included within the scope of the classifications listed may be added after award only as provided in the labor standards contract clauses (29 CFR, 5.5(a)(1)(ii)).

DECISION NO.: LA84-4008

PAID HOLIDAYS FOR ELEVATOR CONSTRUCTORS & GLAZIERS
A - New Years' Day; B - Memorial Day; C - Independence Day; D - Labor Day; E - Thanksgiving Day; F - the Friday after Thanksgiving Day; G- Christmas Day

FOOTNOTES FOR ELEVATOR CONSTRUCTORS & GLAZIERS
a - 1st 6 mos. - none; 6 mos. to 5 yrs. - 6%; over 5 yrs. - 8% of basic hourly rate; Seven Paid Holidays
b - 5 days paid vacation; Paind Holidays A, C, D, E, G & Good Friday

POWER EQUIPMENT OPERATORS CLASSIFICATION DEFINITIONS
GROUP 1 - Aspahlt plant operator; Asphalt spreader; Backhoes (all types); Boom Trucks; Bulldozers; Bull Floats; Bush Hog; Cableways; Cherry Pickers (all types); Concrete Mixers (over one sack); Concrete Pump; Concrete Saw; Concrete Spreader; Cranes; Deck Winches; Derricks; Distributors; Ditching or Trenching Machines (riding type); Dowel Bar Machine; Draglines; Dredges; Elevator Operator; Finishing Machines (roadway, riding type); Fork Lifts (other than farm-type outside warehouse); Foundation Drill; Front End Loaders; Grease Service Man; Hoists; Locomotive (all types); Mechanic; Mixer Plant Op. (central Mix); Motor Patrols; Motorized Street Sweepers (self-propelled); Piledrivers; Pull Cat; Pump (3" & over); Push Cat; Road Pavers; Rollers; Scrapers; Shovels; Sideboom; Test Pump-Internal Combustion Engine Powered; Tower Cranes; Welder Journeyman; Well Point System; Whirleys; Winch Cats; Winch Truck with A-Frame; Work Boats
GROUP 2 - Batch Plant; Compressor; Ditching or Trenching Machine (non-riding type); Fireman; Generator or Light Plant over 5 h.p.; Mixers (one sack & under); Oiler, Oiler-Compressor op.; Oiler-Driver on Motor Crane; Oiler-Fireman; Pump (under 3" suction); Scale op.; Water Blast Pump; Welding Machine
GROUP 3 - Crane 60 tons & over; Crane Boom 100' & over but less than 150'
GROUP 4 - Crane 100 tons & up to 125 tons; Crane Boom 150' & over but less than 225'
GROUP 5 - Crane over 125 tons up to 200 tons
GROUP 6 - Crane over 200 tons up to 300 tons; Crane Boom 225' & over but less than 300'
GROUP 7 - Crane over 300 tons; Crane Boom 300' & over

SUPERSEDEAS DECISION

STATE: Iowa

COUNTIES: ZONE 1-Black Hawk; ZONE 2-Cerro Gordo; ZONE 3-Clinton; ZONE 4-Des Moines; ZONE 5-Dubuque; ZONE 6-Johnson; ZONE 7-Linn & ZONE 8-Polk

DECISION NO.: IA84-4006 DATE: Date of Publication

Supersedes Decision NO. IA83-4056, dated July 29, 1983, in 48 FR 34611.

DESCRIPTION OF WORK: Building (does not include single family homes & apartments up to & including 4 stories). DOES NOT APPLY TO WATER & SEWER TREATMENT PLANTS.

	Basic Hourly Rates	Fringe Benefits
Asbestos Workers:		
ZONES: 1,3,4,5,6 & 7	$16.86	$2.40
ZONES: 2 & 8	16.17	3.155
Boilermakers	17.345	3.00
Bricklayers & Stonemasons:		
ZONE 1	11.83	2.62
ZONE 2	13.99	1.07
ZONE 3	14.28	1.22
ZONE 4	13.03	1.00
ZONE 5	13.00	.57
ZONE 6 & 7	14.04	.57
ZONE 8	14.19	2.82
Carpenters:		
ZONE 1:		
Carpenters, soft floor layers, piledrivermen	9.00	2.78
Millwrights	9.60	2.78
ZONE 2:		
Carpenters & soft floor layers	10.91	1.65
Millwrights & pile-drivermen	11.16	1.65
ZONE 3:		
Carpenters	12.83	2.71
Piledrivermen	13.33	2.71
Millwrights	16.28	3.57
ZONE 4:		
Remodeling (change appearance or purpose of any type of present existing structures) & renovation (for any work on or replacement of any existing machinery, or structures, or related manufacturing items, within any type of manufacturing complex:		
Carpenters	13.57	1.08
Millwrights	14.27	1.08
All other work:		
Carpenters	14.37	1.08
Millwrights/Pile-drivermen	15.07	1.08
Carpenters (Cont'd):		
ZONE 5:		
Carpenters	11.62	1.04
Piledrivermen	12.02	1.04
Millwrights	12.12	1.04
ZONES 6 & 7:		
Carpenters & soft floor layers	11.74	1.93
Piledrivermen	12.24	1.93
Millwrights	15.28	3.57
ZONE 8:		
Carpenters	12.95	2.54
Millwrights & pile-drivermen	13.30	2.54
Drywall	12.95	2.54
Cement Masons:		
ZONE 1	9.00	2.50
ZONE 2	11.45	
ZONE 3	13.78	1.22
ZONE 4	17.65	
ZONE 5	12.68	
ZONE 6 & 7	11.72	1.00
ZONE 8	14.25	.94
Electricians:		
ZONE 1: Electricians	15.64	.65+ 3-3/4%
Cable Splicers	16.11	.65+ 3-3/4%
ZONE 2	15.26	.65+ 3-3/4%
ZONE 3: Electricians	16.34	1.66+ 8%
Cable Splicers	17.34	1.66+ 8%
ZONE 4	16.72	1.80+ 3-3/4%
ZONE 5	14.95	1.80+ 3-3/4%
ZONE 6 & 7	16.52	2.35+ 3-3/4%
ZONE 8	15.68	2.70+ 3-3/4%
Elevator Constructors:		
ZONES 1,5,6 & 7:		
Mechanics	12.55	3.00+a
Helpers	70%JR	3.00+a
Helpers (prob.)	50%JR	

DECISION NO.: IA84-4006

	Basic Hourly Rates	Fringe Benefits
Elevator Constructors (Cont'd):		
ZONE 8:		
Mechanics	15.10	2.69 +a
Helpers	70%JR	2.69 +a
Helpers (prob.)	50%JR	
Glaziers:		
ZONES 2 & 8	13.64	1.31+ 4.35% +b
ZONES 3,4,5, 6 & 7	15.71	1.77
Ironworkers:		
ZONE 1	10.70	1.96
ZONE 5 (except S.E. part of Dubuque Co.)	12.26	2.00
ZONES 2 & 8	13.67	2.61
ZONE 3 & S.E. part of Dubuque Co.	16.45	3.085
ZONE 4:		
Maintenance projects of $200,000 & under; metal, buildings of 20,000 sq. ft. & under & a maximum of 20' eaves in height	13.65	2.40
All other work	16.00	2.40
ZONES 6 & 7	12.26	2.00
Laborers:		
ZONE 1 - Group 1	7.35	1.60
Group 2	7.50	1.60
Group 3	7.70	1.60
ZONE 2	7.75	1.05
ZONE 3:		
All jobs totaling over $500,000:		
Group 1	11.63	1.35
Group 2	11.88	1.35
Group 3	11.93	1.35
All jobs totaling $500,000 or less:		
Group 1	8.72	1.35
Group 2	8.97	1.35
Group 3	9.02	1.35
ZONE 4:		
Construction laborer (all projects with a total volume of $200,000 & under) or projects with a total volume of $325,000 & under for remodeling & additions which change the appearance or purpose of any type of present existing structures & renovation for any work or replacement of any existing machinery or structures or related manufacturing items, within any type of manufacturing complex:	10.00	1.70
Laborers (Cont'd):		
ZONE 4 (Cont'd):		
Construction laborer (all other work)	11.00	1.70
Powderman	11.00	1.70
Mason tender	11.16	1.70
Creosote & tarring	11.50	1.70
ZONE 5	10.65	.90
ZONE 6	9.50	1.50
ZONE 7	9.61	1.56
ZONE 8 - Group 1	12.305	1.71
Group 2	12.405	1.71
Group 3	12.43	1.71
Group 4	12.455	1.71
Group 5	12.505	1.71
Group 6	12.605	1.71
Lathers:		
ZONE 1	9.00	2.78
ZONE 3	12.83	2.71
ZONE 5	11.62	1.04
ZONES 6 & 7	11.74	1.93
ZONE 8	12.95	2.54
Line Construction (excluding ZONES 3 & 5):		
Group 1: Lineman; all rigs setting assembled "H" fixtures, steel transmission structures & transmission concrete structures	16.09	1.00+ 7-1/2% +c
Group 2: Blaster	12.87	"
Group 3: Special equipment operations (hole digging machines, all tractors, transmission line pole hauling & setting equipment other than assembled "H" fixtures	13.35	1.00+ 7-1/2% +c
Group 4: Groundman	10.46	"
Group 5: Groundman - truck driver	10.62	"
Group 6: Pole treating truck driver	10.30	"
Group 7: Pole treating specialist	12.39	"

DECISION NO.: IA84-4006

	Basic Hourly Rates	Fringe Benefits
Marble, Tile & Terrazzo Workers & Finishers:		
ZONE 1 - Tile Setters	12.88	.90
ZONE 3 - Marble Setters	14.28	1.22
ZONE 5 - Marble Setters	13.00	.57
ZONES 6 & 7 - Tile Setters	14.93	.80
ZONE 8:		
Marble, Tile & Terrazzo Workers	14.79	
Marble, Tile & Terrazzo Finishers	12.09	
Painters:		
ZONE 1:		
Brush or Roller	12.68	.83
Paper & Vinyl Hanging	13.28	.83
Sandblasting	13.43	.83
Spray	13.58	.83
ZONE 2:		
Brush or Roller	13.55	.80
Spray	14.05	.80
Paper & Vinyl Hanging Sandblasting	14.15	.80
ZONE 3:		
Brush or Roller	12.50	3.49
Spray; Structural Steel; Sandblasting; Drywall Tapers	13.00	3.49
ZONE 4:		
Brush & Paperhangers; Drywall Finishers	13.00	.50
Roller	13.10	.50
Structural Steel (over 25 ft.)	13.70	.50
Spray & Sandblast	14.00	.50
Sign	13.50	.50
ZONE 5:		
Brush & Roller; Paperhanging; Taping Drywall	10.50	1.60
High work & Steel; Spray	11.05	1.60
ZONES 6 & 7:		
Brush, Roller, Tapers & Finishers	13.50	.03
Paperhangers	13.75	.03
Structural Steel	14.00	.03
Spray	14.00	.03
Sandblasting	14.00	.03
ZONE 8:		
Brush or Roller	14.02	.85
Paperhanger	14.27	.85
Sandblaster; Spray; Swing Stage & Boatswain Chair; Structural Steel	14.52	.85
Plasterers:		
ZONE 1	11.75	.45
ZONE 2	9.00	
ZONE 3	14.28	1.22
ZONE 4	17.28	
ZONE 5	13.50	
ZONES 6 & 7	16.47	
ZONE 8	14.325	.90
Plumbers & Pipefitters:		
ZONE 1	15.96	3.74
ZONE 2	11.35	1.65
ZONE 3	16.60	2.85
ZONE 4	16.15	2.80
ZONE 5	14.92	2.10
ZONES 6 & 7	13.05	2.27
ZONE 8	15.74	3.15
Power Equipment Operators:		
ZONES 1,2,5,6 & 7:		
Group 1	13.00	2.25
Group 2	11.72	2.25
Group 3	10.00	2.25
Group 4	9.00	2.25
ZONES 3 & 4:		
Group 1	15.25	2.98
Group 2	13.85	2.98
Group 3	12.80	2.98
ZONE 8:		
Group 1	13.98	2.25
Group 2	13.725	2.25
Group 3	12.03	2.25
Group 4	11.205	2.25
Roofers:		
ZONE 1	12.76	
ZONE 2	9.52	
ZONE 3	15.60	2.66
ZONE 4	14.13	
ZONE 5	12.16	.50
ZONES 6 & 7	11.95	
ZONE 8	12.25	2.05
Sheet Metal Workers:		
ZONE 1	12.91	2.70
ZONES 2 & 8	15.55	2.99
ZONES 3, 4 & 5	13.53	3.57
ZONES 6 & 7	17.20	1.11
Sprinkler Fitters	16.47	3.23
Truck Drivers:		
ZONE 1	7.47	1.88

DECISION NO.: IA84-4006

	Basic Hourly Rates	Fringe Benefits
Truck Drivers (Cont'd):		
ZONE 4:		
Jobs $200,000.00 & under & remodeling & addition work with a total volume of $325,000.00 or less:		
Group 1	11.12	28.50 per wk.
Group 2	11.33	28.50 per wk.
Group 3	11.43	28.50 per wk.
All Other Work:		
Group 1	12.12	28.50 per wk.
Group 2	12.33	28.50 per wk.
Group 3	12.43	28.50 per wk.
ZONE 6 & 7:		
Flat bed trucks & dump trucks (single axle)	9.025	104.70 per wk. +e
Drivers of ten wheelers (tandem axle) trucks & semi-trailer & tractor combinations	9.125	104.70 per wk. +e
Truck Drivers (Cont'd):		
Zone 8:		
Pickups, dumpsters	9.83	96.50 per wk +e
Winch trucks dumpcrete & scoopmobiles	9.88	96.50 per wk +e
Semis	9.98	96.50 per wk +e
Tandem trucks	10.08	96.50 per wk +e

WELDERS:
Receive rate prescribed for craft performing operation to which welding is incidental.

Unlisted classifications needed for work not included within the scope of the classifications listed may be added after award only as provided in the labor standards contract clauses (29 CFR 5.5(a)(1)(ii)).

FOOTNOTES:
a - Employer contributes 8% of basic hourly rate for over 5 yrs. service & 6% of basic hourly rate for 6 mos. to 5 yrs. service as Vacation Pay Credit. Also Seven Paid Holidays A thru G.
b - Six Paid Holidays A thru E + G
c - Seven Paid Holidays A thru G
d - 1 week vacation with pay with 1 yr service; 2 weeks vacation with pay after 2 yrs. service & 3 weeks vacation with pay after 10 yrs. service.
e - All employees accumulating 1 yr. service shall receive & take 1 week vacation with pay. All employees accumulating 3 yrs. or more of service shall receive & take 2 weeks vacation with pay. All employees accumulating 10 yrs. or more of service shall receive & take 3 weeks vacation with pay.

PAID HOLIDAYS- A-New Year's Day; B-Memorial Day; C-Independence Day; D-Labor Day; E-Thanksgiving Day; F-the Friday after Thanksgiving Day; G-Christmas Day

CLASSIFICATION DEFINITIONS

LABORERS - ZONE 1
Group 1 - Common laborers; carpenter tenders; moving, wrecking & demolition
Group 2 - Mason tenders; hod carriers; machine & air tool operators
Group 3 - Powderman

LABORERS - ZONE 3
Group 1 - Common laborers
Group 2 - Jackhammers over 60 lbs.
Group 3 - Cutting torch burner

LABORERS - ZONE 8
Group 1 - General laborers
Group 2 - Mortar mixers; motor buggies when pouring concrete; power tool ops. (air tools, concrete, vibrator, gunnite nozzlemen, electric drills & hammers)
Group 3 - Plasterers' tenders
Group 4 - Powdermen
Group 5 - Air tool, power tampers & other similar self-powered tools weighing 50 lbs. & over
Group 6 - Paving breakers weighing 50 lbs. and over

POWER EQUIPMENT OPERATORS - ZONES 1,2,5,6,7 & 8
Group 1 - Cranes, incl. those being used as backhoe, dragline, clamshell, etc.; tower cranes; electric overhead cranes; truck cranes & cherry pickers 12½ ton & over rated capacity; derricks; piledrivers & extractors; caisson rigs; sideboom & winch truck used for erection of structural steel & moving & setting of heavy machinery; 3 drum hoist; welders; mechanics; locomotive; dredge (levermen);
Group 2 - 1 & 2 drum hoists; air & electric tuggers (on power plants or setting steel or grating); economobiles; plant mixers; farm type tractors (with loaders, backhoes, attachments, etc.); scrapers (tournapull, etc.); endloaders; dredge engineer); sideboom & winch truck other than Group No. 1; motor patrol; bulldozers; push cat; truck cranes & cherry pickers (under 12½ ton); concrete mixers (yd. & over); ditching machines (8" & over); fork lifts (on steel erection & machinery moving or hoisting above one complete story); concrete pump; temporary hoist cage operated; second man on locomotive; vibrating concrete spreader (Gomaco, C-450 or equal); working boat (tug, tow, etc.); group greaser

POWER EQUIPMENT OPERATORS - ZONES 1,2,5,6,7 & 8 (Cont'd):
Group 3 - Tractors (under 35 HP) with or without attachments; endloaders (under 35 HP) with or without attachments; firemen (boiler); fork lifts (other than Group No. 2); gunnite machine; self-propelled rollers; stump chippers; self-propelled tampers; air & electric tuggers other than above); ditching machine under 8"; pile threader
Group 4 - Mechanical heaters; truck crane drivers; permanent elevators; air compressors (one or a combination of 400 cfm. or more); pumps 3" or over; welding machines 600 amps or combination thereof; conveyors; generator (75 KW & over); dewatering pumps; boat used for personnel transport or as a safety boat

POWER EQUIPMENT OPERATORS - ZONES 3 & 4
Group 1 - All hoists or steel erecting equip.; Crane, Shovel, Clamshell, Dragline, Backhoe, Derrick, Tower Crane, Cableway, Concrete Spreader (servicing 2 pavers), Asphalt Spreader, Asphalt Mixer Plant Engineer, Dipper Dredge Op.; Dipper Dredge Craneman, Dual Purpose Truck (boom or winch), Leverman or Engineman (hydraulic dredge), Mechanic, Paving Mixer with tower attached (2 ops. required), Piledriver, Boom Tractor, Stationary, Portable or Floating Mixing Plant, Trenching Machine (over 40 HP), Building Hoist (2 drums), Hot Paint Wrapping Machine, Cleaning & Priming Machine, Backfiller (throw bucket), Locomotive Engineer, Qualified Welder, Tow or Push Boat, Concrete Paver, Seaman Trav-L-Plant or similar machines, CMI Autograder or similar machines, Slip Form Paver, Caisson Augering Machine, Mucking Machine, Asphalt Heater-Planer Unit, Hydraulic Cranes, Mine Hoists; Athey, Barber-Green, Euclid or Haiss Loader, Asphalt Pug Mill, Fireman & Drier, Concrete Spreader (servicing 1 paver), Bulldozer, Endloader, Log Chippers or similar machines, Elevating Grader, Group Equipment Greaser, LeTourneaupull & similar machines, DW-10, Hyster Winch & similar machines, Motor Patrol, Power Blade, Push Cat, Tractor Pulling Elevating Grader or Power Blade, Tractor operating Scoop or Scraper, Tractor with Power Attachments, Roller on Asphalt or Blacktop, Single Drum Hoist, Jaeger Mix & Place Machine, Pipe Bending Machine, Flexaplane or similar machines, Automatic Curbing Machines, Automatic Cement & Gravel Batch Plant (1 stop set-up), Seaman Pulvi-Mixer or similar machines, Blastholer self-propelled Rotary Drill or similar machines, Work Boat, Combination Concrete Finishing Machine & Float, Self-propelled Sheepsfoot Roller or Compactor (used in conjunction with Grading Spread), Asphalt Spreader Screen Op., Aspco Spreader or similar machine, Slusher, Forklift (over 6000 lbs. capacity or working at heights above 28 ft.), Concrete Conveyors, Concrete Pump
Group 2 - Asphalt Booster, Fireman & pump Op. at Asphalt Plant, Mud Jack, Underground Boring Machine, Concrete Finishing Machines, Form Grader with Roller on Earth, Mixers (3 bag to 16 E), Power Operated Bull Float, Tractor without Power attachment, Dope Pot (agitating motor), Dope Chop Machine, Distributor (back end), Straddle Carrier, Portable Machine Fireman, Hydro-Hammer, Power Winch on Paving Work, Self-propelled Roller or Compactor (other than provided for above), Pump Op. (more than 1 well point pump), Portable Crusher, Trench Machine (under 40 HP), Power Subgrader (on forms) or similar machines, Forklift (6000 lbs. or less capacity), Gypsum Pump, Conveyor over 20 HP, Fuller Kenyon Cement Pump or similar machines; Air Compressors (275 CFM or over), Driver on Truck Crane or similar machines, Light Plant, Mixers (1 or 2 bag), Power Batching Machines (Cement Auger or Conveyor), Boiler (Engineer or Fireman), Water Pumps, Mechanical Broom, Automatic Cement & Gravel Batch Plant (2 or 3 stop set-up), Small Rubber-tired Tractors (not including backhoes or endloaders), Self-propelled curing machine
Group 3 - Oiler, Mechanical Heater (other than steam boiler), Belt Machine, Small Outboard Motor Boat, Engine Driven Welding Machine

DECISION NO.: IA84-4006

CLASSIFICATION DEFINITIONS - (Cont'd)

TRUCK DRIVERS - ZONE 4
Group 1 - Warehousemen, greasers; drivers on single axle flat beds & dump trucks; drivers pulling air compressors & welding machines, batch trucks 2-34E batches or less & chip spreaders
Group 2 - Drivers on cheater axle & tandems; drivers on all 6-wheel trucks, semi-trailers, carryall, winch trucks & mixer trucks; drivers on batch trucks over 2-34E; drivers on A-frame trucks & pole trailers
Group 3 - Drivers on track truck, euclid-type truck; front & rear, all types of dumpsters & pavement breakers

SUPERSEDEAS DECISION

STATE: Pennsylvania
COUNTIES: * See Below
DECISION NO.: PA84-3004
DATE: Date of Publication
Supersedeas Decision No.: PA81-3043, July 17, 1981, in 46 FR 37212.
DESCRIPTION OF WORK: Building Erection and Foundation Excavation, (does not include single family homes or apartments up to and including 4 stories) exculding Sewage and Treatment plant projects.

*Armstrong, Allegheny, Beaver, Butler, Fayette, Indiana, Washington & Westmoreland

	Basic Hourly Rates	Fringe Benefits
ABSESTOS WORKERS	15.88	5.29
BOILERMAKERS	16.67	.79+ 14½%
BRICKLAYERS		
ZONE 1	15.02	3.70
ZONE 2	16.15	4.66
ZONE 3	15.26	5.15
ZONE 4	14.70	3.06
ZONE 5	16.135	3.87
CARPENTERS		
ZONE 1	15.00	29%
ZONE 2	14.00	30%
CEMENT MASONS		
ZONE 1	15.94	3.98
ZONE 2	16.77	
ELECTRICIANS		
ZONE 1	17.70	2.85+ 3%
ZONE 2	16.72	5.33+ 3%
ZONE 3	17.50	1.50+ 10½%
ELEVATOR CONSTRUCTORS	17.375	3.00+ a+b
ELEVATOR CONSTRUCTORS' HELPERS	12.16	3.00+ a+b
ELEVATOR CONSTRUCTORS' HELPERS (PROB.)	8.69	
GLAZIERS	14.98	3.85
IRONWORKERS, STRUCTURAL, ORNAMENTAL & REINFORCING	16.37	4.95
LABORERS		
ZONE 1		
CLASS 1	13.55	20%
CLASS 2	13.68	20%
CLASS 3	13.81	20%
CLASS 4	14.08	20%
CLASS 5	14.28	20%
ZONE 2		
CLASS 1	13.51	20%
CLASS 2	13.64	20%
CLASS 3	13.76	20%
CLASS 4	14.04	20%
CLASS 5	14.24	20%
ZONE 3		
CLASS 1	13.42	20%
CLASS 2	13.56	20%
CLASS 3	13.69	20%
CLASS 4	13.96	20%
CLASS 5	14.14	20%
LANDSCAPING		
Landscape laborer to include general landscaping work and driving of trucks for the distributing of materials on the job site but not to include dump trucks used to transport supplies to the job	10.30	20%
Landscape Tractor Operator to operate small industrial rubber tire tractor equipped with front end loader and back hoe attachments used for the sole purpose of landscape work including soil spreading, but not for heavy and highway construction work	10.72	22%
LEADBURNERS	10.75	.66+c
LATHERS		
ZONE 1	13.62	2.71
ZONE 2	14.00	30%
LINE CONSTRUCTION		
ZONE 1		
Lineman	18.06	.80+ 3%
Winch Truck Operator	12.59	.80+ 3%
Groundman	10.76	.80+ 3%
ZONE 2		
Lineman, Dynamite man, heavy equipment operator	15.64	.65+ 3+3/8%
Winch Truck Operator	10.94	.65+ 3 3/8%
Groundman	10.46	.65+ 3 3/8%
MARBLE SETTERS		
ZONE 1	14.92	3.77

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	Basic Hourly Rates	Fringe Benefits
MARBLE SETTERS (CONT'D)		
ZONE 2	15.26	5.15
ZONE 3	15.02	3.70
ZONE 4	14.70	2.65
ZONE 5	16.135	3.87
MILLWRIGHTS	14.80	39⅛%
PAINTERS:		
ZONE 1		
COMMERCIAL - shall include schools, warehouses not in plant showrooms, churches, apartments buildings, commercial garage, office buildings		
Brush	16.06	2.45
Paperhangers	16.06	2.45
Spray	16.56	2.45
INDUSTRIAL - shall include sewage treatment plants, water works or authorities, and power plants, all skeleton steel, railroad and highway bridges towers, tanks, furnances, machinery corrugated ceiling and sidewalks, sheeting steel sash and all steel surfaces, officers & hospital, both interior and exterior		
Brush	16.71	2.45
Spray	17.21	2.45
PAINTERS:		
ZONE 2		
COMMERCIAL - shall include stores, schools, warehouses not in plant showrooms, churches, apartment buildings, commercial garage, office buildings		
Brush	9.95	3.20
Spray	10.47	3.20
INDUSTRIAL - shall include sewage treatment plants, all skeleton steel, railroad and highway bridges, towers, tanks, storage tanks, furnances, machinery, corrugated ceiling and sidewalks, sheeting steel sash and all steel surfaces, officers &		

	Basic Hourly Rates	Fringe Benefits
PAINTERS (COND'T)		
INDUSTRIAL (COND'T)		
hosptial, both interior and exterior		
Brush	11.85	3.20
Roller	12.38	3.20
PAINTERS:		
ZONE 3		
COMMERCIAL - shall include stores, schools, warehouses not in plant showrooms, churches, apartment buildings, commercial garage, office buildings		
Brush & Roller	15.70	2.80
Spray	16.70	2.80
INDUSTRIAL - shall include sewage treatment plants, water works or authorities, and power plants, all skeleton steel, railroad and highway bridges, towers tanks, storage tanks, furnances, machinery, corrugated ceiling and sidewalks, sheeting steel sash and all steel surfaces, offices & hospital, both interior and exterior		
Brush & Roller	16.20	2.80
Spray	17.20	2.80
PAINTERS:		
ZONE 4		
COMMERCIAL - shall include stores, schools, warehouses not in plants showrooms, churches, apartment buildings, commercial garage, office buildings,		
Brush	13.00	4.30+ 2%
INDUSTRIAL - shall include sewage treatment plants, water works or authorities, and power plants, all skeleton steel, railroad and highway bridges, towers, tanks, storage		

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	Basic Hourly Rates	Fringe Benefits
PAINTERS (COND'T)		
INDUSTRIAL (COND'T)		
tanks, furnances, machinery corrugated ceiling and sidewalks, sheeting steel sash and all steel surfaces, office & hospital, both interior and exterior		
Brush	14.65	4.30+ 2%
PAINTERS:		
ZONE 5		
COMMERCIAL - shall include stores, warehouses not in plant showrooms, churches, apartment buildings, commercial garage, office buildings		
Brush	13.09	3.27
Spray	15.09	3.27
INDUSTRIAL - shall in clude sewage treatment plants, water works or authorities, and power plants, all skeleton steel, railroad and highway bridges, towers, tanks, storage tanks, furnances, machinery, corrugated ceiling and sidewalks, sheeting steel sash and all steel surfaces, office & hospital, both interior and exterior		
Brush	15.23	2.02
Spray	15.73	2.02
PILEDRIVERMEN	16.14	28%
PLASTERERS		
ZONE 1	14.19	3.42
ZONE 2	16.77	
ZONE 3	14.85	.01
PLUMBERS:		
ZONE 1	17.45	3.78
ZONE 2	16.40	4.34
ZONE 3	16.48	3.48
ROOFERS	16.89	2.65
SHEET METAL WORKERS	16.59	4.38
SOFT FLOOR LAYERS		
ZONE 1	14.46	33⅛%
ZONE 2	14.00	30%

	Basic Hourly Rates	Fringe Benefits
SPRINKLER FITTERS		
ZONE 1	17.60	3.19
ZONE 2	16.92	3.23
STEAMFITTERS		
ZONE 1	17.40	3.39
ZONE 2	16.48	3.48
ZONE 2	17.45	3.93
STONEMASONS		
ZONE 1	15.02	3.70
ZONE 2	14.48	5.69
ZONE 3	15.26	5.15
ZONE 4	15.74	3.46
ZONE 5	16.135	3.87
TERRAZZO WORKERS		
ZONE 1	15.55	3.51
ZONE 2	15.56	5.15
ZONE 3	14.70	3.06
ZONE 4	16.135	3.87
TILE SETTERS		
ZONE 1	14.00	4.76
ZONE 2	15.26	5.15
ZONE 3	14.70	2.65
ZONE 4	16.135	3.87
POWER EQUIPMENT		
OPERATORS:		
CLASS I	16.825	3.44
CLASS I-A	17.075	3.44
CLASS I-B	17.325	3.44
CLASS I-C	17.575	3.44
CLASS II	16.625	3.44
CLASS III	14.54	3.44
CLASS III-A	15.04	3.44
CLASS IV	13.53	3.44
CLASS V	13.22	3.44
CLASS V-A	13.32	3.44
CLASS V-B	13.47	3.44
CLASS V-C	14.22	3.44
TRUCK DRIVERS:		
CLASS 1	11.86	16.8%+a
CLASS 2	11.91	16.8%+a
CLASS 3	11.93	16.8%+a
CLASS 4	12.01	16.8%+a
CLASS 5	12.20	16.8%+a
CLASS 6	12.03	16.8%+a
CLASS 7	12.18	16.8%+a

AREA COVERED BY BRICKLAYERS ZONES

ZONE 1 - Armstrong, Indiana, Remainder of Fayette and Westmoreland Counties

ZONE 2 - Allegheny County; Washington County Twps: Cross Creek, Hanover, Jefferson, Mt. Pleasant, Nottingham, Peters, Robinson, Smith & Union

ZONE 3 - Beaver County

ZONE 4 - Butler County

ZONE 5 - Twps, in Fayette of Jefferson & Washington; Westmoreland County, Twp of Rostraver; Remainder of Washington County

AREA COVERED BY CARPENTERS ZONES

ZONE 1 - Allegheny, Armstrong, Beaver, Butler, Fayette, Washington, Westmoreland Counties

ZONE 2 - Indiana County

AREA COVERED BY CEMENT MASON ZONES

ZONE 1 - Allegheny, Armstrong, Butler, Fayette, Indiana, Washington, Westmoreland Counties.

ZONE 2 - Beaver County

AREA COVERED BY ELECTRICIAN ZONES

Zone 1 - Allegheny, Armstrong, Fayette, Indiana, Washington Westmoreland

ZONE 2 - Beaver County

ZONE 3- Butler County

AREA COVERED BY LABORERS ZONES

ZONE 1 - Allegheny County

ZONE 2 - Beaver, Butler, Washington, Westmoreland

ZONE 3 - Armstrong, Fayette & Indiana

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AREA COVERED BY LINE CONSTRUCTION ZONES

ZONE 1 - Allegheny, Armstrong, Beaver, Fayette, Indiana, Washington and Westmoreland

ZONE 2 - Butler County

AREA COVERED BY LATHERS ZONES

ZONE 1 - Allegheny, Armstrong, Beaver Butler, Fayett, Washington & Westmoreland Counties

ZONE - 2 Indiana County

AREA COVERED BY MARBLE SETTERS ZONES

ZONE 1 - Allegheny, Butler, Westmoreland; Charleroi Twp. in Washington County

ZONE 2 - Beaver County

ZONE 3 - Fayette County, Jefferson and Washington Twps.

ZONE 4 - Eastern part of Indiana County

ZONE 5 - Remainder of Washington & Fayette Counties

AREA COVERED BY PAINTERS ZONES

ZONE 1 - Allegheny County

ZONE 2 - Beaver County

ZONE 3 - Butler County

ZONE 4 - Fayette & Washington Counties

ZONE 5 - Armstrong, Indiana, Westmoreland Counties

AREA COVERED BY PLASTERERS ZONES

ZONE 1 - Allegheny, Armstrong, Fayette, Butler, Westmoreland and Washington County

ZONE 2 - Beaver County

ZONE 3 - Indiana County

AREA COVERED BY PLUMBERS ZONES

ZONE 1 - Beaver & Butler Counties

ZONE 2 - Allegheny, Armstrong Counties; Washington County (that part West of a straight line drawn from Library to Kirby), Pennsylvania

ZONE 3 - Fayette, Indiana, Westmoreland Counties; Washington County (that part east of a straight line drawn from Library to Kirby) Pennsylvania

AREA COVERED BY SOFT FLOOR LAYERS ZONES

ZONE 1 - Allegheny, Armstrong, Beaver, Butler, Fayette, Washington and Westmoreland

ZONE 2 - Indiana County

AREA COVERED BY SPRINKLER FITTERS ZONES

ZONE 1 - Allegheny County

ZONE 2 - Armstrong, Beaver, Butler, Fayette, Indiana, Washington and Westmoreland

AREA COVERED BY STEAMFITTERS ZONES

ZONE 1 - Allegheny, Armstrong, remainder of Washington County, Fayette, Indiana, Westmoreland Counties

ZONE 2 - Twp. of Charleroi in Washington County

ZONE 3 - Beaver & Butler Counties

AREA COVERED BY STONEMASONS ZONES

ZONE 1 - Armstrong, Indiana, Westmoreland Counties; Remainder of Fayette County

ZONE 2 - Allegheny County; Twps., in Washington County, Cross Creek, Hanover, Jefferson, Mt. Pleasant, Nottingham, Peters, Robinson, Smith and Union; Twps., in Fayette County of Jefferson & Washington

ZONE 3 - Beaver County

ZONE 4 - Butler County

ZONE 5 - Remainder of Washington County

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AREA COVERED BY TERRAZZO WORKERS ZONES

ZONE 1 - Allegheny, Butler, Washington, Westmoreland

ZONE 2 - Beaver County

ZONE 3 - Indiana County

ZONE 4 - Fayette County

AREA COVERED BY TILE SETTERS ZONES

ZONE 1 - Allegheny, Butler, Washington, Westmoreland

ZONE 2 - Beaver County

ZONE 3 - Indiana County

ZONE 4 - Fayette County

CLASSIFICATION DEFINITIONS LABORERS ZONES

CLASS 1 - Laborer, Carryable pumps, west brick buggy or similar non-self-propelled vibrator operators walk behind forklift or similar, stripper and mover of forms, cement finishers, footers, window cleaner, all material conveyor (regardless of power used including starting and stopping)

CLASS 2 - West brick buggy or similar (self-propelled), power wheelbarrows buggies, walk behand forklift or similar, (self-propelled) wagon drill tender, drill runner, drill runners' tender (including drill mounted on truck, track or similar), blaster's tender, all operators of compacting equipment, pipe layers, burner, jackhammer man-concrete buster

CLASS 3 - Hod carrier, scaffold builder, bell and bottom man or furnances and stacks, mortar mixer, mortar mixing machine (regardless of power used), concrete saw operator, wagon drill operator

CLASS 4 - Gunnite Nozzleman

CLASS 5 - Blaster

POWER EQUIPMENT OPERATORS CLASSIFICATION DEFINITIONS

CLASS I - Austin-Western or similar type under 25 Ton, Austin-Western or similar type 25 ton or over; auto grader (CMI or similar); backhoe; batch plant - when conveyors are used for direct feeding or discharge, batch plant - no conveyors for direct feeding or discharge; cableway; caisson drill, central mix plant; cranes (exculding overhead) (truck or crawler type); cranes - tower (mobile); cranes - tower (stationary) (climbing type); cranes - tower (climbing type) cranes - hydraulic self-contained wagon crane - over 18 ton; derrick-traveler (self-propelled); derrick (all) types) derrick boats; dragline; dredge; engineer-maintenance; franki or similar type pile driver; gradall (remote control or otherwise; helicopter (when used for erection purposes); helicopter hoist operators (when used for erection purposes); hi-lift 4 yds. or over; hoist-hod (2 cages up to 10 floors; hoist-single cage with Chicago boom attached; hoist (50 ft. or over) (stacks, stoves, stoves or furnances); hoist (slip form jobs; hop-to or similar type with 180 degrees swing; hop-to or similar type with 360 degrees swing; kocal; koehring scooper; metro chip harvester or similar type; mix mobile or similar type (with self-loading attachment); mix mobile or similar type; mucking machine (tunnel); multiple bow machines; pile driver (sonic or similar type); post driver - guard rail (truck mounted); post driver - guard rail (skid type); pumpkrete - mobil or similar type; quad nine; shovels (all types); slip form paver (CMI or similar) 1 tractors - boom mounted (all types); tractors (all types with hydraulic back-hoe attached); tug boat and whirley

CLASS I-A - Austin-Western or similar type under 25 ton with jib; Austin Western or similar type 25 ton or over with jib; cranes (boom or mast 100 ft. or over to & including 150 ft. (truck or crawler type); cranes - mobile (any type 15 tons or overplaced on any bldg. structure; hoist-hod (2 cages over 10 floors)

CLASS I-B - Cranes (boom or mast over 150 ft. up to & including 200 ft. truck or crawler type)

CLASS I-C - Cranes (boom or mast over 200 ft.)

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POWER EQUIPMENT OPERATORS CLASSIFICATION DEFINITIONS CONT'D

CLASS II - Asphalt plant operator; athey loader; auger - truck tractor mounted; back filling machine; boat - material or personnel carrying (powered); boat - job work (inboard or outboard); bulldozer; cable layer; compactor with blade; compressor (1) and air tugger (1) (combination); compressor (1) and gunite machine (1) (combination); concrete belt placer; crane - overhead; curshing & screening plants; drill - Davey or similar type; drill - core (truck or skid mounted) drill - well & core (truck mounted); elevator (new buildings); euclid loader; excavating equipment (all other); forklift-lull or similar; grader; grader-elevating; greaser-equipment (head); hi-lift - less than 4 yds; hoist - one drum (4 floors or over); hoist - hod (buildings 4 floors or more); hoist - (2 drums or more in one unit); jumbo operator; locomotive; lift slab machine (hydraulic); mixer - paving; mucking machine pipe cleaning machine; refrigeration plant (used for constr. jobs i.e., cooling, concrete & holding banks); ross carrier (or similar type); scoope (single bowl) (self-powered & tractor drawn); spreader - concrete asphalt and stone; tower mobile (hoisting or lower material); trencher; well point systems; compressors (3 within a reasonable distance); generators electric (3) (over) 5 KW up to 20 KW); pumps (1½' discharge or less) (4 to 5 within reasonable distance); pumps (3) (over 1½ discharge) (within reasonable distance) welding machine (4 to 6 within reasonable distance) other than electrically driven); elevator (when used for alteration & remoldeling all bldgs.); grout pump (10H.P. or over); paver operator - asphalt (spreader); pumpkrete or similar type (not self-propelled); pumpkrete machine operator (stationary); tire repairman (when assigned to job); welder (repairman)

CLASS III - Ballast regulator; boiler; boring machine; broom, power (except push type); compressor - single (over 65 CFM; compressor (over 125 CFM and air pump); compressor (1) and sand blasting machine (1) (combination); conveyor over 1 and up to 3 units (regardless of power used); crane (carry; curb builder (self-propelled); drills - well and horizontal truck mounted; forklifts (ridden or self-propelled); form line machine; generator (over 5 KW: hoists (monorail) (regardless of power used); hoist one drum (regardless of power used) hoist roof (regardless of power used); huck machine or similar type; mixer concrete (regardless of power used); pavement breaker (self-propelled or ridden); pipe dream; plant, private or industrial air or steam valve; pump (over 1½" discharge regardless of power used); roller; saw (concrete); soil stablizer (pump type); spray cure machine (power driven);

POWER EQUIPMENT OPERATORS CLASSIFICATION DEFINITIONS CONT'D

steam jenny (or similar type); stone crusher; stone spreader self-propelled; syphon (steam or air); tractors (when used for snaking and hauling); truck, (winch) truck or hydraulic boom (when hoisting & placing); tube finisher (CMI or similar type); tugger; welding machine single (300 amp or over) other than electrically driven); compressors (2); generators (2); mortar machine over 10 cu. ft. and single unit conveyor; pumps (1½" discharge (2) in bank) (within reasonable distance); welding machines (2 to 3) (other than electrically driven)

CLASS III-A - Conveyors 4 units or more

CLASS IV - Compressor - 65 cubic ft. or under (regardless of power used); conveyors one (1) unit regardless of power used); heaters - up to and including 6; jack motor hydraulic (single type) power driven; ladavator; mixer mortar (10 cubic ft. or under); mulching machine; pin puller (powered); pulverizer; pump - 1½" discharge or less; seeding machine; spreader side delivery shoulder (attachment); tie tamper (multiple heads); tractor farm (when used for landscaping); water blaster

CLASS V - Brakeman; deckhand; helicopter oiler; mechanic

CLASS V-A - Truck crane; oiler & fireman

CLASS V-B - Oiler on truck crane 50-ton up to but not incl. 100-ton

CLASS V-C - Oiler truck crane 100 ton and over

TRUCK DRIVER CLASSIFICATIONS DEFINITIONS

CLASS 1 - Service truck (pickup, jeep, buses, station wagon, panel truck, escort vehicle, including fuel and water trucks)

CLASS 2 - Dump and flat top (including fuel and water trucks, fork lift in warehouse or job site storage area and single axle trucks with power tailgate); distributor truck over 33,000 lbs. gross weight (oil, tar asphalt products two man operation, bottomsmen)

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TRUCK DRIVER CLASSIFICATIONS DEFINITIONS CONT'D

CLASS 3 - Transit mix, single axle

CLASS 4 - Transit mix, tandem

CLASS 5 - Heavy duty tractor and trailer with low bed, 6 to 16 wheels and pole trailer and wide load

CLASS 6 - Distributor truck up to 33,000 lbs. gross weight (oil tar asphalt products) one man operation; truck with dolly and scissor truck; truck with dump trailer or tandem, including fuel and water, tandem axle truck with mixer, driver towing equipment

CLASS 7 - Winch truck and form truck

WELDERS - Rate of craft

PAID HOLIDAYS: (Where Applicable)

A-New Year's Day; B-Memorial Day; C-Inpendence Day; E-Thanksgiving Day; F-Christmas Day.

FOOTNOTES:

a. Employer Contributes 8% basic hourly rate for 5 years or more of service or6% basic hourly rate for 6 months to 5 years of service as Vacation Pay Credit.

b. Paid Holidays: A through F, plus the Friday after Thanksgiving Day.

c. Paid Holidays: A through F and Washington's Birthday, Good Friday and Christmas Eve, provided the employee has worked 45 days for the employer the 120 days prior to the holiday, and is available for work the day preceding and following the holiday.

d. Paid Holidays: New Year's Day, Memorial Day, Independence Day, Labor Day, Thanksgiving Day, Christmas Day and Veterans Day and Good Friday, provided the employee is available for work the day before and the day after the holiday and has been employed by the employer a minimum of 40 hours each calendar month for two consecutive month.

"Unlisted classifications needed for work not included within the scope of the classifications listed may be added after award only as provided in the labor standards contract clauses (29 CFR, 5.5 (a)(1)(ii))."

SUPERSEDEAS DECISION

STATE: Texas
DECISION NO.: TX84-4007
COUNTIES: Statewide
DATE: Date ofPublication
Supersedes Decision No. TX83-4053, dated July 22, 1983, in 48 FR 33625.
DESCRIPTION OF WORK: See "Area Covered by Various Zones"

	ZONE 1	ZONE 2	ZONE 3	ZONE 4	ZONE 5
	Basic Hourly Rates	Basic Hourly Rates	Basic Hourly Rates	Basic Hourly Rates	Basic Hourly Rates
Air Tool Man	6.00	-	5.50	-	6.25
Asphalt Heaterman	6.10	5.00	5.50	5.15	5.25
Asphalt Raker	6.55	6.30	5.75	5.45	5.90
Asphalt Shoveler	-	-	-	4.20	5.05
Batching Plant Scaleman	7.10	5.85	6.00	5.65	5.35
Batterboard Setter	-	-	7.00	-	-
Carpenter	6.90	6.50	6.45	5.95	6.45
Carpenter Helper	6.10	5.85	5.40	4.75	5.30
Concrete Finisher (Paving)	8.00	7.55	-	7.05	7.00
Concrete Finisher Helper (Paving)	-	6.30	-	4.75	5.00
Concrete Finisher (Structures)	7.45	6.90	6.30	5.40	6.20
Concrete Finisher Helper (Structures)	5.90	5.90	5.25	4.75	5.05
Concrete Rubber	-	-	5.00	-	4.85
Electrician	-	-	11.70	11.80	11.50
Electrician Helper	-	-	-	9.75	6.60
Fireman	-	-	-	-	-
Form Builder (Structures)	6.45	7.25	6.50	5.50	6.35
Form Builder Helper (Structures	-	-	5.15	4.60	5.25
Form Liner (Paving & Curb)	7.75	-	6.50	-	-
Form Setter (Paving & Curb)	6.95	7.10	6.50	4.75	6.55
Form Setter Helper (Paving & Curb)	6.10	-	-	4.20	5.00
Form Setter (Structures)	7.40	7.25	6.30	5.35	6.45
Form Setter Helper (Structures)	6.05	6.60	4.70	4.70	5.40
Laborer, Common	4.95	4.70	4.70	4.20	4.50
Laborer, Utility Man	5.80	5.55	5.70	5.05	5.10
Manhole Builder, Brick	5.75	-	-	-	-
Mechanic	8.40	8.00	7.65	6.60	7.55
Mechanic Helper	6.25	-	5.95	-	5.60
Oiler	6.10	5.60	6.00	5.20	5.80
Serviceman	6.50	6.70	5.60	5.40	5.80
Painter (Structures)	-	-	-	-	9.00
Painter Helper (Structures)	-	-	-	-	6.50
Piledrivermen	6.95	-	-	-	-
Pipelayer	6.00	6.50	-	-	5.70
Pipelayer Helper	4.95	-	-	-	5.15
Pneumatic Mortarman	4.95	-	-	-	-
Powderman	7.00	-	5.80	6.50	6.45
Reinforcing Steel Setter (Paving)	-	-	5.50	5.60	6.00

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	ZONE 1	ZONE 2	ZONE 3	ZONE 4	ZONE 5
	Basic Hourly Rates	Basic Hourly Rates	Basic Hourly Rates	Basic Hourly Rates	Basic Hourly Rates
Reinforcing Steel Setter (Structures)	6.90	6.50	6.55	5.35	6.20
Reinforcing Steel Setter Helper	5.70	-	5.40	4.60	5.40
Steel Worker (Structural	5.70	-	-	-	-
Steel Worker Helper (Structural)	-	-	-	-	-
Sign Erector	-	-	-	-	6.00
Sign Erector Helper	-	-	-	-	-
Spreader Box Man	6.20	6.10	6.40	6.55	5.50
Swamper	-	4.75	-	-	-
Power Equipment Operators:					
Asphalt Distributor	7.35	6.50	6.90	5.80	5.95
Asphalt Paving Machine	7.30	6.30	6.90	6.10	6.35
Broom or Sweeper Operator	5.25	5.45	-	5.30	5.05
Bulldozer 150 HP & Less	6.35	6.50	6.75	5.50	6.10
Bulldozer over 150 HP	7.05	6.70	6.95	6.55	6.35
Concrete Paving Curing Machine	6.75	-	-	-	7.50
Concrete Paving Finishing Machine	7.00	-	-	-	-
Concrete Paving Joint Machine	-	-	-	-	-
Concrete Paving Joint Sealer	-	-	-	-	-
Concrete Paving Longitudinal Float	-	-	-	-	-
Concrete Paving Saw	-	-	-	-	-
Concrete Paving Spreader	6.50	-	-	-	-
Paving Sub Grader	6.50	6.50	-	7.50	-
Crane, Clamshell, Backhoe, Derrick, Dragline, Shovel (less than 1½ CY)	7.00	6.85	6.35	6.00	6.45
Crane, Clamshell, Backhoe, Derrick, Dragline, Shovel (1½ CY & Over)	8.00	8.60	7.00	7.05	7.55
Crusher or Screening Plant Operator	7.00	6.70	6.35	-	6.00
Form Loader	-	-	-	-	-
Foundation Drill Operator (Crawler Mounted)	-	-	-	-	-
Foundation Drill Operator (Truck Mounted)	8.75	9.25	-	-	9.15
Foundation Drill Operator Helper	-	5.90	-	-	6.00
Front End Loader (2½ CY & less)	6.10	6.05	5.80	4.95	5.70
Front End Loader (Over 2½ CY)	7.20	6.70	7.05	6.25	6.60
Hoist (Over 2 Drums)	6.90	-	-	-	-
Mixer (Over 16 CF)	-	-	-	-	-
Mixer (16 CF & Less)	-	-	-	-	-
Motor Grader Operator, Fine Grade	8.20	8.35	8.50	7.75	7.95
Motor Grader Operator	7.25	7.45	7.05	6.75	7.10
Roller, Steel Wheel (Plant-Mix Pavements)	6.15	6.50	6.00	4.95	4.90
Roller, Steel Wheel (Other-Flat Wheel or Tamping)	5.65	5.30	5.25	4.75	5.05
Roller, Pneumatic (self-propelled)	5.20	5.00	5.40	4.90	5.00
Scrapers (17 CY & Less)	5.85	5.30	5.50	5.00	5.50
Scrapers (Over 17 CY)	6.75	7.40	6.60	5.95	6.20
Self-Propelled Hammer	-	-	-	-	-

	ZONE 1	ZONE 2	ZONE 3	ZONE 4	ZONE 5
	Basic Hourly Rates	Basic Hourly Rates	Basic Hourly Rates	Basic Hourly Rates	Basic Hourly Rates
Side Boom	4.95	-	-	-	-
Tractor (Crawler Type) 150 HP & Less	5.30	4.95	5.20	-	6.00
Tractor (Crawler Type) over 150 HP	6.85	7.00	6.25	-	6.75
Tractor (Pneumatic) 80 HP & Less	5.70	5.50	5.50	-	5.05
Tractor (Pneumatic) over 80 HP	6.50	6.50	6.75	-	5.60
Traveling Mixer	-	-	-	-	5.70
Trenching Machine, Light	4.95	-	-	-	-
Trenching Machine, Heavy	5.85	-	-	6.15	-
Wagon Drill, Boring Machine or Post Hole Driller Operator	6.00	-	5.55	4.50	6.00
Truck Drivers:					
Single Axle, Light	5.60	5.20	5.30	4.80	4.80
Single Axle, Heavy	6.15	5.40	5.35	5.15	5.25
Tandem Axle or Semitrailer	5.90	5.70	6.25	5.15	5.10
Lowboy-Float	6.60	-	6.70	5.95	5.25
Transit-Mix	5.90	6.00	-	-	-
Winch	7.00	-	-	-	5.00
Welder	8.00	7.30	6.85	6.10	6.70
Welder Helper	7.15	6.00	6.00	-	5.35

Unlisted classifications needed for work not included within the scope of the classifications listed may be added after award only as provided in the labor standards contract clauses (29 CFR, 5.5(a)(1)(ii)).

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	ZONE 6	ZONE 7	ZONE 8	ZONE 9	ZONE 10
	Basic Hourly Rates	Basic Hourly Rates	Basic Hourly Rates	Basic Hourly Rates	Basic Hourly Rates
Air Tool Man	-	-	-	-	5.25
Asphalt Heaterman	-	4.60	5.65	5.70	5.90
Asphalt Raker	-	5.30	6.10	6.00	7.05
Asphalt Shoveler	5.05	5.05	-	-	6.40
Batching Plant Scaleman	-	6.75	-	7.25	6.70
Batterboard Setter	-	-	6.80	-	6.00
Carpenter	7.50	7.05	6.70	6.80	7.10
Carpenter Helper	5.70	5.40	5.35	5.80	5.85
Concrete Finisher (Paving	5.75	-	5.95	6.80	7.70
Concrete Finisher Helper (Paving)	-	-	-	5.25	6.60
Concrete Finisher (Structures)	6.40	6.50	6.30	6.40	7.20
Concrete Finisher Helper (Structures)	5.00	5.65	-	5.50	6.15
Concrete Rubber	-	-	-	5.10	-
Electrician	-	11.50	12.75	10.00	9.75
Electrician Helper	-	7.10	-	-	8.25
Fireman	-	-	-	-	-
Form Builder (Structures)	6.50	7.10	6.65	6.25	7.25
Form Builder Helper (Structures)	-	-	6.30	5.35	5.95
Form Liner (Paving & Curb)	-	-	-	-	7.25
Form Setter (Paving & Curb)	5.25	6.20	5.50	-	7.00
Form Setter Helper (Paving & Curb)	-	-	5.25	-	5.60
Form Setter (Structures)	6.00	6.60	6.50	7.15	6.35
Form Setter Helper (Structures)	-	5.15	6.20	5.45	5.95
Laborer, Common	4.00	4.00	4.60	4.80	5.00
Laborer, Utility Man	5.65	4.80	5.50	5.25	5.70
Manhole Builder, Brick	-	-	-	-	-
Mechanic	7.05	7.05	7.35	7.60	8.40
Mechanic Helper	5.10	4.75	6.10	5.50	6.00
Oiler	-	-	7.00	-	6.85
Serviceman	5.60	6.10	5.45	6.35	5.90
Painter (Structures)	-	-	14.00	-	-
Painter Helper (Structures)	-	-	8.00	-	-
Piledriverman	-	-	-	-	-
Pipelayer	5.15	6.00	-	6.00	6.20
Pipelayer Helper	-	-	-	4.80	5.00
Pneumatic Mortarman	-	5.50	-	-	-
Powderman	-	-	6.00	-	-
Reinforcing Steel Setter (Paving)	-	-	-	-	6.25
Reinforcing Steel Setter (Structures)	7.00	6.80	6.95	6.15	7.00
Reinforcing Steel Setter Helper	-	4.75	5.75	5.30	5.70
Steel Worker (Structural)	-	7.00	-	-	-
Steel Worker Helper (Structural)	-	5.75	-	-	-
Sign Erector	-	6.50	-	-	7.10
Sign Erector Helper	-	4.00	-	-	-

	ZONE 6	ZONE 7	ZONE 8	ZONE 9	ZONE 10
	Basic Hourly Rates	Basic Hourly Rates	Basic Hourly Rates	Basic Hourly Rates	Basic Hourly Rates
Spreader Box Man	5.45	5.40	5.95	-	6.25
Swamper	-	-	5.15	-	-
Power Equipment Operators:					
Asphalt Distributor	6.15	5.90	6.20	6.55	6.55
Asphalt Paving Machine	-	6.35	6.25	6.15	7.40
Broom or Sweeper Operator	5.25	-	5.25	-	6.35
Bulldozer 150 HP & Less	6.00	6.25	5.95	6.55	7.00
Bulldozer Over 150 HP	6.95	6.65	6.85	7.35	7.60
Concrete Paving Curing Machine	-	-	-	-	-
Concrete Paving Finishing Machine	-	-	-	-	7.90
Concrete Paving Joint Machine	-	-	-	-	-
Concrete Paving Joint Sealer	-	-	-	-	-
Concrete Paving Longitudinal Float	-	-	-	-	-
Concrete Paving Saw	-	-	-	5.25	7.00
Concrete Paving Spreader	-	-	-	-	-
Paving Sub Grader	-	-	-	-	-
Crane, Clamshell, Backhoe, Derrick, Dragline, Shovel (Less than 1½ CY)	5.75	6.50	6.75	7.00	7.45
Crane, Clamshell, Backhoe, Derrick, Dragline, Shovel (1½ CY & Over)	7.40	7.60	8.15	7.85	8.15
Crusher or Screening Plant Operator	8.00	-	-	-	-
Form Loader	-	-	-	-	7.25
Foundation Drill Operator (Crawler Mounted)	-	-	-	-	-
Foundation Drill Operator (Truck Mounted)	-	-	-	9.00	9.50
Foundation Drill Operator Helper	-	-	-	6.35	7.00
Front End Loader (2½ CY & Less)	5.65	5.25	5.95	5.85	6.55
Front End Loader (Over 2½ CY)	6.35	6.35	6.65	7.20	7.90
Hoist (Over 2 Drums)	-	-	-	-	-
Mixer (Over 16 CF)	-	-	-	-	-
Mixer (16 CF & Less)	-	-	-	-	6.00
Motor Grader Operator, Fine Grade	7.50	7.80	8.00	7.95	8.55
Motor Grader Operator	6.50	6.85	7.50	7.05	7.75
Roller, Steel Wheel (Plant-Mix Pavement)	4.05	5.45	5.30	6.20	6.65
Roller, Steel Wheel (Other-Flat Wheel or Tamping)	4.80	5.40	5.15	5.35	6.50
Roller, Pneumatic (Self-Propelled)	4.50	4.50	4.90	5.10	5.80
Scrapers (17 CY & Less)	5.50	4.60	5.55	5.85	7.00
Scrapers (Over 17 CY)	6.40	6.35	6.00	7.15	7.00
Self-Propelled Hammer	-	-	6.10	-	-
Side Boom	-	-	-	-	-
Tractor (Crawler Type) 150 HP & Less	5.60	-	4.60	5.00	6.25
Tractor (Crawler Type) Over 150 HP	6.65	-	5.75	-	7.25
Tractor (Pneumatic) 80 HP & Less	4.70	-	-	6.25	5.90
Tractor (Pneumatic) Over 80 HP	5.20	5.85	5.40	6.50	-
Traveling Mixer	-	4.70	-	5.90	6.50
Trenching Machine, Light	-	-	-	-	-
Trenching Machine, Heavy	-	6.50	-	7.40	-

	ZONE 6	ZONE 7	ZONE 8	ZONE 9	ZONE 10
	Basic Hourly Rates	Basic Hourly Rates	Basic Hourly Rates	Basic Hourly Rates	Basic Hourly Rates
Wagon Drill, Boring Machine or Post Hole Driller Operator	-	-	5.00	-	5.75
Truck Drivers:					
Single Axle, Light	4.50	4.50	5.10	5.30	5.80
Single Axle, Heavy	-	5.15	5.15	6.40	5.80
Tandem Axle or Semi-trailer	6.10	5.75	5.40	5.80	5.80
Lowboy-Float	-	-	-	-	5.90
Transit-Mix	-	-	5.65	-	6.50
Winch	-	5.30	-	-	-
Welder	-	-	6.15	-	7.50
Welder Helper	-	-	-	-	6.00

Unlisted classifications needed for work not included within the scope of the classifications listed may be added after award only as provided in the labor standards contract clauses (29 CFR, 5.5(a)(1)(ii)).

