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Thursday
March 28, 1985

Selected Subjects

CONTINUED INSIDE

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Selected Subjects

Contents

Federal Register
Vol. 50, No. 60
Thursday, March 28, 1985

Separate Parts in this Issue

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

CFR PARTS AFFECTED IN THIS ISSUE

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

1 CFR
1 ... 12462
2 ... 12462
7 ... 12462
8 ... 12462
9 ... 12462
10 ... 12462
15 ... 12462
18 ... 12462
20 ... 12462
21 ... 12462

7 CFR
301 (2 documents) ... 12215
916 ... 12217
917 ... 12217
981 ... 12219
1032 ... 12218

9 CFR
303 ... 12220
381 ... 12220

10 CFR
40 ... 12221
70 ... 12221
73 ... 12221
110 ... 12221

12 CFR
Proposed Rules:
210 ... 12310

13 CFR
118 ... 12472
119 ... 12472
120 (2 documents) ... 12229, 12472
122 ... 12472
130 ... 12472
301 ... 12235
302 ... 12236
305 ... 12236

14 CFR
97 ... 12237
Proposed Rules:
71 (2 documents) ... 12313, 12314

16 CFR
Proposed Rules:
13 ... 12314

17 CFR
200 ... 12239

18 CFR
803 ... 12241
Proposed Rules:
2 ... 12325
157 ... 12326

20 CFR
350 ... 12241

23 CFR
Proposed Rules:
420 ... 12328
450 ... 12328

25 CFR
11 ... 12242

26 CFR
1 ... 12243

29 CFR
629 ... 12243

30 CFR
250 ... 12248

31 CFR
Proposed Rules:
206 ... 12333

32 CFR
78 ... 12249
Proposed Rules:
97 ... 12337

33 CFR
165 ... 12251
Proposed Rules:
100 ... 12337

38 CFR
8 ... 12252
9 ... 12252

40 CFR
421 ... 12252
Proposed Rules:
52 ... 12338
81 ... 12341
261 ... 12342

43 CFR
1769 (Revoked in part by PLO 6598) ... 12253
3780 (Revoked in part by PLO 6598) ... 12253
5187 (Revoked in part by PLO 6598) ... 12253
6598 ... 12253

47 CFR
69 ... 12254
73 (6 documents) ... 12257–12260
90 ... 12260
Proposed Rules:
73 ... 12343

48 CFR
201 ... 12261
202 (2 documents) ... 12261, 12275
204 (3 documents) ... 12261, 12275, 12286
208 (2 documents) ... 12261, 12275
209 (2 documents) ... 12261, 12286
211 ... 12286
212 ... 12275
213 (2 documents) ... 12286, 12291
214 ... 12291
215 (2 documents) ... 12261, 12286
216 ... 12261
217 (2 documents) ... 12275, 12291
219 ... 12286
225 (3 documents) ... 12261, 12286, 12291
227 (2 documents) ... 12261, 12286
228 ... 12275
230 (2 documents) ... 12275, 12286
231 (2 documents) ... 12261, 12291
235 ... 12291
236 (2 documents) ... 12275, 12286
237 ... 12286
242 (3 documents) ... 12261, 12275, 12286
243 ... 12275
245 ... 12286
252 (4 documents) ... 12261, 12275, 12286, 12291
253 ... 12291
270 (2 documents) ... 12286, 12291

49 CFR
Proposed Rules:
531 ... 12344

50 CFR
17 (3 documents) ... 12298, 12302, 12306
Proposed Rules:
17 (2 documents) ... 12345, 12348

Rules and Regulations

Federal Register
Vol. 50, No. 60
Thursday, March 28, 1985

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

7 CFR Part 301

[Docket No. 85-311]

Gypsy Moth Regulated Areas

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Affirmation of interim rule.

SUMMARY: This document affirms without change an interim rule published in the **Federal Register** on October 24, 1984 which amended the "Gypsy Moth and Browntail Moth" quarantine and regulations by designating a previously nonregulated area in Lane County, Oregon, as a gypsy moth high-risk area. The quarantine and regulations impose restrictions on the interstate movement of certain articles from gypsy moth high-risk areas and gypsy moth low-risk areas. This action is necessary in order to prevent the artificial spread interstate of gypsy moth.

EFFECTIVE DATE: March 28, 1985.

FOR FURTHER INFORMATION CONTACT: Gary E. Moorehead, Staff Officer, Field Operations Support Staff, Plant Protection and Quarantine, Animal and Plant Health Inspection Service, U.S. Department of Agriculture, Room 663 Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782, 301-436-8295.

SUPPLEMENTARY INFORMATION: A document published in the **Federal Register** on October 24, 1984 (49 FR 42691-42693) amended § 301.45-2a of the Gypsy Moth and Browntail Moth quarantine and regulations (7 CFR 301.45 *et seq.*, referred to below as the regulations) by designating a previously nonregulated area in Lane County, Oregon, as a gypsy moth high-risk area. The regulations impose, among other things, restrictions on the interstate movement of certain articles from areas designated as gypsy moth high-risk areas and gypsy moth low-risk areas.

The amendment became effective on the date of publication. The document provided that the amendment was necessary as an emergency measure in order to prevent the artificial spread interstate of gypsy moth.

Comments were solicited for 60 days after publication of the amendment. One comment was received during the comment period. The commenter supported the amendment but recommended that the regulations be further amended by defining Christmas trees as a regulated article in § 301.45-1(x). No change has been made in the interim rule based on this comment. The Department, however, has begun the process of determining whether to further amend the regulations by defining Christmas trees as a regulated article.

The factual situation set forth in the document of October 24, 1984, still provides a basis for the amendment. Accordingly, it has been determined that the amendment should remain effective as published in the **Federal Register** on October 24, 1984.

Executive Order 12291 and Regulatory Flexibility Act

This amendment has been issued in conformance with Executive Order 12291 and has been determined to be not a "major rule." Based on information compiled by the Department, it has been determined that this amendment will have an annual effect on the economy of approximately $100,000; 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 cause significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

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

The Administrator of the Animal and Plant Health Inspection Service has determined that this action will not have a significant economic impact on a substantial number of small entities. This action affects the interstate movement of regulated articles from a specified area in Lane County in Oregon. Based on information compiled by the Department it has been determined that there are many hundreds of small entities that move regulated articles interstate from Oregon and many thousands of small entities that move regulated articles interstate from other States. However, based on such information, it has been determined that approximately 35 small entities move regulated articles interstate from the specified area affected by this action. Further, the annual overall economic impact from this action is estimated to be less than $100,000.

Paperwork Reduction Act

The regulations in this subpart contain no information collection or recordkeeping requirements under the Paperwork Reduction Act of 1980 (44 U.S.C. 3507 *et seq.*).

List of Subjects in 7 CFR Part 301

Agricultural commodities, Gypsy moth, Plant pests, Quarantine, Transportation.

PART 301—DOMESTIC QUARANTINE NOTICES

Accordingly, the interim rule published at 49 FR 42691—42693 on October 24, 1984 is adopted as a final rule.

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

Done at Washington, D.C., this 25th day of March 1985.

Harvey L. Ford,

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

[FR Doc. 85-7408 Filed 3-27-85; 8:45 am]
BILLING CODE 3410-34-M

7 CFR Part 301

[Docket No. 85-309]

Pink Bollworm Regulated Areas

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Interim rule.

SUMMARY: This document amends the "Pink Bollworm" quarantine and regulations by removing Bossier Parish from the list of pink bollworm regulated areas in Louisiana. This action is necessary because it has been determined that the pink bollworm no longer occurs in Bossier Parish, Louisiana. The effect of this amendment is to remove restrictions on the interstate movement of regulated articles from Bossier Parish, a previously regulated area in Louisiana.

DATES: Effective date of this amendment is March 28, 1985. Written comments concerning this interim rule must be received on or before May 28, 1985.

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

SUPPLEMENTARY INFORMATION:

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 of this interim rule without prior opportunity for a public comment period because otherwise there would be unnecessary restrictions imposed on the interstate movement of certain articles. This situation requires immediate action to delete such unnecessary restrictions.

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

Background

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

Prior to the effective date of this document, the "Pink Bollworm Quarantine and Regulations" (referred to below as regulations; 7 CFR 301.52–1 through 301.52–10) quarantined the States of Arizona, Arkansas, California, Louisiana, Mississippi, Nevada, New Mexico, Oklahoma, and Texas because of the pink bollworm. The regulations restrict the interstate movement of regulated articles from regulated areas in quarantined States in order to prevent the artificial spread of the pink bollworm.

Under the regulations, an area must be designated as a "regulated area" if it is an area in which the pink bollworm has been found, or in which there is reason to believe that the pink bollworm is present, or which it is deemed necessary to regulate because of its proximity to infestation or its inseparability for quarantine enforcement purposes from infested localities. Regulated areas are classified as either "suppressive areas" or "generally infested areas". Suppressive areas are regulated areas in which eradication of the pink bollworm is undertaken as an objective. Generally infested areas are all regulated areas not designated as suppressive areas. Restrictions are imposed on the interstate movement of regulated articles from both generally infested areas and suppressive areas in order to prevent the artificial movement of the pink bollworm into noninfested areas, and to prevent the reinfestation of suppressive areas of the pink bollworm.

Surveys conducted by inspectors of the U.S. Department of Agriculture and officials of the State Department of Louisiana have established that the pink bollworm no longer occurs in Bossier Parish, Louisiana, which was previously designated as a suppressive area. As such, there is no longer a basis for imposing restrictions on the interstate movement of articles from Bossier Parish in Louisiana. Therefore, it is necessary as an emergency measure to remove Bossier Parish from the list of regulated areas in order to remove unnecessary restrictions on the interstate movement of regulated articles from Bossier Parish.

Executive Order 12291 and Regulatory Flexibility Act

This interim rule is issued in conformance with Executive Order 12291 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 have an estimated annual effect on the economy of less than $8,000; will not cause a major increase in cost or prices for consumers, individual industries, Federal, State or local government agencies, or geographic regions; and will not cause significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of the United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

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

The Administrator of the Animal and Plant Health Inspection Service has determined that this action will not have a significant economic impact on a substantial number of small entities. This action involves removing restrictions on the interstate movement of regulated articles from Bossier Parish in Louisiana. There are hundreds of small entities that move such articles interstate from nonregulated areas in the United States. However, based on information compiled by the Department, it has been determined that fewer than 5 small entities move such articles interstate from the affected area in Bossier Parish, Louisiana. Further, the overall economic impact from this action is estimated to be less than $8,000.

List of Subjects in 7 CFR Part 301

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

PART 301—[AMENDED]

Accordingly, § 301.52–2a of the pink bollworm quarantine and regulations (7 CFR 301.52–2a) is amended by revising the list of regulated areas in Louisiana to read as follows:

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

* * * * *

Louisiana

(1) *Generally infested area.* None.

(2) *Suppressive area.*

Caddo Parish. The entire parish.

* * * * *

Authority: 7 U.S.C. 150ee; 7 U.S.C. 161, 162; 7 CFR 2.17, 2.51, 371.2(c).

Done at Washington, D.C., this 25th day of March 1985.

Harvey L. Ford,

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

[FR Doc. 85-7407 Filed 3-27-85; 8:45 am]

BILLING CODE 3410-34-M

Agricultural Marketing Service

7 CFR Parts 916 and 917

[Nectarine Reg. 14, Amdt. 6; Peach Reg. 14, Amdt. 6; Plum Reg. 19, Amdt. 6]

Nectarines, Pears, Plums and Peaches Grown in California; Amendment of Size and Grade Requirements

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: This final rule amends size and grade requirements for shipments of fresh nectarines, peaches and plums grown in California. These requirements are necessary to promote the marketing of suitable quality and sizes of such fresh fruit in the interest of producers and consumers.

EFFECTIVE DATE: April 29, 1985.

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 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 the marketing agreements, as amended, and Marketing Orders 916 and 917, as amended (7 CFR Parts 916 and 917), regulating the handling of nectarines, pears, plums, and peaches grown in Califorina. The agreements and orders are effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601-674). Shipments of these California fruits are regulated by grade and size under Nectarine Regulation 14 (7 CFR Part 916), Peach Regulation 14 (7 CFR Part 917), and Plum Regulation 19 (7 CFR Part 917), all initially issued in July 1981. Because these regulations do not change substantially from season to season, they were issued on a continuing basis subject to amendment, modification or suspension as may be recommended by the applicable committees and approved by the Secretary.

The Nectarine Administrative Committee and the Peach and Plum, Commodity Committees met on November 14 and 15, 1984, and recommended amendment of the size requirements for nectarines, peaches and plums. The Plum Commodity Committee also recommended a change in the grade requirements for plums. This final rule is based upon those recommendations, information submitted by the committee and other available information .

This final rule amends the size requirements for nectarines, peaches and plums by extending regulation to several varieties now produced in commercially significant quantities, by deleting from size regulation one variety no longer produced in significant quantities and by lowering the grade requirements for certain varieties of plums to reflect current crop and expected market conditions.

For nectarines, § 916.356 is amended to establish a minimum size requirement of 96 nectarines per No. 22D standard lug box for the Grand Stan and Red Delight varieties of nectarines. In addition, size requirements are deleted for the June Belle variety of nectarines. For peaches, § 917.459 is amended to add size requirements for three new varities as follows: 72 peaches, per No. 22D standard lug box for the Blum's Beauty and Royal Flame varieties and 80 peaches per No. 22D standard lug box for the 50-178 variety. For Plums, § 917.460 is amended to add size requirements for the Ambra, Angie, Armelita, Black Diamond, Black Giant, Catalina, Fresno Black, Prima Rosa, and Rich Red varieties (see Table I for sizes), and to relax the grade requirements for any variety of plums.

These size requirement changes are designed to provide ample supplies of good quality fruit in the interest of producers and consumers pursuant to the declared policy of the act. Shipments of the above-named varieties that would be regulated exceeded 10,000 packages during the prior season, and shipments of the above-named variety that would be eliminated from variety-specific size regulation fell below 5,000 packages during the prior season. Variety-specific size regulations are implemented for varieties of nectarines, peaches and plums which are produced in commercially significant quantities. Similarly, varieties no longer produced in significant quantities are deleted from variety-specific size regulations.

The changes in grade requirements permit the shipment of any variety of plums which fails to meet U.S. No. 1 grade on account of healed, stem-end cracks. Presently, only 17 varieties of plums failing to meet that grade on account of healed, stem-end cracks may be shipped. This condition does not adversely affect the quality of the fruit. This action recognizes the tendency of plums to develop stem-end cracks as the three mature. This amendment is necessary to increase supplies of acceptable quality fruit in the interest of producers and consumers.

A proposed rule was published in the January 25 issue of the Federal Register (50 FR 3531) with a 30-day comment period. No comments were received. It is found that this final rule would tend to effectuate the declared policy of the act.

List of Subjects

7 CFR Part 916

Marketing agreements, Nectarines, California.

7 CFR Part 917

Marketing Agreements, Pears, Plums, Peaches, California.

This final rule amends §§ 916.356, 917.459, and 917.460 as follows:

PART 916—NECTARINES GROWN IN CALIFORNIA

1. The introductory text of paragraph (a) and subparagraph [a][3] of § 916.356 (49 FR 22451) are revised to read as follows:

§ 916.356 Nectarine Regulation 14.

(a) No handler shall ship:

* * * * *

[3] Any package or container of Apache, Armking, Early May, Early May Grand, Early Star, Gee Red, Grand Stan, June Glo, June Grand, May Grand, Red Delight, Red June, Spring Grand, Sunfre, or Zee Gold Variety of nectarines unless:

* * * * *

PART 917—FRESH PEARS, PLUMS, AND PEACHES GROWN IN CALIFORNIA

2. The introductory text of paragraph (a) and subparagraphs [a][4] and [a][5] of § 917.459 (49 FR 22461) are revised to read as follows:

§ 917.459 Peach Regulation 14.

(a) No handler shall ship:

* * * * *

(4) Any package of container or

Babcock, Bonjour, Coronet, Early Coronet, Early Royal May, Firecrest, First Lady, Flavorcrest, Flavor Red, Golden Lady, Honey Red, JJK-1, June Crest, June Lady, May Crest, May Lady, Merrill Gem, Merrill Gemfree, Redhaven, Redtop, Regina, Royal May, Springcrest, Spring Lady, Willie Red, or 50-178 variety of peaches unless:

* * * * *

(5) Any package or container of Angelus, August Sun, Autumn Gem, Autumn Lady, Belmont, Blum's Beauty, Cassie, Cal Red, Carnival, Early Fairtime, Early O'Henry, Elberta, Elegant Lady, Fairtime, Fay Elberta, Fayette, Fiesta, Fire Red, flamecrest, Fortyniner, Franciscan, Halloween, July Elberta (Early Elberta, Kim Elberta and Socala), July Lady, July Sun, Kings Lady, Lacey, Mardigras, O'Henry, Pacifica, Parade, Preuss Suncrest, Red Cal, Redglobe, Red Lady, Rio Oso Gem, Royal Flame, Scarlet Lady, Sparkel, Summerset, Suncrest, Sun Lady, Toreador, or Windsor variety of peaches unless:

* * * * *

3. Paragraphs (a) and (b) and Table I of paragraph (c) of § 917.460 (49 FR 22461) are amended to read as follows:

§ 917-460 Plum Regulation 19.

(a) No handler shall ship any lot of packages or containers of any plums, other than varieties named in paragraph (b) hereof, unless such plums grade at least U.S. No. 1, except that healed cracks emanating from the stem-end which do not cause serious damage shall not be considered as a grade defect with respect to such grade: *Provided,* That maturity shall be determined by the application of color standards by variety or such other tests as determined to be proper by the Federal or Federal-State Inspection Service; and *Provided further,* That internal discoloration not considered serious damage will be permitted.

(b) No handler shall ship any lot of packages or containers of Tragedy or Kelsey plums unless such plums grade U.S. No. 1 with additional tolerance of 10 percent for defects not considered serious damage: *Provided,* That internal discoloration not considered serious damage will be permitted; and *Provided further,* That maturity shall be determined by the application of color standards by variety or such other tests as detemined to be proper by the Federal or Federal-State Inspection Service.

(c) * * *

TABLE I

Column A, variety	Column B plums per sample
Ace	55
Amazon	64
Ambra	67
Andys Pride	69
Angeleno	67
Angie	67
Armelita	59
August Rosa	64
Autumn Rosa	72
Bee Gee	65
Blackamber	56
Black Beaut	69
Black Diamond	59
Black Giant	59
Black Knight	58
Carolyn Harris	61
Casselman	63
Catalina	59
Durado	74
Early Hawaiian Ann	60
Ebony	66
El Dorado	68
Empress	57
Freedom	56
Fresno Black	67
Friar	56
Frontier	61
Gar-Rosa	71
Grand Rosa	54
July Red	64
July Santa Rosa	69
Kelsey	47
King David	50
King's Black	58
Laroda	58
Late Santa Rosa (including improved Late Santa Rosa and Swall Rosa)	64
Linda Rosa	63
Mariposa	61
Midsummer	63
Nubiana	56
President	57
Prima Rosa	74
Queen Ann	50
Queen Rosa	53
Red Beaut	74
Red Glow	60
Red Rosa	64
Redroy	58
Rich Red	74
Rosa Ann	69
Rosemary	50
Rose Ann	60
Royal Red	74
Roysum	74
Santa Rosa	69
Simka, Arrosa, New Yorker	50
Spring Beaut	74
Standard	83
Wickson	51

* * * * *

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

Dated: March 21, 1985.

Thomas R. Clark,

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

[FR Doc. 85-7187 Filed 3-27-85; 8:45 am]

BILLING CODE 3410-02-M

7 CFR Part 1032

Milk in the Southern Illinois Marketing Area; Determination of Equivalent Price for Use in Computing Class I Prices

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: This action provides for the use of an equivalent price for use in computing Class I prices under the Southern Illinois order. Currently, the Class I price for any month under the Southern Illinois order is the Class I price under the St. Louis-Ozarks order less 7 cents per hundredweight. Termination of the St. Louis-Ozarks order, effective April 1, 1985, thus necessitates the use of an equivalent price to establish Class I prices for the Southern Illinois market. A Class I differential of $1.53 added to the basic formula price for the second preceding month will establish a Class I price for any month that is identical to the monthly Class I prices that would have been established in the absence of the termination of the St. Louis-Ozarks order.

EFFECTIVE DATE: This determination is effective April 1, 1985.

FOR FURTHER INFORMATION CONTACT: John F. Borovies, Marketing Specialist, Dairy Division, Agricultural Marketing Service, United States Department of Agriculture, Washington, D.C. 20250, (202) 447-2089.

SUPPLEMENTARY INFORMATION: Pursuant to the provisions of the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601, *et seq.*), and section 1032.54 of the order, as amended, regulating the handling of milk in the Southern Illinois marketing area, it is hereby found and determined that:

(1) The Southern Illinois order (Part 1032) specifies that the Class I price for the month per hundredweight of milk containing 3.5 percent butterfat shall be the Class I price pursuant to the St. Louis-Ozarks order (Part 1062) minus 7 cents.

(2) The Class I price for the month per hundredweight of milk containing 3.5 percent butterfat under the St. Louis-Ozarks order is the basic formula price for the second preceding month plus $1.60.

(3) An action issued by the Deputy Assistant Secretary on February 27, 1985, terminates the order regulating the handling of milk in the St. Louis-Ozarks marketing area effective April 1, 1985.

(4) Termination of the St. Louis-Ozarks order requires that an equivalent price be established to compute the Class I price for each month under the Southern Illinois order.

(5) An equivalent Class I differential of $1.53 (the St. Louis-Ozarks order $1.60

Class I differential minus the 7-cent adjustment under the Southern Illinois order) added to the basic formula price for the second preceding month will establish a Class I price for any month under the Southern Illinois order that is identical to the Class I price for any month that would be established under the Southern Illinois order in the absence of the termination of the St. Louis-Ozarks order.

(6) Notice of proposed rulemaking and public procedure thereon are impractical, unnecessary, and contrary to the public interest in that:

(a) This determination of an equivalent price is necessary for computing Class I prices under the Southern Illinois order because such prices are based on Class I prices established under the St. Louis-Ozarks order (Part 1062) which is terminated, effective April 1, 1985, based on an action of the Deputy Assistant Secretary issued on February 27, 1985;

(b) Use of the equivalent price will result in monthly Class I prices under the Southern Illinois order that are identical to Class I prices that would be established under the order in the absence of a termination of the St. Louis-Ozarks order; and

(c) This action does not require substantial or extensive preparation by any person.

It is therefore determined, That on and after April 1, 1985, the Class I price for the month shall be the basic formula price for the second preceding month plus $1.53.

List of Subjects in 7 CFR Part 1032

Milk marketing orders, Milk, Dairy products.

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

Effective date: April 1, 1985.

Signed at Washington, D.C., on : March 21, 1985.

Karen Darling,

Acting Assistant Secretary for Marketing & Inspection Services.

Add the following footnote[1] to the end of § 1032.50(a):

[1]The computation of the Class I price is affected by a determination document published on March 28, 1985, at 50 FR 12218.

[FR Doc. 85–7185 Filed 3–27–85; 8:45 am]

BILLING CODE 3410–02–M

7 CFR Part 981

Handling of Almonds Grown in California; Revision of Salable and Reserve Percentages for the 1984–85 Crop Year

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: This action revises the salable and reserve percentages for marketable California almonds received by handlers during the 1984–85 crop year, which began July 1, 1984. The salable percentage is increased from 75 percent to 79 percent, and the reserve percentage is correspondingly decreased from 25 percent to 21 percent. This action is under the marketing order for almonds grown in California and is designed to promote orderly marketing conditions in view of a record large 1984 almond crop.

EFFECTIVE DATES: July 1, 1984 through June 30, 1985.

FOR FURTHER INFORMATION CONTACT: Frank M. Grasberger, Acting Chief, Specialty Crops Branch, Fruit and Vegetable Division, AMS, USDA, Washington, D.C. 20250 (202) 447–5053.

SUPPLEMENTARY INFORMATION: This rule has been reviewed under USDA guidelines implementing Executive Order 12291 and Secretary's Memorandum No. 1512–1 and has been classified a "non-major" rule under criteria contained therein.

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.

It has been determined that a situation exists which warrants publication of this final rule without prior opportunity for public comment. This action relaxes restrictions on handlers by allowing them to ship additional almonds to salable outlets and should be taken promptly to ensure a sufficient quantity of almonds for normal domestic and export needs and maintain the current momentum of sales. Therefore, pursuant to the administrative procedure provisions in 5 U.S.C. 553, it is found upon good cause that notice of public rulemaking and other public procedures with respect to this final action are impracticable and contrary to the public interest.

It is further found that good cause exists for not postponing the effective date of this action until 30 days after publication in the **Federal Register** (5 U.S.C. 553). The marketing order for California almonds requires that revised salable, reserve, and export percentages established for a particular crop year shall apply to all marketable California almonds received by handlers from the beginning of that year. The 1984–85 crop year began July 1, 1984.

The authority to establish salable and reserve percentages is pursuant to § 981.47 of the marketing agreement and Order No. 981, both as amended (7 CFR 981), regulating the handling of almonds grown in California and hereinafter referred to collectively as the "order." The order is effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674). Section 981.48 of the order provides for an increase in the salable percentage by the Secretary upon findings of fact that the quantity of salable almonds is not sufficient to satisfy trade demand and desirable carryover requirements for the crop year.

On October 1, 1984, a final rule was published in the **Federal Register** (49 FR 38530) establishing salable, reserve, and export percentages of 75 percent, 25 percent, and 0 percent, respectively, for the 1984–85 crop year. That action was based on a unanimous recommendation of the Almond Board of California, which works with USDA in administering the order, at its July 25, 1984, meeting.

On February 26, 1985, the Board met to review the salable and reserve percentages established for the 1984–85 crop year and the supply and demand estimates from which those percentages were derived. Pursuant to § 981.48 of the order, the Board recommended an increase in the salable percentage to 79 percent and a corresponding decrease in the reserve percentage to 21 percent. In arriving at this recommendation, the Board noted that the current estimate of 1984 crop production is up 61.4 million pounds from its July 25, 1984, estimate to 581.4 million pounds. The Board decreased its estimate of domestic shipments by 10.0 million pounds to 140.0 million pounds but increased its estimate of export shipments by 20.0 millions pounds to 250.0 million pounds. Thus, total estimated trade shipments are increased by 10.0 million pounds to 390.0 million pounds. The Board also increased the quantity of almonds deemed desirable to be carried out on June 30, 1985, from 82.3 million pounds to 138.1 million pounds to ensure an adequate supply of almonds for early season use during the 1985–86 crop year. Therefore, an increase in the salable percentage is necessary to ensure that ample supplies of almonds are available to meet trade demand and carryover requirements. The increase in the

salable percentage also is necessary to return more money to almond producers. Handlers pay producers for the salable portion of their crops soon after delivery, but make payments for the reserve when it is released for sale in normal domestic and export markets, or disposed of in noncompetitive outlets.

The estimates used by the Board in recommending the revised salable and reserve percentages are tabulated below. The Board's July 25, 1984, estimates are shown as a basis of comparison.

MARKETING POLICY ESTIMATES—1984 CROP

[Kernel weight basis— million pounds]

	Initial estimate (7/25/84)	Revised estimate (2/26/85)
Production:		
1. 1984 Crop	520.0	581.4
2. Loss and exempt—5 pct	26.0	29.1
3. Marketable supply	494.0	552.3
Trade Shipments:		
4. Domestic	150.0	140.0
5. Export	230.0	250.0
6. Total	380.0	390.0
Inventory Adjustment:		
7. Carryin 7/1/84	91.8	91.8
8. Estimated carryover 6/30/85	82.3	138.1
9. Adjustment	(9.5)	46.3
Salable/Reserve:		
10. Salable Supply [6 plus 9]	370.5	436.3
11. Reserve Supply [3 minus 10]	123.5	116.0
12. Salable Percentage [10 ÷ 3 × 100]	75	79
13. Reserve Percentage [100% minus 12]	25	21

The reserve of 21 percent (116.0 million pounds) must be withheld by handlers from normal domestic and export outlets to meet their reserve obligations. The Board has allocated 27.6 million pounds of these almonds for use chiefly in the almond butter and school lunch projects begun during the 1982–83 crop year. These long-term projects are a means for the industry to develop new markets for almonds in view of larger crops. Allocated reserve almonds also could be disposed of in other noncompetitive outlets as specified in the order or approved by the Board.

The remaining portion of the reserve will be held as a contingency for allocation at a later date. All or part of these almonds could be released as salable to augment 1984–85 or 1985–86 salable supplies if it is later found that the quantity of salable almonds made available by this revision of the salable percentage is still insufficient to satisfy trade demand and desirable carryover requirements. The Board is required to make all recommendations to the Secretary to increase the salable percentage prior to May 15, 1985. Alternatively, the Board could use contingency reserve almonds to augment supplies for almond butter, school lunch, or other market development projects or dispose of these almonds in other noncompetitive outlets specified in § 981.66(c) of the order or as approved by the Board.

After consideration of all relevant matter presented, including the information and recommendation submitted by the Board, and other available information, it is further found that the revision of the salable and reserve percentages, as hereinafter set forth, will tend to effectuate the declared policy of the act.

List of Subjects in 7 CFR Part 981

Marketing agreements and orders, Almonds, and California.

PART 981—ALMONDS GROWN IN CALIFORNIA

Therefore, § 981.233 is revised to read as follows:

[The following provisions will not appear in the Code of Federal Regulations.]

Subpart—Salable, Reserve, and Export Percentages

§ 981.233 Salable, reserve, and export percentages for almonds during the crop year beginning July 1, 1984.

The salable, reserve, and export percentages during the crop year beginning July 1, 1984, shall be 79, 21, and 0 percent, respectively.

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

Dated: March 25, 1985.

Thomas R. Clark,

Deputy Director, Fruit and Vegetable Division.

[FR Doc. 85–7410 Filed 3–27–85; 8:45 am]

BILLING CODE 3410-02-M

Food Safety and Inspection Service

9 CFR Parts 303 and 381

[Docket No. 85–003N]

Exemptions for Retail Stores; Adjustment of Dollar Limitations

AGENCY: Food Safety and Inspection Service, USDA.

ACTION: Rule related notice.

SUMMARY: This notice announces that the dollar limitation currently in effect for annual sales of meat and poultry products by retail stores, exempt from routine Federal inspection, to nonhousehold consumers, such as hotels, restaurants and similar institutions, has been adjusted to conform with price changes for meat and poultry products as indicated by the Consumer Prices I index. The dollar limitation for meat products remains at $28,800 and the dollar limitation for poultry products raises from $25,500 to $28,200 per calendar year.

EFFECTIVE DATE: March 28, 1985.

FOR FURTHER INFORMATION CONTACT: Mr. Irwin Dubinsky, Acting Director, Regulations Office, Policy and Program Planning, Food Safety and Inspection Service, U.S. Department of Agriculture, Washington, DC 20250, (202) 447–8735.

SUPPLEMENTARY INFORMATION:

Background

Federal inspection of meat and poultry products prepared for sale and distribution in commerce and in States designated under section 301(c) of the Federal Meat Inspection Act (21 U.S.C. 661(c)) and section 5(c) of the Poultry Products Inspection Act (21 U.S.C. 454(c)) is required by law and administered by the Food Safety and Inspection Service (FSIS). However, section 301(c)(2) of the Federal Meat Inspection Act (21 U.S.C. 661(c)(2)) and section 5(c)(2) of the Poultry Products Inspection Act (21 U.S.C. 454(c)(2)) state that the general requirement of routine Federal inspection ". . . shall not apply to operations of types traditionally and usually conducted at retail stores . . . when conducted at any retail store . . . for sale in normal retail quantities . . . to consumers . . . ."

FSIS regulations (9 CFR 303.1(d) and 381.10(d)) define retail stores that qualify for exemption from routine Federal inspection under these Acts. Whether or not FSIS deems an establishment to be an exempt retail establishment depends, in part, upon the level of its trade with nonhousehold consumers, such as hotels, restaurants and similar institutions. Accordingly, the Federal meat and poultry products inspection regulations state in terms of dollars the maximum amount of meat and poultry products which may be sold to nonhousehold consumers if the establishment is to remain an exempt retail establishment. For meat products, the maximum amount is currently $28,800 per calendar year; for poultry products, the amount is $25,500 per calendar year.

The Federal meat and poultry products inspection regulations 9 CFR 303.1(d)(2)(iii)(*b*) and 381.10(d)(2)(iii)(*b*)) further provide that the dollar limitation on the sales of meat and poultry products by exempt retail stores to nonhousehold consumers will be automatically adjusted during the first quarter of each calendar year, whenever

the Consumer Price Index, published by the Bureau of Labor Statistics, Department of Labor, indicates a change in the price of the same volume of product exceeding $500, upward or downward. The regulations also require that notice of the adjusted dollar limitation will be published in the Federal Register.

The Consumer Price Index for 1984 has been published by the Bureau of Labor Statistics and, for that year, indicates a price increase in meat products of 0.3 percent and a price increase in poultry products of 10.6 percent. As a percentage of the existing dollar limitation, a change in excess of $500 is indicated by poultry products only. When rounded off to the nearest $100, a price increase for meat products amounts to $100 and a price increase for poultry products amounts to $2,700.

Accordingly, pursuant to the regulations, FSIS has automatically raised the dollar limitation of permitted sales of poultry products to nonhousehold consumers by establishments desiring status as retail establishments exempt from Federal inspection requirements. Since a change in excess of $500 for meat products has not occurred, the dollar limitation remains at $28,800. The adjustment raises the dollar limitation on poultry products specified in § 318.10(d)2)(iii)(*b*) from $25,500 to $28,200.

Done at Washington, DC, on: March 22, 1985.

Donald L. Houston,

Administrator, Food Safety and Inspection Service.

[FR Doc. 85-7409 Filed 3-27-85; 8:45 am]

BILLING CODE 3410-DM-M

NUCLEAR REGULATORY COMMISSION

10 CFR Parts 40, 70, 73, and 110

Implementation of the Convention on Physical Protection of Nuclear Material

AGENCY: Nuclear Regulatory Commission.

ACTION: Final rule.

SUMMARY: The Nuclear Regulatory Commission has decided to amend its regulations to bring them into accord with the provisions of the Convention on the Physical Protection of Nuclear Material. The amendments will result in strengthened protection of shipments of Convention-defined materials during international transport. The amendments will affect licensees and carriers who import, export, or transport international shipments of Convention-defined materials in four specifically-defined situations.

EFFECTIVE DATE: This notice of rulemaking is being published for information only. The amendments are intended to become effective 30 days after the 21st country ratifies the Convention. Following the 21st ratification, the NRC will republish this notice of rulemaking with the effective date expressed as a calendar date.

FOR FURTHER INFORMATION CONTACT: Carl B. Sawyer, Office of Nuclear Material Safety and Safeguards, U.S. Nuclear Regulatory Commission, Washington, DC 20555, Telephone: 301-427-4186.

SUPPLEMENTARY INFORMATION:

Background

On March 3, 1980, the United States signed the Convention on the Physical Protection of Nuclear Material (the Convention) (Exec. H, Senate, 96th Cong., 2d Sess.). The Convention is the result of a U.S. proposal originally made by the Secretary of State in 1974. Its purpose is to provide for the establishment and maintenance of adequate physical security with respect to international shipment of significant quantities of source or special nuclear material. The Senate approved the Convention on July 30, 1981 and the implementing legislation was enacted by the Congress and signed by the President on October 18, 1982 (Pub. L. 97-351, 96 Stat. 1663). The Convention will enter into force on the thirtieth day following the date on which the twenty-first country formally ratifies the Convention. The U.S. ratified the Convention on December 13, 1982.

Publication of the intended final rule at this time demonstrates continuing U.S. support for the Convention and will encourage other countries to ratify the Convention. The provisions of the final rule, however, are not scheduled to become effective until after the Convention enters into force. International cooperation is necessary if the strengthened protection of international shipments envisioned by the Convention is to be attained. Rules enacted by the U.S. or any one country alone would have little impact on overall protection of international shipments. As of this date, eleven of the needed twenty-one countries have ratified the Convention.