	ZONE 11	ZONE 12	ZONE 13	ZONE 14	ZONE 15
	Basic Hourly Rates	Basic Hourly Rates	Basic Hourly Rates	Basic Hourly Rates	Basic Hourly Rates
Air Tool Man	6.50	6.50	-	-	6.00
Asphalt Heaterman	-	6.00	6.00	-	-
Asphalt Raker	7.60	6.55	5.70	5.25	6.95
Asphalt Shoveler	5.60	5.50	-	-	7.35
Batching Plant Scaleman	7.10	6.35	-	-	8.00
Batterboard Setter	-	-	-	-	-
Carpenter	7.20	7.10	7.00	8.95	8.35
Carpenter Helper	6.05	6.00	6.05	5.25	6.55
Concrete Finisher (Paving)	8.00	6.90	7.55	-	8.20
Concrete Finisher Helper (Paving)	6.85	5.60	6.00	-	6.20
Concrete Finisher (Structures)	7.15	6.80	7.20	7.50	7.75
Concrete Finisher Helper (Structures)	5.90	5.85	5.70	6.75	6.25
Concrete Rubber	6.00	-	5.50	-	6.70
Electrician	10.60	9.00	9.50	-	11.25
Electrician Helper	8.15	-	-	-	7.85
Fireman	5.70	-	-	-	-
Form Builder (Structures)	7.25	6.40	6.35	-	7.35
Form Builder Helper (Structures)	5.95	5.70	5.90	-	5.80
Form Liner (Paving & Curb)	7.15	5.75	7.25	-	8.20
Form Setter (Paving & Crub)	7.45	7.00	6.40	-	7.15
Form Setter Helper (Paving & Curb)	5.95	5.50	-	-	6.50
Form Setter (Structures)	7.00	7.10	7.00	8.20	7.55
Form Setter Helper (Structures)	5.10	5.70	6.75	6.55	6.55
Laborer, Common	4.70	4.85	5.10	4.75	5.30
Laborer, Utility Man	5.20	5.65	5.40	5.35	6.10
Manhole Builder, Brick	7.50	-	-	-	7.15
Mechanic	8.35	8.65	8.00	9.15	8.80
Mechanic Helper	6.55	6.25	-	7.00	7.15
Oiler	6.75	5.80	6.25	5.95	7.00
Serviceman	6.50	6.00	6.00	6.15	7.45
Painter (Structures)	-	-	-	-	-
Painter Helper (Structures)	-	-	-	-	-
Piledriverman	6.00	-	8.00	-	7.00
Pipelayer	6.25	6.15	-	-	6.85
Pipelayer Helper	5.50	5.00	-	-	5.70
Pneumatic Mortarman	-	-	-	-	-
Powderman	7.50	-	-	-	-
Reinforcing Steel Setter (Paving)	6.05	6.65	-	-	6.50
Reinforcing Steel Setter (Structures)	6.75	5.60	7.00	7.75	7.20
Reinforcing Steel Setter Helper	5.50	4.85	5.10	-	6.10
Steel Worker (Structural)	6.70	5.80	-	-	8.00
Steel Worker Helper (Structural)	6.00	5.00	-	-	6.10
Sign Erector	7.75	6.30	-	-	5.50
Sign Erector Helper	7.05	-	-	-	-
Spreader Box Man	-	6.25	6.15	5.50	7.25

	ZONE 11	ZONE 12	ZONE 13	ZONE 14	ZONE 15
	Basic Hourly Rates	Basic Hourly Rates	Basic Hourly Rates	Basic Hourly Rates	Basic Hourly Rates
Swamper	-	6.50	-	-	-
Power Equipment Operators:					
Asphalt Distributor	6.95	6.65	6.20	5.85	6.60
Asphalt Paving Machine	7.50	6.90	6.55	5.75	7.95
Broom or Sweeper Operator	-	5.25	5.60	-	-
Bulldozer 150 HP & Less	7.00	6.75	6.95	6.75	7.00
Bulldozer over 150 HP	7.85	7.15	7.20	7.05	8.00
Concrete Paving Curing Machine	7.75	6.50	-	-	7.40
Concrete Paving Finishing Machine	7.75	7.50	-	-	8.00
Concrete Paving Joint Machine	-	7.00	-	-	-
Concrete Paving Joint Sealer	-	7.00	-	-	-
Concrete Paving Longitudinal Float	7.75	-	-	-	-
Concrete Paving Saw	6.50	7.00	-	-	7.00
Concrete Paving Spreader	-	-	-	-	8.25
Paving Sub Grader	-	-	-	-	-
Crane, Clamshell, Backhoe, Derrick, Dragline, Shovel (less than 1½ CY)	7.30	7.20	7.05	6.50	8.05
Crane, Clamshell, Backhoe, Derrick, Dragline, Shovel (1½ CY & Over)	7.70	8.20	8.25	8.60	8.85
Crusher or Screening Plant Operator	6.00	-	-	-	-
Form Loader	-	-	-	-	-
Foundation Drill Operator (Crawler Mounted)	-	8.50	-	-	11.25
Foundation Drill Operator (Truck Mounted)	7.75	-	-	10.25	9.00
Foundation Drill Operator Helper	-	-	-	-	-
Front End Loader (2½ CY & Less)	6.70	6.60	6.50	5.90	6.90
Front End Loader (Over 2½ CY)	7.50	7.00	6.75	7.85	7.85
Mixer (Over 16 CF)	-	7.00	-	-	6.60
Mixer (16 CF & Less)	-	-	-	-	6.00
Motor Grader Operator, Fine Grade	8.20	8.45	7.75	8.70	8.75
Motor Grader Operator	7.60	7.35	7.10	8.25	7.95
Roller, Steel Wheel (Plant-Mix Pavements)	7.00	5.85	6.15	5.20	6.85
Roller, Steel Wheel (Other-Flat Wheel or Tamping)	6.65	6.30	6.15	5.50	6.00
Roller, Pneumatic (Self-Propelled)	6.30	5.70	6.30	5.55	6.35
Scrapers (17 CY & Less)	6.00	6.50	6.25	6.00	6.75
Scrapers (Over 17 CY)	7.35	6.85	7.00	7.55	7.75
Self-Propelled Hammer	-	-	-	-	-
Side Boom	-	5.45	5.10	-	-
Tractor (Crawler Type) 150 HP & Less	6.00	5.50	6.70	-	6.35
Tractor (Crawler Type) Over 150 HP	7.10	6.50	6.75	-	7.55
Tractor (Pneumatic) 80 HP & Less	-	-	-	-	6.00
Tractor (Pneumatic) Over 80 HP	6.75	-	-	-	-
Traveling Mixer	6.50	5.75	-	6.00	6.25
Trenching Machine, Light	6.00	-	-	-	-

	ZONE 11	ZONE 12	ZONE 13	ZONE 14	ZONE 15
	Basic Hourly Rates	Basic Hourly Rates	Basic Hourly Rates	Basic Hourly Rates	Basic Hourly Rates
Trenching Machine, Heavy	6.90	-	-	-	-
Wagon Drill, Boring Machine or Post Hole Driller Operator	-	-	-	-	8.00
Truck Drivers:					
Single Axle, Light	5.95	5.65	6.00	6.00	6.25
Single Axle, Heavy	6.20	6.00	6.25	6.35	6.70
Tandem Axle or Semi-trailer	6.00	6.30	6.25	-	6.60
Lowboy-Float	6.85	-	6.95	-	7.95
Transit-Mix	6.60	6.75	-	-	7.00
Winch	6.70	-	-	-	-
Welder	7.70	7.50	6.50	-	8.10
Welder Helper	7.00	-	-	-	-

Unlisted classifications needed for work not included within the scope of the classifications listed may be added only as provided in the labor standards contract clauses (29 CFR, 5.5(a)(1)(ii)).

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	ZONE 16				
	Basic Hourly Rates	Basic Hourly Rates	Basic Hourly Rates	Basic Hourly Rates	Basic Hourly Rates
Air Tool Man	-				
Asphalt Heaterman	7.50				
Asphalt Raker	6.50				
Asphalt Shoveler	-				
Batching Plant Scaleman	-				
Batterboard Setter	-				
Carpenter	8.00				
Carpenter Helper	6.25				
Concrete Finisher (Paving)	9.00				
Concrete Finisher Helper (Paving)	-				
Concrete Finisher (Structures)	8.15				
Concrete Finisher Helper (Structures)	-				
Concrete Rubber	-				
Electrician	-				
Electrician Helper	-				
Fireman	-				
Form Builder (Structures)	7.75				
Form Builder Helper (Structures)	-				
Form Liner (Paving & Curb)	-				
Form Setter (Paving & Curb)	-				
Form Setter Helper (Paving & Curb)	-				
Form Setter (Structures)	7.10				
Form Setter Helper (Structures)	-				
Laborer, Common	6.05				
Laborer, Utility Man	7.00				
Manhole Builder, Brick	-				
Mechanic	10.90				
Mechanic Helper	5.75				
Oiler	-				
Serviceman	-				
Painter (Structures)	7.25				
Painter Helper (Structures	6.00				
Piledrivermen	-				
Pipelayer	-				
Pipelayer Helper	-				
Pneumatic Mortarman	-				
Powderman	-				
Reinforcing Steel Setter (Paving)	-				
Reinforcing Steel Setter (Structures)	-				
Reinforcing Steel Setter Helper	-				
Steel Worker (Structural)	-				
Steel Worker Helper (Structural)	-				
Sign Erector	-				
Sign Erector Helper	-				
Spreader Box Man	7.50				
Swamper	-				

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	ZONE 16				
	Basic Hourly Rates	Basic Hourly Rates	Basic Hourly Rates	Basic Hourly Rates	Basic Hourly Rates
Power Equipment Operators:					
Asphalt Distributor	-				
Asphalt Paving Machine	8.00				
Broom or Sweeper Operator	6.15				
Bulldozer 150 HP & Less	8.00				
Bulldozer Over 150 HP	10.00				
Concrete Paving Curing Machine	-				
Concrete Paving Finishing Machine	-				
Concrete Paving Joint Machine	-				
Concrete Paving Joint Sealer	-				
Concrete Paving Longitudinal Float	-				
Concrete Paving Spreader	-				
Paving Sub Grader	-				
Crane, Clamshell, Backhoe, Derrick, Dragline, Shovel (Less than 1½ CY)	8.00				
Crane, Clamshell, Backhoe, Derrick, Dragline, Shovel (1½ CY & Over	9.50				
Crusher or Screening Plant Operator	-				
Form Loader	-				
Foundation Drill Operator (Crawler Mounted)	-				
Foundation Drill Operator (Truck Mounted)	-				
Foundation Drill Operator Helper	-				
Front End Loader (2½ CY & Less)	7.00				
Front End Loader (Over 2½ CY)	8.75				
Hoist (Over 2 drums)	-				
Mixer Over 16 CF)	-				
Mixer (16 CF & Less)	-				
Motor Grader Operator, Fine Grade	9.85				
Motor Grader Operator	8.10				
Roller, Steel Wheel (Plant-Mix Pavements)	6.35				
Roller, Steel Wheel (Other-Flat Wheel or Tamping	-				
Roller, Pneumatic (Self-Propelled)	7.00				
Scrapers (17 CY & Less)	-				
Scrapers (Over 17 CY)	-				
Self-Propelled Hammer	-				
Side Boom	-				
Tractor (Crawler Type) 150 HP & Less	-				
Tractor (Crawler Type) Over 150 HP	-				
Tractor (Pneumatic) 80 HP & Less	7.00				
Tractor (Pneumatic) Over 80 HP	8.00				

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	ZONE 16				
	Basic Hourly Rates	Basic Hourly Rates	Basic Hourly Rates	Basic Hourly Rates	Basic Hourly Rates
Traveling Mixer	-				
Trenching Machine, Light	-				
Trenching Machine, Heavy	-				
Wagon Drill, Boring Machine or Post Hole Driller Operator	-				
Truck Drivers:					
Single Axle, Light	6.55				
Single Axle, Heavy	-				
Tandem Axle or Semitrailer	7.00				
Lowboy-Float	-				
Transit-Mix	-				
Winch	-				
Welder	-				
Welder Helper	-				

Unlisted classifications needed for work not included within the scope of the classifications listed may be added after award only as provided in the labor standards contract clauses (29 CFR, 5.5(a)(1)(ii)).

AREA COVERED BY VARIOUS ZONES

ZONE 1 - Archer, Armstrong, Baylor, Briscoe, Carson, Castro, Childress, Clay, Collingsworth, Dallam, Deaf Smith, Donley, Gray, Hall, Hansford, Hardeman, Hartley, Hemphill, Hutchinson, Lipscomb, Montague, Moore, Ochiltree, Oldham, Parmer, Potter, Randall, Roberts, Sherman, Swisher, Wheeler, Wichita & Wilbarger Counties

DESCRIPTION OF WORK: Heavy (excluding tunnels & dams) and Highway Projects (does not include building structures in rest area projects)

ZONE 2 - Bailey, Borden, Cochran, Cottle, Crosby, Dawson, Dickens, Fisher, Floyd, Foard, Gaines, Garza, Hale, Haskell, Hockley, Jones, Kent, King, Knox, Lamb, Lubbock, Lynn, Motley, Scurry, Shackelford, Stephens, Stonewall, Terry, Throckmorton, Yoakum & Young Counties

DESCRIPTION OF WORK: Heavy (excluding tunnels & dams) and Highway Projects (does not include building structures in rest area projects)

ZONE 3 - Andrews, Brown, Callahan, Coke, Coleman, Comanche, Concho, Crane, Crockett, Eastland, Ector, Erath, Glasscock, Howard, Irion, Kimble, Loving, Martin, McCulloch, Menard, Midland, Mills *, Mitchell, Nolan, Reagan, Runnels, San Saba, Schleicher, Sterling, Sutton, Taylor, Tom Green, Upton, Ward & Winkler Counties

DESCRIPTION OF WORK: Heavy (excluding tunnels & dams) and Highway Projects (does not include building structures in rest area projects)
*Not to be used for work on water or sewage treatment plant or lift/pump stations in Mills County

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ZONE 4 - Brewster, Culberson, El Paso *, Hudspeth, Jeff Davis, Pecos, Presidio, Reeves & Terrell Counties

DESCRIPTION OF WORK: Heavy (excluding tunnels & dams), Water & sewer lines and Highway Projects (does not include building structures in rest area projects)

*Not to be used for Heavy Projects in El Paso County

ZONE 5 - Atascosa, Bandera, Bexar, Comal, Dimmit, Edwards, Frio, Guadalupe, Kendall, Kerr, Kinney, LaSalle, Maverick, McMullen, Medina, Real, Uvalde, Val Verde, Wilson & Zavala Counties

DESCRIPTION OF WORK: Heavy (excluding tunnels & dams) and Highway Projects (does not include building structures in rest area projects)

ZONE 6 - Brooks, Cameron, Duval, Hidalgo, Jim Hogg, Kenedy, Starr, Webb, Willacy & Zapata Counties

DESCRIPTION OF WORK: Heavy (excluding tunnels & dams) and Highway Projects (does not include building structures in rest area projects) & Incidental Shore Work

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ZONE 7 - Aransas, Bee, Calhoun, DeWitt, Goliad, Jackson, Jim Wells, Karnes, Kleberg, Lavaca, Live Oak, Nueces, Refugio, San Patricio & Victoria Counties

DESCRIPTION OF WORK Heavy (excluding tunnels & dams) and Highway Projects (does not include building structures in rest area projects) & Incidental Shore Work

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ZONE 8 - Austin, Bastrop, Blanco, Burnet, Caldwell, Colorado, Fayette, Gillespie, Gonzales, Hays, Lee, Llano, Mason, Travis & Williamson * Counties

DESCRIPTION OF WORK: Heavy (excluding tunnels & dams) and Highway Projects (does not include building structures in rest area projects)
*Not to be used on work on water or sewage treatment plant or lift pump Stations in Williamson Co

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ZONE 9 - Bell, Bosque, Coryell, Falls, Freestone, Hamilton, Hill, Lampasas, Limestone, McLennan & Navarro Counties

DESCRIPTION OF WORK Heavy (exluding tunnels, dam & work on water or sewage treatment plant or lift/pump stations) and Highway Projects (does not include building structures in rest area projects)

ZONE 10 - Cooke, Denton, Hood, Jack, Johnson, Palo Pinto, Parker, Sommervell, Tarrant * and Wise Counties

DESCRIPTION OF WORK: Heavy (exluding tunnels & dams), Water & Sewer Lines and Highway Projects (does not include building structures in rest area projects)
*Not to beused for Heavy Projects in Tarrant County

ZONE 11 - Collin, Dallas, Ellis, Grayson & Rockwall Counties

DESCRIPTION OF WORK: Water & sewer lines & Highway Construction Projects Only

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ZONE 12 - Bowie, Camp, Cass, Delta, Fannin, Franklin, Gregg, Harrison, Hopkins, Hunt, Kaufman, Lamar, Marion, Morris, Rains, Red River, Rusk, Smith, Titus, Upshur, Van Zandt & Wood Counties

DESCRIPTION OF WORK: Heavy (excluding tunnels & dams) and Highway Projects (does not include building structures in rest area projects)

ZONE 13 - Anderson, Angelina, Cherokee, Henderson, Houston, Jasper, Nacogdoches, Newton, Panola, Polk, Sabine, San Augustine, San Jacinto, Shelby, Trinity & Tyler Counties

DECISION NO: TX84-4007

DESCRIPTION OF WORK: Heavy (excluding tunnels & dams) and Highway Projects (does not include building structures in rest area projects) & Incidental Shore Work

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ZONE 14 - Brazos, Burleson, Grimes, Leon *, Madison, Milam *, Robertson *, Walker & Washington Counties

DESCRIPTION OF WORK: Heavy (excluding tunnels & dams) and Highway Projects (does not include building structures in rest area projects)
*Not to be used for work on water or sewage treatment plant or lift/pump stations in Leon, Milam & Robertson Cos.

ZONE 15 -Brazoria, Fort Bend, Galveston, Harris, Matagorda, Montgomery, Waller & Wharton Counties

DESCRIPTION OF WORK: Highway Construction Projects Only

ZONE 16 - Chambers, Hardin, Jefferson *, Liberty & Orange * Counties

DESCRIPTION OF WORK: Heavy Projects (excluding tunnels & dams) and Highway Projects (does not include building structures in rest area projects) & Incidental Shore Work

*Not to be used for Heavy Projects & Incidental Shore Work in Jefferson & Orange Cos.

[FR Doc. 84-4126 Filed 2-16-84; 8:45 am]

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federal register

Friday
February 17, 1984

Part III

Environmental Protection Agency

40 CFR Part 35

Grants for Construction of Treatment Works; Final and Interim Rule

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 35

[WH-FRL 2267-5]

Grants for Construction of Treatment Works

AGENCY: Environmental Protection Agency.

ACTION: Final and interim final rules.

SUMMARY: The construction grants regulation is being published in two places in today's **Federal Register**. This portion includes, as a final rule, the main body of the construction grant regulation (§ 35.2000 et seq.), Appendix B (Allowance for Facilities Planning and Design), and Appendix C (Subpart I Information Collection Requirements).

Appendix A (Determinations of Allowable Costs), published together with this final rule, is a *revised* interim final rule which responds to some of the comments received on the May 12, 1982 publication of Appendix A. These comments are described below under Description of Major Issues. EPA is publishing Appendix A as a revised *interim final* rule for two main reasons. First, the Congressional authorization for the construction grants program expires after fiscal year 1985 (September 30, 1985). In anticipation of reauthorization hearings on the Clean Water Act in 1984, the Agency is conducting a one-year study of the funding of municipal wastewater facilities. The study will evaluate a broad range of funding mechanisms such as loan programs, privatization and infrastructure banks in addition to the present grants program. The common goals which will be used to compare these alternatives are greater self-sufficiency of local communities in addressing wastewater treatment, more efficient targeting of Federal financial assistance, and quicker attainment of water quality goals. We expect to publish a notice of the study in the **Federal Register** in February. The results of the study may result in changes to the allowable costs described in Appendix A. Second, the proposed rule (§ 35.2205) is expected to elicit comments which may extend to allowable cost items in Appendix A.

A proposed rule published elsewhere in today's **Federal Register**, would create a new section (§ 35.2205) that would define the maximum increase in the allowable cost of a grant award. The new section would apply to all construction grants regardless of the grant award date.

This regulation includes only those items called for by the Clean Water Act, including the Municipal Wastewater Treatment Construction Grant Amendments of 1981, and the minimum requirements necessary for effective program management. The changes clarify and simplify the regulation and thereby reduce project costs.

DATES: This regulation is effective February 17, 1984. See also the section in the preamble on "Effective Date." Comments on the interim final regulation contained in Appendix A, must be received on or before April 17, 1984.

ADDRESS: Comments should be addressed to: Central Docket Section (LE131), Attention: Docket No. G-81-5, Environmental Protection Agency, Washington, D.C. 20460.

The public may inspect the comments received on this interim final rule at: Central Docket Section, Gallery 1 West Tower Lobby, Environmental Protection Agency, 401 M Street, SW., Washington, D.C., between 8 a.m. and 4 p.m., business days.

FOR FURTHER INFORMATION CONTACT: William Kramer, Office of Water Program Operations (WH-595), Environmental Protection Agency, Washington, D.C. 20460, (202) 382-7277.

SUPPLEMENTARY INFORMATION: In keeping with the President's mandate to reduce the burden of government regulation, EPA has undertaken a comprehensive review of the construction grants regulation. Based on that review, revisions to the regulation were proposed in the November 6, 1981 **Federal Register** and published as interim final on May 12, 1982. The interim rule reflected extensive experience with the program, comments received over the years from a broad spectrum of the program's constituents and comments received on the interim rule. In developing this regulation, the Agency consulted with a wide variety of organizations representing various participants in the program.

On December 29, 1981, the Municipal Wastewater Treatment Construction Grant Amendments of 1981, Pub. L. 97-117 (1981 amendments), were signed into law, making several basic modifications to the grants program. This regulation, which is built on the Administration's commitment to reduce regulatory burdens to a minimum while maintaining the program's environmental and financial integrity, incorporates provisions to implement the 1981 amendments and comments on the interim rule.

This regulation includes items required by statute—free of detailed procedures to be followed—and those additional minimum requirements that EPA considers necessary for effective program management.

In conjunction with this effort to reduce regulatory requirements to a minimum, EPA will issue appropriate guidance documents. These guidance documents will not be regulations in disguise. The regulatory requirements are repeated in the guidance solely for continuity and clarity. If there appears to be a difference between the regulations and the guidance, the regulations govern. The guidance materials will contain information which is helpful to States and grantees in managing and carrying out the construction grants program. Use of the information in the guidance documents is to be discretionary. That is, States or grantees may adopt other procedures which are sufficient to meet the requirements of this regulation.

The first major guidance document, *Facilities Planning 81 (FP 81)*, was published in 1981. Its successor, *Construction Grants 82 (CG 82)*, companion to the interim final regulation, reflects and includes this new emphasis on increased flexibility in its guidance for planning, design, and building. Future editions in the *CG* series will continue this approach. Other guidance publications in the areas of operation and maintenance, financial planning and development of user charge systems are being developed. By linking efforts to reduce mandatory requirements and to provide guidance, the greatest possible flexibility is provided to States and local governments to effectively carry out the construction grants program.

Although this subpart is the primary regulation governing the construction grants program, it is not the only one. Others that apply include EPA's Uniform Relocation Assistance and Real Property Acquisition Policies Act regulation (Part 4), NEPA regulation (Part 6), public participation regulation (Part 25), intergovernmental review regulation (Part 29), general grant regulation (Part 30), debarment and suspension regulation (Part 32), procurement regulation (Part 33), and pretreatment regulation (Part 403). Rather than repeat verbatim selected portions of these Parts, this regulation will rely on the others and, where appropriate, cross reference those requirements. It is felt that this is a simpler approach and, more helpful to the States and grantees. Requirements of these other Parts still apply to the construction grants program.

Following is a table showing the relationship of Subpart I to Subpart E:

CONSTRUCTION GRANT REGULATION—40 CFR PART 35

Subpart I		Subpart E
Sec.		Sec.
35.2000	Purpose and policy	35.900, 35.901, 35.903, and 35.912.
35.2005	Definitions	35.905.
35.2010	Allotment; reallotment	35.910 et seq.
35.2015	State priority system and project priority list.	35.915.
35.2020	Reserves	35.915–1.
35.2021	Reallotment of reserves	35.915.
35.2023	Water quality management planning.	1981 Amendments.
35.2024	Combined sewer overflows.	1981 Amendments.
35.2025	Allowance and advance of allowance.	1981 Amendments.
35.2030	Facilities planning	35.917 et seq.
35.2032	Innovative and alternative technologies.	35.908.
35.2034	Privately owned individual systems.	35.918.
35.2040	Grant application	35.920 et seq.
35.2042	Review of grant applications.	1981 Amendments.
35.2050	Effect of approval or certification of documents.	35.935–1.
35.2100	Limitations on award	35.925.
35.2101	Advanced treatment	New Section.
35.2102	Water quality management plans.	25.925–2.
35.2103	Priority determination	35.925–3.
35.2104	Funding and other considerations.	35.925–5.
35.2105	Debarment and suspension.	New Section.
35.2106	Plan of operation	35.925–12.
35.2107	Intermunicipal service agreements.	35.920–3.
35.2108	Phased or segmented treatment works.	New Section.
35.2109	Step 2+3	35.909.
35.2110	Access to individual systems.	35.918–1.
35.2111	Revised water quality standards.	1981 Amendments.
35.2112	Marine discharge waiver applicants.	1981 Amendments.
35.2113	Environmental review	35.925–8.
35.2114	Value engineering	1981 Amendments.
35.2116	Collection system	35.925–13.
35.2118	Preaward costs	35.925–18.
35.2120	Infiltration/inflow	35.927 et seq.
35.2122	Approval of user charge system and proposed sewer use ordinance.	35.929–1, 35.935–13, and 35.927–4.
35.2123	Reserve capacity	1981 Amendments.
35.2125	Treatment of wastewater from industrial users.	35.925–15.
35.2127	Federal facilities	35.925–15.
35.2130	Sewer use ordinance	35.927–4.
35.2140	User charge system	35.929–1.
35.2152	Federal share	35.930–4.
35.2200	Grant conditions	35.935 et seq.
35.2202	Step 2+3 projects	35.935–4.
35.2204	Project changes	35.935–11.
35.2206	Operation and maintenance.	35.935–12.
35.2208	Adoption of sewer use ordinance and user charge system.	35.935–4.
35.2210	Land acquisition	New Section.
35.2211	Field testing for innovative and alternative technology report.	1981 Amendments.
35.2212	Project initiation	35.935–9.
35.2214	Grantee responsibilities	35.935–1.
35.2216	Notice of building completion and final inspection.	35.935–14.
35.2218	Project performance	1981 Amendments.
35.2250	Determination of allowable costs.	35.940.
35.2260	Advance purchase of eligible land.	New Section.
35.2262	Funding of field testing	1981 Amendments.
35.2300	Grant payments	35.945.
35.2350	Subagreement enforcement.	35.970.
Appendix A	Determination of allowable costs.	35.940 et seq.
Appendix B	Allowance for facilities planning and design.	1981 Amendments.
Appendix C	Subpart I information collection requirements.	New Section.

Description of Major Issues

In response to the interim final regulation published on May 12, 1982, we received comments from a variety of States, municipalities, professional organizations, firms that work in the program, and industries. Although the preamble doesn't respond to every comment individually, all were considered and many served as the basis for revisions to the interim final regulation.

Effective Date

This regulation is effective for all grants awarded on or after the date of publication in the **Federal Register.** Facilities plans and design initiated under 40 CFR Subpart E continue to be subject to the requirements in Subpart E. Unless required by the 1981 amendments, no revisions to the facilities plan or design will be required. Work done under Subpart E will be accepted for grant awards under this subpart.

Elsewhere in this issue of the **Federal Register,** EPA is proposing a new section, § 35.2205, which would specify a maximum allowable project cost.

Program Direction: Improved Water Quality

The 1981 amendments stress the importance of improving water quality through the construction grants program. The regulation reflects this emphasis in several ways. It incorporates the concept of "priority water quality areas," which States will identify and use in setting priorities for projects. Revised regulations for water quality management planning (40 CFR Part 130) and water quality standards (40 CFR Part 131), and guidance for State preparation of section 305(b) reports will also use the concept of priority water quality areas for scheduling revisions to water quality standards, total daily maximum loads, and major permits, as well as focusing monitoring, enforcement and reporting efforts on critical water quality problems. Priority water quality areas will generally be water quality limited segments, i.e., segments where applicable water quality standards are not attainable with application of technology-based effluent limitations to point sources.

This term was introduced in the interim final regulations; however, the concept is not new. For the purposes of construction grant funding and this regulation, priority water quality areas are specific stream segments or bodies of water where municipal discharges have resulted in the impairment of a designated use or significant public health risks, and where the reduction of pollution from the municipal discharges will substantially restore surface or groundwater uses.

The regulation (§ 35.2111) includes a limitation stating that no grant assistance can be awarded for particular stream segments after December 28, 1984, if a State has failed to review and revise, as appropriate, its applicable water quality standards. To comply with this provision, States will need to review and revise the water quality standards for each stream segment within the State in priority order. In setting priorities for the review of water quality standards States should focus on priority water quality areas, considering the timing of pending advanced treatment and combined sewer overflow funding decisions. The necessary level of review will depend upon the characteristics of a segment and the priority that a State assigns a segment. For most effluent limited segments no further water quality standards reviews will be needed beyond the determination that the segment is indeed effluent limited. A more comprehensive review will be needed for segments designated as water quality limited. Regulations governing priority setting and the review and revision of water quality standards are found in the regulations for water quality standards (40 CFR Part 131).

Within this context for setting priorities, the regulation requires an annual project priority list with two sections: the fundable portion consists of those projects anticipated to be funded from the current allotment; and the planning portion consists of projects anticipated to be funded from future authorized allotments. After September 30, 1982, Regional Administrators will

not fund projects until they accept, and the States use, priority lists that reflect the 1981 amendments.

The 1981 amendments added section 205(j) to the Act which requires States to reserve not less than $100,000 nor more than 1 percent of their annual allotment for water quality management planning. The regulation provides an exception to the $100,000 minimum for Guam, the Virgin Islands, American Samoa, the Trust Territory of the Pacific Islands and the Commonwealth of the Northern Marianas because of the small size of their allotments.

The 1 percent ceiling is a maximum limit rather than a required limit. The language of the amendments states that the reserve is "not to exceed" 1 percent. Also, the "not to exceed" language is identical to the language of the 205(g) reserve for State administration which provides for an optional maximum percentage rather than a required percentage. 40 CFR Part 130 will govern the use of funds reserved under section 205(j).

This regulation in § 35.2108 also addresses the need to make EPA funded treatment works phases and segments operate to improve water quality. Several commenters interpreted the regulation to require in all cases that grant recipients build the complete waste treatment system, including even its lowest priority components, if grant assistance were awarded for any part of the system. We made minor modifications to the regulation to address this misunderstanding.

Section 35.2108 requires that all recipients of grants for a phase or segment of treatment works negotiate a commitment with the Regional Administrator that assures that the treatment works of which the phase or segment is a part will be made operational and meet the enforceable requirements of the Act. Section 35.2108 embodies a longstanding EPA policy previously contained in § 35.930–4. The policy is that grant recipients must commit to making EPA funded phases or segments operational and comply with the enforceable requirements of the Act and to making them part of treatment works that result in water quality improvements. This does not necessarily require recipients to commit to building all parts of a complete waste treatment system. However, the regulation does require that recipients commit to building the treatment works necessary to make EPA funded phases or segments contribute to improved water quality.

Priority System and List

There was some confusion over the due date for submission of revised annual lists to the Regional Administrator for review. We have revised § 35.2015(e) to clarify that each State must submit a new list by August 31 in order to allow time for review by the Regional Administrator prior to the beginning of the next fiscal year.

Activities Prior to Grant Award

One of the most significant changes in the program resulting from the 1981 amendments is the elimination of grants for planning (Step 1) and design (Step 2). An allowance is provided to grantees for facilities planning and design. A full discussion of issues related to the allowance is in the Appendix B section of this preamble.

Step 2+3

We received several comments recommending that the design portion of a Step 2+3 grant be a grant rather than an allowance. We believe the allowance is more consistent with the Congressional intent of the 1981 amendments to reduce EPA involvement in grantees' design activities.

The 1981 amendments raised the limit on building cost for projects eligible for a Step 2+3 grant to $8 million. The amount of the allowance will be based on the estimated Step 3 building cost in the Step 2+3 grant application. If the grantee has not received a grant or advance for facilities planning, the Agency will pay 30 percent of the Federal share of the estimated allowance as soon as requested after the Step 2+3 grant award. EPA will pay half the remaining estimated allowance when the design is 50 percent complete. The final portion of the allowance will be paid after the grantee awards all prime subagreements for building the project.

Advances

The 1981 amendments require States to reserve a portion up to 10 percent of their allotments to provide advances of the allowance to small communities which would otherwise be unable to undertake planning and design activities. Although the amendments do not prescribe a minimum amount, the Agency believes the Congress intended that a reasonable reserve be established. Designation of eligible applicants to receive an advance will be done entirely by the States.

Upon application by a State, a grant will be awarded to the State for making advances of allowance to small communities. A State may request that payments under the grant be assigned to specified potential grant applicants. Any community that has received an advance will have any later allowance reduced by an amount equal to the advance.

Some commenters were concerned that the States would not reserve adequate funds to meet the demand of small communities; others were concerned that States would unjustifiably lose funds through reallotment because there would not be a need or demand for them. The Agency recognizes the potential for problems related to this provision of the law, and believes that solutions can be found to those individual problems within the framework provided by the regulation. In particular, the regulation provides for waiving this reserve requirement when the State can demonstrate it is not necessary because planning and design requiring an advance is not expected to begin during the period of availability of the annual allotment. Some States, prior to the 1981 amendments, had built up a backlog of projects ready for Step 3 grants and had planned to initiate few if any new Step 1 or Step 2 projects. Further, States have available the Step 2+3 approach which, if used extensively, could reduce or eliminate the need for this reserve.

NEPA Compliance

Before publication of the interim final regulation there was great concern expressed that the elimination of grants for planning and design would make NEPA compliance ineffective, because for NEPA compliance to be most effective, environmental issues must be addressed in conjunction with planning the project, and traditionally that has been done during Step 1. The elimination of Step 1 and Step 2 grants postpones official EPA involvement in the project until after planning and design are complete. To avoid the design of environmentally unsound alternatives, the regulation encourages applicants to confer with review agencies very early in the process and request, in writing, that EPA make necessary NEPA determinations. In this way, NEPA responsibilities can be met at the appropriate time, avoiding delay and added expense that could result from postponement. In any case, the regulation requires that the environmental review under NEPA be completed before submission of an application.

Grantees currently in the facilities planning process with Step 1 grant assistance are bound by existing regulations and grant agreements to complete their environmental documents as planned and obtain a formal determination in accordance with Part 6 of this chapter.

Financial Capability

In 1981 amendments stress the importance of the applicant's financial and management capability to adequately build, operate and maintain the proposed project, particularly the ability to finance adequate operations and maintenance (including replacement) of facilities through their user charge systems. Three of the "limitations on awards" (conditions that must be met before a grant can be awarded) are designed to ensure adequate financial capability and management of Federally funded treatment works. First, the applicant is required to demonstrate that it has the legal, institutional, managerial, and financial capability to ensure adequate building and operation and maintenance of the treatment works. Second, the draft plan of operation, required at the time of application, must include "an adequate budget identifying the basis for determining the annual operation and maintenance costs and the costs of personnel, material, energy and administration." Third, the applicant must have the Regional Administrator's approval of a user charge system that will produce adequate revenues required for operation and maintenance (including replacement), and that contains an adequate financial management system that will accurately account for revenues generated by the system and expenditures for operation and maintenance (including replacement) of the treatment system. EPA has developed guidance to assist grantees in meeting these requirements.

Advanced Treatment Reviews

In March 1979 Congress directed EPA to review advanced treatment projects. The 1978 oversight and appropriation hearings focused on the high costs and often marginal benefits of advanced treatment projects. In action approving the FY 1979 appropriation for the construction grants program, the House and Senate Appropriations Conference Committee agree "that grant funds may be used for construction of new facilities providing treatment greater than secondary only if the incremental cost of the advanced treatment is $1 million or less, or if the Administrator personally determines that advanced treatment is required and will definitely result in significant water quality and public health improvements." The incremental dollar limit for the Administrator's review was raised from $1 million to $3 million in FY 1980. Each year's appropriation legislation or committee report has continued the review requirements.

Review procedures were set forth in EPA policy issued in March 1979. EPA published a revised draft policy in June 1980, and a final policy is nearing publication.

Section 35.2101 requires that before award of grant assistance, EPA review under the advanced treatment policy any project requiring advanced treatment. EPA recommends that the proposed advanced treatment projects be submitted for review upon completion of facility planning, but requires that the review be completed before submission of any application.

Innovative and Alternative (I/A) Technology

The 1981 amendments extend the innovative and alternative program by providing an I/A set-aside to increase grants for I/A projects. The regulation allows the Governor to reserve amounts from the annual allotment which range from a minimum of 4 percent up to 7½ percent. The Federal share of grants for I/A technologies will be 20 percent more than the Federal share for grants for conventional technologies as long as the Federal share totals no more than 85 percent. The regulation also includes provisions for field testing for verification of design parameters for higher risk technologies which EPA may fund either as a preaward cost or as a separate field testing grant. Upon completion of the field test, the grantee must submit a report containing the procedure, cost, results and conclusions of the test.

The 1981 amendments maintain the cost-effectiveness preference for the I/A program. Several commenters were confused by the provision which describes the applicability of the cost-effectiveness preference when the I/A components are less then 100 percent of the present worth cost of project. Section 35.2032(b) has been clarified to indicate that when the I/A components are 50 percent or less of the present worth cost of the treatment works, the cost-effectiveness preference applies only to the I/A components.

EPA is incorporating the innovative and alternative technology guidelines from Appendix E of the 1978 regulation into the *CG* series.

Infiltration/Inflow

The interim final regulations simplified the procedure for determining whether a treatment works is subject to excessive infiltration and inflow (I/I). The procedures previously specified in the regulation were not only time consuming and costly, but also produced inaccurate and misleading results in many instances. The net effect was that considerable effort was spent analyzing and repairing sewer systems without achieving the expected benefits of reduced flows and properly sized facilities.

The revised procedures incorporated in the interim final regulation specified baseline values for both infiltration and inflow. Comparison of the guildline values with actual flows in sewer systems allows rapid screening of those systems not subject to excessive I/I. This final regulation continues the use of a baseline for comparison of infiltration rates but deletes the baseline value previously specified for inflow.

The baseline figure of 120 gallons per capita per day (gpcd) for infiltration analysis is unchanged in the final regulation. The figure derived from Needs Survey data for 270 Standard Metropolitan Statistical Area cities. The 120 gpcd value is the national average wastewater flow for these cities and is comprised of 70 gpcd domestic wastewater and 50 gpcd of non-excessive infiltration.

The baseline figure for inflow was deleted because sufficient data were not available to support its uniform application to all projects. In the final regulation, inflow is excessive when it results in chronic operational problems in the treatment system.

The final regulation provides that no further I/I work is required if domestic wastewater plus non-excessive infiltration does not exceed 120 gpcd, and there are no chronic operational problems resulting from hydraulic overloading of the treatment works during storm events. Furthermore, even in cases where infiltration marginally exceeds 120 gpcd, the grantee may proceed with design and construction of facilities to accommodate the entire flow provided that such facilities are cost effective. In these cases, Federal grant participation will be based on 120 gpcd and grantees must demonstrate that sufficient local funds are available to construct and operate the entire treatment works.

Only in cases where infiltration is determined to be excessive in accordance with the previously described procedures or the treatment works is experiencing chronic operational problems due to inflow, will grantees be required to undertake more detailed sewer system evaluation studies and propose an I/I rehabilitation program. A limited amount of grant assisted sewer rehabilitation may also be undertaken on systems with flows less than 120 gpcd provided that grantees can demonstrate that such

rehabilitation is cost effective for specific portions of their systems.

Grantees will be responsible for the results achieved by I/I rehabilitation programs conducted using Federal funds as part of their certification of project performance at the end of the first year's operation of the facility. Grantees will also be responsible for taking corrective actions if flows are not reduced by the amounts specified or operational problems are not corrected as a result of the rehabilitation program.

Public Participation

Several commenters expressed concern that, with the exception of the requirement for public hearings in conjunction with developing State priority systems and project priority lists, the proposed regulation relies on Part 25 to supply all further requirements necessary to involve the public fully in decisions relating to the construction grants program. EPA is fully committed to public participation in all its programs and believes that Part 25 affords every opportunity necessary and available under the Clean Water Act for public participation in the construction grants program.

However, because the elimination of Step 1 and 2 grants effectively prohibits EPA involvement in facilities planning and design, neither provisions of this subpart nor of Part 25 apply to activities of a potential grantee prior to submission of the grant application. Grantees who request an early determination of NEPA compliance can take advantage of involving the public in Step 1 and Step 2 through application of public participation requirements of Part 6. Furthermore, this regulation requires the State to certify at the time of application that there has been adequate public participation in accordance with State and local laws.

Project Schedule

The regulation requires that a timetable of key project events be included in the grant application. The advice of the grantee's design engineer should be sought when developing the schedule. The schedule should include important dates regarding procurement actions, building schedule, and operation of the project. If the grantee has multiple projects, he must coordinate each project's schedule with the others and with the State's project priority list. Any change in the project schedule will require a formal grant amendment. This requirement is necessary to insure the continued coordination of project completion with permit and compliance schedules, court orders and State administrative orders.

State Certification

The 1981 amendments allow States with sufficient delegated program administration authority to certify that grant applications comply with all applicable Federal requirements. The certification must be supported by documentation specified in the delegation agreement, and the Regional Administrator shall accept the certification unless he determines the State has failed to establish adequate grounds for the certification or that an applicable requirement has not been met. Several commenters pointed out the failure of the interim final regulation to state the provision of the 1981 amendments mandating EPA to accept or reject in writing a fully certified application within 45 days of receipt or the application is automatically approved. That oversight has been corrected.

Treatment of Wastewater From Industrial Users

This section of the interim final regulation that dealt with treatment of wastewater from industrial users was intended to continue the Agency policy of not providing grant assistance for treatment works that are exclusively for industrial use. In stating that policy, we used the term "compatible industrial wastewater" and defined it in terms that could have been interpreted to prohibit funding POTW capacity to serve many industrial users. It was not the Agency's intention to place a new restriction on funding for treatment works serving industries. To correct that problem, we eliminated the term "compatible industrial wastewater" and added a new provision. Section 35.2125 prohibits award of grants for treatment works that are exclusively for industrial use. It is similar to a provision proposed in the May 18, 1981 **Federal Register** (46 FR 27314). Several commentors objected to the continuation of the Agency policy not to fund projects exclusively for industrial use. We believe that expanding eligibility to a substantial new category of industrial projects would be contrary to the overall intent of the 1981 amendments.

Project Performance

The purpose of EPA assistance is to build treatment works that have been planned and designed to meet the enforceable requirements of the Act. By executing a grant agreement, the grantee is obligated to build the project according to its approved design specifications and operate and maintain the project during its design life to meet the enforceable requirements of the Act.

The regulation requires the grantee to reach this performance goal within a year after the project has been put into use for its intended purpose. The costs of architectural, engineering, legal, technical and other services necessary to assure that the project is built according to its design drawings and specifications are allowable project costs.

The date of initiation of operation is determined by the grantee, in consultation with the design engineer and included in the project schedule. To assist in operating the project during the first full year, the amendments require the grantee to procure the services of the engineer or firm that provided architect engineering services during construction or the engineer or firm that supervised construction. The regulation uses the term "construction" to clarify congressional intent and makes this provision consistent with the language in the Act. The amendments state that such engineer shall "supervise operation of the treatment works, train operating personnel, and prepare curricula and training material for operating personnel."

EPA uses the term "supervising" as it is used in the law only once, when restating the statutory requirements. Elsewhere in detailing requirements the regulation uses language requiring the engineer to "direct" the operation of the project and revise the operation and maintenance manual as necessary to accommodate operating experience. It is not the intent of the amendment or the regulation to involve the engineer in the administrative details of daily operation of the plant such as individual personnel transactions or direct supervision of a contractor's employees. On the other hand, the legislative history of the amendments makes it clear that Congress envisioned a more active role for the engineer than merely advising the grantee, and that the intent was to firmly establish appropriate responsibility of all participants in the process.

We believe that the regulation provides a sufficiently flexible framework to allow grantees and their engineers to negotiate, on a case-by-case basis, appropriate arrangements that fulfill the intent of the amendments. The grantee may require sufficient assurances, guarantees or indemnity or other contractual requirements to achieve this goal.

At the end of the first year of operation, the grantee must certify to the Regional Administrator whether the project *meets* its design specifications and the enforceable requirements of the

Act. This has been changed from the language of the interim final regulation which said the certification was whether the project was *capable of meeting* project performance standards, in order to more closely reflect the 1981 amendments and their intent. The certification that the project *meets* project performance standards must be satisfactory to the Regional Administrator and must reflect at a minimum that applicable permit or other discharge requirements are currently being met.

If the project is not affirmatively certified, the grantee must provide a corrective action report. The cost of bringing the project into compliance is the responsibility of the grantee except for the modification or replacement of innovative or alternative technology projects. The grantee must also commit itself to a reasonable date on which it can make an affirmative certification to the Regional Administrator. If the grantee does not bring the project into compliance with the design specifications and enforceable requirements of the Act, EPA will take appropriate and prompt remedial action.

More detailed discussion of project certification is contained in the *CG* series guidance.

Delegation

For the sake of simplicity, the regulation refers to the role of the Regional Administrators. Delegation to State agencies remains an integral part of construction grants program management. As stated in § 35.2000(c), to the extent that the Regional Administrator delegates responsibility to a State agency under a delegation agreement, the term "Regional Administrator" is to be read "State agency."

Reserve Capacity

One commenter, noting that interceptors funded after the 1981 amendments are limited to 20 years reserve capacity in all cases, argued that the amendments and their history meant to allow Step 1 or Step 2 grantees with interceptors now under design for 40 years reserve capacity to receive Step 3 grants for that capacity. We disagree and believe that paragraph (a) of § 35.2123 is a correct reading of the law and its history. The "grandfathering" provision applies only if EPA awarded a grant for a Step 3 segment of an interceptor before December 29, 1981.

Several commenters expressed confusion over the application of 1990 needs as used in this section. This has been rewritten to make it clear that this date only has relevance after 1990, with 1990 being the cap on eligible needs after 1990.

Additionally, several questions were raised on how to determine "existing needs" and their relation to unallowable (beginning October 1, 1984) reserve capacity. First, existing needs should be considered flows as estimated to exist at time of grant award, and as described in an approved facility plan or facility plan amendment. For onsite systems, existing needs can include anticipated flows from failing onsite systems. The amount of these anticipated flows should be based on studies updated to the estimated date of grant award where necessary. Second, the length of the planning period to use in determining reserve capacity and in the cost-effectiveness analyses is to be 20 years (§ 35.2030(b)(3)). This is consistent with previous practice (40 CFR, Part 35, Subpart E, Appendix A.6.b and sections 204(a) (1) and (2) and 208(b)(2)(A) of the Clean Water Act). While this does not require that the project include capacity for a twenty-year period, it does require that the project be shown to be the most cost effective when compared to alternatives with capacity for a twenty year period.

For example, a project that only provides capacity for existing needs may be a stage of a complete waste treatment system. Alternatively, the project could be only for the costs to meet the existing needs, with the costs for reserve capacity identified using cost curves as described in the *CG* series guidance.

Federal Share

Some commenters expressed confusion relating to eligibility of treatment works phases or segments for 75 percent Federal grants after September 30, 1984 (grandfathering). Section 35.2152 of the regulation, which sets forth the requirement grandfathering, has been clarified in the final regulation. The final regulation makes our original intent that all grandfathered phases or segments be described in a facilities plan approved by the Regional Administrator before October 1, 1984, and that they be built in logical sequence assuring expeditious operation and compliance with the enforceable requirements of the Act.

The fact that an approved facilities plan describes a complete waste treatment system that includes a grandfathered phase or segment does not mean that the complete system is grandfathered. The description of the complete system is a planning tool to help put the proposed project in context. Under § 35.2152, the only grandfathered treatment works are those that are described in a facilities plan that is approved prior to October 1, 1984, and that include a phase or segment that is awarded a Step 3 grant prior to October 1, 1984. Treatment works that do not include a phase or segment that is awarded a grant prior to October 1, 1984, are not grandfathered merely because they are described in a facilities plan that contains grandfathered treatment works. For example, if there were two treatment facilities and their interceptors described in the facilities plan, and only one had received a grant for a phase or segment prior to October 1, 1984, then only that facility and its interceptors are eligible for grandfathering. However, two treatment facilities with simple interconnections, such as sludge lines, are considered separate treatment facilities for purposes of this regulation.

Concerning the sequence for EPA funding of grandfathered phases and segments, § 35.2152 requires that EPA funded phases and segments be built in a sequence necessary to make phases or segments previously funded by EPA operational and comply with the enforceable requirements of the Act before other phases or segments receive EPA funding. EPA expects the sequence of funding segments will result in the earliest compliance with the enforceable requirements of the Act. For example, where an interceptor segment is built, the next segments to be funded are those which will make the interceptor operational and meet the enforceable requirements of the Act. EPA would not expect to fund a segment in another interceptor until the first interceptor is operational.

Another area of concern is the uniform lower Federal share. The lower uniform Federal share is applied on a project-by-project basis. That is, each separate grant, including phased and segmented grants, is viewed individually. Prior to October 1, 1984, grant assistance is awarded for a phase or segment with the Federal share prevailing at the time of award. Separate phases or segments of the same treatment works may, therefore, receive grant assistance with varying Federal shares, but once grant assistance is awarded for a project, the Federal share shall be the same for any grant increase within the scope of the project.

There was a question raised on the relationship between the "grandfathering" Federal share provision for treatment works first awarded segment grants before October 1, 1984, and the Governor's discretion to

uniformly reduce the Federal grant share throughout a State.

When EPA first proposed a regulation to implement the 1980 amendment (Pub. L. 96-483) regarding the uniform lower Federal share (46 FR 27314, May 18, 1981), we addressed the issue of varying the Federal share among treatment works phases or segments. That proposal and this regulation allow variations among treatment works phases or segments. Requiring States to maintain the same Federal share to each phase or segment of an entire waste treatment system would inhibit, or even preclude effectiveness of the amendment. However, for increases within the scope of a project, the Federal share will be the same as the share of the initial award for that project.

In instituting the "grandfathering" provision, Congress did not restrict the use of the lower Federal share. The 1981 amendments used the phrase "shall be eligible for grants at 75 per centum . . .," not "shall be 75 per centum." Reading this provisions consistent with the uniform lower Federal share means that should the Governor not reduce the Federal share, post 1984 phases or segments would receive 75 percent grants like 1984 or earlier phases or segments of that treatment works. If the Governor reduces the share, post-1984 phases or segments would be eligible for a grant at only the reduced Federal share prevailing in that State.

By maintaining our initial interpretation we are able to give effect to both provisions now part of the law. We believe, further, that this view is consistent with prevailing policies calling for maintaining and increasing State control over the construction grants program.

Another issue was the period of time for which the share would be reduced. EPA believes that one year periods are reasonable, but the Governor may lower the share for a shorter or longer period of time as the Governor deems appropriate. However, this flexibility may not be used to discriminate against particular projects or classes of projects.

Allotment and Reallotment

Recent experience with reallotment and several comments on the interim regulation highlighted the need for changes in the "Allotment and reallotment" section (§ 35.2010) and the "Reserves" section (§ 35.2020).

First, we made it clear that § 35.2010 applies only to funds appropriated under section 205 of the Clean Water Act. Funds available to the construction grants program from sources other than section 205, such as the Public Works Employment Act and section 206 of the Clean Water Act, are not subject to reallotment under § 35.2010.

We revised § 35.2010 (c) and (d) to clarify the intent of those provisions. The interim final regulation revised § 35.910-2 in response to a problem encountered in reallotting FY 1979 and FY 1980 funds last year. Some regions deobligated funds late in fiscal year 1981 that were subject to reallotment on October 1, 1981. Deobligated funds must be reissued to the regions by the EPA Comptroller in headquarters before the Regional Administrator can reobligate them to other projects. That process takes time and some funds were not reissued in time for use before the end of the fiscal year. As a result, § 35.2010 (c) and (d) provide that funds deobligated by a Region which are not reissued to the Region before the reallotment date for those funds will not be subject to reallotment and shall be made available for obligation.

We added a new section (§ 35.2021) to clarify the reallotment provisons of the various reserves under § 35.2020. Paragraph (c) of § 35.2021 requires that Regions which deobligate funds from one of the mandatory reserves under § 35.2020 before the initial reallotment date for those funds return them to the same reserve after they are reissued by the EPA Comptroller. Funds from a mandatory reserve which are deobligated after the initial reallotment date for those funds are not to be returned to the reserve and are governed by § 35.2010(d).

Finally, we deleted the words "sums alloted for" from the second sentence of § 35.2010(b). This change was necessary to clarify the year with which funds realloted or deobligated before an approval of an appropriation for the current year would be identified. In the future these funds will be treated like funds for the current year regardless of whether funds for that year have been appropriated.

Combined Sewer Overflow

The regulation incorporates two provisions of the 1981 amendments directly related to funding the correction of combined sewer overflow problems:

(1) Section 35.2024 implements section 201(n)(1) of the Act and states that after September 30, 1984 (when correction of combined sewer overflows is no longer an eligible category), the Governor may elect to use the regular State allotments from funds authorized under section 207 to address impaired uses in priority water quality areas due to the impacts of combined sewer overflows (CSOs).

(2) Section 35.2024 also deals with the use after September 30, 1982, of funds to be appropriated under section 201(n)(2) of the Act for addressing impaired uses or public health risks resulting from combined sewer overflows in marine bays and estuaries. In addition to the priority criteria set forth here, § 35.2040 contains particular grant application requirements for this separate fund.

While this separate CSO fund's eligibility and priority criteria and application requirements are distinct, it is subject to all applicable limitations on award and grant conditions, as well as Federal share, allowable cost and other provisions imposed on CSO projects funded with monies authorized in section 207.

The regulation reflects the language of the conference committee report on H.R. 4503, placing restrictions on the funding of combined sewer overflow correction. Directed at both provisions for funding of combined sewer overflow projects, this language requires States to demonstrate to EPA the necessity for the project and the specific benefits to be achieved.

Guidance on the preparation and review of applications for marine CSO projects is available from the State water pollution control agency. Non-marine CSO projects applied for under § 35.2015(b)(2) (iii) and (iv) can also use the marine CSO guidance to prepare the demonstration of water quality benefits required by § 35.2024(b); however, the demonstration should address fishing (rather than shellfishing under the marine CSO program).

Work by Debarred or Suspended Persons

EPA published procedures for debarments and suspensions under EPA assistance programs, 40 CFR Part 32 (47 FR 35940) on August 17, 1982. This regulation states EPA's policy to do business only with persons who properly use Federal assistance.

The purpose of § 35.2105 is to inform EPA whether the applicant awarded a contract for planning or design work to a debarred, suspended, or excluded individual, organization, or unit of government. If the applicant certifies that it has made such an award, EPA shall closely examine the facilities plans, and design drawings and specifications to determine whether to award a Step 3 grant or take other appropriate action.

Value Engineering

Before the enactment of Pub. L. 97-117, value engineering was required during the design of projects with a projected total Step 3 grant eligible cost of $10 million or more, excluding the

cost for interceptor and collector sewers. Pub. L. 97–117 requires that value engineering be conducted on all projects that did not have prior grant assistance for design where the total cost of building the treatment works is estimated to exceed $10 million. (This includes the cost of building interceptor and collector sewers but does not include the cost of services.) Projects that had grant assistance for design are subject to the value engineering requirements of 40 CFR 35.926.

Miscellaneous Terms

The terms "project," "treatment works" and "complete waste treatment system" have specific meanings in this regulation and should not be used interchangeably. This reflects a consistency with the Act and EPA's general regulations for assistance programs (40 CFR Part 30).

"Project" refers only to the activities or tasks identified in the grant agreement.

The definition of "treatment works" is essentially the same as that contained in section 212 of the Act. In the context of the Clean Water Act, this is a broad definition, and includes "any devices and systems for the storage, treatment, recycling, and reclamation of municipal sewage, domestic sewage, or liquid industrial wastes."

A "complete waste treatment system" is the total of all elements necessary for the transport, treatment and ultimate disposal of treated wastewater and residuals.

Building

The term "building" has been used throughout this regulation to describe the principal activity to be undertaken in the grants program. That is, the program provides assistance for the erection, acquisition, alteration, remodeling, improvement or extension of facilities to transport and treat wastewater. The term "building" is used in this regulation rather than "construction" (the term used in the past) because "construction" is defined in the Act to include facilities planning and design. EPA can no longer award grant assistance solely for facilities planning and design activities.

Costs of Acquiring Existing Treatment Works

Section D.1.e of Appendix A to the interim final rule states long-standing EPA policy limiting grant assistance for the acquisition of existing publicly or privately owned treatment works. This provision explains that the costs of acquiring existing treatment works are allowable only if the acquisition provides new pollution control benefits and meets three other criteria.

The limitations contained in section D.1.e reflect the purpose of section 201 of the Clean Water Act, which is to make grant funds available to municipalities for the construction of treatment works that provide new pollution control benefits (i.e., pollution control services that are additional to those being provided before grant award) and not to provide reimbursement for costs incurred to construct existing facilities. In view of this purpose, acquisitions of existing treatment works are generally ineligible for section 201 funding because they usually do not provide new pollution control benefits. Conversely, the upgrade, expansion, or rehabilitation of a project that includes an acquisition does provide such benefits and thus the upgrade, expansion, or rehabilitation portion may be eligible although the acquisition portion is not. An example of an eligible acquisition would be a municipality's purchase of demonstrated excess treatment works capacity that was built without Federal funds and provides new pollution control benefits.

On October 28, 1982, subsequent to the promulgation of the interim final rule, the EPA Board of Assistance Appeals issued a decision on the case of *Atlantic City Municipal Utilities Authority* (EPA Docket No. 81–19) which misinterpreted the new pollution control benefits principle. In *Atlantic City*, the Board found allowable the costs incurred by the Authority to purchase a privately-owned sewage collection system. The Board based its determination on the assumption that the acquisition would result in new pollution control benefits because the Authority intended to rehabilitate the system. This determination, however, overlooked the fact that the acquisition independent of the rehabilitation plan would not provide new water pollution control services additional to those being provided before acquisition.

We have modified Appendix A to state explicitly that in determining the eligibility of acquisitions of existing facilities it is necessary to distinguish between the acquisition and any subsequent improvements. An acquisition of an existing facility is eligible only if the acquisition, in and of itself, considered apart from any upgrade, expansion or rehabilitation, provides new pollution control benefits.

Appendix A—Revised Interim Final Rule

Allowable Costs

Appendix A consolidates information on allowable and unallowable costs. Although the Appendix continues existing Agency policy in 40 CFR Part 35, the Handbook of Procedures and Program Requirement Memoranda, it also reflects new policies designed to restrict allowability assuring more pollution control benefits from limited program funds. To simplify its use, Appendix A has been organized by type of cost, i.e., subagreement costs, small systems, equipment, etc.

Replacement and Additions Costs

Section H.2.e of Appendix A states EPA's policy against providing grant assistance for replacing, through reconstruction or substitution, failed treatment works that were built with construction grants assistance. This provision bars the procedure of providing grant assistance for replacement costs after the costs under the original grant for the failed treatment works are disallowed.

Based on comments received on the interim final regulation, we have clarified the replacement cost provision in two ways. First, the sentence structure has been modified to make clear that the provision applies to treatment works that fail before the expiration of their design life, either before or after initiation of operation. Second, the statutory reference has been modified to clarify our original intent that the provision covers treatment works built with Federal assistance provided under the Federal Water Pollution Control Act of 1956 (Pub. L. 84–660) or any subsequent amendments including, but not limited to, Pub. L. 92–500.

We have also clarified the policy against grant assistance for replacement costs by explaining, in Paragraph H.1.d of Appendix A, EPA's policy concerning additions to projects that fail to meet their performance standards. The additions provision is not an exception to the prohibition against grant assistance for replacement costs. As Paragraph H.2.e makes clear, the costs of replacing failed treatment works through reconstruction or substitution are unallowable.

Paragraph H.1.d provides that if the additions costs are demonstrated not to be caused by the grantee's mismanagement or the improper actions of others (e.g., the grantee's engineers or contractors), the costs are allowable under limited conditions. Subparagraph

H.1.d(3)(a) provides that if the need for additions is caused by changes in performance standards or design criteria outside the grantee's control or by a written agreement or directive to delay building a portion of the treatment works, the cost of the additions is allowable. Subparagraph H.1.d(3)(b) limits the allowability of additions not covered by subparagraph H.1.d(3)(a) by excluding the costs of rework, delay, acceleration or disruption caused by the additions and requiring on projects for which grants are awarded after December 28, 1981, that the additions be made during the project's first year of operation.

Cost of Corrective Action Report

In the interim final regulation the cost of the corrective action report was listed as allowable. One commenter questioned this, and upon review of the 1981 amendments we have concluded that the Congress intended this cost to be unallowable. The statute refers to undertaking correction at other than Federal expense, and the corrective action report is a part of that effort.

Costs Related to Subagreement Enforcement

The construction grants regulation has long referred to the authority of EPA to provide technical and legal assistance in the administration and enforcement of subagreements. This regulation describes EPA financial assistance as an alternative to direct assistance. It is generally unallowable unless a number of conditions are met. These conditions include a formal grant amendment specifically covering the costs before they are incurred and the Regional Administrator's determination that there is a significant Federal interest in the subagreement matters at issue.

Mercury Seals

The cost of process equipment such as trickling filters and comminutors that use mercury seals is no longer listed as an unallowable cost. While the Agency continues to have concerns about the safe use of mercury seals, there is no statutory basis for prohibiting the use of mercury seals. Decisions on the use of mercury seals should be made on a case-by-case basis; specific guidance on this subject is contained in the *CG* series guidance.

Appendix B: Allowance for Facilities Planning and Design—Final Rule

One of the most significant changes in the construction grants program resulting from the 1981 Amendments is the elimination of grants for planning (Step 1) and design (Step 2). Grant agreements include an allowance for facilities planning and design. Grantees that currently have a Step 1 or Step 2 grant will be able to complete the work included in their scope of work using the present system of grant payments. However, the 1981 Amendments prohibit new grants exclusively for facilities planning or design. Those activities will be completed by potential grantees before they apply for a grant to build their projects. The Congress, in providing the allowance mechanism, sought to achieve systemwide efficiency. In so doing, the Congress acknowledged the potential for inequity in the allowance for any given project. The device in the law is not a cost reimbursement, but an allowance. EPA understands that, in practice, any savings realized from the allowance will be available to each community for general public purposes. The Agency expects that these funds will be used to defray unreimbursed expenses associated with plant construction. Due to the unrestricted nature of the allowance, however, EPA will not audit the use of these funds.

Appendix B contains the procedures to determine the amount of advances of allowance and of the estimated and final allowances. Allowances in Appendix B are based on the percentage of building costs that have historically been attributable to facilities planning and design. Costs of specific facilities planning and design activities are not segregated and cannot be considered as a basis for reimbursement in addition to the allowance.

The allowance for a project is a single sum based on the actual total allowable building cost. Allowances are not auditable and the activities they cover are not subject to EPA requirements for procurement under assistance agreements (40 CFR Part 33). However, the Congress did not intend to reduce the opportunities afforded minority and women's business enterprises (MBE/WBE) to compete for contracts associated with construction of publicly owned treatment works; therefore, it is EPA's policy to encourage recipients to adopt procurement procedures for all activities of their construction program that, at a minimum, include the affirmative steps in 40 CFR § 33.240. EPA will request information from grant applicants regarding the level of minority and women's business enterprise participation achieved during planning and design activities in order to meet our obligation to report MBE and WBE participation in the construction grants program.

The data analysis for the development of the allowances took the form of using one parameter as the sole predictor of a second parameter. The method employed was bivariate analysis using a linear regression technique, a convenient, widely accepted way of analyzing both large and small data sets for relationships. The least-squares method was used for the linear regression analysis; this method yields an equation which expresses one variable in terms of another. The allowances for facilities planning and design are based on such regression equations.

Since the allowance applies to all of the work performed during the facilities planning and design of the project, not just architectural or engineering services, the historical data used to develop the allowance tables included all of the allowable costs of the Step 1 and Step 2 work. In addition, prior to any analysis being performed, all of the cost values were updated (adjusted for inflation) and normalized (adjusted to a common geographical area) to fourth quarter (calendar year) 1980 Kansas City/St. Joseph, Missouri dollars.

After the publication of the proposed allowance tables in the **Federal Register** on May 12, 1982, additional analysis of the historical cost data was performed. This additional work was undertaken for two reasons. First, it was desired to verify the appropriateness of the methodology and procedures used to develop the allowance tables, and if possible to improve it. Second, the additional analysis was necessary to respond to comments which suggested different approaches for analyzing the cost data. As part of this follow-up analysis, EPA contracted for a statistician to conduct an independent review of the methodology and procedure that were used to develop the proposed (May 12, 1982) allowance tables.

The follow-up analysis contains two refinements that were not included in the development of the proposed allowance tables. The proposed allowance tables were developed from a regression analysis that related building cost (in dollars) to Step 1 and/or Step 2 cost (expressed as a percentage of building cost). The proposed allowance tables were calculated using the resulting regression equations. This technique, although valid, showed a poor correlation between the two variables. Although the basic technique used to generate the regression equation is sound, the result tends to mask the actual relationships between building cost and Step 1 and Step 2 cost. In order to overcome the masking of the variation, the independent statistical consultant suggested a new method of

relating the two variables. The new method entailed relating the building cost (in dollars) directly to the Step 1 and/or Step 2 cost (in dollars), and not to Step 1 and/or Step 2 cost (expressed as a percentage of building cost) as was done in the original analysis. This method produced a very good correlation (in the 80–85% range) and supported the underlying hypothesis that a change in building cost results in a change in Step 1 and/or Step 2 cost.

Since the method for developing the regression equation changed, it was necessary to change the method of calculating the allowance percentage. Instead of inserting the building cost into an equation and calculating a percent, a two step process was necessary. First a building cost was entered into the regression equation to obtain the facilities planning and/or design cost. The resulting dollar value was then divided by the input building cost to obtain the allowance percentage.

The second change in the development of the final allowance tables involved the selection of projects that were included in the analysis. The analysis that resulted in the development of the proposed allowance tables included all of the projects in EPA's construction cost data base that had Step 1 cost and/or Step 2 cost. This resulted in the inclusion of a number of projects in the analysis that were lacking an associated Step 1 or Step 2 cost. The Step cost could have been missing for a number of reasons. For example, the Step 1 cost could have been funded by the community. This would result in a project being included in the analysis that had a Step 2 cost without any associated Step 1 cost. For this reason, the analysis that resulted in the final allowance tables only included projects that had both a Step 1 *and* a Step 2 cost.

In the proposed allowance tables, the allowance for design was developed by subtracting the values obtained from the regression equation for facilities planning from the values obtained from the regression equation for combined facilities planning and design to develop a third equation. This mathematical procedure was necessary because many of the Step 2 projects included in the earlier analysis contained reimbursement for facilities planning cost in the Step 2 awards. Since the analysis that resulted in the development of the final allowance tables only included projects that contained both a Step 1 and Step 2 cost, it was not necessary to use this mathematical procedure. Instead the allowance for design was developed directly from the regression equation relating building cost (in dollars) to Step 2 cost (in dollars).

As a result of this follow-up analysis, the final allowance tables differ slightly from the tables that were published on May 12, 1982. The percentages in the final allowance tables are higher for projects with low building cost and lower for projects with high building cost than those in the proposed allowance tables.

We received 38 comments concerning the allowance for facilities planning and design. A number of commenters stated that the allowance would not fully compensate communities for the facilities planning and design cost associated with complicated or involved projects. Similarly, other commenters were concerned that the allowance procedure could discourage value engineering (VE) or designs incorporating innovative or alternative (I/A) technologies, because the higher cost normally associated with these services would not be fully covered by the allowance.

EPA carefully considered these comments. However, after extensive deliberation, we determined that it was not in the best interest of the program to change the allowance procedures. This decision was based on the following:

(1) EPA does not want to create a compensation schedule for facilities planning or design services such as the one contained in the American Society of Civil Engineer's Manual No. 45. If separate allowance tables were created for advanced treatment projects, innovative projects, value engineering projects, or for different geographical areas of the country, it would give the impression that the allowance tables could be used to determine the compensation for services on these types of projects.

(2) EPA does not believe the amount paid under the allowance procedures would have any significant impact on the effectiveness of the VE program or selection of I/A technologies. The I/A program already has many incentives, including a larger Federal share, lower operational cost, and higher ranking on the State's priority list. Similarly, EPA believes that there are sufficient safeguards and incentives contained in the regulations to assure an effective VE program.

(3) Congress, in providing an allowance for facilities plannning and design, sought to achieve overall program efficiencies. In doing so, the Congress acknowledged the potential for inequity in the allowance for an individual project.

A number of commenters suggested that the allowance tables be changed to show the percentage for the Federal share. Although this could simplify the application of the allowance procedures, this change could not be made because the Federal share of a project is not fixed. Therefore, the tables continue to show the total allowance and EPA pays the prevailing Federal share of that figure.

The proposed allowance procedures require that the allowance be based on the allowable cost of building the treatment works. Accordingly, the allowance for a segment of a treatment works was to be based on the cumulative allowable building cost to date minus any previous allowances. We received comments from a number of communities and from members of the engineering profession stating that this was not an equitable way to determine the allowance. These commenters said that in most cases each segment stands alone, and for this reason, the allowance should be based only on the building cost of that segment. Another commenter wrote that the proposed procedure was more complex, difficult to understand, and different than the procedures generally used in the engineering profession. It was also pointed out that the analysis of the historical cost information did not, in many instances, represent the entire cost of building the treatment works. Because of these reasons EPA is deleting the procedures that were proposed for determining the allowance for segmented and phase funded treatment works. In the future, the allowance will be based on the allowable building cost of each segment.

A number of commenters objected to the adjustment of the allowance to reflect the building cost one year after substantial completion of the design drawings and specifications. They argue that since the allowance is not directly related to the cost of facilities planning and design, it should not be related to the date of completion of such work. EPA agrees with this logic. Accordingly, the proposal to adjust the allowance to reflect the date of completion of facilities planning and design was deleted from Appendix B.

In response to a number of comments the allowance tables were expanded to include projects with building cost less then $100,000 and projects with building cost between $100 million and $200 million.

One commenter suggested that all references to the allowance being based on an analysis of historical data be removed from Appendix B because such

a discussion could give the impression that the tables could be used to estimate the actual facilities planning and design cost. Since these references are not needed to determine the allowance, and because this preamble includes an extensive discussion of the data and analysis, these references have been deleted from Appendix B.

Many commenters expressed concern that the allowance tables in Appendix B would be used by communities to determine the amount to be paid to architect/engineering firms for planning and design services. As stated above, the tables are not designed to be used as a compensation schedule for facilities planning or design services. In fact, many variables, including demonstrated competence, experience and qualifications of the firms involved are important factors in determining the appropriate fees for architect/engineering services. To reinforce this fact, a "Note" to this effect has been incorporated into Appendix B.

Regulation Development Process

This program is listed in the Catalog of Federal Domestic Assistance as number 66.418—Construction Grants for Wastewater Treatment Works. Executive Order 12372 of July 14, 1982, detailed a State and local elected official consultation process to replace Office of Management and Budget Circular A–95. EPA published a final regulation on June 24, 1983, implementing this Executive Order (48 FR 29288).

Under Executive Order 12291 EPA is required to judge whether a regulation is "major" and therefore subject to the regulatory impact analysis requirements of the Order. We are making these changes to implement Pub. L. 96–483, the October 21, 1980 amendments to the Clean Water Act, to reduce the complexity of the regulation, and to implement the Municipal Wastewater Treatment Construction Grant Amendments of 1981 (Pub. L. 97–117). I have determined this regulation is not a major regulation as it will not have a substantial impact on the nation's economy or large numbers of individuals or businesses. Thus it is not subject to the impact analysis requirements of Executive Order 12291.

Information collection requirements contained in this regulation have been approved by the Office of Management and Budget (OMB) under the provisions of the Paperwork Reduction Act of 1980, 44 U.S.C. 3501 et seq. and have been assigned OMB control number 2040–0027. (See Appendix C.)

Under the Regulatory Flexibility Act (5 U.S.C. 601) I hereby certify that this regulation will not have a significant impact on a substantial number of small entities. This rule is designed to reduce regulation burdens to a minimum. The revisions made clarify and simplify the regulation, and reduce project costs.

List of Subjects in 40 CFR Part 35

Air pollution control, Grant programs—environmental protection, Indians, Pesticides and pests, Reporting and recordkeeping requirements, Waste treatment and disposal, Water pollution control.

This regulation was submitted to the Office of Management and Budget for review as required by Executive Order 12291.

Dated: February 3, 1984.

William D. Ruckelshaus,

Administrator.

For the reasons outlined in the preamble, 40 CFR Part 35 is amended by revising Subpart I, to read as follows:

PART 35—STATE AND LOCAL ASSISTANCE

* * * * *

Subpart I—Grants for Construction of Treatment Works

Sec.

Subpart I—Grants for Construction of Treatment Works

Authority: Secs. 101(e), 109(b), 201 through 205, 207, 208(d), 210 through 212, 215 through 217, 304(d)(3), 313, 501, 502, 511 and 516(b) of the Clean Water Act, as amended, 33 U.S.C. 1251 et seq.

§ 35.2000 Purpose and policy.

(a) The primary purpose of Federal grant assistance available under this subpart is to assist municipalities in meeting enforceable requirements of the Clean Water Act, particularly, applicable National Pollutant Discharge Elimination System (NPDES) permit requirements.

(b) This subpart supplements EPA's Uniform Relocation and Real Property Acquisition Policies Act regulation (Part 4 of this chapter), its National Environmental Policy Act (NEPA) regulation (Part 6 of this chapter), its public participation regulation (Part 25 of this chapter), its intergovernmental review regulation (Part 29 of this chapter), its general grant regulation (Part 30 of this subchapter), its debarment regulation (Part 32 of this subchapter), and its procurement under assistance regulation (Part 33 of this subchapter), and establishes requirements for Federal grant assistance for the building of wastewater treatment works. EPA may also find it necessary to publish other requirements applicable to the construction grants program in response

to Congressional action and executive orders.

(c) EPA's policy is to delegate administration of the construction grants program on individual projects to State agencies to the maximum extent possible (see Subpart F). Throughout this subpart we have used the term Regional Administrator. To the extent that the Regional Administrator delegates review of projects for compliance with the requirements of this subpart to a State agency under a delegation agreement (§ 35.1030), the term Regional Administrator may be read State agency. This paragraph does not affect the rights of citizens, applicants or grantees provided in Subpart F.

(d) In accordance with the Federal Grant and Cooperative Agreement Act (Pub. L. 95–224) EPA will, when substantial Federal involvement is anticipated, award assistance under cooperative agreements. Throughout this subpart we have used the terms grant and grantee but those terms may be read cooperative agreement and recipient if appropriate.

(e) From time to time EPA publishes technical and guidance materials on various topics relevant to the construction grants program. Grantees may find this information useful in meeting requirements in this subpart. These publications, including the MCD and FRD series, may be ordered from: EPA, 401 M St. SW, Room 1115 ET, WH 547, Washington, DC 20460. In order to expedite processing of requests, persons wishing to obtain these publications should request a copy of EPA form 7500–21 (the order form listing all available publications), from EPA Headquarters, Municipal Construction Division (WH–547) or from any EPA Regional Office.

§ 35.2005 Definitions.

(a) Words and terms not defined below shall have the meaning given to them in 40 CFR Parts 30 and 33.

(b) As used in this subpart, the following words and terms mean:

(1) *Act.* The Clean Water Act (33 U.S.C. 1251 et seq., as amended).

(2) *Ad valorem tax.* A tax based upon the value of real property.

(3) *Allowance.* An amount based on a percentage of the project's allowable building cost, computed in accordance with Appendix B.

(4) *Alternative technology.* Proven wastewater treatment processes and techniques which provide for the reclaiming and reuse of water, productively recycle wastewater constituents or otherwise eliminate the discharge of pollutants, or recover energy. Specifically, alternative technology includes land application of effluent and sludge; aquifer recharge; aquaculture; direct reuse (non-potable); horticulture; revegetation of disturbed land; containment ponds; sludge composting and drying prior to land application; self-sustaining incineration; methane recovery; individual and onsite systems; and small diameter pressure and vacuum sewers and small diameter gravity sewers carrying partially or fully treated wastewater.

(5) *Alternative to conventional treatment works for a small community.* For purposes of §§ 35.2020 and 35.2032 a treatment works in a small community using innovative or alternative technology.

(6) *Architectural or engineering services.* Consultation, investigations, reports, or services for design-type projects within the scope of the practice of architecture or professional engineering as defined by the laws of the State or territory in which the grantee is located.

(7) *Best Practicable Waste Treatment Technology (BPWTT).* The cost-effective technology that can treat wastewater, combined sewer overflows and nonexcessive infiltration and inflow in publicly owned or individual wastewater treatment works, to meet the applicable provisions of:

(i) 40 CFR Part 133—secondary treatment of wastewater;

(ii) 40 CFR Part 125, Subpart G—marine discharge waivers;

(iii) 40 CFR 122.44(d)—more stringent water quality standards and State standards; or

(iv) 41 FR 6190 (February 11, 1976)—Alternative Waste Management Techniques for Best Practicable Waste Treatment (treatment and discharge, land application techniques and utilization practices, and reuse).

(8) *Building.* The erection, acquisition, alteration, remodeling, improvement or extension of treatment works.

(9) *Building completion.* The date when all but minor components of a project have been built, all equipment is operational and the project is capable of functioning as designed.

(10) *Collector sewer.* The common lateral sewers, within a publicly owned treatment system, which are primarily installed to receive wastewaters directly from facilities which convey wastewater from individual systems, or from private property, and which include service "Y" connections designed for connection with those facilities including:

(i) Crossover sewers connecting more than one property on one side of a major street, road, or highway to a lateral sewer on the other side when more cost effective than parallel sewers; and

(ii) Except as provided in (b)(10)(iii) of this section, pumping units and pressurized lines serving individual structures or groups of structures when such units are cost effective and are owned and maintained by the grantee.

(iii) This definition excludes other facilities which convey wastewater from individual structures, from private property to the public lateral sewer, or its equivalent and also excludes facilities associated with alternatives to conventional treatment works in small communities.

(11) *Combined sewer.* A sewer that is designed as a sanitary sewer and a storm sewer.

(12) *Complete waste treatment system.* A complete waste treatment system consists of all the treatment works necessary to meet the requirements of title III of the Act, involving: (i) The transport of wastewater from individual homes or buildings to a plant or facility where treatment of the wastewater is accomplished; (ii) the treatment of the wastewater to remove pollutants; and (iii) the ultimate disposal, including recycling or reuse, of the treated wastewater and residues which result from the treatment process.

(13) *Construction.* Any one or more of the following: Preliminary planning to determine the feasibility of treatment works, engineering, architectural, legal, fiscal, or economic investigations or studies, surveys, designs, plans, working drawings, specifications, procedures, field testing of innovative or alternative wastewater treatment processes and techniques (excluding operation and maintenance) meeting guidelines promulgated under section 304(d)(3) of the Act, or other necessary actions, erection, building, acquisition, alteration, remodeling, improvement, or extension of treatment works, or the inspection or supervision of any of the foregoing items.

(14) *Conventional technology.* Wastewater treatment processes and techniques involving the treatment of wastewater at a centralized treatment plant by means of biological or physical/chemical unit processes followed by direct point source discharge to surface waters.

(15) *Enforceable requirements of the Act.* Those conditions or limitations of section 402 or 404 permits which, if violated, could result in the issuance of a compliance order or initiation of a civil or criminal action under section 309 of the Act or applicable State laws. If a permit has not been issued, the term shall include any requirement which, in the Regional Administrator's judgment,

would be included in the permit when issued. Where no permit applies, the term shall include any requirement which the Regional Administrator determines is necessary for the best practicable waste treatment technology to meet applicable criteria.

(16) *Excessive infiltration/inflow.* The quantities of infiltration/inflow which can be economically eliminated from a sewer system as determined in a cost-effectiveness analysis that compares the costs for correcting the infiltration/inflow conditions to the total costs for transportation and treatment of the infiltration/inflow. (See §§ 35.2005(b)(28), (b)(29) and 35.2120).

(17) *Field testing.* Practical and generally small-scale testing of innovative or alternative technologies directed to verifying performance and/or refining design parameters not sufficiently tested to resolve technical uncertainties which prevent the funding of a promising improvement in innovative or alternative treatment technology.

(18) *Individual systems.* Privately owned alternative wastewater treatment works (including dual waterless/gray water systems) serving one or more principal residences, or small commercial establishments. Normally these are onsite systems with localized treatment and disposal of wastewater, but may be systems utilizing small diameter gravity, pressure or vacuum sewers conveying treated or partially treated wastewater. These systems can also include small diameter gravity sewers carrying raw wastewater to cluster systems.

(19) *Industrial user.* Any nongovernmental, nonresidential user of a publicly owned treatment works which is identified in the Standard Industrial Classification Manual, 1972, Office of Management and Budget, as amended and supplemented, under one of the following divisions:

Division A. Agriculture, Forestry, and Fishing
Division B. Mining
Division D. Manufacturing
Division E. Transportation, Communications, Electric, Gas, and Sanitary Services
Division I. Services

(20) *Infiltration.* Water other than wastewater that enters a sewer system (including sewer service connections and foundation drains) from the ground through such means as defective pipes, pipe joints, connections, or manholes. Infiltration does not include, and is distinguished from, inflow.

(21) *Inflow.* Water other than wastewater that enters a sewer system (including sewer service connections) from sources such as, but not limited to, roof leaders, cellar drains, yard drains, area drains, drains from springs and swampy areas, manhole covers, cross connections between storm sewers and sanitary sewers, catch basins, cooling towers, storm waters, surface runoff, street wash waters, or drainage. Inflow does not include, and is distinguished from, infiltration.

(22) *Initiation of operation.* The date specified by the grantee on which use of the project begins for the purposes that it was planned, designed, and built.

(23) *Innovative technology.* Developed wastewater treatment processes and techniques which have not been fully proven under the circumstances of their contemplated use and which represent a significant advancement over the state of the art in terms of significant reduction in life cycle cost or significant environmental benefits through the reclaiming and reuse of water, otherwise eliminating the discharge of pollutants, utilizing recycling techniques such as land treatment, more efficient use of energy and resources, improved or new methods of waste treatment management for combined municipal and industrial systems, or the confined disposal of pollutants so that they will not migrate to cause water or other environmental pollution.

(24) *Interceptor sewer.* A sewer which is designed for one or more of the following purposes:

(i) To intercept wastewater from a final point in a collector sewer and convey such wastes directly to a treatment facility or another interceptor.

(ii) To replace an existing wastewater treatment facility and transport the wastes to an adjoining collector sewer or interceptor sewer for conveyance to a treatment plant.

(iii) To transport wastewater from one or more municipal collector sewers to another municipality or to a regional plant for treatment.

(iv) To intercept an existing major discharge of raw or inadequately treated wastewater for transport directly to another interceptor or to a treatment plant.

(25) *Interstate agency.* An agency of two or more States established under an agreement or compact approved by the Congress, or any other agency of two or more States, having substantial powers or duties pertaining to the control of water pollution.

(26) *Marine bays and estuaries.* Semi-enclosed coastal waters which have a free connection to the territorial sea.

(27) *Municipality.* A city, town, borough, county, parish, district, association, or other public body (including an intermunicipal agency of two or more of the foregoing entities) created under State law, or an Indian tribe or an authorized Indian tribal organization, having jurisdiction over disposal of sewage, industrial wastes, or other waste, or a designated and approved management agency under section 208 of the Act.

(i) This definition includes a special district created under State law such as a water district, sewer district, sanitary district, utility district, drainage district or similar entity or an integrated waste management facility, as defined in section 201(e) of the Act, which has as one of its principal responsibilities the treatment, transport, or disposal of domestic wastewater in a particular geographic area.

(ii) This definition excludes the following:

(A) Any revenue producing entity which has as its principal responsibility an activity other than providing wastewater treatment services to the general public, such as an airport, turnpike, port facility or other municipal utility.

(B) Any special district (such as school district or a park district) which has the responsibility to provide wastewater treatment services in support of its principal activity at specific facilities, unless the special district has the responsibility under State law to provide wastewater treatment services to the community surrounding the special district's facility and no other municipality, with concurrent jurisdiction to serve the community, serves or intends to serve the special district's facility or the surrounding community.

(28) *Nonexcessive infiltration.* The quantity of flow which is less than 120 gallons per capita per day (domestic base flow and infiltration) or the quantity of infiltration which cannot be economically and effectively eliminated from a sewer system as determined in a cost-effectiveness analysis. (See §§ 35.2005(b)(16) and 35.2120.)

(29) *Nonexcessive inflow.* The rainfall induced peak inflow rate which does not result in chronic operational problems related to hydraulic overloading of the treatment works during storm events. These problems may include surcharging, backups, bypasses, and overflows. (See §§ 35.2005(b)(16) and 35.2120.)

(30) *Operation and Maintenance.* Activities required to assure the dependable and economical function of treatment works.

(i) *Maintenance:* Preservation of functional integrity and efficiency of equipment and structures. This includes

preventive maintenance, corrective maintenance and replacement of equipment (See § 35.2005(b)(36)) as needed.)

(ii) *Operation:* Control of the unit processes and equipment which make up the treatment works. This includes financial and personnel management; records, laboratory control, process control, safety and emergency operation planning.

(31) *Principal residence.* For the purposes of § 35.2034, the habitation of a family or household for at least 51 percent of the year. Second homes, vacation or recreation residences are not included in this definition.

(32) *Project.* The activities or tasks the Regional Administrator identifies in the grant agreement for which the grantee may expend, obligate or commit funds.

(33) *Project performance standards.* The performance and operations requirements applicable to a project including the enforceable requirements of the Act and the specifications, including the quantity of excessive infiltration and inflow proposed to be eliminated, which the project is planned and designed to meet.

(34) *Priority water quality areas.* For the purposes of § 35.2015, specific stream segments or bodies of water, as determined by the State, where municipal discharges have resulted in the impairment of a designated use or significant public health risks, and where the reduction of pollution from such discharges will substantially restore surface or groundwater uses.

(35) *Project schedule.* A timetable specifying the dates of key project events including public notices of proposed procurement actions, subagreement awards, issuance of notice to proceed with building, key milestones in the building schedule, completion of building, initiation of operation and certification of the project.

(36) *Replacement.* Obtaining and installing equipment, accessories, or appurtenances which are necessary during the design or useful life, whichever is longer, of the treatment works to maintain the capacity and performance for which such works were designed and constructed.

(37) *Sanitary sewer.* A conduit intended to carry liquid and water-carried wastes from residences, commercial buildings, industrial plants and institutions together with minor quantities of ground, storm and surface waters that are not admitted intentionally.

(38) *Services.* A contractor's labor, time or efforts which do not involve the delivery of a specific end item, other than documents (e.g., reports, design drawings, specifications). This term does not include employment agreements or collective bargaining agreements.

(39) *Small commercial establishments.* For purposes of § 35.2034 private establishments such as restaurants, hotels, stores, filling stations, or recreational facilities and private, nonprofit entities such as churches, schools, hospitals, or charitable organizations with dry weather wastewater flows less than 25,000 gallons per day.

(40) *Small community.* For purposes of §§ 35.2020(b) and 35.2032, any municipality with a population of 3,500 or less, or highly dispersed sections of large municipalities, as determined by the Regional Administrator.

(41) *State.* A State, the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, Guam, American Samoa, the Trust Territory of the Pacific Islands, and the Commonwealth of the Northern Marianas. For the purposes of applying for a grant under section 201(g)(1) of the act, a State (including its agencies) is subject to the limitations on revenue producing entities and special districts contained in § 35.2005(b)(27)(ii).

(42) *State agency.* The State agency designated by the Governor having responsibility for administration of the construction grants program under section 205(g) of the Act.

(43) *Step 1.* Facilities planning.

(44) *Step 2.* Preparation of design drawings and specifications.

(45) *Step 3.* Building of a treatment works and related services and supplies.

(46) *Step 2+3.* Design and building of a treatment works and building related services and supplies.

(47) *Storm sewer.* A sewer designed to carry only storm waters, surface run-off, street wash waters, and drainage.

(48) *Treatment works.* Any devices and systems for the storage, treatment, recycling, and reclamation of municipal sewage, domestic sewage, or liquid industrial wastes used to implement section 201 of the Act, or necessary to recycle or reuse water at the most economical cost over the design life of the works. These include intercepting sewers, outfall sewers, sewage collection systems, individual systems, pumping, power, and other equipment and their appurtenances; extensions, improvement, remodeling, additions, and alterations thereof; elements essential to provide a reliable recycled supply such as standby treatment units and clear well facilities; and any works, including acquisition of the land that will be an integral part of the treatment process or is used for ultimate disposal of residues resulting from such treatment (including land for composting sludge, temporary storage of such compost and land used for the storage of treated wastewater in land treatment systems before land application); or any other method or system for preventing, abating, reducing, storing, treating, separating, or disposing of municipal waste or industrial waste, including waste in combined storm water and sanitary sewer systems.

(49) *Treatment works phase or segment.* A treatment works phase or segment may be any substantial portion of a facility and its interceptors described in a facilities plan under § 35.2030, which can be identified as a subagreement or discrete subitem. Multiple subagreements under a project shall not be considered to be segments or phases. Completion of building of a treatment works phase or segment may, but need not in and of itself, result in an operable treatment works.

(50) *Useful life.* The period during which a treatment works operates. (Not "design life" which is the period during which a treatment works is planned and designed to be operated.)

(51) *User charge.* A charge levied on users of a treatment works, or that portion of the ad valorem taxes paid by a user, for the user's proportionate share of the cost of operation and maintenance (including replacement) of such works under sections 204(b)(1)(A) and 201(h)(2) of the Act and this subpart.

(52) *Value engineering.* A specialized cost control technique which uses a systematic and creative approach to identify and to focus on unnecessarily high cost in a project in order to arrive at a cost saving without sacrificing the reliability or efficiency of the project.

§ 35.2010 Allotment; reallotment.

(a) Allotments are made on a formula or other basis which Congress specifies for each fiscal year (FY). The allotment for each State and the availability period shall be announced each fiscal year in the **Federal Register.** This section applies only to funds allotted under section 205 of the Act.

(b) Unless otherwise provided by Congress, all sums allotted to a State under section 205 of the Act shall remain available for obligation until the end of one year after the close of the fiscal year for which the sums were appropriated. Except as provided in § 35.2020)(a), sums not obligated at the end of that period shall be subject to reallotment on the basis of the same ratio as applicable to the then-current

fiscal year, but none of the funds reallotted shall be made available to any State which failed to obligate any of the fiscal year funds being reallotted. Any sum made available to a State by reallotment under this section shall be in addition to any funds otherwise allotted to such State for grants under this subpart during any fiscal year and the reallotted funds shall remain available for obligation until the last day of the fiscal year following the fiscal year in which the reallotted funds are issued by the Comptroller to the Regional Administrator.

(c) Except for funds appropriated for FY 72 and fiscal years prior to 1972, sums which are deobligated and reissued by the Comptroller to the Regional Administrator before their reallotment date shall be available for obligation in the same State and treated in the same manner as the allotment from which such funds were derived.

(d) Except for funds appropriated for FY 72 and fiscal years prior to 1972, deobligated sums which are reissued by the Comptroller to the Regional Administrator after their reallotment date shall be available for obligation in the same State until the last day of the fiscal year following the fiscal year in which the reissuance occurs.

(e) Deobligated FY 72 and prior to 1972 fiscal year funds, except 1964, 1965 and 1966 funds, will be credited to the allowances of the same Region from which such funds are recovered, and the Regional Administrator may determine how these recoveries are credited to the States within the Region.

§ 35.2015 State priority system and project priority list.

(a) *General.* The Regional Administrator will award grant assistance from annual allotments to projects on a State project priority list developed in accordance with an approved State priority system. The State priority system and list must be designed to achieve optimum water quality management consistent with the goals and requirements of the Act. All projects for building treatment works to be funded by EPA must be included on a State project list, except training facilities funded under section 109(b) of the Act and marine CSO projects funded under section 201(n)(2) of the Act.

(b) *State priority system.* The State priority system describes the methodology used to rank projects that are considered eligible for assistance. The priority system should give high priority to projects in priority water quality areas. The priority system may also include the administrative, management, and public participation procedures required to develop and revise the State project priority list. The priority system includes at least the following elements:

(1) *Criteria.* (i) The priority system shall include at least the following criteria for ranking projects:

(A) The impairment of classified water uses resulting from existing municipal pollutant discharges; and

(B) The extent of surface or ground water use restoration or public health improvement resulting from the reduction in pollution.

(ii) The State may also include other criteria in its priority system for ranking projects, such as the use of innovative or alternative technology, the need to complete a waste treatment system for which a grant for a phase or segment was previously awarded; and the category of need and the existing population affected.

(iii) In ranking phased and segmented projects States must comply with § 35.2108.

(2) *Categories of need.* All projects must fit into at least one of the categories of need described in this paragraph to be eligible for funding, except as provided in paragraphs (b)(2)(iii) and (b)(2)(iv) of this section. States will have sole authority to determine the priority for each category of need.

(i) Before October 1, 1984, these categories of need shall include at least the following:

(A) Secondary treatment (category I);

(B) Treatment more stringent than secondary (category II);

(C) Infiltration/inflow correction (category IIIA);

(D) Major sewer system rehabilitation (category IIIB);

(E) New collector sewers and appurtenances (category IVA);

(F) New interceptors and appurtenances (category IVB);

(G) Correction of combined sewer overflows (category V).

(ii) After September 30, 1984, except as provided in paragraphs (b)(2)(iii) and (b)(2)(iv) of this section, these categories of need shall include only the following:

(A) Secondary treatment or any cost-effective alternative;

(B) Treatment more stringent than secondary or any cost-effective alternative;

(C) New interceptors and appurtenances; and

(D) Infiltration/inflow correction.

(iii) After September 30, 1984, up to 20 percent (as determined by the Governor) of a State's annual allotment may be used for categories of need other than those listed in paragraph (b)(2)(ii) of this section.

(iv) After September 30, 1984, the Governor may include in the priority system a category for projects needed to correct combined sewer overflows which result in impaired uses in priority water quality areas. Only projects which comply with the requirements of § 35.2024(a) may be included in this category.

(c) *Project priority list.* The State's annual project priority list is an ordered listing of projects for which the State expects Federal financial assistance. The priority list contains two portions: the fundable portion, consisting of those projects anticipated to be funded from funds available for obligation; and the planning portion, consisting of projects anticipated to be funded from future authorized allotments.

(1) The State shall develop the project priority list consistent with the criteria established in the approved priority system. In ranking projects, the State must also consider total funds available, needs and priorities set forth in areawide water quality management plans, and any other factors contained in the State priority system.

(2) The list shall include an estimate of the eligible cost of each project.

(d) *Public participation.* (1) In addition to any requirements in 40 CFR Part 25, the State shall hold public hearings as follows:

(i) Before submitting its priority system to the Regional Administrator for approval and before adopting any significant change to an approved priority system; and

(ii) Before submitting its annual project priority list to the Regional Administrator for acceptance and before revising its priority list unless the State agency and the Regional Administrator determine that the revision is not significant.

(iii) If the approved State priority system contains procedures for bypassing projects on the fundable portion of the priority list, such bypasses will not be significant revisions for purposes of this section.

(2) Public hearings may be conducted as directed in the State's continuing planning process document or may be held in conjunction with any regular public meeting of the State agency.

(e) *Regional Administrator review.* The State must submit its priority system, project priority list and revisions of the priority system or priority list to the Regional Administrator for review. The State must also submit each year, by August 31, a new priority list for use in the next fiscal year.

(1) After submission and approval of the initial priority system and submission and acceptance of the project priority lists under paragraph (c) of this section, the State may revise its priority system and list as necessary.

(2) The regional Administrator shall review the State priority system and any revisions to insure that they are designed to obtain compliance with the criteria established in accordance with paragraphs (b) and (d) of this section and the enforceable requirements of the Act as defined in § 35.2005(b)(15). The Regional Administrator shall complete review of the priority system within 30 days of receipt of the system from the State and will notify the State in writing of approval or disapproval of the priority system, stating any reasons for disapproval.

(3) The Regional Administrator will review the project priority list and any revisions to insure compliance with the State's approved priority system and the requirements of paragraph (c) of this section. The Regional Administrator will complete review of the project priority list within 30 days of receipt from the State and will notify the State in writing of acceptance or rejection, stating the reasons for the rejection. Any project which is not contained on an accepted current priority list will not receive funding.

(f) *Compliance with the enforceable requirements of the Act.* (1) Except as limited under paragraph (f)(2) of this section, the Regional Administrator, after a public hearing, shall require the removal of a specific project or portion thereof from the State project priority list if the Regional Administrator determines it will not contribute to compliance with the enforceable requirements of the Act.

(2) The Regional Administrator shall not require removal of projects in categories under paragraphs (b)(2)(i)(D) through (b)(2)(i)(G) of this section which do not meet the enforceable requirements of the Act unless the total Federal share of such projects would exceed 25 percent of the State's annual allotment.

§ 35.2020 Reserves.

In developing its priority list the State shall establish the reserves required or authorized under this section. The amount of each mandatory reserve shall be based on the allotment to each State from the annual appropriation under § 35.2010. The State may also establish other reserves which it determines appropriate.

(a) *Reserve for State management assistance grants.* Each State may request that the Regional Administrator reserve, from the State's annual allotment, up to 4 percent of the State's allotment based on the amount authorized to be appropriated, or $400,000, whichever is greater, for State management assistance grants under Subpart F of this part. Grants may be made from these funds to cover the costs of administering activities delegated or scheduled to be delegated to a State. Funds reserved for this purpose that are obligated by the end of the allotment period will be added to the amounts last allotted to a State. These funds shall be immediately available for obligation to projects in the same manner and to the same extent as the last allotment.

(b) *Reserve for alternative systems for small communities.* Each State with 25 percent or more rural population (as determined by population estimates of the Bureau of Census) shall reserve 4 percent of the State's annual allotment for alternatives to conventional treatment works for small communities. The Governor of any non-rural State may reserve up to 4 percent of that State's allotment for the same purpose.

(c) Reserve for innovative and alternative technologies. Each State shall reserve not less than 4 percent nor more than 7½ percent from its annual allotment to increase the Federal share of grant awards under § 35.2032 for projects which use innovative or alternative wastewater treatment processes and techniques. Of this amount not less than one-half of one percent of the State's allotment shall be set aside to increase the Federal share for projects using innovative processes and techniques.

(d) *Reserve for water quality management.* Each State shall reserve not less than $100,000 nor more than 1 percent from its annual allotments, to carry out water quality management planning under § 35.2023, except that in the case of Guam, the Virgin Islands, American Samoa, the Trust Territory of the Pacific Islands and the Commonwealth of the Northern Marianas, a reasonable amount shall be reserved for this purpose.

(e) *Reserve for Advances of Allowance.* Each State shall reserve a reasonable portion of its annual allotment not to exceed 10 percent for advances of allowance under § 35.2025. The Regional Administrator may waive this reserve requirement where a State can demonstrate that such a reserve is not necessary because no new facilities planning or design work requiring an advance and resulting in Step 3 grant awards is expected to begin during the period of availability of the annual allotment.

§ 35.2021 Reallotment of reserves.

(a) Mandatory portions of reserves under § 35.2020(b) through (e) shall be reallotted if not obligated during the allotment period. The State management assistance reserve under § 35.2020(a) is not subject to reallotment.

(b) States may request the Regional Administrator to release funds in optional reserves or optional portions of required reserves under § 35.2020(b) through (e) for funding projects at any time before the reallotment date. If these optional reserves are not obligated or released and obligated for other purposes before the reallotment date, they shall be subject to reallotment under § 35.2010(b).

(c) Sums deobligated from the mandatory portion of reserves under paragraphs (b) through (e) of § 35.2020 which are reissued by the Comptroller to the Regional Administrator before the initial reallotment date for those funds shall be returned to the same reserve. (See § 35.2010.)

§ 35.2023 Water quality management planning.

(a) From funds reserved under § 35.2020(d) the Regional Administrator shall make grants to the States to carry out water quality management planning including but not limited to:

(1) Identifying the most cost-effective and locally acceptable facility and non-point measures to meet and maintain water quality standards;

(2) Developing an implementation plan to obtain State and local financial and regulatory commitments to implement measures developed under paragraph (a)(1);

(3) Determining the nature, extent and causes of water quality problems in various areas of the State and interstate region, and reporting on these annually; and

(4) Determining which publicly owned treatment works should be constructed, in which areas and in what sequence, taking into account the relative degree of effluent reduction attained, the relative contributions to water quality of other point or nonpoint sources, and the consideration of alternatives to such construction, and implementing section 303(e) of the Act.

(b) In carrying out planning with grants made under paragraph (a), a State shall develop jointly with local, regional and interstate entities, a plan for carrying out the program and give funding priority to such entities and designated or undesignated public comprehensive planning organizations to carry out the purposes of this section.

§ 35.2024 Combined sewer overflows.

(a) *Grant assistance from State allotment.* As provided in § 35.2015(b)(2)(iv), after September 30, 1984, upon request from a State, the Administrator may award a grant under section 201(n)(1) of the Act from the State allotment for correction of combined sewer overflows provided that the project is on the project priority list, it addresses impaired uses in priority water quality areas which are due to the impacts of the combined sewer overflows and otherwise meets the requirements of this subpart. The State must demonstrate to the Administrator that the water quality goals of the Act will not be achieved without correcting the combined sewer overflows. The demonstration shall as a minimum prove that significant usage of the water for fishing and swimming will not be possible without the proposed project, and that the project will result in substantial restoration of an existing impaired use.

(b) *Separate fund for combined sewer overflows in marine waters.* (1) After September 30, 1982, the Administrator may award grants under section 201(n)(2) of the Act for addressing impaired uses or public health risks in priority water quality areas in marine bays and estuaries due to the impacts of combined sewer overflows. The Administrator may award such grants provided that the water quality benefits of the proposed project have been demonstrated by the State. The demonstration shall as a minimum prove that significant usage of the water for shellfishing and swimming will not be possible without the proposed project for correction of combined sewer overflows, and the proposed project will result in substantial restoration of an existing impaired use.

(2) The Administrator shall establish priorities for projects with demonstrated water quality benefits based upon the following criteria:

(i) Extent of water use benefits that would result, including swimming and shellfishing;

(ii) Relationship of water quality improvements to project costs; and

(iii) National and regional significance.

(3) If the project is a phase or segment of the proposed treatment works described in the facilities plan, the criteria in paragraph (b)(2) of this section must be applied to the treatment works described in the facilities plan and each segment proposed for funding.

(4) All requirements of this Subpart apply to grants awarded under section 201(n)(2) of the Act except §§ 35.2010, 35.2015, 35.2020, 35.2021, 35.2025(b), 35.2042, 35.2103, 35.2109, and 35.2202.

§ 35.2025 Allowance and advance of allowance.

(a) *Allowance.* Step 2+3 and Step 3 grant agreements will include an allowance for facilities planning and design of the project to be determined in accordance with Appendix B of this subpart.

(b) *Advance of allowance to potential grant applicants.* (1) After application by the State (see § 35.2040(d)), the Regional Administrator will award a grant to the State in the amount of the reserve under § 35.2020(e) to advance allowances to potential grant applicants for facilities planning and project design.

(2) The State may request that the right to receive payments under the grant be assigned to specified potential grant applicants.

(3) The State may provide advances of allowance only to small communities, as defined by the State, which would otherwise be unable to complete an application for a grant under § 35.2040 in the judgment of the State.

(4) The advance shall not exceed the Federal share of the estimate of the allowance for such costs which a grantee would receive under paragraph (a) of this section.

(5) In the event a Step 2+3 or Step 3 grant is not awarded to a recipient of an advance, the State may seek repayment of the advance on such terms and conditions as it may determine. When a State recovers such advances they shall be added to its most recent grant for advances of allowance.

§ 35.2030 Facilities planning.

(a) *General.* (1) Facilities planning consists of those necessary plans and studies which directly relate to treatment works needed to comply with enforceable requirements of the Act. Facilities planning will investigate the need for proposed facilities. Through a systematic evaluation of alternatives that are feasible in light of the unique demographic, topographic, hydrologic and institutional characteristics of the area, it will demonstrate that, except for innovative and alternative technology under § 35.2032, the selected alternative is cost effective (i.e., is the most economical means of meeting the applicable effluent, water quality and public health requirements over the design life of the facility while recognizing environmental and other non-monetary considerations). For sewered communities with a population of 10,000 or less, consideration must be given to appropriate low cost technologies such as facultative ponds, trickling filters, oxidation ditches, or overland-flow land treatment; and for unsewered portions of communities of 10,000 or less, consideration must be given to onsite systems. The facilities plan will also demonstrate that the selected alternative is implementable from legal, institutional, financial and management standpoints.

(2) Grant assistance may be awarded before certification of the completed facilities plan if:

(i) The Regional Administrator determines that applicable statutory and regulatory requirements (including Part 6) have been met; that the facilities planning related to the project has been substantially completed; and that the project for which grant assistance is awarded will not be significantly affected by the completion of the facilities plan and will be a component part of the complete waste treatment system; and

(ii) The applicant agrees to complete the facilities plan on a schedule the State accepts and such schedule is inserted as a special condition of the grant agreement.

(b) *Facilities plan contents.* A completed facilities plan must include:

(1) A description of both the proposed treatment works, and the complete waste treatment system of which it is a part.

(2) A description of the Best Practicable Wastewater Treatment Technology. (See § 35.2005(b)(7).)

(3) A cost-effectiveness analysis of the feasible conventional, innovative and alternative wastewater treatment works, processes and techniques capable of meeting the applicable effluent, water quality and public health requirements over the design life of the facility while recognizing environmental and other non-monetary considerations. The planning period for the cost-effectiveness analysis shall be 20 years. The monetary costs to be considered must include the present worth or equivalent annual value of all capital costs and operation and maintenance costs. The discount rate established by EPA for the construction grants program shall be used in the cost-effectiveness analysis. The population forecasting in the analysis shall be consistent with the current Needs Survey. A cost-effectiveness analysis must include:

(i) An evaluation of alternative flow reduction methods. (If the grant applicant demonstrates that the existing average daily base flow (ADBF) from the area is less than 70 gallons per capita per day (gpcd), or if the Regional Administrator determines the area has

an effective existing flow reduction program, additional flow reduction evaluation is not required.)

(ii) A description of the relationship between the capacity of alternatives and the needs to be served, including capacity for future growth expected after the treatment works become operational. This includes letters of intent from significant industrial users and all industries intending to increase their flows or relocate in the area documenting capacity needs and characteristics for existing or projected flows;

(iii) An evaluation of improved effluent quality attainable by upgrading the operation and maintenance and efficiency of existing facilities as an alternative or supplement to construction of new facilities;

(iv) An evaluation of the alternative methods for the reuse or ultimate disposal of treated wastewater and sludge material resulting from the treatment process;

(v) A consideration of systems with revenue generating applications;

(vi) An evaluation of opportunities to reduce use of, or recover energy;

(vii) Cost information on total capital costs, and annual operation and maintenance costs, as well as estimated annual or monthly costs to residential and industrial users.

(4) A demonstration of the non-existence or possible existence of excessive infiltration/inflow in the sewer system. See § 35.2120.

(5) An analysis of the potential open space and recreation opportunities associated with the project.

(6) An adequate evaluation of the environmental impacts of alternatives under Part 6 of this chapter.

(7) An evaluation of the water supply implications of the project.

(8) For the selected alternative, a concise description at an appropriate level of detail, of at least the following:

(i) Relevant design parameters;

(ii) Estimated capital construction and operation and maintenance costs, (identifying the Federal, State and local shares), and a description of the manner in which local costs will be financed;

(iii) Estimated cost of future expansion and long-term needs for reconstruction of facilities following their design life;

(iv) Cost impacts on wastewater system users; and

(v) Institutional and management arrangements necessary for successful implementation.

(c) *Submission and review of facilities plan.* Each facilities plan must be submitted to the State for review. EPA recommends that potential grant applicants confer with State reviewers early in the facilities planning process. In addition, a potential grant applicant may request in writing from the State and EPA an early determination under Part 6 of this chapter of the appropriateness of a categorical exclusion from NEPA requirements, the scope of the environmental information document or the early preparation of an environmental impact statement.

§ 35.2032 Innovative and alternative technologies.

(a) *Funding for innovative and alternative technologies.* Projects or portions of projects using unit processes or techniques which the Regional Administrator determines to be innovative or alternative technology shall receive increased grants under § 35.2152.

(1) Only funds from the reserve in § 35.2020(c) shall be used to increase these grants.

(2) If the project is an alternative to conventional treatment works for a small community, funds from the reserve in § 35.2020(b) may be used for the 75 percent portion, or any lower Federal share of the grant as determined under § 35.2152.

(b) *Cost-effectiveness preference.* The Regional Administrator may award grant assistance for a treatment works or portion of a treatment works using innovative or alternative technologies if the total present worth cost of the treatment works for which the grant is to be made does not exceed the total present worth cost of the most cost-effective alternative by more than 15 percent.

(1) Privately-owned individual systems (§ 35.2034) are not eligible for this preference.

(2) If the present worth costs of the innovative or alternative unit processes are 50 percent or less of the present worth cost of the treatment works, the cost-effectiveness preference applies only to the innovative or alternative components.

(c) *Modification or replacement of innovative and alternative projects.* The Regional Administrator may award grant assistance to fund 100 percent of the allowable costs of the modification or replacement of any project funded with increased grant funding in accordance with paragraph (a) of this section if he determines that:

(1) The innovative or alternative elements of the project have caused the project or significant elements of the complete waste treatment system of which the project is a part to fail to meet project performance standards;

(2) The failure has significantly increased operation and maintenance expenditures for the project or the complete waste treatment system of which the project is a part; or requires significant additional captial expenditures for corrective action;

(3) The failure has occurred prior to two years after initiation of operation of the project; and

(4) The failure is not attributable to negligence on the part of any person.

§ 35.2034 Privately owned individual systems.

(a) An eligible applicant may apply for a grant to build privately owned treatment works serving one or more principal residences or small commercial establishments.

(b) In addition to those applicable limitations set forth in § 35.2100 through § 35.2127 the grant applicant shall:

(1) Demonstrate that the total cost and environmental impact of building the individual system will be less than the cost of a conventional system;

(2) Certify that the principal residence or small commercial establishment was constructed before December 27, 1977, and inhabited or in use on or before that date;

(3) Apply on behalf of a number of individual units to be served in the facilities planning area;

(4) Certify that public ownership of such works is not feasible and list the reasons; and

(5) Certify that such treatment works will be properly operated and maintained and will comply with all other requirements of section 204 of the Act.

§ 35.2040 Grant application.

Applicants for Step 2+3 or Step 3 assistance shall submit applications to the State. In addition to the information required in Parts 30 and 33 of this subchapter, applicants shall provide the following information:

(a) *Step 2+3: Combined design and building of a treatment works and building related services and supplies.* An application (EPA form 5700–32) for Step 2+3 grant assistance shall include:

(1) A facilities plan prepared in accordance with Subpart E or I as appropriate;

(2) Certification from the State that there has been adequate public participation based on State and local statutes;

(3) Notification of any advance received under § 35.2025(b); and

(4) Evidence of compliance with all applicable limitations on award (§§ 35.2100 through 35.2127).

(b) *Step 3: Building of a treatment works and related services and supplies.* An application (EPA form 5700–32) for Step 3 grant assistance shall include:

(1) A facilities plan prepared in accordance with Subpart E or I as appropriate;

(2) Certification from the State that there has been adequate public participation based on State and local statutes;

(3) Notification of any advance received under § 35.2025(b);

(4) Evidence of compliance with all applicable limitations on award (§§ 35.2100 through 35.2127);

(5) Final design drawings and specifications;

(6) The project schedule; and

(7) In the case of an application for Step 3 assistance that is solely for the acquisition of eligible real property, a plat which shows the legal description of the property to be acquired, a preliminary layout of the distribution and drainage systems, and an explanation of the intended method of acquiring the real property (see 40 CFR Part 4).

(c) *Training facility project.* An application (EPA form 5700–32) for a grant for construction and support of a training facility, facilities or training programs under section 109(b) of the Act shall include:

(1) A written commitment from the State agency to carry out at such facility a program of training; and

(2) If a facility is to be built, an engineering report including facility design data and cost estimates for design and building.

(d) *Advances of allowance.* State applications for advances of allowance to small communities shall be on EPA form 5700–31, Application for Federal Assistance (short form). The application shall include:

(1) A list of communities that received an advance of allowance and the amount received by each under the previous State grant; and

(2) The basis for the amount requested.

(e) *Field Testing of Innovative and Alternative Technology.* An application (EPA Form 5700–32) for field testing of I/A projects shall include a field testing plan containing:

(1) Identification; including size, of all principal components to be tested;

(2) Location of testing facilities in relationship to full scale design;

(3) Identification of critical design parameters and performance variables that are to be verified as the basis for I/A determinations:

(4) Schedule for construction of field testing facilities and duration of proposed testing;

(5) Capital and O&M cost estimate of field testing facilities with documentation of cost effectiveness of field testing approach; and

(6) Design drawing, process flow diagram, equipment specification and related engineering data and information sufficient to describe the overall design and proposed performance of the field testing facility.

(f) *Marine CSO Project.* An application (EPA Form 5700–32) for marine CSO grant assistance under § 35.2024(b) shall include:

(1) All information required under paragraphs (b)(1), (b)(2), (b)(4), (b)(6), and (b)(7), of this section;

(2) Final design drawings and specifications or a commitment to provide them by a date set by the Regional Administrator; and

(3) The water quality benefits demonstration required under § 35.2024(b)(1).

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§ 35.2042 Review of grant applications.

(a) All States shall review grant applications to ensure that they are complete. When the State determines the proposed project is entitled to priority it shall forward the State priority certification and, except where application review is delegated, the complete application to the regional Administrator for review.

(b)(1) All States delegated authority to manage the construction grants program under section 205(g) of the Act and Subpart F of this part shall furnish a written certification to the Regional Administrator, on a project-by-project basis, stating that the applicable Federal requirements within the scope of authority delegated to the State under the delegation agreement have been met. The certification must be supported by documentation specified in the delegation agreement which will be made available to the Regional Administrator upon request. The Regional Administrator shall accept the certification unless he determines the State has failed to establish adequate grounds for the certification or that an applicable requirement has not been met.

(2)(i) When EPA receives a certification covering all delegable preaward requirements, the Regional Administrator shall approve or disapprove the grant within 45 calendar days of receipt of the certification. The Regional Administrator shall state in writing the reasons for any disapproval, and he shall have an additional 45 days to review any subsequent revised submissions. If the Regional Administrator fails to approve or disapprove the grant within 45 days of receipt of the application, the grant shall be deemed approved and the Regional Adminstrator shall issue the grant agreement.

(ii) Grant increase requests are subject to the 45 day provision of this section if the State has been delegated authority over the subject matter of the request.

(c) Applications for assistance for training facilities funded under section 109(b) and for State advances of allowance under section 201(l)(1) of the Act and § 35.2025 will be reviewed in accordance with Part 30 of this subchapter.

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§ 35.2050 Effect of approval or certification of documents.

Review or approval of facilities plans, design drawings and specifications or other documents by or for EPA is for administrative purposes only and does not relieve the grantee of its responsibility to properly plan, design, build and effectively operate and maintain the treatment works described in the grant agreement as required under law, regulations, permits, and good management practices. EPA is not responsible for increased costs resulting from defects in the plans, design drawings and specifications or other subagreement documents.

§ 35.2100 Limitations on award.

Before awarding grant assistance for any project the Regional Administrator shall approve the facilities plan and final design drawings and specifications, and determine that the applicant and the applicant's project have met all of the applicable requirements of § 35.2040 and §§ 35.2100 through 35.2127 except as provided in § 35.2202 for Step 2+3 projects.

§ 35.2101 Advanced treatment.

Projects proposing advanced treatment shall be awarded grant assistance only after the project has been reviewed under EPA's advanced treatment review policy. This review must be completed before submission of any application. EPA recommends that potential grant applicants obtain this review before initiation of design.

§ 35.2102 Water quality management plans.

The project shall be consistent with the approved elements of any applicable

water quality management (WQM) plan approved under section 208 or section 303(e) of the Act; and the applicant shall be the wastewater management agency designated in that WQM plan.

§ 35.2103 Priority determination.

The project shall be entitled to priority in accordance with § 35.2015, and the award of grant assistance for the project shall not jeopardize the funding of any project of higher priority under the approved priority system.

§ 35.2104 Funding and other considerations.

The applicant shall;

(a) Agree to pay the non-Federal project costs;

(b) Demonstrate the legal, institutional, managerial, and financial capability to ensure adequate building and operation and maintenance of the treatment works throughout the applicant's jurisdiction including the ability to comply with Part 30 of this subchapter. This demonstration must include: an explanation of the roles and responsibilities of the local governments involved; how construction and operation and maintenance of the facilities will be financed; a current estimate of the cost of the facilities; and a calculation of the annual costs per household. It must also include a written certification signed by the applicant that the applicant has analyzed the costs and financial impacts of the proposed facilities, and that it has the capability to finance and manage their building and operation and maintenance in accordance with this regulation;

(c) Certify that it has not violated any Federal, State or local law pertaining to fraud, bribery, graft, kickbacks, collusion, conflict of interest or other unlawful or corrupt practice relating to or in connection with facilities planning or design work on a wastewater treatment works project.

(d) Indicate the level of participation for minority and women's business enterprises during facilities planning and design of the project.

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§ 35.2105 Debarment and suspension.

The applicant shall indicate whether it used the services of any individual, organization, or unit of government for facilities planning or design work whose name appears on the master list of debarments, suspensions, and voluntary exclusions. See 40 CFR 32.400. If the applicant indicates it has used the services of a debarred individual or firm, EPA will closely examine the facilities plan, design drawings and specifications to determine whether to award a grant. EPA will also determine whether the applicant should be found non-responsible under Part 30 of this subchapter or be the subject of possible debarment or suspension under Part 32 of this subchapter.

§ 35.2106 Plan of operation.

The applicant shall submit a draft plan of operation that addresses development of: An operation and maintenance manual; an emergency operating program; personnel training; an adequate budget consistent with the user charge system approved under § 35.2140; operational reports; laboratory testing needs; and an operation and maintenance program for the complete waste treatment system.

§ 35.2107 Intermunicipal service agreements.

If the project will serve two or more municipalities, the applicant shall submit the executed intermunicipal agreements, contracts or other legally binding instruments necessary for the financing, building and operation of the proposed treatment works. At a minimum they must include the basis upon which costs are allocated, the formula by which costs are allocated, and the manner in which the cost allocation system will be administered. The Regional Administrator may waive this requirement provided the applicant can demonstrate:

(a) That such an agreement is already in place; or

(b) Evidence of historic service relationships for water supply, wastewater or other services between the affected communities regardless of the existence of formal agreements, and

(c) That the financial strength of the supplier agency is adequate to continue the project, even if one of the proposed customer agencies fails to participate.

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§ 35.2108 Phased or segmented treatment works.

Grant funding may be awarded for a phase or segment of a treatment works, subject to the limitations of § 35.2123, although that phase or segment does not result in compliance with the enforceable requirements of the Act, provided:

(a) The great agreement requires the recipient to make the treatment works of which the phase or segment is a part operational and comply with the enforceable requirements of the Act according to a schedule specified in the grant agreement regardless of whether grant funding is available for the remaining phases and segments; and

(b) Except in the case of a grant solely for the acquisition of eligible real property, one or more of the following conditions exist:

(1) The Federal share of the cost of building the treatment works would require a disproportionate share of the State's annual allotment relative to other needs or would require a major portion of the State's annual allotment;

(2) The period to complete the building of the treatment works will cover three years or more; or

(3) The treatment works must be phased or segmented to meet the requirements of a Federal or State court order.

§ 35.2109 Step 2+3.

The Regional Administrator may award a Step 2+3 grant which will provide the Federal share of an allowance under Appendix B and the estimated allowable cost of the project only if:

(a) The population of the applicant municipality is 25,000 or less according to the most recent U.S. Census;

(b) The total Step 3 building cost is estimated to be $8 million or less; and

(c) The project is not for a treatment works phase or segment.