A review of NRC regulations and procedures disclosed that they are in accord with the Convention except for four specific situations: (1) The physical protection of transient shipments of special nuclear material of moderate and low strategic significance and irradiated reactor fuel; (2) advance notification to the NRC regarding the export of Convention-defined nuclear materials; (3) advance notification and assurance of protection to NRC concerning transient shipments of Convention-defined nuclear material between countries that are not parties to the Convention; and (4) advance notification and assurance of protection to the NRC regarding the importation of Convention-defined nuclear materials from countries that are not parties to the Convention. Convention-defined material includes natural uranium (other than in the form of ore or ore residue) in a quantity exceeding 500 kilograms, plutonium, uranium-233, uranium enriched in uranium-235, and irradiated fuel. A transient shipment is one originating and terminating in foreign countries, that is transported on a vessel or aircraft which stops at a U.S. port.

On July 14, 1983, the NRC published a Federal Register notice (48 FR 32182) inviting public comment on a proposed rule that would bring NRC regulations into accord with the Convention in the four situations cited above. The 90-day comment period ended on October 13, 1983.

Five letters of comment were received, each containing several comments and suggestions. The individual comments and suggestions were considered by NRC and are discussed in terms of three categories: (A) Those that led to a change in the regulations as proposed; (B) those that are to be incorporated into various guidance documents; and (C) those that were not adopted.

A. Comments That Led to a Change in the Rule as Proposed

1. *Single notification to NRC.* The proposed rule called for licensees to provide shipment notification to the NRC headquarters and to the cognizant NRC Regional Office. Some comments argued that this is a needless burden on licensees and that the NRC should set up whatever internal mechanisms are needed to work from a single notification.

The NRC agrees with this suggestion. The final rule has been revised to call for a licensee to notify only the NRC headquarters.

2. *Specification of notification times.* The proposed rule called for notification 14 days in advance of the time transport is to commence. Some comments were concerned about possible changes in shipping plans during the 14-day period and requested that it be shortened.

The NRC agrees that a shorter notification period will likely contribute

to more accurate notification details. The NRC staff has consulted with the staff of the Department of State and has determined that a 10-day period is the minimum needed to process the messages and communicate them to the countries situated along the shipment routes. The regulation has been modified accordingly. If experience shows that a shorter time can be tolerated or that a longer time is necessary, the regulation will be so modified in the future.

3. *Uniformity of notification times.* Some comments pointed out that the phrasing of the notification time requirements differs in the various parts of the proposed rule.

The NRC agrees with this observation Identical phrasing is used in the various parts of the final rule.

4. *Changes to advance notification information.* One comment pointed out that routes or other shipment plans might be changed at the last minute before shipment, thereby invalidating at least part of the advance notification information.

The NRC agrees that the rule should provide for such last minute changes. The rule has been modified to permit the advance notification information to be modified by telephone.

5. *Simplification of proposed §§ 40.66(b)(5) and 40.67(b)(5).* Some comments suggested that the regulation would be clearer if the text of subject proposed paragraphs is replaced by the referenced material in Appendix E. Another comment asked what a licensee must do to provide the "assurance" referred to in the subject paragraphs as proposed.

The suggestion was adopted. The term "assurance" does not appear in the redrafted paragraphs.

6. *Changes § 73.72 to include irradiated fuel.* Some comments pointed out that (1) the phrasing of § 73.72 could lead a reader to believe that it applies exclusively to a formula quantity of strategic special nuclear material; but (2) § 73.37(b)(1) requires that spent fuel shipments be reported under § 73.72. The NRC agrees with the comment and has rephrased § 73.72.

7. *Clarification.* Several comments pointed out language defects in §§ 40.12 and 70.20b(e) and in Appendix E. The passages in Parts 40 and 70 have been modified to eliminate the defects. Introductory phrasing to Appendix E has been modified to emphasize that a verbatim quotation is used. Finally, cross references have been added in Parts 40 and 110.

B. Comments Incorporated Into Guidance

Some comments and suggestions are to be addressed in various guidance documents. The purpose of this guidance is to describe some methods acceptable to the NRC staff for implementing the provisions. The guidance is intended as an aid to licensees and is not legally binding.

The specific guidance documents involved will be explicitly identified and made available when this notice of rulemaking is republished following ratification of the Convention by the 21st country (see *Effective Date* section). Following is a summary of comments to be addressed in guidance documents.

1. *Details of shipment location.* One comment suggested that §§ 40.23(2)(i) and 70.20b(f)(2)(i) should be modified to specify details of the location information needed (e.g., street address, berth, etc.).

NRC needs to have the information specified to a level that will enable inspectors to find and observe the vessel bearing the shipment. Sometimes the information needed will not be available when the advance notification is prepared. Moreover, the NRC believes that the various combinations of transport modes, locations, and contingency situations combine to make the detailed specification of shipment location more lengthy than is appropriate for a regulation. The matter will be addressed in an appropriate guidance document.

2. *Definitions.* One comment asked for definitions of: (1) "Ore or ore residue" and (2) "Storage incidental to international nuclear transport." Another comment asks whether "storage incidental to international nuclear transport" includes the time at the container loading station and, if so, will the Inspection and Enforcement groups of the NRC accept the normal conditions at these locations as meeting the requirements of "Controlled Access Area" as it is defined in § 73.2(Z). Still another comment asks whether uranium ore concentrate-U_3O_8 is considered to fall within the category of natural uranium other than in the form of ore or ore residue.

In this context, "ore" means natural mineral that has been mined with the intention of later treatment to extract the uranium contained therein. "Natural uranium" means uranium containing U-238 and U-235 in the proportions found in nature. "Ore residue" means that part of the ore that remains after the treatment process to remove the uranium. For an export shipment, the period of international transport commences when the first transporter takes custody of the shipment at the port of departure from the United States and ends when a prearranged agency in the receiving country takes custody of the shipment. For an import shipment, international transport ends when the shipment is cleared through U.S. customs at the U.S. port of entry.

"Storage incidental to international transport" means any storage of the shipment during the period of international transport, and occurs most commonly when a shipment is removed from one transport vehicle and stored temporarily with the intention of subsequent loading aboard another transport vehicle.

The NRC believes that the Convention is intended to apply to any product (of a manmade chemical reaction) containing natural uranium in greater concentration than that in natural ore. In natural ore, the concentration of uranium is a few pounds per ton. In the uranium concentrate U_3O_8, uranium accounts for about 85% of the weight. Accordingly, the Convention is interpreted by the NRC to apply to U_3O_8.

The above information will be included in a guidance document.

The final rule imposes no change to current security requirements applicable to loading stations in the United States.

3. *Publication of selected parts of the Convention.* One comment offered the view that public understanding of the regulation would be improved if the complete text of the Convention's Annex I and II be included in the regulations.

Annex I appears in both the proposed and final rule as Appendix E. Annex II essentially repeats the definitions of formula quantity of special nuclear material, special nuclear material of moderate strategic significance, and special nuclear material of low strategic significance that appear in 10 CFR Part 73 and was therefore considered redundant.

C. Comments Not Incorporated in the Regulation or Guidance

1. *Justification for the rule.* Some comments contended that the NRC has not provided a proper or sufficient basis for the new requirements.

a. *Need for protection of natural uranium shipments.* One comment questioned the justification for requirements for protection of natural uranium arguing that natural uranium does not pose a significant threat. Another comment pointed out that essentially all of the proposed requirements are routinely carried out as prudent management practice and

accordingly there is no need for the explicit regulations.

The NRC agrees that natural uranium, even in large quantities, does not pose a threat in the absence of further processing. Further processing would include enrichment by diffusion, centrifuge, or laser technology and breeding of Pu-239 or 241 in heavy water research reactors or non-power or power reactors. International shipments between selected countries could likely be made without incident. The drafters of the Convention, however, were faced with the difficult problem of designing a set of protection requirements to apply to virtually all international shipments of Convention-defined materials and to apply indefinitely into the future. The drafters elected to include greater-than-500-kilogram shipments of natural uranium among the materials to be protected.

Inasmuch as the Convention is a U.S. initiative, with enabling legislation enacted by Congress and approved by the President, the Commission deems it necessary to have its regulations in accord with the provisions of the Convention. In the Convention, Annex I, Paragraph 2(c) sets forth the protection requirements for natural uranium. The NRC requirements are an adaptation of the Convention's requirements.

b. *Cost of protection of natural uranium shipments.* One comment argued that the proposed rule for protection of natural uranium would not improve security and would involve an undue burden on licensees.

The NRC agrees that the requirements, considered in isolation, do not constitute a strong protection system. However, when considered as an integral and necessary part of the larger package of Convention provisions, a somewhat different picture emerges. Signatories to the Convention agree, for example, to cooperate in the protection of shipments, in the recovery of shipments that are stolen, and in the prosecution of persons who steal or conspire to steal shipments. The NRC believes that the Convention will lead to actual protection and deterrents far stronger than those now in force. When those additional benefits are considered, the cost of the requirements is justified.

2. *Phrasing of requirements for protection of natural uranium.* One comment suggested that the regulation reference the language of the Convention, e.g., as set forth in footnote c of Appendix C of Part 110.

The suggestion was not adopted. The NRC is concerned that a regulation written as suggested would be too vague for uniform implementation. More concrete phrasing, such as that proposed, is less likely to be misunderstood.

3. *Justification for protection of shipments of low strategic significance.* Some comments questioned the need for the requirements of § 73.73 for export shipments of special nuclear material of low strategic significance and of § 73.74 for import shipments of low strategic significance from countries that are not party to the Convention. The requirements were seen as either unnecessary or as being overly burdensome.

These suggestions were not adopted. The Convention provides explicitly for protection of what it defines as Category III material. Category III material is essentially identical to what NRC regulations call material of low strategic significance. The two shipment situations of concern here (the export of material of low strategic significance to all countries, and the import of material of low strategic significance from a country not a party to the Convention) are not addressed elsewhere in NRC regulations. The need for and benefit of explicitly addressing each provision of the Convention have been discussed in paragraph 1, in connection with comments on protection requirements for natural uranium.

4. *NRC use of notifications and NRC costs.* One comment asked what NRC will do with the notification and whether NRC will have to hire larger staffs both at headquarters and in the Regions to handle notifications for material of "low strategic significance".

The NRC will arrange for the shipment information to be transmitted (through Department of State channels) to countries that will be transited by the shipment. Current planning calls for an additional 0.5 staff-year to handle the advance notifications at NRC headquarters. The impact on Office of Inspection and Enforcement resources will involve developing written guidance to support any reactive inspections or responses to serious offenses involving nuclear material that may be required. Development of this guidance and infrequent reactive activities are expected to be accomplished without additional resources.

5. *Impacts on carriers.* Some comments addressed various aspects of how the amendments could affect carriers.

a. *Intent of amendments.* One comment questioned whether the amendments would result in the licensing of carriers.

A carrier of a shipment of Convention-defined material would become a general licensee and thus be subject to applicable NRC regulations for the duration of the time that it possesses the shipment in the U.S. A general license does not require the filing of an application with the Commission or the issuance of a licensing document to the licensee. For some years, a similar general license has been issued to carriers of spent fuel and of Category I shipments. The amendments under consideration here would extend the general license to include carriers who transport other Convention-defined materials.

b. *Carrier awareness of general license process.* One comment expressed concern that carriers of transient shipments might not be aware of the general license. The carrier might, therefore, unwittingly fail to comply with the amendments during stopovers in the U.S. and be liable for fine or other penalty.

The amendments will become effective only after at least 21 countries ratify the Convention. Most international shipments will originate or terminate in one of these countries. Similar protection requirements will be imposed in each of these countries. With such widespread application of similar requirements, the NRC believes that international carriers will become aware of the general license and the related requirements.

c. *Carrier response to general license.* Some comments concluded that carriers either might refuse to transport Convention-defined materials rather than become NRC licensees subject to NRC requirements or might use the requirements as an excuse to raise rates to an unreasonable level.

The scenario that carriers might refuse to accept shipments or might charge excessively to carry the shipments is possible but speculative. Licensees can reduce the potential burden on carriers. For import and export shipments, protection during international shipment will likely be arranged by the foreign importer or exporter or by the domestic importer or exporter. With appropriate cooperation between the shipper, receiver, and carrier, matters could be arranged so as to minimize the burden on the carrier and the potential concern could possibly be avoided.

For some years, carriers of certain nuclear materials have become general licensees under regulations in 10 CFR § 70.20a. The NRC is aware of no inordinate difficulty being imposed upon carriers because, in practice, the protection requirements are generally arranged for and carried out by the NRC licensee which does the shipping or receiving.

d. *Exemption for private carriage.* One comment suggested that § 40.12(a) should exempt private carriage.

The NRC believes that the suggested change is unnecessary. Carriers of nuclear materials appear to be adequately covered by the current phrasing which is repeated in several other parts of our regulations. The NRC is aware of no carrier or other person who is being improperly inconvenienced by the current phrasing.

6. *Spent fuel shipments.* Some comments addressed various aspects of protection of transient shipments of spent fuel.

a. *Appropriateness of current requirements.* One comment suggested that the proposed § 70.20b(e) should be revised to require protection of transient shipments of spent fuel equivalent to Annex I and II of the Convention rather than referring to [the more stringent] § 73.37 requirements.

The suggestion was not adopted because it would introduce non-uniformity wherein protection requirements for a transient shipment of spent fuel in the U.S. would be different from requirements for a domestic shipment. However, the NRC agrees with the view that current requirements for the protection of spent fuel may be overly stringent. Moderated requirements for protection of spent fuel shipments were published in proposed form on June 8, 1984 in the **Federal Register** (49 FR 23867).

b. *Differing kinds of spent fuel.* One comment suggested that current requirements are based solely on characteristics of high burnup fuel from light water power reactors and do not take into account the more favorable characteristics of spent fuel from research reactors or high temperature gas cooled power reactors.

The NRC agrees with the comment. Research is currently in progress to determine whether protection requirements should take into account the differing characteristics of the spent fuel from various kinds of reactors.

7. *Respective role of DOT and NRC.* One comment pointed out that for the U.S., the Department of Transportation is the "national competent authority" responsible for administering International Atomic Energy Agency (IAEA) transportation safety requirements in the U.S. ["National competent authority" is an IAEA term used in that agency's documents.] Accordingly, the comment reasoned that DOT rather than NRC should administer Convention concerns, including advance notification, and thereby avoid unnecessary duplication, waste of time, and waste of money.

Both the DOT and the NRC have a statutory responsibility and authority to regulate the safety and security of shipments of radioactive materials in the U.S. Recognizing the possibility for duplication of effort and possible conflicts in regulations, the two agencies came to an agreement on their respective roles. Among other things, the agencies decided that the NRC should be the lead agency for issuance of transportation security regulations for shipments of radioactive materials. The Convention, of course, deals with the subject of transportation security. Largely for that reason, the agencies agreed that NRC should issue the regulations needed to implement the Convention.

The NRC agrees that the DOT is the Competent Authority for administering the IAEA regulations for transportation safety in the U.S.; however, the principal activity of the DOT in connection with the subject of this rulemaking is to carry out safety reviews for import packages. For each import package design, the DOT issues one approval which is valid for a period of up to 3 years unless explicitly modified. The DOT has no requirements for notification of individual shipments. The DOT has no regulations requiring carriers to specifically comply with the notification and shipment protection guidelines contained in IAEA document INFCIRC/225/Rev. 1.

8. *Comparative costs for shipments.* One comment expressed concern that the rule will make the transportation of nuclear material of "low strategic significance" have the same importance and cost as materials of "moderate strategic significance" and irradiated materials which already have the majority of transportation restrictions.

The NRC disagrees with the conclusion reached in the comment. The protection requirements for Category II and III shipments are similar but not identical. For Category II shipments, there is a requirement that the shipment be stored in an area under surveillance at all times by guards or electronic devices during storage incidental to international transport. A less stringent requirement applies to Category III shipments during storage incidental to international transport. Because of this difference, the NRC expects that typical shipment protection cost for a Category III shipment will be lower than that for a Category II shipment. Protection cost for a Category II shipment will likely be lower than that for a spent fuel shipment.

9. *Protection of shipment information.* One comment asked that shipment information be kept confidential because it would be of interst to competitors. Another comment pointed out that release of shipment information into the public domain would reduce rather than strengthen physical protection. Yet another comment pointed out that the IAEA publication *The Physical Protection of Nuclear Material, INFCIRC/225/Rev. 1* recommends that shipment information not be made public.

The NRC agrees with the comment that information concerning international shipments should be withheld from public disclosure if so requested by any of the foreign countries to be transited. This is consistent with Article 6 of the Convention. Other countries have generally accepted the view that public disclosure of shipment information is a significant detriment to physical security (as discussed in INFCIRC/225/Rev. 1).

For an export shipment, the NRC considers international shipment to commence at the port of departure from the United States. For an import shipment, the NRC considers international transport to end at the port of entry.

Shipment information for international shipments can be protected under various existing statutes and regulations, depending on the kind and quantity of nuclear material involved. Shipment information concerned with Category I shipments is protected as U.S. national security information. Shipment information for most Category II and Category III shipments provided to the NRC in confidence by a foreign country can be protected (i.e., withheld from disclosure) under the present provisions of 10 CFR 2.790(d). If it becomes necessary to provide such information to a licensee, a license condition prohibiting disclosure of the information would be written into the appropriate license. The present NRC practice not to withhold information on domestic routes for spent fuel shipments, including the domestic segments route for import or export shipments, would continue unchanged.

Paperwork Reduction Act Statement

This final rule amends information collection requirements that are subject to the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 et seq.). These requirements were approved by the Office of Management and Budget approval numbers 3150-0002, 3150-0009, and 3150-0020.

Regulatory Analysis

The Commission has prepared a regulatory analysis on this final

regulation. The analysis examines the costs and benefits and environmental implications of the regulation. Interested persons may examine a copy of the regulatory analysis at the NRC Public Document Room, 1717 H Street NW, Washington, DC. Single copies of the analysis may be obtained from Carl B. Sawyer, Office of Nuclear Material Safety and Safeguards, Nuclear Regulatory Commission, Washington, DC 20555, telephone: 301–427–4186.

Finding of No Significant Environmental Impact: Availability

The Commission has determined under the National Environmental Policy Act of 1969, as amended, and the Commission's regulations in Subpart A of 10 CFR Part 51, that this rule is not a major Federal Action significantly affecting the quality of the human environment and therefore an environmental impact statement is not required. The proposed rule would improve the physical protection of nuclear material during international transport and would result in no negative environmental impacts. The environmental assessment and finding of no significant impact on which this determination is based are part of the Regulatory Analysis prepared in connection with this rulemaking.

Regulatory Flexibility Certification

As required by the Regulatory Flexibility Act (5 U.S.C. 605(b)), the Commission certifies that this rule does not have a significant economic impact on a substantial number of small entities. The NRC reviewed data on import and export shipments made during the period between December 1, 1983 and February 29, 1984, and found that no small entities in the U.S. were among the importers or exporters. Additionally, public comments responding to the proposed rule do not indicate significant economic impact on a large number of small entities. (One letter of comment is from a company identifying itself as a small entity. The objective of the letter, however, is judged to be to present constructive comment for improving the proposed rule rather than to demonstrate that, because of its size, the company is likely to bear a disproportionate adverse economic impact.) The data reviewed shows no transient shipments of spent fuel or formula quantities of strategic special nuclear material; such shipments are very rare. Currently, there are no reporting requirements for transient shipments of natural uranium or special nuclear material of low or moderate significance. Such shipments, if they are regularly made, are not expected to affect a substantial number of small entities.

List of Subjects

10 CFR Part 40

Government contracts, Hazardous materials—transportation, Nuclear materials, Penalty, Reporting and recordkeeping requirements, Source material, Uranium.

10 CFR Part 70

Hazardous materials—transportation, Nuclear materials, Packaging and containers, Penalty, Radiation protection, Reporting and recordkeeping requirements, Scientific equipment, Security measures, Special nuclear material.

10 CFR Part 73

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

10 CFR Part 110

Administrative practice and procedure, Classified information, Export, Import, Incorporation by reference, Intergovernmental relations, Nuclear materials, Nuclear power plants and reactors, Penalty, Reporting and recordkeeping requirements, Scientific equipment.

For the reasons set out in the preamble and under the authority of the Atomic Energy Act of 1954, as amended, the Energy Reorganization Act of 1974, as amended, and 5 U.S.C. 553, the NRC is adopting the following amendments to Part 40, 70, 73 and 110.

PART 40—DOMESTIC LICENSING OF SOURCE MATERIAL

1. The authority citation for Part 40 is revised to read as follows:

Authority: Secs. 62, 63, 64, 65, 81, 161, 182, 183, 186, 68 Stat. 932, 933, 935, 948, 953, 954, 955, as amended, secs. 11e(2), 83, 84, Pub. L. 95–604, 92 Stat. 3033, as amended, 3039, sec. 234, 83 Stat. 444, as amended (42 U.S.C. 2014(e)(2), 2092, 2093, 2094, 2095, 2111, 2113, 2114, 2201, 2232, 2236, 2282); sec. 274, Pub. L. 86–373, 73 Stat. 688 (42 U.S.C. 2021); secs. 201, as amended, 202, 206, 88 Stat. 1242, as amended, 1244, 1246 (42 U.S.C. 5841, 5842, 5846).

Section 40.7 also issued under Pub. L. 95–601, sec. 10, 92 Stat. 2951 (42 U.S.C. 5851). Section 40.31(g) also issued under sec. 122, 68 Stat. 939 (42 U.S.C. 2152). Section 40.46 also issued under sec. 184, 68 Stat. 954, as amended (42 U.S.C. 2234). Section 40.71 also issued under sec. 187, 68 Stat. 955 (42 U.S.C. 2237).

For the purposes of sec. 223, 68 Stat. 958, as amended (42 U.S.C. 2273), §§ 40.3, 40.25(d)(1)–(3), 40.35(a)–(d), 40.41 (b) and (c), 40.46, 40.51 (a) and (c), and 40.63 are issued under sec. 161b., 68 Stat. 948, as amended (42 U.S.C. 2201(b)); and §§ 40.25 (c) and (d) (3) and (4), 40.26(c)(2), 40.35(e), 40.42, 40.61, 40.62, 40.64, and 40.65 are issued under sec. 161o., 68 Stat. 950, as amended (42 U.S.C. 2201(o)).

2. In § 40.1, paragraph (a) is revised to read as follows:

§ 40.1 Purpose.

(a) The regulations in this part establish procedures and criteria for the issuance of licenses to receive title to, receive, possess, use, transfer, or deliver source and byproduct materials, as defined in this part, and establish and provide for the terms and conditions upon which the Commission will issue such licenses. The regulations in this part also establish certain requirements for the physical protection of import, export, and transient shipments of natural uranium. (Additional requirements applicable to the import and export of natural uranium are set forth in Part 110 of this chapter.) The regulations in this part do not establish procedures and criteria for the issuance of licenses for materials covered under Title I of the Uranium Mill Tailings Radiation Control Act of 1978 (92 Stat. 3021).

* * * * *

3. In § 40.4 a new (r) is added to read as follows:

§ 40.4 Definitions.

* * * * *

(r) "Transient shipment" means a shipment of nuclear material, originating and terminating in foreign countries, on a vessel or aircraft that stops at a United States port.

4. Section 40.12 is revised to read as follows:

§ 40.12 Carriers.

(a) Except as specified in paragraph (b) of this section, common and contract carriers, freight forwarders, warehousemen, and the U.S. Postal Service are exempt from the regulations in this part and the requirements for a license set forth in section 62 of the Act to the extent that they transport or store source material in the regular course of the carriage for another or storage incident thereto.

(b) The exemption in paragraph (a) of this section does not apply to a person who possesses a transient shipment (as defined in § 40.4(r)), an import shipment, or an export shipment of natural uranium in an amount exceeding 500

kilograms, unless the shipment is in the form of ore or ore residue.

5. A new § 40.23 is added to read as follows:

§ 40.23 General license for carriers of transient shipments of natural uranium other than in the form of ore or ore residue.

(a) A general license is hereby issued to any person to possess a transient shipment of natural uranium, other than in the form of ore or ore residue, in amounts exceeding 500 kilograms.

(b)(1) Persons generally licensed under paragraph (a) of this section, who plan to carry a transient shipment with scheduled stops at a United States port, shall notify the Material Transfer Safeguards Licensing Branch, U.S. Nuclear Regulatory Commission, Washington, DC 20555. The notification must be in writing and must be received at least 10 days before transport of the shipment commences at the shipping facility.

(2) The notification must include the following information:

(i) Location of all scheduled stops in United States territory;

(ii) Arrival and departure times for all scheduled stops in United States territory;

(iii) The type of transport vehicle;

(iv) A physical description of the shipment;

(v) The numbers and types of containers;

(vi) The name and telephone number of the carrier's representative at each stopover location in United States territory;

(vii) A listing of the modes of shipments, transfer points, and routes to be used;

(viii) The estimated date and time that shipment will commence and that each nation (other than the United States) along the route is scheduled to be entered;

(ix) For shipments between countries that are not party to the Convention on the Physical Protection of Nuclear Material (i.e., not listed in Appendix F to Part 73 of this chapter), a certification that arrangements have been made to notify the Material Transfer Safeguards Licensing Branch when the shipment is received at the destination facility.

(c) Persons generally licensed under this section making unscheduled stops at United States ports, immediately after the decision to make an unscheduled stop, shall provide to the Material Transfer Safeguards Licensing Branch the information required under paragraph (b) of this section.

(d) A licensee who needs to amend a notification may do so by telephoning the Material Transfer Safeguards Licensing Branch at 301–427–4186.

6. A new § 40.66 is added to read as follows:

§ 40.66 Requirement for advance notice of export shipments of natural uranium.

(a) Each licensee authorized to export natural uranium, other than in the form of ore or ore residue, in amounts exceeding 500 kilograms, shall notify the Material Transfer Safeguards Licensing Branch, U.S. Nuclear Regulatory Commission, Washington, DC 20555. The notification must be in writing and must be received at least 10 days before transport of the shipment commences at the shipping facility.

(b) The notification must include the following information:

(1) The name(s), address(es), and telephone number(s) of the shipper, receiver, and carrier(s);

(2) A physical description of the shipment;

(3) A listing of the mode(s) of shipment, transfer points, and routes to be used;

(4) The estimated date and time that shipment will commence and that each nation (other than the United States) along the route is scheduled to be entered; and

(5) A certification that arrangements have been made to notify the Material Transfer Safeguards Licensing Branch when the shipment is received at the receiving facility.

(c) A licensee who needs to amend a notification may do so by telephoning the Material Transfer Safeguards Licensing Branch at 301–427–4186.

7. A new § 40.67 is added to read as follows:

§ 40.67 Requirement for advance notice for importation of natural uranium from countries that are not party to the Convention on the Physical Protection of Nuclear Material.

(a) Each licensee authorized to import natural uranium, other than in the form of ore or ore residue, in amounts exceeding 500 kilograms, from countries not party to the Convention on the Physical Protection of Nuclear Material (see Appendix F of Part 73 of this chapter) shall notify the Material Transfer Safeguards Licensing Branch, U.S. Nuclear Regulatory Commission, Washington, DC 20555. The notification must be in writing and must be received at least 10 days before transport of the shipment commences at the shipping facility.

(b) The notification must include the following information:

(1) The name(s), address(es), and telephone number(s) of the shipper, receiver and carrier(s);

(2) A physical description of the shipment;

(3) A listing of the mode(s) of shipment, transfer points, and routes to be used;

(4) The estimated date and time that shipment will commence and that each nation along the route is scheduled to be entered;

(c) The licensee shall notify the Material Transfer Safeguards Licensing Branch by telephone at 301–427–4186 when the shipment is received at the receiving facility;

(d) A licensee who needs to amend a notification may do so by telephoning the Material Transfer Safeguards Licensing Branch at 301–427–4186.

PART 70—DOMESTIC LICENSING OF SPECIAL NUCLEAR MATERIAL

8. The authority citation for Part 70 is revised to read as follows:

Authority: Secs. 51, 53, 161, 182, 183, 68 Stat. 929, 930, 948, 953, 954, as amended, sec. 234, 83 Stat. 444, as amended (42 U.S.C. 2071, 2073, 2201, 2232, 2233, 2282); secs. 201, as amended, 202, 204, 206, 88 Stat. 1242, as amended, 1244, 1245, 1246 (42 U.S.C. 5841, 5842, 5845, 5846).

Section 70.7 also issued under Pub. L. 95–601, sec. 10, 92 Stat. 2951 (42 U.S.C. 5851). Section 70.21(g) also issued under sec. 122, 68 Stat. 939 (42 U.S.C. 2152). Section 70.31 also issued under sec. 57d, Pub. L. 93–377, 88 Stat. 475 (42 U.S.C. 2077). Section 70.36 and 70.44 also issued under sec. 184, 68 Stat. 954, as amended (42 U.S.C. 2234). Section 70.61 also issued under secs. 186, 187, 68 Stat. 955 (42 U.S.C. 2236, 2237). Section 70.62 also issued under sec. 108, 68 Stat. 939, as amended (42 U.S.C. 2138).

For the purposes of sec. 223, 68 Stat. 958, as amended (42 U.S.C. 2273); §§ 70.3, 70.19(c), 70.21(c), 70.22 (a), (b), (d)–(k), 70.24 (a) and (b), 70.32 (a) (3), (5), (6), (d) and (i), 70.36, 70.39 (b) and (c), 70.41(a), 70.42 (a) and (c), 70.56, 70.57 (b), (c), and (d), 70.58 (a)–(g)(3), and (h)–(j) are issued under sec. 161b, 68 Stat. 948, as amended (42 U.S.C. 2201(b)); §§ 70.7, 70.20a (a) and (d), 70.20b (c) and (e), 70.21(c), 70.24(b), 70.32 (a)(6), (c), (d), (e) and (g), 70.36, 70.51(c)–(g), 70.56, 70.57 (b) and (d) and 70.58 (a)–(g)(3) and (h)–(j) are issued under sec. 161i, 68 Stat. 949, as amended (42 U.S.C. 2201(i)); and §§ 70.20b (d) and (e), 70.38, 70.51 (b) and (i), 70.52, 70.53, 70.54, 70.55, 70.58 (g)(4), (k), and (l) and 70.59, and 70.60 (b) and (c) are issued under sec. 161o, 68 Stat. 950, as amended (42 U.S.C. 2201(o)).

9. Section 70.20b is revised to read as follows:

§ 70.20b General license for carriers of transient shipments of formula quantities of strategic special nuclear material, special nuclear material of moderate strategic significance, special nuclear material of low strategic significance, and irradiated reactor fuel.

(a) A general license is hereby issued to any person to possess transient shipments of the following kinds and quantities of special nuclear material:

(1) A formula quantity of special nuclear material of the types and quantities subject to the requirements of §§ 73.20,. 73.25, 73.26 and 73.27 of this chapter;

(2) Special nuclear material of moderate and low strategic significance of the types and quantities subject to the requirements of § 73.67 of this chapter;

(3) Irradiated reactor fuel of the type and quantity subject to the requirements of § 73.37 of this chapter.

(b) Persons generally licensed under this section are exempt from the requirements of Parts 19 and 20 of this chapter and the requirements of this part, except §§ 70.32 (a) and (b), 70.52, 70.55, 70.61, 70.62 and 70.71.

(c) Persons generally licensed under this section to possess a transient shipment of special nuclear material of the kind and quantity specified in paragraph (a)(1) of this section shall provide physical protection for that shipment in accordance with or equivalent to §§ 73.20(a), 73.20(b), 73.25, and 73.26 of this chapter and shall comply with the requirements of §§ 73.70(g) and 73.71(b) of this chapter from the time a shipment enters a United States port until it exits that or another U.S. port.

(d) Persons generally licensed under this section to possess a transient shipment of special nuclear material of moderate or low strategic significance of the kind and quantity specified in paragraph (a)(2) of this section shall provide physical protection for that shipment in accordance with or equivalent to § 73.67 of this chapter and shall comply with the requirements of § 73.71(b) of this chapter.

(e) Persons generally licensed under this section to possess a transient shipment of irradiated reactor fuel of the kind and quantity specified in paragraph (a)(3) of this section shall provide physical protection for that shipment in accordance with or equivalent to § 73.37 of this chapter and shall comply with the requirements of § 73.71(b) of this chapter.

(f)(1) Persons generally licensed under this section, who plan to carry transient shipments with scheduled stops at United States ports, shall notify in writing the Material Transfer Safeguards Licensing Branch, U.S. Nuclear Regulatory Commission, Washington, DC 20555.

(2) A person generally licensed under this section shall assure that:

(i) The notification will be received at least 10 days before transport of the shipment commences at the shipping facility;

(ii) The Material Transfer Safeguards Licensing Branch has been notified by telephone at 301–427–4186, at least 10 days before transport of the shipment commences at the shipping facility, that an advance shipping notice has been sent by mail; and

(iii) The Material Transfer Safeguards Licensing Branch will be notified by telephone at 301–427–4186 of any changes to the shipment itinerary.

(3) Persons who are generally licensed under paragraph (a)(1) of this section must include the information listed in paragraphs (f)(3) (i) through (ix) of this section. Persons who are generally licensed under § 70.20b(a)(2) and § 70.20b(a)(3) must include the information listed in paragraphs (f)(3) (i) through (viii) of this section.

(i) Location of all scheduled stops in United States territory;

(ii) Arrival and departure times for all scheduled stops in United States territory;

(iii) The type of transport vehicle;

(iv) A physical description of the shipment (elements, isotopes, and enrichments);

(v) The number and types of containers;

(vi) The name and telephone number of the carrier's representative at each stopover location in United States territory;

(vii) The estimated time and date that shipment will commence and that each country (other than the United States) along the route is scheduled to be entered;

(viii) For shipments between countries that are not party to the Convention on the Physical Protection of Nuclear Material, provide assurances, as far as is practicable, that this nuclear material will be protected during international transport at levels described in Annex I to that Convention (see Appendices E and F of Part 73 of this chapter); and

(ix) A physical protection plan for implementing the requirement of § 70.20b(c), which will include the use of armed personnel to protect the shipment during the time the shipment is in a United States port.

(g) Persons generally licensed under this section making unscheduled stops at United States ports, immediately after the decision to make an unscheduled stop, shall:

(1) Provide to the Material Transfer Safeguards Licensing Branch, the information required under paragraph (f) of this section.

(2) In the case of persons generally licensed under paragraph (a)(1) of this section, arrange for local law enforcement authorities or trained and qualified private guards to protect the shipment during the stop.

(3) In the case of persons generally licensed under paragraph (a)(2) of this section, arrange for the shipment to be protected as required in § 73.67 of this chapter.

(4) In the case of persons generally licensed under paragraph (a)(3) of this section, arrange for the shipment to be protected as required in § 73.37(e) of this chapter.

(5) Implement these arrangements within a reasonable time after the arrival of the shipment at a United States port to remain in effect until the shipment exits that or another U.S. port.

PART 73—PHYSICAL PROTECTION OF PLANTS AND MATERIALS

10. The authority citation for Part 73 is revised to read as follows:

Authority: Secs. 53, 161, 68 Stat. 930, 948, as amended, sec. 147, 94 Stat. 780 (42 U.S.C. 2073, 2167, 2201); sec. 201, as amended, 204, 88 Stat. 1242, as amended, 1245 (42 U.S.C. 5841, 5844).

Section 73.37(f) is also issued under sec. 301, Pub. L. 96–295, 94 Stat. 789 (42 U.S.C. 5841 note).

For the purposes of sec. 223, 68 Stat. 958, as amended (42 U.S.C. 2273); §§ 73.21, 73.37(g), 73.55 are issued under sec. 161b, 68 Stat. 948, as amended (42 U.S.C. 2201(b)); §§ 73.20, 73.24, 73.25, 73.26, 73.27, 73.37, 73.40, 73.45, 73.46, 73.50, 73.55, 73.67 are issued under sec. 161i, 68 Stat. 949, as amended (42 U.S.C. 2201(i)); and §§ 73.20(c)(1), 73.24(b)(1), 73.26 (b)(3), (h)(6), and (k)(4), 73.27 (a) and (b), 73.37(f), 73.40 (b) and (d), 73.46 (g)(6) and (h)(2), 73.50 (g) (2), (3)(iii)(B) and (h), 73.55(h) (2), and (4)(iii)(B), 73.70, 73.71, 73.72 are issued under sec. 161o, 68 Stat. 950, as amended (42 U.S.C. 2201(o)).

In § 73.1, a new paragraph (b)(8) is added to read as follows:

§ 73.1 Purpose and scope.

* * * * *

(b) * * *

(8) This part prescribes requirements for advance notice of export and import shipments of special nuclear material, including irradiated reactor fuel.

12. Section 73.72 is revised to read as follows:

§73.72 Requirement for advance notice of shipment of formula quantities of strategic special nuclear material, special nuclear material of moderate strategic significance, or irradiated reactor fuel.

(a) A licensee, other than one specified in paragraph (b) of this section, who, in a single shipment, plans to deliver to a carrier for transport, to take delivery at the point where a shipment is delivered to a carrier for transport, to import, to export, or to transport a formula quantity of strategic special nuclear material, special nuclear material of moderate stategic significance, or irradiated reactor fuel required to be protected in accordance with § 73.37, shall:

(1) Notify in writing the Material Transfer Safeguards Licensing Branch, U.S. Nuclear Regulatory Commission, Washington, DC 20555;

(2) Assure that the notification will be received at least 10 days before transport of the shipment commences at the shipping facility;

(3) Include the following information in the notification:

(i) The name(s), address(es), and telephone number(s) of the shipper, receiver and carrier(s);

(ii) A physical description of the shipment: (A) for a shipment other than irradiated fuel, the elements, isotopes, enrichment, and quantity; (B) for a shipment of irradiated fuel, the physical form, quantity, type of reactor, and original enrichment;

(iii) A listing of the mode(s) of shipment, transfer point(s) and route(s) to be used;

(iv) The estimated time and date that shipment will commence and that each country along the route is scheduled to be entered; and

(v) the estimated time and date of arrival of the shipment at the destination;

(v) The estimated time and date of arrival of the shipment at the destination;

(4) Notify the Material Transfer Safeguards Licensing Branch by telephone at 301–427–4186 at least 10 days before transport of the shipment commences at the shipping facility that an advance notice has been sent; and

(5) Notify the Material Transfer Licensing Branch by telephone at 301–427–4186 of any changes to the shipment itinerary.

(b) A licensee who makes a road shipment or transfer with one-way transit times of one hour or less in duration between installations of the licensee is exempt from the requirements of this section for that shipment or transfer.

13. Section 73.73 is added to read as follows:

§ 73.73 Requirement for advance notice and protection of export shipments of special nuclear material of low strategic significance.

(a) A licensee authorized to export special nuclear material of low strategic significance shall:

(1) Notify in writing the Material Transfer Safeguards Licensing Branch, U.S. Nuclear Regulatory Commission, Washington, DC 20555;

(2) Assure that the notification will be received at least 10 days before transport of the shipment commences at the shipper's facility;

(3) Include the following information in the notification:

(i) The name(s) address(es), and telephone number(s) of the shipper, receiver and carrier(s);

(ii) A physical description of the shipment (the elements, isotopes, form, etc.);

(iii) A listing of the mode(s) of shipment, transfer points, and routes to be used;

(iv) The estimated time and date that shipment will commence and that each country along the route is scheduled to be entered; and

(v) The estimated time and date of arrival of the shipment at the destination;

(4) Assure that during transport outside the U.S., the shipment will be protected in accordance with Annex I to the Convention on the Physical Protection of Nuclear Material (see Appendix E of this part).

(b) A licensee who needs to amend a written advance notification required by paragraph (a) of this section may do so by telephoning the Material Transfer Safeguards Licensing Branch at 301–427–4186.

14. Section § 73.74 is added to read as follows:

§ 73.74 Requirement for advance notice and protection of import shipments of nuclear material from countries that are not party to the Convention on the Physical Protection of Nuclear Material.

(a) A licensee authorized to import special nuclear material of low strategic significance from a country not a party to the Convention on the Physical Protection of Nuclear Material (i.e., not listed in Appendix F of this part) shall:

(1) Notify in writing the Material Transfer Safeguards Licensing Branch, U.S. Nuclear Regulatory Commission, Washington, DC 20555;

(2) Assure that the notification will be received at least 10 days before transport of the shipment commences at the shipper's facility; and

(3) Include the following information in the notification:

(i) The name(s), address(es) and telephone number(s) of the shipper, receiver and carrier(s);

(ii) A physical description of the shipment (the isotopes, enrichment, quantity, etc.);

(iii) A listing of mode(s) of shipment, transfer points, and routes to be used; and

(iv) The estimated time and date that shipment will commence and that each country along the route is scheduled to be entered; and

(v) The estimated time and date of arrival of the shipment at the destination.

(b) A licensee who needs to amend a written advance notification required by paragraph (a) of this section may do so by telephoning the Material Transfer Safeguards Licensing Branch at 301–427–4186.

(c) A licensee authorized to import from a country not a party to the Convention on the Physical Protection of Nuclear Material (i.e., not listed in Appendix F of this part) a formula quantity of special nuclear material, special nuclear material of moderate strategic significance, special nuclear material of low strategic significance, or irradiated reactor fuel shall assure that during transport outside the U.S. the shipment will be protected in accordance with Annex I to the Convention on the Physical Protection of Nuclear Material (see Appendix E of this part).

15. A new Appendix E is added to Part 73 to read as follows.

Appendix E—Levels of Physical Protection To Be Applied in International Transport of Nuclear Material [1]

(Verbatim from Annex I to The Convention on the Physical Protection of Nuclear Material)

(a) Levels of physical protection for nuclear material during storage

[1] See Appendix C to Part 110 of this chapter for the physical description of the categories of nuclear material as set forth in Annex I to the Convention. For the purposes of this part, the following categories of nuclear material are synonymous:

Category I is a formula quantity of strategic special nuclear material;

Category II is special nuclear material of moderate strategic significance. Other fuel which by virtue of its original fissile material content is classified as Categories I and II before irradiation may be reduced one category level while the

Continued

incidental to international nuclear transport include:

(1) For Category III materials, storage within an area to which access is controlled;

(2) For Category II materials, storage within an area under constant surveillance by guards or electronic devices, surrounded by a physical barrier with a limited number of points of entry under appropriate control or any area with an equivalent level of physical protection;

(3) For Category I material, storage within a protected area as defined for Category II, to which, in addition, access is restricted to persons whose trustworthiness has been determined, and which is under surveillance by guards who are in close communication with appropriate response forces. Specific measures taken in this context should have as their object the detection and prevention of any assault, unauthorized access, or unauthorized removal of material.

(b) Levels of physical protection for nuclear material during international transport include:

(1) For Categories II and III materials, transportation shall take place under special precautions including prior arrangements among sender, receiver, and carrier, and prior agreement between natural or legal persons subject to the jurisdiction and regulation of exporting and importing States, specifying time, place and procedures for transferring transport responsibility;

(2) For Category I materials, transportation shall take place under special precautions identified for transportation of Categories II and III materials, and in addition, under constant surveillance by escorts and under conditions which assure close communication with appropriate response forces;

(3) For natural uranium other than in the form of ore or ore residue, transportation protection for quantities exceeding 500 kilograms U shall include advance notification of shipment specifying mode of transport, expected time of arrival and [shall provide for] confirmation of receipt of shipment.

16. A new Appendix F is added to Part 73 to read as follows:

radiation level from the fuel exceeds 100 rads/hour at one meter unshielded; and

Category III is special nuclear material of low strategic significance.

Appendix F—Nations That Are Parties to the Convention on the Physical Protection of Nuclear Material [2]

Nation	Date of deposit of instrument of ratification with the IAEA
Bulgaria	Apr. 10, 1984.
Czechoslovakia	Apr. 23, 1982.
German Democratic Republic (E. Germany).	Feb. 5, 1981.
Hungary	May 4, 1984.
Korea, Republic of	Apr. 7, 1982.
Paraguay	Feb. 6, 1985.
Philippines	Sept. 22, 1981.
Poland	Oct. 5, 1983.
Sweden	Aug. 1, 1980.
Union of Soviet Socialist Republics	May 25, 1983.
United States of America	Dec. 13, 1982.

PART 110—EXPORT AND IMPORT OF NUCLEAR FACILITIES AND MATERIALS

17. The authority citation for Part 110 is revised to read as follows:

Authority: Secs. 51, 53, 54, 57, 62, 63, 64, 65, 81, 82, 103, 104, 109, 111, 126, 127, 128, 129, 161, 181, 182, 183, 187, 189, 68 Stat. 929, 930, 931, 932, 933, 936, 937, 948, 953, 954, 955, 956, Pub. L. 88-489, 78 Stat. 603-605; Pub. L. 91-560, 84 Stat. 1472; 70 Stat. 1071, Pub. L. 85-256, 71 Stat. 579; Pub. L. 87-615, 76 Stat. 409; Pub. L. 93-377, 88 Stat. 473, 475, Pub. L. 95-242, 92 Stat. 125, 126, 131-139, 141 (42 U.S.C. 2071, 2073, 2074, 2077, 2092-2095, 2111, 2112, 2133, 2134, 2139, 2139a, 2141, 2154-2158, 2201, 2231-2233, 2237, 2239); Sec. 201, Pub. L. 93-438, 88 Stat. 1242, as amended by Pub. L. 94-79, 89 Stat. 413, 414 (42 U.S.C. 5841).

Sec. 110.13 also issued under sec. 122, Pub. L. 83-703, 68 Stat. 939 (42 U.S.C. 2152). Sec. 110.50(b)(4) also issued under sec. 123, Pub. L. 95-242, 92 Stat. 142-145 (42 U.S.C. 2153). Sec. 110.51 also issued under sec. 184, Pub. L. 83-703, 63 Stat. 954; Pub. L. 88-489, 78 Stat. 607 (42 U.S.C. 2234). Sec. 110.52 also issued under sec. 186; Pub. L. 83-703, 68 Stat. 955 (42 U.S.C. 2236). Sec. 110.80-110.113 also issued under 5 U.S.C. 552, 554. Sec. 110.130-110.135 also issued under 5 U.S.C. 553.

18. In § 110.50, paragraph (b)(5) is revised to read as follows:

§ 110.50 Terms.

* * * * *

(b) * * *

(5) A licensee authorized to export or import nuclear material is responsible for compliance with applicable requirements of Parts 40, 70, and 73 of this chapter, unless a domestic licensee of the Commission has assumed that responsibility and the Commission has been so notified.

* * * * *

[2] Once the Convention enters into force, an updated list of party nations will appear annually in the Department of State's publication, Treaties in Force. Appendix F will be amended as required to maintain its currency.

Dated at Washington, DC this 21st day of March 1985.

For the Nuclear Regulatory Commission.

John C. Hoyle,

Acting Secretary of the Commission.

[FR Doc. 85-7137 Filed 3-27-85; 8:45 am]

BILLING CODE 7590-01-M

SMALL BUSINESS ADMINISTRATION

13 CFR Part 120

Business Loans; Secondary Market Substantive Rules

AGENCY: Small Business Administration.

ACTION: Final rule.

SUMMARY: On July 10, 1984, the Small Business Secondary Market Improvements Act of 1984 (Pub. L. 98-352) was enacted (98 Stat. 329) which amended the Small Business Act (15 U.S.C. 631 *et seq.*) (Act) to authorize the Small Business Administration (SBA) to issue certificates representing ownership of all or a fractional part of SBA guaranteed portions of loans which have been assembled into an SBA-approved pool, and certificates representing individual guaranteed portions of such loans. This regulation implements section 3(b) of Pub. L. 98-352 which requires SBA to promulgate rules and regulations to implement this new authorization.

EFFECTIVE DATE: March 31, 1985.

FOR FURTHER INFORMATION CONTACT: James W. Hammersley, Financial Analyst, Room 800C, (202) 653-5954 or Allan S. Mandel, Special Assistant, Room 800B, (202) 653-5764, 1441 L Street, NW, Washington, D.C. 20416.

SUPPLEMENTARY INFORMATION: The Small Business Secondary Market Improvements Act of 1984 (Pub. L. 98-352) was enacted on July 10, 1984. This legislation amended the Act to authorize SBA to issue certificates representing ownership of SBA guaranteed portions of individual loans and representing ownership of all or a part of a pool approved by SBA and composed solely of the entire guaranteed portions of such loans (henceforth "guaranteed portions"). These regulations implement this legislation. Subpart G covers loan pools and Subpart H covers the sale of individual guaranteed portions.

Under section 7(a) of the Act (15 U.S.C. 636(a)), SBA guarantees loans made by participating lenders. Such guaranty cannot exceed 90 percent of the loan, and in some cases, by statute, the maximum percentage that can be guaranteed is 80 percent. The lender which made the loan remains at risk for

the unguaranteed portion and continues to service that loan. A secondary market has developed for the guaranteed portions of these loans. Until the enactment of Pub. L. 98–352, the only way for an investor to participate in this market was to purchase the entire guaranteed portion of an individual loan. There was no authority to fractionalize any single loan. Congress recognized the benefits of an effective secondary market in S. Rep. No. 542, 98th Cong., 2d Sess. 6 (1984), accompanying Pub. L. 98–352

Among the benefits of an effective secondary market are increased liquidity and leverage of capital for lenders; increased access to capital for borrowers; wider distribution of capital among geographic areas; greater accessibility to long-term fixed-rate financing; and potentially lower costs of borrowing for small business.

The SBA Small Business Committee on Capital Access, a task force created by the Administrator of SBA, recommended in October 1982, that a new program of loan pooling be created in order to facilitate the purchase of fixed rate loans. The General Accounting Office subsequently issued a report which also recommended the use of loan pooling in order to provide fixed rate financing. (See S. Rep. No. 542, 98th Cong., 2d Sess. 9–10). Both Congress and the Small Business Committee on Capital Access recognized the need to bring into the secondary market large numbers of institutional buyers of significant size. (See S. Rep. No. 542, *supra*, at p. 19). The impact of this participation would, it is expected, reduce borrowing costs incurred by small business concerns.

As part of its plan to provide for a more efficient secondary market, Congress in Pub. L. 98–352 also required a central registration of all SBA guaranteed portions sold and resold in the marketplace, whether or not such portions were pooled. SBA implemented this requirement in a final regulation published in the **Federal Register** on October 11, 1984 (49 FR 39837).

In addition, SBA published on November 2, 1984, a final regulation, 49 FR 44091, intended to standardize the documentation relative to all secondary market transactions.

These regulations provide that SBA shall guarantee to registered holders upon such terms and conditions as it deems appropriate, the timely payment of principal and interest on certificates which are based on and backed by a pool of SBA guaranteed portions of loans. With respect to the sale of individual guaranteed portions, SBA guarantees the holder against a failure by the borrower to repay the loan or a failure by either the lender or the SBA's Fiscal and Transfer Agent (FTA) to forward to the holder the borrower's payment on the guaranteed portion of the loan. SBA does not guarantee timely payment on individual guaranteed portions when the borrower has not made the payment to the lender. However, if the borrower is delinquent on any payment for sixty days or more, the FTA, on behalf of the registered holder, will make a written demand upon the lender to purchase the guaranteed portion. If the lender fails to make the repurchase, then the guaranteed portion will be purchased by SBA.

Under the central registration requirement, an investor who purchases a guaranteed portion or an interest in a pool consisting of the guaranteed portions of loans will receive from the FTA a certificate representing such interest.

With the passage of Pub. L. 98–352, SBA's guaranty of a pool certificate was given the statutory backing of the full faith and credit of the United States. SBA's guaranty of an individual portion was not affected by enactment of this law.

Lenders will make, sell, and service loans as they do now. Certificates evidencing ownership of guaranteed portions will continue to be issued by the FTA. The relationship between the lender and FTA will continue to be governed solely by SBA Form 1086. In the case of individual guaranteed portions the relationship between the holder and FTA will be governed by the individual portion certificate. With regard to pools, the relationship between the holder and FTA will be governed by the terms of the pool certificate.

Guaranteed interests forming a pool may be sent by the pool assembler to the FTA as an already assembled package of guaranteed interests or may be sent to the FTA separately. If sent separately, the FTA will issue certificates for individual guaranteed portions until such time as the pool is fully assembled. At that time, the individual SBA certificates will be converted into the required pool certificates in the appropriate denominations.

The pool assembler will be responsible for purchasing the guaranteed portions, applying for the pool certificate, and marketing the pool interests. The SBA and the FTA will not be a party to these contracts, and will not have any responsibility to deliver pool interests to the purchaser if the assembler fails to make good delivery of the individual guaranteed portions to the FTA. In general, the SBA and FTA will have no greater or lesser responsibility in regards to the sales of pool interests than they do at present in regard to the sales of individual guaranteed portions.

An entity desiring to assemble a pool of guaranteed portions must be approved as a pool assembler by SBA. Any such entity must have a net worth consistent with the guidelines of the appropriate regulatory authority. It must be regulated either by SBA or by a state or federal financial regulatory agency, or it must be a member of the National Association of Securities Dealers (NASD). It must have the financial capability of assembling acceptable and eligible guaranteed portions in sufficient quantity to support the required minimum issuances of pool certificates. And it must be in good standing with SBA as determined by the SBA Associate Administrator for Finance and Investment and with any state or Federal regulatory body governing the entity's activities or with NASD, if it is a member.

While SBA has the statutory authority to regulate participants in the pooling program, the Agency does not desire to impose new regulatory burdens upon those who wish to participate. Therefore, the Agency is proposing to make use of NASD membership, State and Federal banking regulation and already existing SBA regulation (13 CFR 120.302) and all that it entails as a standard for entry and continued participation in SBA secondary market loan pooling. Once it is approved by SBA, an entity shall continue to qualify as an eligible pool assembler only so long as it meets the eligibility requirements outlined above. It must also conduct its operations in accordance with accepted industry practices, ethics and standards, and is required to keep its books in accordance with generally accepted accounting principles or as directed by the appropriate regulatory body. The SBA may suspend or terminate the continued eligibility of any pool assembler which fails to meet the stated characteristics and requirements. Termination proceedings will be conducted in accordance with Part 134, Title 13, Code of Federal Regulations (13 CFR Part 134).

After a pool assembler is approved by SBA, it must file an application with SBA to assemble each pool, together with the appropriate application fee charged by SBA's Fiscal and Transfer Agent.

The regulations provide that SBA shall analyze market conditions and program experience and then develop certain program parameters necessary

for program operation. The Agency has made initial decisions for the following parameters:

Minimum number of guaranteed portions	4
Maximum percentage of one loan in a pool	25%
Minimum dollar size of a pool	$1,000,000
Maximum allowable difference in remaining term	70%
Minimum pool certificate size	$25,000
Pool certificate dollar multiple	$5,000
Maximum difference in note rate	2 points

The Agency is not imposing any geographic requirement on the location of the loans which compose a pool, nor is it requiring that only loans to similar businesses must comprise a pool.

In order to take care of the odd amount in any pool, one certificate in each pool can be in an amount which is not a multiple of the specified certificate dollar multiple. A certificate representing a guaranteed portion not in a pool has no minimum amount limitation.

In selecting these requirements, SBA has endeavored to balance two conflicting considerations. The first is the need to moderate the effect of prepayment of loans, which is permitted under Section 5(f)(4) of the Act (15 U.S.C. 634(f)(4)). The larger the pool the smaller the effect of prepayment of one loan. For example, in a pool consisting of two $500,000 loans, half of the investor's capital would be returned prematurely if one loan were prepaid. In contrast, in a pool of twenty $100,000 loans, only one-twentieth of the capital would be prematurely returned by a prepayment. The second need is to avoid mandating an undesirably high cost for assembling a pool (measuring cost both in dollars and time). To assemble a pool of two loans with a value of $500,000 each is less costly both in dollars and in time than it is to assemble a pool of fifty such loans valued at $25 million. One need favors smaller pools; the other, larger ones.

In order to comply with the statutorily-mandated central registration requirement, each certificate issued by the FTA, whether evidencing ownership of a pool interest or an individual guaranteed portion, shall be in registered form only. Each certificate must specify the principal amount, the interest rate, and the marturity date.

Each certificate is freely transferable on the books of the FTA except that a lender cannot purchase a pool certificate if any loans currently in the lender's portfolio have become part of the pool. It will be the responsibility of the lender to determine prior to the purchase of the pool certificate if any of its loans have been put into a particular pool.

There can only be one registered holder with respect to each certificate. This does not preclude ownership as joint tenants or as tenants in common, but it does preclude ownership in a disjunctive capacity (*i.e.*, Mary Smith or John Smith).

As required by the statute, SBA's guartanty for payment of interest on prepaid or defaulted loans, the guaranteed portions of which have been placed in a pool, extends only through the date of prepayment by the borrower or SBA's payment in honoring its guaranty on a defaulted loan.

If a pool assembler acquires central registration documents as it puts together a pool, it must deliver to the FTA all such required documents before the FTA will issue the certificates representing fractional interests in the pool to the registered holders. This is an appropriate function of pool administration.

The proposed regulations also implement the statutory mandate that no state, local, or Federal law shall preclude or limit SBA's exercise of its ownership right in the guaranteed portions in a pool or individual guaranteed interest against which the certificates are issued. When the Agency pays a claim with respect to a certificate, it shall be subrogated fully to the rights satisfied by such payment.

Eligible guaranteed interests in loans for assembly in a pool consist of any SBA guaranteed portion of a loan made pursuant to Section 7(a) of the Act, except Section 7(a)(13), which relates to development companies. Each such loan must be in a current status on the date of pool formation.

The Congress and the Agency are interested in disclosing relevant information to purchasers of pool certificates as well as to purchasers of guaranteed portions which are not pooled. With the exception of the originating lender, the seller of a pool or individual certificate must provide the purchaser of the certificate with information on the terms, conditions and yield of that certificate. Such disclosures are to be made orally at the time of the sale and recorded on the transfer document.

Regulatory Flexibility Analysis

For the purposes of the Regulatory Flexibility Act, 5 U.S.C. 601 *et seq*, the Small Business Administration has determined that these rules may have a significant economic impact on a substantial number of small entities.

A. *Reasons for action.* This action is mandated by Pub. L. 98-352, "Small Business Secondary Market Improvements Act of 1984."

B. *Statement of Objectives.* The objective of these rules is to promote the orderly operation of the SBA secondary market and to create the SBA Loan Pooling Program.

C. *Description of affected entities.* Affected entities will be those businesses currently buying or selling guaranteed portions in the secondary market and those entities that decide to become pool assemblers. It is estimated that the number of businesses affected is approximately 3000.

D. *Description of recordkeeping.* Recordkeeping requirements are unchanged for individual sales in the secondary market. Recordkeeping for lenders selling loans into a pool will be the same as for those loans sold into the individual market. The fiscal and transfer agent will be responsible for maintaining records for each pool.

E. *Duplicative rules.* There are no Federal rules which duplicate or overlap this rule.

F. *Significant alternatives.* There are no significant alternatives to this rule.

Analysis Under Executive Order 12291

The following analysis is provided under the guidelines of Executive Order 12291. SBA has determined that this rule could be considered a major rule.

A. *Potential Benefits.* The Secondary Market increases the supply of capital available to small business and mitigates the effect of cyclical fluctuations in bank liquidity on the supply of small business loans. The Loan Pooling Program is expected to increase the amount of fixed rate money available to small business.

B. *Potential Costs.* The potential costs are the administrative costs involved in program operation. These costs include the salaries and expenses of SBA and program participants.

C. *Net Benefit.* The net benefit will be better financing terms available to small business.

D. *Analysis and Response to Public Participation.* The public comments submitted in response to SBA's Notice of Proposed Rulemaking were all supportive of the Loan Pooling program and the secondary market, but discussed some aspect of the program that the writer felt needed to be reviewed by SBA. Most of the comments dealt with the fees, §§ 120.711 and 120.808. These commentors felt that the fee schedule charged by the Fiscal and Transfer Agent (FTA) must be subject to public comment. The fee schedule for the FTA will be based on the result of a competition of private sector entities.

The fees established will be the fees that are negotiated by SBA and the selected contractor for FTA services. The Agency has always been willing to

accept public comment on the FTA fees and will continue to accept such comments. In response to the public comments, the two sections were reworded to better convey the fee setting process.

Two commentors discussed the requirement that pool assemblers be members of the National Association of Securities Dealers (NASD) if they are not regulated by a state of federal regulatory authority. The writers felt the requirement may be burdensome for a firm that is not currently a member and noted that the subsidiaries of large securities firms that trade SBAs are not members of NASD.

In response to these letters, further discussions were held with representatives of the industry and with the NASD. As a result of these discussions, SBA is convinced that the NASD membership requirement is not burdensome and will contribute greatly to the integrity and reputation of the SBA pool security. It should be noted that the pooling legislation gave SBA the authority to regulate broker/dealers participating in this market. SBA feels that the market will be better served if SBA can make use of existing regulatory mechanisms rather than creating a new body of regulation.

Some comments were received on the various pool parameters. In general these comments are reflected in the initial pool parameters described above. SBA did not adopt the suggestion of two writers that one loan be allowed to account for 35% of a particular pool. Twenty-five percent was selected as a maximum percentage for one loan in order to minimize the effects of a prepayment or default of one loan in a pool. One writer suggested that the maximum allowable spread for the note rate on the loans in the pool be three percentage points instead of the two percentage point limit that will be used initially. Three percentage points was considered excessive. Two percentage points was the number suggested by the other writers commenting on this aspect of the loan pools. In selecting pool parameters, SBA will base its decisions on actual experience. Parameters selected will be designed to facilitate smooth operation of the program and meet SBA's policy objectives.

Two commentors suggested that loans in the 90-day deferment status be permitted to be included in pools. This idea was considered but rejected because it would encourage poor loans to be sold into pools as soon as a problem developed.

It should also be noted that the suspension and termination procedures were changed slightly. Suspension decisions will continue to be made by the Associate Administrator for Finance and Investment, however, termination procedures will now be handled through the Office of Hearings and Appeals.

SBA has also modified § 120.703(a) to eliminate the requirement that the net worth of a pool assembler be at least $100,000. Instead, SBA has decided that the net worth guidelines of the appropriate regulatory agency will be satisfactory to meet SBA's requirements.

SBA hs added a requirement in § 120.706(g) regarding the interest rate on the pool. This section requires that the interest rate on the pool certificate cannot be greater than the lowest net rate of any of the guaranteed portions in the pool.

In addition, this rule contains reporting or recordkeeping requirements subject to approval by the Office of Management and Budget (OMB) under the Paperwork Reduction Act, 44 U.S.C. Chap. 35. Reporting and recordkeeping requirements are approved under OMB approval No. 3245-0213.

List of Subjects in 13 CFR Part 120

Loan programs, Business, Small business.

Accordingly, pursuant to the authority contained in section 5(b)(6) of the Small Business Act, as amended (15 U.S.C. 634(b)(6)), SBA is amending Part 120, Chapter 1, Title 13, Code of Federal Regulations, by adding new Subparts G and H to read as follows:

PART 120—BUSINESS LOANS POLICY

* * * * *

Subpart G—Pooling of SBA Guaranteed Portion

Subpart H—Individual SBA Guaranteed Portion Sold in the Secondary Market

Subpart G—Pooling of SBA Guaranteed Portion

§ 120.700 Statutory Provisions.

The statutory authority for this Subpart G is section 5(g) of the Small Business Act (15 U.S.C. 634(g)).

§ 120.701 General.

The SBA shall guarantee to registered holders, upon such terms and conditions as it may deem appropriate, the timely payment of principal of and interest on certificates which are based on and backed by a pool composed solely of the entire SBA guaranteed portions of loans which are made by private lenders. SBA's guaranty of the certificates is backed by the full faith and credit of the United States. Transactions involving the sale of interests in pools are governed by the specified terms and provisions of these regulations, SBA's Secondary Market Program Guide and contracts entered into by the parties. These transactions and those described in Subpart H of these regulations constitute the SBA secondary market. Procedural rules dealing with central registration for the secondary market may be found at Subpart F of this Part and § 120.301-2-3. Further information regarding the SBA Secondary Market may be obtained from the Small Business Administration, Room 800, 1441 L Street, NW., Washington, D.C. 20416.

§ 120.702 Definitions.

(a) *Agency* or *SBA* means the Small Business Administration.

(b) *Certificate* means the document representing a beneficial interest in a pool consisting solely of the SBA guaranteed portions of loans.

(c) *Current status* means a loan repayment category in which no payments from borrower to lender on a loan are more than 29 days overdue as measured from the due date of the payment, and as evidenced on the records of the central registry maintained by the FTA.

(d) *FTA* means SBA's fiscal and transfer agent.

(e) *Payment date* means the date that checks are deposited in the U.S. mail by the FTA. Such date shall be the 25th of the month of the next business day thereafter if the 25th is not a business day, or such other date as may be chosen from time to time by SBA and published by notice in the **Federal Register.**

(f) *Pool Assembler* means a national or state bank or savings and loan

association, life insurance company, broker-dealer, small business lending company, or similar institution, which meets the requirements set forth in §120.703 of this Subpart. This entity, whether or not it is the SBA participating lender which made the loan, arranges and organizes the pool by acquiring the guaranteed portions of loans that are in accordance with the requirements of subpart H and directs the FTA to issue the certificates.

(g) *Registered Holder* or *Holder* means the certificate owner whose identity is maintained on the books of the FTA.

(h) *Note Rate* means the stated rate of interest on the note SBA Form 147.

(i) *Net Rate* means the rate of interest on an individual guaranteed portion in a pool.

(j) *Pool Rate* means the stated rate of interest on a pool certificate.

§ 120.703 Eligible pool assemblers.

(a) *File Application.* In order to qualify as a pool assembler, an entity must file an application with SBA (OMB Approval No. 3245/0123), along with an application fee, and certify that it:

(1) Is either (i) regulated by a state or federal financial regulatory agency, (ii) regulated by SBA, or (iii) is a member of the National Association of Securities Dealers (NASD);

(2) Has a net worth in accordance with the requirements of the appropriate regulatory authority;

(3) Has the financial capability to assemble acceptable and eligible guaranteed portions in sufficient quantity to support the required minimum issuances of pool certificates; and

(4) Is in good standing with SBA as determined by the SBA Associate Administrator for finance and Investment and with any state or Federal regulatory body governing the entity's activities or with NASD, if it is a member.

(b) *Approval.* Only after its application has been approved by SBA may an entity submit pool applications to the FTA.

(c) *Conduct of Business.* An entity shall continue to qualify as an eligible pool assembler only so long as it (1) meets the eligibility standards of paragraph (a) of this section; (2) conducts its business operations in accordance with accepted securities or banking industry practices, ethics, and standards and applicable SBA regulations; and (3) maintains its books and records in accordance with generally accepted accounting principles or in accordance with the guidelines promulgated by the regulatory body governing its activities.

§ 120.704 Suspension or termination of eligibility of pool assembler.

(a) *Suspension.* If a pool assembler (including principals thereof) should fail to comply with any of the requirements prescribed in § 120.703 (a) and (c) of this subpart, or has been indicted or otherwise formally charged with, or convicted of, a misdemeanor or felony or suffered an adverse final civil judgment that such pool assembler has committed a breach of trust or a violation of a law or regulation protecting the integrity of business transactions or relationships, the Agency may suspend such entity's eligibility to participate as a pool assembler and decline to issue additional certificates for not more than twelve (12) months, which period may be extended for six (6) additional months as may be necessary. The Agency shall notify the entity by certified mail, return receipt requested, of its suspension and the reasons therefore. Upon receipt of the notice of suspension, the pool assembler may file a petition for review of such action in accordance with the procedures in Part 134 of these regulations.

(b) *Termination.* If a pool assembler (including principals thereof) should fail to comply with any of the requirements prescribed in 120.703 (a) and (c) of this subpart, or has been convicted of a misdemeanor or felony or suffered an adverse final civil judgment that such pool assembler has committed a breach of trust or a violation of a law or regulation protecting the integrity of business transactions or relationships, the Agency may terminate such entity's eligibility to participate as a pool assembler. Proceedings to terminate a pool assembler's right to participate in the secondary market shall be initiated by the issuance of an order to show cause why its participation in the secondary market should not be terminated. That order to show cause shall be issued and any administrative proceedings in connection therewith shall be conducted in accordance with the procedures in Part 134 of these regulations.

§ 120.705 Certificates.

(a) *General Certificate Characteristics.* All certificates to be issued pursuant to this subpart shall be in registered form only. Each certificate shall have terms acceptable to SBA and shall specify its principal amount, interest rate, the maturity date, and the date payments are to be made to the holders. The certificates may include call provisions and other characteristics depending on market conditions.

(b) *Pool Certificate Payment Characteristics.* Each certificate shall provide for payment on payment date of both principal installments and interest installments calculated on a fixed or variable rate of interest on the unpaid principal balance of the portion of the pool the certificate represents. These provisions shall be effective whether or not the payments on the loans which underlie the pool are collected. All prepayments on such loans will be passed through to the holder(s) as appropriate, on payment date. In the case of non-payment by the borrower on a loan in a pool backing the certificates, SBA through its FTA shall make advances to maintain the schedule of interest and principal payments to the registered holders until SBA purchases the guaranteed portion. Guarantee purchases are discussed in § 120.212 of this part and in SBA Form 1086, Secondary Participation Guaranty and Certification Agreement.

§ 120.706 Loan pools.

(a) *Pool Characteristics.* Every pool, at its outset, must include a minimum number of guaranteed portions of loans with a minimum aggregate principal balance outstanding of such guaranteed portions at the time of certificate issuance. Any individual guaranteed portion may not constitute more than a certain maximum percentage of the pool. The minimum number of guaranteed portions of loans in a pool, the aggregate principal balance and the percentage of pool make up all may be altered from time to time by SBA by publication of a notice in the **Federal Register**. The required characteristics will be based on an analysis of program experience and market conditions by SBA. After such analysis, SBA will make appropriate adjustments to pool characteristics.

(b) *Amount of Certificate.* The face amount of any certificate representing an interest in a pool cannot be less than specified minimum amount and, with the exception of one certificate per pool, must be in increments specified by SBA. These requirements may be altered by SBA by publication of a notice in the **Federal Register** after SBA has analyzed market conditions and program experience.

(c) *Transferability.* Each certificate shall be transferable, but only on the books and records of SBA or its FTA provided that a lender may not be a holder of any certificate in any pool containing guaranteed portions generated by that lender. The share of the proceeds collected on account of the

pool may not be payable to more than one registered holder with respect to any certificate.

(d) *Period of Interest Guaranteed.* Interest on prepaid or defaulted loans shall accrue and be guaranteed by SBA only through the date of prepayment or payment on the guaranty.

(e) *Maximum Allowable Difference in Interest Rates.* From time to time SBA may, by notice, publish in the **Federal Register** the maximum allowable difference between the highest note rate and the lowest note rate for all loans in a pool. The maximum allowable difference in interest rates will be determined by SBA based on program experience and an analysis of market conditions.

(f) *Maximum Allowable Difference in Terms to Maturity.* From time to time SBA may publish by notice in the **Federal Register** the maximum allowable difference between the remaining terms to maturity of all loans constituting the pool. The maximum allowable difference selected by SBA will be based on program experience and an analysis of market conditions.

(g) *Pool Rate.* The rate on a pool certificate must be equal to the lowest net rate on any individual guaranteed portion in the pool.

(h) *Redemption.* During the term of a certificate, it may be called for redemption due to prepayment or default of all loans constituting the pool.

§ 120.707 Delivery requirements.

Before FTA issues any certificate, the pool assembler shall deliver to the FTA the following documents (OMB Approval No. 3245 0213):

(a) A properly completed pool application form;

(b) Either (1) certificates evidencing the guaranteed portions comprising the pool or (2) appropriate documentation evidencing ownership of the guaranteed interests, certification that each of the loans has been closed in conformity with the SBA authorization, and copies of the notes representing the loans whose guaranteed portions are to be part of the pool, and

(c) Such other documentation as may be required by SBA.