§ 35.2110 Access to individual systems.

Applicants for privately owned individual systems shall provide assurance of access to the systems at all reasonable times for such purposes as inspection, monitoring, building, operation, rehabilitation and replacement.

§ 35.2111 Revised water quality standards.

After December 29, 1984, no grant assistance can be awarded in a State for stream segments which have not had their water quality standards reviewed and revised, as appropriate, or new standards adopted under section 303(c) of the Act, unless the State has in good faith submitted such water quality standards and the Regional Administrator has failed to act on them within 120 days of receipt.

§ 35.2112 Marine discharge waiver applicants.

If the applicant is also an applicant for a secondary treatment requirement waiver under section 301(h) of the Act, a plan must be submitted which contains a modified scope of work, a schedule for completion of the less-than-secondary facility and an estimate of costs providing for building the proposed less-than-secondary facilities, including

provisions for possible future additions of treatment processes or techniques to meet secondary treatment requirements.

§ 35.2113 Environmental review.

(a) The environmental review required by Part 6 of this Chapter must be completed before submission of any application. The potential applicant should work with the State and EPA as early as possible in the facilities planning process to determine if the project qualifies for a categorical exclusion from Part 6 requirements, or whether a finding of no significant impact or an environmental impact statement is required.

(b) In conjunction with the facilities planning process as described in § 35.2030(c), a potential applicant may request, in writing, that EPA make a formal determination under Part 6 of this chapter.

§ 35.2114 Value engineering.

(a) If the project has not received Step 2 grant assistance the applicant shall conduct value engineering if the total estimated cost of building the treatment works is more than $10 million.

(b) The value engineering recommendations shall be implemented to the maximum extent feasible.

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§ 35.2116 Collection system.

Except as provided in § 35.2032(c), if the project involves collection system work, such work:

(a) Shall be for the replacement or major rehabilitation of an existing collection system which was not build with Federal funds awarded on or after October 18, 1972, and shall be necessary to the integrity and performance of the complete waste treatment system; or

(b) Shall be for a new cost-effective collection system in a community in existence on October 18, 1972, which has sufficient existing or planned capacity to adequately treat such collected wastewater and where the bulk (generally two-thirds) of the expected flow (flow from existing plus future residential users) will be from the resident population on October 18, 1972. The expected flow will be subject to the limitations for interceptors contained in § 35.2123. If assistance is awarded, the grantee shall provide assurances that the existing population will connect to the collection system within a reasonable time after project completion.

§ 35.2118 Preaward costs.

(a) EPA will not award grant assistance for Step 2+3 and Step 3 work performed before award of grant assistance for that project, except:

(1) In emergencies or instances where delay could result in significant cost increases, the Regional Administrator may approve preliminary Step 3 work (such as procurement of major equipment requiring long lead times, field testing of innovative and alternative technologies, minor sewer rehabilitation, acquisition of eligible land, or of an option for the purchase of eligible land or advance building of minor portions of treatment works), after completion of the environmental review as required by § 35.2113.

(2) If the Regional Administrator approves preliminary Step 3 work, such approval is not an actual or implied commitment of grant assistance and the applicant proceeds at its own risk.

(b) Any procurement is subject to the requirements of 40 CFR Part 33, and in the case of acquisition of eligible real property, 40 CFR Part 4.

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§ 35.2120 Infiltration/Inflow.

(a) *General.* The applicant shall demonstrate to the Regional Administrator's satisfaction that each sewer system discharging into the proposed treatment works project is not or will not be subject to excessive infiltration/inflow. For combined sewers, inflow is not considered excessive in any event.

(b) *Inflow.* If the rainfall induced peak inflow rate results or will result in chronic operational problems during storm events, the applicant shall perform a study of the sewer system to determine the quantity of excessive inflow and to propose a rehabilitation program to eliminate the excessive inflow. All cases in which facilities are planned for the specific storage and/or treatment of inflow shall be subject to a cost-effectiveness analysis.

(c) *Infiltration.* (1) If the flow rate at the existing treatment facility is 120 gallons per capita per day or less during periods of high groundwater, the applicant shall build the project including sufficient capacity to transport and treat any existing infiltration. However, if the applicant believes any specific portion of its sewer system is subject to excessive infiltration, the applicant may confirm its belief in a cost-effectiveness analysis and propose a sewer rehabilitation program to eliminate that specific excessive infiltration.

(2) If the flow rate at the existing treatment facility is more than 120 gallons per capita per day during periods of high groundwater, the applicant shall either:

(i) Perform a study of the sewer system to determine the quantity of excessive infiltration and to propose a sewer rehabilitation program to eliminate the excessive infiltration; or

(ii) If the flow rate is not significantly more than 120 gallons per capita per day, request the Regional Administrator to determine that he may proceed without further study, in which case the allowable project cost will be limited to the cost of a project with a capacity of 120 gallons per capita per day under Appendix A.G.2.a.

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§ 35.2122 Approval of user charge system and proposed sewer use ordinance.

If the project is for Step 3 grant assistance, unless it is solely for acquisition of eligible land, the applicant must obtain the Regional Administrator's approval of its user charge system (§ 35.2140) and proposed (or existing) sewer use ordinance § 35.2130). If the applicant has a sewer use ordinance or user charge system in affect, the applicant shall demonstrate to the Regional Administrator's satisfaction that they meet the requirements of this Part and are being enforced.

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§ 35.2123 Reserve capacity.

EPA will limit grant assistance for reserve capacity as follows:

(a) If EPA awarded a grant for a Step 3 interceptor segment before December 29, 1981, EPA may award grants for remaining interceptor segments included in the facilities plan with reserve capacity as planned, up to 40 years.

(b) Except as provided in paragraph (a) of this section, if EPA awards a grant for a Step 3 or Step 3 segment of a primary, secondary, or advanced treatment facility or its interceptors included in the facilities plan before October 1, 1984, the grant for that Step 3 or Step 3 segment, and any remaining segments, may include 20 years reserve capacity.

(c) Except as provided in paragraph (b) of this section, after September 30, 1984, no grant shall be made to provide reserve capacity for a project for secondary treatment or more stringent treatment or new interceptors and appurtenances. Grants for such projects shall be based on capacity necessary to serve existing needs (including existing needs of residential, commercial, industrial, and other users) as

determined on the date of the approval of the Step 3 grant. Grant assistance awarded after September 30, 1990 shall be limited to the needs existing on September 30, 1990.

(d) For any application with capacity in excess of that provided by this section:

(1) All incremental costs shall be paid by the applicant. Incremental costs include all costs which would not have been incurred but for the additional excess capacity, i.e., any cost in addition to the most cost-effective alternative with eligible reserve capacity described under paragraphs (a) and (b) of this section.

(2) It must be determined that the actual treatment works to be built meets the requirements of the National Environmental Policy Act and all applicable laws and regulations.

(3) The Regional Administrator shall approve the plans, specifications and estimates for the actual treatment works.

(4) The grantee shall assure the Regional Administrator satisfactorily that it has assessed the costs and financial impacts of the actual treatment works and has the capability to finance and manage their construction and operation.

(5) The grantee must implement a user charge system which applies to the entire service area of the grantee.

(6) The grantee shall execute appropriate grant conditions or releases protecting the Federal Government from any claim for any of the costs of construction due to the additional capacity.

§ 35.2125 Treatment of wastewater from industrial users.

(a) Grant assistance shall not be provided for a project unless the project is included in a complete waste treatment system and the principal purpose of both the project and the system is for the treatment of domestic wastewater of the entire community, area, region or district concerned.

(b) Allowable project costs do not include:

(1) Costs of interceptor or collector sewers constructed exclusively, or almost exclusively, to serve industrial users; or

(2) Costs for control or removal of pollutants in wastewater introduced into the treatment works by industrial users, unless the applicant is required to remove such pollutants introduced from nonindustrial users.

§ 35.2127 Federal facilities.

Grant assistance shall not be provided for costs to transport or treat wastewater produced by a facility that is owned and operated by the Federal government which contributes more than 250,000 gallons per day or five percent of the design flow of the complete waste treatment system, whichever is less.

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§ 35.2130 Sewer use ordinance.

The sewer use ordinance (see also §§ 35.2122 and 35.2208) or other legally binding document shall prohibit any new connections from inflow sources into the treatment works and require that new sewers and connections to the treatment works are properly designed and constructed. The ordinance or other legally binding document shall also require that all wastewater introduced into the treatment works not contain toxics or other pollutants in amounts or concentrations that endanger public safety and physical integrity of the treatment works; cause violation of effluent or water quality limitations; or preclude the selection of the most cost-effective alternative for wastewater treatment and sludge disposal.

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§ 35.2140 User charge system.

The user charge system (see §§ 35.2122 and 35.2208) must be designed to produce adequate revenues required for operation and maintenance (including replacement). It shall provide that each user which discharges pollutants that cause an increase in the cost of managing the effluent or sludge from the treatment works shall pay for such increased cost. The user charge system shall be based on either actual use under paragraph (a) of this section, ad valorem taxes under paragraph (b) of this section, or a combination of the two.

(a) *User charge system based on actual use.* A grantee's user charge system based on actual use (or estimated use) of wastewater treatment services shall provide that each user (or user class) pays its proportionate share of operation and maintenance (including replacement) costs of treatment works within the grantee's service area, based on the user's proportionate contribution to the total wastewater loading from all users (or user classes).

(b) *User charge system based on ad valorem taxes.* A grantee's user charge system which is based on ad valorem taxes may be approved if:

(1) On December 27, 1977, the grantee had in existence a system of dedicated ad valorem taxes which collected revenues to pay the cost of operation and maintenance of wastewater treatment works within the grantee's service area and the grantee has continued to use that system;

(2) The ad valorem user charge system distributes the operation and maintenance (including replacement) costs for all treatment works in the grantee's jurisdiction to the residential and small non-residential user class (including at the grantee's option nonresidential, commercial and industrial users that introduce no more than the equivalent of 25,000 gallons per day of domestic sanitary wastes to the treatment works), in proportion to the use of the treatment works by this class; and

(3) Each member of the industrial user and commercial user class which discharges more than 25,000 gallons per day of sanitary waste pays its share of the costs of operation and maintenance (including replacement) of the treatment works based upon charges for actual use.

(c) *Notification.* Each user charge system must provide that each user be notified, at least annually, in conjunction with a regular bill (or other means acceptable to the Regional Administrator), of the rate and that portion of the user charges or ad valorem taxes which are attributable to wastewater treatment services.

(d) *Financial management system.* Each user charge system must include an adequate financial management system that will accurately account for revenues generated by the system and expenditures for operation and maintenance (including replacement) of the treatment system, based on an adequate budget identifying the basis for determining the annual operation and maintenance costs and the costs of personnel, material, energy and administration.

(e) *Charges for operation and maintenance for extraneous flows.* The user charge system shall provide that the costs of operation and maintenance for all flow not directly attributable to users (i.e., infiltration/inflow) be distributed among all users based upon either of the following:

(1) In the same manner that it distributes the costs for their actual use, or

(2) Under a system which uses one or any combination of the following factors on a reasonable basis:

(i) Flow volume of the users;

(ii) Land area of the users;

(iii) Number of hookups or discharges of the users;

(iv) Property valuation of the users, if the grantee has an approved user charge system based on ad valorem taxes.

(f) After completion of building a project, revenue from the project (e.g., sale of a treatment-related by-product; lease of the land; or sale of crops grown on the land purchased under the grant agreement) shall be used to offset the costs of operation and maintenance. The grantee shall proportionately reduce all user charges.

(g) *Adoption of system.* One or more municipal legislative enactments or other appropriate authority must incorporate the user charge system. If the project accepts wastewater from other municipalities, the subscribers receiving waste treatment services from the grantee shall adopt user charge systems in accordance with this section. These user charge systems shall also be incorporated in appropriate municipal legislative enactments or other appropriate authority of all municipalities contributing wastes to the treatment works.

(h) *Inconsistent agreements.* The user charge system shall take precedence over any terms or conditions of agreements or contracts which are inconsistent with the requirements of section 204(b)(1)(A) of the Act and this section.

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§ 35.2152 Federal share.

(a) *General.* The Federal share for each project shall be based on the sum of the total Step 3 allowable costs and the allowance established in the grant agreement under Appendix B. Except as provided elsewhere in this section, the Federal share shall be:

(1) 75 percent for grant assistance awarded before October 1, 1984;

(2) 55 percent for grant assistance awarded after September 30, 1984, except as provided in paragraph (a)(3) of this section; and

(3) Subject to paragraph (c) of this section, 75 percent for grant assistance awarded after September 30, 1984, for sequential phases or segments of a primary, secondary, or advanced treatment facility or its interceptors, or infiltration/inflow correction provided:

(i) The treatment works being phased or segmented is described in a facilities plan approved by the Regional Administrator before October 1, 1984;

(ii) The Step 3 grant for the initial phase or segment of the treatment works described in (a)(3)(i) of this section is awarded prior to October 1, 1984; and

(iii) The phase or segment that receives 75 percent funding is necessary to (A) make a phase or segment previously funded by EPA operational and comply with the enforceable requirements of the Act, or (B) complete the treatment works referenced in (a)(3)(i) of this section provided that all phases or segments previously funded by EPA are operational and comply with the enforceable requirements of the Act.

(b) *Innovative and alternative technology.* In accordance with § 35.2032, the Federal share for eligible treatment works or unit processes and techniques that the Regional Administrator determines meet the definition of innovative or alternative technology shall be 20 percent greater than the Federal share under paragraph (a) or (c) of this section, but in no event shall the total Federal share be greater than 85 percent. This increased Federal share depends on the availability of funds from the reserve under § 35.2020. The proportional State contribution to the non-Federal share of building costs for I/A projects must be the same as or greater than the proportional State contribution (if any) to the non-Federal share of eligible building costs for all treatment works which receive 75 or 55 percent grants or such other Federal share under paragraph (c) of this section in the State.

(c) *Uniform lower Federal share.* (1) Except as provided in § 35.2032 (c) and (d) of this section, the Governor of a State may request the Regional Administrator's approval to revise uniformly throughout the State the Federal share of grant assistance for all future projects. The revised Federal share must apply to all needs categories (see § 35.2015(b)(2)).

(2) After EPA awards grant assistance for a project, the Federal share shall be the same for any grant increase that is within the scope of the project.

(d) *Training Facilities.* The Federal share of treatment works required to train and upgrade waste treatment works operations and maintenance personnel may be up to 100 percent of the allowable cost of the project.

(1) Where a grant is made to serve two or more States, the Administrator is authorized to make an additional grant for a supplemental facility in each State. The Federal funds awarded to any State under section 109(b) for all training facilities shall not exceed $500,000.

(2) Any grantee who received a grant under section 109(b) before December 27, 1977, may have the grant increased up to $500,000 by funds made available under the Act, not to exceed 100 percent of the allowable costs.

(Approved by the Office of Management and Budget under control number 2040–0027)

§ 35.2200 Grant conditions.

In addition to the EPA General Grant Conditions (Part 30 of this subchapter), each treatment works grant shall be subject to the conditions under §§ 35.2202 through 35.2218.

§ 35.2202 Step 2+3 projects.

(a) Prior to initiating action to acquire eligible real property, a Step 2+3 grantee shall submit for Regional Administrator review and written approval the information required under § 35.2040(b)(7).

(b) Before initiating procurement action for the building of the project, a Step 2+3 grantee shall submit for the Regional Administrator's review and written approval the information required under §§ 35.2040 (b)(5) and (b)(6), 35.2106, 35.2107, 35.2130 and 35.2140.

§ 35.2204 Project changes.

(a) Minor changes in the project work that are consistent with the objectives of the project and within the scope of the grant agreement do not require the execution of a formal grant amendment before the grantee's implementation of the change. However, the amount of the funding provided by the grant agreement may only be increased by a formal grant amendment.

(b) The grantee must receive from the Regional Administrator a formal grant amendment before implementing changes which:

(1) Alter the project performance standards;

(2) Alter the type of wastewater treatment provided by the project;

(3) Significantly delay or accelerate the project schedule;

(4) Substantially alter the facilities plan, design drawings and specifications, or the location, size, capacity, or quality of any major part of the project; or

(5) Otherwise require a formal grant amendment under Part 30 of this subchapter.

§ 35.2206 Operation and maintenance.

(a) The grantee must assure economical and effective operation and maintenance (including replacement) of the treatment works.

(b) Except as provided in paragraphs (c)(1) and (c)(2) of this section, the Regional Administrator shall not pay more than 50 percent of the Federal share of any project unless the grantee has furnished and the Regional Administrator has approved the final plan of operation required by § 35.2106, and shall not pay more than 90 percent of the Federal share of any project unless the grantee has furnished and the Regional Administrator has approved an operation and maintenance manual.

(c)(1) In projects where segmenting of a proposed treatment works has occurred, the Regional Administrator shall not pay more than 90 percent of the Federal share of the total allowable costs of the proposed treatment works until the grantee has furnished and the Regional Administrator has approved an operation and maintenance manual.

(2) In projects where a component is placed in operation before completion of the entire project, the Regional Administrator shall not make any additional payment on that project until a final operation and maintenance manual for the operating component is furnished and approved.

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§ 35.2208 Adoption of sewer use ordinance and user charge system.

The grantee shall adopt its sewer use ordinance and implement its user charge system developed under §§ 35.2130 and 35.2140 before the treatment works is placed in operation. Further, the grantee shall implement the user charge system and sewer use ordinance for the useful life of the treatment works.

§ 35.2210 Land acquisition.

The grantee shall not acquire real property determined allowable for grant assistance until the Regional Administrator has determined that applicable provisions of 40 CFR Part 4 have been met.

§ 35.2211 Field testing for innovative and alternative technology report.

The grantee shall submit a report containing the procedure, cost, results and conclusions of any field testing. The report shall be submitted to the Regional Administrator in accordance with a schedule to be specified in the grant agreement.

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§ 35.2212 Project initiation.

(a) The grantee shall expeditiously initiate and complete the project, in accordance with the project schedule contained in the grant application and agreement. Failure to promptly initiate and complete a project may result in the imposition of sanctions under Part 30 of this subchapter.

(b) The grantee shall initiate procurement action for building the project promptly after award of a Step 3 grant or after receiving written approval of the information required under § 35.2202 under a Step 2+3 grant. Public notice of proposed procurement action should be made promptly after Step 3 award or final approvals for a Step 2+3 grant under § 35.2202. The grantee shall award the subagreement(s) and issue notice(s) to proceed, where required, for building all significant elements of the project within twelve months of the Step 3 award or final Step 2+3 approvals.

(c) Failure to promptly award all subagreement(s) for building the project will result in a limitation on allowable costs. (See Appendix A, A.2.e.).

(d) The grantee shall notify the Regional Administrator immediately upon award of the subagreement(s) for building all significant elements of the project (see 40 CFR 33.211).

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§ 35.2214 Grantee responsibilities.

(a) The grantee shall complete the project in accordance with the grant agreement including: the facilities plan that establishes the need for the project; the design drawings and specifications; the plan of operation under § 35.2106 that identifies the basis to determine annual operating costs; the financial management system under § 35.2140(d) that adequately accounts for revenues and expenditures; the user charge system under § 35.2140 that will generate sufficient revenue to operate and maintain the treatment works; the project schedule; and all other applicable regulations. The grantee shall maintain and operate the project to meet project performance standards including the enforceable requirements of the Act for the design life.

(b) The grantee shall provide the architectural and engineering services and other services necessary to fulfill the obligation in paragraph (a) of this section.

§ 35.2216 Notice of building completion and final inspection.

The grantee shall notify the Regional Administrator when the building of the project is complete. Final inspection shall be made by the Regional Administrator after receipt of the notice of building completion.

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§ 35.2218 Project performance.

(a) The grantee shall notify the Regional Administrator in writing of the actual date of initiation of operation.

(b) Subject to the provisions of 40 CFR Part 33, the grantee shall select the engineer or engineering firm principally responsible for either supervising construction or providing architectural and engineering services during construction as the prime engineer to provide the following services during the first year following the initiation of operation:

(1) Direct the operation of the project and revise the operation and maintenance manual as necessary to accommodate actual operating experience;

(2) Train or provide for training of operating personnel and prepare curricula and training material for operating personnel; and

(3) Advise the grantee whether the project is meeting the project performance standards.

(c) On the date one year after the initiation of operation of the project, the grantee shall certify to the Regional Administrator whether the project meets the project performance standards. If the Regional Administrator or the grantee concludes that the project does not meet the project performance standards, the grantee shall submit the following:

(1) A corrective action report which includes an analysis of the cause of the project's failure to meet the performance standards (including the quantity of infiltration/inflow proposed to be eliminated), and an estimate of the nature, scope and cost of the corrective action necessary to bring the project into compliance;

(2) The schedule for undertaking in a timely manner the corrective action necessary to bring the project into compliance; and

(3) The scheduled date for certifying to the Regional Administrator that the project is meeting the project performance standards.

(d) Except as provided in § 35.2032(c) the grantee shall take corrective action necessary to bring a project into compliance with the project performance standards at its own expense.

(e) Nothing in this section:

(1) Prohibits a grantee from requiring more assurances, guarantees, or indemnity or other contractual requirements from any party performing project work; or

(2) Affects EPA's right to take remedial action, including enforcement, against a grantee that fails to carry out its obligations under § 35.2214.

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§ 35.2250 Determination of allowable costs.

The Regional Administrator will determine the allowable costs of the project based on applicable provisions of laws and regulations, the scope of the approved project, § 30.705 of this subchapter, and Appendix A of this subpart.

§ 35.2260 Advance purchase of eligible land.

In the case of grant assistance awarded solely for the acquisition of eligible land, the following provisions are deferred until the award of the ensuing Step 3 assistance for the building of facilities: §§ 35.2105, 35.2130, 35.2140, 35.2206 and 35.2208.

§ 35.2262 Funding of field testing.

In the case of grant assistance for field testing of innovative or alternative wastewater process and techniques, the following provisions are deferred until the award of assistance for building the approved facilities: §§ 35.2105, 35.2106, 35.2122, 35.2130, 35.2140, 35.2206, and 35.2208.

§ 35.2300 Grant payments.

Except as provided in § 35.2206, the Regional Administrator shall pay the Federal share of the allowance under § 35.2025 and the allowable project costs incurred to date and currently due and payable by the grantee, as certified in the grantee's most recent payment request.

(a) *Adjustment.* The Regional Administrator may at any time review and audit requests for payment and payments and make appropriate adjustments as provided in Part 30 of this subpart.

(b) *Refunds, rebates and credits.* The Federal share of any refunds, rebates, credits, or other amounts (including any interest) that accrue to or are received by the grantee for the project, and that are properly allocable to costs for which the grantee has been paid under a grant, must be credited to the current State allotment or paid to the United States. Examples include rebates for prompt payment and sales tax refunds. Reasonable expenses incurred by the grantee securing such refunds, rebates, credits, or other amounts shall be allowable under the grant when approved by the Regional Administrator.

(c) *Release.* By its acceptance of final payment, the grantee releases and discharges the United States, its officers, agents, and employees from all liabilities, obligations, and claims arising out of the project work or under the grant, subject only to exceptions previously specified in writing between the Regional Administrator and the grantee.

(d) *Payment of costs incurred under the Uniform Relocation Assistance and Real Property Acquisition Policies Act.* Notwithstanding the provisions of the introductory paragraph of this section, if the Regional Administrator determines it is necessary for the expeditious completion of a project, he may make advance payment after grant award for the Federal share of the eligible cost of any payment of relocation assistance under § 4.502(c) of this chapter by the grantee. The requirements in Part 30 of this subchapter apply to any advances of funds for assistance payments.

(e) *Payment under grants to States for advances of allowance*—(1) *Advance payment to State.* Notwithstanding the provisions of the introductory paragraph of this section, the Regional Administrator, under a State grant for advances of allowance (see § 35.2025), may make payments on an advance or letter-of-credit payment method in accordance with the requirements under Part 30 of this subchapter. The State and the Regional Administrator shall agree to the payment terms.

(2) *Assignment.* If the State chooses to assign its payments to a potential grant applicant, it shall execute an agreement with the potential grant applicant authorizing direct payment from EPA and establishing appropriate terms for payment. The State shall provide a copy of the agreement to EPA.

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§ 35.2350 Subagreement enforcement.

(a) *Regional Administrator authority.* At the grantee's request the Regional Administrator may provide technical and legal assistance in the administration and enforcement of any subagreement related to treatment works for which an EPA grant was made and to intervene in any civil action involving the enforcement of such subagreements, including subagreement disputes which are the subject of either arbitration or court action.

(b) *Privity of subagreement.* The Regional Administrator's technical or legal involvement in any subagreement dispute will not make EPA a party to any subagreement entered into by the grantee.

(c) *Grantee responsibilities.* The provision of technical or legal assistance under this section in no way releases the grantee from its obligations under § 35.2214, or affects EPA's right to take remedial action, including enforcement, against a grantee that fails to carry out those obligations.

Appendix A—Determination of Allowable Costs

(a) *Purpose.* The information in this appendix represents Agency policies and procedures for determining the allowability of project costs based on the Clean Water Act, EPA policy, appropriate Federal cost principles under Part 30 of this subchapter and reasonableness.

(b) *Applicability.* This cost information applies to grant assistance awarded on or after the effective date of this regulation. Project cost determinations under this subpart are not limited to the items listed in this appendix. Additional cost determinations based on applicable law and regulations must of course be made on a project-by-project basis. Those cost items not previously included in program requirements are not mandatory for decisions under grants awarded before the effective date. They are only to be used as guidance in those cases.

A. Costs Related to Subagreements

1. Allowable costs related to subagreements include:

a. The costs of subagreements for building the project.

b. The costs of complying with the procurement requirements of Part 33 of this subchapter, other than the costs of self-certification under § 33.110.

c. The cost of legal and engineering services incurred by grantees in deciding procurement protests and defending their decisions in protest appeals under subpart G of 40 CFR Part 33.

d. The costs for establishing or using minority and women's business liaison services.

e. The costs of services incurred during the building of a project to ensure that it is built in conformance with the design drawings and specifications.

f. The costs (including legal, technical, and administrative costs) of assessing the merits of or negotiating the settlement of a claim by or against a grantee under a subagreement provided:

(1) The claim arises from work within the scope of the grant;

(2) A formal grant amendment is executed specifically covering the costs before they are incurred;

(3) The costs are not incurred to prepare documentation that should be prepared by the contractor to support a claim against the grantee; and

(4) The Regional Administrator determines that there is a significant Federal interest in the issues involved in the claim.

g. Change orders and the costs of meritorious contractor claims for increased costs under subagreements as follows:

(1) Change orders and the costs of meritorious contractor claims provided the costs are:

(i) Within the scope of the project;

(ii) Not caused by the grantee's mismanagement; and

(iii) Not caused by the grantee's vicarious liability for the improper actions of others.

(2) Provided the requirements of paragraph g(1) are met, the following are examples of allowable change orders and contractor claim costs:

(i) Building costs resulting from defects in the plans, design drawings and specifications, or other subagreement documents only to the extent that the costs would have been incurred if the subagreement documents on which the bids were based had been free of the defects, and excluding the costs of any rework, delay,

acceleration, or disruption caused by such defects;

(ii) Costs of equitable adjustments under Clause 4, Differing Site Conditions, of the model subagreement clauses required under § 33.1030 of this Subchapter.

(3) Settlements, arbitration awards, and court judgments which resolve contractor claims shall be reviewed by the grant award official and shall be allowable only to the extent that they meet the requirements of paragraph g(1), are reasonable, and do not attempt to pass on to EPA the cost of events that were the responsibility of the grantee, the contractor, or others.

h. The costs of the services of the prime engineer required by § 35.2218 during the first year following initiation of operation of the project.

i. The cost of development of a plan of operation including an operation and maintenance manual required by § 35.2106.

j. Start-up services for onsite training of operating personnel in operation and control of specific treatment processes, laboratory procedures, and maintenance and records management.

2. Unallowable costs related to subagreements include:

a. The costs of architectural or engineering services or other services incurred in preparing a facilities plan and the design drawings and specifications for a project.

b. Except as provided in 1.g. above, architectural or engineering services or other services necessary to correct defects in a facilities plan, design drawings and specifications, or other subagreement documents.

c. The costs [including legal, technical and administrative) of defending against a contractor claim for increased costs under a subagreement or of prosecuting a claim to enforce any subagreement unless:

(1) The claim arises from work within the scope of the grant;

(2) A formal grant amendment is executed specifically covering the costs before they are incurred;

(3) The claim cannot be settled without arbitration or litigation;

(4) The claim does not result from the grantee's mismanagement;

(5) The Regional Administrator determines that there is a significant Federal interest in the issues involved in the claim; and

(6) In the case of defending against a contractor claim, the claim does not result from the grantee's responsibility for the improper action of others.

d. Bonus payments, not legally required, for completion of building before a contractual completion date.

e. All incremental costs of delay due to the award of any subagreements for building more than 12 months after the Step 3 grant award or final Step 2+3 approvals.

B. Mitigation

1. Allowable costs include:

a. Costs necessary to mitigate only direct, adverse, physical impacts resulting from building of the treatment works:

b. The costs of site screening necessary to comply with NEPA related studies and facilities plans, or necessary to screen adjacent properties.

c. The cost of groundwater monitoring facilities necessary to determine the possibility of groundwater deterioration, depletion or modification resulting from building the project.

2. Unallowable costs include:

a. The costs of solutions to aesthetic problems, including design details which require expensive building techniques and architectural features and hardware, that are unreasonable or substantially higher in cost than approvable alternatives and that neither enhance the function or appearance of the treatment works nor reflect regional architectural tradition.

C. Privately or Publicly Owned Small and Onsite Systems

1. Allowable costs for small and onsite systems serving residences and small commercial establishments inhabited on or before December 27, 1977 include:

a. The cost of major rehabilitation, upgrading, enlarging and installing small and onsite systems, but in the case of privately owned systems, only for principal residences.

b. Conveyance pipes from property line to offsite treatment unit which serves a cluster of buildings.

c. Treatment and treatment residue disposal portions of toilets with composting tanks, oil flush mechanisms, or similar in-house devices.

d. Treatment or pumping units from the incoming flange when located on private property and conveyance pipes, if any, to the collector sewer.

e. The cost of restoring individual system building sites to their original condition.

2. Unallowable costs for small and onsite systems include:

a. Modification to physical structure of homes or commercial establishments.

b. Conveyance pipes from the house to the treatment unit located on user's property.

c. Wastewater generating fixtures such as commodes, sinks, tubs, and drains.

D. Real Property

1. Allowable costs for land and rights-of-way include:

a. The cost (including associated legal, administrative and engineering costs) of land acquired in fee simple or by lease or easement under grants awarded after October 17, 1972, that will be an integral part of the treatment process or that will be used for the ultimate disposal of residues resulting from such treatment provided the Regional Administrator approves it in the grant agreement. These costs include:

(1) The cost of a reasonable amount of land, considering irregularities in application patterns, and the need for buffer areas, berms, and dikes;

(2) The cost of land acquired for a soil absorption system for a group of two or more homes;

(3) The cost of land acquired for composting or temporary storage of compost residues which result from wastewater treatment;

(4) The cost of land acquired for storage of treated wastewater in land treatment systems before land application. The total land area for construction of a pond for both treatment and storage of wastewater is allowable if the volume necessary for storage is greater then the volume necessary for treatment. Otherwise, the allowable cost will be determined by the ratio of the storage volume to the total volume of the pond.

b. The cost of complying with the requirements of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 [42 U.S.C. 4621 et seq., 4651 et seq.), under Part 4 of this chapter.

c. The cost of contracting with another public agency or qualified private contractor for part or all of the required acquisition and/or relocation services.

d. The cost associated with the preparation of the treatment works site before, during and, to the extent agreed on in the grant agreement, after building. These costs include:

(1) The cost of demolition of existing structures on the treatment works site (including rights-of-way) if building cannot be undertaken without such demolition;

(2) The cost [considering such factors as betterment, cost of contracting and useful life) of removal, relocation or replacement of utilities, provided the grantee is legally obligated to pay under state or local law; and

(3) The cost of restoring streets and rights-of-way to their original condition. The need for such restoration must result directly from the construction and is generally limited to repaving the width of trench.

e. The cost of acquiring all or part of an existing publicly or privately owned wastewater treatment works provided all the following criteria are met:

(1) The acquisition, in and of itself, considered apart from any upgrade, expansion or rehabilitation, provides new pollution control benefits;

(2) The acquired treatment works was not built with previous Federal or State financial assistance;

(3) The primary purpose of the acquisition is *not* the reduction, elimination, or redistribution of public or private debt; and

(4) The acquisition does not circumvent the requirements of the Act, these regulations, or other Federal, State or local requirements.

2. Unallowable costs for land and rights-of-way include:

a. The costs of acquisition (including associated legal, administrative and engineering etc.) of sewer rights-of-way, waste treatment plant sites (including small system sites), sanitary landfill sites and sludge disposal areas except as provided in paragraph 1.a. of this section.

b. Any amount paid by the grantee for eligible land in excess of just compensation, based on the appraised value, the grantee's record of negotiation or any condemnation proceeding, as determined by the Regional Administrator.

c. Removal, relocation or replacement of utilities located on land by privilege, such as franchise.

E. Equipment, Materials and Supplies

1. Allowable costs of equipment, materials and supplies include:

a. The cost of a reasonable inventory of laboratory chemicals and supplies necessary

to initiate plant operations and laboratory items necessary to conduct tests required for plant operation.

b. The costs for purchase and/or transportation of biological seeding materials required for expeditiously initiating the treatment process operation.

c. Cost of shop equipment installed at the treatment works necessary to the operation of the works.

d. The costs of necessary safety equipment, provided the equipment meets applicable Federal, State, local or industry safety requirements.

e. A portion of the costs of collection system maintenance equipment. The portion of allowable costs shall be the total equipment cost less the cost attributable to the equipment's anticipated use on existing collection sewers not funded on the grant. This calculation shall be based on: (1) The portion of the total collection system paid for by the grant, (2) a demonstrable frequency of need, and (3) the need for the equipment to preclude the discharge or bypassing of untreated wastewater.

f. The cost of mobile equipment necessary for the operation of the overall wastewater treatment facility, transmission of wastewater or sludge, or for the maintenance of equipment. These items include:

(1) Portable stand-by generators;

(2) Large portable emergency pumps to provide "pump-around" capability in the event of pump station failure or pipeline breaks; and

(3) Sludge or septic tanks, trailers, and other vehicles having as their sole purpose the transportation of liquid or dewatered wastes from the collector point (including individual or on-site systems) to the treatment facility or disposal site.

g. Replacement parts identified and approved in advance by the Regional Administrator as necessary to assure uninterrupted operation of the facility, provided they are critical parts or major systems components which are:

(1) Not immediately available and/or whose procurement involves an extended "lead-time;"

(2) Identified as critical by the equipment supplier(s); or

(3) Critical but not included in the inventory provided by the equipment supplier(s).

2. Unallowable costs of equipment, materials and supplies include:

a. The costs of equipment or material procured in violation of the procurement requirements of 40 CFR Part 33.

b. The cost of furnishings including draperies, furniture and office equipment.

c. The cost of ordinary site and building maintenance equipment such as lawnmowers and snowblowers.

d. The cost of vehicles for the transportation of the grantees' employees.

e. Items of routine "programmed" maintenance such as ordinary piping, air filters, couplings, hose, bolts, etc.

F. Industrial and Federal Users

1. Except as provided in paragraph F.2.a., allowable costs for industrial and Federal facilities include development of a municipal pretreatment program approvable under Part 403 of this chapter, and purchase of monitoring equipment and construction of facilities to be used by the municipal treatment works in the pretreatment program.

2. Unallowable costs for industrial and Federal facilities include:

a. The cost of developing an approvable municipal pretreatment program when performed solely for the purpose of seeking an allowance for removal of pollutants under Part 403 of this chapter.

b. The cost of monitoring equipment used by industry for sampling and analysis of industrial discharges to municipal treatment works.

c. All incremental costs for sludge management incurred as a result of the grantee providing removal credits to industrial users under 40 CFR 403.7 beyond those sludge management costs that would otherwise be incurred in the absence of such removal credits.

G. Infiltration/Inflow

1. Allowable costs include:

a. The cost of treatment works capacity adequate to transport and treat nonexcessive infiltration/inflow under § 35.2120.

b. The costs of sewer system rehabilitation necessary to eliminate excessive infiltration/inflow as determined in a sewer system study under § 35.2120.

2. Unallowable costs include:

a. When the Regional Administrator determines that the flow rate is not significantly more than 120 gallons per capita per day under § 35.2120(c)(2)(ii), the incremental cost of treatment works capacity which is more than 120 gallons per capita per day.

H. Miscellaneous Costs

1. Allowable costs include:

a. The costs of salaries, benefits and expendable materials the grantee incurs for the project.

b. Unless otherwise specified in this regulation, the costs of meeting specific Federal statutory procedures.

c. Costs for necessary travel directly related to accomplishment of project objectives. Travel not directly related to a specific project, such as travel to professional meetings, symposia, technology transfer seminars, lectures, etc., may be recovered only under an indirect cost agreement.

d. The costs of additions to a treatment works that was assisted under the Federal Water Pollution Control Act of 1956 (Pub. L. 84–660), or its amendments, and that fails to meet its project performance standards provided:

(1) The project is identified on the State priority list as a project for additions to a treatment works that has received previous Federal funds;

(2) The grant application for the additions includes an analysis of why the treatment works cannot meet its project performance standards; and

(3) The additions could have been included in the original grant award and:

(a) Are the result of one of the following:

(i) a change in the project performance standards required by EPA or the State;

(ii) a written understanding between the Regional Administrator and grantee prior to or included in the original grant award;

(iii) a written direction by the Regional Administrator to delay building part of the treatment works; or

(iv) a major change in the treatment works' design criteria that the grantee cannot control; or

(b) Meet all the following conditions:

(i) if the original grant award was made after December 28, 1981, the treatment works has not completed its first full year of operation;

(ii) the additions are not caused by the grantee's mismanagement or the improper actions of others;

(iii) the costs of rework, delay, acceleration or disruption that are a result of building the additions are not included in the grant; and

(iv) the grant does not include an allowance for facilities planning or design of the additions.

(4) This provision applies to failures that occur either before or after the initiation of operation. This provision does not cover a treatment works that fails at the end of its design life.

e. Costs of royalties for the use of or rights in a patented process or product with the prior approval of the Regional Administrator.

f. Costs allocable to the water pollution control purpose of multiple purpose projects as determined by applying the Alternative Justifiable Expenditure (AJE) method described in the *CG* series. Multiple purpose projects that combine wastewater treatment with recreation do not need to use the AJE method, but can be funded at the level of the most cost-effective single-purpose alternative.

g. Costs of grantee employees attending training workshops/seminars that are necessary to provide instruction in administrative, fiscal or contracting procedures required to complete the construction of the treatment works, if approved in advance by the Regional Administrator.

2. Unallowable costs include:

a. Ordinary operating expenses of the grantee including salaries and expenses of elected and appointed officials and preparation of routine financial reports and studies.

b. Preparation of applications and permits required by Federal, State or local regulations or procedures.

c. Administrative, engineering and legal activities associated with the establishment of special departments, agencies, commissions, regions, districts or other units of government.

d. Approval, preparation, issuance and sale of bonds or other forms of indebtedness required to finance the project and the interest on them.

e. The costs of replacing, through reconstruction or substitution, a treatment works that was assisted under the Federal Water Pollution Control Act of 1956 (Pub. L. 84–660), or its amendments, and that fails to meet its project performance standards. This provision applies to failures that occur either before or after the initiation of operation. This provision does not apply to an innovative and alternative treatment works eligible for funding under § 35.2032(c) or a treatment works that fails at the end of its design life.

f. Personal injury compensation or damages arising out of the project.

g. Fines and penalties due to violations of, or failure to comply with, Federal, State or local laws, regulations or procedures.

h. Costs outside the scope of the approved project.

i. Costs for which grant payment has been or will be received from another Federal agency.

j. Costs of treatment works for control of pollutant discharges from a separate storm sewer system.

k. The cost of treatment works that would provide capacity for new habitation or other establishments to be located on environmentally sensitive land such as wetlands or floodplains.

l. The costs of preparing a corrective action report required by § 35.2218(c).

Appendix B—Allowance for Facilities Planning and Design

1. This Appendix provides the method EPA will use to determine both the estimated and the final allowance under § 35.2025 for facilities planning and design. The Step 2+3 and Step 3 grant agreement will include an estimate of the allowance.

2. The Federal share of the allowance is determined by applying the applicable grant percentage in § 35.2152 to the allowance.

3. The allowance is not intended to reimburse the grantee for costs actually incurred for facilities planning or design. Rather, the allowance is intended to assist in defraying those costs. Under this procedure, questions of equity (i.e., reimbursement on a dollar-for-dollar basis) will not be appropriate.

4. The estimated and final allowance will be determined in accordance with this Appendix and Tables 1 and 2. Table 2 is to be used in the event that the grantee received a grant for facilities planning. The amount of the allowance is computed by applying the resulting allowance percentage to the initial allowable building cost.

5. The initial allowable building cost is the initial allowable cost of erecting, altering, remodeling, improving, or extending a treatment works, whether accomplished through subagreement or force account. Specifically, the initial allowable building cost is the allowable cost of the following:

a. The initial award amount of all prime subagreements for building the project.

b. The initial amounts approved for force account work performed in lieu of awarding a subagreement for building the project.

c. The purchase price of eligible real property.

6. The estimated allowance is to be based on the estimate of the initial allowable building cost.

7. The final allowance will be determined one time only for each project, based on the initial allowable building cost, and will not be adjusted for subsequent cost increases or decreases.

8. For a Step 3 project, the grantee may request payment of 50 percent of the Federal share of the estimated allowance immediately after grant award. Final payment of the Federal share of the allowance may be requested in the first payment after the grantee has awarded all prime subagreements for building the project, received the Regional Administrator's approval for force account work, and completed the acquisition of all eligible real property.

9. For a Step 2+3 project, if the grantee has not received a grant for facilities planning, the grantee may request payment of 30 percent of the Federal share of the estimated allowance immediately after the grant award. Half of the remaining estimated allowance may be requested when design of the project is 50 percent complete. If the grantee has received a grant for facilities planning, the grantee may request half of the Federal share of the estimated allowance when design of the project is 50 percent complete. Final payment of the Federal share of the allowance may be requested in the first payment after the grantee has awarded all prime subagreements for building the project, received the Regional Administrator's approval for force account work, and completed the acquisition of all eligible real property.

10. The allowance does not include architect or engineering services provided during the building of the project, e.g., reviewing bids, checking shop drawings, reviewing change orders, making periodic visits to job sites, etc. Architect or engineering services during the building of the project are allowable costs subject to this regulation and 40 CFR Part 33.

11. The State will determine the amount and conditions of any advance under § 35.2025(b), not to exceed the Federal share of the estimated allowance.

12. EPA will reduce the Federal share of the allowance by the amount of any advances the grantee received under § 35.2025(b).

TABLE 1.—ALLOWANCE FOR FACILITIES PLANNING AND DESIGN

Building cost	Allowance as a percentage of building cost*
$100,000 or less	14.4945
120,000	14.1146
150,000	13.6631
175,000	13.3597
200,000	13.1023
250,000	12.6832
300,000	12.3507
350,000	12.0764
400,000	11.8438
500,000	11.4649
600,000	11.1644
700,000	10.9165
800,000	10.7062
900,000	10.5240
1,000,000	10.3637
1,200,000	10.0920
1,500,000	9.7692
1,750,000	9.5523
2,000,000	9.3682
2,500,000	9.0686
3,000,000	8.8309
3,500,000	8.6348
4,000,000	8.4684
5,000,000	8.1975
6,000,000	7.9827
7,000,000	7.8054
8,000,000	7.6550
9,000,000	7.5248
10,000,000	7.4101
12,000,000	7.2159
15,000,000	6.9851
17,500,000	6.8300
20,000,000	6.6984
25,000,000	6.4841
30,000,000	6.3142
35,000,000	6.1739
40,000,000	6.0550
50,000,000	5.8613
60,000,000	5.7077
70,000,000	5.5809
80,000,000	5.4734
90,000,000	5.3803
100,000,000	5.2983
120,000,000	5.1594
150,000,000	4.9944
175,000,000	4.8835
200,000,000	4.7894

NOTE.—The allowance does not reimburse for costs incurred. Accordingly, the allowance Tables shall not be used to determine the compensation for facilities planning or design services. The compensation for facilities planning or design services should be based upon the nature, scope and complexity of the services required by the community.

* Interpolate between values.

TABLE 2.—ALLOWANCE FOR DESIGN ONLY

Building cost	Allowance as a percentage of building cost*
$100,000 or less	8.5683
120,000	8.3808
150,000	8.1570
175,000	8.0059
200,000	7.8772
250,000	7.6668
300,000	7.4991
350,000	7.3602
400,000	7.2419
500,000	7.0485
600,000	6.8943
700,000	6.7666
800,000	6.6578
900,000	6.5634
1,000,000	6.4300
1,200,000	6.3383
1,500,000	6.1690
1,750,000	6.0547
2,000,000	5.9574
2,500,000	5.7983
3,000,000	5.6714
3,500,000	5.5664
4,000,000	5.4769
5,000,000	5.3306
6,000,000	5.2140
7,000,000	5.1174
8,000,000	5.0352
9,000,000	4.9637
10,000,000	4.9007
12,000,000	4.7935
15,000,000	4.6655
17,500,000	4.5790
20,000,000	4.5054
25,000,000	4.3851
30,000,000	4.2892
35,000,000	4.2097
40,000,000	4.1421
50,000,000	4.0314
60,000,000	3.9432
70,000,000	3.8702
80,000,000	3.8080
90,000,000	3.7540
100,000,000	3.7063
120,000,000	3.6252
150,000,000	3.5284
175,000,000	3.4630
200,000,000	3.4074

NOTE.—The allowance does not reimburse for costs incurred. Accordingly, the allowance Tables shall not be used to determine the compensation for facilities planning or design services. The compensation for facilities planning or design services should be based upon the nature, scope and complexity of the services required by the community.

*Interpolate between values.

[FR Doc. 84-4076 Filed 2-16-84; 8:45 am]

BILLING CODE 6560-50-M

federal register

Friday
February 17, 1984

Part IV

Environmental Protection Agency

40 CFR Part 35
Financial and Management Capability for Construction, Operations and Maintenance of Publicly Owned Wastewater Treatment Systems; Final Policy

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 35

[WH-FRL-2267-5]

Financial and Management Capability for Construction, Operation and Maintenance of Publicly Owned Wastewater Treatment Systems

AGENCY: Environmental Protection Agency.

ACTION: Notice of final policy .

SUMMARY: This notice sets forth Agency policy and procedures to ensure that construction grants applicants demonstrate their financial and management capability to construct, operate, and maintain (including equipment replacement) a wastewater treatment system. The policy describes the statutory and regulatory requirements for applicants to demonstrate that they have answered five questions concerning the total costs of the proposed treatment system, how it will be financed, the total annual costs per household, and the roles and responsibilities of local governments involved. The demonstration must also include a written certification by applicants that they have analyzed the costs and financial impacts of the proposed facilities and that they have the necessary financial and management capability to complete and successfully operate the treatment system. The purpose of the policy is to interpret more fully the relevant provisions of the final construction grants regulations and the Clean Water Act, as amended, in order to protect adequately the Federal investment in the construction of publicly owned treatment systems.

EFFECTIVE/EXPIRATION DATE: This policy will apply to any applications received in EPA Regional Offices after publication of this notice in the **Federal Register.** It will expire on September 30, 1988.

FOR FURTHER INFORMATION CONTACT: Keith Dearth, Environmental Protection Agency, WH-595, 401 M Street, SW., Washington, D.C. 20460, (202) 382-7226.

SUPPLEMENTARY INFORMATION: Under the Paperwork Reduction Act of 1980, 44 U.S.C. 3501 *et seq.*, the information provisions in this notice have been submitted to the Office of Management and Budget (OMB), and will become effective upon OMB approval. A notice of that approval will be published in the **Federal Register.**

Dated: December 13, 1983.

Jack E. Ravan,

Assistant Administrator for Water.

The authority for this action is found in section 204(b)(1) of the Clean Water Act, as amended.

Financial and Management Capability for Construction and Operation of Publicly Owned Treatment Systems

I. Statement of Policy

It is the policy of the Environmental Protection Agency (EPA) that no grant shall be awarded for the construction of a publicly owned treatment works (POTW) unless the applicant has demonstrated substantively to the satisfaction of the delegated State (or EPA for non-delegated States) that it has the legal, institutional, managerial, and financial capability to ensure construction, operation and maintenance (including equipment replacement) of the proposed treatment system.

II. Effective/Expiration Date

This policy will apply to any applications received in EPA Regional Offices after publication of this notice in the **Federal Register.** It will expire on September 30, 1988.

III. Background

The purpose of this policy is to interpret more fully the relevant provisions of the revised construction grants regulations and the Clean Water Act, as amended, in order to protect adequately the Federal investment in the construction of publicly owned treatment works. It draws together various statutory and regulatory provisions pertaining to the local financing and management of Federally funded POTWs.

Authority

The authority for this policy on financial capability is found in the Clean Water Act (CWA), as amended, as well as the revised construction grants regulations. Specifically, each applicant is required to demonstrate its financial capability prior to award of a Step 3 or 2+3 grant (40 CFR 35.2104); and the Administrator is required to determine whether the applicant has, in fact, shown sufficient evidence that it has the legal, institutional, managerial, and financial capability to ensure adequate construction, operation and maintenance of the proposed treatment system (section 204(b)(1)).

Discussion

The decision to construct a wastewater treatment facility represents a major financial commitment by a local government. Consequently, there is a need for each applicant to determine whether the community and its residents have the financial and institutional capability to pay for and manage the proposed system prior to actual construction.

This need has been clearly recognized in the Clean Water Act, which requires that, before awarding a grant, the Administrator must be satisfied that a grantee has the adequate legal, institutional, managerial, and financial capability to complete and maintain the proposed wastewater system. This was further strengthened with the 1981 Amendments, which state that the Administrator should encourage and assist all applicants for grant assistance to develop a capital financing plan. The clear intent, therefore, is that all applicants need to assess adequately the financial impact of the proposed facility on the community and its users, and to disclose how the system will be financed and managed following construction.

IV. Application

This policy will apply to all applicants for a Step 3 or 2+3 grant award under the Amendments to Title II of the Clean Water Act and the revised costruction grants regulations.

V. Implementation

At the time of application for a Step 3 or 2+3 grant award, an applicant must demonstrate that it has the legal, institutional, managerial, and financial capability to construct, operate, and maintain the proposed facility. To do so, the applicant must answer the following questions:

1. What is proposed in the facilities plan?
2. What roles and responsibilities will local governments have?
3. How much will the facilities cost at today's prices?
4. How will construction, operation and maintenance of the facilities be financed?
5. What are the annual costs per household?

Attachment A [1] provides a format that the applicant may use to respond to the above questions.

The applicant must also submit, along with the Step 3 or 2+3 application, written certification that it has analyzed the costs and financial impacts of the proposed facilities and that it has the capability to finance and manage the construction and operation of the facilities in accordance with the

[1] Attachment A has been provided as an example of how the information required to demonstrate financial capability might be displayed. The grant applicant may use any format he chooses to meet the requirement, including, as examples, a financial plan, a separate chapter in the facilities plan, or procedures as prescribed by a delegated State, provided that the information required is adequately addressed. A publication entitled

Continued

construction grants regulations. Before signing the certification the applicant must consider the responses to the questions above as well as the community's financial condition. The certification should be signed by an elected official or chief financial officer for the municipality authorized to commit funding. An example certification letter is provided in Attachment B.

An applicant proposing to construct a wastewater treatment facility designed to serve two or more public agencies or jurisdictions must show how the costs will be allocated among the participating jurisdictions or agencies. Such applicants must provide an executed intermunicipal service agreement which, at a minimum, incorporates the following information: the basis upon which costs are allocated; [2] the formula by which costs are allocated; and the manner in which the cost allocation system will be administered. Executed intermunicipal service agreements are to be submitted with a Step 3 grant application or before initiation of procurement action for building the project for Step 2+3 grants. This requirement may be waived by the Regional Administrator or the delegated State if the applicant can demonstrate: that such an agreement is already in place, or that there is evidence of a service relationship in the absence of formal agreement, and that the supplier agency exhibits sufficient financial strength to continue the project if one or more of the customer agencies fails to participate (40 CFR 35.2107).

The intermunicipal service agreement serves as the legal, contractual basis for implementation of the wastewater treatment system, and guarantees future commitments. Although it will guard against reneging or unilateral actions by participants, it should also serve as a basis for a sound working relationship. Its institutional provisions should provide for a management framework, and should assign roles and responsibilities for management and operation of the system.

In implementing this policy, States, EPA Regions, and EPA Headquarters have the following responsibilities:

• *All States*: In order to account for unique aspects of State laws governing local financing and institutional arrangements, all States are encouraged to develop specific guidance and procedures for communities to use to demonstrate their financial capability. Attachment A may be used as the basis for this guidance, and may be modified according to individual State needs.

• *Delegated States*: At the time of transmittal of a Step 3 or 2+3 grant application, a delegated State must indicate that it has reviewed the financial information provided by the applicant, and has determined that the applicant has adequately demonstrated its financial capability, and, as appropriate, has provided an executed intermunicipal agreement. Delegated States may waive the requirement for an executed intermunicipal agreement on the basis of the criteria cited above.

The criteria for approving the financial capability portion of a grant application are listed below ("Regional Offices"). States should use the reviewer's checklist guidance provided by EPA or develop comparable guidance for applying these criteria to financial capability demonstrations.

Delegated States must also develop screening procedures for identifying communities whose projects need greater attention to satisfy the requirements of this policy. These projects could be identified on the basis of their high cost, technological appropriateness or potential financial impact. A combination of several of the following criteria should be used for this purpose: size of the community, extent of sewers (for presently unsewered communities), type of technology proposed, total capital costs per household, total annual household costs, total annual cost per household as a percentage of median income, capital cost of treatment per 1000 gpd capacity, or other meaningful indicators.

Delegated States should conduct a more intensive review of projects identified by these procedures and should not certify grant applications for these projects unless the State is completely satisfied that the community and its users can successfully finance and manage the wastewater treatment system. If this intensive review discloses that the project may not be financially sound, the State should provide assistance to the applicant to resolve the problem. This assistance should include both the technical aspects of projects (e.g., appropriate technology and project scope and staging) and the necessary financial arrangements (e.g., other sources of funding and alternative methods for financing the local share.) Screening procedures should be applied as early as is feasible during the development of a project so that problems can be resolved prior to the actual grant application.

• *Nondelegated States*: Nondelegated States are encouraged to meet with communities to review local financial capability, as well as the overall feasibility of implementing proposed projects from financial and institutional aspects.

• *Regional Offices:* In the case of non-delegated States, the EPA Regional Office will review the applications as outlined under "Delegated States."

The RA or delegated State representative may approve an application if all other regulatory requirements are met and if, in his or her judgment, the applicant has adequately demonstrated financial capability by submission of financial information consistent with relevant information in the facility plan; appropriate assumptions regarding population projections, cost estimates, or eligible costs; appropriate analysis of the community's proposed financing system, and the financial impacts of the proposed system on its users; and submission of an executed intermunicipal service agreement if there are two or more participating jurisdictions, except as prescribed above.

If approval is withheld, the RA or delegated State representative will notify the applicant of the reason(s) and will work with the applicant to resolve any identified problems or deficiencies.

• *Headquarters:* EPA Headquarters will provide guidance and technical assistance to Regions and to States to carry out the intent of this policy.

VI. Overview

Each fiscal year, the EPA Regions and States develop an overview progam consistent with the section 205(g) regulation. These overview programs should provide for the Region's review of all guidance and procedures used by delegated States to implement this policy, as well as a random sample of financial capability demonstrations that have been accepted by the State. The overview program should provide for the Region's review of financial capability demonstrations for specific, selected projects that warrant special attention or are determined to be of overriding Federal interest consistent with the section 205(g) regulation.

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Financial Capability Guidebook is available to assist communities in completing Attachment A or in developing comparable information.

[2] The regional cost basis consists of facilities (including equipment, sewage treatment facilities, and interceptors, etc.) and services (administrative, managerial, legal, etc.) which are to be shared by two or more jurisdictions and are, therefore, eligible for regional cost allocation. An auditable cost accounting system is usually maintained by the supplier agency; it defines the regional cost basis and is included in service agreements. Attachment C provides elements to consider in determining regional cost basis, and is excerpted from "Financial Planning for Wastewater Facilities: A Guide for Wyoming Local Officials" (Part 3).

Attachment A (to Policy Statement)

Wastewater Facilities Financial Information Sheet

Applicant

Name_____

Address_____

City_____ Zip_____

Contact_____

Telephone _____

(This is provided for optional use by the grantee community, or its A-E consultant, as an aid to conventional Facility planning financial analyses. EPA developed this improved and simplified form with the Municipal Financial Officers Assn., based on feedback on earlier versions, which have been used successfully by consultants for projects in Texas, North Carolina, Tennessee, and Pensylvania.)

(Information to complete this sheet should be contained in the Facility Plan.)

Additional assistance in completing the Financial Information Sheet can be found in the Financial Capability Guidebook which is available from the US Department of Commerce, National Technical Information Service (NTIS) 5285 Port Royal Road Springield, VA 22161

(This Sheet and the Guidebook will also be provided to grant applicants (to assist in facility planning) by EPA Regions & delegated States in the application package.)

What Is Proposed In The Facilities Plan? (Information should be in Facility Plan.)

- The proposed facilities will be: (check more than one if applicable) ☐ New ☐ An expansion ☐ An upgrade

- If treatment facilities are proposed, do they feature low O+M Cost Technology such as ponds, trickling filters, overland flow? If yes, please identify. ☐ Yes ☐ No

_____

_____

_____

- The facilities will serve: ☐ Existing Population on Sewers ☐ Existing Area Served by On-Site Systems ☐ Existing Industries ☐ Anticipated Growth

  Indicate the approximate percentage of the plant's capacity that will be allocated to each. _____% _____% _____% _____%

- Entities to be served: ☐ County ☐ Municipality ☐ Sewer district ☐ Industry

- Design population _____ (Year _____)

THIS IS A SAMPLE FORMAT

Wastewater Facilities Financial Information Sheet

What Roles And Responsibilities Will Local Governments Have? (Information in Facility Plan.)

Cooperative arrangements between various entities may be required to meet the management needs of wastewater treatment facilities.

• What agency will:	☐ Own the facilities	☐ Operate	☐ Finance
• Will there be financial contributions by:	☐ Other agencies	☐ Industry	
• Have participating agencies been asked to review:	☐ Wastewater facilities plan	☐ Population projections	☐ Service area boundaries
• Have agreements been sought between the operating agency and:	☐ Participating agencies	☐ Other agencies	☐ Industry

How Much Will The Facilities Cost At Today's Prices? (Information in Facility Plan.)

The following figures are estimated costs for construction, operation, and maintenance of the proposed facilities. Dollar amounts are uninflated and reflect today's prices.

A. Construction costs estimate

- Wastewater treatment plant _____
- Pump stations _____
- Interceptor sewers _____
- Collection sewers _____
- On-site systems _____
- Land acquisition _____
- Other _____
- Total construction costs _____

B. Estimated annual operation, maintenance, and replacement (O,M + R) costs for the proposed facilities

- Labor _____ per year
- Utilities _____ per year
- Materials _____ per year
- Outside services _____ per year
- Misc. expenses _____ per year
- Equipment replacement _____ per year
- Total operation, maintenance and replacement costs _____ per year

How Will The Facilities Be Financed? (Information in Facility Plan.)