§ 120.708 Pool administration.

(a) *FTA Responsibility.* Administration of each pool shall be the responsibility of the FTA, which shall maintain a registry of owners and such other information as SBA shall determine.

(b) *Self Liquidating.* Each pool shall be self-liquidating as the result of borrower payments, redemption by SBA, prepayment by borrower, and/or payment by SBA or the lender because of default by borrower. Substitution of the guaranteed portions of existing loans for defaulted loans is not permitted.

(c) *Subrogation by SBA.* If SBA pays a claim under a guarantee with respect to a certificate issued pursuant to this subpart, it shall be subrogated fully to the rights satisfied by such payment.

(d) *SBA Ownership Rights.* No State, local, or Federal law, shall preclude or limit the exercise by the SBA of its ownership right in the portions of loans constituting the pool against which the certificates are issued.

§ 120.709 Eligible loans for pools.

(a) Certificates issued under these provisions must be based on and backed by the SBA guaranteed portion of loans under arrangements satisfactory to SBA. Each loan must:

(1) be in a current status as of the date of pool formation;

(2) be guaranteed under the Small Business Act, as amended (except that loans guaranteed under section 7(a)(13) of the Small Business Act (relating to development companies) are not eligible for this program);

(3) have such characteristics as SBA shall from time to time determine to be necessary for the successful operation of the pooling program.

(b) With respect to any particular pool, the loans must meet only such standards as may be in effect at the time of issuance.

§ 120.710 Guaranty.

With respect to each pool certificate, SBA guarantees the timely payment on payment date, whether or not collected, of interest and principal installments, and any prepayments or other early recoveries of principal on the loans, as undertaken in the Agency's guaranty appearing on the face of the certificate.

§ 120.711 Fees.

The FTA is authorized to collect reasonable application fees, transfer fees and such other fees as the SBA and the FTA may negotiate under contract and which the Agency, from time to time, will publish in the **Federal Register.** In negotiating any changes in fees, the Agency will accept public comments on these notices and consider these comments in establishing these fees.

§ 120.712 Disclosure requirements.

Prior to any sale, the pool assembler or any subsequent seller of a certificate must disclose to the purchaser, either orally or in writing, information on the terms, conditions and yield as described in the Secondary Market Program Guide. In addition, such information must be provided in writing on the transfer document at the time if submitted to the FTA. The FTA will, subsequent to the sale, provide such disclosure information in writing to the purchaser.

Subpart H—Individual SBA Guaranteed Portion Sold in the Secondary Market

§ 120.800 Statutory provisions.

The statutory authority for this Subpart H is section 5(f) of the Small Business Act (15 U.S.C. 634(f)).

§ 120.801 General.

(a) SBA guarantees to purchase from the registered holder the guaranteed portion for an amount equal to the guaranteed percentage of unpaid principal and accrued interest due on the note as of the date of purchase by SBA, less deductions for the lender's and the FTA's servicing fees. SBA's guarantee to the registered holder shall become effective in the event (1) the borrower defaults in making payments of principal or interest due on the note or (2) the lender fails to remit to the FTA payments received from the borrower. SBA also guarantees to forward to the registered holder any such payments that the FTA fails to remit to the registered holder. SBA's guarantee to such holder is unconditional and is backed by the full faith and credit of the United States. (SBA does not guarantee timely payment on individual guaranteed portions. *cf.* § 120.701) Transactions involving the sale of individual guaranteed portions are governed by the specified terms and provisions of the contracts entered into by the parties, SBA's Secondary Market Program Guide, and these regulations.

(b) These transactions and those described in Subpart G of these regulations constitute the SBA secondary market. Procedural rules dealing with central registration for the secondary market may be found at Subpart F of this part and § 120.301–2–3. Further information may be obtained from the Small Business Administration, Room 800, 1441 L Street, NW., Washington, D.C. 20416.

§ 120.802 Definitions.

The definitions of the terms "Agency or SBA," "Certificate," "FTA," "Payment Date" and "Registered Holder or Holder" have the same meaning in this subpart as they do in subpart G.

(a) *Certificate* means the document representing a beneficial interest in the guaranteed portion of a loan made by a lender and guaranteed by SBA.

(b) *Current status* means a loan repayment category in which no

payments on a loan are more than 29 days overdue as measured from the due date of the payment, as evidenced on the records of the entity servicing such loan.

§ 120.803 Certificates.

(a) *Certificate Characteristics.* All certificates to be issued pursuant to this subpart shall be in registered form only. Each certificate shall have terms acceptable to SBA and shall specify its principal amount, interest rate and the maturity date.

(b) *Payment Characteristics for Certificates Representing Individual Guaranteed Loans.* Each certificate shall represent a holder's undivided interest in an entire SBA guaranteed portion of a loan providing for a pass through to the holder of payments received by the FTA from the lender or any entity servicing the loans.

§ 120.804 Individual sale.

(a) *Amount of Certificate.* Each certificate representing the guaranteed portion of a single loan shall be for the entire amount of the guaranteed portion.

(b) *Transferability.* Each such certificate shall be transferable only on the books and records of SBA or its FTA, except that the lender (or its associate as defined in § 120.2–2) which made the loan shall not purchase the guaranteed portion in the secondary market. If a lender purchases the guaranteed portion of one of its own loans, it will have the same status for the particular loan as it is accorded in the Loan Guaranty Agreement, SBA Form 750.

(c) *Prepayment or Default.* The prepayment of the underlying loan or a default on such loan will cause the certificate to be redeemed in accordance with procedures prescribed in the SBA Form 1086.

§ 120.805 Delivery requirements.

(a) Before FTA issues the initial certificate for a particular guaranteed portion, the original seller shall provide the following documents:

(1) Appropriate documentation evidencing ownership of the guaranteed interest, including a certification by the lender that the loan has been closed in conformity with the SBA authorization;

(2) A copy of the note representing the guaranteed loan; and

(3) Such other documentation as may be required by SBA.

(b) SBA reserves the right to review or require its Agent to review such documentation prior to certificate issuance. However, SBA shall not review any materials previously approved if the lender has certified that the loan has been properly closed and that the lender has substantially complied with the provisions of the guarantee agreement and the SBA regulations.

§ 120.806 Secondary market administration.

(a) *FTA Responsibility.* Administration of each individual guaranteed portion shall be the responsibility of the FTA which shall maintain a registry of owners and such other information as SBA shall determine.

(b) *Self Liquidating.* Each individual guaranteed portion shall be self-liquidating as the result of borrower payments, redemption by SBA, prepayment by borrower and/or payment by SBA because of the default by borrower.

(c) *Subrogation by SBA.* If SBA pays a claim under a guarantee with respect to a certificate issued pursuant to this Subpart, it shall be subrogated fully to the rights satisfied by such payment.

§ 120.807 Eligible loans for the secondary market.

Certificates issued under these provisions must be based on and backed by the SBA guaranteed portion of loans under arrangements satisfactory to SBA. Each loan must:

(a) Be in a current status at the time it is initially sold into the secondary market;

(b) Be guaranteed under the Small Business Act, as amended;

(c) Have such characteristics as SBA shall, from time to time, determine to be necessary for the successful operation of the secondary market.

§ 120.808 Fees.

The FTA is authorized to collect reasonable application fees, transfer fees and such other fees as the SBA and the FTA may negotiate under contract and which the Agency, from time to time, will publish in the **Federal Register.** In negotiating any changes in fees, the Agency will accept public comments on these notices and consider these comments in establishing these fees.

§ 120.809 Disclosure requirements.

Except for the entity which made the loan, every registered holder of the guaranteed portion must, prior to any sale, disclose to the purchaser either orally or in writing the terms and conditions and yield of such instrument as described in the Secondary Market Program Guide. In addition, such information must be provided in writing on the transfer document at the time it is submitted to the FTA. The FTA will, subsequent to sale, provide such disclosure information in writing to the purchaser.

Dated: March 7, 1985.

James C. Sanders,

Administrator.

[FR. Doc. 85–7403 Filed 3–27–85; 8:45 am]

BILLING CODE 8025–01–M

DEPARTMENT OF COMMERCE

Economic Development Administration

13 CFR Part 301

[Docket No. 50332–5032]

Establishment and Organization; Information Collection Requirements Under the Paperwork Reduction Act; OMB Control Numbers

AGENCY: Economic Development Administration (EDA), Commerce.

ACTION: Final rule.

SUMMARY: This rule shows an update to OMB Control Numbers assigned to EDA's information collection requirements.

EFFECTIVE DATE: March 28, 1985.

FOR FURTHER INFORMATION CONTACT: Brian B. Whalen, Director, Management and Administration, Economic Development Administration, U.S. Department of Commerce, Herbert C. Hoover Building, 14th Street between Pennsylvania and Constitution Avenues NW., Room 7816, Washington, D.C. 20230, (202) 377–2194.

SUPPLEMENTARY INFORMATION: EDA is amending this regulation to comply with an OMB requirement for publication in the **Federal Register** of OMB Control Numbers assigned to information collection pursuant to the Paperwork Reduction Act of 1980 (Pub. L. 96–511).

Because this rule relates to agency management or personnel, it is exempt from all requirements of Section 553 of the Administrative Procedure Act (APA) (5 U.S.C. 553).

No other law requires that notice and opportunity for comment be given for the rule.

Since notice and an opportunity for comment are not required to be given for this rule under Section 553 of the APA (5 U.S.C. 553) or any other law, under Sections 603(a) and 604(a) of the Regulatory Flexibility Act (5 U.S.C. 603(a), 604(a)), no initial or final Regulatory Flexibility Analysis has to be or will be prepared.

Because this rule is exempt from the requirements of Section 553 of the APA

it can be and is being made immediately effective upon publication.

Since this rule is related to agency management it is not a rule or regulation within the meaning of Section 1(a) of Executive Order 12291 and, accordingly, is not subject to the requirements of that Order.

This rule does not contain a collection of information for purposes of the Paperwork Reduction Act (Pub. L. 96-511).

List of Subjects in 13 CFR Part 301

Freedom of information, Organization and functions (Government agencies), Reporting and recordkeeping requirements.

PART 301—[AMENDED]

Accordingly, 13 CFR Part 301 Subpart E is revised to read as follows:

Subpart E—Information Collection Requirements Under the Paperwork Reduction Act: OMB Control Numbers

§ 301.70 OMB Control Numbers assigned pursuant to the Paperwork Reduction Act.

(a) This table displays control numbers assigned to EDA's information collection requirements by the Office of Management and Budget ("OMB") pursuant to the Paperwork Reduction Act of 1980, Pub. L. 96-511. EDA intends that this table comply with the requirements of Section 3507(f) of the Paperwork Reduction Act, which requires that agencies display a current control number assigned by the Director of OMB for each agency information collection requirement.

(b) Control Number Table:

13 CFR part or section where identified and described	Current OMB control No.
Part 305	0610-0011 0610-0076
Part 308	0610-0010
Part 307	0610-0018 0610-0024
Part 308	0610-0058
Sec. 309.2(c)	0610-0082
Sec. 309.22	0610-0011 0610-0024
Part 311	0610-0003 0610-0021
Sec. 312.5	0610-0011
Part 317	0610-0028 0610-0076

Authority: Sec. 701, Pub. L. 89-136, 79 Stat. 570) (42 U.S.C. 3211). DOC Organization Order 10-4, as amended (40 FR 56702, as amended.

Dated: March 7, 1985.

J. Bonnie Newman,

Assistant Secretary for Economic Development.

[FR Doc. 85-7323 Filed 3-27-85; 8:45 am]

BILLING CODE 3510-24-M

13 CFR Parts 302 and 305

[Docket No. 50331-5031]

EDA's Designation of Areas and Public Works and Development Facilities

AGENCY: Economic Development Administration (EDA), Commerce.

ACTION: Final rule.

SUMMARY: This rule amends EDA's Designation of Areas and Public Works and Development Facilities regulations which were in effect for a limited time under the Emergency Jobs Act, which is no longer in effect and for which funds are no longer available, to revert back (with 2 technical changes) to the original regulations.

EDA's original regulation at 13 CFR 302.7 defines substantial unemployment as an annual average unemployment rate of 8.5 percent or more during the most recent quarter for which appropriate data was available. A technical change at 13 CFR 302.7(a), in describing the Assistant Secretary as "he/she", is also being made. This rule also reverts back to EDA's original regulation at 13 CFR 305.5(b)(iv), which provides that all PWIP supplementary grants meeting the requirements of Sec. 401(a) of PWEDA, are eligible for an 80 percent grant rate. The technical amendment at 305.5(e) is made to reflect a change in delegation of authority to the Assistant Secretary to authorize applications.

EFFECTIVE DATE: March 28, 1985.

FOR FURTHER INFORMATION CONTACT: John Corrigan, Deputy Assistant Secretary for Operations, Economic Development Administration, U.S. Department of Commerce, Herbert C. Hoover Building, 14th Street between Pennsylvania and Constitution Avenues NW., Room 7824, Washington, D.C. 20230 (202) 377-3081.

SUPPLEMENTARY INFORMATION: On May 23, 1983, and as corrected on May 27, 1983, EDA published (48 FR 23154 and 48 FR 23810) interim rules regarding designation of areas at 13 CFR Part 302 and supplementary grant rates under its Public Works and Development Facilities Program at 13 CFR Part 305. EDA published the regulation in interim form and allowed interested persons 60 days to comment. Comments were received, suggesting that these interim regulations state in the bodies thereof, that they apply only during the existence of the Emergency Jobs Act Program. Although the preamble to the amendment explained that the changes were being made for the Emergency Jobs Act Program, the text did not indicate that such was the case.

Because this rule relates to loans, grants and contracts, it is exempt from all requirements of Section 553 of the Administrative Procedure Act (APA) (5 U.S.C. 553).

No other law requires that notice and opportunity for comment be given for this rule.

Accordingly, the Department's General Counsel has determined and so certified to the Office of Management and Budget, that dispensing with notice and opportunity for comment is consistent with the APA and other relevant laws.

Since notice and an opportunity for comments are not required to be given for this rule under Section 553 of the APA (5 U.S.C. 553) or any other law, under Sections 603(a) and 604(a) of the Regulatory Flexibility Act (5 U.S.C. 603(a), 604(a)), no initial or final Regulatory Flexibility Analysis has to be or will be prepared.

Because this rule is exempt from the requirements of Section 553 of the APA, it can be and is being made immediately effective upon publication.

Under Executive Order (E.O.) 12291 the Department must judge whether a regulation is 'major' within the meaning of Section 1 of the Order and therefore subject to the requirement that a Regulatory Impact Analysis be prepared. This regulation is not major because it is not likely to result in an annual effect on the economy of $100 million or more; a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; or significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

This rule does not contain a collection of information for purposes of the Paperwork Reduction Act (Pub. L. 96-511).

List of Subjects

13 CFR Part 302

Community development.

13 CFR Part 305

Community development, Community facilities, Grant programs—community development, Indians, and Loan programs—community development.

Accordingly, EDA amends 13 CFR Part 302 and Part 305 as follows:

PART 302—DESIGNATION OF AREAS

1. Section 302.7 is amended by revising (a) introductory text, and paragraph (a)(3) to read as follows:

§ 302.7 Designation of public works impact program areas.

(a) The Assistant Secretary shall designate communities or neighborhoods defined without regard to political or other subdivisions or boundaries when he/she determines one of the following conditions has been met.

* * * * *

(3) Substantial unemployment as established by an annual average unemployment rate of 8.5 percent or more during the most recent quarter for which appropriate data is available.

* * * * *

PART 305—PUBLIC WORKS AND DEVELOPMENT FACILITIES PROGRAM

2. Section 305.5 is amended by revising paragraph (b)(3)(iv) and paragraph (e) to read as follows. The introductory text of (b)(3) is shown for the convenience of the reader.

§ 305.5 Supplementary grant rates.

* * * * *

(b) * * *

(3) The maximum grant rate of funds granted under authority of title I of the Act for projects in designated areas, determined by relative needs, is as follows:

* * * * *

(iv) Projects located in redevelopment areas designated under section 401(a)(6) of the act but which cannot meet the requirement of paragraph (b)(3)(ii) of this section.....80

* * * * *

(e) Notwithstanding paragraphs (c) and (d) of this section an applicant shall be eligible for the highest applicable maximum grant rate in effect between the time the Assistant Secretary authorizes the application and the time the project is approved.

* * * * *

Authority: Sec. 701, Pub. L. 89-136, 79 Stat. 570 (42 U.S.C. 3211). Sec. 1-105, DOC Organization Order 10-4, as amended (40 FR 56702, as amended).

Dated: March 26, 1985.

J. Bonnie Newman,

Assistant Secretary for Economic Development.

[FR Doc. 85-7322 Filed 3-27-85; 8:45 am]

BILLING CODE 3510-24-M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 97

[Docket No. 24564; Amdt. No. 1291]

Standard Instrument Approach Procedures; Miscellaneous Amendments

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment establishes, amends, suspends, or revokes Standard Instrument Approach Procedures (SIAPs) for operations at certain airports. These regulatory actions are needed because of the adoption of new or revised criteria, or because of changes occurring in the National Airspace System, such as the commissioning of new navigational facilities, addition of new obstacles, or changes in air traffic requirements. These changes are designed to provide safe and efficient use of the navigable airspace and to promote safe flight operations under instrument flight rules at the affected airports.

EFFECTIVE DATES: An effective date for each SIAP is specified in the amendatory provisions.

ADDRESSES: Availability of matters incorporated by reference in the amendment is as follows:

For Examination—

1. FAA Rules Docket, FAA Headquarters Building, 800 Independence Avenue, SW., Washington, D.C. 20591;

2. The FAA Regional Office of the region in which the affected airport is located; or

3. The Flight Inspection Field Office which originated the SIAP.

For Purchase—

Individual SIAP copies may be obtained from:

1. FAA Public Inquiry Center (APA-430), FAA Headquarters Building, 800 Independence Avenue, SW., Washington, D.C. 20591; or

2. The FAA Regional Office of the region in which the affected airport is located.

By Subscription—

Copies of all SIAPs, mailed once every 2 weeks, are for sale by the Superintendent of Documents, U.S. Government Printing Office, Washington, D.C. 20402.

FOR FURTHER INFORMATION CONTACT: Donald K. Funai, Flight Procedures Standards Branch (AFO-230), Air Transportation Division, Office of Flight Operations, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, D.C. 20591; telephone (202) 426-8277.

SUPPLEMENTARY INFORMATION: This amendment to Part 97 of the Federal Aviation Regulations (14 CFR Part 97) prescribes new, amended, suspended, or revoked Standard Instrument Approach Procedures (SIAPs). The complete regulatory description of each SIAP is contained in official FAA form documents which are incorporated by reference in this amendment under 5 U.S.C. 552(a), 1 CFR Part 51, and § 97.20 of the Federal Aviation Regulations (FARs). The applicable FAA Forms are identified as FAA Forms 8260-3, 8260-4, and 8260-5. Materials incorporated by reference are available for examination or purchase as stated above.

The large number of SIAPs, their complex nature, and the need for a special format make their verbatim publication in the **Federal Register** expensive and impractical. Further, airmen do not use the regulatory text of the SIAPs, but refer to their graphic depiction on charts printed by publishers of aeronautical materials. Thus, the advantages of incorporation by reference are realized and publication of the complete description of each SIAP contained in FAA form document is unnecessary. The provisions of this amendment state the affected CFR (and FAR) sections, with the types and effective dates of the SIAPs. This amendment also identifies the airport, its location, the procedure identification and the amendment number.

This amendment to Part 97 is effective on the date of publication and contains separate SIAPs which have compliance dates stated as effective dates based on related changes in the National Airspace System or the application of new or revised criteria. Some SIAP amendments may have been previously issued by the FAA in a National Flight Data Center (FDC) Notice to Airmen (NOTAM) as an emergency action of immediate flight safety relating directly to published aeronautical charts. The circumstances which created the need for some SIAP amendments may require making them effective in less than 30 days. For the remaining SIAPs, an effective date at least 30 days after publication is provided.

Further, the SIAPs contained in this amendment are based on the criteria contained in the U.S. Standard for Terminal Instrument Approach Procedures (TERPs). In developing these SIAPs, the TERPS criteria were applied to the conditions existing or anticipated

at the affected airports. Because of the close and immediate relationship between these SIAPs and safety in air commerce, I find that notice and public procedure before adopting these SIAPs is unnecessary, impracticable, and contrary to the public interest and, where applicable, that good cause exists for making some SIAPs effective in less than 30 days.

List of Subjects in 14 CFR Part 97

Aviation safety, Approaches, Standard instrument.

PART 97—[AMENDED]

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me, Part 97 of the Federal Aviation Regulations (14 CFR Part 97) is amended by establishing, amending, suspending, or revoking Standard Instrument Approach Procedures, effective at 0901 G.M.T. on the dates specified, as follows:

1. By Amending § 97.23 VOR, VOR/DME, VOR or TACAN, and VOR/DME or TACAN SIAPs identified as follows:

** * * Effective June 6, 1985*

Kalamazoo, MI—Kalamazoo County, VOR RWY 17, Amdt. 16
Kalamazoo, MI—Kalamazoo County, VOR RWY 23, Amdt. 16
Kalamazoo, MI—Kalamazoo County, VOR RWY 35, Amdt. 15
Kearney, NE—Kearney Muni, VOR RWY 18, Amdt. 10
Kearney, NE—Kearney Muni, VOR RWY 36, Amdt. 7

** * * Effective May 9, 1985*

Concord, CA—Buchanan Field, VOR RWY 19R, Amdt. 12
Thomasville, GA—Thomasville Muni, VOR RWY 22, Amdt. 9
Thomasville, GA—Thomasville Muni, VOR/DME RWY 22, Amdt. 3
Indianapolis, IN—Eagle Creek Airpark, VOR-A, Amdt. 6
Oelwein, IA—Oelwein Muni, VOR-A, Amdt. 2
Salina, KS—Salina Muni, VOR RWY 17, Amdt. 16
Auburn-Lewiston, ME—Auburn-Lewiston Muni, VOR/DME-A, Amdt. 3
Augusta, ME—Augusta State, VOR/DME-A, Amdt. 10
Augusta, ME—Augusta State, VOR/DME RWY 8, Amdt. 10
Augusta, ME—Augusta State, VOR/DME RWY 17, Amdt. 3
Augusta, ME—Augusta State, VOR RWY 35, Amdt. 4
Bedford, MA—Laurence G Hanscom Fld, VOR RWY 23, Amdt. 7
Newburyport, MA—Plum Island, VOR RWY 10, Amdt. 4
Northampton, MA—Northampton, VOR-A, Amdt. 1
Charlotte, MI—Fitch H. Beach, VOR RWY 20, Amdt. 7
St. Louis, MO—Spirit of St. Louis, VOR RWY 8R, Amdt. 4
St. Louis, MO—Spirit of St. Louis, VOR RWY 26L, Amdt. 2
North Platte, NE—Lee Bird Field, VOR RWY 35, Amdt. 15
Akron, NY—Akron, VOR RWY 6, Amdt. 1
Akron, NY—Akron, VOR/DME RWY 24, Amdt. 2
Aberdeen, SD—Aberdeen Regional, VOR RWY 31, Amdt. 17
Aberdeen, SD—Aberdeen Regional, VOR/DME or TACAN RWY 13, Amdt. 9
Madison, SD—Madison Muni, VOR/DME RWY 32, Orig.

** * * Effective March 7, 1985*

North Bend, OR—North Bend Muni, 14, VOR-A, Amdt. 2
North Bend, OR—North Bend Muni, 14, VOR/DME-B, Amdt. 1

2. By amending § 97.25 LOC, LOC/DME, LDA, LDA/DME, SDF, and SDF/DME SIAPs identified as follows:

** * * Effective June 6, 1985*

Kearney, NE—Kearney Muni, LOC RWY 36, Amdt. 3

** * * Effective May 9, 1985*

Thomasville, GA—Thomasville Muni, LOC RWY 22, Amdt. 1
Indianapolis, IN—Eagle Creek Airpark, LOC RWY 21, Amdt. 3
Augusta, ME—Augusta State, LOC RWY 17, Amdt. 3
St. Louis, MO—Spirit of St. Louis, LOC RWY 26L, Amdt. 1
Niagara Falls, NY—Niagara Falls Intl, LOC BC RWY 10L, Amdt. 6
Ponca City, OK—Ponca City Muni, LOC RWY 17, Amdt. 2
Aberdeen, SD—Aberdeen Regional, LOC/DME BC RWY 13, Amdt. 7

** * * Effective March 8, 1985*

Portland, OR—Portland Intl, LOC/DME RWY 20, Amdt. 5

3. By amending § 97.27 NDB and NDB/DME SIAPs identified as follows:

** * * Effective June 6, 1985*

Kalamazoo, MI—Kalamazoo County, NDB RWY 35, Amdt. 17
Kearney, NE—Kearney Muni, NDB RWY 36, Amdt. 2

** * * Effect May 9, 1985*

Wilmington, DE—Greater Wilmington—New Castle County, NDB RWY 1, Amdt. 16
Thomasville, GA—Thomasville Muni, NDB RWY 22, Amdt. 1
Indianapolis, IN—Eagle Creek Airpark, NDB RWY 21, Amdt. 3
Oelwein, IA—Oelwein Muni, NDB RWY 13, Amdt. 1
Salina, KS—Salina Muni, NDB RWY 35, Amdt. 14
Auburn-Lewiston, ME—Auburn-Lewiston Muni, NDB RWY 4, Amdt. 6
St. Louis, MO—Spirit of St. Louis, NDB RWY 8R, Amdt. 7
North Platte, NE—Lee Bird Field, NDB RWY 30L, Amdt. 7
North Platte, NE—Lee Bird Field, NDB RWY 30R, Amdt. 1
Niagara Falls, NY—Niagara Falls Intl, NDB RWY 28R, Amdt. 15
Newport, RI—Newport State, NDB RWY 4, Orig.
Pawtucket, RI—North Central State, NDB RWY 5, Orig.
Westerly, RI—Westerly State, NDB RWY 7, Orig.
Aberdeen, SD—Aberdeen Regional, NDB RWY 31, Amdt. 7
Madison, SD—Madison Muni, NDB RWY 14, Amdt. 4
Seattle, WA—Boeing Field/King County Intl, NDB-A, Amdt. 7
Petersburg, WV—Grant County, NDB-A, Amdt. 2, Cancelled

4. By amending § 97.29 ILS, ILS/DME, ISMLS, MLS, MLS/DME and MLS/RNAV SIAPs identified as follows:

** * * Effective June 6, 1985*

Kalamazoo, MI—Kalamazoo County, ILS RWY 35, Amdt. 19

** * * Effective May 9, 1985*

Huntsville, AL—Huntsville-Madison Co Apt—Carl T Jones Fld, ILS RWY 36L, Amdt. 4
Salina, KS—Salina Muni, ILS RWY 35, Amdt. 17
Topeka, KS—Forbes Field, ILS RWY 31, Amdt. 7
Auburn-Lewiston, ME—Auburn-Lewiston Muni, ILS RWY 4, Amdt. 4
St. Louis, MO—Spirit of St. Louis, ILS RWY 8R, Amdt. 8
North Platte, NE—Lee Bird Field, ILS RWY 30R, Amdt. 3
Niagara Falls, NY—Niagara Falls, Intl, ILS RWY 28R, Amdt. 20
Philadelphia, PA—Philadelphia Intl, ILS RWY 27L, Amdt. 4
Philadelphia, PA—Philadelphia Intl, ILS RWY 27R, Amdt. 6
Aberdeen, SD—Aberdeen Regional, ILS RWY 31, Amdt. 9
Seattle, WA—Boeing Field/King County Intl, ILS RWY 13R, Amdt. 23
Charleston, WV—Kanawha, ILS RWY 5, Amdt. 2

** * * Effective March 15, 1985*

Oakland, CA—Metropolitan Oakland Intl, ILS RWY 29, Admt. 21

5. By amending § 97.31 RADAR SIAPS identified as follows:

** * * Effective March 9, 1985*

Clarksburg, WV—Benedum, RADAR-1, Orig.

6. By amending § 97.33 RNAV SIAPs identified as follows:

** * * Effective March 9, 1985*

Oelwein, IA—Oelwein Muni, RNAV RWY 13, Amdt. 1
Salina, KS—Salina Muni, RNAV RWY 17, Amdt. 9
St. Louis, MO—Spirit of St. Louis, RNAV RWY 26L, Amdt. 2
North Platte, NE—Lee Bird Field, RNAV RWY 12L, Amdt. 1

(Secs. 307, 313(a), 601, and 1110, Federal Aviation Act of 1958 (49 U.S.C. 1348, 1354(a), 1421, and 1510); 49 U.S.C. 106(g) (Revised,

Pub. L. 97-449, January 12, 1983); and 14 CFR 11.49(b)(3)]

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. For the same reason, the FAA certifies that this amendment will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

Issued in Washington, D.C. on March 22, 1985.

John S. Kern,

Acting Director of Flight Operations.

Note.—The incorporation by reference in the preceding document was approved by the Director of the Federal Register on December 31, 1980, and reapproved as of January 1, 1982.

[FR Doc. 85-7244 Filed 3-27-85; 8:45 am]

BILLING CODE 4910-13-M

SECURITIES AND EXCHANGE COMMISSION

17 CFR Part 200

[Release Nos. 33-6573; 34-21885; 35-23638; 39-974; IC-14434; IA-963]

Organization Changes

AGENCY: Securities and Exchange Commission.

ACTION: Final rule.

SUMMARY: The Securities and Exchange Commission announces revisions to Subpart A, Part 200 of Title 17 which sets forth descriptions of the functional responsibilities of the divisions and offices within the Commission and the authority delegated to the various division directors and office heads in order to update these sections.

EFFECTIVE DATE: March 28, 1985.

FOR FURTHER INFORMATION CONTACT: John Komoroske, Office of the Executive Director, (202) 272-2700.

SUPPLEMENTARY INFORMATION: The Commission finds, in accordance with the Administrative Procedure Act ("APA") (15 U.S.C. 553(b)(3)(B)) that this amendment relates solely to agency organization, procedures, or practices and that notice and procedures pursuant to the APA are therefore not necessary and that such amendment shall be adopted, effective immediately.

List of Subjects in 17 CFR Part 200

Administrative practice and procedure, Freedom of Information, Privacy, Securities.

Text of Amendments

Part 200 of 17 CFR Chapter II is amended as follows:

PART 200—ORGANIZATION; CONDUCT AND ETHICS; AND INFORMATION AND REQUESTS

1. By revising the introductory text and redesignating it as paragraph (a), by redesignating paragraphs (a) through (d) as paragraphs (a)(1) through (a)(4), and adding paragraph (a)(5) by redesignating the last paragraph as paragraph (b), and adding a new paragraph (c) to read as follows:

§ 200.13 Executive Director.

(a) The Executive Director is vested with broad discretionary powers and executive authority to act within the general framework of basic policies established by the Chairman or the Commission to achieve maximum efficiency and economy in the Commission's total operations. This entails the development and execution of the overall management policies of the Commission for all its operating divisions and staff offices. The Executive Director also provides executive direction to, and exercises administrative control over, the Office of Equal Employment Opportunity, Office of Consumer Affairs and Information Services, Office of the Comptroller, Office of Information Systems Management, Office of Personnel, Office of Public Affairs, Office of Administrative Services, and the Office of Applications and Reports Services. In addition, the Executive Director is delegated the full range of program administration functions for the purposes of implementing the following statutes, regulations, and Executive Orders, as well as others designated by the Chairman.

* * * * *

(5) Section 2 of Public Law 97-255—The Federal Managers Financial Integrity Act of 1982.

* * * * *

(c) The Executive Director is also delegated authority to designate certifying officers for agency payments, to prescribe procurement regulations, to enter into contracts, to designate contracting officers, and to make procurement determinations.

2. By revising § 200.13 to read as follows:

§ 200.13a The Secretary of the Commission.

(a) The Secretary of the Commission is responsible for the preparation of the daily and weekly agendas of Commission business; the orderly and expeditious flow of business at formal Commission meetings; the maintenance of the Official Minute record of all actions of the Commission; and the service of all instruments of formal Commission action. He or she is custodian of the official seal of the Commission, and also has the responsibility for authenticating documents.

(b) The Secretary has been delegated responsibilities relating to the Commission's rules of practice, administrative proceedings under the Commission's statutes, and other responsibilities.

(c) In addition, he or she administers the Commission's Library.

3. By revising § 200.13b to read as follows:

§ 200.13b Director of the Office of Public Affairs.

The Director of the Office of Public Affairs is the chief public information officer for the Commission, and oversees activities that communicate the Commission's actions to those interested in or affected by them. His or her responsibilities include liaison with the news media, dissemination of information to the news media and to the general public, coordination and production of the Annual Report to Congress, supervision of internal and some external publications and of audio-visual presentations. Responsibilities of the Director, and of his or her staff, include special projects that may be deemed appropriate to communicate information on Commission actions.

4. By revising the introductory text and paragraph (a), revising and redesignating paragraph (c) and (d) as paragraphs (b)(4) and (b)(5), and redesignating paragraph (e) as paragraph (c) of § 200.18 as follows:

§ 200.18 Director of Division of Corporation Finance.

The Director of the Division of Corporation Finance is responsible to the Commission for the administration of all matters (except those pertaining to investment companies registered under the Investment Company Act of 1940) relating to establishing and requiring adherence to standards of business and financial disclosure with respect to securities being offered for public sale pursuant to the registration

requirements of the Securities Act of 1933 (15 U.S.C. 77a *et seq.*) or the exemptions therefrom; establishing and requiring adherence to standards of reporting and disclosure with respect to securities traded on national securities exchanges or required to be registered pursuant to section 12 (g) of the Securities Exchange Act of 1934 (15 U.S.C. 78*l*(g)) and with respect to securities whose issuers are required to file reports pursuant to section 15(d) of that Act (15 U.S.C. 78*o*(d)); establishing and requiring adherence to disclosure and procedural standards in the solicitation of proxies for the election of directors and other corporate actions; establishing and requiring adherence to standards of disclosure with respect to the filing of statements respecting beneficial ownership and transaction statements pursuant to sections 13 (d), (e), and (g) (15 U.S.C. 78m(d), 78m(e), and 78m(g)) of the Securities Exchange Act of 1934; administering the disclosure and substantive provisions of the Williams Act relating to tender offers; and ensuring adherence to enforcement of the standards set forth in the Trust Indenture Act of 1939 (15 U.S.C. 77aaa *et seq.*) regarding indenture covering debt securities. Those duties shall include, with the exception of enforcement and related activities under the jurisdiction of the Division of Enforcement, the responsibility to the Commission for the administration of the disclosure requirements and other provisions of the Securities Act of 1933, the Securities Exchange Act of 1934, and the Trust Indenture Act of 1939, as listed below:

(a) All matters under the Securities Act of 1933 (15 U.S.C. 77a, *et seq.*) including the examination and processing of material filed pursuant to the requirements of that Act (except such material filed by investment companies registered under the Investment Company Act of 1940), the interpretation of the provisions of the Securities Act of 1933, and the proposing to the Commission of rules under that Act.

(b) * * *

(4) The examination and processing of statements respecting beneficial ownership transaction statements and tender offer statements filed pursuant to sections 13 (d), (e), and (g) and 14 (d), (e), (f), and (g) of the Securities Exchange Act of 1934 (15 U.S.C. 78m(d), 78m(e), 78m(g), and 78n(d)), and the administration of the other protective standards of these provisions.

(5) The interpretation of the foregoing provisions of the Act, as well as Section 16(a) thereof (15 U.S.C. 78p(a)), and proposing of rules under those portions of the Act to the Commission.

* * * * *

5. By revising the first three sentences of paragraph (a), changing the word "memorandums" in sentence four to "memoranda" and revising paragraph (b) of § 200.21 as follows:

§ 200.21 The General Counsel.

(a) The General Counsel is the chief legal officer of the Commission. He or she is responsible for the representation of the Commission in judicial proceedings in which it is involved as a party or as amicus curiae, for directing and supervising all civil litigation involving the Commission in the United States District Courts, for directing and supervising the Commission's responsibilities under the Bankruptcy Code and all related litigation, and for representing the Commission in all cases in appellate courts. The General Counsel is responsible for the review of cases which the Division of Enforcement recommends be referred to the Department of Justice with a recommendation for criminal prosecution. Together with the Director of the Division of Enforcement, the General Counsel is responsible for granting of access, by delegated authority, to materials contained in Commission files concerning non-public investigatory proceedings in which formal orders of investigation have been entered at the request of domestic and foreign governmental authorities, self-regulatory organizations, receivers, special counsels, and other similar persons appointed in Commission ligitation, the Securities Investor Protection Corporation, and trustees and counsel for trustees "appointed" pursuant to section 5(b) of the Securities Investor Protection Act. * * *

(b) The General Counsel also is responsible to the Commission for the administration of the Government in the Sunshine Act for publicly certifying, pursuant to § 200.406, that, in his or her opinion, particular Commission meetings may properly be closed to the public. In the absence of the General Counsel, the Solicitor to the Commission shall be deemed the General Counsel for purposes of § 200.406. In the absence of the General Counsel and the Solicitor, the most senior Associate General Counsel available shall be deemed the General Counsel for purposes of § 200.406. In the absence of the General Counsel, the Solicitor, and every Associate General Counsel, the most senior Assistant General Counsel available shall be deemed the General Counsel for purposes of § 200.406. In the absence of the General Counsel, the Solicitor, every Associate General Counsel and every Assistant General Counsel, such attorneys as the General Counsel may designate (in such order of succession as the General Counsel directs) shall exercise the responsibilities imposed by § 200.406.

6. By amending the first sentence by changing "This office" to read "The Office of Personnel" and by revising the last two sentences of § 200.25 as follows:

§ 200.25 Office of Personnel.

* * * He or she also is the Commission's liaison officer with the Office of Personnel Management, professional organizations and other government agencies on personnel matters. He or she is responsible for the day-to-day administration of the Regulation Regarding Conduct of Members and Employees except where otherwise specifically provided in the Regulation.

7. By revising § 200.26 as follows:

§ 200.26 Office of Administrative Services.

(a) The Director of Administrative Services is responsible for the development and execution of the Commission's office service programs, which include procurement, contract administration, telecommunications management, supply and space management, transportation, safety programs, emergency preparedness coordination and building security, as well as all mail, printing and publication operations of the Commission.

(b) The Director has authority to act as Contracting Officer for the Commission, serves as Printing Liaison with the Joint Committee on Printing and is the liaison with those federal, state, and local government agencies involved with matters that are within the jurisdiction of the Director.

8. By revising the second sentence of § 200.27 as follows:

§ 200.27 The Regional Administrators.

* * * The Regional Administrators' responsibilities include particularly the investigation of transactions in securities on national securities exchanges, in the over-the-counter market, and in distribution to the public; the examination of members of national securities exchanges and registered brokers and dealers, transfer agents, investment advisers and investment companies including the examination of reports filed under § 240.17a–5 of this chapter; the examination and processing of filings under § 230.251 to § 230.264 of

this chapter issued pursuant to section 3(b) of the Securities Act of 1933; the examination and processing of filings under § 239.28 of this chapter and any related filings under the Trust Indenture Act of 1939; the prosecution of injunctive actions in U.S. District Courts and administrative proceedings before Administrative Law Judges; the rendering of assistance to U.S. Attorneys in criminal cases; and the making of the Commission's facilities more readily available to the public in that region.* * *

Authority: Secs. 19, 23, 48, Stat. 85, 901, as amended, sec. 20, 49 Stat. 833, sec. 319, 53 Stat. 1173, secs. 38, 211, 54 Stat. 841, 855; 15 U.S.C. 77s, 78w, 79t, 77sss, 80a–37, 80b–11.

By the Commission.

John Wheeler,

Secretary.

March 25, 1985.

[FR Doc. 85–7406 Filed 3–27–85; 8:45 am]

BILLING CODE 8010–01–M

SUSQUEHANNA RIVER BASIN COMMISSION

18 CFR Part 803

Emergency Approval of Project by Executive Director; Addition to Regulations & Procedures for Review of Projects

AGENCY: Susquehanna River Basin Commission.

ACTION: Final rule.

SUMMARY: This final regulation adds a new § 803.26 to Part 803, Subpart B, authorizing the Executive Director to approve projects in certain defined emergency situations.

EFFECTIVE DATE: March 14, 1985.

FOR FURTHER INFORMATION CONTACT: Richard A. Cairo, Secretary, Susquehanna River Basin Commission, 1721 N. Front St., Harrisburg, Pa. 17102–2391, Telephone: (717) 238–0423.

SUPPLEMENTARY INFORMATION: An explanation of the nature and purpose of the rule appeared in the **Federal Register** on July 12, 1984, page 28412.

The only comment on the proposed rule came from the Director, Advisory Council on Historic Preservation who questioned the applicability of section 106 of the National Historic Preservation Act and accompanying regulations to the SRBC project review and approval process. The SRBC is a totally independent Federal-Interstate Compact Commission with co-equal membership from the States of New York, Pennsylvania and Maryland and the United States of America. The SRBC is not the agency of any single member jurisdiction and is not, therefore, a Federal agency for purposes of section 106. No other substantive comments were received.

By its own motion, the Commission made a minor change in the wording of the rule as originally proposed by deleting the words "exigent or."

List of Subjects in 18 CFR Part 803

Administrative practice and procedure, Water resources.

Final Regulation

Accordingly, Part 803, Subpart B of the Code of Federal Regulations is amended by adding a new § 803.26, as set forth below.

Dated: March 20, 1985.

Robert J. Bielo,

Executive Director.

PART 803—[AMENDED]

§ 803.26 Emergency approval.

Whenever, in the judgment of the Executive Director, there exists an emergency situation where delay in project review will affect adversely the public health, public welfare, protection of property or the environment, he may, after consultation with the Chairman and the member of the signatory state in which the project is located and any affected signatory state, act to approve a project on behalf of the Commission under these regulations; provided, however, that the Commission must ratify the Executive Director's action at the next regular meeting of the Commission or the said action shall be considered invalid.

(Pub. L. 91–575, 84 Stat. 1509 et seq.)

[FR Doc. 85–7218 Filed 3–27–85; 8:45 am]

BILLING CODE 6360–01–M

RAILROAD RETIREMENT BOARD

20 CFR Part 350

Garnishment Regulations

AGENCY: Railroad Retirement Board.

ACTION: Final rule.

SUMMARY: The Railroad Retirement Board (Board) hereby amends 20 CFR Chapter II, Part 350. These regulations inform the public of procedures which must be followed to garnish, for purposes of satisfaction of an obligation to pay alimony or child support, benefits paid under the Railroad Retirement and Railroad Unemployment Insurance Acts. The amendments make provision for the garnishment of benefits paid under other Acts administered by the Board, and reduce the administrative burden on the Board resulting from garnishments.

EFFECTIVE DATE: March 28, 1985.

FOR FURTHER INFORMATION CONTACT: Michael C. Litt, General Attorney, Railroad Retirement Board, 844 Rush Street, Chicago, Illinois 60611, (312) 751–4929 (FTS 387–4929).

SUPPLEMENTARY INFORMATION: Garnishment is authorized by section 459(a) of the Social Security Act (42 U.S.C. 659(a)), which subjects certain Federal payments to:

* * * legal process brought for the enforcement * * * of * * * legal obligations to provide child support or make alimony payments.

Garnishment of benefits for other than the stated purposes is prohibited by sections 14 of the Railroad Retirement Act (45 U.S.C. 231m) and 2(e) of the Railroad Unemployment Insurance Act (45 U.S.C. 352(e)).

The Board honors an order of garnishment or analogous legal process in satisfaction of an obligation for alimony or child support subject to the Federal exemptions contained in section 303(b)(2) of the Consumer Credit Protection Act (15 U.S.C. 1673(b)(2)), if it accords with the law of the state with jurisdiction in the case.

Garnishment regulations were established in April 1980. The Board is now administering the payment of benefits under Title VII of the Regional Rail Reorganization Act, as well as the Railroad Retirement and Railroad Unemployment Insurance Acts, and may be administering the payment of benefits under other acts in the future. The number of garnishments has increased substantially. The amended regulations include garnishment of benefits paid under the Regional Rail Reorganization Act and other acts which may be administered by the Board, and reduce the administrative burden on the Board resulting from garnishments. The Board will no longer be required to respond to legal process which is received without an address to which such response may be made, and it will not be required to notarize responses to garnishment actions.

No comments were received to the proposed rule which was published in the **Federal Register** on September 20, 1983 (48 FR 42829–42830).

The Board has determined that this is not a major rule for purposes of Executive Order 12291. Therefore, no Regulatory Impact Analysis is required. In addition, these parts do not impose any requirements for the collection of information within the meaning of the Paperwork Reduction Act of 1980.

List of Subject in 20 CFR Part 350

Railroad employees, Railroad retirement, Railroad unemployment insurance, Garnishment.

PART 350—[AMENDED]

Title 20 CFR Chapter II, is amended as follows:

1. The table of contents for Title 20, Chapter II, Railroad Retirement Board, Subchapter D, is proposed to be revised by changing the title of Part 350 from "Garnishment of benefits paid under the Railroad Retirement Act and the Railroad Unemployment Insurance Act" to "Garnishment of benefits paid under the Railroad Retirement Act, the Railroad Unemployment Insurance Act, and under any other act administered by the Board".

2. 20 CFR Part 350 is amended by revising the title to read as follows:

PART 350—GARNISHMENT OF BENEFITS PAID UNDER THE RAILROAD RETIREMENT ACT, THE RAILROAD UNEMPLOYMENT INSURANCE ACT, AND UNDER ANY OTHER ACT ADMINISTERED BY THE BOARD

3. The authority citation for 20 CFR Part 350 reads as follows:

Authority: 15 U.S.C. 1673(b)(2); 42 U.S.C. 659, 661, and 662, and 45 U.S.C. 231f(b)(5) and 362(1).

4. 20 CFR Part 350 is amended by revising § 350.1(a) to read as follows:

§ 350.1 Authorization for garnishment of benefits paid by the Board.

(a) Annuities and accrued annuities payable under the Railroad Retirement Act, sickness and unemployment benefits payable under the Railroad Unemployment Insurance Act, and benefits payable under any other Act administered by the Board, are subject, in like manner and to the same extent as if the Board were a private person, to legal process brought for the enforcement of legal obligations to provide child support or to make alimony payments.

* * * * *

5. 20 CFR Part 350 is amended by adding a new paragraph (f) to § 350.5 to read as follows:

§ 350.5 Miscellaneous.

* * * * *

(f) No acknowledgement or response will be made to legal process which does not contain the mailing address to which acknowledgement may be made. No response to any legal process will be notarized or verified.

Dated: March 22, 1985.

By Authority of the Board.

For the Board.

Beatrice Ezerski,

Secretary to the Board.

[FR Doc. 85-7439 Filed 3-27-85; 8:45 am]

BILLING CODE 7905-01-M

DEPARTMENT OF THE INTERIOR

Bureau of Indian Affairs

25 CFR Part 11

Law and Order on Indian Reservations

March 15, 1985.

AGENCY: Bureau of Indian Affairs, Interior.

ACTION: Final rule.

SUMMARY: The purpose of this amendment is to update the listing of courts of Indian offenses under § 11.1(a) by adding the Louisiana Court of Indian Offenses to the list. There is an urgent and compelling need for judicial services for the Coushatta Indian Tribe of Louisiana and other areas of Indian country located within the State of Louisiana. The Coushatta Indian Tribe does not have a traditional, federal, or state law enforcement system creating a void in law and order and seriously effecting the safety of their residents. Additionally, the Coushatta Tribe lacks an adequate alternative for maintaining law and order. Therefore, the Tribal Council of the Coushatta Tribe of Louisiana adopted a resolution dated February 15, 1985, requesting that a court of Indian offenses be established to provide a system for law enforcement. The Louisiana Court of Indian Offenses is hereby created to serve the Coushatta Tribe and other tribes located in the State of Louisiana who resolve to submit to its jurisdiction.

EFFECTIVE DATE: This amendment will become effective March 28, 1985.

FOR FURTHER INFORMATION CONTACT: Allen L. Davis, Branch of Judicial Services, Bureau of Indian Affairs, Washington, D.C. 20245, telephone number (202) 343-7885.

SUPPLEMENTARY INFORMATION: This amendment is published in exercise of authority delegated by the Secretary of the Interior to the Assistant Secretary — Indian Affairs by 209 DM 8.

The Tribal Council of the Coushatta Tribe of Louisiana adopted a resolution dated February 15, 1985, requesting that a court of Indian offenses be established on the Coushatta Indian Reservation. The Tribal Council resolves that due to a present controversy among the tribal members resulting from a dispute over tribal leadership, there is a growing threat of violence and civil disorder. Establishment of a court of Indian offenses will provide a system for law enforcement within the areas of Indian country under the jurisdiction of the Coushatta Indian Tribe and other tribes located in Louisiana who resolve to submit to its jurisdiction.

Normally, it is the policy of the Department of the Interior to afford the public an opportunity to participate in the rulemaking process. However, due to the lack of judicial services a current danger to life and property exists which creates a state of emergency.

It is determined that the normal notice and public procedure would unnecessarily delay the establishment of the judicial system. They are hereby dispensed with under the exception provided in subsection (b)(B) of 5 U.S.C. 553 (1970). Additionally, the 30 day deferred effective date is dispensed with under the exception provided in subsection (d)(1) of 5 U.S.C. 553 (1970).

The Department of the Interior has determined that this document is not a major rule under the criteria established by Executive Order 12291 and does not have a significant economic effect on a substantial number of small entities under the criteria established by the Regulatory Flexibility Act. Accordingly, this amendment will become effective upon publication in the **Federal Register**.

The primary author of this document is Allen L. Davis, Branch of Judicial Services, Division of Tribal Government Services, Bureau of Indian Affairs, telephone number (202) 343-7885.

List of Subjects in 25 CFR Part 11

Courts, Indians—law enforcement and penalties.

PART 11—[AMENDED]

25 CFR 11.1(a)(22) is added to read as follows:

§ 11.1 Application of regulations.

(a) Except as otherwise provided in this part, §§ 11.1—11.87 of this part apply to the following Indian reservations:

* * * * *

(22) Louisiana Area (Louisiana) (Includes Coushatta and other tribes in the State of Louisiana which occupy Indian country and which accept the application of this part; *provided* that this part shall not apply to any Louisiana tribe other than the Coushatta Tribe until notice of such application

has been published in the **Federal Register**.)

* * * * *

Theodore C. Krenzke,

Acting Deputy Assistant Secretary—Indian Affairs.

[FR Doc. 85-7346 Filed 3-27-85; 8:45 am]

BILLING CODE 4310-02-M

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[T.D. 8008]

Income Tax; Taxable Years Beginning After December 31, 1953; Mixed Straddles: Straddle-by-Straddle Identification and Mixed Straddle Account Elections Under Section 1092(b)(2)

Correction

In FR Doc. 85-1817, beginning on page 3324, in the issue of Thursday, January 24, 1985, make the following corrections:

§ 1.1092(b)-3T [Corrected]

1. On page 3325, in column two, in § 1.1092(b)-3T, paragraph (b)(2) on the last line just before *Example (1)*, "taxpayer" should read "taxable".

2. On the same page, same column, in *Example (2)*, ninth line, insert "capital" between "term" and "gain".

3. On page 3326, in column two, in § 1.1092(b)-3T, paragraph (b)(4), seventeenth line, insert "the" between "from" and "section".

4. On page 3327, column three, in § 1.1092(b)-3T, paragraph (b)(5), *Example (3)*, paragraph (ii), last line, insert "no" between "is" and "net".

§ 1.1092(b)-4T [Corrected]

5. On page 3330, second column, in § 1.1092(b)-4T, paragraph (c)(2), nineteenth linge, insert "gain or" between "net" and "loss".

6. On the same page, same column, same paragraph, twenty-fourth line, "establish" should read "established".

7. On the same page, column three, in § 1.1092(b)-4T, paragraph (c)(3)(ii)(C), fourth line, "other" should read "over".

8. In the same column, in the last line of the undesignated text following paragraph (c)(3)(ii)(C) of § 1.1092(b)-4T, remove the period and add: "and net long-term capital gain or loss.".

9. And in the same column, in § 1.1092(b)-4T, paragraph (c)(5), on lines two and three "includable" should read "includible".

10. On page 3331, column one, in § 1.1092(b)-4T, paragraph (c)(6), *Example (2)*, fifteenth line, "$14,000" should read "$14,400".

11. On the same page, in column two, in § 1.1092(b)-4T, paragraph (c)(6), *Example (4)*, seventh line, "($18,000-/ $16,800)" should read "($18,000-$16,800)".

12. In the same column, in § 1.1092(b)-4T, paragraph (c)(6), *Example (5)*, lines 10 and 11, remove "and $3,000 ($15,000-$12,000) of short-term capital loss".

BILLING CODE 1505-01-M

DEPARTMENT OF LABOR

Employment and Training Administration

29 CFR Part 629

[Training and Employment Guidance Letter No. 6-84]

Job Training Partnership Act; States' Responsibilities in Incident Report Procedures

AGENCY: Employment and Training Administration, Labor.

ACTION: Notice of reporting procedures and instructions.

SUMMARY: The Employment and Training Administration (ETA) of the Department of Labor (DOL) has issued a guidance letter containing procedures and instructions for reporting known or suspected incidents of fraud, program abuse, or criminal conduct against programs under the Job Training Partnership Act. The guidance letter is being republished in the **Federal Register** for information.

DATES: Training and Employment Guidance Letter No. 6-84 was issued on February 25, 1985, with an expiration date of March 31, 1986.

FOR FURTHER INFORMATION CONTACT: Ms. Anna C. Hall. Telephone: 202-376-6295.

SUPPLEMENTARY INFORMATION: The Department of Labor (DOL) has stated that efforts to strengthen DOL's capabilities in the prevention and detection of fraud and abuse are of the highest priority.

A systematic procedure for reporting instances of suspected or actual fraud or criminal conduct is a vital link in this overall effort.

Pursuant to the Job Training Partnership Act (29 U.S.C. 1501 *et seq.*), DOL has published a regulation at 20 CFR 629.55 for the immediate and direct reporting to the Secretary of Labor of all information and complaints involving fraud, abuse, or other criminal activity. On February 25, 1985, the Employment and Training Administration (ETA) issued Training and Employment Guidance Letter No. 6-4, setting forth the procedures for States to report such incidents.

Training and Employment Guidance Letter No. 6-4 is republished below for information (Attachment IV, the Inspector General's "Hotline" poster has not been republished).

Signed at Washington, D.C., this 15th day of March, 1985.

Frank C. Casillas,

Assistant Secretary for Employment and Training.

Training and Employment Guidance Letter No. 6-84

From: Frank C. Casillas, Assistant Secretary for Employment and Training

Subject: States' Responsibilities in DOL Incident Report Procedures

1. *Purpose.* To transmit procedures for reporting known or suspected incidents of fraud, program abuse, or criminal conduct.

2. *Background.* The Job Training Partnership Act (JTPA) provides for concurrent oversight activities initiated by local, State, and Federal entities in the Job Training system. In particular, Section 103 provides for local level oversight by Private Industry Councils (PICs), sections 105, 106, 122, and 164 contain State level oversight responsibilities, and sections 163, 164, 165, and 454 address certain Federal oversight responsibilities. In addition, 20 CFR 629.55 of the JTPA regulations states in part that "All information and complaints involving fraud, abuse or other criminal activity shall be reported directly and immediately to the Secretary of Labor."

3. *Policy.* The Employment and Training Administration's (ETA) policy recognizes the significant responsibilities of the States, PICs, and local elected officials in conducting oversight of JTPA. In order to carry out responsibilities at 20 CFR 629.55, the ETA is issuing to State program officials procedures for reporting to ETA Regional Administrators known or suspected incidents of fraud, malfeasance, misapplication of funds, gross mismanagement, or other criminal activities in ETA-funded programs. The reports submitted by the States serve a dual purpose. They provide information on fraudulent activities which may be prosecutable and they provide information on other types of incidents which allow ETA to identify trends and patterns occurring throughout the States. The procedures described in the

following section are intended to supplement, but not supplant, other systems of oversight carried out by local, State, and Federal entities.

4. *Notification to the Regional Office of Alleged Problems.* In order to facilitate the reporting process, DOL has developed procedures and standardized forms for reporting incidents. Any act which raises questions concerning possible illegal expenditures or other unlawful activities should be immediately reported. It is not the intent of the Incident Report (IR) to elicit reports only after determination that an act or allegation is legally prosecutable. All such incidents shall be reported immediately even though the case may be subsequently handled by the Governors, service delivery areas (SDAs), or local law enforcement agencies.

DOL Form DL 1-156, Incident Report (IR), should be used to notify Regional Administrators (RAs) of all known or suspected cases of fraud, abuse, or other criminal activities in ETA-funded programs (see Attachments, I, II, and III—facsimile of DL 1-156, "Use and Preparation of DL Form 1-156, Incident Report," and Definition of Terms, respectively). The original and one copy of this form should be forwarded to the appropriate RA within one work day of the discovery of the occurrence. The RA, in turn, will immediately distribute the IR in accordance with established DOL procedures.

5. *Office of the Inspector General/ DOL Hotline.* It is anticipated that the incident reporting procedures outlined above will be utilized to report matters to the RA. However, all State JTPA agencies are requested to notify their employees of the availability of the OIG/DOL Hotline for providing information confidentially. Sufficient copies of a poster which provides information about the Hotline are attached for display in State JTPA and SDA offices.

The Hotline—800-424-5409 (357-0227 FTS and Washington, D.C., local area)—was established for employees and the public to notify the OIG of suspected fraud, abuse, or waste in DOL-funded programs. The Hotline permits reporting of matters anonymously, if desired, to avoid fears of reprisal. Information supplied via the Hotline should be as specific as possible to enable the OIG to identify and solve the problem. The Hotline should not be used for resolving employee grievances, EEO complaints, labor disputes, or other personnel concerns.

6. *ETA Action.* The Employment and Training Administration is in the process of publishing in the **Federal Register** a notice which describes the procedures outlined above.

7. *Necessary Action.*

a. Establish procedures for use by State and sub-State personnel (e.g., SDAs, subrecipients, contractors, etc.) to ensure that the States fulfill their responsibilities to forward IRs to the appropriate RA within one work day of the discovery of the occurrence.

b. Ensure that State staff, SDAs, subrecipients, contractors, etc. are familiar with the procedures that are established, the content of the attachments to this document, and the availability of the OIG/DOL Hotline to provide information confidentially.

8. *Inquiries.* Questions concerning this notice should be directed to Anna C. Hall., Chief, Division of Special Review and Internal Control, Office of Program and Fiscal Integrity on (202) 376-6295.

9. *Attachments.*

a. Attachment I—DOL Form DL 1-156, Incident Report (IR);

b. Attachment II—Use and Preparation of DL Form 1-156 (IR);

c. Attachment III—Definition of Terms; and

d. Attachment IV—OIG/DOL Hotline Poster.

BILLING CODE 4510-30-M

Attachment I—DOL Form DL 1-156, Incident Report

Incident Report

U.S. Department of Labor
Office of Inspector General

For Official Use Only (When filled in) | 1. Date of report | 2. Agency designation code (Yr.) (Agency) (Report No.) | 3. File Number (For IG use)

4. Type of report
☐ Initial ☐ Supplemental ☐ Final ☐ Other (Specify) _____

5. Type of incident ☐ Conduct violation ☐ Criminal violation ☐ Program violation

6. Allegation against
☐ DOL Employee ☐ Contractor ☐ Grantee ☐ Program participant or claimant ☐ Other (Specify) _____

Give name and position of employee(s), contractor(s), grantee, etc. List telephone number, OWCP or other Claim File Number, if applicable, and other identifying data:

7. Location of incident (Give complete name(s) and addresses of organization(s) involved)

8. Date and time of incident/discovery

9. Source of complaint ☐ Public ☐ Contractor ☐ Grantee ☐ Program Participant ☐ Audit

Investigative Law Enforcement Agency (Specify) _____

Other (Specify) _____

Give name and telephone number so additional information can be obtained.

10. Contacts with law enforcement agencies (Specify name(s) and agency contacted and results)

11. Expected concern to DOL
☐ Local ☐ Regional ☐ National ☐ Media interest ☐ Executive interest ☐ GAO/Congressional interest
☐ Other (Specify) _____

12. DOL Agency involved
☐ SECY ☐ ESA ☐ ETA ☐ ILAB ☐ LMSA ☐ MSHA ☐ OASAM ☐ OIG
☐ OSHA ☐ SOL ☐ ASP ☐ BLS ☐ NCEP ☐ WB ☐ OIPA
☐ Other (Specify) _____

Amount of grant or contract (If known) $ _____ Amount of subgrant of subcontract (If known) $ _____

13. Persons who can provide additional information (Include custodian of records)

Name	Grade	Position or job title	Employment[1]	Local Address (Street, City, & State) or organization, if employed and telephone number

[1]Enter one of these codes
U - Unemployed G - Grantee C - Contractor D - DOL F - Other Federal Employee P - Program Participant or claimant

For Official Use Only (When filled in)

14. Details of incident (Describe the incident)

If more room is needed attach additional sheets.

15. Typed name and title of DOL employee

16. Signature of DOL employee

17. Copies furnished to:

18. Attachments: (List)

BILLING CODE 4510-30-C

Attachment II—Use and Preparation of Form DL 1–156

Use and Preparation of DL Form 1–156, Incident Report

A. Purpose.

Form DL 1–156 should be used for reporting to Regional Administrators (RAs) incidents of program abuse, fraud, or other criminal violations involving ETA-funded programs and operations.

B. Responsibilities of Governors.

Governors are responsible for reporting all actual or suspected violations to the Regional Administrators using the Incident Report, DL 1–156. While such information may be phoned directly to the RA, these telephone reports should be supplemented by submission of the Incident Report within 72 hours.

C. Use of the Incident Report, Form DL 1–156.

1. *As an Initial Report.* The DL 1–156 is designed primarily as an initial report of actual or suspected violations to inform the RAs that a violation or apparent violation has occurred. It should also be used to initially inform the RAs of cases involving employees, programs, and operations being investigated by or reported to other investigative agencies.

2. *As a Supplemental Report.* The DL 1-156 should also be used to submit supplemental information not available at the time the original report was submitted. Form DL 1–156 should be used as indicated below.

(a) It is determined that the matter cannot be resolved at the agency level and the case is administratively closed.

(b) Supplemental reports should be submitted without awaiting the results of adjudication.

3. *As a Final Report.* Form DL 1–156 should be used as indicated below.

(a) An incident is resolved or otherwise settled.

b. Final adjudication or imposition of administrative/disciplinary action against the person or organization involved is initiated. When adjudication results become known, the final report should be sent to the RAs indicating the results.

D. Completion of the Incident Report.

Form DL 1–156 should be completed as follows:

Block 1. Enter the date the form is actually signed by the responsible agency official.

Block 2. Enter the fiscal year (e.g., October 1, 1984–September 30, 1985) in which the report is being submitted, the two letter State abbreviation, and a number to indicate the chronological sequence of the report (e.g., 84–VT–0001 would show that the report was submitted in Fiscal Year 1984, by Vermont, and was the first report submitted in FY 1984).

Block 3. Leave Blank. For use by OIG only.

Block 4. Indicate the type of report being submitted by checking the appropriate block. If the report is both an "Initial" and a "Final" report, then place a check in both the initial and final blocks.

Block 5. Check appropriate block.

Block 6. Check appropriate block.

Block 7. Enter the name of the person, recipient, or subrecipient, if applicable, and the location where the incident occurred. A general geographic (city, town) location or mail address should be used.

Block 8. Complete as necessary.

Block 9. Check appropriate block(s). Public includes press.

Block 10. Any information requested by any law enforcement agency should be reported here. Identify the officer and/or agency who made the request. In Block 14, describe what information was requested from and offered to the outside agency.

Block 11. Indicate the type of interest/publicity that the incident may generate, or actually has generated, by placing a check in the appropriate block(s). If necessary, a brief statement of explanation may be included in Block 14.

Block 12. Check appropriate block.

Block 13. Complete as necessary.

Block 14. Synopsis—This is a clear, concise statement of the incident which should include:

(a) (When). Identify the time and date when the incident occurred; when it was discovered; when it was reported to supervisory personnel, OIG, or other law enforcement agency; and whether an inventory was conducted to determine the extent of loss.

(b) (What). Describe the complete incident in as much detail as is available and necessary to give a complete picture of what happened. Cost/value figures should be shown in the appropriate place in Block 12.

(c) (Who). Enter the names of those principal personnel who are listed in Block 7 and Block 13, as well as other personnel whose identities are necessary to complete the narrative and give the reader a complete picture of what happened. Include, when applicable, complete identities of persons/agencies to whom the incident is reported or referred. If needed for purpose of clarification, include the reason(s) why non-principal personnel were involved (e.g., fire department personnel who made pertinent determinations in a suspected arson incident).

(d) (Where). Clearly specify the location where the incident occurred (e.g., a certain building, an area/room within a building, a particular contractor, grantee location).

If the direction and distance from an identifiable point of reference (e.g., building, street, intersection, bridge) is known, this should be indicated.

(e) (Why). Frequently the motive for an incident is not readily discernible (e.g., a suicide or property destruction) or it must be deduced from the existing facts and circumstances. If the "why" for an incident is known or suspected, it should be reported. When a suspected motive is reported, the basis/rationale for the suspicion should be noted.

(f) (How). Report the manner/method by which an incident actually or probably was committed and discovered. "How" an incident was discovered and committed should be reported in sufficient detail to assist proper authorities in the development of preventive measures.

(g) Plan of Action. Indicate if OPFI or OIG assistance is requested.

Block 15. Identify the name, title, address, and telephone number of the official completing the report.

Block 16. All copies should be signed by the responsible official for the reporting office.

Block 17. Self-explanatory.

Block 18. Self-explanatory.

Continuation. Entries requiring additional space may be continued at the end of the synopsis entry in Block 14 or on a separate sheet(s) of bond paper. Each continuation sheet should be headed "Continuation" and indicate the Activity Identification Code from Block 2.

E. Supporting Documentation.

All documentation (e.g., photographs, drawings) pertinent/relevant to the incident or necessary to clarify the attendant facts should be forwarded with the DL 1–156, if not already provided.

F. Transmission of Reports.

Mail copies of the DL 1–156 to the appropriate RA as shown on the following page.

Note.—The copies sent to the RA should be in a sealed envelope within the mailing envelop. In no event should reports be electronically transmitted.

U.S. DEPARTMENT OF LABOR

Regional Administrators for the Employment and Training Administration

Revised 5/15/84

Region I—Boston

Barbara A. Farmer, Acting Regional Administrator, U.S. Department of Labor/ETA, Room 1703, J.F. Kennedy Fed. Bldg., Boston, Massachusetts 02203, 8-223-6440/617-223-6440*

Region II—New York

Thomas E. Hill, Acting Regional Administrator, U.S. Department of Labor/ETA, 1515 Broadway, Room 3713, New York, New York 10036, 8-265-3210/212-944-3210*

Region III—Philadelphia

William J. Haltigan, Regional Administrator, U.S. Department of Labor/ETA, P.O. Box 8796,** Philadelphia, Pennsylvania 19101, 8-596-6336/215-596-6336*

Region IV—Atlanta

Lawrence E. Weatherford, Jr., Regional Administrator, U.S. Department of Labor/ETA, 1371 Peachtree Street, N.E., Rm. 405 Atlanta, Georgia 30309, 8-257-4411/404-881-4411*

Region V—Chicago

Steven M. Singer, Regional Administrator, U.S. Department of Labor/ETA, 230 S. Dearborn Street, Rm. 628, Chicago, Illinois 60604, 8-353-0313/312-353-0313*

Region VI—Dallas

Floyd E. Edwards, Regional Administrator, U.S. Department of Labor/ETA, 555 Griffin Sq. Bldg., Rm. 316, Griffin & Young Streets, Dallas, Texas 75202, 8-729-6877/214-767-6877*

Region VII—Kansas City

Richard G. Miskimins, Regional Administrator, U.S. Department of Labor/ETA, Federal Bldg., Room 800, 911 Walnut Street, Kansas City, Missouri 64106, 8-758-3796/816-374-3796*

Region VIII—Denver

Luis Sepulveda, Regional Administrator, U.S. Department of Labor/ETA, 1961 Stout Street, R. 1676, Denver, Colorado 80294, 8-564-4477/303-844-4477*

*Commercial Dialing

**Street Address—3535 Market Street, Room 13300

Region IX—San Francisco

Don A. Balcer, Regional Administrator, U.S. Department of Labor/ETA, 450 Golden Gate Avenue, Box 36084 (Room 9108), San Francisco, California 94102, 8-556-7414/415-556-7414*

Region X—Seattle

Harry B. Brown, Acting Regional Administrator, Rm. 1145, Federal Office Bldg., 909 First Avenue, Seattle, Washington 98174, 8-399-7700/206-442-7700*

Attachment III—Definition of Terms

For the purpose of completing the Incident Report, fraud, misfeasance, nonfeasance or malfeasance, misapplication of funds, gross mismanagment, and employee/participant misconduct are explained in the following paragraphs. These definitions are illustrative and are not intended to be either fully inclusive or restrictive.*

a. Fraud, Misfeasance, Nonfeasance or Malfeasance

Fraud, misfeasance, and nonfeasance or malfeasance should be considered broadly as any alleged deliberate action which is apparently in violation of Federal statutes and regulations. This category includes, but is not limited to, indications of bribery, forgery, extortion, embezzlement, theft of participant checks, kickbacks from participants, intentional payments to a contractor without the expectation of receiving services, payments to ghost enrollees, misuse of appropriated funds, and misrepresenting information in official reports.

b. Misapplication of Funds

Misapplication of funds should be considered as any alleged use of funds, assets, or property not authorized or provided for under the Job Training Partnership Act (JTPA) or regulations, grants, or contracts. This category includes, but is not limited to, nepotism, political patronage, use of participants for political activities, ineligible participants, conflict of interest, failure to report income from Federal funds, violation of contract/grant procedures, and the use of Federal funds for other than specified purposes.

Indian and Native American programs are excluded from the aforementioned category regarding nepotism as cited in Section 632.118 of the Title IV-A, B, and E of JTPA.

An Incident Report should be filed when it appears that there exists an intent to misapply funds rather than merely a case of minor mismanagement.

c. Gross Mismanagement

Gross mismanagement should be considered as actions or situations arising out of management ineptitude or oversight, leading to major violations of JTPA processes, regulations, or contract/grant provisions which could severely hamper the accomplishment of program goals. These include situations which lead to waste of Government resources and could jeopardize future support for a particular project. This category includes, but is not limited to, unauditable records, unsupported costs, highly inaccurate fiscal and/or program reports, payroll discrepancies, payroll deductions not paid to Internal Revenue Service, and the lack of good internal control procedures.

d. Employee/Participant Misconduct

Employee/participant misconduct should be considered as actions occurring during or outside work hours that reflect negatively on the Department of Labor, the State, or the JTPA program. It may include, but is not limited to, conflict of interest or the appearance of conflict of interest involving outside employment, business, and professional activities, the receipt or giving of gifts, fees, entertainment, and favors, misuse of Federal property misuse of official information, and such other activities as might adversely affect the confidence of the public, as well as serious violations of Federal and State laws.

* OIG will focus only on those incidents reported under Categories "a" and "b". ETA will use the information reported on the other types of incidents in order to identify trends and patterns occurring throughout the States for management information purposes.

[FR Doc. 85-7301 Filed 3-27-85; 8:45 am]
BILLING CODE 4510-30-M

DEPARTMENT OF THE INTERIOR

Minerals Management Service

30 CFR Part 250

Oil and Gas and Sulfur Operations in the Outer Continental Shelf

AGENCY: Minerals Management Service, Interior.