A. Amount to be borrowed

- Grantee share of construction costs _____
- Construction-related costs _____
- Grantee contributions _____
- Amount to be borrowed _____

B. Methods of financing the amount to be borrowed

Financing method	Amount borrowed	Interest rate	Term of maturity	Annual debt service payment
General obligation bond				
Revenue bond				
Loan				
Total				

C. Total estimated annual wastewater facilities costs

- Net existing O,M + R _____
- Existing annual debt service _____
- O,M + R for proposed facilities _____
- Debt service for proposed facilities _____
- Total estimated annual wastewater facilities costs _____

D. Sources of funding for total annual wastewater facilities costs

- Sewer service charges _____
- Surcharge _____
- Special assessments and fees
  - — connection fee _____
  - — betterment assessments _____
  - — other _____
- Transfers from other funds _____
- Other _____
- Total funding _____

THIS IS A SAMPLE FORMAT

Wastewater Facilities Financial Information Sheet

What Are The Annual Costs Per Household? (Information in Facility Plan)

- Total estimated annual wastewater facilities charges _____
- Nonresidential share of total annual charges _____
- Residential share of total annual charges _____
- Number of households _____
- Annual costs per household for
  - — wastewater collection and treatment _____
  - — other _____
- Total annual costs per household _____

Certification of Financial Capability

Your community must certify that it has the capability to finance and manage the proposed facility.

The answers to the preceeding questions will provide useful information regarding the cost of the proposed facility, how it will be financed, and what this means in terms of costs to the typical household user. In order to evaluate effectively the true impact of the proposed treatment system, however, this infomation must be viewed within the overall context of the community's financial condition, financial resources, legal constraints, and local public policy.

Listed below are additional elements relating to a community's overall financial condition and its ability to pay the local costs of constructing and operating the treatment system. These factors should be considered before signing the financial and management capability certification.

- reasonableness of population projections relative to historic trends (if new population growth is needed to help finance the proposed system.)
- total current outstanding indebtedness
- state finance laws and legal debt limits
- historical trends in your community's revenue sources (e.g., changes in taxable assessed property valuation with respect to population)
- current bond rating and its historical trend

If your community would have difficulty financing the proposed project, it should consider alternative methods of financing to mitigate the adverse impacts, re-evaluate the project alternative and scope, or consider staging implementation to spread out financing to future users. When certifying your project, the community should be fully satisfied that both the users and the community as a whole have the capability to finance and manage the facility as proposed.

THIS IS A SAMPLE FORMAT

ATTACHMENT B

EXAMPLE - CERTIFICATION LETTER

Mr. John Brown
Any City
Any State

(Regional Administrator if applicant is in non-delegated State)

Dear Mr. Brown:

I hereby certify that we have analyzed the local share of the costs of the proposed wastewater treatment facilities, including their financial impact on this community and the residents of the service area. As a result of these analyses, I have found that we have the legal, institutional, managerial and financial capability to ensure adequate construction, operation and maintenance, and replacement of the wastewater treatment works.

Sincerely yours,

Honorable Joseph Stevens
Mayor of (name of City)
(City), State 00000

THIS IS A SAMPLE FORMAT

[FR Doc. 84-4074 Filed 2-16-84; 8:45 am]
BILLING CODE 6560-50-C

ATTACHMENT C

BASIS FOR IDENTIFICATION OF REGIONAL COST

SYSTEM-WIDE CAPITAL COST BASIS

- **Proposed Regional Facilities:**
  Local share of capital cost of new components proposed in regional facilities plan.
- **Contributed Capital Facilities:**
  Value of existing facilities which are to be incorporated into regional system (based on an estimate of the replacement value, fair market value, or undepreciated value of the component).

  Estimated value of land on which existing contributed facilities are located (calculated at fair market value or other acceptable method).
- **Periodic Capital Requirements:**
  Additions, expansion, or replacement of equipment or system components (not included in initial facilities plan), as required by regional use.

SYSTEM-WIDE OPERATIONS AND MAINTENANCE COST BASIS

- **Direct Costs for Regional System O & M:**
  Annual costs directly attributable to regional operations and maintenance, identified in appropriate budget categories of the regional system operator.
- **Administrative Costs for Regional System:**
  Costs associated with management, administration, and overhead of the regional operator. For example, if a municipality operates the system, appropriate portions of administrative time must be identified in the municipal budget.

SOURCE: Financial Planning for Wastewater Facilities: A Guide for Wyoming Local Officials, Part 3, "Regional Wastewater Facilities: Cost Sharing, Financing, and Intergovernmental Relations," (Wyoming Department of Environmental Quality), page 16.

federal register

Friday
February 17, 1984

Part V

Department of Defense

32 CFR Parts 1-39

Defense Acquisition Regulation; Final Rule

DEPARTMENT OF DEFENSE

32 CFR Parts 1–39

[DAC 76–47]

Defense Acquisition Regulation

AGENCY: Department of Defense.

ACTION: Final rule.

SUMMARY: This document publishes changes to the Defense Acquisition Regulation contained in the Code of Federal Regulations. The changes are the same as those in Defense Acquisition Circular 76–47. Some of the changes include: deletion of requirement for reporting of identical bids; listing of contracting activities; revision to the Uniform Contract Format; reinstatement of the Exchange Program; and DoD contract simplification test. Also included in this document are the following items issued for information and guidance: (1) Information with respect to publication of the DoD FAR Supplement; (2) reprint of a memorandum from the Acting Deputy Under Secretary (Acquisition Management), Subject: Solicitations Under Mandatory Federal Supply Schedules; and (3) reprint of Determinations and Findings executed by the Director of the Defense Logistics Agency, concurred in by the Administrator of the Small Business Administration, which exempt requirements for perishable subsistence and brand-name subsistence for commissary resale from the synopsis provisions of the Small Business Act.

EFFECTIVE DATE: Upon receipt, in accordance with DAR 1–106.2(d).

FOR FURTHER INFORMATION CONTACT: J. Brannan, Director, Defense Acquisition Regulatory Council, OUSDRE(AM)(DARS), OUSDRE(M&RS), Room 3D 139, 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 July 1, 1983 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 76–44.

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 76–47

This document contains amendments to the Defense Acquisition Regulation in the form of replacement pages which were included in DAC 76–47, issued 15 December 1983. The following is a summary of the amendments:

Reports of Identical Bids. DAR 1–114 and the references thereto in DAR 1–111.2(c) are deleted to implement Executive Order 12430 of July 6, 1983, which revokes Executive Order 10936 of April 24, 1961. The revocation cancels the requirement of Federal agencies to report identical bids to the Attorney General.

Designation of Contracting Activities. DAR 1–201.14 is revised to update the listing of contracting activities for the Army, the Navy, and the Defense Logistics Agency.

Identification of FMS Requirements (UCF). A revision is made to the Uniform Contract Format (UCF) to incorporate a requirement to stamp the cover sheet of appropriate contracts with the legend "FMS Requirement," which was a part of the UCF prior to its revision by DAC 76–20. The requirement was inadvertently omitted from DAC 76–20, but was reinstated by Departmental direction. This change codifies that Departmental direction.

Exchange of Nonexcess Personal Property. Based on recent actions by the House Appropriations Committee, the Department of Defense has reinstated the Exchange Program which had previously been a major portion of the Exchange Sale Program, addressed at DAR Section IV, Part 2. A new DoD Directive 4140.51 was issued on March 2, 1983.

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 receipt in accordance with DAR 1–106.2(d).

How To Use Replacement Pages

Reproduced at the end of this document are replacement pages from DAC 76–47. The number at the top of each page (for example, 1:9) 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 above, 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 July 1, 1983 edition of 32 CFR Parts 1–39, Volumes I, II, and III, is amended in the DAR paragraphs indicated by substitution of the replacement pages listed in the table.

DAR paragraph	Replacement pages
Volume I	
1–111.2(c) (deleted)	1:9
1–114 (reserved) (deleted)	1:12, 1:13
1–201.14	1:16, 1:17
2–201(a)(Sec.A)(ii) (added)	2:4
3–501(b)(3)(Sec.A)(iv) (added)	3:59, 3:60
Section IV, Part 2 (added)	4:22
4–200 (added)	4:22
4–201 (added)	4:22
4–202 (added)	4:22
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M. S. Healy,

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

February 8, 1984.

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requirements of Federal agencies, and provide all levels of management with data on which to formulate procurement policy as well as to determine the extent of adherence to prescribed policy. Basic to the preparation of all these regular and special reports, so far as they affect individual contracting officers, is DD Form 350 (Individual Procurement Action Report) (Section XXI, Part 1). Each item of this form enters into the preparation of reports furnished the President, the Congress, and other Federal agencies, and is used for management purposes within the Department of Defense. The accuracy, completeness, and timeliness of these reports are fully dependent on the careful preparation and prompt submission of DD Form 350.

1-111 Reports of Suspected Criminal Conduct, Noncompetitive Practices, Kickbacks, and Other Procurement Irregularities.

1-111.1 *Reporting Procedures.* Reports of suspected criminal conduct, noncompetitive practices, kickbacks, and other procurement irregularities shall be made by each Department in accordance with procedures set forth in Part 6 of this Section.

1-111.2 *Noncompetitive Practices.*

(a) Unless bids or proposals are genuinely competitive, contract prices tend to be higher than they should be. If the Secretary concerned or his representative considers that any bid received after formal advertising evidences a violation of the antitrust laws, he is required by 10 U.S.C. 2305(d) to refer such bids to the Attorney General for appropriate action. Similarly, evidence of such violations in negotiated procurements should be referred to the Attorney General. Practices which are designed to eliminate competition or restrain trade and which may evidence possible violations of such laws include collusive bidding, follow-the-leader pricing, rotated low bids, uniform estimating systems, sharing of the business, identical bids, etc.

(b) Reports of identical or equal bids or proposals should not be submitted automatically, but only where there is some reason to believe that those bids or proposals may not have been arrived at independently. Such reports should be accompanied by conformed copies of the bid or proposal, other contract documents, and supporting data. The report should set forth:

(i) the noncompetitive pattern or situation under consideration;
(ii) purchase experience in the same product or service for a reasonable period of time (one or more years) prior to the receipt of the bids or proposals under consideration, including unit and total contract price and abstract of bids;
(iii) community of financial interest among bidders, insofar as is known;
(iv) the extent, if any, to which specification requirements or patents restrict competition;
(v) information which may be available with respect to the pricing system employed in bids or proposals believed to reflect noncompetitive practices; and
(vi) any other information deemed pertinent.

1-111.3 *Subcontractor Kickbacks.* The Anti-Kickback Act (41 U.S.C. 51) prohibits the payment, directly or indirectly, by or on behalf of a subcontractor in any tier under any Government negotiated contract of any fee, commission, compensation, gift, or gratuity to the prime contractor or any higher tier subcontractor or to any officer, partner, employee, or agent of the prime contractor, of any higher tier subcontractor, as an inducement or acknowledgment for the award of a subcontract or order. The Act further provides that the amount of any such fee, commission, or compensation, or the cost or expense of any such gratuity or gift, whether heretofore or hereafter paid by the subcontractor, shall not be charged, either directly or indirectly, as a part of the contract price charged by the subcontractor to the prime contractor or higher tier subcontractor. It also creates a conclusive presumption that the cost of any such prohibited payment has been included in the price of the subcontract or order and ultimately borne by the Government. The Act provides for the recovery on behalf of the United States action, or by set-off of moneys otherwise owing to the subcontractor either by the United States directly or by the prime contractor. The Act imposes criminal penalties on any person who knowingly, makes or receives, directly or indirectly, any such prohibited payment.

1-111.4 *Contractor Gratuities to Government Personnel.*

(a) The right of a contractor to proceed under the contract may be terminated if it is found, after notice and hearing, that the contractor, or his agent or other representative, offered or gave any gratuity, such as entertainment or a gift, to an officer, official, or employee of the Government to obtain a contract or favorable treatment in the awarding, amending, or making of determinations concerning the performance, of a contract.

(b) To constitute a violation under the Gratuities clause (7-104.16) three elements must be present:

(i) the contractor must have a contract which contains the Gratuities clause;
(ii) the contractor, his agent, or other representative must have offered or given a gratuity to an officer, official, or employee of the Government; and
(iii) the gratuity must have been offered or given with the intent to obtain a contract or favorable treatment in the awarding or amending, or the making of determinations concerning the performance, of a contract (in this respect, intent generally must be inferred because an admission is rarely obtainable).

A lack of any of these elements will cause an action taken by the Government pursuant to the Gratuities clause to fail. Procedural requirements for gratuities hearings are set out in Appendix D.

1-112 Federal Property Management Regulations, Federal Procurement Regulations, and GSA Regulations Relating to Acquisition of Supplies and Services. Except for acquisition of ADPE under delegation of contracting authority from GSA, all policy and procedural matters of Federal Procurement Regulations and General Services Administration Regulations applicable to the Department of Defense within the scope of this Regulation are as set forth herein. Changes will be

implemented through the DAR system. The applicable DoD Directives covering the assignments of responsibility for the purchasing of specific supplies under Interagency Purchase Assignment will be incorporated by reference in this Regulation. For DoD implementation of Federal Supply Schedules, see Section V, Part 1.

1–113 Standards of Conduct.

1–113.1 *Government Personnel.* All governmental personnel engaged in procurement and related activities shall conduct business dealing with industry in a manner above reproach in every respect. Transactions relating to expenditure of public funds require the highest degree of public trust to protect the interests of the Government. While many Federal laws and regulations place restrictions on the actions of governmental personnel, the latter's official conduct must, in addition, be such that the individual would have no reticence about making a full public disclosure thereof. See AR600–50, for the Army; SECNAV Instr. 5370.2G of 4 August 1977, for the Navy; AFR 30–30, for the Air Force; DLAR 5500.1, for the Defense Logistics Agency; DCA Inst. 220–50–1, for the Defense Communications Agency; DNA Inst. 5500.7A, for the Defense Nuclear Agency; and DMA Inst. 5500.1, for the Defense Mapping Agency.

1–113.2 *Organizational Conflicts of Interest.*

(a) Appendix G—Rules for the Avoidance of Organizational Conflicts of Interest sets out some of the more essential policy considerations of the Department of Defense with respect to relationships with non-Federal institutions. Specifically, Appendix G describes examples of various organizational conflicts of interest which might come into being, and rules for avoidance of such conflicts; and it provides that action must be taken to avoid placing a contractor in a position where his judgment might be biased or where he would have an unfair competitive advantage within the scope and intent of the rules. However, the Appendix cannot of itself impose any obligations on the contractor; such obligations must be imposed by a contract clause designed to carry out the intent of the Appendix. Furthermore, potential contractors must be advised in the solicitation as to the extent of applicability of the rules, and must be given an opportunity to negotiate on the terms of the clause and its application.

(b)(1) The contracting officer is responsible for applying the rules in the Appendix to contracts under his cognizance and shall determine whether each proposed procurement is subject to the Appendix.

(2) If the contracting officer initially determines with respect to a particular procurement that a potential conflict of interest exists, he shall, before issuing the solicitation, prepare a written analysis justifying his recommendation to contract with either no restraint, partial restraint, or strict hardware exclusion provisions, including a statement as to which of the four rules (or other conflict of interest not stated in the rules) he considers applicable, and where appropriate a recommended solicitation notice and clause designed to avoid the organizational conflict of interest. This analysis and recommendation shall be reviewed by the Head of the Procuring Activity who shall examine the circumstances for benefits and detriments to both the Government and potential contractors, and who shall either approve, modify or reject the contracting officer's recommendation to contract with either no restraint, partial restraint or strict hardware exclusion provisions. In the event the Head of the Procuring Activity modifies, or rejects the contracting officer's recommendation, he shall document his decision. A standard form of solicitation notice or clause is not prescribed in this Regulation since such notices and clauses must be especially adapted to apply the principle of the rules to the specific facts of each contractual situation. The clause shall spell out the specific extent of any future restrictions on the contractor. The restrictions of the proposed clause shall also have a specific time period of effectiveness. As a general rule, the time effectiveness of any clause which excludes the contractor from participation in subsequent procurement shall have a fixed term of reasonable duration as appropriate, except that where Rule 1 of Appendix G is involved the exclusion shall be permanent. A fixed term of reasonable duration is measured by the time required to avoid the circumstance of unfair competitive advantage. This is variable; for example, it may run to the date of award of the first production contract or for a stated period of time. (See Rules 2 and 3 of Appendix G.) In no event shall an exclusion be stated in the clause without a specific date, or an event certain, terminating the effectiveness of the exclusion except where Rule 1 is involved.

(3) The contracting officer shall include his recommendations and the Head of the Procuring Activity's determination, together with the written analysis, in the negotiation file or record. The approved solicitation notice and proposed clause shall then be included in the solicitation, together with a clear statement that the proposed clause and the application of the Appendix are subject to negotiation.

(4) In no case shall the clause included in a solicitation or in a contract (including letter contracts) pursuant to this paragraph 1–113.2 defer the determination of the application of the Appendix to a time after the contract has been awarded.

(5) When a contract contemplates a Rule 4 situation, it is incumbent on the contracting officer to assure himself that the agreement called for by Rule 4 is in fact executed, and that copies thereof are made available to the Government.

(c) The contracting officer shall not impose restrictions under the Appendix in follow-on procurements on any prospective contractor in the absence of a specific contractual agreement with that contractor. If, during the effective period of any restriction, procurement responsibility for the system or item involved is transferred from the procuring activity which imposed the restriction that activity shall notify the transferee of the restriction and send it a copy of the contract under which it was imposed.

(d) The Departments shall maintain, in accordance with Departmental procedures, and for an appropriate period of time as determined by the circumstances, a record of all solicitation notices and of all clauses incorporated in contracts pursuant to this paragraph 1–113.2.

1–114 Reserved.

1–115 Noncollusive Bids and Proposals.

(a) In order to promote full and free competition for Government contracts, the certification appearing in 7–2003.1 shall be included in all (i) invitations for bids and (ii) requests for proposals or quotations (other than for small purchases made in accordance with Section III, Part 6; other than for solicitations issued by overseas purchasing offices which will result in contracts performed overseas by foreign suppliers; and other than requests for technical proposals in connection with two-step formal advertising) involving firm fixed-price contracts and fixed-price contracts with economic price adjustment provisions. The certification is included in SF 18, 19–B, and SF 33, and therefore need not be added to solicitations utilizing these forms. When the solicitation authorizes the submission of oral offers and requires that such offers be confirmed in writing, it shall require that the certification be included with or be expressly incorporated by reference in and thereby made a part of the confirmation.

(b) The fact that a firm (1) has published price lists, rates, or tariffs covering items being procured by the Government, (2) has informed prospective customers of proposed or pending publication of new or revised price lists for such items, or (3) has sold the same items to commercial customers at the same prices being offered the Government does not constitute, without more, a disclosure within the meaning of paragraph (a)(2) of the Certificate.

(c) It is not required that a separate written authorization be given to the signer of the bid or proposal for each procurement involved where the signer makes the certification provided in paragraph (b)(2) of the Certificate, provided that with respect to any blanket authorization given, (1) the procurement to which the Certificate applies is clearly within the scope of such authorization, and (2) the person giving such authorization is the person responsible within the bidder's or offeror's organization for the decision as to the prices being bid or offered at the time the Certificate is made in a particular procurement.

(d) After the execution of an initial certificate and the award of a contract in connection therewith, the contractor need not submit additional certificates in connection with proposals submitted on "work orders" or similar ordering instruments issued pursuant to the terms of that contract, where the Government's requirements cannot be met from another source.

(e) The Chief of the Purchasing Office shall make the determination described in paragraph (d) of the above certification.

(f) When a certification is suspected of being false or there is indication of collusion, the matter shall be processed in accordance with 1–111. For rejection of bids which are suspected of being collusive and for the negotiation of procurements subsequent to such rejection, see 2–404.1 (b)(vii) and 3–215.

[The next page is 1:15.]

Part 2—Definition of Terms

1–201 Definitions. As used throughout this Regulation, the words and terms defined in this paragraph 1–201 shall have the meanings set forth below, unless (i) the context in which they are used clearly requires a different meaning, or (ii) a different definition is prescribed for a particular Section or portion thereof.

1–201.1 *Change Order* means a written order signed by the contracting officer, directing the contractor to make changes which the Changes clause of the contract authorizes the contracting officer to order without the consent of the contractor (see 16–103).

1–201.2 *Contract Modification* means any written alteration in the specification, delivery point, rate of delivery, contract period, price, quantity, or other contract provisions of an existing contract, whether accomplished by unilateral action in accordance with a contract provision, or by mutual action of the parties to the contract. It includes (i) bilateral actions such as supplemental agreements, and (ii) unilateral actions such as change orders, orders for provisioned items, administrative changes, notices of termination, and notices of the exercise of a contract option.

1–201.3 *Contracting Officer* means any person who, either by virtue of his position or by appointment in accordance with procedures prescribed by this Regulation, is currently a contracting officer (see 1–400) with the authority to enter into and administer contracts and make determinations and findings with respect thereto, or with any part of such authority. The term also includes the authorized representative of the contracting officer acting within the limits of his authority. NOTE: Recent assignments of contract administration responsibilities have necessitated a separation of duties related to procurement, with some duties normally performed at a purchasing office and some normally performed at a contract administration office. For convenience of expression, when requiring performance of specific duties by a contracting officer, this Regulation may refer to a contracting officer at the purchasing office as the procuring contracting officer (PCO), and to a contracting officer at a contract administration office as an administrative contracting officer (ACO). Additionally, a contracting officer, responsible for the settlement of terminated contracts, may be referred to as the termination contracting officer (TCO). It is recognized that a single contracting officer may be responsible for duties in any or all of these areas, and reference in this Regulation to PCO, ACO, or TCO does not of itself require that duty be performed at a particular office or activity or restrict in any way a contracting officer in the performance of any duty properly assigned. For example, a duty specified by this Regulation to be performed by the ACO will be performed by a contracting officer at the purchasing office when contract administration or responsibility for that duty has been retained in the purchasing office in accordance with 20–703.3.

1–201.4 *Contracts* means all types of agreements and orders for the procurement of supplies or services. It includes awards and notices of award; contracts of a fixed-price, cost, cost-plus-a-fixed-fee, or incentive type; contracts providing for the issuance of job orders, task orders, or task letters thereunder; letter contracts, and purchase orders. It also includes supplemental agreements with respect to any of the foregoing.

1-201.5 *Department or Military Department* includes the Department of the Army, the Department of the Navy, the Department of the Air Force, the Defense Logistics Agency, the Defense Communications Agency, the Defense Nuclear Agency, the Defense Mapping Agency, and the National Security Agency.

1-201.6 *Department of Defense* comprises the Office of the Secretary of Defense and the Military Departments.

1-201.7 *Head of Procuring Activity* includes the chief, commander, or other official in charge of a Procuring Activity.

1-201.8 *Includes* means "includes but is not limited to"

1-201.9 *Labor Surplus Area Concern.* See 1-801.1.

1-201.10 *May* is permissive. However, the words "no person may . . ." mean that no person is required, authorized, or permitted to do the act prescribed.

1-201.11 *Negotiate and Negotiation*, when applied to the making of purchases and contracts, refer to making purchases and contracts without formal advertising.

1-201.12 *Possession* in a geographic sense includes the Virgin Islands, the Swan Islands, Guantanamo Bay, Johnston Island, American Samoa, Guam, Wake Island, Midway Island, and the guano islands but does not include Puerto Rico, leased bases, or trust territories.

1-201.13 *Procurement* includes purchasing, renting, leasing, or otherwise obtaining supplies or services. It also includes all functions that pertain to the obtaining of supplies and services, including description (but not determination) of requirements, selection and solicitation of sources, preparation and award of contract, and all phases of contract administration.

1-201.14 *Procuring Activity* includes:

FOR THE ARMY:

Office of the Deputy Assistant Secretary (Acquisition), Assistant Secretary of the Army (Research, Development and Acquisition);
Directorate of Procurement & Production, Headquarters, U.S. Army Materiel Development and Readiness Command;
Eighth U.S. Army;
U.S. Army Armament Munitions and Chemical Command;
U. S. Army Missile Command;
U. S. Army Electronics Research and Development Command;
U. S. Army Communications-Electronics Command;
U. S. Army Troop Support Agency;
U. S. Army Troop Support and Aviation Materiel Readiness Command;
U. S. Army Tank-Automotive Command;
U. S. Army Aviation Research and Development Command;
U. S. Army Training and Doctrine Command;
U. S. Army Test and Evaluation Command;
U. S. Army Forces Command;
U. S. Army Health Services Command;
Military District of Washington, U.S. Army;
U.S. Army, Europe;
National Guard Bureau;
Office of the Chief of Engineers;
U.S. Army Communications Command;

Office of The Surgeon General;
U.S. Army Western Command;
Military Traffic Management Command;
U.S. Army Ballistic Missile Defense Systems Command; and
Office of the Assistant Deputy Chief of Staff for Operations and Plans (Command Control, Communications and Computers).

FOR THE NAVY:

Office of Acquisition and Contract Policy, Office of the Assistant Secretary of the Navy (Shipbuilding and Logistics);
Headquarters, Naval Material Command;
Office of the Deputy Chief of Naval Material (Contracts and Business Management);
Naval Air Systems Command;
Naval Data Automation Command;
Naval Electronic Systems Command;
Naval Facilities Engineering Command;
Naval Sea Systems Command;
Naval Supply Systems Command;
Office of Naval Research;
Navy Aviation Supply Office;
Military Sealift Command;
Ships Parts Control Center;
Headquarters, United States Marine Corps; and
Installations and Logistics Department, Headquarters, U.S. Marine Corps.

FOR THE AIR FORCE:

HQ USAF, Director of Contracting and Manufacturing Policy;
Air Force Logistics Command;
Air Force Systems Command;
Strategic Air Command;
Tactical Air Command;
Air Force Communications Command;
Military Airlift Command;
Air Training Command;
Pacific Air Forces;
United States Air Forces in Europe;
Alaskan Air Command; and
Space Command.

FOR THE DEFENSE LOGISTICS AGENCY:

Office of the Executive Director, Contract Management;
Office of the Executive Director, Contracting;
Defense Supply Centers; and
Defense Personnel Support Center.

FOR THE DEFENSE COMMUNICATIONS AGENCY:

Headquarters, Defense Communications Agency; and
Defense Commercial Communications Office.

GENERAL PROVISIONS

FOR THE DEFENSE NUCLEAR AGENCY:

Headquarters, Defense Nuclear Agency.

FOR DEFENSE MAPPING AGENCY:

Headquarters, Defense Mapping Agency, Logistics Office.

FOR THE NATIONAL SECURITY AGENCY:

Headquarters, National Security Agency.

FOR THE DEFENSE SUPPLY SERVICE--WASHINGTON:
Director, Defense Supply Service--Washington

It also includes any other procuring activity hereafter established. The number and designation of particular procuring activities of any Military Department may be changed by directive of the Secretary.

1-201.15 *Secretary* means the Secretary, the Under Secretary, or any Assistant Secretary of any Military Department. Secretary shall also include the Director and Deputy Director of the Defense Supply Agency, the Director of the Defense Communications Agency, the Director, Defense Nuclear Agency, the Director, Defense Mapping Agency, and the Director of the National Security Agency, except to the extent that any law or executive order limits the exercise of authority to persons at the Secretarial level. In the latter situation, such authority shall be exercised by the Assistant Secretary of Defense (Installations and Logistics).

1-201.16 *Shall* is imperative.

1-201.17 *Small Business Concern*. See 1-701.1.

1-201.18 *Supplemental Agreement* means any contract modification which is accomplished by the mutual action of the parties. (See 16-103.)

1-201.19 *Supplies* means all property except land or interest in land. It includes public works, buildings, and facilities; ships, floating equipment, and vessels of every character, type, and description, together with parts, and accessories thereto; aircraft and aircraft parts, accessories, and equipment; machine tools; and the alteration or installation of any of the foregoing. "Supplies" as used in this Regulation is synonymous with "property" as described in 10 U.S.C. 2303(b).

1-201.20 *United States*, when used in a geographic sense, means the States and the District of Columbia.

1-201.21 *Construction*. See 18-101.1.

1-201.22 *Classified Procurement* is that which requires access to classified information ("Confidential, Secret or Top Secret") either to submit a bid or proposal, or to perform the contract; see 1-320.

1-201.23 *Designee*, as used, for example, in the phrase, "Head of a Procuring Activity or his designee", may include one or more officials.

1-201.24 *Purchasing Office* means the office which awards or executes a contract for supplies or services and performs post-award functions not assigned to a contract administration office.

1-201.25 *Contract Administration Office* means the office which performs assigned functions related to the administration of contracts, and assigned pre-award functions.

1-201.26 *Assignment of Contract Administration* means that process whereby identified functions, duties, or responsibilities related to the administration of

PROCUREMENT BY FORMAL ADVERTISING

Part 2—Solicitation of Bids

2-200 Scope of Part. This Part sets forth procedures for the solicitation of bids. Forms used in inviting bids are prescribed in Section XVI, Parts 1 and 4. Invitations for bids shall contain the applicable information described in 2-201 below and any other information required for a particular acquisition. All such information shall be set forth in full in the solicitation rather than incorporated by reference, except that:

(i) Standard Forms consisting of general provisions (contract clauses) may be incorporated by reference to the form number, form name, and edition date; *provided*, the instructions for use of the form do not prohibit incorporation of the form by reference; and

(ii) other contract clauses set forth in Section VII may be incorporated by reference if authorized by 7-001.

No other contract clauses shall be incorporated by reference. Pen and ink entries, deletions, or alterations shall not be made in an invitation for bids after it has been reproduced for issue to prospective bidders. If a change is necessary after reproduction of the invitation for bids, the Standard Form 30 (Amendment of Solicitation/Modification of Contract) shall be used (see 16-101) except that its use for construction contracts is optional (see 16-401.1(ix)).

2-201 Preparation of Invitation for Bids.

(a) *Supply and Services Contracts.* For supply and services contracts, invitations for bids (Standard Form 33) shall contain the following information if applicable to the acquisition involved. For construction contracts, see 2-201(b).

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THE FOLLOWING CHECKED SECTIONS ARE CONTAINED IN THE CONTRACT

PROCUREMENT BY FORMAL ADVERTISING

Acquisition of (i) ship construction, including shipbuilding, conversion, and repair; (ii) supplies or services for which special forms or formats are prescribed by this Regulation, e.g., those prescribed by Part 5 of Section XVI; and (iii) subsistence must contain all applicable items, but such items need not be set forth in the Uniform Contract Format. The following subparagraphs are grouped to conform to the Uniform Contract Format. All items of information shall be set forth in the appropriate sections.

Part I—The Schedule

SECTION A - Contract Form.

(i) Standard Form 33, Part 1 (Solicitation, Offer, and Award and Acknowledgement of Amendments). Instructions for filling out this form are in 16-104.1 and 16-104.2;

(ii) if the contract includes FMS requirements, identify the contracts by clearly stamping or otherwise indicating, "FMS Requirement" on the cover sheet of the contract.

SECTION B - Supplies/Services and Prices.

(i) a brief description of the contract line items being purchased (i.e., item numbers, NSN/part numbers, nouns, and quantities);

(ii) any provision for extent of quantity variation (see 1-325);

(iii) except under the circumstances set forth in 9-505; DD Form 1423 (Contract Data Requirements List); one or more line items or subline items of data in this Section B referring to DD Form 1423 (see 16-815);

(iv) information normally contained in Sections C, D, E, and F relating to specific line items may be included in Section B with the appropriate line item.

SECTION C - Description/Specifications.

(i) when the NSN/part number and noun or brief description is not in sufficient detail to permit full and free competition, a sufficient description (including any necessary specifications) of the supplies and services to be furnished shall be provided in this Section C. Reference to specifications shall include identification of all amendments or revisions thereof applicable to the acquisition and dates of both the specifications and the revisions (see Section 1, Part 12); and

(ii) in accordance with 1-1206.3, the statement in 1-1206.3(a) for a "brand name or equal" item.

PROCUREMENT BY NEGOTIATION

(3) The following subparagraphs are grouped so as to conform to the Uniform Contract Format (including the Table of Contents) set out below. All items of information shall be set forth in the appropriate Sections. Arrangement in this Uniform Contract Format for fixed-price supply and service contracts does not preclude use of the following paragraphs in preparing requests for proposals or requests for quotations for other types of contracts.

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Part I—The Schedule

SECTION A - Contract Form.

(i) for requests for proposals, either Standard Form 33, Part 1 (Solicitation, Offer, and Award and Acknowledgement of Amendments) or forms prescribed by Departmental regulations. Instructions for filling out SF 33 are in 16-604.1 and 16-104.2.

(ii) for requests for quotations, either SF 18 (Request for Quotations) or forms prescribed by Departmental regulations. Instructions for filling out SF 18 are in 16-104.1 and 16-104.5; if the Request for Quotations is for informational or planning purposes, the statement in 1-309 shall be placed on the face of the request;

(iii) when neither SF 18 nor SF 33 is used, the following shall be included in the first page of the solicitation:

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(A) name and address of issuing activity, channels for submission of proposal/quotation, location, including room and building number where proposals/quotations, including a hand-carried proposal or quotation, must be submitted;
(B) date of issuance;
(C) closing date and time;
(D) number of pages;
(E) requisition or other purchase authority.

(iv) if the contract includes FMS requirements, identify the contracts by clearly stamping or otherwise indicating, "FMS Requirement" on the cover sheet of the contract.

SECTION B - Supplies/Services, and Prices.

(i) a brief description of the contract line items being acquired (i.e., item numbers, NSN/part numbers, nouns and quantities);
(ii) any provisions for extent of quantity variations (see 1-325);
(iii) if the DD Form 1423 (Contract Data Requirements List) is used for obtaining data, one or more line or subline items of data in this Section B referring to the DD Form 1423; (see 16-815)
(iv) information normally contained in Sections C, D, E, and F relating to specific line items may be included in Section B with the appropriate line item.

SECTION C - Description/Specifications.

(i) when the NSN/part number and noun or brief description is not in sufficient detail to permit full and free competition, a sufficient description (including any necessary specifications) of the supplies and services to be furnished shall be provided in this Section C. Reference to specifications shall include identification of all amendments or revisions thereof, applicable to the acquisition and dates of both the specifications and the revisions (see Section 1, Part 12);
(ii) in accordance with 1-1206, the statement in 7-2003.10 for a "brand name or equal" item.

SECTION D - Packaging and Marking.

(i) packaging and marking requirements, if any (see 1-1204).

SECTION E - Inspection and Acceptance.

(i) place of inspection and place of acceptance, and any other instructions required to supplement the requirements of Section XIV, Part 3.

and organizations warrant an agreement. These Basic Agreements will be reviewed annually for currency. The responsibility for negotiating Basic Agreements with appropriate educational institutions and nonprofit organizations for DoD is assigned to the Office of Naval Research, 800 North Quincy Street, Arlington, Virginia. Copies of the agreements will be maintained by the Office of Naval Research and provided to DoD and other purchasing activities upon their request. The Office of Naval Research will periodically provide a listing of current Basic Agreements to the ASPR Committee for publication in a Defense Procurement Circular.

(b) DoD activities shall obtain and utilize existing Basic Agreements to the maximum practical extent in contracts with educational institutions and nonprofit organizations. A special clause requirement may be incorporated into Section J - *Special Provisions* - of the standard contract format, whereas, the Basic Agreement is incorporated by reference in Section L *General Provisions*. Therefore, the need for special clauses should not preclude the purchasing office from utilizing these Basic Agreements.

(c) The General Services Administration will issue Federal Procurement Regulation Bulletins periodically which will list Basic Agreements issued by all agencies. The Bulletin will show the office from whom copies of the agreement can be obtained. DoD purchasing activities are encouraged to utilize Basic Agreements of other agencies where one has not been issued by the Office of Naval Research.

Part 2—Exchange of Nonexcess Personal Property

4–200 Scope of Part. This Part prescribes contracting policies and procedures governing the use by Department of Defense components of the exchange authority of Section 201(c) of the Federal Property and Administrative Services Act of 1949, 63 Stat. 384, as amended (40 U.S.C. 481(c)), when exchange is accomplished concurrently with procurement. The act authorizes the exchange of personal property and the application of the exchange allowance to the acquisition of similar property. Exchange policy, authority, applicability, and limitations are governed by the Federal Property Management Regulations issued by the Administrator for General Services, and by Department of Defense Instruction 4140.51, "Exchange of Nonexcess Personal Property in the Department of Defense."

4–201 Policy. It is DoD policy to use exchange processing for replacing eligible nonexcess items. It shall be used to the maximum extent possible when such transactions foster the economical and efficient accomplishment of an approved program.

4–202 Definitions.

(a) *Exchange (Trade-In) Property.* Property not in excess of the needs of the owning DoD Component, but eligible for replacement because of obsolescence, unserviceability, or other valid reason, that is exchanged and applied as whole or partial payment allowance toward the acquisition of similar items.

(b) *Similar Items.* In exchange transactions, both the item being acquired and the item being replaced. Both must fall within one of the single generic categories listed in 4-203.1, and the item being acquired must be designed and constructed for the same specific purpose as the item being replaced.

4–203 Categories of Property Eligible for Exchange and Categories of Property Ineligible for Exchange.

4–203.1 *Property Eligible for Exchange.* In the exchange of property in the categories below, both the item to be acquired and the item to be replaced must fall within a single number category. Categories of property that do not appear below and do not fall within an ineligible FSCG in 4-203.2, are eligible for processing if designed and constructed for the same specific purpose.

1. Agriculture products, processed foods, and forage
2. Ammunition and ammunition components
3. Animals and animal products
4. Batteries, storage
5. Cards, tabulating
6. Ditching machines
7. Dozer blades
8. Drill presses
9. Drugs, biologicals, and official reagents
10. Earth augers

11. Graders, self-powered and towed
12. Lathes
13. Machines, adding and calculating
14. Machines, addressing and mailing
15. Machines, dictating and transcribing
16. Machines, duplicating
17. Machines, punched card, bookkeeping, tabulating, and accounting
18. Milling machines
19. Mixers, concrete, portable or truck mounted
20. Pile drivers
21. Plows, snow, motor
22. Road rollers, wheeled and sheepsfoot
23. Saws, circular or band
24. Scrapers, earth moving, self-powered
25. Scrapers, earth moving, towed
26. Sedans, station wagons, coupes, limousines
27. Shovels, power
28. Spreaders, aggregate and lime
29. Tractors, warehouse
30. Tractors, wheeled or crawler, with or without special attachments, up to 65 h.p.
31. Tractors, wheeled or crawler, with or without special attachments, 65 h.p and up
32. Trailers, general purpose, multiple axle
33. Trailers, general purpose, single axle
34. Trailers, tank mounted
35. Trucks, forklift
36. Trucks, general purpose, cargo and construction, 12,500 GVW and up (including truck tractors, dump, and multiple drive)
37. Trucks, general purpose and utility, up to 12,500 GVW (including suburbans, carryalls, and sedan deliveries)
38. Trucks, straddle
39. Trucks, tank (special purpose trucks on which the tank is an integral part of the construction)
40. Trucks, warehouse, platform, electric and gasoline powered
41. Typewriters, manual and electric

4–203.2 *Property Ineligible for Exchange.* Items that are found in any of the FSCGs listed below are not eligible for handling under exchange procedures without the prior approval of the General Services Administration (such approval shall accompany the purchase request):

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10	Weapons
11	Nuclear ordnance
12	Fire control equipment
14	Guided missiles
15	Aircraft, and airframe structural components*
16	Aircraft components and accessories*
17	Aircraft launching, landing, and ground handling equipment
20	Ship and marine equipment
22	Railway equipment
31	Bearings
32	Woodworking machinery and equipment, except lathes, milling machines, and saws, circular or band
34	Metalworking machinery, except drill presses, lathes, milling machines, and saws, circular or band
40	Rope, cable, chain, and fittings
41	Refrigeration and air conditioning equipment
42	Fire fighting, rescue, and safety equipment
44	Furnace, steam plant, and drying equipment; and nuclear reactors
45	Plumbing, heating, and sanitation equipment
46	Water purification and sewage treatment equipment
47	Pipes, tubing, hoses, and fittings
48	Valves
51	Hand Tools
53	Hardware and abrasives
54	Prefabricated structures and scaffolding
55	Lumber, millwork, plywood, and veneer
56	Construction and building materials
68	Chemicals and chemical products, except medicinal chemicals
71	Furniture
75	Office supplies and devices, except cards, tabulating
83	Textiles, leather, and furs
84	Clothing and individual equipment

* These line items shall be exchanged directly when the Military Departments rely on a contract with a manufacturer for full spare parts support for commercial type aircraft.

4-204 Procedures.

4-204.1 *Offering Property for Exchange.*

(a) Sale of nonexcess personal property is not authorized pursuant to this Part. The objective in exchanging nonexcess personal property shall be to acquire new property from an offeror whose offer will be most advantageous to the Government, price and other factors considered. When procuring new property concurrent with offering exchange property, formal advertising shall be used, except that:

(1) Property may be exchanged through negotiation, obtaining maximum practicable competition, in accordance with applicable laws and regulations.

(2) When the personal property is required to be procured against a mandatory Federal Supply Schedule Contract, the property shall be acquired against such contract, regardless of whether the exchange can be effected under such contract.

(b) The following notation shall be included in the solicitation:

> The property described in item number(s) _____, is being offered in accordance with the exchange provisions of Section 201(c) of the Federal Property and Administrative Services Act of 1949, 63 Stat. 384 (40 U.S.C. 481(c)).

(c) A minimum of 14 calendar days should be allowed in Continental United States (CONUS) for the inspection of property being offered for exchange. For exchanges outside Continental United States, the minimum inspection period should normally be 21 calendar days.

4-204.2 *Purchase Request and Certification.* In connection with a procurement involving exchange, the purchase request must be accompanied by a certification that the property is eligible for exchange and complies with all conditions and limitations specified in DoDI 4140.51, including a written administrative determination of economic advantage which shall indicate:

(a) The anticipated economic advantage to the Government resulting from the use of the exchange authority.

(b) That exchange allowances shall be applied toward or in partial payment for the items to be acquired.

(c) That if required, the exchange property has been rendered safe or innocuous, or has been demilitarized.

4-204.3 *Exchange of Exchange Property.* Each solicitation listing exchange property, in addition to asking for prices

for the new items being procured, shall request offers in terms of exchange (trade-in allowance) for the exchange property listed. The solicitation shall provide for award(s) which are in the best overall interest of the Government. Exchanges may only be effected with the successful offeror. Thus, if the lowest net price to the Government of the property to be procured (i.e., the price of the new property less the amount offered for the exchange property) results from an offer by a supplier of the new property who agrees to accept the exchange property as a trade-in, a single award would be made which would cover both the acquisition by the Government of the new property and the disposal of the exchange property by trade-in. If, however, the lowest net price to the Government results from a low offered price from a supplier of the new property, without exchange of the exchange property, award shall be made to the low offeror to purchase the new property and the exchange shall not be made.

[The next page is 4:29.]

(5) The Contractor shall (i) insert in each price redetermination or incentive price revision subcontract hereunder the substance of this "Limitation on Payments" provision, including this subparagraph (5), modified to omit mention of the Government and reflect the position of the Contractor as purchaser and of the subcontractor as vendor, and to omit that portion of subparagraph (3) relating to tax credits, and (ii) include in each cost-reimbursement type subcontract hereunder a requirement that each price redetermination and incentive price revision subcontract thereunder will contain the substance of this "Limitation on Payments" provision, including this subparagraph (5), modified as outlined in (i) above.

(g) *Disagreements.* If the Contractor and the Contracting Officer fail to agree upon redetermined prices within sixty (60)** (*See footnotes at end of clause*) days after the date on which the data required by (b) above is to be filed, or within such further time as may be agreed upon by the parties, the failure to agree upon redetermined prices shall be deemed to be a dispute concerning a question of fact within the meaning of the clause of this contract entitled "Disputes," and the Contracting Officer shall promptly issue a decision thereunder. For the purpose of paragraphs (d), (e), and (f) above, and pending final settlement of the disagreement on appeal, or by failure to appeal, or by agreement, such a decision shall be treated as an executed contract modification.

(h) *Termination.* If this contract is terminated prior to price redetermination, prices shall be established pursuant to this clause for completed supplies and services which are not terminated. All other elements of the termination shall be resolved pursuant to other applicable provisions of this contract.

(End of clause)

*Insert, in contracts of the Department of the Navy, the words: "and the office or offices designated in the contract to make payments thereunder."

**This period may be varied by the parties at the time of negotiating the contract.

7-110 Simplified Contract Required Clauses. The clauses in this paragraph shall be used only by contracting offices authorized by their Department to use the test procedures of the DoD Contract Simplification Program.

7-110.1 The following clause shall be inserted in all simplified contracts for supplies.

SIMPLIFIED SUPPLY CONTRACT REQUIRED CLAUSES (1983 DEC)

The General Provisions set forth below by reference are incorporated herein with the same force and effect as if set forth in full.

(a) Definitions (1979 MAR), 7-103.1
(b) Changes (1958 JAN), 7-103.2
(c) Variation in Quantity (1949 JUL), 7-103.4
(d) Inspection (1982 NOV), 7-103.5(a)
(e) Title and Risk of Loss (1968 JUN), 7-103.6
(f) Payments (1958 JAN), 7-103.7
(g) Assignment of Claims (1962 FEB), 7-103.8
(h) Federal, State and Local Taxes (1971 NOV), 7-103.10(a).
(i) Default (1969 AUG), 7-103.11
(j) Disputes (1983 FEB), 7-103.12(a)

(k) Discounts (1968 JUN), 7-103.14
(l) Walsh-Healey Public Contracts Act (1958 JAN), 7-103.17
(m) Equal Opportunity (1978 SEP), 7-103.18(a)
(n) Officials Not to Benefit (1949 JUL), 7-103.19
(o) Covenant Against Contingent Fees (1958 JAN), 7-103.20
(p) Termination for Convenience of the Government (1974 OCT), 7-103.21(b)
(q) Responsibility for Inspection (1968 SEP), 7-103.24
(r) Affirmative Action for Disabled Veterans and Veterans of the Vietnam Era (1983 AUG), 7-103.27
(s) Affirmative Action for Handicapped Workers (1976 MAY), 7-103.28
(t) Invoices (1982 OCT), 7-103.30
(u) Buy American Act and Balance of Payments Program (1980 OCT), 7-104.3
(v) Notice to the Government of Labor Disputes (1958 SEP), 7-104.4
(w) Utilization of Small Business and Small Disadvantaged Business Concerns (1980 AUG), 7-104.14(a)
(x) Gratuities (1952 MAR), 7-104.16
(y) Convict Labor (1975 OCT), 7-104.17
(z) Priorities, Allocations, and Allotments (1975 OCT), 7-104.18
(aa) Utilization of Labor Surplus Area Concerns (1981 MAY), 7-104.20(a)
(ab) Interest (1983 FEB), 7-104.39
(ac) New Material (1965 JAN), 7-104.48
(ad) Government Surplus (1965 JAN), 7-104.49

(End of clause)

PART 2—Cost-Reimbursement Type Supply Contracts

7-200 Scope of Part. This Part sets forth uniform contract clauses for use in cost-reimbursement type supply contracts as defined in 7-202.

7-201 Reserved.

7-202 Applicability. As used in this Part, the term "cost-reimbursement type supply contract" shall mean any contract (other than a letter contract, notice of award; or a supplemental agreement to a contract which does not effect a new procurement) entered into on a cost reimbursement basis as covered in 3-405 for supplies other than (i) the construction, alteration or repair of buildings, bridges, roads, or other kinds of real property; (ii) experimental, developmental, or research work; (iii) facilities to be provided by the Government under a "facilities contract" as defined in 7-701 and Section XIII of this Regulation or (iv) general contracts for communication services and facilities.

7-203 Required Clauses. The following clauses shall be inserted in all cost-reimbursement type supply contracts.

7-203.1 *Definitions.* Insert the clause in 7-103.1. Additional definitions may be included in such clause *provided* they are not inconsistent with the provisions of this Regulation.

7-203.2 *Changes.*

CHANGES (1967 APR)

(a) The Contracting Officer may at any time, by a written order, and without notice to the sureties, if any, make changes, within the general scope of this contract, in any one or more of the following:

(i) drawings, designs, or specifications, where 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.

(b) If any such change causes an increase or decrease in the estimated cost of, or the time required for, the performance of any part of the work under this contract, whether changed or not changed by any such order, or otherwise affects any other provision of this contract, an equitable adjustment shall be made:

(i) in the estimated cost or delivery schedule, or both;
(ii) in the amount of any fixed fee to be paid to the Contractor; and
(iii) in such other provisions of the contract as may be so affected, and the contract shall be modified in writing accordingly.

Any claim by the Contractor for adjustment under this clause must be asserted within thirty (30) days from the date of receipt by the Contractor of the notification of change; *provided*, however, that the Contracting Officer, if he decides that the facts justify such action, may receive and act upon any such claim asserted at any time prior to final payment under this contract. Failure to agree to any adjustment shall be a dispute concerning a question of fact within the meaning of the clause of this contract entitled "Disputes." However, except as provided in paragraph (c) below, nothing in this clause shall excuse the Contractor from proceeding with the contract as changed.

(c) Notwithstanding the provisions of paragraphs (a) and (b) above, the estimated cost of this contract and, if this contract is incrementally funded, the funds allotted for the performance thereof, shall not be increased or deemed to be increased except by specific written modification of the contract indicating the new contract estimated cost and, if this contract is incrementally funded, the new amount allotted to the contract. Until such modification is made, the Contractor shall not be obligated to continue performance or incur costs beyond the point established in the clause of this contract entitled "Limitation of Cost" or "Limitation of Funds."

(End of clause)

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7-1912 Limitation of Liability — Service Contract. In accordance with 1-330, insert the following clause.

LIMITATION OF LIABILITY — SERVICE CONTRACT (1974 APR)

(a) Except to the extent that the Contractor is responsible under this contract for deficiencies in the services required to be performed under this contract, including any materials furnished in conjunction therewith, the contractor shall not be liable, by reason of Contractor's performance of services or delivery of materials under this contract, for loss of or damage to property of the Government occurring after Government acceptance of such services.

(b) The foregoing limitations shall not apply as to loss of or damage to property of the Government caused by willful misconduct or lack of good faith on the part of the Contractor's directors or officers, or on the part of any of his managers, superintendents, or other equivalent representatives, who have supervision or direction of:

(i) all or substantially all of the Contractor's business; or

(ii) all or substantially all of the Contractor's operations at any one plant or separate location, in which this contract is being performed; or

(iii) a separate and complete major industrial operation in connection with the performance of this contract.

(c) Notwithstanding paragraph (a) above, if the Contractor carries insurance or has established a reserve for self-insurance covering liability for damages or losses to property of the Government through performance of the services or furnishing of materials under this contract, then the Contractor shall be liable to the Government for such damages or losses to property of the Government to the extent of such insurance or reserve for self-insurance.

(d) The substance of this clause, suitably altered to reflect the relationship of the contracting parties, shall be included in any subcontracts hereunder.

(End of clause)

7-1913 Simplified Contract Required Clauses. The clauses in this paragraph shall be used only by contracting offices authorized by their Department to use the test procedures of the DoD Contract Simplification Program.

7-1913.1 The following clause shall be inserted in all simplified contracts for services.

SIMPLIFIED SERVICES CONTRACT REQUIRED CLAUSES (1983 DEC)

The General Provisions set forth below by reference are incorporated herein with the same force and effect as if set forth in full.

(a) Definitions (1979 MAR), 7-103.1
(b) Changes (1971 NOV), 7-1902.2
(c) Inspection of Services (1971 NOV), 7-1902.4
(d) Payments (1958 JAN), 7-103.7
(e) Assignment of Claims (1962 FEB), 7-103.8
(f) Federal, State and Local Taxes (1971 NOV), 7-103.10(a)
(g) Default (1969 AUG), 7-103.11
(h) Disputes (1983 FEB), 7-103.12(a)
(i) Discounts (1971 NOV), 7-1902.11
(j) Contract Work Hours and Safety Standards Act - Overtime Compensation (1971 NOV), 7-103.16(a)

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(k) Equal Opportunity (1978 SEP), 7-103.18(a)
(l) Officials Not to Benefit (1949 JUL), 7-103.19
(m) Covenant Against Contingent Fees (1958 JAN), 7-103.20
(n) Affirmative Action for Disabled Veterans and Veterans of the Vietnam Era (1983 AUG), 7-103.27
(o) Affirmative Action for Handicapped Workers (1976 MAY), 7-103.28
(p) Invoices (1982 OCT), 7-103.30
(q) Notice to the Government of Labor Disputes (1958 SEP), 7-104.4
(r) Utilization of Small Business and Small Disadvantaged Business Concerns (1980 AUG), 7-104.14(a)
(s) Gratuities (1952 MAR), 7-104.16
(t) Convict Labor (1975 OCT), 7-104.17
(u) Utilization of Labor Surplus Area Concerns (1981 MAY), 7-104.20(a)
(v) Interest (1983 FEB), 7-104.39
(w) Service Contract Act of 1965, As Amended (1979 SEP), 7-1903.41(a)

(End of clause)

CONTRACT CLAUSES AND SOLICITATION PROVISIONS

PART 20—CONTRACT CLAUSES AND SOLICITATION PROVISIONS

7-2000 Scope of Part. This part sets forth uniform clauses, provisions, notices, statements, etc., for use in solicitations.

7-2001 Reserved.

7-2002 Required Clauses.

7-2002.1 *Contingent Fee.* In accordance with 1-506.1, insert the following clause.

CONTINGENT FEE (1974 APR)

The Offeror/Quoter represents and certifies as part of his proposal/quotation that: (Check all applicable boxes or blocks).

(a) He [ ] has, [ ] has not, employed or retained any company or person (other than a full-time, bona fide employee working solely for the offeror/quoter) to solicit or secure this contract, and (b) he [ ] has, [ ] has not, paid or agreed to pay any company or person (other than a full-time bona fide employee working solely for the offeror/quoter) any fee, commission, percentage, or brokerage fee contingent upon or resulting from the award of this contract, and agrees to furnish information relating to (a) and (b) above, as requested by the Contracting Officer. (For interpretation of the representation, including the term "bona fide employee", see Code of Federal Regulations, Title 41, Subpart 1-1.5.)

If the offeror/quoter, by checking the appropriate box provided therefor, has represented that he has employed or retained a company or person (other than a full-time bona fide employee working solely for the offeror/quoter) to solicit or secure this contract, or that he has paid or agreed to pay any fee, commission, percentage, or brokerage fee to any company or person contingent upon or resulting from the award of this contract, he shall furnish, in duplicate, a complete Standard Form 119, Contractor's Statement of Contingent or Other Fees. If offeror/quoter has previously furnished a completed Standard Form 119 to the office issuing this solicitation, he may accompany his proposal/quotation with a signed statement (a) indicating when such completed form was previously furnished, (b) identifying by number the previous solicitation or contract, if any, in connection with which such form was submitted, and (c) representing that the statement in such form is applicable to this proposal/quotation.

(End of clause)

7-2002.2 *Late Bids, Modifications of Bids or Withdrawal of Bids.* The following provision shall be included in all advertised procurements (this replaces paragraphs 7 and 8 of Standard Forms 22 and 33A).

LATE BIDS, MODIFICATIONS OF BIDS OR WITHDRAWAL OF BIDS (1979 MAR)

(a) Any bid received at the office designated in the solicitation after the exact time specified for receipt will not be considered unless it is received before award is made and either:

(i) it was sent by registered or certified mail not later than the fifth calendar day prior to the date specified for the receipt of bids (*e.g.*, a bid submitted in response to a solicitation requiring receipt of bids by the 20th of the month must have been mailed by the 15th or earlier); or,

(ii) it was sent by mail (or telegram if authorized) and it is determined by the Government that the late receipt was due solely to mishandling by the Government after receipt at the Government installation.

(b) Any modification or withdrawal of bid is subject to the same conditions as in (a) above except that withdrawal of bids by telegram is authorized. A bid may also be withdrawn in person by a bidder or his authorized representative, *provided* his identity is made known and he signs a receipt for the bid, but only if the withdrawal is made prior to the exact time set for receipt of bids.

(c) The only acceptable evidence to establish:

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7-2003.91 *Certification of Handicapped Organizations.* In accordance with 2-201(a)Sec.K(xxi), 2-201(b)(lxiv), 3-501(b)Sec.K(xxiii), and 3-501(c)(lxvi), insert the following provision.

HANDICAPPED ORGANIZATIONS (1981 SEP)

The Offeror certifies that it is [ ] is not [ ] an organization eligible for assistance under section 7(h) of the Small Business Act (15 USC 636). An Offeror certifying in the affirmative is eligible to participate in any resultant contracts hereunder or any part thereof as if he were a small business concern as elsewhere defined in the solicitation. An organization to be eligible under section 7(h) of the Small Business Act must be one (i) organized under the laws of the United States or any state; (ii) operated in the interest of handicapped individuals; (iii) the net income of which does not inure in whole or part to the benefit of any shareholder or other individual; (iv) that complies with any applicable occupational health and safety standard prescribed by the Secretary of Labor; (v) that, during the fiscal year in which it bids upon a set-aside, employs handicapped individuals for not less than 75 per cent of the man-hours required for the production or provision of commodities or services; and (vi) that can qualify under the additional criteria prescribed in Section 118.11, SBA Rules and Regulations, 13 CFR 118.11. For purposes of this clause, the term "handicapped individual" means a person who has a physical, mental, or emotional impairment, defect, ailment, disease, or disability of a permanent nature which in any way limits the selection of any type of employment for which the person would otherwise be qualified or qualifiable.

(End of provision)

7-2004 Provisions to be Used for Simplified Contracts. The provisions n this paragraph shall be used only by contracting offices authorized by their Department to use the test procedures of the DoD Contract Simplification Program.

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7-2004.1 The following provision shall be inserted in all solicitations for simplified contracts.

SIMPLIFIED CONTRACT TERMS AND CONDITIONS (1983 DEC)

The following provisions are incorporated herein by reference with the same force and effect as if set forth in full.

(a) Order of Precedence (1973 APR), 7-2003.41
(b) Preparation of Offers (1983 DEC), 7-2004.2
(c) Explanation to Offerors (1983 DEC), 7-2004.3
(d) Acknowledgement of Amendments to Solicitation (1983 DEC), 7-2004.4
(e) Submission of Offers (1983 DEC), 7-2004.5
(f) Failure to Submit Offer (1983 DEC), 7-2004.6
(g) Award of Contract (1983 DEC), 7-2004.7
(h) Labor Information (1983 DEC), 7-2004.8
(i) Parent Company (1983 DEC), 7-2004.9
(j) Solicitation Definitions (1983 DEC), 7-2004.10

(End of provision)

7-2004.2 *Preparation of Offers.* Insert the following provision in all solicitations for simplified contracts.

PREPARATION OF OFFERS (1983 DEC)

(a) Offerors are expected to examine the drawings, specifications, Schedule, and all instructions. Failure to do so will be at the offeror's risk.

(b) Each offeror shall furnish the information required by the solicitation. The offeror shall sign the solicitation and print or type his name on the Schedule and each Continuation Sheet thereof on which he makes an entry. Erasures or other changes must be initialed by the person signing the offer. Offers signed by an agent are to be accompanied by evidence of his authority unless such evidence has been previously furnished to the issuing office.

(c) Unit price for each unit offered shall be shown and such price shall include packing unless otherwise specified. A total shall be entered in the "Amount" column of the Schedule for each item offered. In case of discrepancy between a unit price and extended price, the unit price will be

presumed to be correct, subject, however, to correction to the same extent and in the same manner as any other mistake.

(d) Offers for supplies or services other than those specified will not be considered unless authorized by the solicitation.

(e) The offeror must state a definite time for delivery of supplies or for performance of services unless otherwise specified in the solicitation.

(f) Time, if stated as a number of days, will include Saturdays, Sundays and holidays.

(g) Code boxes are for Government use only.

(End of provision)

7-2004.3 *Explanation to Offerors.* Insert the following provision in all solicitations for simplified contracts.

EXPLANATION TO OFFERORS (1983 DEC)

Any explanation desired by an offeror regarding the meaning or interpretation of the solicitation, drawings, specifications, etc., should be requested in writing and with sufficient time allowed for a reply to reach offerors before the submission of their offers. Oral explanations or instructions given before the award of the contract will not be binding. Any information given to a prospective offeror concerning a solicitation will be furnished to all prospective offerors as an amendment of the solicitation, if such information is necessary to offerors in submitting offers on the solicitation or if the lack of such information would be prejudicial to uninformed offerors.

(End of provision)

7-2004.4 *Acknowledgement of Amendments to Solicitations.* Insert the following provision in all solicitations for simplified contracts.

ACKNOWLEDGEMENT OF AMENDMENTS TO SOLICITATIONS (1983 DEC)

Receipt of an amendment to a solicitation by an offeror must be acknowledged (a) by signing and returning the amendment, or (b) by letter or telegram. Such acknowledgement must be received prior to the hour and date specified for receipt of offers.