ACTION: Approval and solicitation of air quality models.

SUMMARY: The Minerals Management Service (MMS) announces its approval pursuant to 30 CFR 250.34-3 of the use of the Offshore and Coastal Dispersion

(OCD) Model in the air quality regulatory program outlined in 30 CFR 250.57 (Air Quality) and withdraws the prior approval of the CRSTER model as modified for Outer Continental Shelf (OCS) applications. The MMS also solicits interested parties to submit suggested improvements for the OCD Model or to submit other air quality models for approval for use in OCS facility evaluations.

DATE: The OCD Model is approved for use as of March 28, 1985, and approval of the use of the CRSTER model is withdrawn, effective June 26, 1985.

ADDRESS: Comments on this Notice, air quality models, or letters of intent to submit air quality models should be sent to Chief, Offshore Environmental Assessment Division, Mail Stop 644, Minerals Management Service, 12203 Sunrise Valley Drive, Reston, Virginia 22091.

FOR FURTHER INFORMATION CONTACT: Mitchell T. Baer, Branch of Environmental Operations, Mail Stop 644, Minerals Management Service, 12203 Sunrise Valley Drive, Reston, Virginia 22091, 703–860–6461 or FTS 928–6461.

SUPPLEMENTARY INFORMATION:

Background

On March 7, 1980, the MMS published a rule, 30 CFR 250.57, establishing a regulatory program to implement section 5(a)(8) of the OCS Lands Act Amendments of 1978, Pub. L. 95–372, concerning the regulation of air emissions from oil and gas operations on the OCS (45 FR 15128, March 7, 1980). The regulations are designed to ensure that emissions from OCS facilities do not cause significant effects on the onshore air quality of any State. The MMS published a Notice in the **Federal Register** on June 5, 1980 (45 FR 37816), describing the use of air quality modeling in its OCS air quality program. In connection with § 250.57, 30 CFR 250.34–3 requires that any models must be approved by the Director, MMS, prior to use.

Earlier approval was given to the CRSTER model which has been used for the majority of air quality evaluations. However, in May 1982 a contract was awarded to Environmental Research and Technology, Inc., to develop an offshore atmospheric transport and dispersion model. After undergoing an extensive peer and public review, the model was completed in October 1984. The model is designed to assess onshore impacts from sources located offshore and incorporates modeling routines specific to air flow over water.

Approval of Air Quality Model for OCS Evaluations

Pursuant to 30 CFR 250.34–3, the OCD Model is approved by MMS for the evaluations required in 30 CFR 250.57. The OCD Model is described in the User's Manual (National Technical Information Service (NTIS) Accession No. PB85–164200). The tape package is available from NTIS, NTIS Accession No. PB85–122760. Users shall follow the guidance provided by the U.S. Environmental Protection Agency (EPA) in "Guidelines of Air Quality Models" EPA–450/2–78–027, RTP, N.C., 27711, April 1978.

Possible Errors in the OCD Model

The code for the OCD Model has been reviewed and the model tested for errors. No errors have been found. If any errors are found by MMS or users of the model, notification of changes will be made. If users of the model find any errors in the code, please forward a description of the error to the above address.

Submission of Models

Although the MMS is satisfied that the OCD Model is an appropriate tool for the evaluation of onshore impacts from OCS facilities, it also recognizes that the field of the development of air quality models is dynamic and evolving. Interested parties are encouraged to recommend improvements to the OCD Model or to submit other air quality models for approval for use in OCS applications. The MMS will review such models or modifications either on a case-by-case basis or for overall OCS application. This review will not be part of an exploration or development/production plan review, but will be done separately. A submitted model will be open to public review and comment. One facet of this review may include review of the model by EPA for its technical merit, documentation, validation, and coding. The model must meet the six requirements outlined by EPA in its Notice of Guidelines on Air Quality Models (45 FR 20157, March 27, 1980). The requirement are:

1. The model must be computerized and functioning in a common Fortran language suitable for use on a variety of computer systems.

2. The model must be documented in a user's guide which identifies the mathematics of the model, data requirements, and program operating characteristics at a level of detail comparable to that available for currently recommended models, e.g., the CRSTER Model.

3. The model must be accompanied by a complete test data set, including input parameters and output results. The test data must be included in the user's guide, as well as provided in computer-readable form.

4. The model must be useful to typical users, e.g., State air pollution control agencies, for specific air quality control problems. Such users should be able to operate the computer program(s) from available documentation.

5. The model documentation must include a comparison with air quality data or with other well-established analytical techniques.

6. The developer must be willing to make the model available to users at a reasonable cost or make it available for public access through the NTIS; the model cannot be proprietary.

We suggest that interested parties who contemplate model development contact the MMS to discuss its applications. Once work on a model is completed, formal submittal should consist of a magnetic tape containing the program source code of the model and the test data set written at 1600 bpi in EBCDIC, four copies of the user's guide, any related documentation concerning past applications and performance of the model, and a statement on what arrangements will be made for public access to the model.

Dated: March 4, 1985.

Bruce G. Weetman,

Acting Associate Director for Offshore Minerals Management.

[FR Doc. 85–7350 Filed 3–27–85; 8:45 am]

BILLING CODE 4310-MR-M

DEPARTMENT OF DEFENSE

Office of the Secretary

32 CFR Part 78

[DoD Directive 1332.xx]

Voluntary State Tax Withholding From Retired Pay

AGENCY: Defense.

ACTION: Interim rule.

SUMMARY: This interim rule implements section 654 of the DoD Authorization Act for Fiscal Year 1985 (Pub. L. 98–525). The rule provides guidance on voluntary State tax withholding for retired members of the Uniformed Services and sets the criteria for agreements between States and DoD.

DATES: Effective February 22, 1985. Written comments must be received on

or before May 13, 1985, to be considered in the final rule.

ADDRESS: Office of the Deputy Assistant Secretary of Defense (Management Systems), Washington, D.C. 20301.

FOR FURTHER INFORMATION CONTACT: Mr. James T. Jasinski, telephone 202-697-0536.

SUPPLEMENTARY INFORMATION: In order to effect prompt implementation, the Uniformed Services will follow the interim rule until a final rule is issued. Comments will be available for public inspection by request. Because of the anticipated number of comments, DoD does not plan to acknowledge or respond to individual comments. However, DoD will respond to comments in the preamble of the final rule.

DoD has determined that this action is not a major rule as defined by Executive Order 12291. The rule will not have an annual effect on the economy of $100 million or more; result in a major increase in the cost or prices for consumers, industries, State or local governments; or adversely effect competition, employment, investment, productivity, or innovation.

DoD has submitted a request to OMB for review and approval of the interim rule.

This rule is not subject to the provisions of the Regulatory Flexibility Act. Therefore, no Regulatory Flexibility Analysis was prepared.

List of Subjects in 32 CFR Part 78

Military personnel, Intergovernmental relations.

Dated: March 22, 1985.

Patricia H. Means,

OSD Federal Register Liaison Officer, Department of Defense.

Accordingly, it is proposed to amend 32 CFR, Chapter 1, by adding a new Part 78, reading as follows:

PART 78—VOLUNTARY STATE TAX WITHHOLDING FROM RETIRED PAY

Sec.

Authority: 10 U.S.C. 1045.

§ 78.1 Purpose.

Under 10 U.S.C. 1045, this part provides implementing guidance for voluntary State tax withholding from the retired pay of Uniformed Service members.

§ 78.2 Application and scope.

(a) This part applies to the Office of the Secretary of Defense, the Military Departments, the Coast Guard (under agreement with the Department of Transportation), the Public Health Service (PHS) (under agreement with the Department of Health and Human Services); and the National Oceanic and Atmospheric Administration (NOAA) (under agreement with the Department of Commerce). The term "Uniformed Services," as used herein, refers to the Army, Navy, Air Force, Marine Corps, Coast Guard, commissioned corps of the PHS, and the commissioned corps of the NOAA.

(b) This part covers members retired from the regular and reserve components of the Uniformed Services who are receiving retired pay.

§ 78.3 Definitions.

(a) *Member.* A person originally appointed or enlisted in, or conscripted into, a Uniformed Service who has retired from the regular or reserve component of the Uniformed Service concerned.

(b) *Income tax.* Any form of tax under a State statute where the collection of that tax either imposes on employers generally the duty of withholding sums from the compensation of employees and making returns of such sums to the State or grants employers generally the authority to withhold sums from the compensation of employees if any employee voluntarily elects to have such sum withheld. And, the duty to withhold generally is imposed, or the authority to withhold generally is granted, with respect to the compensation of employees who are residents of such State.

(c) *Retired pay.* Pay and benefits received by a member based on conditions of the retirement law, pay grade, years of service, date of retirement, transfer to the Fleet Reserve or Fleet Marine Corps Reserve, or disability. It is also known as retainer pay.

(d) *State.* Any State, the District of Columbia, the Commonwealth of Puerto Rico, and any territory or possession of the United States.

§ 78.4 Policy.

(a) It is the policy of the Uniformed Services to accept written requests from members for voluntary income tax withholding from retired pay when the Department of Defense (DoD) has an agreement for such withholding with the State named in the request and the member is a resident of that State.

(b) DoD shall enter into an agreement for the voluntary withholding of State income taxes from retired pay with any State within 120 days of a request for agreement from the proper State official. The agreement shall provide that the Uniformed Services shall withhold State income tax from the monthly retired pay of any member who voluntarily requests such withholding in writing.

§ 78.5 Procedures.

(a) The amounts withheld during any calendar quarter shall be retained by the Uniformed Service and disbursed to the States during the month following that calendar quarter. Payment procedures shall conform, to the extent practicable, to the usual fiscal practices of the Uniformed Services.

(b) A member may request that the State designated for withholding be changed and that the withholdings be remitted as amended. A member may revoke his or her request for withholding at any time. Any request for a change in the State designated or any revocation is effective on the first day of the month after the month in which the request or revocation is processed by the Uniformed Service concerned, but in no event later than on the first day of the second month beginning after the day on which the request or revocation is received by the Uniformed Service concerned.

(c) A member may have in effect at any time only one request for withholding under this part. A member may not have more than two such requests in effect during any one calendar year.

(d) The agreements with States shall not impose more burdensome requirements on the United States than on employers generally or that subjects the United States, or any member, to a penalty or liability because of such agreements.

(e) The Uniformed Services shall perform the service under this part without accepting payment from States for such services.

(f) Any amount erroneously withheld from retired pay and paid to a State by the Uniformed Services shall be repaid by the State on demand.

(g) A member may request voluntary tax withholding by writing the retired pay office of his or her Uniformed Service. The request must include: The member's full name, social security number, the fixed amount to be withheld monthly from retired pay, the State designated to receive the withholding, the member's current residence address. The request must be signed by the member, or in the case of incompetence, his or her guardian or trustee. The amount of the request for State tax

withholding must be an even dollar amount, not less than ten dollars or less than the State's minimum withholding amount, if higher. The Uniformed Services' retired pay office addresses are given below:

(1) *Army.* Commanding Officer, U.S. Army Finance and Accounting Center (Dept. 90), Indianapolis, IN 46249, (800) 428–2290.

(2) *Navy.* Commanding Officer, Navy Finance Center (Code 301), Anthony J. Celebrezze Federal Building, Cleveland, OH 44199, (800) 321–1080.

(3) *Air Force.* Commander, Air Force Accounting and Finance Center, Attn: RP, Denver, CO 80279, (800) 525–0104

(4) *Marine Corps.* Commanding Officer (CPR), Marine Corps Finance Center, Kansas City, MO 64197, (816) 926–7130

(5) *Coast Guard.* Commanding Officer (Retired), U.S. Coast Guard Pay and Personnel Center, 444 S.E. Quincy Street, Topeka, KS 66683, (913) 295–2657

(6) *PHS.* U.S. Public Health Service, Compensation Branch, 5600 Fisher Land (Room 4–50), Rockville, MD 20857, (800) 638–8744 (Except AK & MD) (301) 443–6132 (AK & MD)

(7) *NOAA.* Commanding Officer, Navy Finance Center (Code 301), Anthony J. Celebrezze Federal Building, Cleveland, OH 44199, (800) 321–1080.

(h) If a member's retired pay is exhausted or otherwise unavailable to satisfy a member's request for voluntary State tax withholding, then the withholding will cease. A member may initiate a new request when such member's retired pay is restored in an amount sufficient to satisfy the withholding request.

(i) A State requesting an agreement for the voluntary withholding of State tax from the retired pay of members of the Uniformed Services shall indicate in writing its agreement to be bound by the provisions of this part and the Standard Agreement. If the State proposes an agreement which varies from the Standard Agreement, the State shall indicate which provisions of the Standard Agreement are not acceptable and propose substitute provisions. The letter shall be addressed to the Assistant Secretary of Defense (Comptroller), The Pentagon, Washington, D.C. 20301. To be effective, the letter must be signed by a State official authorized to bind the State under an agreement for tax withholding. Copies of applicable State laws that authorize employers to withhold State income tax and authorize the official to bind the State under an agreement for State income tax withholding shall be enclosed with the letter. The letter shall also indicate the title and address of the official whom the Uniformed Services may contact to obtain information necessary for implementing withholding.

(j) Within 120 days of the receipt of a letter from a State, the Assistant Secretary of Defense (Comptroller), or designee, will notify the State in writing that DoD has either entered into the Standard Agreement or that an agreement cannot be entered into with the State and the reasons for that determination.

(k) *Responsibilities.* (1) The Assistant Secretary of Defense (Comptroller) shall establish policy and procedures, provide guidance, coordinate changes with the Uniformed Services, sign and administer the agreements with States, and monitor the implementation of this part.

(2) The Secretaries of the Military Departments and the Heads of the other Uniformed Services shall implement this part.

§ 78.7 Standard agreement.

Standard Agreement for Voluntary State Tax Withholding From the Retired Pay of Uniformed Service Members

Article I—Purpose

This agreement, hereafter referred to as the "Standard Agreement," establishes administrative procedures and assigns responsibilities for voluntary State tax withholding from the retired pay of Uniformed Service members consistent with section 654 of the Department of Defense Authorization Act for Fiscal Year 1985 (Pub. L. 98–525), codified under section 1045 of title 10, United States Code.

Article II—Parties

The parties to this agreement are the Department of Defense on behalf of the Uniformed Services and the State that has entered into this agreement pursuant to 10 U.S.C. 1045.

Article III—Procedures

The parties to the Standard Agreement are bound by the provisions in title 32, Code of Federal Regulations Part 78. The Secretary of Defense may amend, modify, supplement, or change the procedures for voluntary State tax withholding from the retired pay pay of Uniformed Service members after giving notice in the **Federal Register.**

Article IV—Reporting

Copies of Internal Revenue Service Form W–2P, "Statement for Recipients of Annuities, Pensions, Retired Pay or IRA Payments," may be used for reporting withheld taxes to the State. The media for reporting (paper copy, magnetic tape, etc.) will comply with State reporting standards that apply to employers in general.

Article V—Other Provisions

A. This agreement shall be subject to any amendment of 10 U.S.C. 1045 and any regulations issued pursuant to such statutory change.

B. The agreement may be terminated by a party to the Standard Agreement by providing the other party with written notice to that effect at least 90 days prior to the proposed termination.

C. Nothing in this agreement shall be deemed to:

1. Require the collection of delinquent tax liabilities of retired members of the Uniformed Services;

2. Consent to the application of any provision of State law which has the effect of imposing more burdensome requirements upon the United States than the State imposes on other employers, or subjecting the United States or any member to any penalty or liability;

3. Consent to procedures for withholding, filing of returns, and payment of the withheld taxes to States that do not conform to the usual fiscal practices of the Uniformed Services;

4. Permit the withholding of State tax from the retired pay of a member who is not a resident of the State in which the member consents to the withholding; or

5. Allow the Uniformed Services to accept payment from a State for any services performed with regard to State income tax withholding from the retired pay of Uniformed Service members.

[FR Doc. 85–7261 Filed 3–27–85; 8:45 am]

BILLING CODE 3810–01–M

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 165

Ice Navigation Season; Northern Chesapeake Bay and Tributaries; Termination

AGENCY: Coast Guard, DOT.

ACTION: Notice of Termination of Ice Navigation Season.

SUMMARY: The Ice Navigation Season Regulated Navigation Area (RNA) on the northern portion of Chesapeake Bay and its tributaries, including the Chesapeake and Delaware Canal is terminated effective March 1, 1985. The regulations for this Regulated Navigation Area, found in 33 CFR 165.503, published in the **Federal Register** May 19, 1983 (48 FR 22543), state that the RNA would be placed in effect and terminated at the direction of the Captain of the Port, Baltimore, MD, by notice in the **Federal Register**. The Regulated Navigation Area was placed in effect by **Federal Register** Notice of January 29, 1985 (FR 3904), and is hereby terminated. The purpose of this Regulated Navigation Area was to enhance the safety of navigation in the affected waters. It required operators of certain vessels to be aware, during their

vessel's transit of the Regulated Navigation Area, of currently effective Ice Navigation Season Captain of the Port Orders issued by the Captain of the Port, Baltimore, Maryland.

DATE: Effective Termination Date: March 1, 1985.

FOR FURTHER INFORMATION CONTACT: CWO2 D.L. Hutchinson, USCG, Port Safety Officer, MSO Baltimore, Maryland at (301) 962-5105.

J.C. Carlton,

Captain, U.S. Coast Guard, Captain of the Port, Coast Guard Marine Safety Office, U.S. Customhouse, 40 South Gay Street, Baltimore, Maryland 21202.

March 25, 1985.

[FR Doc. 85-7352 Filed 3-27-85; 8:45 am]

BILLING CODE 4910-14-M

VETERANS ADMINISTRATION

38 CFR Parts 8 and 9

National Service Life Insurance, Servicemen's Group Life Insurance and Veterans' Group Life Insurance

AGENCY: Veterans Administration.

ACTION: Final regulations.

SUMMARY: The Veterans Administration is amending certain regulations to: (1) Reflect that National Service Life Insurance (NSLI) policyholders have the option to purchase paid-up additions with their dividends; (2) ensure that no claims for Servicemen's or Veterans' Group Life Insurance [SGLI/VGLI] are denied because of a failure to file a claim within four years of the insured's death; and (3) reflect that the insurer under the SGLI/VGLI program is responsible only for the return of premiums paid in excess of the premiums payable for the maximum allowable combined amount of SGLI/VGLI coverage.

EFFECTIVE DATES: The effective date for the amendment concerning NSLI paid-up additions is February 15, 1985, and the amendment will apply to applications for insurance submitted on or after July 1, 1972. The effective date for the amendment regarding timely filing of a claim for SGLI/VGLI is February 15, 1985, and the amendment will apply to all claims determined on or after October 1, 1982. These dates will then coincide with the effective dates of the respective legislative changes. Finally, the effective date of the change concerning the return of excess premiums paid is February 15, 1985.

FOR FURTHER INFORMATION CONTACT: Mr. Robert W. Carey, Assistant Director for Insurance, Veterans Administration Regional Office and Insurance Center, P.O. Box 8079, Philadelphia, PA 19101, (215) 951-5360.

SUPPLEMENTARY INFORMATION: On pages 24148 and 24149 of the **Federal Register** of June 12, 1984, there was published a notice of proposed regulatory development to amend 38 CFR 8.26, 9.18(d), and 9.36. Interested persons were given 30 days in which to submit written comments, suggestions, or objections regarding the proposed regulatory amendments. No comments were received and the proposed regulations are hereby adopted without change and are set forth below.

The Administrator has certified that these rules will not have a significant economic impact on a substantial number of small entities as they are defined in the Regulatory Flexibility Act (RFA), 5 U.S.C. 601-612. Pursuant to 5 U.S.C. 605(b), these rules are, therefore, exempt from the initial and final regulatory flexibility analyses requirements of sections 603 and 604. The reason for this certification is that these rules will affect only certain NSLI, SGLI and VGLI insureds. They will, therefore, have no significant direct impact on small entities in terms of compliance costs, paperwork requirements or effects on competition.

The agency has also determined that these regulations are non-major in accordance with Executive Order 12291, Federal Regulation. These regulations will not have a large effect on the economy, will not cause an increase in costs or prices, and will not otherwise have any significant adverse economic effects.

Because statutes upon which these regulatory amendments are based are already in effect, the Administrator has determined that these amendments should be effective immediately upon final approval.

List of Subjects in 38 CFR Parts 8 and 9

Life insurance, Veterans.

[Catalog of Federal Domestic Assistance Number is 64.103]

Approved: February 15, 1985.

Harry N. Walters,

Administrator.

38 CFR Parts 8 and 9, Insurance, are amended as follows:

PART 8—[AMENDED]

1. In § 8.26, paragraph (b) is revised as follows:

§ 8.26 How paid

* * * * *

(b) Unless and until the VA receives a written request from the insured that National Service Life Insurance dividends be paid in cash, or that they be used to pay an insurance indebtedness, or that they be placed on deposit or be used to pay premiums in advance, or that they be used to pay the premiums on a particular policy or policies, or that they be used to purchase paid-up additions, any such dividends shall be held to the credit of the insured to be applied to pay monthly premiums becoming due and unpaid after the date such dividends are payable on any National Service or United States Government Life Insurance policy or policies held by the insured: *Provided*, That such dividend credits will be applied as of the due date of any unpaid premium. Dividend credits will earn interest at such rate and in such manner as the Administrator may determine. (38 U.S.C. 797(c))

* * * * *

PART 9—[AMENDED]

§ 9.18 [Amended]

2. In § 9.18, paragraph (d) is removed and reserved.

3. In § 9.36, paragraph (a) is revised as follows:

§ 9.36 Veterans Group Life Insurance.

Veterans Group Life Insurance shall be issued under the following rules:

(a) The insurance shall be issued in the amount of $5,000, $10,000, $15,000, $20,000, $25,000, $30,000 or $35,000. No person may carry a combined amount of Servicemen's Group Life Insurance and Veterans' Group Life Insurance in excess of $35,000 at any one time. Should any person remit premiums in excess of the premiums payable for the maximum allowable amount of coverage, the insurer shall be responsible only for the refund of such excess premiums paid. (38 U.S.C. 777)

* * * * *

[FR Doc. 85-7348 Filed 3-27-85; 8:45 am]

BILLING CODE 8320-01-M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 421

[OW-FRL 2806-1]

Nonferrous Metals Manufacturing Point Source Category; Effluent Limitations Guidelines, Pretreatment Standards, and New Source Performance Standards; Correction

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule; correction.

SUMMARY: EPA is correcting several errors in the effluent limitations guidelines, pretreatment standards and new source performance standards for the nonferrous metals manufacturing point source category which appeared in the **Federal Register** on March 8, 1984 (49 FR 8742). This document corrects errors in 40 CFR Part 421.

EFFECTIVE DATE: March 28, 1985.

FOR FURTHER INFORMATION CONTACT: Mr. Ernst P. Hall at (202) 382-7126.

SUPPLEMENTARY INFORMATION: On March 8, 1984, EPA published final effluent limitations guidelines and standards for the nonferrous metals manufacturing point source category (40 CFR Part 421; 49 FR 8742). The regulation contained an arithmetic error. This error is discussed briefly below and is corrected by this notice.

In the columbium-tantalum subcategory, the regulatory flow rate calculated for solvent extraction raffinate was 9,257 1/kkg of concentrate digested. Inadvertently, a value of 9,157 1/kkg was used to develop the mass limitations for this waste stream. This error affects BPT and BAT effluent limitations and NSPS, PSES, and PSNS for this waste stream.

Dated: March 19, 1985.

Henry Longest II,

Acting Assistant Administrator for Water.

PART 421—[CORRECTED]

1. In 40 CFR, § 421.112(b), is corrected as shown below.

§ 421.112 [Amended]

* * * * *

(b) Subpart K—Solvent Extraction Raffinate.

BPT Effluent Limitations

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	Mg/Kg (pounds per million pounds) of concentrate digested	
Lead	3.888	1.851
Zinc	13.520	5.647
Ammonia (as N)	1,233.000	542.500
Fluoride	324.000	185.100
Total Suspended Solids	379.500	189.500
pH	(1)	(1)

(1) Within the range of 7.5 to 10.0 at all times.

2. In 40 CFR 421.113(b) is corrected as shown below.

§ 421.113 [Amended]

* * * * *

(b) Subpart K—Solvent Extraction Raffinate.

BAT Effluent Limitations

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	Mg/Kg (pounds per million pounds) of concentrate digested	
Lead	2.592	1.203
Zinc	9.442	3.888
Ammonia (as N)	1,233.000	542.5000
Fluoride	324.000	185.100

3. In 40 CFR, 421.114(b) is corrected as shown below.

§ 421.114 [Amended]

* * * * *

(b) Subpart K—Solvent Extraction Raffinate.

NSPS

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	Mg/kg (pounds per million pounds) of concentrate digested	
Lead	2.592	1.203
Zinc	9.442	3.888
Ammonia (as N)	1,233.000	542.5000
Fluoride	324.000	185.100
Total Suspended Solids	138.900	111.100
pH	(1)	(1)

(1) Within the range of 7.5 to 10.0 at all times.

4. In 40 CFR, 421.115(b) is corrected as shown below.

§ 421.115 [Amended]

* * * * *

(b) Subpart K—Solvent Extraction Raffinate.

PSES

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	Mg/kg (pounds per million pounds) of concentrate digested	
Lead	2.592	1.203
Zinc	9.442	3.888
Ammonia (as N)	1,233.000	542.5000
Fluoride	324.000	185.100

5. In 40 CFR, 421.116(b) is corrected as shown below.

§ 421.116 [Corrected]

* * * * *

(b) Subpart K—Solvent Extraction Raffinate.

PSNS

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	Mg/kg (pounds per million pounds) of concentrate digested	
Lead	2.592	1.203
Zinc	9.442	3.888
Ammonia (as N)	1,233.000	542.5000
Fluoride	324.000	185.100

[FR Doc. 85-7343 Filed 3-27-85; 8:45 am]

BILLING CODE 6560-50-M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

43 CFR Public Land Order 6598

[F-015197, F-015198]

Partial Revocation of Public Land Order Nos. 1769, 3780, and 5187; Alaska

AGENCY: Bureau of Land Management, Interior.

ACTION: Public Land Order.

SUMMARY: This order revokes three public land orders insofar as they affect 876 acres of land withdrawn for defense purposes and classification. The lands are within the Arctic National Wildlife Refuge and will remain closed to surface entry and mining in accordance with the Alaska National Interest Lands Conservation Act of December 2, 1980. The land will remain closed to mineral leasing in accordance with Section 1003 of the above Act.

EFFECTIVE DATE: March 28, 1985.

FOR FURTHER INFORMATION CONTACT: Mary Jane Clawson, BLM Alaska State Office, 701 C Street, Box 70, Anchorage, Alaska 99513, 907-271-3240.

By virtue of the authority vested in the Secretary of the Interior by Section 204 of the Federal Land Policy and Management Act of October 21, 1976 (43 U.S.C. 1714), it is ordered as follows:

1. Public Land Order No. 1769 of December 16, 1958, which withdrew lands for the Department of the Air Force, as amended by Public Land Order No. 3780 of August 10, 1965, and Public Land Order No. 5187 of March 15, 1972, which withdrew the lands for classification, is hereby revoked as to the following described lands:

(F-015197)

Camden Bay Area—Arctic Coast

Beginning at a point on the mean high tide line of the Beaufort Sea which bears N. 12°00' E., approximately 3,200 feet from USC&GS Station "Maybell," thence by metes and bounds;

South, approximately 2,000 feet;

West, approximately 7,800 feet to a point on the mean high tide line of Simpson Cove;

Northerly and westerly, following said tide line approximately 7,300 feet to the intersection of the mean high tide line of the Beaufort Sea;

Southeasterly, following said tide line approximately 9,750 feet to the point of beginning.

The tract described contains approximately 456 acres.

(F-015198)

Beaufort Lagoon Area—Beaufort Coast

Beginning at a point on the mean high tide line of the Beaufort Sea which bears S. 82°00' W., approximately 5,615 feet from USG&GS Station "Beaufort," thence by metes and bounds;

South, approximately 2,650 feet;

East, approximately 4,500 feet to a point on the mean high tide line of the Beaufort Sea;

Northeasterly, following said mean high tide line, approximately 6,150 feet to a point;

Northwesterly, following same said mean high tide line, approximately 5,250 feet to a point;

Southwesterly, following same said mean high tide line, approximately 8,500 feet to the point of beginning.

The tract described contains approximately 420 acres.

The tracts described aggregate approximately 876 acres.

2. The lands described in paragraph one of this order are included as a part of the Arctic National Wildlife Refuge and remain withdrawn from all forms of appropriation or disposal under the public land laws, including location, entry and patent under the mining laws by Section 304(C) of the Alaska National Interest Lands Conservation Act of December 2, 1980, (94 Stat. 2371, 2393). These lands will remain under the jurisdiction of the U.S. Fish and Wildlife Service.

3. The lands described in paragraph one will remain closed to operation of the mineral leasing laws in accordance with Section 1003 of the Alaska National Interest Lands Conservation Act.

Dated: March 19, 1985.

Robert N. Broadbent,

Assistant Secretary of the Interior.

[FR Doc. 85-7391 Filed 3-27-85; 8:45 am]

BILLING CODE 4310-84-M

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 69

[FCC 85-89]

Access Charges; Clarification of Certain Rule Sections

AGENCY: Federal Communications Commission.

ACTION: Memorandum Opinion and Order clarifying certain rule sections.

SUMMARY: The MO&O clarifies an ambiguity in § 69.115(e)(6) of the Commission's Rules, which exempts from the private line surcharge any private line that a subscriber certifies is "not connected to a PBX or other device capable of interconnecting a local exchange subscriber line with the private line." The MO&O grants the petition for clarification filed by Aeronautical Radio, Inc., and construes the exemption in question to include private lines terminated in PBXs or similar equipment that have been rendered incapable of interconnection with the local exchange through physical or program restrictions. This action is taken in order to ensure that the application of the exemption in § 69.115(e)(6) of the Commission's Rules is consistent with the policy underlying the private line surcharge.

FOR FURTHER INFORMATION CONTACT: Sandra Eskin (202) 632-9342.

SUPPLEMENTARY INFORMATION:

List of Subjects in 47 CFR Part 69

Access charges.

Memorandum Opinion and Order

In the matter of clarification of §§ 69.5 and 69.115 of the Rules of the Federal Communications Commission.

Adopted: February 25, 1985.

Released: March 13, 1985.

By the Commission

I. Introduction

1. On December 5, 1984, Aeronautical Radio, Inc. ("ARINC") filed a "Petition for Clarification and Expedited Relief ("Petition").[1] The Petition seeks clarification of §§ 69.5 and 69.115 of our rules.[2] These rules address certain problems created by the "leaky PBX" phenomenon, which refers to the ability of a private line subscriber to "patch" interstate calls to off-network destinations in the local exchange without paying for interstate access to that exchange. We have implemented a special access surcharge of $25.00 to recover from private line subscribers a fair contribution for the use of the local exchange occasioned by such leakage. We have at the same time provided that certain categories of private line circuits that are incapable of leaking traffic into the local exchange are exempt from the surcharge. The Petition is concerned with the scope of one of these exemptions.

2. Specifically, ARINC requests clarification of § 69.115(e)(6) of the rules, which exempts from the surcharge "(a)ny termination of a line that the customer certifies to the exchange carrier is not connected to a PBX or other device capable of interconnecting a local exchange subscriber line with the private line.[3] ARINC argues that an exemption should be available under this provision to a customer whose private lines are terminated in equipment that, as a result of program or physical restrictions, cannot interconnect those lines with local exchange lines. In this Order we find that, while the language of the rule is somewhat ambiguous, ARINC's interpretation is fully consistent with the policy underlying the special access surcharge and with our intent in providing the exemption in question. Accordingly, we grant the Petition.

II. Background

3. We discussed the "leaky PBX" phenomenon for the first time in the *Second Supplemental Notice*[4] in this docket. There we described the problem as follows:

Private lines can also be used to access local exchanges for the purposes of originating or completing long distance calls. Although private lines are generally described as dedicated, unswitched, point-to-point facilities, they frequently (perhaps even typically) originate or terminate at a private branch exchange (PBX) facility controlled by the subscriber. With a PBX, the private line subscriber has the capability to "patch" an interstate call to off-network destinations in the local exchange. At the local exchange such a call is indistinguishable from a local call, even though the call originated in another state. The off-network connection through the subscriber's PBX utilizes the

[1] We requested comments on the Petition by Public Notice issued December 13, 1984, FCC Public Notice No. 1382. The pleading cycle established in the Public Notice was extended by order of the Chief, Common Carrier Bureau, Mimeo No. 1604 (released December 27, 1984).

[2] 47 CFR 69.5, 69.115 (1983). Section 69.115(e)(6) was added, and revisions to § 69.115(a) and (c) were made in the *Second Reconsideration Order* in this docket, *see infra* note 6. Amendments to Part 69, 49 FR 7829 (1984)(to be codified at 47 CFR 69.115(a), (c), (e)(6)).

[3] 47 CFR 69.115(e)(6), 49 FR 7829.

[4] MTS/WATS Market Structure, Second Supplemental Notice of Inquiry and Proposed Rulemaking, 77 FCC 2d 224 (1980) (hereinafter *Second Supplemental Notice*).

telephone operating company's local exchange facilities in a manner similar to switched services, but somewhat more extensively. Thus, an interstate call going off-net from a local PBX would have to traverse two subscriber loops, would use station equipment at both ends of the off-net portion of a call, and would be switched from the line side to the trunk side of one local switch and then back from the trunk side to the line side probably at another local switch. While we believe that such off-net use of exchange plant by private lines is extensive, we are not aware of any statistics or measurements which would enable us to quantify such use or to assess the costs which should be attributed to private line service because of off-net local access. It appears reasonable to assume that such additional costs are sufficient to offset any cost savings in bypassing the local switch.[5]

4. In adopting our original *Access Charge Order*,[6] we decided not to include a leaky PBX surrogate charge because we found that leaky PBX traffic would diminish as the implementation of flat-rate customer line charges reduced MTS usage rates and hence reduced the incentive to substitute private line service for MTS.[7] On reconsideration, however, when we modified the access charge plan to provide a more gradual transition for implementation of customer line charges for residential subscribers, we felt compelled to reexamine our decision not to impose a leaky PBX charge. As we explained in the *Second Reconsideration Order*: "With the reduction in costs to be recovered from residential customers during the early years of the access charge plan came a concomitant increase in the costs to be recovered directly through carrier common line charges and indirectly through MTS rates."[8]

5. We concluded, therefore, that the most reasonable interim approach to reducing the discrimination in rates between MTS users and private line users resulting from the leaky PBX phenomenon would be to develop a surcharge on private lines.[9] We determined that a surcharge[10] would be imposed on all jurisdictionally interstate private lines not falling within specifically enumerated exceptions.[11] In response to numerous petitions requesting further reconsideration of our rules governing the private line surcharge, we added another exception, one allowing customers to be exempt from the surcharge if they certify to their exchange carriers that their private lines do not terminate in a PBX or other device capable of leaking interstate traffic into the local exchange.[12]

III. Record in This Proceeding

A. The ARINC Petition

6. In the Petition, ARINC contends that exchange carriers are incorrectly implementing the exemption from the special access surcharge we provided in § 69.115(e)(6) for private lines that are not connected to "a PBX or other device capable of interconnecting a local exchange subscriber line with the private line."[13] Specifically, it complains that exchange carriers are applying the surcharge to private lines that have been blocked from connecting with the local exchange by software partitioning or other means.[14] According to ARINC, our intent in providing this exemption was to limit the surcharge to those private lines configured to permit leakage of traffic into the local exchange.[15] ARINC maintains that private lines terminating in PBXs or other devices that are partitioned lack the capability of local interconnection and should therefore not be subject to the surcharge.[16]

7. ARINC also asserts that its construction of our rules is necessary in order to avoid converting a valid regulatory surcharge into an unconstitutional tax.[17] Levying a surcharge as a surrogate for local exchange usage charges on lines that cannot make use of local exchange facilities would constitute taxation, ARINC argues, and the power to tax may not be delegated to agencies such as this Commission (and by us to the exchange carriers).[18] ARINC points to our statement in the *Second Reconsideration Order*—that imposition of a surcharge for purported local exchange usage on lines that do not have the capacity to leak would constitute a tax[19]—as recognition of this constitutional limitation.[20]

B. Comments

8. A large number of parties, including carriers and telecommunications users and their associations, have filed comments or reply comments in response to the Petition.[21] Many of

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[5] *Id.* at para. 63 (footnotes omitted).

[6] MTS/WATS Market Structure, Third Report and Order, 93 FCC 2d 241 (1983) (hereinafter *Access Charge Order*), *modified on reconsideration*, 97 FCC 2d 682 (1983) (hereinafter *First Reconsideration Order*), *modified on further reconsideration*, 97 FCC 2d 834 (1984) (hereinafter *Second Reconsideration Order*), *aff'd and remanded in part, Nat'l Ass'n of Regulatory Comm'rs v. FCC*, 737 F.2d 1095 (D.C. Cir. 1984), *cert. denied*, 53 U.S.L.W. 3583, 3595 (U.S. Feb. 19, 1985) (No. 84-95) (*NARUC v. FCC*).

[7] *Access Charge Order* at para. 127.

[8] *Second Reconsideration Order* at para. 111.

[9] *Id.* at para. 112. In the *First Reconsideration Order*, we applied the surcharge to closed ends of WATS lines since such lines were then included in the special access category. In the *Second Reconsideration Order*, we decided to include closed ends of WATS lines in the switched access category and treat them like ordinary subscriber lines for the purpose of assessing carrier common line charges and customer line charges. Thus, there was no need to apply the surcharge to such lines, and we amended our rules accordingly.

[10] Due to time limitations we established a flat surcharge of $25 per voice grade line. However, we expressed our expectation that telephone companies would replace the $25 surcharge with a system more precisely reflecting actual leakage as soon as possible. *Second Reconsideration Order*, at para. 112. We have recently issued a Notice of Proposed Rulemaking in which we are seeking public comment on whether the private line surcharge should be continued, modified, deleted, or replaced. MTS/WATS Market Structure, Notice of Proposed Rulemaking, 49 FR 50413, 64 Rad. Reg. 2d (P&F) 47 (1984) (hereinafter *Notice*).

[11] *Second Reconsideration Order* at para. 112. These exceptions from the private line surcharge adopted in the *First Reconsideration Order* are as follows:

(1) The open end termination in a telephone company switch of an FX line, including CCSA and CCSA-equivalent ONALs; (2) Any termination of an analog channel that is used for radio or television program transmission; (3) Any termination of a line that is used for telex service; (4) Any termination of a line that by nature of its operating characteristics could not make use of common lines; and (5) Any termination of a line that is subject to carrier usage charges pursuant to § 69.5.

Section 69.115(e)(1)–(5) of the Commission's Rules, 47 CFR 69.115(e)(1)–(5) (1983).

[12] *Second Reconsideration Order* at para. 128; 47 CFR 69.115(e)(6), 49 FR 7829.

[13] ARINC Petition at 10–12, 15–17. For the full text of this exemption, *see supra* at para. 2.

[14] *Id.*

[15] *Id.* at 18–20.

[16] *Id.* at 26.

[17] *Id.* at 26–30.

[18] *Id.*

[19] *Second Reconsideration Order* at para. 133 n.58.

[20] ARINC Petition at 27.

[21] Parties filing are: Ad Hoc Telecommunications Users Committee (Ad Hoc), American Satellite Company (ASC), Association of American Railroads (AAR), American Telephone and Telegraph (AT&T), Central Committee on Telecommunications of the American Petroleum Institute with the Utilities Telecommunications Council (Central Committee), GTE Service Corporation and Associated Telephone Companies (GTE), Hewlett-Packard Company (HP), International Communications Association (ICA), Law Offices of Victor J. Toth, P.C. (Toth), Mountain States Telephone and Telegraph Company with Northwestern Bell Telephone Company and Pacific Northwest Bell Telephone Company (Mountain States), North American Telecommunications Association (NATA), RCA Network Services, Inc. (RCA), Satellite Business Systems (SBS), Securities Industry Automation Corporation (SIAC), Telecommunications Association (TCA), and the Telephone Companies (composed of the Illinois Bell Telephone Company, Indiana Bell Telephone Company, Inc., Michigan Bell Telephone Company, Nevada Bell, New England Telephone and Telegraph Company, New York Telephone Company, The Ohio Bell Telephone Company, Pacific Bell, South Central Bell Telephone Company, Southern Bell Telephone and Telegraph Company.

Continued

these, principally users and user groups, support the Petition and its position that the exemption from private line surcharges embodied in § 69.115(e)(6) is available to customes whose equipment has been prevented from providing access to or from the local exchange as the result program or physical restrictions.[22]

8. SBS contends that the evolution of Commission policy shows that the surcharge is authorized only in those limited situations where the customer's equipment is configured to provide actual and immediate capability to connect the private lines to local subscriber lines.[23] Similarly, AAR argues that the surcharge is intended to apply to lines that have the present capability to leak traffic into the local exchange.[24]

9. Parties supporting the Petition assert that exchange carriers have treated, or intend to treat, broad categories of CPE, including key systems and multi-function equipment (MFE) that have no ability to switch calls to local exchange lines, as automatically subject to the surcharge.[25] Ad Hoc alleges that confusion over whether the surcharge should be applied to certain equipment has resulted in inconsistent application of the surcharge.[26]

10. RCA maintains that forcing users to pay a surcharge when they cannot leak traffic will only worsen the "leaky PBX" problem; if users are assessed the surcharge when they cannot interconnect, they will reconfigure their equipment so that they will be able to derive some economic benefit from the additional costs.[27] SIAC asserts that rejection of ARINC's petition might compel users to acquire duplicative hardware to assure complete separation of traffic, an inefficient result and one contrary to the public interest, or might encourage uneconomic bypass of the local telephone companies.[28] Similarly, HP contends that users may be forced to abandon private line systems in order to avoid the surcharge,[29] while NATA maintains that customers should have the freedom to obtain and use technologically sophisticated equipment without incurring penalties for making such technological improvements.[30]

11. A number of parties also support ARINC's argument that applying the surcharge to private lines that cannot leak would constitute an unlawful tax.[31]

12. A number of exchange carriers oppose the Petition and assert that they are properly interpreting the Commission's rules in applying the surcharge.[32] The Telephone Companies maintain that the rules make capability to leak, not actual leakage, the controlling factor.[33] GTE contends that the correct reading of the text of §69.115(e)(6) and the *Second Reconsideration Order* indicates our intention to apply the surcharge to *all* PBXs as well as other devices with equivalent capabilities.[34] Both ARINC and Ad Hoc reject GTE's interpretation of § 69.115(e)(6), claiming that the phrase "capable of interconnecting a local exchange subscriber line with a private line" modifies both PBX and "other device."[35] GTE maintains that if ARINC's interpretation is accepted, and a user can avoid the surcharge by certifying that its PBX has been partitioned by software changes to prevent leakage, then for all practical purposes there will be no surcharge program. In making all PBXs subject to the surcharge, GTE argues, we were focusing on practical considerations and recognized that a user can easily reprogram a PBX to eliminate the blockage of access to the local exchange.[36]

13. The Telephone Companies argue that the Petition merely represents another attempt by ARINC to raise an argument we considered and rejected in the *Second Reconsideration Order*.[37] ARINC, however, distinguishes the argument it made in the earlier proceeding, in which it requested that an exemption apply to all users who certify that they do not intend to leak (regardless of the present capability of their equipment to so so), from the interpretation it asserts in this proceeding, which is that an exemption should be available to users who certify that their PBXs have been rendered incapable of leaking through progamming or physical restrictions.[38]

14. Both GTE and the Telephone Companies contend that if we do not dismiss the Petition, then the proper vehicle for considering the issues it raises is the proceeding we recently initiated to reevaluate all aspects of the private line surcharge.[39] The Telephone Companies maintain that another reason for referring ARINC's request to this proceeding is the interrelationship between the surcharge and common line revenue requirement; if ARINC's interpretation is accepted, the resulting decrease in the surcharge contribution will necessitate a corresponding increase in the carrier common line rate, and any such change should be decided as part of a broader investigation.[40] Parties supporting the Petition reject the suggestion that consideration of ARINC's proposal should be postponed. NATA notes that ARINC is requesting a clarification, not a change, of the existing rules [41], and SBS asserts that the seriousness of the controversy over the proper interpretation of the exemption in question requires immediate action.[42] Ad Hoc contends that the change in switched access revenues that would result from accepting ARINC's interpretation of § 69.115(e)(6) may in fact be *de minimis* and that the exchange carriers have failed to justify their claim that such an interpretation would automatically necessitate an increase in the carrier common line rate.[43]

IV. Discussion

15. In attempting to resolve the problems created by the leaky PBX phenomenon, we have been faced with

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Southwestern Bell Telephone Company and Wisconsin Bell, Inc.). We grant HP's request for leave to file its reply comments one day late, due to confusion regarding comment deadlines between two similarly-styled petitions for declarstory relief submitted by ARINC.

[22] Ad Hoc Comments at 1; AAR Comments at 6; ASC Comments at 1-2; Central Committee Comments at 1-2; HP Comments at 1-2; NATA Comments at 1-2; RCA Comments at 1; SBS Comments at 1, 4; SIAC Comments at 1, 5; TCA Comments at 7-8; Toth Comments at 3.

[23] SBS Comments at 3.

[24] AAR Comments at 5; *see* also HP Comments at 2.

[25] AAR Comments at 2-5; NATA Comments at 2-3; *see also* ARINC Petition at 14-15. ARINC contends that old key systems should be exempted from the surcharge under section 69.115(e)(4); *see supra* note 11 for text of this section.

[26] Ad Hoc Comments at 3.

[27] RCA Comments at 3.

[28] SIAC Comments at 2, 4; *see also* Ad Hoc Comments at 10.

[29] HP Comments at 7.

[30] NATA Comments at 2 and Reply at 2.

[31] AAR Comments at 6; Central Committee Comments at 13-18; SIAC Comments at 4-5; TCA Comments at 4.

[32] GTE Comments at 4-6; Telephone Companies Comments at 2-4.

[33] Telephone Companies Comments at 3 and Reply at 3.

[34] GTE Comments at 5. GTE apparently concedes that devices other than PBXs with programming or other physical restrictions that prevent leakage should not be subject to the surcharge. *Id.* at 4.

[35] ARINC Comments at 10-13; Ad Hoc Comments at 3-4. *See also* NATA Comments at 4; SBS Comments at 2-3.

[36] GTE Comments at 6.

[37] Telephone Companies Comments at 2.

[38] ARINC Petition at 22 and Reply at 6-9; Ad Hoc Comments at 8 and Reply at 5.

[39] *See supra* note 10. GTE Comments at 6; Telephone Companies Comments at 4-5; *See also* Mountain States Comments at 3-4; ICA Comments at 1-2.

[40] Telephone Companies Comments at 5 and Reply at 4-5.

[41] NATA Reply at 2-3; *see also* HP Reply at 2-6.

[42] SBS Reply at 4; *see also* ARINC Reply at 4-7.

[43] Ad Hoc Reply at 11-12.

the difficult task of trying to reconcile our regulatory goal of assuring that all interstate users of exchange access pay the same charge for the same service, with the technical limitation of being unable to measure the existence or extent of leakage from private lines into the local exchange.[44] Our solution to the problem, admittedly an interim one, has been to assess a surcharge on all private lines that are capable of such leakage. While we are presently undertaking a comprehensive review of this surcharge, and a number of commenting parties in this proceeding suggested that we consider the Petition as part of that review, we have decided to give immediate attention to ARINC's request for a clarification of the present rules governing application of the surcharge. The present rules obviously apply until they are amended, and the Petition raises a serious issue regarding the meaning of one aspect of these rules that deserves prompt attention.

16. When we first implemented the private line surcharge, we provided specific exceptions for certain types of private lines, while at the same time stating that we would permit such other exceptions or modifications as are "shown to be reasonable and supported by actual operating practicalities and limitations."[45] In the *Second Reconsideration Order*, we recognized one such additional exception, now codified in section § 69.115(e)(6), the subject of the Petition.

17. In interpreting § 69.115(e)(6), we must look to the goal of the private line surcharge—to prevent any unreasonable discrimination in rates between MTS users and private line users by ensuring that "(t)hose responsible for leaky PBX traffic bear some share of interstate access cost,"[46] and that "all users pay a fair and equitable share of the costs which their usage imposes on the telephone exchange network."[47] Equally important, however, is our desire to minimize the likelihood that surcharges are being imposed on private line customers who do not use these facilities as an MTS substitute.[48] The interpretation of § 69.115(e)(6) put forward by ARINC and those commenting parties supporting the Petition strikes the correct balance between these two important goals.[49]

18. In adopting § 69.115(e)(6), we admittedly did not focus on, and hence did not address, the possibility that PBXs and other similar devices could be rendered incapable of interconnecting private lines to the local exhange. It is clear, however, that we intended to apply the surcharge only where there was a present leakage capability. If a user's equipment is prevented from interconnecting private lines with the local exchange lines due to "actual operating practicalities or limitations"—resulting from either hardware or software restrictions— then it is not capable of leakage. No use of the exchange can be made, and no surcharge should therefore be assessed.

19. Furthermore, when we adopted the private line surcharge, we believed that no "undue impact on private line users or on the orderliness of the marketplace" would result.[50] Commenting parties in this proceeding have persuasively argued, however, that assessment of the surcharge on private lines that are not capable of leaking will not only promote uneconomic bypass of telephone company facilities, encourage wasteful duplication of facilities, and hamper technological developments—results that are clearly undesirable—but also may actually increase the leakage that we are attempting to prevent. It was never our intention that the private line surcharge have such adverse effects in the marketplace, and they may be avoided by properly interpreting § 60.115(e)(6) so as to make its exemption available to users, such as ARINC, who have imposed programming or physical restrictions on their PBXs or similar equipment to prevent any leakage of private line traffic into the local exchange.[51]

V. Ordering Clauses

20. Accordingly, it is ordered, pursuant to 47 U.S.C. 154 (i) and (j), 201, 202, 203, 205, 218, and 403, That the "Petition for Clarification and Expedited Relief," filed by Aeronautical Radio, Inc. is granted.

Federal Communications Commission.

William J. Tricarico,

Secretary.

[FR Doc. 85-7299 Filed 3-27-85; 8:45 am]

BILLING CODE 8712-10-M

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47 CFR Part 73

[MM Docket No. 84-470; RM-4665]

FM Broadcast Stations in Farmington, NM

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: Action taken herein dismisses the petition of Dwight R. Magnuson requesting the allotment of Class C FM Channel 294 to Farmington, New Mexico, for failure to receive comments expressing an intention to apply for the channel, if assigned.

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

FOR FURTHER INFORMATION CONTACT: D. David Weston, Mass Media Bureau, (202) 634-6530.

SUPPLEMENTARY INFORMATION:

List of subjects in 47 CFR Part 73

Radio broadcasting.

Report and Order (Proceeding Terminated)

In the Matter of Amendment of § 73.202(b), Table of Allotments, FM Broadcast Stations. (Farmington, New Mexico). (MM Docket No. 84-470, RM-4665).

Adopted: March 13, 1985.

Released: March 21, 1985.

By the Chief, Policy and Rules Division.

1. Before the Commission for consideration is the *Notice of Proposed Rule Making*, 49 FR 22512, published May 30, 1984, proposing the allotment of Class C FM Channel 294 to Farmington, New Mexico, as that community's fourth FM channel. The *Notice* was adopted in response to a petition filed by Dwight R.

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[44] *First Reconsideration Order* at para. 80-81.

[45] *Id.* at para. 86.

[46] *Id.* at para. 80.

[47] *Id.* at para. 90.

[48] *Second Reconsideration Order* at para. 127.

[49] Because we determined that ARINC's interpretation of § 69.115(e)(6) is consistent with the policy underlying the surcharge, we find it unnecessary to address its further argument that, were we to endorse the exchange carrier's interpretation of this exemption, the assessment of the private line surcharge on the users in question would constitute the unlawful levying of a tax.

[50] *First Reconsideration Order* at para. 87.

[51] In light of the clarification of § 69.115(e)(6) that we adopt today, it may be appropriate for the exchange carriers to increase the amount of the surcharge from $25.00. When we affirmed this surcharge amount in the *Second Reconsideration Order*, we did not consider that users could partition or otherwise modify their PBXs so as to block leakage and thereby qualify for an exemption from the surcharge under our rules. As a result, fewer lines than we anticipated in the *Second Reconsideration Order* are subject to the surcharge, but the total amount of leakage over private lines has probably remained about the same (because it is likely that the lines that qualify for an exemption under the clarification we adopt today have engaged in little, if any, leakage). An upward adjustment in the amount of the interim surcharge may, therefore, be necessary to recover the same level of contribution for the same amount of leakage from a smaller number of lines. Accordingly, we would consider, with appropriate justification but without the usage measurements or estimates required in § 69.115 (a) and (b) or our rules, a revised interim surcharge filed by an exchange carrier that, when applied to this smaller number of lines, would produce the same total revenue as the applica tion of the $25.00 to all lines attached to PBXs or similar devices. We note again that we have initiated an overall reexamination of the surcharge approach to private line "leakage". *See Notice, supra* note 10.

Magnuson ("petitioner"). Petitioner failed to file comments reaffirming his intention to apply for the channel, if assigned. No other comments on the proposal were received.

2. As stated in the *Notice*, a showing of continuing interest is required before a channel will be alloted. Therefore, in accordance with Commission policy, no further consideration will be given to the allotment of Class C FM Channel 294 to Farmington, New Mexico.

3. It is ordered, That the petition of Dwight R. Magnuson is dismissed and this proceeding is terminated.

4. For further information concerning the above, contact D. David Weston, Mass Media Bureau, (202) 634–6530.

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

Federal Communications Commission.

Charles Schott,

Chief, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 85–7297 Filed 3–27–85; 8:45 am]

BILLING CODE 6712-01-M

47 CFR Part 73

[MM Docket No. 84–519; EM–4692]

FM Broadcast Stations in Worthington, MN

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: :Action taken herein assigns FM Channel 228A to Worthington, Minnesota, as that community's second local FM allocation, at the request of James W. Kinsman.

EFFECTIVE DATE: May 1, 1985.

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

FOR FURTHER INFORMATION CONTACT: Leslie K. Shapiro, Mass Media Bureau, (202) 634–6530.

SUPPLEMENTARY INFORMATION:

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Report and Order (Proceeding Terminated)

In the Matter of Amendment of § 73.202(b), Table of Allotments, FM Broadcast Stations. (Worthington, Minnesota). (MM Docket No. 84–519, RM–4692).

Adopted: March 13, 1985.
Released: March 25, 1985.

By the Chief, Policy and Rules Division.

1. The Commission has before it the *Notice of Proposed Rule Making*, 49 FR 24412, published June 13, 1984, seeking comments on the proposed allotment of FM Channel 228A to Worthington, Minnesota, as that community's second channel, at the request of James W. Kinsman ("petitioner"). The petitioner filed comments reiterating his intention to apply for the channel.

2. Channel 228A can be alloted in compliance with the Commission's minimum distance separation requirements with a site restriction of 7.4 kilometers (4.6 miles) east of Worthington, to avoid a short-spacing to co-channel Station KKRC–FM, Sioux Falls, South Dakota. This allotment would also limit the 16 kilometer buffer zone of Stations KKRL, Carroll, Iowa, and KXLP, New Ulm, Minnesota.[1]

3. It is view of the above, we believe the public interest would be served by allotting FM Channel 228A to Worthington, Minnesota, as it could provide a second local service to the community. Accordingly, pursuant to the authority contained in Sections 4(i), 5(c)(1), 303(g) and (r) and 307(b) of the Communications Act of 1934, as amended, and §§ 0.61, 0.204(b) and 0.283 of the Commission's Rules, it is ordered, that effective May 1, 1985, the FM Table of Allotments, Section 73.202(b) of the Rules, is amended to read as follows for the community listed below:

City	Channel Nos.
Worthington, MN	228A, and 236.

4. For further ordered, that this proceeding is terminated.

5. For further information concerning this proceeding, contact Leslie K. Shapiro, Mass Media Bureau, (202) 634–6530.

(Secs. 4, 303, 49 stat., as amended, 1066, 1082; 47 U.S.C. 154, 303)

Federal Communications Commission.

Charles Schott,

Chief, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 85–7296 Filed 3–27–85; 8:45 am]

BILLING CODE 6712-01-M

47 CFR Part 73

[MM Docket No. 84–513; RM–4641]

FM Broadcast Stations in Harbor Springs, MI

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: Action taken herein, at the request of David C. Schaberg, assigns FM Channel 280A to Harbor Springs, Michigan, as that community's first FM service.

EFFECTIVE DATE: May 1, 1985.

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

FOR FURTHER INFORMATION CONTACT: Patricia Rawlings, Mass Media Bureau, (202) 634–6530.

SUPPLEMENTARY INFORMATION:

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Report and Order (Proceeding Terminated)

In the Matter of Amendment of § 73.202(b), Table of Assignments, FM Broadcast Stations. (Harbor Springs, Michigan); MM Docket No. 84–513; RM–4641.

Adopted: March 11, 1985.
Released: March 25, 1985.

By the Chief, Policy and Rules Division.

1. Before the Commission for consideration is the *Notice of Proposed Rule Making*, 49 FR 24397, published June 13, 1984, proposing the assignment of Channel 280A to Harbor Springs, Michigan, as that community's first local FM service, at the request of David C. Schaberg ("petitioner"). Petitioner submitted comments reaffirming his interest in the channel, if assigned. No other comments in opposition to the proposal were received.

2. The Commission believes that the public interest would be served by the assignment of Channel 280A to Harbor Springs, Michigan, as that community's first FM service. The assignment can be made in compliance with the minimum distance separation requirements of § 73.207 of the Commission's Rules.

3. Since the proposal is within 320 kilometers (200 miles) of the common U.S.-Canadian border, concurrence of the Canadian government has been obtained.

4. Accordingly, pursuant to the authority contained in sections 4(i), 5(c)(1), 303(g) and (r) and 307(b) of the Communications Act of 1934, as amended and §§ 0.61, 0.204(b) and 0.283 of the Commission's Rules, it is ordered, that effective May 1, 1985, the FM Table of Assignments, § 73.202(b) of the Rules, is amended to read as follows for the community listed below:

City	Channel No.
Harbor Springs, MI	280A

[1] Existing Class C stations with less than a 300 meter antenna height are now permitted a 16 kilometer buffer zone. However, this buffer zone does not apply to allocation proceedings which were initiated prior to March 1, 1984. See BC Docket 80–90, 94 F.C.C. 2d 152 (1983), *recons.* 97 F.C.C. 2d 279 (1984).

5. It is further ordered, that this proceeding is terminated.

6. For further information concerning this proceeding, contact Patricia Rawlings, Mass Media Bureau, (202) 634–6530.

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

Charles Schott,

Chief, Policy and Rules Division; Mass Media Bureau.

[FR Doc. 85–7295 Filed 3–27–85; 8:45 am]

BILLING CODE 6712-01-M

47 CFR Part 73

[MM Docket No. 84–299; RM–4618, RM–4631, RM–4701, RM–4752]

FM Broadcast Stations in Great Falls, MT

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: Action taken herein allots Channels 262 and 297 to Great Falls, Montana, as that community's fifth and sixth FM broadcast services. This action was taken in response to a petition filed by Timothy G. Taylor and comments filed by Klynn Cole.

EFFECTIVE DATE: April 29, 1985.

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

FOR FURTHER INFORMATION CONTACT: Patricia Rawlings, Mass Media Bureau, (202) 634–6530.

SUPPLEMENTARY INFORMATION:

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Report and Order (Proceeding Terminated)

In the Matter of Amendment of § 73.202(b), Table of Allotments, FM Broadcast Stations. (Great Falls, Montana) (MM Docket No. 84–299, RM–4618, RM–4631, RM–4701, RM–4752 [1]).

Adopted: March 13, 1985.
Released: March 21, 1985.

By the Chief, Policy and Rules Division.

1. The Commission has before it for consideration the *Notice of Proposed Rule Making*, 49 FR 15583, published April 19, 1984, proposing the allotment of Class C FM Channels 262, 271 and 297 to Great Falls, Montana, at the request of Allen Sheets ("Sheets"), Charles J. Thompson ("Thompson") and Timothy G. Taylor ("Taylor"), respectively. Taylor submitted supporting comments reaffirming his intention to apply for Channel 297. Sheets and Thompson failed to submit supporting comments. A late-filed supporting comment was received from Klynn Cole ("Cole") [2]

2. Cole urges the Commission to allot Channel 245 to Great Falls, as an alternative to his original request for Channel 260, in addition to Channels 262, 271 and 297.

3. In view of the fact that two parties expressed an interest in providing Great Falls, with a new FM broadcast service, we believe the allotments of Channels 262 and 297 to be in the public interest. These channels can be allotted in compliance with the Commission's minimum distance separation and other technical requirements, as that community's fifth and sixth FM channels.

4. Since Great Falls, Montana is within 320 kilometers (200 miles) of the common U.S.—Canadian border, concurrence of the Canadian government has been obtained.

5. Accordingly, pursuant to the authority contained in Sections 4(i), 5(c)(1), 303 (g) and (r) and 307(b) of the Communications Act of 1934, as amended, and §§ 0.61, 0.204(b) and 0.283 of the Commission's Rules, IT IS ORDERED, That effective April 29, 1985, the FM Table of Allotments, § 73.202(b) of the Rules, is amended with regard to the following community:

City	Channel Nos.
Great Falls, MT	225, 233, 255, 262, 291, and 297.

6. It is further ordered, that this proceeding is terminated.

7. For further information concerning this proceeding, contact Patricia Rawlings, Mass Media Bureau, (202) 634–6530.

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

Federal Communications Commission.

Charles Schott,

Chief, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 85–7292 Filed 3–27–85; 8:45 am]

BILLING CODE 6712-01-M

47 CFR Part 73

[MM Docket No. 84–183; RM–4668]

TV Broadcast Stations in Bunnell, FL

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: Action taken herein assigns UHF TV Channel 58 to Bunnell, Florida, as that community's first television assignment in response to a petition filed by Wendell Triplett.

EFFECTIVE DATE: April 29, 1985.

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

FOR FURTHER INFORMATION CONTACT: D. David Weston, Mass Media Bureau, (202) 634–6530.

SUPPLEMENTARY INFORMATION:

List of Subjects in 47 CFR Part 73

Television broadcasting.

Report and Order (Proceeding Terminated)

In the Matter of Amendment of § 73.606(b), Table of Assignments, TV Broadcast Stations (Bunnell, Florida), MM Docket No. 84–183, RM–4668).

Adopted: March 13, 1985.
Released: March 21, 1985.

By the Chief, Policy and Rules Division.

1. The Commission has before it for consideration the *Notice of Proposed Rule Making*, 49 FR 8266, published March 6, 1984, proposing the assignment of UHF TV Channel 58 to Bunnell, Florida, as that community's first television assignment. The *Notice* was adopted in response to a petition filed by Wendell Triplett ("petitioner"). Petitioner has filed supporting comments reaffirming his intention to apply for the channel, if assigned. No oppositions or other comments expressing an interest in the proposal were received.

2. The channel can be assigned in compliance with the Commission's minimum distance separation and other technical requirements.

3. We believe the public interest would be served by assigning UHF TV Channel 58 to Bunnell, Florida, since it could provide a first television assignment to that community. Accordingly, pursuant to the authority contained in Section 4(i), 5(c)(1), 303(g) and (r) and 307(b) of the Communications Act of 1934, as amended, and §§ 0.61, 0.204(b) and 0.283 of the Commission's Rules, it is ordered, that effective April 29, 1985, the Television Table of Assignments, Section 73.606(b) of the Rules, is amended with respect to the community listed below, to read as follows:

City	Channel No.
Bunnell, FL	58

[1] This petition has been added to this proceeding.

[2] Cole's comments were not timely filed, but were accompanied by a motion for their acceptance. They will be accepted for the purpose of permitting Cole to reaffirm his interest in the proposal.

4. It is further ordered, that this proceeding is terminated.

5. For further information concerning the above, contact D. David Weston, Mass Media Bureau, (202) 634–6530.

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

Federal Communications Commission.

Charles Schott,

Chief, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 85–7293 Filed 3–27–85; 8:45 am]

BILLING CODE 6712–01–M

47 CFR Part 73

[MM Docket No. 84–298; RM–4613]

TV Broadcast Stations in Minden, LA

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This action assigns UHF Television Channel 21 to Minden, Louisiana, in response to a petition filed by Saul Dresner. The assignment could provide a first television service for Minden.

EFFECTIVE DATE: April 29, 1985.

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

FOR FURTHER INFORMATION CONTACT: Kathleen Scheuerle, Mass Media Bureau (202) 634–6530.

SUPPLEMENTARY INFORMATION:

List of Subjects in 47 CFR Part 73

Television broadcasting.

Report and Order

In the Matter of Amendment of § 73.606(b), Table of Assignments, Television Broadcast Stations (Minden, Louisiana) MM Docket No. 84–298, RM–4613).

Adopted: March 11, 1985.

Released: March 21, 1985.

By the Chief, Policy and Rules Division.

1. The Commission herein considers the *Notice of Proposed Rule Making*, 49 FR 14546, published April 12, 1984, which proposed the assignment of UHF Television Channel 21 to Minden, Louisiana, in response to a petition filed by Saul Dresner ("petitioner"). The petitioner filed comments in support of the *Notice* and reaffirmed its interest in applying for the channel, if assigned. No opposing comments were received.

2. Texas Gulf Communications Inc., permittee of KTGC–TV filed comments noting a short spacing of 8 miles between proposed Channel 21 in Minden and Channel 21 in Nederland, Texas. KTGC's construction permit has expired and is under reconsideration. On April 20, 1984, KTGC filed an application for modification of its construction permit to specify a new site and tower height. A site restriction of 8.3 miles north on the assignment made to Minden could have resolved the spacing problem. However, on January 14, 1985, the reconsideration request was denied. Therefore, a site restriction on the Minden channel is no longer needed.

3. We believe that the petitioner has adequately demonstrated the need for a first commercial television assignment to Minden, Louisiana, and that the public interest would be served by assigning UHF Television Channel 21 to that community. The channel can be assigned in compliance with the minimum distance separation requirements and other technical criteria of the Commission's Rules.

4. Accordingly, pursuant to the authority contained in Section 4(i), 5(c)(1), 303(g) and (r) and 307(b) of the Communications Act of 1934, as amended, and §§ 0.61, 0.204(b) and 0.283 of the Commission's Rules, it is ordered, that effective April 29, 1985, the Television Table of Assignments, § 73.606(b) of the Rules, is amended with respect to the community listed below:

City	Channel No.
Minden, LA	21+

5. It is further ordered, that this proceeding is terminated.

6. For further information please call Kathleen Scheuerle, Mass Media Bureau, (202) 634–6530.

(Secs. 4, 303, 48 stat., as amended, 1066, 1092; 47 U.S.C. 154, 303)

Federal Communications Commission.

Charles Schott,

Chief, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 85–7294 Filed 3–27–85; 8:45 am]

BILLING CODE 6712–01–M

47 CFR Part 90

Additional 800 MHz Private Land Mobile Radio Frequencies Available Along the U.S./Mexico Border

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This document amends Part 90 of the Commission's Rules to reflect additional 800 MHz frequencies made available in the common border area by a modification to an agreement between the United States and Mexican governments.

EFFECTIVE DATE: March 28, 1985.

FOR FURTHER INFORMATION CONTACT: Eugene Thomson, Private Radio Bureau, (202) 634–2443.

SUPPLEMENTARY INFORMATION:

List of Subjects in 47 CFR Part 90

Private land mobile radio services, Radio.

Order

In the matter of Amendment of Part 90 to reflect additional 800 MHz private land mobile radio frequencies available for use along the U.S./Mexico Border.

Adopted: March 14, 1985.

Released: March 22, 1985.

By the Chief, Private Radio Bureau.

1. The United States Government and the Government of the United Mexican States have modified the provisions of the Agreement dealing with land mobile service in the bands 470–512 MHz and 806–890 MHz along their common border.[1] More specifically, with regard to the bands 816–821/861–866 MHz, which are shared equally by both countries, pursuant to the provisions of section (B)(2)(b) of the Agreement which allows modification by mutual consent, it has been agreed to shift down by 12.5 kHz the frequencies available to each country.[2]

2. The effect of this change is to make 100 more channels available for private land mobile use in the common border region. The 100 new offset channels in the 816–821/861–866 MHz bands will be divided among the four service categories essentially in the same proportion as previously allocated in PR Docket No. 79–191.[3]

Category	Number of additional channels
Public safety	30
Industrial/land transportation	20
Business	20
SMRS	30
Total	100

3. As stated in the Public Notice announcing the modification of the Agreement,[4] the Commission will issue

[1] Acuerdo Sobre El Servicio Movil Terrestre En Las Banda 470 A 512 MHz y De 806 A 890 MHz; Agreement Between the United States of America Government and the United Mexican States Government Concerning Land Mobile Service in the Bands 470–512 and 806–890 MHz along their Common Border, dated June 18, 1982.

[2] Formal ratification of the modification to the Agreement is subject to an exchange of diplomatic notes between the two governments.

[3] See 47 CFR 90.619 (a) (1), (2), (3), and (4).

[4] Public Notice, FCC, Mimeo No. 1621, "Availability of 800 MHz Private Land Mobile Radio Frequencies along the U.S./Mexico Border, dated December 28, 1984.

licenses for the SMR portion of these additional channels to the applicants that were selected in the California lottery held on February 22, 1985.

4. The additional channels that are now available for each category of users are indicated in Tables 1, 2, 3, and 4 of § 90.619(a) of the amended Rules as shown in the attached Appendix. The channel numbers indicated in the Tables differ from those given in the December 28, 1984 Public Notice, where the channel numbers were those utilized in the trunked frequency table in Part 90, Subpart M, § 90.362(a)(3). The channel numbers listed in the amended Tables are in accordance with the latest channel designations utilized in §§ 90.613 and 90.619(a) of the Rules for U.S./Mexico border area use. The channel frequencies are offset 12.5 kHz below the frequencies given in § 90.613. All licensees on the additional channels may commence operations immediately, but their authorizations will be conditioned to reflect the fact that the grant is subject to formal ratification of the agreement between the two countries.

5. We therefore are amending § 90.619(a) of the Rules to reflect the availability of the new offset channels in the U.S./Mexico border area. This change will require a minor amendment to our rules. However, since these frequencies were made available by agreement between the United States and Mexican governments, and a Public Notice concerning the agreement has been issued, we find for good cause that compliance with the notice and comment procedure of the Administrative Procedures Act is unnecessary. *See* 5 U.S.C. 553(b)(B). Moreover, the foreign affairs exemption of the Administrative Procedures Act would be applicable. *See* 5 U.S.C. 553(a)(1). Additionally, in order to authorize these frequencies as soon as possible, we believe good cause exists to implement these rules immediately. *See* 5 U.S.C. 553(d).

6. Accordingly, it is ordered, pursuant to the authority set forth in § 0.331 of the Commission's Rules and Regulations, that effective March 28, 1985, Part 90 of the Commission's Rules is amended as set forth in the attached Appendix.

(Secs. 4, 303, 48 stat., as amended, 1066, 1092; 47 U.S.C. 154, 303)

Federal Communications Commission.

Robert S. Foosaner,

Chief, Private Radio Bureau.

Appendix

PART 90—[AMENDED]

Part 90 of the Commissions Rules and Regulations is amended to read:

In § 90.619 Tables 1–4 are revised to read:

§ 90.619 Frequencies available for use in the U.S./Mexico and U.S./Canada border areas.