(End of provision)

7-2004.5 *Submission of Offers.* Insert the following provision in all solicitations for simplified contracts.

SUBMISSION OF OFFERS (1983 DEC)

(a) Offers and modifications thereof shall be enclosed in sealed envelopes and addressed to the office specified in the solicitation. The offeror shall show the hour and date specified in the solicitation for receipt, the solicitation number, and the name and address of the offeror on the face of the envelope.

(b) Telegraphic offers will not be considered unless authorized by the solicitation; however, offers may be modified or withdrawn by written or telegraphic notice, provided such notice is received prior to the hour and date specified for receipt.

(c) Samples of items, when required, must be submitted within the time specified, and unless otherwise specified by the Government, at no expense to the Government. If not destroyed by testing, samples will be returned at offeror's request and expense, unless otherwise specified by the solicitation.

(End of provision)

7-2004.6 *Failure to Submit Offer.* Insert the following provision in all solicitations for simplified contracts.

FAILURE TO SUBMIT OFFER (1983 DEC)

If no offer is to be submitted, do not return the solicitation unless otherwise specified. You should advise the issuing office in writing whether future solicitations for the type of supplies or services covered by this solicitation are desired. Failure of the recipient to offer, or to notify the issuing office that future solicitations are desired, may result in removal of the name of such recipient from the mailing list for the type of supplies or services covered by the solicitation.

(End of provision)

7-2004.7 *Award of Contract.* Insert the following provision in all solicitations for simplified contracts.

AWARD OF CONTRACT (1983 DEC)

(a) The contract will be awarded to the responsible offeror whose offer conforming to the solicitation will be most advantageous to the Government, price and other factors considered.

(b) The Government reserves the right to reject any or all offers and to waive informalities and minor irregularities in offers received.

(c) The Government may accept any item or group of items of any offer, unless the offeror qualifies his offer by specific limitations. UNLESS OTHERWISE PROVIDED IN THE SCHEDULE, OFFERS MAY BE SUBMITTED FOR ANY QUANTITIES LESS THAN THOSE SPECIFIED; AND THE GOVERNMENT RESERVES THE RIGHT TO MAKE AN AWARD ON ANY ITEM FOR A QUANTITY LESS THAN THE QUANTITY OFFERED AT THE UNIT PRICES OFFERED UNLESS THE OFFEROR SPECIFIES OTHERWISE IN HIS OFFER.

(d) A written award (or Acceptance of Offer) mailed (or otherwise furnished) to the successful offeror within the time for acceptance specified in the offer shall be deemed to result in a binding contract without further action by either party.

The following paragraphs (e) through (h) apply only to negotiated solicitations.

(e) The Government may accept within the time specified therein, any offer (or part thereof, as provided in (c) above), whether or not there are negotiations subsequent to its receipt, unless the offer is withdrawn by written notice received by the Government prior to award. If subsequent negotiations are conducted, they shall not constitute a rejection or counter offer on the part of the Government.

(f) The right is reserved to accept other than the lowest offer and to reject any or all offers.

(g) The Government may award a contract, based on initial offers received, without discussion of such offers. Accordingly, each initial offer should be submitted on the most favorable terms from a price and technical standpoint which the offeror can submit to the Government.

(h) Any financial data submitted with any offer hereunder or any representation concerning facilities or financing will not form a part of any resulting contract; provided, however, that if the resulting contract contains a clause providing for price reduction for defective cost or pricing data, the contract price will be subject to reduction if cost or pricing data furnished hereunder is incomplete, inaccurate, or not current.

(End of provision)

7-2004.8 *Labor Information.* Insert the following provision in all solicitations for simplified contracts.

LABOR INFORMATION (1983 DEC)

General information regarding the requirements of the Walsh-Healey Public Contracts Act (41 U.S.C. 35-45) and the Contract Work Hours Standards Act (40 U.S.C. 327-330) may be obtained from the Department of Labor, Washington, D.C. 20210, or from any regional office of that agency. Request for information should include the solicitation number, the name and address of the issuing agency, and a description of the supplies or services.

(End of provision)

7-2004.9 *Parent Company.* Insert the following provision in all solicitations for simplified contracts.

PARENT COMPANY (1983 DEC)

A parent company for the purpose of this offer is a company which either owns or controls the activities and basic business policies of the offeror. To own another company means the parent company must own at least a majority (more than fifty percent (50%)) of the voting rights in that company. To control another company, such ownership is not required; if another company is able to formulate, determine, or veto basic business policy decisions of the offeror. This control may be exercised through the use of dominant minority voting rights, use of proxy voting, contractual arrangmeents, or otherwise.

(End of provision)

7-2004.10 *Solicitation Definitions.* Insert the following provision in all solicitations for simplified contracts.

SOLICITATION DEFINITIONS (1983 DEC)

(a) The term "solicitation" means Invitation for Bids (IFB) where the procurement is advertised, and Request for Proposal (RFP) where the procurement is negotiated.

(b) The term "offer" means bid where the procurement is advertised and proposal where the procurement is negotiated.

(c) For purposes of this solicitation, the term "advertised" includes small business restricted advertising and other types of restricted advertising.

(End of provision)

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Part VI

Department of Labor

Occupational Safety and Health Administration

29 CFR Part 1926

Crane or Derrick Suspended Personnel Platforms; Proposed Rule

DEPARTMENT OF LABOR

Occupational Safety and Health Administration

29 CFR Part 1926

[Docket No. S-409]

Crane or Derrick Suspended Personnel Platforms

AGENCY: Occupational Safety and Health Administration, Labor.

ACTION: Proposed rule.

SUMMARY: OSHA proposes to revise section 1926.550, Cranes and Derricks, of OSHA's construction industry standards, by adding a new paragraph (g). None of the other paragraphs of § 1926.550 will be affected by this rulemaking.

The use of a friction of hydraulic portal, tower, crawler, locomotive, truck, and wheel mounted crane or derrick to hoist employees on a platform is occasionally necessary due to worksite conditions. However, several accidents have occurred as a result of this practice, the most recent of which resulted in four fatalities at Tampa Stadium, Tampa, Florida, March 31, 1983. While OSHA's construction standards do cover the use of elevators, personnel hoists, and aerial lifts to hoist employees, they do not currently provide guidance concerning safe work practices while hoisting personnel platforms with cranes or derricks. This proposed regulatory action would remedy that lack of coverage by providing criteria for the allowance of such a practice as well as design, operational, inspection and testing requirements.

DATES: Written comments and any requests for a hearing must be postmarked on or before April 17, 1984.

ADDRESS: Written comments and any request for a hearing should be submitted to the Docket Officer, Docket No. S-409, Occupational Safety and Health Administration, Room S-6212, U.S. Department of Labor, 200 Constitution Ave, NW., Washington, D.C. 20210, (202) 523-7894.

FOR FURTHER INFORMATION CONTACT: Mr. James Foster, Occupational Safety and Health Administration, Room N3637, U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, D.C. 20210, Telephone (202) 523-8151.

SUPPLEMENTARY INFORMATION: The author of this Proposed Rulemaking is Steve Jones of the Office of Construction and Civil Engineering Safety Standards, Occupational Safety and Health Administration.

I. Background

Congress amended the Contract Work Hours Standards Act (CWHSA) (40 U.S.C. 327 et seq.) in 1969 by adding a new Section 107 (40 U.S.C. 333) to provide employees in the construction industry with a safer work environment and to reduce the frequency and severity of construction accidents and injuries. The amendment, comonly known as the Construction Safety Act (CSA) (Pub. L. 91-54; August 9, 1969), significantly strengthened employee protection by providing for occupational safety and health standards for employees of the building trades and construction industry in Federal and federally financed or federally assisted construction projects.

The Occupational Safety and Health Act (the Act) (84 Stat. 1590; 29 U.S.C. 655 et seq.), which expanded coverage to virtually all employments and was enacted less than two years later, authorized the Secretary of Labor to adopt established Federal standards issued under other statutes, including the Construction Safety Act, as occupational safety and health standards under the Act. Accordingly, the Secretary adopted the construction standards, which were issued under the Construction Safety Act, as OSHA standards on May 29, 1971 (36 FR 10466), and redesignated these rules as 29 CFR Part 1926 on December 30, 1971 (36 FR 25232). The standard entitled "Cranes and Derricks," § 1926.550, was adopted as an OSHA standard in Subpart N of Part 1926 as part of this process.

A particular provision within that Cranes and Derricks section that was adopted as an OSHA standard in 1971 is related to the hoisting of employees by crawler, locomotive and truck cranes. Paragraph 550(b)(2) requires that the operation of all such cranes meet the applicable requirements in the ANSI standard B30.5 "Safety Code for Crawler, Locomotive and Truck Cranes." ANSI standard B30.5 Section 5-3.2.3(e), requires that "the operator shall not hoist, lower, swing, or travel while anyone is on the load or hook."

A similar requirement is contained in ANSI standard B30.6. "Safety Code for Derricks." Section 6-3.3.3 requires that "the operator shall not hoist, lower, or swing while anyone is on the load or hook."

There has been some confusion in the construction industry about whether OSHA interprets these ANSI provisions to prohibit the hoisting of personnel platforms, sometimes known as man baskets or man-skip boxes, by crawler, locomotive, and truck cranes and derricks. OSHA's policy in this matter can best be understand by examining the chronology of events related to this matter.

In 1972, a group of contractors in Florida requested a clarification of § 1926.550(b)(2). OSHA interpreted § 1926.550(b)(2) to mean that where no other practical alternative means of transporting employees existed, no citations would be issued, provided that specific requirements were met (Ex. 1).

In 1973 OSHA received an ANSI B30 Committee interpretation of ANSI B30.5, Section 5-3.2.3(e). ANSI interpreted the section to refer to normal loads such as beams, girders or concrete buckets. They further stated that under controlled conditions, a specially designed scale box or other guarded platform for pesonnel that was attached to the crane hook was permissible (Ex. 2).

Again in 1973 OSHA responded to a request for a variance from the Boeing Corporation concerning the application of paragraph .550(b)(2). OSHA determined that a variance was unnecessary because a specifically designed safety work platform suspended from the hook was not covered by the tern"load." OSHA further stated that riding and working on these platforms while using a lifebelt-lifeline system was not the same as riding a material load, or hanging, standing or sitting on the hook which is prohibited by both the ANSI standard and OSHA's standard (Ex. 3. p. 2).

The Advisory Committee on Construction Safety and Health (ACCSH) appointed a subgroup from among the Committee members in December 1973 to examine this issue, to evaluate the need for standards, and to make recommendations to the full Committee.

A two-day meeting of the subgroup, at which interested parties were invited to participate, was held July 30 and 31, 1974 (Ex. 4). After review of all the oral and written comments received, along with data developed by the subgroup, recommendations for a draft proposal were prepared for consideration by the full Committee. The Advisory Committee acted favorably upon these recommendations at a meeting held in October 1974 (Ex. 5).

Following the Advisory Committee meetings, OSHA prepared a draft Proposed Rule to cover the practice of hoisting personnel, but no action was undertaken to publish the document in the **Federal Register.** Instead, since 1975, OSHA has issued four interpretations which provided guidelines for the use of crane suspended work platforms (Ex. 6, 7, 8 and 9). These guidelines were

incorporated into OSHA Instruction STD 1–11.2A, dated October 8, 1981 (Ex. 10). That instruction has recently been revised (OSHA Instruction STD 1–11.2B, dated August 8, 1983) to serve as guidance until this rulemaking is completed (Ex. 11).

OSHA has determined that these administrative interpretations have been less successful than desired in accomplishing the objectives of the OSH Act. Therefore, this rulemaking action has been initiated to clarify and codify those conditions under which employees may be hoisted by cranes or derricks in a personnel platform.

Since that decision was made, a new draft proposal was accordingly developed which incorporated the latest policy on this subject in OSHA standards development, as well as recent ANSI draft guidelines (Ex. 14 and 15). (Subsequent to the completion of this document, a revised ANSI/ASME B30.5 standard was issued on October 31, 1983.) That draft OSHA proposal was discussed by ACCSH May 23 and 24, 1983 (Ex. 12). The recommendations of ACCSH have been incorporated where possible, into this proposed rule. In addition to the ACCSH review, OSHA has widely distributed drafts of this proposal to interested parties. Those comments have been very informative and OSHA appreciates the various parties' efforts (Ex. 19). Further comments are now solicited, especially on the issues highlighted in this proposal.

II. Hazards

OSHA estimates that there would be 42 injuries resulting from the use of cranes or derricks to hoist personnel in a typical year, 10 of which would be fatal (Ex. 21, p. IV–2).

Although the worker population exposed to the hazards of this practice is small relative to other worker populations covered by OSHA standards, the severity of an accident is usually great. A review of several accidents best illustrates the severity of this problem.

One accident in Cheyenne, Wyoming (1973), resulted in two deaths when a telescopic boom severed the load line. Had the employees in the platform been secured by a safety belt and lanyard attached to a lifeline secured to the boom tip, or if the crane had been equipped with a device or feature to prevent two-blocking from severing the load line, the deaths may have been averted. The operator was experienced in operating cranes, but not with the specific machine involved, nor with the type of operation in which the accident occurred. Even employees well acquainted with telescopic boom operations have had problems when working with this equipment in new locations and in unfamiliar surroundings.

In another fatal accident in Kansas City (1972), a structural framework with five men and a significant amount of material and equipment within it fell to the ground when the crane tipped over. The total weight was reported to be only half the rated capacity of the crane when boomed out to the work location, but the crane started tipping before it reached the desired radius. Failures of this nature point out the need for exact knowledge of a crane or derrick's stability, and the need for an accurate determination of the weight of the load, especially prior to its use for hoisting employees.

In Chicago (1981), five employees were killed and a sixth employee was seriously injured when a job-built personnel basket fell 100 feet. The employees were being hoisted by a mobile crane to a work station atop a tower crane being assembled on the site. The metal framework at the top of the cage, to which the hoisting rope was attached, snapped, causing the platform and its occupants to fall. Specific design criteria and inspection and testing requirements should prevent accidents caused by structural failure.

Most recently, in March 1983, four men were killed in an accident at Tampa Stadium in Tampa, Florida. Four men in a personnel platform were being raised by a crane to a work station 135 feet above the ground at the top of the stadium. When the platform reached 130 feet, the boom of the crane fell carrying the men in the platform with it.

The available evidence therefore suggests that there is a significant risk involved in the use of crane or derrick suspended personnel platforms if proper precautions are not followed. OSHA solicits further information on the nature and the extent of this risk.

III. Summary and Explanation of the Proposed Standard

This Notice of Proposed Rulemaking is intended to solicit information relevant to the hazards of this operation and to proposed paragraph (g) of § 1926.550. Comments on the proposed standards, suggestions and recommendations with explanations, and supporting evidence are particularly solicited. OSHA intends to evaluate the comments, recommendations, suggestions and evidence received in response to this Notice and, on the basis of this record and other information available to the Agency, make appropriate modifications.

In order to facilitate public comment, this Notice not only includes the text and explanation of the proposal, but also identifies several issues to which OSHA directs the public's attention for special consideration. OSHA wants to focus attention on these issues that have been raised during the preparation of this proposal in order to encourage the submission of additional valuable information from interested persons.

(A) Issues

1. OSHa's scope and application statement contained in paragraph .550(g)(1) contains several important points on which the Agency solicits comments.

• It is recognized throughout the construction industry that hoisting employees with cranes or derricks should not be allowed as a routine operation. The theme appears again and again that this practice must be limited (Ex. 13–16). This same point has been stressed repeatedly by members of the Advisory Committee on Construction Safety and Health (ACCSH) (Ex. 4, pp. 16–90; Ex. 5, pp. 103–292; Ex. 12, pp. 56–97 and 282–286). It has been and remains OSHA's position that this hoisting practice shall not be used as a way to provide routine access to a working location for reasons of convenience alone.

OSHA considered describing in detail the situations in which this practice would be warranted, but such descriptions would have to list all the complex factors involved in reaching that conclusion. Each situation requiring the hoisting of employees will be unique and must be considered on its own merits. OSHA cannot anticipate every set of circumstances in which this practice would be considered appropriate.

Therefore, OSHA has drafted the scope of this proposed standard in performance language designed to allow the hoisting of employees under a variety of conditions that would meet the criteria.

OSHA considers the scope statement and its limitation on employee hoisting by cranes and derricks to be very important. Therefore, the Agency solicits comment on the effectiveness and clarity of the scope and application statement. Specific suggestions for rewording the statement are encouraged.

• Another issue involves the possibility of future rulemaking actions regarding this practice in general industry and shipyard employments. OSHA recognizes that such operations also occur in general industry and

shipyards as well, and that protection for employees in those industry sectors should be provided also. Thus far, OSHA has concentrated its efforts on the construction industry. However, if comments support coverage of those industries, the Agency may begin development of proposed rules as appropriate.

OSHA solicits comments from those affected industry and employee groups as well as equipment manufacturers on the coverage of general industry and shipyards with a similar standard (Marine Terminals already have rules on this issue). Do the cranes and derricks used or the types of operations performed in all these industries vary sufficiently from those in construction to warrant standards much different from this proposal? Commenters are urged to indicate whether there are reasons not to apply provisions such as those contained in this proposal to the listed types of cranes and derricks used in general industry and shipyards.

2. The second issue of which OSHA particularly solicits comments involves crane and derrick operational criteria. OSHA proposes to require that the load line hoist drum have controlled load lowering. OSHA's intent is to establish effective operator control of the personnel platform under all circumstances. This would remove the potential for a free fall of the personnel platform, protecting the occupants from the hazards of a free fall. If the hoisting equipment has been equipped with the free-fall feature, the free-fall option must not be used while hoisting employees. This protection against the hazards of a free fall would be provided by a system or device on the power train, other than the brake, which can regulate the rate of speed of the hoist mechanism.

OSHA had previously considered prohibiting the use of systems, such as torque converters, that require an increase of the engine or motor speed to reduce the lowering speed of the loadline. The intent of such a prohibition was to eliminate the possibility of equipment which allowed a free fall. However, the Agency has received many comments that there are hoisting mechanisms using torque converters that will provide adequate protection to employees being hoisted in personnel platforms (Ex. 4, pp. 55–60; Ex. 5, pp. 104–130; Ex. 12, pp. 66–288).

Therefore, OSHA is proposing to provide protection to hoisted employees by requiring controlled load lowering. The Agency believes that this rule will provide the intended protection, while allowing the use of any hoist mechanism that could provide that control. OSHA's intent is to prohibit the use of any equipment that could not maintain control over the speed of the drum rotation under all circumstances.

OSHA has followed the example set by ANSI in its draft standards on this topic (Ex. 13, 14 and 15). However, OSHA solicits information on this issue. Specifically, what types of systems exist that maintain this power control of the hoist drum? Are there systems which usually have power control that occasionally lose the control, thus allowing the wire rope to free spool off the hoist drum? If so, what are the causes of this loss of control and how can they be prevented? OSHA encourages the submission of any data on accidents related to this topic.

OSHA's preliminary regulatory impact assessment disclosed that the requirement for controlled load lowering may not be technologically feasible for many older machines that are not so equipped (Ex. 21, p. V–1). Even if this provision was technologically feasible, OSHA's report indicates that such a conversion may not be economically feasible. However, feasibility problems should be confined to a relatively small number of older cranes. OSHA seeks comment on the impact of this proposed rule on older cranes not equipped with controlled load lowering. Is that population of cranes large enough so that the impact of this rule creates a severe hardship for the construction industry? If so, what alternative protections are available for the hazard of a free fall?

3. Another topic which has been discussed is whether OSHA should limit the number of occupants on the personnel platform (Ex. 4, pp. 61–79, 172–178; Ex. 5. pp. 186–187).

One view is that if OSHA does not limit the number of occupants, the Agency would be encouraging the use of platforms to replace personnel hoists or scaffolding. ACCSH received comments from the public on the size of the personnel platform, ranging from two men up to an unlimited number. After looking at the work procedures that would be done from this type of suspended platform, the ACCSH recommended a limit of six employees on a platform (Ex. 4, p. 172; Ex. 5, pp. 186–189). However, several commenters at the Advisory Committee meetings expressed the opinion that the platform should be designed for the number of employees needed for the job, and that the platform's rated capacity should not be exceeded.

The most recent draft of ANSI A10.28, "Crane or Derrick Suspended Work Platforms," does not limit the number of occupants. OSHA does not have the data to support any particular number for a limitation of occupancy of the personnel platforms. The Agency believes that as long as the platform's rated capacity assigned by the engineer who designed the platform is not exceeded, any limitation on the number of occupants is unnecessary. Given that this standard will apply to many different operations and work situations in construction, OSHA believes that such an approach will allow flexibility to meet all those situations, while providing protection to the employees.

OSHA solicits comment on the appropriateness of this approach and welcomes data to support any other approaches that may be recommended. OSHA solicits comment on whether any allowable operation would require more than six occupants.

4. A subject of much discussion has been the safety factors for the wire ropes, the personnel platform and the associated rigging. In previous drafts of this proposed standard, OSHA had proposed a safety factor of 10 for the loadline, rigging, and personnel platform. OSHA believes that safety factors for hoisting employees should be higher than those specified for handling material. OSHA currently requires 3.5 for running ropes, three for standing ropes (by § 1926.550(b)(2) which incorporates ANSI B30.5–1968) and a safety factor of five for wire rope slings and bridles used for material handling rigging equipment (§ 1926.251(c)(1)). OSHA currently has no standard on the safety factor for a personnel platform.

A safety factor of eight for the wire rope was recommended by ACCSH (Ex. 5, p. 199; Ex. 12, pp. 135–136). The most recent draft of ANSI B30.5–3.2.2.3(a)(5) requires minimum load hoist and boom hoist wire rope safety factors for the combined weight of the lift attachments, platform, personnel and tools to be 5:1 for manufacturer's specified constructioon wire rope, and 8:1 for rotation-resistant wire rope.

The "Rigging Manual", published by the Construction Safety Association of Ontario, Canada, states that nonrotating ropes warrant special consideration, handling and care since they are much more easily damaged in service than any other type of rope. They recommend a material handling factor of safety of approximately eight or 10 for optimum nonrotating characteristics. More recent ANSI standards (B30.6–1977 and the draft revision of B30.5) also specify a higher safety factor of five for rotation-resistant wire rope for material handling purposes.

The "Rigging Manual" also specifies a minimum acceptable safety factor of 10 for standing and running ropes used on

equipment that is intended to carry employees.

OSHA is proposing to require a derating of the crane or derrick's capacity as listed on the load rating chart, by 50 percent when handling employees (§ 1926.550(g)(3)(i)(F)). This will in effect double the existing safety factors on the wire ropes, which will result in a safety factor of seven on the loadline, without even further specifying any additonal safety factor. OSHA has proposed a safety factor of seven for the load line in order to be consistent with this derating, i.e, the 3.5 safety factor would automatically be doubled (paragraph .550(g)(3)(i)(B)). Requiring a safety factor other than seven would conflict with the 50% derating provision. OSHA solicits comments on whether this derating of the load rating chart is sufficient to cover the safety factor for standing and running ropes, or if the safety factor should be specifically listed. OSHA further solicits comments on the adequacy of the safety factor of seven for rotation resistant wire rope. Current OSHA standards do not list a specific safety factor for such wire rope, so the 50-percent derating of the load rating chart would have no impact on rotation resistant wire rope safety factors.

The ACCSH Subcommittee on Crane Suspended Work Platforms recommended a safety factor of 10 for the platform (Ex. 4, pp. 173–182). However, ACCSH recommended a safety factor of six for the platform (Ex. 5, p. 199). The ANSI A10.28 draft proposes a safety factor of five for the platform. OSHA is proposing a safety factor of five for the platform in paragraph .550(g)(4)(i)(C). OSHA solicits comments on the sufficiency of such a safety factor for the platform. Will this safety factor be sufficient if the personnel platform strikes and hangs up on a projection while being hoisted, before the operator reacts to clear the projection? If different safety factors are recommended, the reasons for the recommendation should be provided.

5. In an earlier draft of this proposed standard, OSHA included several additional instruments or equipment components. However, comments were received that such devices were either not feasible or unnecessary. Therefore, OSHA has not included these devices in this proposal. OSHA is soliciting comments on these devices and their contribution to the safety of employees engaged in these operations.

A. OSHA had considered a requirement for a load line position indicator with an accuracy of plus or minus one percent to be in view of the operator. The purpose was constantly to inform the operator of the height of the personnel platform by indicating the amount of load line paid out. As an alternative, the proposal would require employees being hoisted to remain in continuous sight and communication with the operator or signal person. Comments are solicited on the necessity of this device if the employees being hoisted remain in continuous sight and communication with the operator or a singal person.

B. OSHA had also considered a requirement for a line speed indicator to be in view of the operator. OSHA had thought that since the Agency was proposing to limit the speed of the personnel platform to 100 feet per minute, the operator would need a speed indicating device to ensure compliance. However, ACCSH comments indicated that such a device was neither feasible or necessary (Ex. 5, p. 239) (See discussion of paragraph (3)(i)(A) later in the preamble)..

OSHA solicits comments on the feasibility and desirability of such devices. Are there other devices which should be required when hoisting employees?

C. Paragraph (3)(ii)(C) requires a means to prevent accidents caused by running the load block or headache ball into the boom tip sheaves (two-blocking). Such an occurrence can break the load line causing the personnel platform to fall, or the boom to be pulled over backwards. OSHA believes that the most effective means of controlling this hazard is for the operator to maintain sight of the load block in relation to the boom tip. However, such constant attention is not ensured due to a wide variety of reasons. Therefore, OSHA is proposing to require either an anti-two-blocking device, which deactivates the hoist drum when contact is made with an upper limit switch, or a two-block damage prevention feature which deactivates the hoist drum before the load line is separated when two-blocking occurs—such as those built into the control circuit of some hydraulic cranes. Other anti-two-blocking devices or damage prevention features may exist and would be allowed by the standard, as long as they are as effective in controlling this hazard. OSHA recognizes the hazards of two-blocking and believes the employer must take the most appropriate measures to ensure that employees are protected from such hazards.

The Agency solicits comments on the effectiveness of anti-two-blocking devices. If problems exists, are they the result of improper use and maintenance or are such devices inherently unreliabe? For example, these devices are sensitive switching mechanisms that are designed to act as back-up safety devices and are not designed to function as an operational control. The device may be used in this fashion by not stopping the rising load block before it strikes the boom tip, thus relying upon the device to stop the hoist drum. Continued use in this mode is beyond the designed capacity of the device and may lead to premature failure. OSHA believes that if the devices are properly used, inspected, tested and maintained, then reliability could be ensured when their functioning is critical to the safety of employees on the platform.

ANSI drafts recognize warning systems as alternatives to positive action devices. OSHA solicits comments on the effectiveness of warning devices in preventing two-blocking accidents.

- OSHA solicits responses to several specific questions on this issue.
- Have anti-two-blocking devices actually been proven to be ineffective as currently used? If so, what are the specific problems involved?
- Will the trial lift, as proposed by paragraph (g)(5)(ii), be sufficient to ensure that this safety device is properly functioning?
- Should OSHA regulate the proper use of these devices as does ANSI B30.2–3.2.4 (Ex. 18)? Such a provision would prohibit the use of anti-two-block devices as an operational control.
- OSHA's preliminary regulatory impact assessment disclosed that the requirement for anti-tow-block protection would entail making major modifications at considerable expense for mechanically operated, frictionclutch type cranes and would probably not be economically feasible for some of these older cranes (Ex. 21, p. V–1). The assessment also indicated that hydraulic cranes can more readily incorporate this safety feature. However, the assessment states that most construction firms and crane rental agencies are likely to retrofit only a small portion of their cranes in view of the infrequency with which the operations covered by this proposed standard are performed. As a result, less adaptable cranes will not likely have to be retrofitted, thereby minimizing any potential feasibility problems. OSHA seeks comments on the economic impact of proposed paragraph (3)(ii)(c). OSHA also seeks comment on the hazards of two blocking when hoisting personnel and seeks suggested alternative protections against such hazards.

6. Employees on the platform may be exposed to the hazard of falling objects. OSHA is proposing in paragraph (g)(4)(ii)(D) to require overhead

protection when employees are exposed to falling objects. During the ACCSH meeting, it was noted that the fall ball may drop into the platform when the platform is landed, if the operator does not immediately stop lowering the loadline. However, it was also pointed out that the nature of the work may not allow overhead protection because some operations require work to be performed almost directly overhead. OSHA solicits comments on whether overhead protection should be required at all times except when the nature of the work would not allow it. If so, what are the work activities that could not be performed if overhead protection were present?

7. OSHA had considered requirements for an automatic brake that stops the load when the operator releases the controls, and a second means of stopping and holding the load. The majority of comments that OSHA has received—comments from engineers and technical representatives of crane manufacturers—state that such requirements are neither feasible nor desirable. Furthermore, neither of the ANSI drafts contain such requirements.

OSHA specifically solicits comments on the feasibility and desirability of requirig automatic brakes. The Agency requests information on accidents involving brakes, especially those which automatic brakes would have prevented, or those in which a secondary stopping means would have prevented an accident when the primary brakes failed.

8. OSHA had also considered a provision which would have required a shackle in lower load blocks and headache balls, when used to hoist employees.

OSHA's objective is to prevent accidental disengagement to the platform from the load block. The personnel platform may be jostled, strike an object, or the hook may be inclined, if two-blocked, to an angle where the ring or shackle comes through the throat of the hook. During such events, some hook types may allow disengagement, causing the platform to fall.

The draft ANSI standard 5-3.2.2.2 was the source of OSHA's proposed standard (Ex. 13, p. 2). After analysis of this issue, the Agency decided to propose to allow a hook. However, OSHA is soliciting comment on what types of hooks can be positively closed and locked to prevent accidental disengagement of the platform. Are such hooks capable of supporting the load in a two-blocking situation when the hook is inclined? OSHA solicits data on various hooks which would provide the positive engagement under all circumstances. Data is also requested on the effectiveness of mousing the hook, as is common practice in the maritime industries.

9. OSHA is prohibiting cranes from traveling while employees are suspended, except for portal and tower cranes operating on a fixed track, which have been allowed to travel because operating on a fixed track eliminates the hazards of traveling over uneven or soft ground.

OSHA has received comment that there are circumstances which would require a truck or crawler crane to travel with employees suspended on the platform. OSHA's proposal does not allow such a practice, but solicits comment on this issue, particularly on the following questions.

- What are the operations that would require the crane to travel with employees suspended?
- Why has the use of cranes to hoist employees been selected over other means of access?
- Under what conditions is the traveling of cranes conducted to ensure the safety of suspended employees?
- Should OSHA limit the distance over which cranes can travel? If so, what should the limit be?
- Should an allowance be made for minor positioning as opposed to traveling? How should minor positioning be defined and what precautions must be taken?
- Should OSHA specify exact conditions under which traveling would be allowed? If so, what are they, and why?

10. OSHA solicits comment on whether an additional sling should be used to attach the platform to the load line. This sling would attach to the ring or shackle at the top of the platform rigging or to the platform and would secure to the load line above the hook at the load block or headache ball. This secondary means of attachment would serve to maintain connection of the personnel platform to the load line if the primary point of connection fails for any reason.

This safety bridle is somewhat related to the requirement for overhead protection and the tie-off point for the body belt lanyard. For example, if employees are hoisted on a platform with overhead protection, the most likely location to attach the body belt lanyard is within the platform. Should employees tie off above the hook, and the personnel platform accidentally disengages from the hook, the employees would be struck by the overhead protection on the platform as it dropped past them. However, if employees tie off within the platform, they will remain on the platform if it drops. Both situations are to be avoided.

- Should OSHA require a secondary means of attachment (safety bridle) under all circumstances, or only when overhead protection is provided?
- What data exists on the frequency of the platform being accidentally released from its primary means of attachment to the load line?
- If required, what exactly should this safety bridle consist of, and how should it be attached?

(B) *Summary of the Proposed Standard.*

Section 1926.550(g). This proposal would add a new paragraph (g) to § 1926.550 entitled "Crane or Derrick Suspended Personnel Platforms."

Paragraph (g)(1) Scope and application. Proposed paragraph (g)(1) states the scope and application of this standard. This standard applies to friction or hydraulic portal, tower, crawler, locomotive, truck, and wheel mounted cranes or derricks. OSHA believes that these machines are similar enough to include in the same rulemaking. However, comment is solicited on the impact of inlcuding these various types of cranes in this rulemaking.

This standard will apply only to personnel hoisting operations where a personnel platform is attached to the load line of the aforementioned equipment.

Paragraph (g) (2) General requirement. This requirement will permit employers to hoist employees in such a manner only under the specified circumstances. An employer will have to analyze carefully each situation before a decision is made to hoist employees by a crane or derrick (See (A) Issue (1)).

Paragraph (g) (3) Crane and derrick. This paragraph contains the general provisions that all cranes and derricks covered by this proposal must comply with when hoisting employees.

Paragraph 3(i)(A) would limit lifting and lowering speeds to 100 feet (30.48 m) per minute. The 1974 ACCSH said there ought to be some criterion of speed, and 100 feet per minute was the consensus of the committee. The 1983 ACCSH did not modify that opinion. Furthermore, one crane manufacturer's manual for wire rope suspended personnel platform use specifies a limit of 100 feet per minute (Ex. 17, p. 7-2).

In an issue related to the hoisting speed, the National Constructors Association raised a question of how the operator will know that he is not exceeding 100 feet per minute unless line speed indicators are provided (See

(A) Issue (5)). The ACCSH discussed this question but did not think it was feasible to put on a line speed indicator (Ex. 4, pp. 136–140; Ex. 5, p. 239).

OSHA solicits comments on the limitation of hoisting speeds to 100 f.p.m. as opposed to the approach taken in the most recent ANSI B30.5 draft (Ex. 14, p. 6). ANSI states that movement of the work platform with personnel shall be done in a slow, controlled, cautious manner with no sudden movements of the crane or work platform. What speed should be considered as an upper limit of "slow"?

Paragraph (3)(i)(B) proposes a safety factor of 7 for the load hoist wire rope. "Safety factor" is defined in Section 1926.32(m) and applies to all 1926 standards. Wire rope safety factors are discussed in (A) Issue (4).

Paragraph (3)(i)(C) would require that when the personnel platform is placed into a stationary position where employees will perform the work, all brakes and locking devices that the crane or derrick is equipped with shall be engaged. The draft ANSI B30.5 standard contains a provision that is substantively the same (Ex. 14, p. 5).

Paragraph (3)(i)(D) will require that the load line hoist drum have controlled load lowering. If the crane or derrick is equipped with a free fall capability, it shall not be used during personnel hoisting operations. The ANSI drafts B30.5 and A10.28 require these same criteria. Maintaining control over the lowering of the load line under all circumstances is extremely critical when employees are suspended on a platform on the end of the loadline. If the hoist with which the operator is hoisting the personnel platform is equipped with the free fall capability, the operator must ensure that controlled load lowering is maintained and free fall is never used. OSHA solicits comments on what means are available on different cranes and derricks to ensure that free fall is not used. Should a positive lock-out of some sort be required? (See (A) Issue (2) for further discussion).

Paragraph (3)(i)(E) will require a firm and level foundation for cranes used to hoist the personnel platform. If the equipment is manufactured with outriggers, they must be used in accordance with the manufacturer's specifications when hoisting employees. The "Crane Handbook," published by the Construction Safety Association of Ontario, Canada states that the capacities listed in the load chart are based on the machine being dead level. A reduction of 5 to 30 percent of the chart capacity will occur when the crane is out of level by only one degree.

Paragraph (3)(i)(F) imposes a reduction of 50 percent on the rated capacity of the crane or derrick. Current standards (§ 1926.550(a)(2)) require load rating charts to be visible to the operator at the control station. This standard will require the operator never to exceed 50 percent of the posted capacity for the crane or derrick. Furthermore, this standard will require the employer to determine the weight of the platform; all additional weight imposed on the platform (employees and tools); and the related rigging prior to hoisting the platform in order to ensure that this weight does not exceed 50 percent of the crane or derrick's rated capacity.

Paragraph (3)(i)(G) would prohibit the use of any machine having a live boom to hoist employees. The draft ANSI A10.28 standard defines a live boom to be one in which lowering is controlled by a brake without aid from other lowering retarding devices.

Paragraph (3)(ii) contains provisions for additional instrumentation and components. It should be noted that the Agency is requiring these safeguards only on cranes or derricks when used to hoist employees in a suspended personnel platform.

The rated capacity of a crane or derrick is related to boom angle, boom length, or load radius, and means must be provided by which operators can determine whether the configuration of the lift is within approved limits.

Paragraph (3)(ii)(A) requires a boom angle indicator to be in view of the crane operator. Knowing the angle of the boom is a prerequisite to reading the load rating chart. Comments are solicited on whether there is the need for boom angle indicators on particular types of derricks. If so, what are those types and are there any special operating conditions?

Paragraph (3)(ii)(B) requires that telescoping booms have a means of clearly indicating the extended length to the operator. The boom length must also be known in order to read the load rating chart.

Comments are solicited on whether the boom angle and length or the load radius information is more beneficial to the operator of each type of affected machine. Are there feasible and reliable devices currently available that indicate this information to the operator?

Paragraph (3)(ii)(C) would require either an anti-two-blocking device or a two-block damage prevention feature to be installed on the crane or derrick hoisting the personnel platform. The device is actually an upper limit switch installed to prevent the hoist drum from pulling the block into the boom tip sheaves. The damage prevention feature is meant to include various features within the hoist mechanism that would deactivate the hoisting action upon contact of the load block with the boom tip before enough force is generated to pull the boom over or to separate the load line. One such feature is an override that would stall tha hydraulic fluid system. OSHA has included definitions of these two terms to alleviate problems that may arise from interpretations. The Agency could not find an industry recognized definition of these terms, necessitating the development of the language contained in the proposed rule. OSHA specifically solicits comment on these two definitions. OSHA also solicits comments on these and other positive methods to control two-blocking hazards. OSHA is particulary interested in other two-block damage prevention features on hoisting systems. Are there particular types of cranes or derricks upon which this equipment would not be feasible? ANSI drafts include an allowance for warning device feature. Under what conditions is this a more feasible approach than the device or damage prevention feature?

Telescoping booms possess additional means for causing a two-blocking accident. Is any device other than those proposed recommended to control this hazard?

Paragraph (4) contains the provisions specifically related to personnel platforms.

Paragraph (4(i)IA) requires the personnel platform to be designed by a qualified engineer competent in structural design.

Paragraph (4)(i)(B) requires the suspension system to be designed to minimize tipping of the platform. This would require the various parts of the suspension system to distribute the load equally and to stabilize the platform. OSHA has been informed of single, triple and four-legged suspension systems that meet such criteria (Ex. 16). OSHA is not limiting the material used in this suspension system. The Agency has been informed that both wire rope or solid suspension members have been successfully used. The design engineer required by paragraph (4)(i)(A) would specify the material.

Paragraph (4)(i)(C) requires the personnel platform to be designed with a safety factor of five (See (A) Issue 4). OSHA solicits comment on the appropriateness of specifying a safety factor of five for ultimate breaking strength. Should the Agency specify an additional safety factor based on permanent deformation of the platform?

If so, what would be an appropriate safety factor?

Paragraph (4)(i)(D) would require a minimum height of six feet from the floor to suspension system to provide adequate headroom. The ACCSH recommended a minimum of six feet from the floor to the point of attachment for the rigging to ensure stability and to keep employees inside the entire unit (Ex. 12, pp. 114–116). OSHA solicits comment on whether this height is sufficient.

Paragraph (4)(ii) contains specifications that the engineer must include in the design of the personnel platform.

Perimeter protection is required by paragraph (4)(ii)(A). A choice of solid walls or expanded metal is to be used up to a height of 42 inches (±3 inches) from the floor. Such protection will restrain employees from falling out, and also restrain tools which may be dropped or fall out of a waist apron or tool belt.

OSHA solicits comments on allowing standard guardrail systems for personnel platforms. Have accidents occured involving personnel platforms with guardrail systems that would have been avoided if the walls were enclosed by solid construction or expanded metal? Are there particular operations that could not be performed because of the proposed requirements? If so, what are they and how do the proposed requirements hinder such operations?

A grab rail would be required by paragraph (4)(ii)(B) to be inside the employees platform to provide a safe handhold which would protect occupants' hands should the personnel platform's side contact another object. This grab rail could also serve as a tie-off point for the body belt lanyard, provided that proposed paragraph .550(g)(6)(ix) is complied with.

Paragraph (4)(ii)(C) contains criteria that an access gate must meet, if the personnel platform is provided with a gate. The ACCSH discussed requiring all personnel platforms to have doors (Ex. 4, pp. 127–129 and 172; Ex. 12, p. 143). Although they did not recommend requiring doors, they did agree that if there is a door it must open inward, and should be equipped with a device to prevent accidental opening. Some personnel platform designs, such as a one person barrel-type platform, may not be suitable for having an access gate (Ex. 16).

Paragraph (4)(ii)(D) requires overhead protection when employees are exposed to falling objects (See (A) Issue 6).

Paragraph (4)(ii)(E) would require all rough edges to which employees may be exposed to be ground smooth.

Paragraph (4)(ii)(F) would require that all welding for the personnel platform be performed by a welder qualified to do the type of work required by the designing engineer. This will do much to ensure the structural strength of the personnel platform. OSHA solicits comments on whether a welder meeting the definition of "qualified," as defined in § 1926.32(1), is sufficient or if a certified welder would be more appropriate. What type of welding should this welder be certified to perform? Additionally, should OSHA specify a particular welding standard to be met, or will the design engineer so specify? Should OSHA require prooftesting after fabrication of the personnel platform? If so, what would be an appropriate weight and procedure?

Paragraph (4)(ii)(G) would require a permanent marking on the personnel platform to indicate the weight of the empty platform and the rated load capacity. This marking would indicate how much weight can be carried in the platform.

Paragraph (4)(ii)(H) would require the personnel platform to be easily identifiable either by color or by marking the platform. This will ensure that everyone knows the special purpose for this equipment, and will assist the crane or derrick operator to see the platform at a distance.

Paragraph (4)(iii)(A) would limit the loading of the personnel platform to its posted rated capacity.

Paragraph (4)(iii)(B) requires that the number of occupants on the platform not exceed that necessary to perform the work. OSHA believes that the Agency should not specify a limit of the number of occupants, but that the nature of the task which makes the use of the personnel platform necessary, and the designed size and rated capacity of the platform be the limiting factors (See (A) Issue 3).

Paragraph (4)(iii)(C) restricts the platform's use to employees, their tools, and only those materials necessary to do their work. The ACCSH stressed that only the tools and material necessary for the work should be hoisted, and that the platform not be used for hoisting bulk materials or other loads not related to the specific task involved (Ex. 4, pp. 197–203; Ex. 12, pp. 49–52, 102–112).

Paragraph (4)(iii)(D) would require all materials hoisted on the platform with employees to be secured and evenly distributed to balance the load.

Paragraph (4)(iv) covers the rigging used to suspend the personnel platform from the load block or fall ball.

Paragraph (4)(iv)(A) would require that when a wire rope bridle is used, the bridle legs all connect to a ring or a shackle. This serves to equalize and consolidate all the load into one point of contact when this ring or shackle is hung on the hook or shackle from the load line block or fall ball.

Paragraph (4)(iv)(B) would require the ring or shackle on the end of the lifting bridle to be attached to the load line block or fall ball by a positive locking hook or a shackle, secured by a screwpin, nut and retaining pin. This will eliminate the possibility of the bridle being accidentally dropped out of the load block hook (See (A) Issue 8).

Paragraph (4)(iv)(C) would require that all rigging hardware have a safety factor of seven, which would equal the load line safety factor.

Paragraph (4)(iv)(D) would require that eyes in wire rope slings be fabricated with thimbles to distribute evenly the forces around the eye without kinking the wire rope.

Proposed paragraph (5) includes the additional inspection and testing requirements for this operation.

Paragraph (5)(i) would require that a competent person inspect such cranes and derricks at the beginning of each shift, and again if the crane or derrick has been used for any material handling operation in which greater than 50 percent of the rated capacity was lifted. This stresses that the crane or derrick must be in good condition and set up properly before any employees are hoisted.

Paragraph (5)(ii) would require a trial lift with the personnel platform unoccupied to ensure that all systems, controls, and safety devices are functioning properly. This trial lift must be made at the beginning of each shift and for each new work location. Work location refers to the location to which the platform is hoisted. When this location changes, the crane or derrick's configuration may change, i.e., the crane's superstructure may rotate or the boom angle may change, and the trial lift will ensure that critical components and safety devices are still functioning properly.

Paragraph (5)(iii) requires a test lift different than that described in the above paragraph. However, the two test lifts may be performed at the same time, if desired. A full-cycle operational test lift would require the operator to hoist an unoccupied personnel platform through the same maneuvers required for the actual lift. The unoccupied platform would be hoisted from the same location to the same working position and landed at the same place as the employees will be. The platform is to be loaded to 150 percent of the intended

load (that which will be on the platform during the work). This test lift is to be performed prior to hoisting employees at each new set-up location. Set-up refers to moving the crane to a different location, preparing the ground, setting the outriggers, etc.

OSHA has been informed during reviews of drafts of this rule that this operational test lift may not be necessary under all conditions. For example, if a crawler crane is operating on an area that is well compacted and has performed many lifts of material far in excess of the weight of the loaded personnel platform, an operator would naturally assume that the personnel lift could be safely made without an operational test. This would be especially true when the crane is operating on a surface of timbers or cribbing and the platform has been recently proof tested. OSHA seeks comment on the impact of paragraph (5)(iii) and recommendation of those circumstances or conditions under which this operational test lift should not be required.

Paragraph (iii)(A) requires an immediate visual inspection after the test lift to identify any adverse effects upon any component or structure of the crane, its outriggers and the supporting ground, as well as the platform.

Paragraph (iii)(B) would prohibit the crane or derrick from being used if the test resulted in defects which could present a safety hazard, such as instability or permanent deformation of any component.

Paragraph (6) contains the safe work practices to be followed when hoisting personnel platforms by the cranes and derricks listed in paragraph (g)(1)(i).

Paragraph (6)(i) would require employees to keep all parts of the body inside the platform except when working.

Paragraph (6)(ii) would ensure the stability of the platform prior to employees getting onto or off of the platform. The Agency solicits comment on the hazards of not securing the personnel platform and of any alternate methods of ensuring the personnel platform's stability.

Paragraph (6)(iii) would require tag lines to be used on the platform where their use is practical.

Paragraph (6)(iv) prohibits the crane from traveling while hoisting employees. OSHA must ensure the stability of cranes while employees are being hoisted. Paragraph (3)(i)(E) which requires firm, level footing and the use of outriggers, if so equipped, is another example of how OSHA is regulating the stability of the crane. However, OSHA has received comments that portal and tower cranes operating on a fixed track can travel and not increase the risk to suspended employees. The Agency solicits comments on the listed exceptions (See (A) Issue 9).

Paragraph (6)(v) would require the operator to remain at the controls at all times while hoisting personnel.

Paragraph (6)(vi) would require employee hoisting to cease upon indication of any dangerous weather conditions or other impending danger. The draft ANSI A10.28 (Ex. 15, p. 5) specifically lists high winds, electrical storms, snow, ice, sleet, or other adverse weather conditions. The ACCSH (Ex. 12, pp. 147–148) recommended the proposed wording to include dangers other than the weather. OSHA solicits comments on the types of occurrences which would be hazardous enough to require discontinuance of the employee hoisting operation.

Paragraph (6)(vii) would require a check of the listed items prior to hoisting employees. This work practice of a last minute check prior to employees occupying the platform may identify some problems that need to be corrected before beginning the operation.

Paragraph (6)(viii) would require the hoisted employees to remain in continuous sight of and communication with the operator or signal person. A signal person would only be required when the operator cannot see the hoisted employees. Communication would include means such as voice contact or hand signals. This rule is taken from OSHA's standards on Marine Terminals, July 5, 1983 (48 FR 30920).

Paragraph (ix) would require a body belt and lanyard for each employee on the platform. The point of attachment should be based on the determination of which method is most suitable for the particular operation. The 1974 ACCSH recommended the lanyard be attached to the platform (Ex. 4, pp. 239–244; Ex. 5, p. 224). However, the 1983 ACCSH members recommended allowing the occupants to choose to tie off either to the load block or headache ball, or to a proper location within the platform (Ex. 12, pp. 128, 138–143). All structural members within the platform are to be designed with a safety factor of five which should be more than sufficient for a lanyard attachment point.

Paragraph (x) prohibits the use of bridles and associated hardware for any other service. Material handling involves rough service which may damage the equipment, making it unsuitable for employee hoisting.

Paragraph (7) contains the requirements for the pre-lift meeting. Paragraph (7)(i) would require a pre-lift meeting of all associated employees to review the appropriate requirements of paragraph (g) and the operation.

Paragraph (7)(ii) would require such a meeting to be held prior to commencing any employee hoisting operations at a new work location and when a new employee joins the operation. A new work location, as discussed earlier, is considered to be the location to which the personnel platform is to be lifted.

OSHA considers such a review of this information critical to the proper conduct of such operations. The Agency solicits comment on these provisions, their impact on the industry, value to the operation and any specific recommendation for revision.

IV. Regulatory Impact Assessment, Regulatory Flexibility Certification, and Environmental Impact Assessment

SUMMARY OF EFFECTS

Affected Industries and Construction

The hoisting of personnel is performed throughout a broad range of four-digit Standard Industrial Classification Codes (SICs). OSHA has determined that the proposal could potentially affect all firms within SICs 1541, Industrial Buildings and Warehouses; 1542, Nonresidential, Not Elsewhere Classified; 1622, Bridge, Tunnel, and Elevated Highway Construction; 1623, Water, Sewer, Pipeline, Communication and Power Line Construction; 1629, Heavy Construction, Not Elsewhere Classified; 1791, Steel Erection, and 1795, Demolition. There were 39,897 firms in these SICs in 1977, and OSHA estimates that the number has decreased to about 35,000 firms in 1983. The reader should be advised that this number is an estimate of the number of firms that would need to be familiar with the proposed amendment rather than the considerably smaller number that would actually engage in hoisting personnel with cranes or derricks.

Feasibility, Benefits, and Costs

OSHA has determined that the proposal would be technologically feasible. The standard does not require any mechanical devices that are not presently available for use on cranes and derricks, although some cranes, especially those of older vintage, would require considerable modification in order to comply with the standard.

Benefits from the proposal would accure to those workers who are at risk from current personnel hoisting practices in the construction industry. Although JACA, OSHA's contractor, was unable to estimate the total number of workers who would benefit from the

proposal in view of the infrequency of such operations and the wide diversity of potential applications (which could require a multitude of worker skills rather than a single job category), JACA was able to estimate that one injury occurs every 6,650 lifts. It should be noted that the same workers are likely to be involved in a number of lifts but to an indeterminable extent. JACA also estimated that 10 fatalities, 7 injuries involving total disability, and 25 injuries involving temporary disability would occur each year as a result of the hoisting of personnel by cranes or derricks in the absence of more stringent OSHA regulation. JACA concluded that full compliance with the proposed standard would prevent all of these injuries. JACA also estimated that an additional 5 fatalities and 16 injuries would result from workers riding the load or rigging in the absence of more stringent regulation. JACA concluded that full compliance with the proposed standard would prevent all of these accidents.

OSHA does not endorse any particular estimate for the value of an employee's life. However, for illustrative purposes, OSHA used two methods to estimate the monetary value of the benefits that would result from implementation of the standard. The first method, known as the "human capital" approach, was to estimate directly the foregone earnings and medical costs associated with an occupational injury or death. Lost production and medical costs to society, however, are the minimum benefits resulting from the prevention of an occupational injury. The other method of estimating benefits was based on the willingness-to-pay concept. Willingness to pay is the theoretical amount that the beneficiaries of a program would be willing to pay in order to obtain the benefits of the program or, in an occupational safety context, what a group of workers would pay to reduce the probability of a death or injury. Willingness to pay is therefore a more accurate indicator of the true social benefits of preventing injuries to workers.

Using the "human capital" approach, the present value (using a 10-percent discount rate) of the benefits of the standard over the 1983–1987 period would amount to $54.84 million. The annual incremental benefits ranged from $13 million to $14 million on a current dollar basis over that period. On the basis of the willingness-to-pay concept, the present value of the benefits over the 1983–1987 period was estimated to range from $93.4 million to $152.5 million. The low estimate was based on the assumption that workers would be willing to pay $900,000 and $644,000 to avoid a death and total disability, respectively, whereas the high estimate was based on a willingness to pay of $1.61 million and $.97 million, respectively. A reasonable estimate of the present value of the expected benefits over the 1983–1987 period would be approximately $89 million, which is the midpoint of the range of estimates based on the two approaches.

OSHA estimates that the annualized costs of full compliance with the proposed standard would range from $5.5 million to $5.8 million per year (on a current dollar basis) over the 1983–1987 period. The present value (using a 10-percent discount rate) of the total compliance costs likely to be incurred by industry in implementing the standard over this period would amount to about $23.7 million. JACA concluded that such costs would not result in decreased competition within the construction industry and would be unlikely to force the closure of many firms. OSHA, therefore, finds the proposed standard to be economically feasible.

REGULATORY FLEXIBILITY CERTIFICATION AND ENVIRONMENTAL IMPACT ASSESSMENT

Regulatory Flexibility Certification

Pursuant to the Regulatory Flexibility Act of 1980 (Pub. L. 96–353, 94 Stat. 1164 (5 U.S.C. 60 et seq.)), OSHA has assessed the impact of the proposed standard and concludes that it would not significantly affect a substantial number of small entities. Any potential differential impacts of compliance costs on the profit margins of small firms would be mitigated by the highly fragmented nature of the market structure in the construction industry, which would tend to minimize the extent of direct competition between small and large firms. Data from the U.S. Small Business Administration indicate that small firms, defined as those with annual revenues of less than $10 million, account for about 98 percent of the total number of firms in the affected SICs.

OSHA estimated the economic impacts by firm size by examining the relationship between compliance costs (under both a low and high cost scenario) and annual contract revenues for three, size categories of model firms (annual revenues of $11 million, $50 million, and $250 million). The ratio of these costs to annual revenues was nearly proportional across all size categories under the low-cost scenario and increased slightly with size under the high cost scenario, indicating an absence of economies of scale. Assuming that firms would be forced to absorb all of their compliance costs, however, OSHA found that the percentage decline in the profit margins of small firms would be slightly greater than for larger firms. The actual extent of the decline was quite small, however, averaging about 2.5 percent a year for the small model firm compared to about 1 percent for the medium and large model firms. The significance of the differential impact on profit margins is further reduced by the likelihood that all firms in the industry should be able to pass on a substantial portion of their compliance costs. The demand for the projects built by construction firms most likely to rely on the hoisting of personnel by cranes or derricks would probably be quite inelastic, as no other lower or comparably priced substitutes for cranes appear to exist, regardless of firm size. This means that some construction firms and developers could not underbid on these projects because they would be unable to reduce operating costs merely by using equipment other than cranes to hoist personnel platforms or by redesigning structures to eliminate the use of cranes.

For these reasons, OSHA concludes that small entities would not be significantly affected by the proposal.

Environmental Impact Assessement

This proposal has been reviewed in accordance with the requirements of the National Environmental Policy Act (NEPA) of 1969 (42 U.S.C. 4231 et seq.), the Guidelines of the Council on Environmental Quality (CEQ) (40 CFR Part 1500), and OSHA's DOL NEPA Procedures (29 CFR Part 11). As a result of this review, the Assistant Secretary for OSHA has determined that the proposed revisions qualify as categorically excluded actions according to Subpart B, Section 11.10 of the DOL NEPA regulations and that the proposed rule would have no significant environmental impact outside of the workplace.

OSHA's proposal contains provisions for work practices and procedures to enhance worker safety and reduce safety hazards from the hoisting of personnel platforms by cranes and derricks. The provisions include design criteria for platforms and derricks, the inspection and testing of cranes and derricks, required test lifts, and worker training. Because the proposed revisions focus on the reduction of accident or injury by means of work practices and procedures, proper use and handling of

equipment, and training, they do not impact on air, water, or soil quality, plant or animal life, the use of land or aspects of the environment.

To the extent that the proposed safety procedures are in place and are integrated into daily construction operations, however, the potential for crane-related occupational accidents and injuries will be reduced and the safety of the workplace will be enhanced.

V. Public Participation

Interested persons are invited to submit written data, views and arguments with respect to this proposal. These comments must be postmarked by April 17, 1984 and submitted in quadruplicate to the Docket Officer, Docket S–370, U.S. Department of Labor, Occupational Safety and Health Administration, Room S–6212, 200 Constitution Avenue, NW., Washington, D.C. 20210.

The data, views and arguments that are submitted will be available for public inspection and copying at the above address. All timely submissions received will be made a part of the record of this proceeding.

Additionally, under Section 6(b)(3) of the OSH Act (29 U.S.C. 657), Section 107 of the Construction Safety Act (41 U.S.C. 333), and 29 CFR 1911.11, interested persons may file objections to the proposal and request an informal hearing. The objections and hearing requests should be submitted in quadruplicate to the Docket Officer at the address above and must comply with following conditions:

1. The objections must include the name, and address of the objector;
2. The objections must be postmarked by April 17, 1984;
3. The objections must specify with particularity the provisions of the proposed rule to which each objection is taken and must state the grounds therefore;
4. Each objection must be separately stated and numbered; and
5. The objections must be accompanied by a detailed summary of the evidence proposed to be adduced at the requested hearing.

VI. Recordkeeping

The proposed standard contains a "collection of information" (recordkeeping) requirement pertaining to the posting of the platform's weight and load capacity (§ 1926.550(g)(4)(ii)(G)). In accordance with 5 CFR Part 1320 (48 FR 13666, Controlling Paperwork Burdens on the Public), OSHA has submitted the proposed recordkeeping requirement to the Office of Management and Budget (OMB) for review under section 3504(h) of the Paperwork Reduction Act (44 U.S.C. 3501 et seq.). Comments regarding the proposed recordkeeping requirement may be directed to the Office of Information and Regulatory Affairs OMB, Attention: Desk Officer for the Occupational Safety and Health Administration, Washington, D.C. 20503.

VII. List of Subjects in 29 CFR Part 1926

Construction safety, Construction industry, Occupational safety and health; Protective equipment, Safety, tools.

VIII. State Plan Standards

The 24 States with their own OSHA-approved occupational safety and health plans must adopt a comparable standard within six months of the publication date of the final rule. These States are: Alaska, Arizona, California, Connecticut (for State and local government employees only), Hawaii, Indiana, Iowa, Kentucky, Maryland, Michigan, Minnestoa, Nevada, New Mexico, North Carolina, Oregon, Puerto Rico, South Carolina, Tennessee, Utah, Vermont, Virginia, Virgin Islands, Washington, Wyoming. Until such time as a State standard is promulgated, Federal OSHA will provide interim enforcement assistance, as appropriate, in these States.

IX. Authority

This document was prepared under the direction of Thorne G. Auchter, Assistant Secretary of Labor for Occupational Safety and Health, U.S. Department of Labor, Third Street and Constitution Avenue, NW., Washington, D.C. 20210.

Accordingly, pursuant to section 6(b) of the Occupational Safety and Health Act of 1970 (84 Stat. 1593; 29 U.S.C. 655), section 107 of the Construction Safety Act (83 Stat. 96, 40 U.S.C. 333), Secretary of Labor's Order No. 9–83 (48 FR 35736), and 29 CFR Part 1911, it is proposed to amend 29 CFR 1926.550 by adding a new paragraph (g) as set forth below.

Signed at Washington, D.C., this 14th day of February 1984.

Thorne G. Auchter,

Assistant Secretary of Labor.

PART 1926—[AMENDED]

29 CFR Part 1926 is proposed to be amended by adding a new paragraph (g) to § 1926.550 to read as follows:

§ 1926.550 Crane and derricks.

* * * * *

(g) *Crane or derrick suspended personnel platforms.*

(1) *Scope and application.* This standard applies to the hoisting of personnel platforms on the load line of friction or hydraulic portal, tower, crawler, locomotive, truck, and wheel mounted cranes or derricks. No crane or derrick function shall be performed while an employee is on a personnel platform attached to a load line on such equipment unless the requirements of this paragraph are met. The practice of hoisting employees on such equipment is permitted only under specific circumstances, as specified in paragraph (g)(2).

Note.—For the purposes of this paragraph (g), "hoisting" means lowering, lifting or suspending.

(2) *General requirement.* The use of a friction or hydraulic portal, tower, crawler, locomotive, truck or wheel mounted crane or derrick to hoist personnel platforms shall be permitted when their use is as safe as the erection, use, or dismantling of conventional means of reaching the worksite, such as ladders, stairways, aerial lifts, elevating work platforms or scaffolds, or when those means are either more hazardous, or are not possible because of structural design or worksite conditions.

(3) *Crane and derrick.* (i) *Operational criteria.* The following general provisions apply when cranes of derricks are used to hoist employees.

(A) Lifting and lowering speeds shall not exceed 100 feet (30.48 m) per minute.

(B) The minimum load hoist wire rope safety factor shall be seven.

(C) Load and boom hoist drum brakes, swing brakes, and locking devices such as pawls or dogs, as equipped, shall be engaged when the occupied personnel platform is in a stationary working position.

(D) The load line hoist drum shall have controlled load lowering. Free fall is prohibited.

Note.—Controlled load lowering means a system or device on the power train, other than the load hoist brake, which can reguate the lowering rate of speed of the hoist mechanism.

(E) The crane shall be uniformly level within one percent of level grade and located on firm footing. Crane outriggers, if provided, shall be used according to manufactirers' specifications when hoisting employees.

(F) The total weight of the loaded personnel platform and related rigging shall not exceed 50 percent of the rated capacity for the radius and configuration of the crane or derrick.

(G) The use of machines having live booms is prohibited.

Note.—Live boom means a boom in which lowering is controlled by brake without aid from other lowering retarding devices.

(ii) *Instruments and components.* Cranes or derricks used to hoist

employees shall be equipped as follows:

(A) A boom angle indicator shall be installed on cranes, readily visible to the operator.

(B) Telescoping booms shall be marked or equipped with a device to clearly indicate at all times the boom's extended length to the operator.

(C) An anti-two-blocking device or two-block damage prevention feature shall be installed.

Note.—Anti-two-blocking device means a positive acting device which prevents contact between the load block or fall ball and the boom tip. Two-block damage prevention feature means a system which deactivates the hoisting action before damage occurs in the event of a two-block situation.

(4) *Personnel Platform.* (i) *Design criteria.* (A) The personnel platform shall be designed by a qualified engineer competent in structural design.

(B) The suspension system shall be designed to minimize tipping of the platform due to movement of employees occupying the platform.

(C) The entire personnel platform shall be designed with a minimum safety factor of five.

(D) Six feet (1.8 m) minimum headroom shall be provided for employees occupying the platform.

(ii) *Platform specifications.* (A) Each personnel platform shall be provided with perimeter protection from the floor to 42 inches (106.7 cm), ± 3 inches 7.62 cm) above the floor, which shall consist of either solid construction or expanded metal having openings no greater than ½ inch (1.27 cm).

(B) A grab rail shall be provided inside the personnel platform.

(C) An access gate, if provided, shall swing inward and shall be equipped with restraining device to prevent accidental opening.

(D) Overhead protection shall be provided on the personnel platform when employees are exposed to falling objects.

(E) All rough edges exposed to contact by employees occupying the platform shall be ground smooth.

(F) All welding shall be performed by a welder qualified for the weld grades, types and material specified in the design.

(G) The personnel platform shall be conspicuously posted with a plate or other permanent marking indicating the personnel platform weight and the rated load capacity of the personnel platform.

(H) Personnel platforms shall be easily identifiable by color or marking.

(iii) *Personnel platform loading.* (A) The rated load capacity of the personnel platform shall not be exceeded.

(B) The number of employees occupying the personnel platform shall not exceed the number required for the work being performed.

(C) Personnel platforms shall be used only for employees, their tools, and sufficient materials to do their work.

(D) Materials on an occupied personnel platform shall be secured and evenly distributed while the platform is in motion.

(iv) *Rigging.* (A) When a wire rope bridle is used to connect the personnel platform to the load line, the bridle legs shall be connected to a single ring or shackle.

(B) Hooks on fall ball assemblies, lower load blocks, or other attachment assemblies shall be of a type that can be closed and locked, eliminating the hook throat opening. Alternatively, a shackle with a screw pin, nut and retaining pin may be used.

(C) Wire rope, shackles, rings, and other rigging hardware shall have a minimum safety factor of seven.

(D) All eyes in wire rope slings shall be fabricated with thimbles.

(5) *Inspection and testing.* (i) In addition to the inspections required by paragraphs (a)(5), (a)(6), (b)(2), and (e) of this section, cranes and derricks which are used to hoist personnel platforms shall be inspected by a competent person, as defined in § 1926.32(f), at the beginning of each shift and prior to hoisting employees on the personnel platform after the crane or derrick has been used for any material handling operations in which greater than 50 percent of the rated capacity was lifted.

(ii) A trial lift with the personnel platform unoccupied shall be made for each new work location and at the beginning of each shift to ensure that all systems, controls and safety devices are functioning properly.

Note.—Work location means the location to which the personnel platform is positioned.

(iii) A full-cycle operational test lift at 150 percent of the intended load of the personnel platform shall be made prior to hoisting of employees for the first time at each new set-up location.

Note.—Set-up location means the location to which the crane or derrick is brought and set-up including assembly and leveling.

(A) A visual inspection of the crane or derrick, personnel platform, and base support shall be conducted immediately after lift testing in order to determine whether the testing has produced any adverse effect upon any component or structure.

(B) Any defects found during such inspections which may create a safety hazard shall be corrected before further use.

(6) *Safe work practices.* (i) Employees shall keep all parts of their body inside the platform during raising, lowering, and positioning.

(ii) If the personnel platform is not landed, it shall be secured to the structure before employees exit or enter the platform.

(iii) Tag lines shall be used where practical.

(iv) Hoisting of employees while the crane is traveling is prohibited, except for portal and tower cranes operating on a fixed track.

(v) The crane or derrick operator shall remain at the controls at all times when hoisting employees.

(vi) Hoisting of employees shall be discontinued upon indication of any dangerous weather conditions or other impending danger.

(vii) The platform shall be hoisted a few inches and inspected to assure that it is secure and properly balanced before employees are allowed to occupy the platform. Employees shall not be hoisted unless the following conditions are determined to exist:

(A) Hoist ropes shall be free of kinks;

(B) Multiple part lines shall not be twisted around each other;

(C) The primary attachment shall be centered over the platform and;

(D) If the wire rope is slack, the hoisting system shall be inspected to assure all ropes are properly seated on drums and in sheaves.

(viii) Employees being hoisted shall remain in continuous sight of and communication with the operator or signal person.

(ix) Employees occupying the personnel platform shall wear a body belt with lanyard appropriately attached to the load block or fall ball, or to a structural member within the personnel platform capable of supporting a fall impact for employees using the anchorage.

(x) Bridles and associated hardware used for attaching the personnel platform to the hoist line shall not be used for any other service.

(7) *Pre-lift meeting.* (i) A meeting attended by the crane or derick operator, signal person(s) (if required), person(s) to be lifted, and the person responsible for the task to be performed shall be held to review the appropriate requirements of this paragraph (g) and the procedures to be followed.

(ii) This meeting shall be held prior to the beginning of personnel hoisting operations at each new work location and thereafter for any employees newly assigned to the operation.

(Sec. 6, 84 Stat. 1593 (29 U.S.C. 655); Sec. 107, 83 Stat. 96 (40 U.S.C. 333); Secretary of Labor's Order No. 9–83 (48 FR 35736); 29 CFR Part 1911)

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Part VII

Department of Agriculture

Food and Nutrition Service

7 CFR Parts 271, 272, 273, 275, and 277
Food Stamp Program; Quality Control Reviews; Final Rule

DEPARTMENT OF AGRICULTURE

Food and Nutrition Service

7 CFR Parts 271, 272, 273, 275, and 277

[Amdt. No. 260]

Food Stamp Program, Quality Control Reviews

AGENCY: Food and Nutrition Service, USDA.

ACTION: Final rule.

SUMMARY: This rulemaking combines and finalizes two recent rules about the Quality Control (QC) system—an interim rule entitled "Error Rate Reduction System" (48 FR 23797 published on May 27, 1983) and a proposed rule entitled "Technical Amendments to the Quality Control Review Process" (48 FR 34650 published on July 29, 1983).

The provisions from the interim rule implement several changes required by the Food Stamp Act Amendments of 1982. These provisions allow the Department to increase the percentage of administrative funding provided to a State that has a relatively low rate of error or reduce the percentage of administrative funding provided to a State with an excessive error rate. The goal is to encourage State agencies to commit themselves to an improved administration of the program that will result in progressively lower error rates.

The provisions from the proposed rule implement various technical changes in the QC review process. State agencies administering the Food Stamp Program are required to conduct QC reviews as a part of the Performance Reporting System under the Food Stamp Act of 1977. These technical changes are based on the Department's experience in administering the QC system. These changes will improve the accuracy of error rate determinations, reduce workloads and costs, simplify the QC system, and increase the compatibility of Food Stamp-QC with the Aid to Families with Dependent Children (AFDC)-QC and Medicaid-QC.

This action also amends Food Stamp Program regulations to correct an error contained in the definition of State.

EFFECTIVE DATES: The provisions of the interim rule were effective on May 27, 1983. However, the statutory changes it embodies were effective October 1, 1982, except that such changes affecting negative case provisions for 55 percent enhanced funding (contained in 7 CFR 277.4(b)(7)) apply from October 1, 1981, through September 30, 1982.

The provisions in this regulation which were in the proposed rule are effective October 1, 1983, except as specified in section 272.1(g)(68) of the regulations.

FOR FURTHER INFORMATION CONTACT: Keith Spinner, Supervisor, State Agency Management and Control Section, Program Design and Rulemaking Branch, Program Planning, Development and Support Division, Family Nutrition Programs, Food and Nutrition Service, USDA, Alexandria, Virginia 22302; 703–756–3431.

SUPPLEMENTARY INFORMATION:

Classification

Justification for Establishing Effective Date. Robert E. Leard, Administrator of the Food and Nutrition Service, pursuant to 5 U.S.C. 553, has determined that good cause exists for making this rule effective less than 30 days after publication. That good cause is the need for certain provisions of this rule to be in place throughout the quality control review period, October 1983 through September 1984. As discussed in the later paragraphs of this preamble concerning implementation, the actual implementation of those provisions should require minimal efforts from State agencies and benefit them by helping them complete cases. As also discussed in those paragraphs, certain provisions can be implemented in January and April 1984 so that State agencies have sufficient time to make those procedural changes.

Executive Order 12291. This final rule has been reviewed under Executive Order 12291 and Secretary's Memorandum No. 1512–1 and has been classified "not major." The rule will not have an annual effect on the economy of $100 million or more, nor is it likely to result in a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions. Because this rule will not affect the business community, it will not result in significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

Regulatory Flexibility Act. This rule has also been reviewed with regard to the requirements of Pub. L. 96–354, and Robert E. Leard, Administrator of the Food and Nutrition Service, has certified that it will not have a significant economic impact on a substantial number of small entities. Part of this rule changes Federal regulations to incorporate the provisions of Pub. L. 97–253, the Food Stamp Act Amendments of 1982, designed to encourage State agencies to reduce errors made in the certification of households and reduce the resulting dollar losses. The other part of the rule implements various technical changes aimed at improving the QC review process. State and local welfare agencies will be affected since they administer the program and may be liable, through a reduction in Federal administrative funding, if error rates are not reduced, or may receive additional funding if their error rates are very low. State and local agencies should also experience a reduction in workloads and costs associated with a more simplified QC system. Individuals participating in the program will be affected should the increased accuracy of error rates result in the identification of an underissuance or overissuance in their benefits which would be subsequently corrected.

Paperwork Reduction Act. Information collection requirements contained in this regulation have been approved by the Office of Management and Budget (OMB) under the provisions of the Paperwork Reduction Act of 1980 (Pub. L. 96–511) and have been assigned OMB control numbers as follows: 7 CFR 275, Control Number 0584–0303; and 7 CFR 275.14(c) and 275.21, Control numbers 0584–0074 and –0299.

Background

On May 27, 1983, the Department issued an interim rulemaking at 48 FR 23797, which implemented several changes to the Food Stamp Error Rate Reduction Program. Another rule was published on July 29, 1983, at 48 FR 34650 which proposed various technical changes to be made in the QC review process. A full explanation of the rationale and purpose of both rules was provided in the preamble of each rulemaking. Therefore this preamble deals only with significant issues raised by the commenters and the changes made as a result of these comments. A thorough understanding of the basis for the final rules may require reference to the interim and proposed rules.

The Department received a total of 22 comment letters on the interim rules entitled the "Error Rate Reduction System." There were 16 comment letters from State agencies, one from a local agency, two from public interest groups, and three from Food and Nutrition Service (FNS) Regional Offices.

A total of 57 commenters sent in suggestions and comments on the proposed rules entitled "Technical Amendments to the Quality Control Review Process." There were 45 comment letters from State agencies,

one from a local agency, two from State administrative associations, two from public interest groups, six from FNS Regional Offices, and one from the Department of Health and Human Services.

Error Rate Reduction System

General

Several commenters supported the Error Rate Reduction System as a means of reducing erroneous benefits. Many commenters objected to it being used primarily as the basis for establishing liabilities and asserted that it would reduce State agency resources which would otherwise be available to reduce errors. Commenters also objected to the annual error rate goals as arbitrary, and unfair because they did not take account of differences among State situations, and as unreasonable because of the increasingly large costs for reducing each additional percentage of error rate. These objections relate to legislatively imposed requirements and so the pertinent parts of the final rule remain unchanged.

Liabilities

The interim rule changed the definition of payment error rate to measure only dollars issued to ineligible cases and dollars overissued to eligible cases. Dollars underissued were excluded. Commenters on this provision supported it. Some State agencies further stated that client-caused errors should be excluded from error rate liabilities because including them penalizes State agencies for something over what they have little control. One State agency said that technical errors such as refusal or failure to comply with the work registration or job search requirements or refusal or failure to provide a social security number should not be included in the payment error rates since they do not result in an actual overpayment. There is no legislative support for excluding these types of errors, and the Department believes that they should continue to be included since they involve basic program requirements. The final rule is unchanged in this area. (See 7 CFR 271.2.)

Interim regulations retained the "good cause" provisions of the current regulations except for the "good faith effort." Several commenters objected to removal of this provision, which allows for liabilities to be waived when the State agency is showing good faith efforts to reduce its payment error rate. As discussed in the preamble to the interim rule, beginning in Fiscal Year 1983, Congress intended for the 33.3 and 66.7 percent reduction provisions to replace the "good faith effort." The final rule therefore remains unchanged. (See 7 CFR 275.25(d).)

Enhanced Funding

The interim rule also modified the provisions dealing with financial incentives for State agencies with low errors. It provided that, beginning with the Fiscal Year 1983 review period, a State agency's Federal share of administrative funding will be increased to 60 percent if the sum of its payment error rate and its rate of underissuance to eligible households is less than five percent, provided that its rate of invalid decisions in denying and terminating eligibility is less than the national weighted mean rate. Some commenters did not support using a national weighted mean negative error rate for determining a State's eligibility for enhanced funding. They wanted a quantified target to be set in advance. Therefore the Department has changed the final rule to say that in order to be eligible for enhanced funding, a State agency's negative case error rate must be less than the national weighted mean negative case error rate for the prior fiscal year. Thus, the goal will be known in advance and yet is related to standards met by many State agencies.

Two State agencies commented that enhanced funding should be granted to State agencies with error rates of five percent or less on errors on overpayment and ineligibles only instead of also adding in rates for underissuance to eligible households and for invalid decisions in denying or terminating eligibility. They stated that the process for restoration of lost benefits and Management Evaluation (ME) review should be sufficient to ensure program integrity in areas of underissuances. Another State agency commented that enhanced administrative funds should be granted to State agencies that increase overpayment collections. State agencies already have an incentive for overpayment collections because the regulations allow them to retain 25 percent of the value of inadvertant household error claims collected and 50 percent of the value of intentional program violation claims collected. No changes in this area are being made in the final rule because the law is very specific about the conditions under which enhanced funding may be granted. (See 7 CFR 275.25(c).)

Technical Modifications to the Interim Rule

The 1982 Amendments changed the basis for determining the amount of sanctions from food stamp issuance to administrative funding. This eliminated the potential for dual liability for payment error rates and also for negligence or fraud on the part of the State agency in the certification of applicant households. Therefore, the interim rule deleted § 275.25(d)(4)(iii) which dealt with the relationship between the QC sanction system and the negligence portion of the regulations. None of the commenters were opposed to this action.

The interim rule also added a provision that will ensure a State agency does not lose allowable administrative funding for noncompliance with a specific program requirement and for the effect of the noncompliance on the error rate. While FNS may continue to suspend and/or disallow Federal administrative funds if a State agency's administration of the program is ineffective or inefficient, the actual amount of funds withdrawn from the State agency will be adjusted if the specific reason for the disallowance contributes to the State agency's payment error rate, and the State agency is held liable for an excessive payment error rate during a given fiscal year. (Refer to the preamble of the interim rule for an example of this provision.) Two commenters agreed with this section, and no change is being made in the final rule. (See 7 CFR 275.25(d)(4)(ii).)

In connection with the change to error rate goals for each fiscal year, the interim rule changed the definition of QC review period from two semiannual periods to the one 12-month period from October 1 of each calendar year through September 30 of the following year. The definition also provided that the annual review period was made up of two 6-month reporting periods. The proposed rule provided for an annual report for the entire annual review period. This rule makes that requirement final and revises the definition accordingly. (See 7 CFR 271.2.)

The remainder of this preamble deals with issues raised in the proposed rule.

Technical Amendments to the Quality Control Review Process

Definitions

Active case. Current rules define an active case as a household which was certified for and received food coupons during the sample month. As discussed in the preamble to the proposed rule, some State agencies have had problems with this definition. The Department proposed to revise the definition to mean a "household which was certified

prior to or during the sample month and issued food stamp benefits for the sample month."

Seventeen comments were received on the proposed redefinition and the majority of them supported it. Several commenters indicated the need for further clarification of the revised definition, particularly as it relates to the treatment of households whose benefits for the sample month are not issued until the month subsequent to the sample month. These households are considered active cases so long as they are certified prior to or during the sample month. (See 7 CFR 275.2.)

Negative case. Sixteen out of twenty commenters voiced support for the Department's proposal to revise the definition of a negative case to mean a household which was denied certification or whose food stamps were terminated effective for the sample month. Two commenters questioned whether there has to be an actual interruption in the household's benefits in order for it to be considered terminated in the sample month. The focus of the review of negative cases is the determination of the correctness of the State agency's decision to deny or terminate the household. Whether in the case of terminations an actual interruption of benefits occurs is not a factor. So, households receiving continued benefits pending a fair hearing could appear as a negative case. The final rule is the same as the proposed. (See 7 CFR 271.2.)

Cumulative allotment error rate. The Department proposed to eliminate the definition of a cumulative allotment error rate from the regulations in order to bring the current rules in line with the 1982 Amendments related to the Error Rate Reduction System. This proposal received unanimous support from commenters. Therefore the definition of a cumulative allotment error rate has been deleted from section 271.2.

Administrative deficiencies. The Department received overwhelming support for the proposal to eliminate the concept of administrative deficiencies from the QC review system. Most commenters indicated support because this change would reduce the burden of identifying and reporting deficiencies which do not contribute to errors. The elimination of this reporting burden would allow State agencies to focus their resources on correcting errors which result in actual program losses. Several State agencies supported the proposal because it allowed them the flexibility to collect this information if they chose.

Out of 27 commenters on this proposal only two were totally opposed. The opposing commenters believed that the QC system provides the only avenue for timely identification of patterns of deficiencies which would warrant corrective action in order to safeguard and prevent future errors and/or program losses. These commenters felt that ME reviews are not done frequently enough to provide for a continual flow of information on administrative deficiencies and therefore are not sufficient for monitoring program compliance. The Department believes that the structure of the ME system of reviews is adequate for identifying, reporting and developing Statewide corrective actions on these nondollar loss related errors. The final and proposed rules are the same with respect to eliminating the requirement for identifying and reporting administrative deficiencies. Some clarifying material is included, however, as discussed in the paragraph below concerning variance identification.

Quality Control Reviews

Scope and purpose. The proposed rule made several changes in the regulatory provisions concerning scope and purpose of quality control reviews.

Nearly all twenty-five commenters objected to the proposal that cases be reviewed against the Food Stamp Act and regulations, taking into account any waivers, and that State agency manual materials no longer be used for that purpose. There were several points of misunderstanding about this proposal.

Because the Department no longer has authority to require approval of State agency manuals prior to their use, the proposed rule eliminated the requirement for their use in the quality control review process. Commenters believed that the regulations did not allow reviewers to use State agency manuals and related policy guidance but limited them to the Food Stamp Act and regulations. The commenters noted that this would put an added burden on reviewers and cause conflicts between them and State agency program staff, and between State and Federal reviewers. While the Department no longer has the authority to require approval of manuals prior to their use, the rule does not prohibit their use for quality control review purposes. As stated in the preamble to the proposed rule, the Department expects that most State agencies will use their manuals as the basis for quality control reviews.

Since the Department is no longer approving manuals, commenters pointed out that Federal quality control reviewers would be finding errors in manuals before State agencies were otherwise notified of them and these errors would affect the regressed error rate. Commenters objected to this use of quality control reviews and requested that FNS approval be reinstated or that State agencies be given time to correct manuals before an error is counted. Since the prohibition against FNS approval of manuals is in the statute, the Department cannot reinstate that approval. If State agencies were not liable for certification errors resulting from manual materials from the date those materials were in effect, presumably the date of implementation of the pertinent regulations, State agencies would have less of an incentive to implement regulations on time and in conformance with the regulations. For these reasons the final rule is the same as the proposed in these respects.

Other proposed changes were made to conform with the shift to payment error rate from cumulative allotment error rate and to restate, in part, the objectives of quality control reviews. One commenter contended that the quality control system is inadequate as a basis for sanctions as they are currently structured. The Department believes the current system is an adequate basis for determining sanctions and that the modifications provided by this rule will improve the system as discussed in various parts of this preamble.

Another commenter suggested that one of the stated objectives of the system be the determination of entitlement to enhanced funding. That has been added. The final rule also contains a restatement of the purpose of negative case reviews which are inadvertently not included in the proposed rule. (See 7 CFR 275.10 (a) and (b).)

Sampling plan. The Department proposed to correct a technical inconsistency in the regulation concerning prior approval of State quality control sampling plans by requiring State agencies to submit such plans as part of the State Plan of Operation along with other planning documents (i.e., the Disaster Plan (currently reserved) and the optional Nutrition Education Plan). The sampling plan serves as the foundation for FNS review of the integrity of the State agency's quality control sampling procedures. Prior FNS approval of sampling plans is in the best interest of the State agency because it protects the State agency from having its review findings disregarded and its error rates being assigned by FNS because of deficiencies in sampling procedures that are discovered too late for correction.

All commenters appeared to accept the concept of prior approval of sampling plans. Four commenters expressed a definite desire for FNS approval of their sampling plans prior to implementation. Prior approval was viewed by these commenters as being in the best interest of both State agencies and FNS. Most of the other comments on the sampling plan provisions focused on two general issues. These were the inclusion of sampling plans in the State Plan of Operation and the timeframes for submitting plans for prior FNS approval.

Two State agencies strongly objected to submitting the Sampling Plan as a part of their Plan of Operation. One of these indicated that all changes to its State Plan of Operation had to go through its Governor's Office, and this was a burdensome and time consuming process. Both commenters indicated that this requirement would likely have a negative impact on their ability to make timely changes to their sampling plans. The Department does not view this requirement as being unnecessarily burdensome or time consuming. With the exception of the Federal/State agreement, FNS does not require a Governor's approval on any part of the State Plan of Operation. We believe that approval of the sampling plan by the head of the agency administering the Food Stamp Program is sufficient for our purposes and that this will not result in delays to the submittal and approval process. The final rule therefore retains the requirement that the State agency Quality Control Sampling Plans be submitted to FNS for approval as a planning document under the State Plan of Operation. It also specifies that the Sampling Plan must be signed by the head of the State agency.

Several commenters were concerned with the proposed 60 day timeframe for the submittal of Sampling Plans. Two States suggested that the Department retain the current requirement that the sampling plan be submitted 30 days prior to implementation. Another State felt that 60 days for submittal is reasonable under normal circumstances, but that some consideration should be given to shortening this timeframe to 30 days under certain emergency situations. One FNS Regional Office suggested that FNS should require State agencies implementing integrated sampling designs for the first time to submit their plans at least 90 days prior to implementation. As stated in the preamble to the proposed regulation, the Department made this proposal primarily to allow FNS sufficient time to review and approve integrated sampling plan submittals. These plans involve considerable coordination at the National Office level between FNS, the Social Security Administration (SSA), and the Health Care Financing Administration (HCFA), as well as extensive communications between the National and Regional Offices of FNS and State agencies. The final regulation provides that the 60 day timeframe applies to the initial submissions of and major revisions to sampling plans, and when sampling plans are being changed as a result of a general change in procedures. An example of this would be the changes in sample frames which this rule requires be effective by October 1984. The final rule also provides for a 30 day timeframe for submittal of minor changes in previously approved sample plans.

Several States and Regional Offices were also concerned with the timeframes for approval of sampling plans for the review period beginning October 1, 1983. To avoid placing undue burden on State agencies, the Department will consider the quality control sampling plan in effect for each State agency as of October 1, 1983, as submitted and approved, provided that the State agency has already obtained prior FNS approval of its sampling plan. Subsequent changes must be submitted for approval as a part of the State Plan of Operation in accordance with the timeframes specified in this rule. (See 7 CFR 272.2 and 275.11(a).)

Sample size. The proposed regulation provided for the implementation of an annual sampling period, a reduction in the minimum sample size requirements, and a requirement that State agencies agree to accept the level of reliability of the error rates resulting from the sample sizes which they select. A total of 24 commenters including State agencies, FNS Regional Offices, public interest groups, and other Federal agencies responded to these proposals.

Thirteen comments were received on the language to allow reductions in the minimum sample sizes. Commenters were about evenly split in voicing opposition and support. Three commenters opposed a reduction in sample sizes because they perceived that smaller samples could interfere with the use of QC data for corrective action purposes. Other commenters were concerned with the adequacy of the sample sizes for yielding reliable error rates for sanction purposes. Although the Department believes that the sample sizes proposed were adequate, it is retaining the current sizes to remove any question about reliability. For example, State agencies currently required to sample at least 1,200 cases in a semiannual period will be required to sample 2,400 cases in annual period. The Department believes that each State agency shares in the responsibility for operating the QC system in an efficient and effective manner and therefore should be allowed the flexibility to manage the system in the manner most suited to its own particular needs and concerns. Consequently, the final rule provides State agencies the option of reducing their sample sizes, subject to the considerations discussed in the following paragraphs.

State agencies expressed strong opposition to the proposal that State agencies must agree not to challenge the reliability of their error rates based on the sample sizes they have chosen. Several commenters questioned the need for this requirement if, as stated in the preamble to the proposed regulation, the Department is satisfied with the reliability of the estimates that would have resulted from the new minimum levels. As stated in the proposed rule, the Department intends that in selecting their sample sizes State agencies consider what degree of reliability they need. The reliability statement was proposed as a means of assuring that State agencies consider the matter of reliability of error rates when they chose their active sample size. Therefore, State agencies exercising the option in the final rule to reduce the sample size for active cases must submit as part of their sampling plan a statement that they will not challenge the error rates based on their sample size. This required statement also applies to sample sizes computed on the basis of the provisions relating to unanticipated changes in caseloads. In no event may States opt to reduce their sample sizes below those stated in the proposed rule; for example a State required by these regulations to sample 2,400 active cases may, subject to providing the statement agreeing not to challenge its error rate based on its sample size, reduce its sample size to 1,200 cases, but may not sample any fewer cases. Any State agency which is currently reviewing on the basis of the proposed reduced sample sizes but which has not provided FNS a statement agreeing not to challenge the error rates based on sample size must provide the statement to the appropriate FNS Regional Office within 30 days of publication of this rule. Otherwise, no later than the second month after publication of this rule, the State agency must revert to the appropriate higher sample size.

Neither currently nor in the proposed rule is there a requirement for a routine,

periodic submission of changes to a State agency sampling plan. State agencies modify their sampling plans from time to time for such reasons as State agency procedural changes, changes in participation and sample sizes, and changes in Federal regulations. As a matter of practice, State agencies have been reviewing their sampling plans prior to each semiannual review period and providing changes to FNS for approval. The proposed rule did contain an explicit requirement that the sampling plan specify the sample sizes which a State agency chooses. No comments were received on this provision, and the final rule retains it. The final rule also adds the requirement that State agencies explain the basis for their sample size. For the most part this would be the demonstration of the calcuation of the sample size. The Department believes that this is necessary because of the flexibility in the choice of sample sizes which these rules provide to State agencies. For this same reason and because of the provisions in the final rule described in the preceding paragraphs, the final rule requires that prior to each annual review period, State agencies must provide changes in their sampling plan for FNS approval according to the timeframes discussed in this preamble in the section immediately above. So, major changes would have to be submitted 60 days before the beginning of the annual review period (October 1) of each year; minor changes, 30 days before. State agencies choosing to reduce their sample sizes must annually renew their reliability certification.

Only one commenter, a public interest group, objected to the reduction in the minimum size of negative case samples. This was on the grounds that the reduction was proportionately more than for active cases and was not justified by the historically low negative error rates. The Department believes the key reason for the proposed reductions in the negative sample size was as stated in the preamble to the proposed rule, the change in focus of the negative reviews to the correctness of the decision to deny or terminate. For this reason and because negative case review findings are not used to determine State agency liability for payment errors (also stated in the preamble to the proposed rule), the final rule pertaining to minimum negative case samples sizes is the same as the proposed rule.

The proposal to shift the basis of the determination of a State agency's sample size from a semiannual to an annual period brought mixed reactions. Four commenters supported the change and four others objected. Two States indicated that implementation of annual sampling in Food Stamp-QC without a similar change in AFDC–QC would result in disruptions to the integrated sampling process. Other commenters thought that annual sampling would hamper their error analysis activities or reduce the reliability of their error rates. Commenters incorrectly concluded that, in conjunction with annual sampling, the Department was requiring that all State agencies use the minimum sample sizes. This is not the case. In selecting their sample sizes, State agencies should consider their needs relative to error analysis and reliability. State agencies should also take account of the monthly disposition standards and the continuous flow of information which it will provide. The Department expects that State agencies which have integrated sampling plans but want to reduce their sample sizes can do so to some extent. This would be accomplished by submission of a change to the sampling plan. (See 7 CFR 272.2, and 275.11 (a) and (b).)

Sample selection. The proposed regulation would have required that State agencies select for review a twelfth of their annual sample each month during the annual sample period. The Department believed that this and the case disposition standards would ensure an even distribution and timely completion of quality control cases during the review period. The Department further proposed to use these requirements in place of the current requirement that State agencies must select their monthly sample no later than the 20th day of the month following the sample month. A majority of the commenters objected to the proposal to select a twelfth of the sample each month for several reasons. Some State agencies said that they would have to use a different sampling interval each month and develop complex procedures for weighting their sample results. Others indicated that this would require an accurate accounting of their caseload and therefore delay sample selection until the month after the sample month. Several States anticipated negative impacts on their integrated sampling designs.

The Department intended the one-twelfth figure as a guide to ensure that State agencies sample each month a number of cases consistent with completion of required sample sizes. To clarify this, the final rule provides for completion of approximately one-twelfth of the sample each month. This should allow for the normal month to month differences resulting from such factors as variations in participation. In addition, the final rule provides that if, for such reasons as sampling techniques, the proportion of cases selected from month to month will not be approximately one-twelfth of the sample, then in its sampling plan the State agency will specify what number of cases will be selected each month.

Required sample size. Currently in order to assure that they select a sufficient number of cases which are subject to review, State agencies pull a larger sample than the size actually required. They then can avoid having their error rate adjusted for failure to complete the required sample size. In the process of this overpull, usually a number of cases which are subject to review are also selected. Current rules (at 7 CFR 275.11(f)) provide that these cases must be included in the required sample size. The purpose of this is to prevent potential bias. This could result from not reporting the results of a number of cases subject to review equal to the number in excess of the selected sample size.

The proposed rule did not include a comparable provision. Two State agencies raised questions about what the rules meant by "minimum required sample." To clarify this matter, the final rule contains a provision that a State agency's required sample size is the larger of either the number of cases selected which are subject to review or the number chosen for selection and review in the sampling plan. (See 7 CFR 275.11(d).)

Active case frame. The Department proposed several modifications to the active case sample frame and universe in order to facilitate the compilation of accurate sample frames in a timely manner with a minimum of administrative burden. Under the proposed rule both the active case frame and universe would exclude those households certified for benefits after the end of the sample month. The rule further clarifies that a household which participates during the review period is one which is issued benefits for the sample month. A corresponding change clarifies the required contents of supplemental lists which may be needed to ensure that the sample frame includes all cases in the universe.

The Department received eight comments on the changes to the active case sample frame and universe. Most commenters recommended changes to the current list of households which are classified as not subject to the review.

One commenter recommended that the list include households whose entire allotment is recovered for repayment of an overissuance claim, because it would require them to use a supplemental list from which cases would have to be selected manually. The commenter indicated that the number of these cases would be small and therefore not worth the time and expense of the added sampling procedure. The Department agrees that the number of such households will be small but believes that such cases should be sampled as any other active case to determine the accuracy of the State agency's actions. (See 7 CFR 275.11(e)(1).)

Negative case frame. As discussed above under the paragraphs concerning definitions, the Department proposed to change the definition of negative cases. As a result the universe for negative cases would be all households whose application for food stamps was denied or whose certification was terminated effective for the sample month, with the exception of certain cases which are not usually amenable to quality control review.

Six commenters responded to this provision. Although some commenters requested clarification on specific questions, there was no opposition to the proposed change in focus. One commenter questioned whether a negative action is subject to review if the review date falls outside of the annual review period, for example, if the decision to terminate a case is made on September 19, but the action is effective in October. If September is the sample month, since the action was not effective in the sample month, the action would not be subject to review and not a part of the negative case universe. If October is the sample month, since the action is effective in the sample month, it is subject to review for October (in the new annual review period). Its review date is September 19. (See 7 CFR 275.11(e)(2).)

Review of Active Cases

Household case record review. The proposed rule removed the requirement that when a case record cannot be located the review must be terminated and reported as not complete. Instead of terminating the review, the reviewer would use the household issuance record to identify as many pertinent facts as possible and to plan the field investigation.

Seven State agencies and two Regional Offices commented on this proposal. The primary concern was that without the case record reviewers would be unable to complete reviews or would have to devote an inordinate amount of time to such reviews. Several commenters believed that the Department expected the reviewer to reconstruct the case record and to determine the variances involved, such as those resulting from the original certification action and from failure to report. The Department is not requiring this level of review. It is requiring, at a minimum, only a review to determine household eligibility and the correctness of the allotment for the sample month. What few variances may be identified during the field review should be appropriately coded and reported. This procedure should reduce State agency workload and result in more cases being completed. A second issue raised, the treatment of instances when the reviewer cannot locate the household case record or the household itself, is discussed later in connection with the disposition of case reviews.

Field investigation. The proposed rule allowed State agencies to terminate field investigations at the point the reviewer could determine and verify that the household was ineligible if that ineligibility could be resolved with the household. Twenty comments were received on this proposal, sixteen from State agencies, two from Regional Offices, and one from the Department of Health and Human Services (DHHS). Twelve commenters supported the proposed change. Several commenters asked about the condition for resolution with the household. The need for such resolution was questioned. It was suggested that Federal rereviews and fair hearings should be used to resolve these situations.

The preamble to the proposed rule described the resolution of ineligibility with the household as a confirmation of ineligibility with the household. The Department believes that this may not be possible in some instances when information indicates that the household is ineligible. The Department believes, however, that some care needs to be taken in such situations to avoid erroneous terminations of household participation. Consequently, the final rule provides that when the information on which a determination of ineligibility is based was not obtained from the household, the reviewer must confirm the correctness of the information as described in § 275.12(c)(2). This section pertains to such situations in general and does not require contact with the household in all cases.

Two commenters opposed the proposal for such abbreviated reviews because it would result in State agencies collecting less information about cases treated in the abbreviated manner proposed. Abbreviated reviews are optional; those State agencies wishing to continue reviews after ineligibility is verified may do so. One commenter noted that extensive work would be required if an abbreviated review case is later found eligible. The verification standards implemented with this rule should keep such instances at a minimum. (See 7 CFR 275.12 (b) and (c).)

Variance identification. The final rule contains the same provisions concerning the identification of variances, and the types of variances included in and excluded from error analysis. To avoid confusion about the treatment of findings related to certain elements, the final rule includes examples of such situations. For instance, a State agency's failure to take appropriate disqualification action for a household member's failure or refusal to register for work is an example of an included variance; failure to have a work registration form on file is a finding which the State agency need not act on or report to FNS. Such findings are included as administrative deficiencies in current rules, and the examples cited in this final rule are taken from that area of the current rules. (See 7 CFR 275.12(d).)

Error analysis and reporting. The proposed rule provided that the sample case is considered complete at the point ineligibility is determined whether or not the State agency terminates the review at that point. Under the proposal, the reviewer would only be required to code and report those variances that directly contributed to the error determination. We received five comments on this proposal, four from State agencies and one from a Regional Office. All supported the proposal. The final rule is unchanged from the proposed rule. (See 7 CFR 275.12 (e) and (f).)

Disposition of case reviews. The proposed rule provided for several changes in the disposition of case reviews to make it easier for State agencies to complete cases. The Department received a total of 56 comments on these changes.

The first proposal concerned cases where the case record is located but the household cannot be located at the address known to the State agency. If the reviewer takes certain steps to locate the household and if the household still cannot be located but the State agency has evidence that it existed, then the case can be reported as not subject to review. Twenty-two comments were received on this proposal, 19 from State agencies and three from Regional Offices. Twelve commenters stated general support for

the proposal. The most frequently expressed concern was that making all of the required contacts about a missing household's current address was ineffective because some of the sources would be unlikely to have information about the household. To provide State agencies with some flexibility in this area, the final rule provides that State agencies can determine which sources are most likely to know the household's current address and that at least two contacts be made. To help assure that these contacts are reasonably useful, the final rule also provides that Regional Offices will monitor the results of the contacts.

Several comments indicated a misunderstanding about the disposition of cases in which the household could not be located after the reviewer made the required contacts. Even though the contacts cannot provide the household's current address, so long as the State agency has evidence that the household did exist, such cases are not subject to review and are not counted against the 100 percent completion rate. Several commenters asked what would constitute evidence that the household did exist. This evidence usually appears during the normal course of the review. For example, the case record may provide birth certificates, pay stubs, or other documents, and sources contacted may indicate that they know the household. If such evidence does not become apparent, then the reviewer would have to make a special effort to locate and document it. For example, employers may need to be contacted. The final rule provides that adequate documentation in this regard is either documentary evidence of two different elements of eligibility or basis of issuance such as a birth certificate or pay stubs; or the statement of a collateral contact indicating that the household did exist. It should be noted that in these situations the reviewer has located the case record. (See 7 CFR 275.12(g).)

In connection with the policy on completing reviews when the case record cannot be found (discussed in the paragraphs above on household case record review), one commenter asked about the treatment of instances when neither the case record nor the household can be found. The proposed rule made no change in policy with respect to such situations. These cases must be reported as not complete. It is only situations where the case record is not missing that the case can be reported complete if the prescribed actions are taken. Section 275.12(g)(1) has been rewritten to clarify this policy.

The proposal also dealt with households refusing to cooperate with the reviewer. Such a household would have its participation terminated until it cooperated with the reviewer or until 95 days after the end of the annual review period, whichever came first. Also, the proposed rule described certain circumstances when a household's unwillingness to cooperate with the reviewer would be considered as refusal to cooperate. Thirty-five comments were received on this proposal, 31 from State agencies, three from Regional Ofices, and one from a public interest group. Eight commenters supported the proposal, and one objected. Concern was expressed about the length of the penalty period, tracking terminated cases, and the difficulty in reviewing cases where the household agrees to cooperate many months after the sample month.

The Department would point out that the penalty period is a disqualification period which the household can end by cooperating with the quality control reviewer. A copy of the termination notice in the casefile or a code in a computerized data base should be sufficient for tracking households. Reviewing stale cases can present problems, but the Department wants to give State agencies every chance to complete all cases subject to review. To further encourage household cooperation with quality control reviewers, the final rule provides that after the termination period ends, households which have failed to cooperate with the reviewer, should they reapply, would be subject to 100 percent verification to the determined eligible. Another concern in this area was the disposition of cases originally reported not complete because of household refusal to cooperate when the household later cooperates. This would be sufficient reason to allow the case to be disposed of as a complete case and counted towards the required sample completion. (See 7 CFR 273.2(d) and 275.12(g)(1)(iii).)

Comments on the proposed 100 percent completion rate contained objections to the proposed treatment of cases involving refusal to cooperate because often the households which refuse to cooperate are not participating at the time of the review. Consequently, the termination penalty is no incentive to them to cooperate. Commenters also pointed out that some cases can be completed without household cooperation. To help State agencies complete these cases, the final rule adds that before it is referred for termination a household refusing to cooperate must first be notified of the penalties for refusal with respect to termination and reapplication and the possibility that its case will be referred for investigation of willful misrepresentation. If the household still refuses to cooperate, the reviewer may try to complete the review and would refer the household for termination of its participation. This referral is required without regard to the results of the reviewer's attempt to complete the review without household cooperation. The final rules also stipulates that prior to taking these steps State agencies are expected to employ other administrative techniques to persuade households to cooperate. These are such things as having the eligibility worker contact the household, assigning the case of another quality control reviewer, and writing the household a letter from a State official such as the welfare commissioner. (See 7 CFR 275.12(g)(1)(ii).)

In addition to these changes the Department is making another change in the final rules which should further enhance the likelihood of completing cases. The proposed rule eliminated the provisions stating that FNS will help State agencies complete cases reported not complete because of household failure to cooperate or because the household could not be located. Because of the actions a State agency can take when a household cannot be located at an address known to the State agency, and so either locate the household and complete the case or report it as not subject to review, the Department believes that only rarely will such cases be reported as not complete. With respect to cases reported as not complete due to household refusal to cooperate, the final rule provides that FNS Regional Offices will assist State agencies in their completion. (See 7 CFR 275.3(c)(1)(iii).)

The proposed rules also provided that cases could not be reported not complete because the State agency could not complete them in time to meet the time standards for disposition. One commenter spoke to this change and supported it. (See 7 CFR 273.12(g)(1).)

Review of Negative Cases

The proposed rule limited negative case reviews to a determination of the validity of the reason for denial or termination as documented in the household case record. The reviewer would examine the household case record and verify through documentation in the file whether the reason given for the denial or termination was valid, or whether the denial or termination was valid for any

other reason documented in the casefile. If such documentation were present, the case would be considered valid. When the case record alone did not prove ineligibility, the reviewer would attempt to verify the element(s) in question through a phone call to a collateral contact designated in the case record. If the reviewer was able to verify through such a collateral source that a household was correctly denied or terminated from the Program, the negative case would be considered valid. If the reviewer was unable to verify the correctness of the State agency's decision to deny or terminate a household's participation through documentation or collateral contact, the negative case would be considered invalid. In addition, the proposal limited the instances in which a negative case would be classified as not completed to those situations where the reviewer, after all reasonable efforts, was unable to locate the case record. Language was also added to clarify that a negative case could not be reported as not completed solely because the State agency was unable to process the case review in time for it to be reported in accordance with the quality control system's reporting requirements, unless the State agency obtained prior FNS approval to do so.

Twenty-one comments were received on this proposal. Comments were generally favorable, especially with regard to the extent of consistency with AFDC and Medicaid procedures for review of negative actions. Commenters suggested that the term "invalid decision" be changed to "incorrect reason" to better describe the review process. The final rule has made this change. Commenters also stated that limiting collateral contacts to ones in the case record and not allowing contact with the household unnecessarily hampered the review process. The final rule allows State agencies to contact the household and collateral contacts. It should be noted, however, that such contacts are limited to the elements involved in the eligibility worker's decision. One commenter pointed out that since there is no longer a field review involved with reviews of negative cases, a case could not be determined not subject to review for the reason that all household members had died or moved out of State. The provision has been deleted. Several commenters expressed concern that the proposed policy would allow too much conjecture on the part of reviewers about the correctness of eligibility worker decisions. This should not be a problem since the new verification and documentation standards establish standards for documenting the basis of quality control reviewer decisions. (See 7 CFR 275.13.)

Review Processing

The proposed regulation required State agencies to use FNS-designed handbooks, worksheets, and coding forms in the QC review process. The Department received comments from five State agencies on these provisions. Three commenters emphasized the need for a complete and continually updated handbook and that the handbook be distributed in sufficient time and quantity to allow for training of staff. The Department understands this concern and the need to provide such materials accurately and on a timely basis. No change is being made to this section of the final rule. (See 7 CFR 275.14.)

Quality Control Review Reports

Individual cases. The new requirement for State agencies to meet monthly disposition standards received numerous comments. The proposal was for each State agency to dispose of and report the findings of 90 percent of all cases selected in a given sample month within 75 days of the end of the sample month, and 100 percent of all cases within 95 days of the end of the sample month. Several commenters supported these timeframes. However, the majority of comments, for various reasons, were against this provision. The predominant reason for opposing this provision was that the timeframes proposed by the Department were inconsistent with timeframes for the AFDC program. The AFDC standards require submission of 90 percent (or all but five cases) of the cases selected in the active case sample each month within 75 days after the end of the sample month. The same standard applies to cases selected from the negative case sample. AFDC also requires that 100 percent of the cases selected in the active and negative case samples be submitted within 120 days after the end of the quarter. Other commenters were opposed to this section of the regulations because of the amount of time needed to select the sample or to complete difficult cases which involve complex policy applications or in which the household refuses to cooperate.

The Department agrees that the timeframes should be compatible with AFDC and is continuing to work with the Department of Health and Human Services to standardize disposition standards for the two programs. However, the Department remains concerned about the timeliness of QC data. Many complaints have been voiced about the length of time for completing quality control reviews and for reporting the results timely enough to take effective corrective action. The Department also wants to avoid the current problem of backlogs of quality control reviews occurring at the end of the reporting period. Therefore, this provision remains the same as in the proposed rule.

Another new requirement in the proposed rule was that if a case has not been disposed of within 95 days from the end of a given sample month, the State agency would be required to immediately inform its FNS Regional Office of why the case remains pending, the progress of the review to date, and when the case(s) will be disposed of. The FNS Regional Office would use this information to determine whether the State agency has made a good faith effort in disposing of a case or whether the case would be considered overdue. FNS proposed to suspend or disallow a percentage of the State agency's Federal administrative funding when cases are overdue, depending upon the number of overdue cases. The proposal provided for a suspension or a disallowable of one percent of a State agency's Federal funding for quality control for every one percent of its required case reviews overdue in a review period. Several commenters wanted this provision to set out specific criteria for imposing the sanction so that sanctions would be applied in an equal and predefined method. They wanted a definition of sufficient justification for pending status and a quantification of the number of overdue cases. A few State agencies commented that meeting the disposition standards would not be a problem as long as FNS accepts the State agency's explanation about why some cases cannot be completed on time and makes a quick decision as to whether the State agency is making a good faith effort to complete the case. The Department believes that in order to receive timely data it is important to keep the disposition standards and impose a penalty if they are not met. The Department also understands that some reviews require more time to do than others and allowing the State agency to submit progress reports provides the flexibility necessary to complete some cases. The final rule leaves this provision unchanged except that it deletes the specification of the one percent criteria for invoking a sanction. The Department believes that this is too rigid a guideline and prefers to allow Regional Offices to monitor State

agency performance in this area and take action case by case.

Some comments indicated that there is confusion between the disposition standard and the completion standard. The disposition standard requires that 90 and 100 percent of selected cases be disposed of and reported on within 75 days and 95 days, respectively, of the end of the sample month. After the 95-day time period, cases which are not adequately justified as incomplete because review action is not finished are considered in possible sanction action. Cases reported not complete for cause, such as household failure to cooperate, as well as cases reported complete and not subject to review, would not be considered for such action. The case completion standard is pertinent only 95 days after the end of the entire review period when, in the process of adjusting the regressed error rate, all cases not complete for any reason are tallied and assigned two standard deviations. (The completion standard is further discussed later in the preamble under the paragraph on the determination of payment error rates.)

The proposed rules contained a provision that State agencies would report findings from individual active cases by submitting the edited findings on the Integrated Review Schedule, Form FNS–380–1. For negative cases, the State agency would submit the edited findings on the Negative Quality Control Review Schedule, Form FNS–245. The State agency would report review findings by inputting and editing the results of each case in the FNS-supplied computer terminal and transmitting the data to the host computer. For State agencies that do not have FNS-supplied terminals, the State agency would submit the results of each QC review in a format specified by FNS. The final rules clarify that the results of negative cases are entered into the computer which produces a summary and only the summary report is sent to FNS. In order to meet the 75/95 day disposition standards, the reviews must be both completed and reported. A few commenters said that there are problems with timely transmissions of data on the FNS terminals. In that situation the State agency should specify in the report sent to FNS (as described in § 275.21(b)(4)) that cases are overdue because of data transmission problems. The Department would point out that it will entertain requests for alternate computer reporting and use of the FNS-supplied terminals which State agencies may submit under the waiver provisions in § 272.1(c). In addition, State agencies may request FNS to change the results of a review in circumstances where that is justified. For example, FNS would consider changing a case where a household that had previously refused to cooperate subsequently agrees to cooperate so that the review can be completed.

In order to do Federal validation reviews, the proposed regulations would have required State agencies to supply its Regional Office with individual household case records, or copies of the pertinent information contained in the case records, as well as hard copies of individual Forms FNS–380–1 and FNS–245. The State agency would provide these materials to the FNS Regional Office within 10 days of receipt of a request. This material can be either originals or copies. The final regulations clarify that the copies must be legible. (See 7 CFR 275.21(b).)

Other reports. The proposal required each State agency to report to FNS about the monthly progress of sample selection and completion (Form FNS–248) no later than 95 days after the end of the sample month, and to submit a summary report of the results of all quality control reviews (Form FNS–247) no later than 95 days from the end of the annual review period. Several commenters said that manual reports are a duplication of what can be generated by the automated system and should be eliminated. The Department does not intend for State agencies to submit duplicate reports. Each State agency has the flexibility of submitting manually generated reports or utilizing the automated system to generate and transmit the required information. A clarifying phrase about this has been added to the final rules. Some State agencies commented that the due date for Form FNS–245 coincides with the due date for reporting the last case for the sample month and some time needs to be allowed for preparation of the report. The 95 day deadline is not the last date for working on the case reviews. The results must be reported by that date. Therefore, it seems reasonable to expect the Status of Sample Selection and Completion report to be ready at the same time. This provision remains the same as the proposed rule. (See 7 CFR 275.21 (c) and (d).)

Federal Monitoring

The proposed rule provided for various changes in the way that FNS would conduct reviews to determine the accuracy of State agencies' reported sample case review findings and determine State agency error rates. The proposed changes were designed to strengthen the Federal validation process by allowing FNS to direct its Regional Office resources where they are most needed so that FNS could continue meeting its responsibility, under the law, for ensuring that State agencies' error rates are accurate for purposes of determining liability for sanctions and eligibility for enhanced funding.

Selective validation. The Department solicited comments on a proposal to validate State agency error rates selectively based on such factors as a State agency's historical performance in operating the quality control system. Fifteen comments were received, most of them from State agencies. Opposition to the proposal was general. Most commenters objected on the grounds that all State agencies should be tested similarly with respect to error rate determinations and because of the lack of defined criteria for selecting error rates to validate.

The Department has decided not to pursue plans for selective validation at this time because of the possible inequities in treatment of State agencies The Department also has decided that selective validation is not timely since the quality control system is currently shifting to using absolute error rates.

State Agency error rates. The proposed rule replaced the provision of current regulations governing the cumulative allotment error rate with separate provisions outlining the content of the payment error and underissuance error rates. The payment error rate would include the value of the allotments reported as overissued, including overissuances in ineligible cases, for those cases included in the active case error rate. The underissuance error rate would include the value of allotments reported as underissued for those cases included in the active case error rate. In addition, the proposed rulemaking reorganized the provisions relative to the content of the State agency's active case error, payment error, underissuance error, and negative case error rates by locating them in the section of the Program's regulations which govern the determination of a State agency's Program performance. This change reflects FNS responsibility for generating State agency error rates. The one comment on these proposals was based on an apparent failure to realize that payment error rate and underissuance error rate were redefined in the interim rule on quality control error rate reduction (48 FR 23797, published May 27, 1983). These new definitions are included in this final rule. (See 7 CFR 275.25(c).)

Validation of State agency error rates. The proposed rule contained a number of changes in the process of validating State agency error rates.

First it provided that FNS would validate each State agency's active case error rate, payment error rate, and underissuance error rate during each annual quality control review period.

Second, it proposed that FNS would validate the State agency's negative case error rate only when the State agency's payment and underissuance error rates for an annual review period would appear to entitle it to an increased share of Federal administrative funding and its negative case error rate is less than the national weighted mean negative case error rate applicable to the period of such enhanced funding. Two comments were received on this proposal; neither objected to it. As mentioned above in the discussion of the error reduction rule, this final rule provides that the negative case error rate standard is the prior year's national weighted mean negative case error rate.

The proposed rule replaced the current formula used for determining the Federal rereview sample sizes for both active and negative cases with separate formulas for each type of case. These formulas distributed the Federal samples among State agencies according to their annual sample sizes. Several commenters objected to the size of the samples especially as a basis for regression. The proposed sample sizes increase the Federal samples relative to the State sample and the Department believes that the sizes are adequate and is making no change in them in the final rule.

The proposed rule also concentrated the Federal validation process on desk reviews of State agencies' active sample cases supplemented by telephone interviews with participants or collateral contacts, and field investigations to the extent necessary for active cases. For negative cases, the FNS Regional Office would conduct case record reviews to the extent necessary to determine whether the household case record contained sufficient documentation to justify the State agency's quality control findings about the correctness of the agency's decision to deny or terminate a household's participation. Related to these changes, the proposed rule provided that FNS Regional Offices would return cases to the State agency for appropriate action on an individual case basis whenever the Federal reviewer determined that the State agency incorrectly disposed of and reported cases as not completed or not subject to review. Cases could also be returned if the Regional Office reviewer was unable to determine the accuracy of the State agency's findings due to insufficient documentary evidence to support the verification required by FNS guidelines. The State agency would have 30 days to take appropriate action and report the findings. As with cases not disposed of timely, State agencies were required to report adequate reasons for each case that remained pending after 30 days of the date it was returned by the Regional Office or have the case be considered overdue and subject to fiscal sanctions.

Thirty-four comments were received on the proposal about desk reviews and the return of cases. Most comments opposed the proposal, although a few supported it. Concerns fell into several major areas: the additional work for State agencies which the proposed return of cases would cause; the basis for Regional Office determination of incorrectly disposed and incomplete cases; and the impact on error rates of State agency correction and completion of returned cases. The return of cases to State agencies was proposed as a means of ensuring compliance with the verification and documentation standards. Compliance with them would mean that most cases in the Federal subsample would be correctly and completely done. Returned cases would likely have few and limited problems. Regional Office determinations about the correctness and completeness of cases would be consistent since their basis would be the verification and documentation standards and the regulations on case disposition. The original findings of the State agency would not be changed by findings of returned cases. Those findings would be used to compute the Federal error rates.

Because of the concerns expressed, the final rule does not include the provision for the return of incorrectly disposed of and incorrect cases. State agencies are advised, however that, as provided in § 276.4, a failure to meet the verification and documentation standards may be the basis for a determination that a State agency's administration of the Food Stamp Program is inefficient and ineffective and may subject the State agency to suspension or disallowance of administrative funds.

Lastly, the proposed rule eliminated the provision of current regulations stating that FNS will assist State agencies in completing cases that State agencies fail to complete initially. This final rule reinstates that provision for cases reported not complete because of household refusal to cooperate. Because of its relation to case disposition, discussion of this change is in earlier paragraphs concerning case disposition. (See 7 CFR 275.3(c)).

Determination of Payment Error Rates. The proposed rule retains the procedure of current Program regulations for adjusting the State agency's error rates to account for incorrect sample selection. In addition, the rule proposes to increase the case completion standard from 95 percent to 100 percent of the minimum required sample size, to adjust the State agency's error rates for failure to meet the 100 percent standard, and to increase the penalty for such failure. In order to calculate the State agency's official error rates, FNS would adjust the State agency's error rates if it fails to complete 100 percent of its minimum required sample size by assigning two standard deviations of the estimated error rates added to the regressed error rates, to those cases not completed. Thirty-one comments were received on these changes, most of which objected to the 100 percent completion standard on the grounds that it is unrealistic and the penalty unavoidable. The Department believes that the 100 percent completion standard is the only standard which will ensure that State agencies make every reasonable attempt to complete their samples and so minimize any bias which incompleted cases cause. Because of the changes which this rule makes in what cases must now be counted not complete, the Department believes that many State agencies will complete such a high percentage of their required minimum sample size that the penalty will cause no more of a liability under the error reduction provisions than without the calculation of the two standard deviations. While this may be the general situation, some State agencies may not achieve a high enough completion rate to avoid incurring a liability for incomplete cases. The Department believes that the increased liability in such situations is appropriate and necessary as an incentive and to reflect the possible errors in those cases. This will mean that all State agencies have, in effect, the same completion standards. The final rule contains the provisions as proposed relative to determining error rates with the exception of the elimination of some words relating to selective validation. (See 7 CFR 275.25(e)(6).

Implementation

The provisions of this rule are effective beginning with the start of Fiscal Year 1984, with the following two exceptions.

First, all cases sampled for the six months October 1983 through March 1984 are due 95 days after March 31, 1984. The disposition standards for sampled cases specified in § 275.21 are effective for April 1984 and later sample cases. This should allow State agencies sufficient time to adjust their sample selection, case assignment, and related procedures in order to meet the new timeliness standards.

Second, no later than October 1, 1984, all State agencies must have revised their sample frames for active and negative cases. This should allow State agencies sufficient time to develop and obtain approval for changes in their sampling plans. (See 7 CFR 275.11(a) and 275.11(e).)

One area of the rule must be implemented as of the beginning of Fiscal Year 1984 is the disposition of active and negative case reviews with respect to being complete, not complete, or not subject to review (7 CFR 275.12(g) and 275.12(e)). These provisions are required for all cases for all State agencies and may require some reworking of some completed cases. In most instances State agencies should be able to accomplish this work with the material in the quality control case file, with some telephone contact, or with a modest amount of actual field investigation. This work should result in more completed cases and so be to the advantage of the State agency.

Finally, State agencies should note that the new provisions for sample sizes and completion standards are effective as of the beginning of Fiscal Year 1984. This will prevent any conflict between the regulations and waivers granted to some State agencies to reduce their sample sizes according to the provisions of the proposed rule. It also allows State agencies which now want to adjust their sample sizes to do so without delay. This will help those State agencies take advantage of as much of the resulting savings as possible. (See 7 CFR 275.11(b) and (d).)

Correction

The definition of State in § 271.2 is incorrect. The phrase "or as a wholesale food concern" actually belongs with the definition of staple food and was inadvertently added to the definition of State by the April 19, 1983, rule entitled "Food Stamp Program: Termination of the Food Stamp Program in the Commonwealth of Puerto Rico" (48 FR 16832). The phrase is being removed by this action.

Note.—The following paragraphs in 7 CFR which had been amended or revised in accordance with the May 27 interim rules have not changed and are adopted as final in the form originally set forth in the interim rules:

271.2 definitions of payment error rate, review period, and underissuance error rate § 275.25(d)(2), (d)(3), (d)(4)(ii), (d)(5)(i)(c), E, and (F), and (d)(5)(ii); and § 277.4(b)(5), (b)(6), (b)(7), and (b)(8).

For the convenience of the reader, these unchanged paragraphs (except the paragraph that sets forth the implementation schedule of the proposed rules) are printed below with paragraphs from the interim rule which are being amended or revised by this final action and with paragraphs from the July 29 proposed rule which are being finalized by this action.

List of Subjects

7 CFR Part 271

Administratative practice and procedure, Food stamps, Grant programs-social programs.

7 CFR Part 272

Alaska, Civil rights, Food stamps, Grant programs-social programs, Reporting and recordkeeping requirements.

7 CFR Part 273

Administrative practice and procedure, Aliens, Claims, Food stamps, Fraud, Grant programs-social programs, Penalties, Reporting and recordkeeping requirements, Social security, Students.

7 CFR Part 275

Administrative practice and procedure, Food stamps, Reporting and recordkeeping requirements.

7 CFR Part 277

Food stamps, Government procedure, Grant programs—social programs, Investigations, Records, Reporting and recordkeeping requirements.

Therefore, 7 CFR Parts 271, 272, 273, 275, and 277 are being amended as follows:

PART 271—GENERAL INFORMATION AND DEFINITIONS

1. In § 271.2, the definition of "State" is amended by removing the phrase "or as a wholesale food concern" from the end of that definition.

2. In § 271.2, the definition of "cumulative allotment error rate" and "administrative deficiencies" are removed; the definitions of "active case," "negative case," and "review period" are revised; and the definitions of "payment error rate," and "underissuance error rate" are adopted as final. They read as follows:

§ 271.2 Definitions.

"Active case" means a household which was certified prior to, or during, the sample month and issued food stamp benefits for the sample month.

* * * * *

"Negative case" means a household which was denied certification or whose food stamp benefits were terminated effective for the sample month.

* * * * *

"Payment error rate" means the sum of the allotments issued to eligible households to which they were not entitled and the allotments issued to ineligible households, expressed as a percentage of all allotments issued to complete active sample cases excluding those cases processed by SSA personnel or participating in certain demonstration projects designated by FNS.

* * * * *

"Review period" means the 12-month period from October 1 of each calendar year through September 30 of the following calendar year.

* * * * *

"Underissuance error rate" means an estimate of the proportion of allotments to which eligible households were entitled but did not receive, expressed as a percentage of all allotments issued to active sample cases.

* * * * *

PART 272—REQUIREMENTS FOR PARTICIPATING STATE AGENCIES

3. In § 272.1, a new paragraphg (68) is added to read as follows:

§ 272.1 General terms and conditions.

* * * * *

(g) *Implementation.* * * *

(68) *Amendment 260.* (i) The quality control review provisions contained in Amendment 260 are effective starting with the beginning of Fiscal Year 1984, except as provided in the following sentences. All cases sampled for the six months October 1983 through March 1984 shall be disposed of and reported within 95 days of March 31, 1984. Cases sampled for April 1984 and for months thereafter shall be disposed of and reported according to § 275.21. For example, 90 percent of April cases are due within 75 days of April 30, and 100 percent are due within 95 days of that date. The structure of sample frames specified in § 275.11(e) must be implemented no later than the sample month of October 1984.

(ii) Starting with the October 1983 sample month, cases must be determined complete, not complete, or not subject to review according to

§§ 275.12(g) and 275.13(e). As of the beginning of Fiscal Year 1984 the sample sizes stated in § 275.11(b) and related sampling plan requirements are effective, and State agencies are required to meet the completion standard stated in § 275.11(d). State agencies currently sampling at the levels provided in § 275.11(b)(1)(iii) must submit to their respective FNS Regional Offices the reliability statement required by § 275.11(a)(2) within 30 days of the publication of this rule, or no later than the second month after publication of this rule begin sampling at the levels specified in § 275.11(b)(1)(ii).

4. In § 272.2, the seventh sentence of paragraph (a)(2) is revised; paragraphs (d)(1)(i) and (ii) are redesignated as paragraphs (d)(1)(ii) and (iii), respectively, and a new paragraph (d)(1)(i) is added; and paragraphs (e)(4) through (6) are redesignated as paragraphs (e)(5) through (7), respectively, and a new paragraph (e)(4) is added. The revision and additions read as follows:

§ 272.2 Plan of operation.

(a) *General Purpose and Content.*

* * *

(2) *Content.* * * * The Plan's attachments include the Quality Control Sample plan, the Disaster Plan (currently reserved), and the optional Nutrition Education Plan. * * *

* * * * *

(d) *Planning Documents.* (1) * * *

(i) Quality Control Sampling Plan as required by § 275.11 (a)(4);

* * * * *

(e) *Submittal Requirements.* * * *

(4) The Quality Control Sampling Plan shall be signed by the head of the State agency and submitted to FNS prior to implementation as follows:

(i) According to the timeframes specified in paragraph (e)(4)(ii) of this section, prior to each annual review period each State agency shall submit any changes in their sampling plan for FNS approval or submit a statement that there are no such changes. These submittals shall include the statement required by § 275.11(a)(2), if appropriate. The Quality Control Sampling Plan in effect for each State agency as of the beginning of Fiscal Year 1984 shall be considered submitted and approved for purposes of this section, provided that the State agency has obtained prior FNS approval of its sampling plan.

(ii) Initial submissions of and major changes to sampling plans and changes in sampling plans resulting from general changes in procedure shall be submitted to FNS for approval at least 60 days prior to implementation. Minor changes to approved sampling plans shall be submitted at least 30 days prior to implementation.

* * * * *

PART 273—CERTIFICATION OF ELIGIBLE HOUSEHOLDS

5. In § 273.2, the text after the title of paragraph (d) is redesignated as paragraph (d)(1), the last two sentences of newly-designated paragraph (d)(1) are revised, and a new paragraph (d)(2) is added. The revisions and additions read as follows:

§ 273.2 Application processing.

* * * * *

(d) *Household cooperation.* (1) * * * The household shall also be determined ineligible if it refuses to cooperate in any subsequent review of its eligibility, including reviews generated by reported changes and applications for recertification. Once denied or terminated for refusal to cooperate, the household may reapply but shall not be determined eligible until it cooperates with the State agency.

(2) In addition, the household shall be determined ineligible if it refuses to cooperate in any subsequent review of its eligibility as a part of a quality control review. If a household is terminated for refusal to cooperate with a quality control reviewer, in accordance with § 275.12(g)(1)(ii), the household may reapply but shall not be determined eligible until it cooperates with the quality control reviewer. If a household reapplies after 95 days from the end of the annual review period, the household shall not be determined ineligible for its refusal to cooperate with a quality control reviewer during the completed review period, but must provide verification of all eligibility requirements prior to being determined eligible.

* * * * *

PART 275—PERFORMANCE REPORTING SYSTEM

6. In § 275.3, paragraph (c) is revised to read as follows:

§ 275.3 Federal monitoring.

* * * * *

(c) *Validation of State Agency Error Rates.* FNS shall validate each State agency's active case error rate, payment error rate, and underissuance error rate, as described in § 275.25(c), during each annual quality control review period. FNS shall validate the State agency's negative case error rate, as described in § 275.25(c), only when the State agency's payment and underissuance error rates for an annual review period appear to entitle it to an increased share of Federal administrative funding for that period as outlined in § 277.4(b) (2), (5), (6), or (7), and its negative case error rate for that period is less than the national weighted mean negative case error rate applicable to the period of enhanced funding. Any deficiencies detected in a State agency's QC system shall be included in the State agency's corrective action plan. The findings of validation reviews shall be used as outlined in § 275.25(e)(6).

(1) *Active case error rate.* The validation review of each State agency's active case error rate shall consist of the following actions:

(i) FNS will select a subsample of a State agency's completed active cases. The Federal review sample for completed active cases is determined as follows:

State annual active case sample size	Federal annual sample size
1,200 and over	n=400.
300–1,199	n=150+0.277 (N-300).
Under 300	n=150

(A) In the above formula, n is the minimum number of Federal review sample cases which must be selected when conducting a validation review.

(B) In the above formula, N is the State agency's minimum active case sample size as determined in accordance with § 275.11(b)(1).

(ii) FNS Regional Offices will conduct case record reviews to the extent necessary to determine the accuracy of the State agency's findings using the household's certification records and the State agency's QC records as the basis of determination. The FNS Regional Office may choose to verify any aspects of a State agency's QC findings through telephone interviews with participants or collateral contacts. In addition, the FNS Regional Office may choose to conduct field investigations to the extent necessary.

(iii) FNS Regional Offices will assist State agencies in completing active cases reported as not complete due to household refusal to cooperate.

(iv) FNS will also review the State agency's sampling procedures, estimation procedures, and the State agency's system for data management to ensure compliance with § 275.11 and § 275.12.

(v) FNS validation reviews of the State agency's active sample cases will be conducted on an ongoing basis as the State agency reports the findings for individual cases and supplies the necessary case records. FNS will begin the remainder of each State agency's

validation review as soon as possible after the State agency has supplied the necessary information regarding its sample and review activity.

(2) *Payment error rate.* The validation review of each State agency's payment error rate shall occur as a result of the Federal validation of the State agency's active case error rate as outlined in paragraph (c)(1) of this section.

(3) *Underissuance error rate.* The validation review of each State agency's underissuance error rate shall occur as a result of the Federal validation of the State agency's active case error rate as outlined in paragraph (c)(1) of this section.

(4) *Negative case error rate.* The validation review of each State agency's negative case error rate shall consist of the following actions:

(i) FNS will select a subsample of a State agency's completed negative cases. The Federal review sample for completed negative cases is determined as follows:

State annual negative case sample size	Federal annual sample size
800 and over	n=160.
150–799	n=75 + 0.130 (N–150).
Under 150	n=75.

(A) In the above formula, n is the minimum number of Federal review sample cases which must be selected when conducting a validation review.

(B) In the above formula, N is the State agency's minimum negative case sample size as determined in accordance with § 275.11(b)(2).

(ii) FNS Regional Offices will conduct case record reviews to the extent necessary to determine whether the household case record contained sufficient documentation to justify the State agency's QC findings of the correctness of the State agency's decision to deny or terminate a household's participation.

(iii) FNS will also review each State agency's negative case sampling and review procedures against the provisions of §§ 275.11 and 275.13.

(iv) FNS will begin each State agency's negative sample case validation review as soon as possible after the State agency has supplied the necessary information, including case records and information regarding its sample and review activity.

(5) *Arbitration.* Each FNS Regional Office will appoint an individual to arbitrate disputes between the State agency and the FNS Regional Office concerning individual case findings and the appropriateness of actions taken to dispose of individual cases on a case-by-case basis. This individual will not be directly involved in the validation effort and will accept questions of certification policy only upon written request by the State agency.

* * * * *

7. In § 275.4, paragraph (c) is revised to read as follows:

§ 275.4 Record retention.

* * * * *

(c) QC review records consist of Forms FNS–380, Worksheet for Integrated AFDC, Food Stamps and Medicaid Quality Control Reviews, FNS–380–1, Integrated Review Schedule, FNS–245, Negative Quality Control Review Schedule, and Form FNS–248, Status of Sample Cases in Reporting Month and Period; other materials supporting the review decision; sample lists; sampling frames; tabulation sheets; and reports of the results of all quality control reviews during each review period.

8. In § 275.10, the fourth, fifth, and sixth sentences of paragraph (a) are revised; and paragraph (b) is revised. The revisions read as follows:

§ 275.10 Scope and purpose.

(a) * * * Reviews of negative cases shall be conducted to determine whether the State agency's decision to deny or terminate the household, as of the review date, was correct. Quality control reviews measure the validity of food stamp cases at a given time (the review date) by reviewing against the Food Stamp Program standards established in the Food Stamp Act and the Regulations, taking into account any FNS authorized waivers to deviate from specific regulatory provisions. FNS and the State agency shall analyze findings of the reviews to determine the incidence and dollar amounts of errors, which will determine the State agency's liability for payment errors and eligibility for enhanced funding in accordance with the Food Stamp Act of 1977, as amended, and to plan corrective action to reduce excessive levels of errors for any State agency with combined payment error and underissuance error rates of 5 percent or more.

(b) The objectives of quality control reviews are to provide:

(1) A systematic method of measuring the validity of the food stamp caseload;

(2) A basis for determining error rates;

(3) A timely continuous flow of information on which to base corrective action at all levels of administration; and

(4) A basis for establishing State agency liability for errors that exceed the National standard and State agency eligibility for enhanced funding.

* * * * *

9. Section 275.11 is revised to read as follows:

§ 275.11 Sampling.

(a) *Sampling plan.* Each State agency shall develop a quality control sampling plan which demonstrates the integrity of its sampling procedures.

(1) *Content.* The sampling plan shall include a complete description of the frame, the method of sample selection, and methods for estimating characteristics of the population and their sampling errors. The description of the sample frames shall include: source, availability, accuracy, completeness, components, location, form, frequency of updates, deletion of cases not subject to review, and structure. The description of the methods of sample selection shall include procedures for: estimating caseload size, overpull, computation of sampling intervals and random starts (if any), stratification or clustering (if any), identifying sample cases, correcting over-or undersampling, and monitoring sample selection and assignment. A time schedule for each step in the sampling procedures shall be included. If appropriate, the sampling plan shall include a description of its relationship, to other Federally-mandated quality control samples (e.g., Aid to Families with Dependent Children or Medicaid).

(2) *Criteria.* All sampling plans shall:

(i) Conform to principles of probability sampling;

(ii) Document methods for estimating characteristics of the population and their sampling errors;

(iii) Contain population estimates with the same or better precision as would be obtained by a simple random sample of the size specified in paragraphs (b)(1) and (b)(2) of this section;

(iv) Describe all weighting procedures and their effects on data analysis and reporting requirements;

(v) Provide for the maintenance of the current effort in other phases of the quality control process (e.g., case reviews, statistical reports, and data analysis);

(vi) Specify and explain the basis for the sample sizes chosen by the State agency;

(vii) Specify and explain the basis for the approximate number of sample cases to be selected each month if other than one-twelfth of the active and negative sample sizes; and

(viii) If the State agency has chosen an active sample size as specified in paragraph (b)(1)(iii) of this section, include a statement that, whether or nc

the sample size is increased to reflect an increase in participation as discussed in paragraph (b)(3) of this section, the State agency will not use the size of the sample chosen as a basis for challenging the resulting error rates.

(3) *Design.* FNS generally recommends a systematic sample design for both active and negative samples because of its relative ease to administer, its validity, and because it yields a sample proportional to variations in the caseload over the course of the annual review period. (To obtain a systematic sample, a State agency would select every kth case after a random start between 1 and k. The value of k is dependent upon the estimated size of the universe and the sample size.) A State agency may, however, develop an alternative sampling design better suited for its particular situation.

(4) *FNS review and approval.* The State agency shall submit its sampling plan to FNS for approval as a part of its State Plan of Operation in accordance with § 272.2(e)(4). In addition, all sampling procedures used by the State agency, including frame composition, construction, and content shall be fully documented and available for review by FNS.

(Approved by the Office of Management and Budget under control number 0584–0303.)

(b) *Sample size.* There are two samples for the food stamp quality control review process, an active case sample and a negative case sample. The size of both these samples is based on the State agency's average monthly caseload during the annual review period. Costs associated with a State agency's sample sizes are reimbursable as specified in § 277.4.

(1) *Active cases.* (i) All active cases shall be selected in accordance with standard procedures, and the review findings shall be included in the calculation of the State agency's payment error and underissuance error rates.

(ii) Unless a State agency chooses to select and review a number of active cases determined by the formulas provided in paragraph (b)(1)(iii) of this section and has included in its sampling plan the reliability certification required by paragraph (a)(2)(viii) of this section, the minimum number of active cases to be selected and reviewed by a State agency during each annual review period shall be determined as follows:

Average monthly active households	Required annual sample size
60,000 and over	n=2400.
16,000 to 59,000	n=300+0.042(N–10,000).
Under 10,000	n=300.

(iii) A State agency which includes in its sampling plan the statement required by paragraph (a)(2)(viii) of this section may determine the minimum number of active cases to be selected and reviewed during each annual review period as follows:

Average monthly active households	Required annual sample size
60,000 and over	n=1200.
10,000 to 59,999	n=300+0.018 (N–10,000).
Under 10,000	n=300.

(iv) In the formulas in paragraphs (b)(1)(ii) and (iii) of this section n is the required active case sample size. This is the minimum number of active cases subject to review which must be selected each review period. Also in the formulas, n is the anticipated average monthly participating caseload subject to quality control review (i.e., households which are included in the active universe defined in paragraph (e)(1) of this section) during the annual review period.

(2) *Negative cases.* The minimum number of negative cases to be selected and reviewed during each annual review period shall be determined as follows:

Average monthly negative households	Required annual sample size
5,000 and over	n=800.
500 to 4,999	n=150+0.144 (N–500).
Under 500	n=150.

(i) In the above formula, n is the required negative sample size. This is the minimum number of negative cases subject to review which must be selected each review period.

(ii) In the above formula, n is the anticipated average monthly number of negative cases which are subject to quality control review (i.e., households which are part of the negative universe defined in paragraph (e)(2) of this section) during the annual review period.

(3) *Unanticipated changes.* Since the average monthly caseloads (both active and negative) must be estimated at the beginning of each annual review period, unanticipated changes can result in the need for adjustments to the sample size. Recognizing the difficulty of forecasting caseloads, State agencies will not be penalized if the actual caseload during a review period is less than 20 percent larger than the estimated caseload used to determine sample size. If the actual caseload is more than 20 percent larger than the estimated caseload, the larger sample size appropriate for the actual caseload will be used in computing the sample completion rate.

(4) *Alternative designs.* The active and negative sample size determinations assume that State agencies will use a systematic or simple random sample design. State agencies able to obtain results of equivalent reliability with smaller samples and appropriate design may use an alternative design with FNS approval. To receive FNS approval, proposals for alternative designs must provide population estimates with equivalent or better precision than would be obtained had the State agency reviewed simple random samples of the sizes specified by paragraphs (b)(1) and (b)(2) of this section.

(c) *Sample selection.* The selection of cases for quality control review shall be made separately for active and negative cases each month during the annual review period. Each month each State agency shall select for review approximately one-twelfth of its required sample, unless FNS has approved other numbers of cases specified in the sampling plan.

(1) *Substitutions.* Once a household has been identified for inclusion in the sample by a predesigned sampling procedure, substitutions are not acceptable. An active case must be reviewed each time it is selected for the sample. If a household is selected more than once for the negative sample as the result of separate and distinct instances of denial or termination, it shall be reviewed each time.

(2) *Corrections.* Excessive undersampling must be corrected during the annual review period. Excessive oversampling may be corrected at the State agency's option. Cases which are dropped to compensate for oversampling shall be reported as not subject to review. Because corrections must not bias the sample results, cases which are dropped to compensate for oversampling must comprise a random subsample of all cases selected (including those completed, not completed, and not subject to review). Cases which are added to the sample to compensate for undersampling must be randomly selected from the entire frame in accordance with the procedures specified in paragraphs (b), (c)(1), and (e) of this section. All sample adjustments must be fully documented and available for review by FNS.

(d) *Required sample size.* A State agency's required sample size is the larger of either the number of cases selected which are subject to review or

the number of cases chosen for selection and review according to paragraph (b) of this section.

(e) *Sample frame.* The State agency shall select cases for quality control review from a sample frame. The choice of a sampling frame shall depend upon the criteria of timeliness, completeness, accuracy, and administrative burden. Complete coverage of the sample universes, as defined in paragraph (f) of this section, must be assured so that every household subject to quality control review has an equal or known chance of being selected in the sample. Since the food stamp quality control review process requires an active and negative sample, two corresponding sample frames are also required.

(1) *Active cases.* The frame for active cases shall list all households which were: (i) certified prior to, or during, the sample month; and (ii) issued benefits for the sample month, except for those households excluded from the universe in paragraph (f)(1) of this section. State agencies may elect to use either a list of certified eligible households or a list of households issued an allotment. If the State agency uses a list of certified eligible households, those households which are issued benefits for the sample month after the frame has been compiled shall be included in a supplemental list. If the State agency uses an issuance list, the State agency shall ensure that the list includes those households which do not actually receive an allotment because the entire amount is recovered for repayment of an overissuance in accordance with the allotment reduction procedures in § 273.18.

(2) *Negative cases.* The frame for negative cases shall list all households whose application for food stamps was denied or whose certification was terminated effective for the sample month except those excluded from the universe in paragraph (f)(2) of this section.

(3) *Unwanted cases.* A frame may include cases for which information is not desired (e.g., households which have been certified but did not actually participate during the sample month). When such cases cannot be eliminated from the frame beforehand and are selected for the sample, they must be accounted for and reported as being not subject to review in accordance with the provisions in §§ 275.12(g) and 275.13(e).

(f) *Sample universe.* The State agency shall ensure that its active and negative case frames accurately reflect their sample universes. There are two sample universes for the food stamp quality control review process, an active case universe and a negative case universe. The exceptions noted below for both universes are households not usually amenable to quality control review.

(1) *Active cases.* The universe for active cases shall include all households certified prior to, or during, the sample month and receiving food stamps for the sample month, except for the following:

(i) A household in which all the members had died or had moved out of the State before the review could be undertaken or completed;

(ii) A household receiving food stamps under a disaster certification authorized by FNS;

(iii) A household which is under investigation for intentional Program violation, including a household with a pending administrative disqualification hearing;

(iv) A household appealing an adverse action when the review date falls within the time period covered by continued participation pending the hearing; or

(v) A household receiving restored benefits in accordance with § 273.17 but not participating based upon an approved application. Other households excluded from the active case universe during the review process are identified in § 275.12(g).

(2) *Negative cases.* The universe for negative cases shall include all households whose application for food stamps was denied or whose certification was terminated effective for the sample month except the following:

(i) A household which had its case closed due to expiration of the certification period;

(ii) A household which withdrew an application prior to the agency's determination;

(iii) A household which is under investigation for intentional Program violation;

(iv) A household in which all members had died or had moved out of State at the time of the review (except those negative cases in which the reason for denial or termination is that all household members died or moved out of State). Other households excluded from the negative case universe during the review process are identified in § 275.13(e). The negative case universe shall not include negative actions taken against the household which do not result in the household actually being denied or terminated.

(g) *Demonstration projects/SSA processing.* Households correctly classified for participation under the rules of an FNS-authorized demonstration project which FNS determines to significantly modify the rules for determining households' eligibility or allotment level, and households participating based upon an application processed by Social Security Administration personnel shall be included in the selection and review process. They shall be included in the universe for calculating sample sizes and included in the sample frames for sample selection as specified in paragraphs (b) through (e) of this section. In addition, they shall be included in the quality control review reports as specified in § 275.21(e) and included in the calculation of a State agency's completion rate as specified in § 275.25(e)(6). However, all results of reviews of active and negative demonstration project/SSA processed cases shall be excluded from the determination of State agencies' active and negative case error rates, payment error rates, and underissuance error rates as described in § 275.25(c). The review of these cases shall be conducted in accordance with the provisions specified in §§ 275.12(h) and 275.13(f).

10. Section 275.12 is revised to read as follows:

§ 275.12 Review of active cases.

(a) *General.* A sample of households which were certified prior to, or during, the sample month and issued food stamp benefits for the sample month shall be selected for quality control review. These active cases shall be reviewed to determine if the household is eligible and, if eligible, whether the household is receiving the correct allotment. The determination of a household's eligibility shall be based on an examination and verification of all elements of eligibility (i.e., basic program requirements, resources, income, and deductions). The elements of eligibility are specified in §§ 273.1 and 273.3 through 273.9. The verified circumstances and the resulting benefit level determined by the quality control review shall be compared to the benefits authorized by the State agency as of the review date. When changes in household circumstances occur, the reviewer shall determine whether the changes were reported by the participant and handled by the agency in accordance with the rules set forth in §§ 273.12, 273.13 and 273.21, as appropriate. For active cases, the review date shall always fall within the sample month, either the first day of a calendar or fiscal month or the day of certification, whichever is later. The review of active cases shall include: a household case record review; a field investigation, except as provided in paragraph (b) of this section; the identification of any variances; an error

analysis; and the reporting of review findings

(b) *Household case record review.* The reviewer shall examine the household case record to identify the specific facts relating to the household's eligibility and basis of issuance. If the reviewer is unable to locate the household case record, the reviewer shall identify as many of the pertinent facts as possible from the household issuance record. The case record review shall include all information applicable to the case as of the review month, including the application and worksheet in effect as of the review date. Documentation contained in the case record can be used as verification if it is not subject to change and applies to the sample month. If during the case record review the reviewer can determine and verify the household's ineligibility the review can be terminated at that point, provided that if the determination is based on information not obtained from the household then the correctness of that information must be confirmed as provided in paragraph (c)(2) of this section. The reviewer shall utilize information obtained through the case record review to complete column (2) of the Integrated Worksheet, Form FNS–380, and to tentatively plan the content of the field investigation.

(c) *Field investigation.* A full field investigation shall be conducted for all active cases selected in the sample month except as provided in paragraph (b) of this section. If during the field investigation the reviewer determines and verfies the household's ineligibility, the review can be terminated at that point, provided that if the determination is based on information not obtained from the household then the correctness of that information must be confirmed as provided in paragraph (c)(2) of this section. In Alaska an exception to this requirement can be made in those isolated areas not reachable by regularly scheduled commercial air service, automobile, or other public transportation provided one fully documented attempt to contact the household has been made. Such cases may be completed through casefile review and collateral contact. The field investigation will include interviews with the head of household, spouse, or authorized representative; contact with collateral sources of information; and any other materials and activity pertinent to the review of the case. The scope of the review shall not extend beyond the examination of household circumstances which directly relate to the determination of household eligibility and basis of issuance status. The reviewer shall utilize information obtained through the field investigation to complete column (3) of the Integrated Worksheet, Form FNS–380.

(1) *Personal interviews.* Personal interviews shall be conducted in a manner that respects the rights, privacy, and dignity of the participants. Prior to making a home visit, the reviewer shall notify the household that it has been selected, as part of an ongoing review process, for review by quality control and that a home visit will be made in the future. The method of notifying the household and the specificity of the notification shall be determined by the State agency, in accordance with applicable State and Federal laws. Most interviews will be held in the home; however, interviews can be held elsewhere when circumstances warrant. Under no circumstances shall the interview with the household be conducted by phone, except in Alaska when an exception to the field investigation is made in accordance with this section. During the interview with the participant, the reviewer shall:

(i) Explore with the head of the household, spouse, authorized representative, or any other responsible household member, household circumstances as they affect each factor of eligibility and basis of issuance;

(ii) Establish the composition of the household;

(iii) Review the documentary evidence in the household's possession and secure information about collateral sources of verification; and

(iv) Elicit from the participant names of collateral contacts. The reviewer shall use, but not be limited to, these designated collateral contacts. If required by the State, the reviewer shall obtain consent from the head of the household to secure collateral information. If the participant refuses to sign the release of information form, the reviewer shall explain fully the consequences of this refusal to cooperate (as contained in paragraph (g)(1)(ii) of this section), and continue the review to the fullest extent possible.

(2) *Collateral contacts.* The reviewer shall obtain verification from collateral contacts in all instances when adequate documentation was not available from the participant. This second party verfication shall cover each element of eligibility as it affects the household's eligibility and coupon allotment. The reviewer shall make every effort to use the most reliable second party verfication available (for example, banks, payroll listings, etc.), in accordance with FNS guidelines, and shall thoroughly document all verfication obtained. If any information obtained by the QC reviewer differs from that given by the participant, then the reviewer shall resolve the differences to determine which information is correct before an error determination is made. The manner in which the conflicting information is resolved shall include recontacting the participant unless the participant cannot be reached. When resolving conflicting information reviewers shall use their best judgement based on the most reliable data available and shall document how the differences were resolved.

(d) *Variance identification.* The reviewer shall identify any element of a basic program requirement or the basis of issuance which varies (i.e., information from review findings which indicates that policy was applied incorrectly and/or information verified as of the review date that differs from that used at the most recent certification action). For each element that varies, the reviewer shall determine whether the variance was State agency or participant caused. The results of these determinations shall be coded and recorded in column (5) of the Integrated Worksheet, Form FNS–380.

(1) *Variances included in error analysis.* Except for those variances in an element resulting from one of the situations described in paragraph (d)(2) of this section, any variance involving an element of eligibility or basis of issuance shall be included in the error analysis. Such variances shall include but not be limited to those resulting from a State agency's failure to take the disqualification action related to SSN's specified in § 273.6(c), and related to work requirements, specified in § 273.7(g).

(2) *Variances excluded from error analysis.* The following variances shall be excluded from the determination of a household's eligibility and basis of issuance for the sample month:

(i) Any variance resulting from the nonverified portion of a household's gross nonexempt income where there is conclusive documentation (a listing of what attempts were made to verify and why they were unsuccessful) that such income could not be verified at the time of certification because the source of income would not cooperate in providing verification and no other sources of verification were available. If there is no conclusive documentation as explained above, then the reviewer shall not exclude any resulting variance from the error determination. This follows certification policy outlined in § 273.2(f)(1)(i).

(ii) Any variance in cases certified under expedited certification procedures resulting from postponed verification of an element of eligibility as allowed under § 273.2(i)(4)(i). Verification of gross income, deductions, resources, household composition, alien status, or tax dependency may be postponed for cases eligible for expedited certification. However, if a case certified under expedited procedures contains a variance as a result of a residency deficiency, a mistake in the basis of issuance computation, a mistake in participant identification, or incorrect expedited income accounting, the variance shall be included in the error determination. This exclusion shall only apply to those cases which are selected for QC review in the first month of participation under expedited certification.

(iii) Any variance subsequent to certification in an element of eligibility or basis of issuance which was not reported and was not required to have been reported as of the review date. The elements participants are required to report and the time requirements for reporting are specified in §§ 273.12(a) and 273.21(h) and (i), as appropriate. If, however, a change in any element is reported, and the State agency fails to act in accordance with §§ 273.12(c) and 273.21(j), as appropriate, any resulting variance shall be included in the error determination.

(iv) Any variance in deductible expenses which was not provided for in determining a household's benefit level in accordance with § 273.2(f)(3)(i)(B). This provision allows households to have their benefit level determined without providing for a claimed expense when the expense is questionable and obtaining verification may delay certification. If such a household subsequently provides the needed verification for the claimed expense and the State agency does not redetermine the household's benefits in accordance with § 273.12(c), any resulting variance shall be included in the error determination.

(3) *Other Findings.* Findings other than variances made during the review which are pertinent to the food stamp household or the case record may be acted on at the discretion of the State agency. Examples of such findings are: an incorrect age of a household member which is unrelated to an element of eligibility; an overdue subsequent certification; no current application on file; insufficient documentation; incorrect application of the verification requirements specified in Part 273; and deficiencies in work registration procedural requirements. Such deficiencies include: inadequate documentation of each household member's exempt status; work registration form for each nonexempt household member not completed at the time of application and every six months thereafter; and the household not advised of its responsibility to report any changes in the exempt status of any household member.

(e) *Error analysis.* The reviewer shall analyze all appropriate variances in completed cases, in accordance with paragraph (d) of this section, which are based upon verified information and determine whether such cases are either eligible, eligible with a basis of issuance error, or ineligible. The review of an active case determined ineligible shall be considered completed at the point of the ineligibility determination. For households determined eligible, the review shall be completed to the point where the correctness of the basis of issuance is determined, except in the situations outlined in paragraph (g) of this section. In the event that a review is conducted of a household which is receiving restored or retroactive benefits for the sample month, the portion of the allotment which is the restored or retroactive benefit shall be excluded from the determination of the household's eligibility and/or basis of issuance. A food stamp case in which a household member(s) receives public assistance shall be reviewed in the same manner as all other food stamp cases, using income as received. The determination of a household's eligibility and the correctness of the basis of issuance shall be determined based on data entered on the computation sheet as well as other information documented on other portions of the Integrated Worksheet, Form FNS–380, as appropriate.

(f) *Reporting of review findings.* All information verified to be incorrect during the review of an active case shall be reported to the State agency for appropriate action on an individual case basis. This includes information on all variances in elements of eligibility and basis of issuance in both error and nonerror cases. In addition, the reviewer shall report the review findings on the Integrated Review Schedule, Form FNS–380–1, in accordance with the following procedures:

(1) *Eligibilty errors.* If the reviewer determines that a case is ineligible, the occurrence and the total allotment issued in the sample month shall be coded and reported. Whenever a case contains a variance in an element which results in an ineligibility determination and there are also variances in elements which would cause a basis of issuance error, the case shall be treated as an eligibility error. The reviewer shall also code and report any variances that directly contributed to the error determination. In addition, if the State agency has chosen to report information on all variances in elements of eligibility and basis of issuance, the reviewer shall code and report any other such variances which were discovered and verified during the course of the review.

(2) *Basis of issuance errors.* If the reviewer determines that food stamp allotments were either overissued or underissued to eligible households in the sample month, in an amount exceeding $5.00, the occurrence and the amount of the error shall be coded and reported. The reviewer shall also code and report any variances that directly contributed to the error determination. In addition, if the State agency has chosen to report information on all variances in elements of eligibility and basis of issuance, the reviewer shall code and report any other such variances which were discovered and verified during the course of the review.

(g) *Disposition of case reviews.* Each case selected in the sample of active cases must be accounted for by classifying it as completed, not completed, or not subject to review. These case dispositions shall be coded and recorded on the Integrated Review Schedule, Form FNS–380–1.

(1) *Cases reported as not complete.* Active cases shall be reported as not completed if the household case record cannot be located and the household itself is not subsequently located; if the household case record is located but the household cannot be located unless the reviewer attempts to locate the household as specified in this paragraph; or if the household refuses to cooperate, as discussed in this paragraph. All cases reported as not complete shall be reported to the State agency for appropriate action on an individual case basis. Without FNS approval, no active case shall be reported as not completed solely because the State agency was unable to process the case review in time for it to be reported in accordance with the timeframes specified in § 275.21(b)(2).

(i) If the reviewer is unable to locate the participant either at the address indicated in the case record or in the issuance record and the State agency is not otherwise aware of the participant's current address, the reviewer shall attempt to locate the household by contacting at least two courses which the State agency determines are most

likely to be able to inform the reviewer of the household's current address. Such sources include but are not limited to:

(A) The local office of the U.S. Postal Service;

(B) The State Motor Vehicle Department;

(C) The owner or property manager of the residence at the address in the case record; and

(D) Any other appropriate sources based on information contained in the case record, such as public utility companies, telephone company, employers, or relatives. Once the reviewer has attempted to locate the household and has documented the response of each source contacted, if the household still cannot be located and the State agency has documented evidence that the household did actually exist, the State agency shall report the active case as not subject to review. In these situations documented evidence shall be considered adequate if it either documents two different elements of eligibility or basis of issuance, such as a copy of a birth certificate for age and pay status for income; or documents the statement of a collateral contact indicating that the household did exist. FNS Regional Offices will monitor the results of the contacts which State agencies make in attempting to locate households.

(ii) If a household refuses to cooperate with the quality control reviewer and the State agency has taken other administrative steps to obtain that cooperation without obtaining it, the household shall be notified of the penalities for refusing to cooperate with respect to termination and reapplication, and of the possibility that its case will be referred for investigation for willful misrepresentation. If a household refuses to cooperate after such notice, the reviewer may attempt to complete the case and shall report the household's refusal to the State agency for termination of its participation without regard for the outcome of that attempt. For a determination of refusal to be made, the household must be able to cooperate, but clearly demonstrate that it will not take actions that it can take and that are required to complete the quality control review process. In certain circumstances, the household may demonstrate that it is unwilling to cooperate by not taking actions after having been given every reasonable opportunity to do so, even though the household or its members do not state that the household refuses to cooperate. Instances where the household's unwillingness to cooperate in completing a quality control review has the effect of a refusal to cooperate shall include the following:

(A) The household does not respond to a letter from the reviewer sent Certified Mail-Return Receipt Requested within 30 days of the date of receipt;

(B) The household does not attend an agreed upon interview with the reviewer and then does not contact the reviewer within 10 days of the date of the scheduled interview to reschedule the interview; or

(C) The household does not return a signed release of information statement to the reviewer within 10 days of either agreeing to do so or receiving a request from the reviewer sent Certified Mail-Return Receipt Requested. However, in these and other situations, if there is any question as to whether the household has merely failed to cooperate, as opposed to refused to cooperate, the household shall not be reported to the State agency for termination.

(2) *Cases not subject to review.* Cases which are not subject to review, if they have not been eliminated in the sampling process, shall be eliminated during the review process. These cases shall be as follows:

(i) Death of all members of a household if they died before the review could be undertaken or completed;

(ii) The household moved out of State before the review could be undertaken or completed;

(iii) The household, at the time of the review, is under active investigation for intentional Food Stamp Program violation, including a household with a pending administrative disqualification hearing;

(iv) A household receiving restored benefits in accordance with § 273.17 but not participating based upon an approved application for the sample month;

(v) A household dropped as a result of correction for oversampling;

(vi) A household participating under disaster certification authorized by FNS for a natural disaster;

(vii) A case incorrectly listed in the active frame;

(viii) A household appealing an adverse action when the review date falls within the time period covered by continued participation pending the hearing;

(ix) A household that did not receive benefits for the sample month; or

(x) A household that still cannot be located after the reviewer has attempted to locate it in accordance with paragraph (g)(1)(i) of this section.

(h) *Demonstration projects/SSA processing.* Households correctly classified for participation under the rules of a demonstration project which establishes new FNS-authorized eligibility criteria or modifies the rules for determining households' eligibility or allotment level shall be reviewed following standard procedures provided that FNS does not modify these procedures to reflect modifications in the treatment of elements of eligibility or basis of issuance in the case of a demonstration project. If FNS determines that information obtained from these cases would not be useful, then they may be excluded from review. A household whose most recent application for participation was processed by Social Security Administration personnel shall be reviewed following standard procedures. This includes applications for recertification, provided such an application is processed by the SSA as allowed in § 273.2(k)(2)(ii).

11. Section 275.13 is revised to read as follows:

§ 275.13 Review of negative cases.

(a) *General.* A sample of households denied certification to receive food stamps or which had their participation in the Food Stamp Program terminated during a certification period effective for the sample month shall be selected for quality control review. These negative cases shall be reviewed to determine whether the State agency's decision to deny or terminate the household, as of the review date, was correct. For negative cases, the review date shall be the date of the agency's decision to deny or terminate program benefits. The review of negative cases shall include a household case record review; an error analysis; and the reporting of review findings.

(b) *Household case record review.* The reviewer shall examine the household case record and verify through documentation in it whether the reason given for the denial or termination is correct or whether the denial or termination is correct for any other reason documented in the casefile. When the case record alone does not prove ineligibility, the reviewer may attempt to verify the element(s) of eligibility in question by telephoning either the household and/or a collateral contact(s). Through the review of the household case record, the reviewer shall complete the household case record sections and document the reasons for denial or termination on the Negative Quality Control Review Schedule, Form FNS–245.

(c) *Error analysis.* A negative case shall be considered correct if the reviewer is able to verify through documentation in the household case

record or collateral contact that a household was correctly denied or terminated from the program. Whenever the reviewer is unable to verify the correctness of the State agency's decision to deny or terminate a household's participation through such documentation or collateral contact, the negative case shall be considered incorrect.

(d) *Reporting of review findings.* When a negative case is incorrect, this information shall be reported to the State agency for appropriate action on an individual case basis, such as recomputation of the coupon allotment and restoration of lost benefits. In addition, the reviewer shall code and record the error determination on the Negative Quality Control Review Schedule, Form FNS–245.

(e) *Disposition of case review.* Each case selected in the sample of negative cases must be accounted for by classifying it as completed, not completed, or not subject to review. These case dispositions shall be coded and recorded on the Negative Quality Control Review Schedule, Form FNS–245.

(1) Negative cases shall be reported as not completed if the reviewer, after all reasonable efforts, is unable to locate the case record. In no event, however, shall any negative case be reported as not completed solely because the State agency was unable to process the case review in time for it to be reported in accordance with the timeframes specified in § 275.21(b)(2), without prior FNS approval. This information shall be reported to the State agency for appropriate action on an individual case basis.

(2) Negative cases shall be reported as not subject to review when the household, at the time of the review:

(i) Withdrew an application prior to the State agency's determination;

(ii) Is under active investigation for intentional Food Stamp Program violation;

(iii) Had its case closed due to expiration of the certification period; or

(iv) Was dropped as a result of correction for oversampling.

(f) *Demonstration projects/SSA processing.* A household whose application has been denied or whose participation has been terminated under the rules of an FNS-authorized demonstration project shall be reviewed following standard procedures unless FNS provides modified procedures to reflect the rules of the demonstration project. If FNS determines that information obtained from these cases would not be useful, then these cases may be excluded from review. A household whose application has been processed by SSA personnel and is subsequently denied participation shall be reviewed following standard procedures.

12. Section 275.14 is revised to read as follows:

§ 275.14 Review processing.

(a) *General.* Each State agency shall use FNS handbooks, worksheets, and schedules in the quality control review process. Deviations may be granted from FNS-designed materials under the conditions in § 273.2(b).

(b) *Handbooks.* The reviewer shall follow the procedures outlined in the Quality Control Review Handbook, FNS Handbook 310, to conduct quality control reviews. In addition, the sample of active and negative cases shall be selected in accordance with the sampling techniques described in the Quality Control Sampling Handbook, FNS Handbook 311.

(c) *Worksheets.* The Integrated Review Worksheet, Form FNS–380, shall be used by the reviewer to record required information from the case record, plan and conduct the field investigation, and record findings which contribute to the determination of eligibility and basis of issuance in the review of active cases. In some instances, reviewers may need to supplement Form FNS–380 with other forms. The State forms for appointments, interoffice communications, release of information, etc., should be used when appropriate.

(d) *Schedules.* Decisions reached by the reviewer in active case reviews shall be coded and recorded on the Integrated Review Schedule, Form FNS–380–1. Such active case review findings must be substantiated by information recorded on the Integrated Review Worksheet, Form FNS–380. In negative case reviews, the review findings shall be coded and recorded on the Negative Quality Control Review Schedule, Form FNS–245, and supplemented as necessary with other documentation substantiating the findings.

(Approved by the Office of Management and Budget under control number 0584–0074.)

13. Section 275.21 is revised to read as follows:

§ 275.21 Quality control review reports.

(a) *General.* Each State agency shall submit reports on the performance of quality control reviews in accordance with the requirements outlined in this section. These reports are designed to enable FNS to monitor the State agency's compliance with Program requirements relative to the Quality Control Review System. Every case selected for review during the sample month must be accounted for and reflected in the appropriate report(s).

(b) *Individual cases.* The State agency shall report the review findings on each case selected for review during the sample month. For active cases, the State agency shall submit the edited findings of the Integrated Review Schedule, Form FNS–380–1. For negative cases, the State agency shall submit a summary report which is produced from the edited findings on individual cases which are coded on the Negative Quality Control Review Schedule, Form FNS–245. The review findings shall be reported as follows:

(1) The State agency shall input and edit the results of each active and negative case into the FNS supplied computer terminal and transmit the data to the host computer. For State agencies that do not have FNS supplied terminals, the State agency shall submit the results of each QC review in a format specified by FNS. Upon State agency request, FNS will consider approval of a change in the review results after they have been reported to FNS.

(2) The State agency shall dispose of and report the findings of 90 percent of all cases selected in a given sample month so that they are received by FNS within 75 days of the end of the sample month. All cases selected in a sample month shall be disposed of and the findings reported so that they are received by FNS within 95 days of the end of the sample month.

(3) The State agency shall supply the FNS Regional Office with individual household case records and the pertinent information contained in the individual case records, or legible copies of that material, as well as legible hard copies of individual Forms FNS–380, FNS–380–1, and FNS–245 or other FNS-approved report forms, within 10 days of receipt of a request for such information.

(4) For each case that remains pending 95 days after the end of the sample month, the State agency shall immediately submit a report that includes an explanation of why the case has not been disposed of, documentation describing the progress of the review to date, and the date by which it will be completed. If FNS determines that the above report does not sufficiently justify the case's pending status, the case shall be considered overdue. Depending upon the number of overdue cases, FNS may find the State agency's QC system to be inefficient or ineffective and suspend and/or disallow the State agency's Federal share of

administrative funds in accordance with the provisions of § 276.4.

(c) *Monthly status.* The State agency shall report the monthly progress of sample selection and completion on the Form FNS–248, Status of Sample Selection and Completion or other format specified by FNS. This report shall be submitted to FNS so that it is received no later than 95 days after the end of the sample month. Each report shall reflect sampling and review activity for a given sample month.

(d) *Annual results.* The State agency shall annually report the results of all quality control reviews during the review period. For this report, the State agency shall submit the edited results of all QC reviews on the Form FNS–247, Statistical Summary of Sample Distribution or other format specified by FNS. This report shall be submitted to FNS so that it is received no later than 95 days from the end of the annual review period. Every case selected in the active or negative sample must be accounted for and reported to FNS, including cases not subject to review, not completed, and completed.

(e) *Demonstration projects/SSA processing.* The State agency shall identify the monthly status of active and negative demonstration project/SSA processed cases (i.e., those cases described in § 275.11(f)) on the Form FNS–248, described in paragraph (c) of this section. In addition, the State agency shall identify the annual results of such cases on the Form FNS–247, described in paragraph (d) of this section.

(Approved by the Office of Management and Budget under control numbers 0584–0034 –0074, and –0299.)

14. In § 275.25, paragraphs (c) and (d) are redesignated as paragraphs (d) and (e), respectively; a new paragraph (c) is added; newly redesignated paragraph (d) is revised; newly redesignated paragraphs (e)(1), (e)(2), (e)(3), (e)(4)(ii), (e)(5)(i)(C), (E) and (F), (e)(5)(ii) and (e)(6) are revised. The addition and revisions read as follows:

§ 275.25 Determination of State agency program performance.

* * * * *

(c) *State agency error rates.* FNS shall estimate each State agency's error rates based on the results of quality control review reports submitted in accordance with the requirements outlined in § 275.21. The State agency's active case error, payment error, underissuance error, and negative case error rates shall be estimated as follows:

(1) *Active case error rate.* The active case error rate shall include the proportion of active sample cases which were reported as ineligible or as receiving an incorrect allotment (as described in § 275.12(e)) based upon certification policy as set forth in Part 273.

(2) *Payment error rate.* The payment error rate shall include the value of the allotments reported as overissued, including overissuances in ineligible cases, for those cases included in the active case error rate.

(3) *Underissuance error rate.* The underissuance error rate shall include the value of the allotments reported as underissued for those cases included in the active case error rate.

(4) *Negative case error rate.* The negative case error rate shall be the proportion of negative sample cases which were reported as having been eligible at the time of denial or termination (as described in § 275.13(c)) based upon certification policy as set forth in Part 273.

(5) *Demonstration projects/SSA processing.* The reported results of reviews of active and negative demonstration project/SSA processed cases, as described in § 275.11(f), shall be excluded from the estimate of the active case error rate, payment error rate, underissuance error rate, and negative case error rate.

(d) *Federal enhanced funding.* (1) Before making enhanced funding available to a State agency, as described in § 277.4(b), FNS will:

(i) Validate the State agency's estimated active case error rate, payment error rate, underissuance error rate, and negative case error rate, as provided for in § 275.3(c);

(ii) Ensure that the sampling techniques used by the State agency are FNS-approved procedures, as established in § 275.11; and

(iii) Validate the State agency's quality control completion rate to ensure that all of the minimum required sample cases, of both active and negative quality control samples, have been completed. This completion standard is applied separately to the active and negative case samples, and the State agency's estimated payment and underissuance error rates will be adjusted separately, if necessary, to account for those required cases not completed, in accordance with the procedures described in paragraph (e)(6)(iii) of this section for adjustment of the payment error rate.

(2) After validation and any necessary adjustment of estimated error rates, a State agency with a combined official payment error rate and underissuance error rate of five percent or less for an annual review period shall be eligible for a 60 percent Federally funded share of administrative costs, provided that the State agency's official negative case error rate for that period is less than the national weighted mean negative case error rate applicable to the period of enhanced funding.

(3) State agencies entitled to enhanced funding shall receive the additional funding on a retroactive basis only for the review period in which their error rates are less than the levels described in paragraph (d)(2) of this section.

(e) *State agencies' liabilities for payment error rates.* (1) At the end of each fiscal year, each State agency's payment error rate over the entire fiscal year will be computed, as described in paragraph (e)(6) of this section, and evaluated to determine whether the payment error rate goals established in the following paragraphs have been met.

(2) *Establishment of Payment Error Rate Goals.* (i) Each State agency's payment error rate goal for Fiscal Year 1983 shall be nine percent. Each State agency's payment error rate goal for Fiscal Year 1984 shall be seven percent. Each State agency's payment error rate goal for Fiscal Year 1985, and each fiscal year thereafter, shall be five percent. State agencies' payment error rates for any fiscal year shall be derived from the review period corresponding to the fiscal year.

(ii) If a State agency fails to achieve a nine percent payment error rate in Fiscal Year 1983 but reduces its payment error rate for Fiscal Year 1983 by 33.3 percent (or more) of the difference between its payment error rate during the period of October 1980 through March 1981 and a five percent payment error rate, the State agency shall bear no fiscal liability for its payment error rate. If a State agency fails to achieve a seven percent payment error rate in Fiscal Year 1984, but reduces its payment error rate for Fiscal Year 1984 by 66.7 percent (or more) of the difference between its payment error rate during the period of October 1980 through March 1981 and a five percent payment error rate, the State agency shall bear no fiscal liability for its payment error rate.

(iii) State agencies' payment error rates shall be rounded to the nearest one hundredth of a percent with .005 and above being rounded up to the next highest one-hundredth and .004 and below being rounded to the next lowest one-hundredth.

(3) *State Agencies Failing to Achieve Payment Error Rate Goals.* Each State agency which fails to achieve its payment error rate goal during a fiscal year shall be liable as specified in the following paragraphs.

(i) For every percentage point, or fraction thereof, by which a State agency's payment error rate exceeds the goal for a fiscal year, FNS shall reduce the money it pays for the State agency's Food Stamp Program administrative costs by five percent for that fiscal year; provided that for every percentage point, or fraction thereof, by which a State agency's payment error rate exceeds its goal by more than three percentage points, FNS shall reduce the Federally funded share of Food Stamp Program administrative costs by ten percent for the applicable fiscal year. Thus, if a State agency's reported error rate in Fiscal Year 1983 is 10.5 percent, its Federal administrative funding could be reduced by ten percent. A 13.1 percent error rate, or 4.1 percentage points above the goal, would result in a reduction of 5 percent for each of the three first points, 10 percent for the fourth point and another 10 percent for the fraction above 4 percentage points. This would amount to a 35 percent reduction in Federal administrative funds unless the provisions of paragraph (e)(3)(ii) are applicable to the State agency's circumstances.

(ii) If a State agency fails to reach its payment error rate goal but reduces its error rate as explained in paragraph (e)(2)(ii) for a given fiscal year it will bear no liability for its error rates. If, however, a State agency fails to reach the established goal and fails to meet the reduction percentage for Fiscal Year 1983 and/or 1984, its Federally funded share of program administrative costs shall be reduced by five percent for every percentage point, or fraction thereof, (with a 10 percent reduction applied for every percentage point or fraction above 3 percentage points) by which its error rate exceeds the payment error rate it would have achieved had it met the 33.3 or 66.7 percent reduction percentage for the applicable fiscal year. Thus, if a State agency's payment error rate during the October through March 1981 period was 13 percent and its error rate for Fiscal Year 1983 is 11 percent, it will have failed to achieve a 33.3 percent reduction (13−(13−5)(33.3)=10.34 percent), i.e., the rate the State agency would have achieved had it met the reduction percentage) and incurred a liability equal to five percent of its Federal administrative funding. If the State agency's payment error rate increased to 13 percent in Fiscal Year 1984, it will have missed a 66.7 percent reduction by 5.34 percentage points (13−(13−5)(66.7)=7.66 percent) and incurred a liability equal to 45 percent of its Federal administrative funding. In the latter example, the 45 percent funding reduction results from a 15 percent reduction for the first three percentage points and 30 percent for the additional 2.34 percentage points by which the State agency exceeded a 7.66 percent error rate.

(iii) If a State agency is found liable for an excessive payment error rate, the amount of liability will be calculated by: (A) Multiplying the percent the Federal share is to be reduced by the base Federal reimbursement rate of 50 percent; (B) subtracting the product of (A) from 50 percent; and (C) multiplying the result of (B) by the State agency's costs covered under the base Federal reimbursement rate for the fiscal year in which the State agency incurred the liability. For example, if the total administrative costs (State and Federal) in a State agency are $4,000,000 for the fiscal year, and the State agency's Federal funding is to be reduced by 25 percent, the State agency would be reimbursed at a rate of 37.5 percent (i.e., 50 percent minus 25 percent times 50 percent) or $1,500,000. The State agency's liability would be $500,000 or 12.5 percent of its administative costs.

(iv) A State's Federally funded share of administrative costs shall not be reduced by an amount that exceeds the difference between its payment error rate goal (or what its error rate would have been had it met the reduction criteria of paragraph (ii) above) and its actual error rates expressed as a percentage of its total issuance during the fiscal year. Therefore, if the State agency in the above example issued $10,000,000 in food stamps in the fiscal year and exceeded its goal by four percentage points (as demonstrated by a 25 percent reduction in Federal funding), the State agency's liability would be capped at $400,000 [(.04)(10,000,000)], even though the calculation based upon administrative funds would result in a liability of $500,000.

(4) *Relationship to Warning Process and Disallowance of Funds.* * * *

(ii) FNS may reduce a State agency's share of Federal administrative funding under the provisions of this section or disallow administrative funds under the provisions of § 276.4(c). If a State agency's administrative funding is reduced under the provisions of this section and a portion is also disallowed under § 276.4(c), FNS shall adjust the billing if the disallowance is based upon noncompliance with a program requirement that would constitute a dollar loss reflected in the State agency's payment error rate to the extent that the disallowance and reduction are for the same deficiency and period of time. This adjustment shall ensure that a State agency is not doubled-billed for the same deficiency in its administration of the program. It shall be each State agency's responsibility to demonstrate the need for any adjustments.

(5) *Good Cause and Appeals.*

(i) * * *

(C) Significant caseload growth prior to or during a fiscal year of, for example, 15 percent;

* * * * *

(E) Misapplication of Federal policy where such misapplication directly affects the State's QC error rates and was incorrectly provided or approved by an FNS representative who is reasonably believed to have the necessary authority; and

(F) Other circumstances beyond the control of the State.

(ii) If FNS determines that there was good cause for all or part of a State agency's error rate to exceed its goal in a fiscal year, FNS shall reduce or eliminate the State agency's liability as appropriate.

* * * * *

(6) *Determination of payment error rates.* As specified in § 275.3(c), FNS will validate each State agency's estimated payment error rate through rereviewing the State agency's active case sample and ensuring that its sampling, estimation, and data management procedures are correct.

(i) FNS shall adjust State agencies' estimated error rates based on findings of rereviewed cases. Once the Federal case reviews have been completed and all differences with the State agency have been resolved, the State agency's estimated error rate shall be adjusted using the following linear regression equation.

(A) $y' = y + b(X-x)$ where y' is the average value of allotments overissued to eligible and ineligible households; y is the average value of allotments overissued to eligible and ineligible households in the rereview sample according to the Federal finding; b is the estimate of the slope parameter; x is the average value of allotments overissued to eligible and ineligible households in the rereview sample according to State agency findings; and X is the average value of allotments overissued to eligible and ineligible households in the

full quality control sampling according to the State agency's findings.

(B) The adjusted error rates are given by $r=y'/u$, where u is the average value of allotments issued to participating households.

(C) After application of the provisions of paragraph (e)(6)(iii) of this section, the adjusted payment error rate will then become the State agency's official payment error rate for use in the reduced and enhanced funding determinations described in paragraphs (d) and (e) of this section.

(ii) If FNS determines that a State agency has sampled incorrectly, estimated improperly, or has deficiencies in its QC data management system, FNS will correct the State agency's payment error rate based upon a correction to that aspect of the State agency's QC system which is deficient. If FNS cannot accurately correct the State agency's deficiency, FNS will assign the State agency a payment error rate based upon the best information available. After consultation with the State agency, this assigned payment error rate will then be used in the above described liability determination and in determinations for enhanced funding under paragraph (d) of this section. State agencies shall have the right to appeal assignment of an error rate in this situation in accordance with the procedure of § 276.7.

(iii) Should a State agency fail to complete all of its required sample size, FNS shall adjust the State agency's payment error rate by assigning two standard deviations of the estimated error rate to those cases not completed in order to calculate the State agency's official payment error.

PART 277—PAYMENT OF CERTAIN ADMINISTRATIVE COSTS OF STATE AGENCIES

15. In Section 277.4 paragraphs (b)(2), (b)(5), (b)(6), and (b)(7), and (b)(8) are adopted as final. they read as follows:

§ 277.4 Funding.

* * * * *

(b) *Federal Reimbursement Rate.* * * *

(2) For the period beginning October 1, 1982, a State agency's Federally funded share of Food Stamp Program administrative costs shall be increased to 60 percent when the sum of the State agency's payment and underissuance error rates is less than five percent; provided that the State agency's negative case error rate is less than the national weighted mean negative case error rate for the fiscal year prior to the period of enhanced funding. The State agency's error rates shall be determined through the quality control review process as described in section 275.

* * * * *

(5) For the period beginning October 1, 1980, a State agency's Federally funded share of Food Stamp Program administrative costs shall be increased to 65 percent when the State agency's cumulative allotment error rate is less than five percent; provided that the State agency's negative case error rate is less than the national weighted mean negative case error rate for the 6-month period of enhanced funding. This provision shall not apply to any period after the April through September 1982 period.

(6) For the period beginning October 1, 1980, a State agency's Federally funded share of Food Stamp Program administrative costs shall be increased to 60 percent when the State agency's cumulative allotment error rate is less than eight percent; provided that the State agency's negative case error rate is less than the national weighted mean negative case error rate for the 6-month period of enhanced funding. This provision shall not apply to any period after the April through September 1982 period.

(7) for the 6-month period beginning October 1, 1980, a State agency with a 25 percent or greater reduction in its cumulative allotment error rate from one 6-month period to the comparable period of the next fiscal year shall be entitled to a 55 percent Federally funded share of Food Stamp Program administrative costs; provided that, effective with the 6-month period beginning October 1, 1981, the State agency's negative case error rate is less than the national weighted mean negative case error rate for the period of enhanced funding. This provision shall not apply to any period after the April through September 1982 period.

(8) beginning October 1982, the Federally funded share of administrative costs, as identified in paragraph (b) of this section may be decreased based upon its payment error rate as described in Section 275.25. The rates of Federal funding for the activities identified in paragraphs (b)(1), (b)(3), and (b)(4) of this section shall not be reduced based upon the agency's payment error rate.

(91 Stat. 958 (U.S.C. 2011–2029))

(Catalogue of Federal Domestic Assistance Programs No. 10.551, Food Stamps)

Dated: February 15, 1984.

Robert E. Leard,

Administrator.

[FR Doc. 84–4532 Filed 2–16–84; 8:45 am]

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Federal Register

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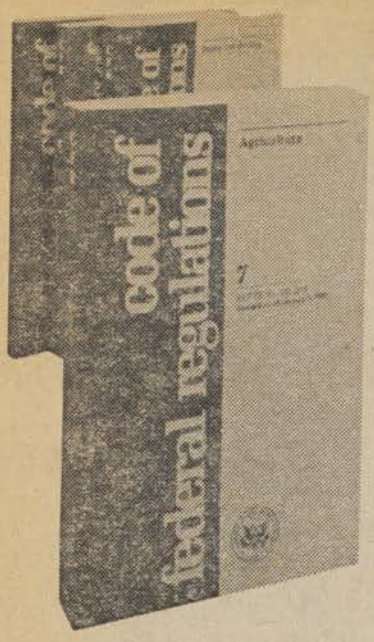
H.R. 2727 Pub. L. 98-216

To codify without substantive chagne recent laws related to money and finance and tranportation and to improve the United States Code. (Feb. 14,1981; 98 Stat. 3) Price: $1.75

H.R. 3969 Pub. L. 98-217

To amend the Panama Canal act of 1979 to allow the use of proxies by the Board of the Panama Canal Commission. (Feb. 14, 1984; 98 Stat. 9) Price: $1.50



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