* * * * *

TABLE 1.—UNITED STATES/MEXICO BORDER AREA PUBLIC SAFETY CATEGORY-85 CHANNELS

Offset group No.	Offset channel Nos.
201[1]	241-281-321-361
202	202-242-282-322-362
203	203-243-283-323-363
204	204-244-284-324-364
205	205-245-285-325-365
206	206-246-286-326-366
207	207-247-287-327-367
208	208-248-288-328-368
209	209-249-289-329-369
210	210-250-290-330-370
211	211-251-291-331-371
401	401-441-481-521-561
403	403-443-483-523-563
405	405-445-485-525-565
407	407-447-487-527-567
409	409-449-489-529-569
411	411-451-491-531-571

[1]Offset group 201 is available for conventional system use only. Offset channel 201 is not available for use in the U.S./Mexico border area.

* * * * *

TABLE 2.—UNITED STATES/MEXICO BORDER AREA, INDUSTRIAL/LAND TRANSPORTATION CATEGORY-60 CHANNELS

Offset group No.	Offset channel Nos.
212	212-252-292-332-372
213	213-253-293-333-373
214	214-254-294-334-374
215	215-255-295-335-375
216	216-256-296-336-376
217	217-257-297-337-377
218	218-258-298-338-378
219	219-259-299-339-379
413	413-453-493-533-573
415	415-455-495-535-575
417	417-457-497-537-577
419	419-459-499-539-579

* * * * *

TABLE 3.—UNITED STATES/MEXICO BORDER AREA, BUSINESS CATEGORY-60 CHANNELS

Offset group No.	Offset channel Nos.
220	220-260-300-340-380
221	221-261-301-341-381
222	222-262-302-342-382
223	223-263-303-343-383
224	224-264-304-344-384
225	225-265-305-345-385
226	226-266-306-346-386
227	227-267-307-347-387
421	421-461-501-541-581

TABLE 3.—UNITED STATES/MEXICO BORDER AREA, BUSINESS CATEGORY-60 CHANNELS—Continued

Offset group No.	Offset channel Nos.
423	423-463-503-543-583
425	425-465-505-545-585
427	427-467-507-547-587

* * * * *

TABLE 4.—UNITED STATES/MEXICO BORDER AREA, SMRS CATEGORY-95 CHANNELS

Offset group No.	Offset channel Nos.
228	228-268-308-348-388
229	229-269-309-349-389
230	230-270-310-350-390
231	231-271-311-351-391
232	232-272-312-352-392
233	233-273-313-353-393
234	234-274-314-354-394
235	235-275-315-355-395
236	236-276-316-356-396
237	237-277-317-357-397
238	238-278-318-358-398
239	239-279-319-359-399
240	240-280-320-360-400
429	429-469-509-549-589
431	431-471-511-551-591
433	433-473-513-553-593
435	435-475-515-555-595
437	437-477-517-557-597
439	439-479-519-559-599

* * * * *

[FR Doc. 85-7298 Filed 3-27-85; 8:45 am]

BILLING CODE 6712-01-M

DEPARTMENT OF DEFENSE

48 CFR Parts 201, 202, 204, 208, 209, 215, 216, 225, 227, 231, 242 and 252

[Defense Acquisition Circular 84-7]

DoD FAR Supplement

AGENCY: Department of Defense.

ACTION: Final rule.

SUMMARY: Defense Acquisition Circular (DAC) 84-7 amends the DoD FAR Supplement with respect to definitions; negotiation authority; debarment; balance of payments approval authority; purchases under the Trade Agreements Act of 1979; customs and duties; patents, data, and copyrights; independent research and development and bid and proposal costs; lobbying cost principle; required sources for high carbon ferrochrome; and provides guidance and information regarding DAR case review and contract savings clauses (deviations).

EFFECTIVE DATE: Upon receipt, in accordance with DoD FAR Supplement 201.301(S-70)(4).

FOR FURTHER INFORMATION CONTACT:
Charles W. Lloyd, Executive Secretary, Defense Acquisition Regulatory Council, OUSDRE(AM) (DARS), OUSDRE(M&RS), Room 3D139, Pentagon, Washington, D.C. 20301-3062, telephone (202)697-7267).

SUPPLEMENTARY INFORMATION:

Background

The DoD FAR Supplement is codified in Chapter 2, Title 48 of the Code of Federal Regulations.

The October 1, 1984 revision of the CFR is the most recent edition of that title. It reflects amendments of the 1984 edition of the DoD FAR Supplement made by Defense Acquisition Circular 84-1 through 84-3.

Interested parties may submit proposed revisions to this Supplement directly to the DAR Council.

List of Subjects in 48 CFR Ch. 2

Government procurement.

James T. Brannan,

Director, Defense Acquisition Regulatory Council.

Defense Acquisition Circular

[Number 84-7]

August 15, 1984.

All DoD FAR Supplement and other directive material contained in this Defense Acquisition Circular is effective upon receipt in accordance with DoD FAR Supplement 201.301(S-70)(4).

Defense Acquisition Circular (DAC) 84-7 amends the DoD FAR Supplement and prescribes procedures to be followed. The following is a summary of the amendments and procedures:

Item I—DAR Case Review

During the DAR/FAR transition period, the DAR Council deferred each case received, except those of designated priority, for Council consideration after the FAR and DFARS were completed. The DAR Council is now reviewing these cases which propose changes to the DAR to determine their proper disposition. Cases having direct application to the FAR and/or the DFARS will be scheduled for consideration. Others have been merged with DAR cases proposing changes to the FAR and/or DFARS of similar nature or have been overcome by new regulations, statute, executive order, etc., and will be accordingly closed.

As these cases are reviewed and disposition determined by the DAR Council, the originator of each case will be notified of the action taken by the Council. If the originator disagrees, he may resubmit the case through DAR Council channels after updating to FAR and/or DFARS conventions.

Item II—Contract Savings Clauses (Deviations)

Item III of DAC #76-39, dated October 20, 1982, specifically recognized a category of DAR deviations known as contract savings clauses and included it at DAR 1-109.1(ix). As a reminder, this same coverage now appears in the DoD FAR Supplement at 201.402(a)(9). Special clauses constructed in solicitations and contracts that anticipate changes in the law or regulation, with potential retroactive or prospective application under the instant contract, are considered deviations to the FAR/DoD FAR Supplement and require prior approval in accordance with DoD FAR Supplement 201.404. These and other proposed deviations must be carefully considered and submitted for approval well in advance of their prospective use, particularly where major policy issues and alternatives are under consideration (e.g., a change to a FAR/DFARS cost principle), to avoid undue disruption of ongoing programs and contract actions, and to preclude prejudice of the DoD policy formulation process.

Item III—Definitions

Revision is made to Subpart 202.1 to add definitions for "Agency Senior Procurement Executives" (for the Services and DLA) and "Senior Procurement Executive" (for the Department of Defense).

Item IV—Negotiation Authority

Paragraph 204.671-5(c)(4) is revised to substitute "Stevedoring, Terminal, Warehousing, or Switching Services (FAR 15.210)" at Code 1010.

Item V—Debarment

Paragraph 209.470(a) is revised to specially designate the authorized representative of the Secretary of the Army.

Item VI—Balance of Payments Approval Authority

Paragraph 225.302(S-72)(2)(i) is revised to add "Commander, U.S. Army Forces Command" as a designee for offshore procurements in the Atlantic Area.

Item VII—Purchases Under the Trade Agreements Act of 1979

Section 225.401 is revised to delete Israel. This country is now included in the list of designated countries shown in FAR 25.401.

Item VIII—Customs and Duties

The coverage at 225.605 (and associated clauses) has been revised to improve the controls associated with the duty-free entry process. Related change has been made at 242.302.

Item IX—Patents, Data and Copyrights

A new Subpart 227.6 is added which prescribes policy with respect to License and Technical Assistance Agreements. A new Subpart 227.70 is added which prescribes policy, procedures, and instructions for use of clauses with respect to processing licenses, assignments, and infringement claims. Related clauses are provided at 252.227-7000 through 252.227-7012.

Item X—Independent Research and Development (IR&D) and Bid and Proposal (B&P) Costs

Changes are made to 231.205-18 as follows:

The heading for paragraph (c) is changed to (c)(1)(vii).

The existing paragraph (c)(1) is deleted since the coverage is now included in the FAR.

The existing paragraph (c)(2) is deleted to remove duplicate coverage contained in (c)(1)(vii).

Item XI—Lobbying Cost Principle

Item VIII, DAC #84-5, dated April 30, 1984, provided guidance with respect to deletion of 231.205-22 from the DoD FAR Supplement, effective July 1, 1984. Subpart 231.2 is revised to delete 231.205-22.

Item XII—Required Sources for High Carbon Ferrochrome

The clause at 252.208-7003 is revised to add clarifying language which provides an effective means for the contractors and subcontractors to meet the certification requirements of the clause without undue administrative burden.

Item XIII—Editorial Changes Are Made as Follows

Section 201.371 is changed to reflect the correct designation of the authority to concur in development of the USEUCOM Supplement.

The Termination Data Letter provided at 208.7012(a)(1) is changed to substitute the word "action" for "act" in paragraph (a) of the letter; and to remove a sentence which was duplicated in paragraph (a)(2) of the letter.

Section 215.613(b) is revised to change the word "not" to read "most."

Section 216.101 is revised to delete a duplicate paragraph (a)(4).

Section 216.703(b) is revised to add an introductory phrase for clarification.

Section 225.7105(a) is revised to provide the correct address for DCASMA Ottawa.

Paragraph (d) of the clause at 252.227-7013 is revised to add a sentence which was omitted from the initial printing of the DoD FAR Supplement. Paragraph (e) which was omitted is added to the clause; and paragraphs (e) and (f) are relettered (f) and (g) respectively.

The clause at 252.236-7008 is revised to add subparagraph (ii) to paragraph (a).

The clause at 252.236-7011 is revised to add a footnote at the end of the clause.

Adoption of Amendments

Therefore, the DoD FAR Supplement contained in 48 CFR Chapter 2 is amended as set forth below.

1. The authority for 48 CFR Chapter 2 reads as follows:

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

PART 201—FEDERAL ACQUISITION REGULATIONS SYSTEM

2. Section 201.371 is revised to read as follows:

201.371 USEUCOM Supplement.

A supplement, entitled USEUCOM Supplement, is applicable to all purchasing offices of the Department of Defense in the North Atlantic-Mediterranean area, including all of Europe. The USEUCOM Supplement and changes thereto are developed by USEUCOM and concurred in by the Joint Acquisition Coordinating Board—Europe representing the purchasing offices in that area and, after adoption and approval by the Defense Acquisition Regulatory Council, are published and distributed by the Headquarters, United States European Command, as an integral part of this Regulation. In addition, Headquarters, USEUCOM publishes Tabs to the USEUCOM Supplement which contain source and informational material (such as government-to-government agreements and tax information) and which do not require approval by the DAR Council.

PART 202—DEFINITIONS OF WORDS AND TERMS

3. Section 202.1 is amended by adding the following definitions in alphabetical sequence to read as follows:

202.1 Definitions.

"Agency Senior Procurement Executives" means for the:

Army, The Assistant Secretary of the Army (Research, Development and Acquisition);

Navy, The Assistant Secretary of the Navy (Shipbuilding and Logistics);

Air Force, The Assistant Secretary of the Air Force (Research, Development and Logistics); and

Defense Logistics Agency, for contracting—The Executive Director, Contracting; for contract management—The Executive Director, Contract Management.

* * * * *

"Senior Procurement Executive" means for the Department of Defense, the Under Secretary of Defense for Research and Engineering.

(a) *Contracting Activities* include:

* * * * *

PART 204—ADMINISTRATIVE MATTERS

4. Section 204.671-5 is amended by revising "Code 1010" to read as follows:

204.671-5 Instructions for Completion of DD Form 350.

* * * * *

(c) * * *

(4) * * *

Code	Negotiation authority
	* * * * *
1010	Stevedoring, Terminal, Warehousing, or Switching Services (FAR 15.210).
	* * * * *

PART 208—REQUIRED SOURCES OF SUPPLIES AND SERVICES

5. Section 208.7009-3 is amended by revising paragraph (a)(3)(i) to read as follows:

208.7009-3 Preparation and Use of DD Form 448-2 (Acceptance of MIPR).

(a) * * *

(3) * * *

(i) When Item 6c acceptance is indicated (identify the MIPR line item numbers that will be provided under each method of financing in Items 8a and 9a respectively); or

* * * * *

6. Section 208.7012 is amended by revising paragraphs (a) (1) and (2) of the clause to read as follows:

208.7012 Cancellation of Requirements.

(a) * * *

(1) * * *

* * * * *

TO:

(a) As termination action is now in progress on the above contract, the following information is submitted:

(1) Brief description of items terminated.

(2) You are notified that the sum of $—— is available for release under the subject contract which sum represents the difference between $——, the value of items terminated under subject contract, and $—— estimated to be required for settlement of the terminated contract. The estimated amount available for release is allocated by the appropriations cited on the contract as follows:

* * * * *

PART 209—CONTRACTOR QUALIFICATIONS

7. Section 209.470 is amended by revising paragraph (a) to read as follows:

209.470 Authorized Representatives.

For the purpose of FAR Subpart 9.4, the authorized representatives of the Secretaries are:

(a) In the Army, the Assistant Judge Advocate General for Military Law;

* * * * *

PART 215—CONTRACTING BY NEGOTIATION

215.171 [Amended]

8. Section 215.171 is amended by changing the title to "Aid to Small Business and Small Disadvantaged Business Concerns in Negotiated Acquisitions."

215.613 [Amended]

9. Section 215.613 is amended by changing the word "not" in the third sentence of paragraph (b) to "most;" and by adding "15.1002 and 215.1002" at the end of paragraph (j).

215.804 [Amended]

10. Section 215.804-3 is amended by redesignating the last sentence of paragraph (e)(3) as paragraph (e)(3)(i).

PART 216—TYPES OF CONTRACTS

216.101 [Amended]

11. Section 216.101 is amended by removing the duplicate paragraph (4) in paragraph (a).

216.603-2 [Amended]

12. Section 216.603-2 is amended by substituting "204.70" in place of "208.70" at the end of paragraph (c).

216.703 [Amended]

13. Section 216.703 is amended by adding "A basic ordering agreement may be used to expedite contracting" and changing the word "If" to "if" at the

beginning of the first sentence of paragraph (b).

PART 225—FOREIGN ACQUISITION

14. Section 225.302 is amended by adding the following entry to paragraph (S-72)(2)(i) to read as follows:

225.302 Policy.

* * * * *

(S-72) * * *
(2) * * *
(i) * * *
Department of the Army—
* * * * *
Commander, U.S. Army, Japan;
Commander, U.S. Army Forces Command;
Department of the Navy—
* * * * *

225.401 [Amended]

15. Section 225.401 is amended by removing the first paragraph.

16. Sections 225.601 through 225.605 are revised to read as follows:

225.601 Definitions.

Emergency Purchase of War Material means any acquisition of foreign supplies if:

(1) The supplies comprise—

(i) Weapons, munitions, aircraft, vessels, or boats;

(ii) Agricultural, industrial, or other supplies used in the prosecution of war or for the national defense; or

(iii) Supplies, including components or equipment, necessary for the manufacture, production, processing, repair, servicing, or operation of supplies within (i) or (ii) above; and

(2) The acquisition—

(i) Is made in time of war or during a national emergency;

(ii) Is made because of a shortage of domestic supply, pursuant to a decision that the supplies are necessary for the adequate maintenance of the Armed Services;

(iii) Is made for the use of U.S. forces abroad or U.S. vessels in foreign waters; or

(iv) Consists of captured enemy war material, materials requisitioned by U.S. forces abroad, or materials rebuilt from other materials owned by, or turned over to U.S. forces, or materials loaned or given to a Military Department of the U.S. Government under exchange agreements with foreign governments.

225.602 Policy.

The issuance of duty-free entry certificates in appropriate situations will result in important savings to military appropriations. Such certificates must be limited to carefully selected situations so that they do not result in unanticipated profits to contractors, especially under fixed-price-type contracts, and involve the Government in administrative expenses outweighing any possible savings to military appropriations. It is DoD policy to use duty-free entry certificates whenever there is *reasonable assurance* that advantages in the form of savings to military appropriations will outweigh the administrative and other costs of processing duty-free entry certificates and of maintaining controls to verify that a full benefit of the certificates inures to the Government. As a rule, a contractor which has been awarded a fixed-price-type contract based on providing a domestic end product or component cannot subsequently furnish a foreign end product or component (including a qualifying country end product or component) and receive a duty-free entry certificate in accordance with FAR 52.225-10 or 252.225-7008 of this supplement without an appropriate reduction in contract price.

225.603 Procedures.

(a) *General.* (1) To assure that the policy of 225.602 is carried out for emergency purchases of war materials abroad, the clauses at FAR 52.225-10 and 252.225-7014 of this supplement shall be used in each negotiated contract in excess of $100,000. Notwithstanding this dollar limit, the clauses may be inserted in any other negotiated contract when the contracting officer determines that to do so would further the policy in 225.602 and would be consistent with the limitations in (4) below, and in any such case the dollar figure in paragraphs (b)(1) and (i)(2) of the clause in FAR 52.225-10 may be reduced appropriately.

(2) When the clause at FAR 52.225-10 is used, the contracting officer shall insert the solicitation provision at 252.225-7007.

(3) In order to provide for duty-free entry for foreign supplies as required by various Memoranda of Understanding between the Department of Defense and allied nations and as required to fully implement the Trade Agreements Act, a clause entitled Duty-Free Entry—Qualifying Country End Products and Supplies is used in most DoD contracts (see 225.605).

(4) Duty-free entry certificates shall be issued as required by contracts containing any of the contract clauses described in 225.605. Consistent with 225.602, duty-free entry certificates may also be issued in connection with any other contract for an "emergency purchase of war material" (i.e., one not containing an appropriate clause) that falls within one of the following categories:

(i) Direct purchases of foreign supplies under a DoD prime contract regardless of whether title passes at point of origin or at destination in the United States; *Provided,* the contract states that the final price is exclusive of duty;

(ii) Purchases of foreign supplies by a domestic prime contractor under a cost-reimbursement type contract or by a cost-reimbursement type subcontractor (where no fixed-price prime or fixed-price subcontract intervenes between the purchaser and the Government), regardless of whether title passes at point of origin or at destination in the United States. If a fixed-price prime or fixed-price subcontract intervenes, the criteria stated in (iii) below should be followed; and

(iii) Purchases of foreign supplies by a fixed-price domestic prime contractor, a fixed-price subcontractor, or a cost-type subcontractor where a fixed-price prime contract, or fixed-price subcontract intervenes; *Provided,* (A) the fixed-price prime contract and, where applicable, fixed-price subcontract prices are, or are amended to be, exclusive of duty; (B) the prime contractor and, where applicable, the subcontractors concerned certify that the supplies so purchased are to be delivered to the Government or incorporated in Government-owned property or in an end product to be furnished to the Government, and that the duty will be paid if such supplies or any portion thereof are utilized for other than the performance of the Government contract or disposed of other than for the benefit of the Government in accordance with the contract terms; and (C) such acquisition abroad is authorized by the terms of the contract, the applicable subcontract, or by the contracting officer. In any case, the procedures required by the clauses prescribed in 225.605 shall be followed to the extent practicable.

(5) When the clauses cited at 225.605 are used, the Contracting Officer shall list in the contract the name and address of the CAO administering the contract and its activity address number (Appendix N of this supplement) in paragraph (d) of the clause at 252.225-7014 or paragraph (k) of the clause at 252.225-7008.

(b) *Formal entry and release*—(1) *CAO Responsibilities.* Contracting Officer assigned to administer the contract must assure that prime contractors are aware of and understand the clause requirements which are summarized below. Contractors should understand that failure by them or their subcontractors to include the data required by the clause will result in the shipment being

treated as a shipment without benefit of free entry under Schedule 8, Part 3, Item No. 832.00, Tariff Schedules of the United States.

(i) Written notice from the contractor or any tier subcontractor to the CAO immediately upon award to a foreign supplier. The notice includes:

(A) Prime contract number plus delivery order number, if applicable;

(B) Total dollar value of the prime contract or delivery order;

(C) Expiration date of the prime contract or delivery order;

(D) Foreign supplier name;

(E) Number of the subcontract/purchase order for foreign supplies;

(F) Total dollar value of the subcontract for foreign supplies;

(G) Expiration date of the subcontract for foreign supplies;

(H) List of items purchased; and

(I) Contractor certification by the purchaser of foreign supplies that supplies to be entered duty-free are intended to be delivered to the Government or incorporated in the end item delivered under the contract.

(ii) Contractor and subcontractor responsibilities to instruct foreign supplier regarding shipping document information including the Activity Address Number as set forth by the clause and as listed in Appendix N.

(iii) Contractor duties to prepare and submit to the District Director of Customs all customs forms required to enter foreign purchased supplies in the United States, its possessions, or Puerto Rico for shipments other than to a military installation in the United States.

(iv) Understanding of the flow down provision of clauses.

(v) Procedure for adjustment to prime contract price with regard to duty not previously excluded (see 225.602).

(2) *Duty-Free Entry Entitlements.* Upon receipt of the required notice of purchase of foreign supplies from the prime contractor or any tier subcontractor, the contracting officer administering the prime contract will verfiy the duty-free entitlement of goods to be entered under the contract. A review of the prime contract should ensure foreign supplies (quantity and price) identified in the notice are required for the performance of the contract.

(3) *Adjustment to Prime Contract Price.* When notification is received from the contractor by the administrative contracting officer indicating that a foreign purchase is being placed that was not identified at the time of the prime contract award, a reduction to the prime contract price may be required in accordance with the Duty-Free Entry clause at FAR 52.224-10, the Duty-Free entry—Qualifying Country End Products and Supplies clause at 252.225-7008 or pursuant to 225.603(a)(4) of this supplement. After determining the amount of duty that woud be payable if duty-free entry certificates were not issued, an equitable adjustment to the prime contract price shall be made unless otherwise approved by the procuring contracting officer. Unless retained in accordance with 242.203, the authority to negotiate and issue such modifications reducing the contract price has been delegated to the ACO in accordance with 242.203(a)(S-74). After determining the price of foreign supplies exclusive of duty, the contracting officer administering the contract shall advise the contractor that that amount will be the maximum dollar value of supplies for which duty-free entry certificates will be issued.

(4) *Data Required by DCASR New York.* (i) Within 20 days of receipt of the notification of purchase of foreign supplies, ACOs will forward the following information to DCASR New York in the format shown below:

To: Commander, DCASR New York
Attn: Customs Function, 201 Varick Street, New York, NY 10014

A contrator notification of the purchase of foreign supples has been received in accordance with FAR 52.225-10 and 252.225-7014 of the DoD FAR Supplement or 252.225-7008 of the Supplement. Verification has been made that foreign supplies are required for the performance of the contract. If required, prime contract price has been or will be adjusted in accordance with 225.603(b)(3) of the DoD FAR Supplement.

In accordance with 225.603(b)(4) of the Supplement, the following information is provided:

Prime Contractor Name:
Prime Contract Number plus Delivery Order Number, if applicable:
Total Dollar Value of the Prime Contract or Delivery Order:
Expiration Date of the Prime Contract or Delivery Order:
Foreign Supplier Name:
Number of the Subcontract/Purchase Order for Foreign Supplies.
Total Dollar Value of the Subcontract for Foreign Supplies:
Expiration Date of the Subcontract for Foreign Supplies:
CAO Activity Address Number (Appendix N of the DoD FAR Supplement):
Signature:
Title:

(ii) If a contract modification results in a change to any data previously furnished to DCASR New York to verify duty-free entitlement, a revised notification of the changed data shall be forwarded to DCASR New York.

(5) *Customs Forms and Duty-Free Entry Certificates*—(i) *Execution of Duty-Free Entry Certificates.* The responsibility for issuing duty-free entry certificates for foreign supplies purchased under a DoD contract or subcontract rests with the Transportation Officer, DCASR New York. Upon receipt of import documentation for incoming shipments from the contractor, his agent, or the U.S. Customs Service, the Transportation Office, DCASR New York will verify the duty-free entitlement and execute the duty-free entry certificate.

(ii) *Customs Import Documentation.* Upon arrival of foreign supplies at ports of entry, the consignee, generally the contractor or his agent (import broker) for shipments to other than a military installation, will file U.S. Customs Form 7501, 7501A, or 7506 and U.S. Customs Form 3461, with the District Director of Customs.

(6) *Immediate Entry and Release.* Immediate release permits, executed on Customs Forms 3461 (Application for Special Permit for Delivery of Perishable and Other Articles, Immediate Delivery of Which is Necessary), entitle all shipments qualifying as "emergency purchase" of war material abroad to be released immediately by the District Directors of Customs at the various ports of entry, prior to and pending the filing of Customs Forms 7501, 7501A, or 7506 and a duty-free entry certificate. The existence of an immediate release permit on file at a port of entry does not dispense with the necessity of filing Customs Forms 7501, 7501A, or 7506 and appropriate duty-free entry certificates. Each Department designates the individuals responsible for issuance of Immediate Release Permits.

225.604 Exempted Supplies.

(b) *Supplies for Vessels or Aircraft Operated by the United States.* (1) Subject to the considerations set forth in FAR 25.605, a duty-free entry certificate may be issued when "certain supplies (not including equipment)" are purchased for vessels or aircraft operated by the United States. As used in this paragraph, the term "certain supplies (not including equipment)" includes articles known as "stores," such as food, medicines and toiletries, and, in addition, all consumable articles necessary and appropriate for the propulsion, operation, and maintenance of the vessel or aircraft, such as fuel, oil, gasoline, grease, paint, cleansing compounds, solvents, wiping rags, and polishes. It does not include portable articles necessary and appropriate for the navigation, operation or maintenance of the vessel or aircraft

and for the comfort and safety of the persons on board, such as rope, bolts and nuts, bedding, china and cutlery, which are included in the term "equipment." The procedures to be followed in the issuance of such certificates shall be prescribed by the respective Departments.

(2) The duty-free entry certificate referred to in this paragraph shall be printed, stamped, or typed on the face of Customs Form 7501, or attached thereto, and shall be executed by a duly designated officer or civilian official of the appropriate Department in the following form:

(Date)_____

I certify that the acquisition of this material constituted a purchase of supplies by the United States for vessels or aircraft operated by the United States, and is admissible free of duty pursuant to 19 U.S.C. 1309.

(Name)_____
(Title)_____
(Organization)_____

225.605 Contract Clause.

(a) When the contract is required to contain the clause at FAR 52.225-10, the contracting officer shall include the clause at 252.225-7014 and the provision at 225.225-7007 of this supplement. Notwithstanding FAR 25.605, the clauses shall only be used within the limits contained at 225.603(a) of this supplement.

(S-70) *Duty-Free Entry—Qualifying Country End Products and Components.* The clause at 252.225-7008 shall be inserted in all contracts for supplies and in all contracts for services involving the furnishing of supplies, except that it need not be inserted when simplified small purchase procedures are used or in contracts for supplies exclusively for use outside the United States.

17. Section 225.7105 is amended by revising paragraph (a) to read as follows:

225.7105 Contract Administration.

(a) When services are requested from the Defense Contract Administration Services on contracts to be performed in Canada, the request shall be directed to:

Defense Logistics Agency, Defense Contract Administration Services, Management Area, Ottawa, 365 Laurier Avenue West, Ottawa, Ontario, Canada, K1A OS5

* * * * *

225.7301 [Amended]

18. Section 225.7301 is amended by revising the title of paragraph (a) to read "Contract Authorization" in lieu of "Contract Administration."

PART 227—PATENTS, DATA, AND COPYRIGHTS

19. A new Subpart 227.6, consisting of sections 227.670 through 227.675-2, is added to read as follows:

Subpart 227.6—Foreign License and Technical Assistance Agreements

227.670 Scope.

This subpart prescribes policy with respect to Foreign License and Technical Assistance Agreements.

227.671 General.

In furtherance of the Military Assistance Program or for other national defense purposes, the Government may undertake to develop or encourage the development of foreign additional sources of supply. The development of such sources may be accomplished by an agreement, often called a foreign licensing agreement or technical assistance agreement, wherein a domestic concern, referred to in this subpart as a "primary source," agrees to furnish to a foreign concern or government, herein referred to as a "second source," foreign patent rights; technical assistance in the form of data, know-how, trained personnel of the primary source, instruction and guidance of the personnel of the second source, jigs, dies, fixtures, or other manufacturing aids, or such other assistance, information, rights, or licenses as are needed to enable the second source to produce particular supplies or perform particular services. Agreements calling for one or more of the foregoing may be entered into between the primary source and the Government, a foreign government, or a foreign concern. The consideration for providing such foreign license and technical assistance may be in the form of a lump sum payment, payments for each item manufactured by the second source, an agreement to exchange data and patent rights on improvements made to the article or service, capital stock transactions, or any combination of these. The primary source's bases for computing such consideration may include actual costs; charges for the use of patents, data, or know-how reflecting the primary source's investment in developing and engineering and production techniques; and the primary source's "price" for setting up a second source. Such agreements often refer to the compensation to be paid as a royalty or license fee whether or not patent rights are involved.

227.672 Policy.

It is Government policy not to pay in connection with its contracts, and not to allow to be paid in connection with contracts made with funds derived through the Military Assistance Program or otherwise through the United States Government, charges for use of patents in which it holds a royalty-free license or charges for data which it has a right to use and disclose to others, or which is in the public domain, or which the Government has acquired without restriction upon its use and disclosure to others. This policy shall be applied by the Departments in negotiating contract prices for foreign license technical assistance contracts (227.675) or supply contracts with second sources (227.674); and in commenting on such agreements when they are referred to the Department of Defense by the Department of State pursuant to Section 414 of the Mutual Security Act of 1954 as amended (22 U.S.C. 1934) and the International Traffic in Arms Regulations (see 227.675).

227.673 Foreign License and Technical Assistance Agreements Between the Government and Domestic Concerns.

(a) Contracts between the Government and a primary source to provide technical assistance or patent rights to a second source for the manufacture of supplies or performance of services shall, to the extent practicable, specify the rights in patents and data and any other rights to be supplied to the second source. Each contract shall provide, in connection with any separate agreement between the primary source and the second source for patent rights or technical assistance relating to the articles or services involved in the contract, that—

(1) The primary source and his subcontractors shall not make, on account of any purchases by the Government or by others with funds derived through the Military Assistance Program or otherwise through the Government, any charge to the second source for royalties or amortization for patents or inventions in which the Government holds a royalty-free license; or data which the Government has the right to possess, use, and disclose to others; or any technical assistance provided to the second source for which the Government has paid under a contract between the Government and the primary source; and

(2) The separate agreement between the primary and second source shall include a statement referring to the contract between the Government and the primary source, and shall conform to the requirements of the International Traffic in Arms Regulations (see 227.675-1).

(b) The following factors, among others, shall be considered in negotiating the price to be paid the primary source under contracts within (a) above:

(1) The actual cost of providing data, personnel, manufacturing aids, samples, spare parts, and the like;

(2) The extent to which the Government has contributed to the development of the supplies or services, and to the methods of manufacture or performance, through past contracts for research and development or for manufacture of the supplies or performance of the services; and

(3) The Government's patent rights and rights in data relating to the supplies or services and to the methods of manufacture or of performance.

227.674 Supply Contracts Between the Government and a Foreign Government or Concern.

In negotiating contract prices with a second source, including the redetermination of contract prices, or in determining the allowability of costs under a cost-reimbursement contract with a second source, the contracting officer:

(a) Shall obtain from the second source a detailed statement (see FAR 27.204–1(a)(2)) of royalties, license fees, and other compensation paid or to be paid to a primary source (or any of his subcontractors) for patent rights, rights in data, and other technical assistance provided to the second source, including identification and description of such patents, data, and technical assistance; and

(b) Shall not accept or allow charges which in effect are—

(1) For royalties or amortization for patents or inventions in which the Government holds a royalty-free license, or

(2) For data which the Government has a right to possess, use, and disclose to others, or

(3) For any technical assistance provided to the second source for which the Government has paid under a contract between the Government and a primary source.

227.675 Foreign License and Technical Assistance Agreements Between a Domestic Concern and a Foreign Government or Concern.

227.675–1 International Traffic in Arms Regulations.

Pursuant to section 414 of the Mutual Security Act of 1954, as amended (22 U.S.C. 1934), the Department of State controls the exportation of data relating to articles designated in the United States Munitions List as arms, ammunition, or munitions of war. (The Munitions List and pertinent procedures are set forth in the International Traffic in Arms Regulations, 22 CFR et seq.) Before authorizing such exportation, the Department of State generally requests comments from the Department of Defense. On request of the Office of the Assistant Secretary of Defense (International Security Affairs), each Department shall submit comments thereon as the basis for a Department of Defense reply to the Department of State. Such comments shall be prepared in the light of the following excerpt from the International Traffic in Arms Regulations.

Sec. 124.04 Required Provisions in Agreements.

(a) Manufacturing license or technical assistance agreements should define in precise terms the following:

(1) The equipment and technology involved;

(2) The scope of the information to be furnished;

(3) The period of duration of the agreement;

(4) Statement of ownership of equipment and special tools involved which would be made available in connection with the agreement. In lieu of inclusion as an integral part of the agreement, the applicant may submit this information in the form of an attachment or enclosure to the agreement submitted for review.

(b) (1) It is the policy of the United States Government not to pay or allow to be paid in connection with purchases made with Mutual Security Program funds, a charge for patent rights in which it holds a royalty-free license, or for technical data which it has a right to use and disclose to others for purposes of the Mutual Security Program, or which are in the public domain, or with respect to which it has been placed in possession without restriction upon their use and disclosure to others. Reasonable charges for reproduction, handling, mailing, and other similar administrative costs do not fall within this policy.

(2) Pursuant to the above policy (subparagraph (1) of this paragraph) agreements shall be written in such a way as to provide that (i) purchases of items by or for the United States Government, or which funds derived through the Mutual Security Program, will not include a charge (a) for technical data in the possession of the United States Government, or in which the United States Government has a right to possession, and regarding which there is no prohibition against use by the United States Government and disclosure to others and (b) for royalties or amortization for patents or inventions in which the United States Government holds a royalty-free license, and (ii) the license rights transferred by such agreements will be subject to existing rights of the United States Government.

* * * * *

227.675–2 Review of Agreements.

(a) In reviewing foreign license and technical assistance agreements between primary and second sources, the Department concerned shall, insofar as its interests are involved, indicate whether the agreement meets the requirements of section 124.04 of the International Traffic in Arms Regulations (see 227.675–1) or in what respects it is deficient. Paragraphs (b) through (g) below provide general guidance.

(b) When it is reasonably anticipated that the Government will purchase from the second source the supplies or services involved in the agreement, or that Military Assistance Program funds will be provided for the procurement of the supplies or services, the following guidance applies.

(1) If the agreement specifies a reduction in charges thereunder, with respect to purchases by or for the Government or by others with funds derived through the Military Assistance Program or otherwise through the Government, in recognition of the Government's rights in patents and data, the Department concerned shall evaluate the amount of the reduction to determine whether it is fair and reasonable in the circumstances, before indicating its approval.

(2) If the agreement does not specify any reduction in charges or otherwise fails to give recognition to the Government's rights in the patents or data involved, approval shall be conditioned upon amendment of the agreement to reflect a reduction, evaluated by the Department concerned as acceptable to the Government, in any charge thereunder with respect to purchases made by or for the Government or by others with funds derived through the Military Assistance Program or otherwise through the Government, in accordance with Section 124.04(b) of the International Traffic in Arms Regulations.

(3) If the agreement provides that no charge is to be made to the second source for data or patent rights to the extent of the Government's rights, the Department concerned shall evaluate the acceptability of the provision before indicating its approval.

(4) If time or circumstances do not permit the evaluation called for in (b) (1), (2), or (3) above, the guidance in (c) below shall be followed.

(c) When it is not reasonably anticipated that the Government will purchase from the second source the supplies or services involved in the agreement nor that Military Assistance Program funds will be provided for the

purchase of the supplies or services, then the following guidance applies.

(1) If the agreement provides for charges to the second source for data or patent rights, it may suffice to fulfill the requirements of section 124.04(b), quoted above, insofar as the Department of Defense is concerned if:

(i) The agreement requires the second source to advise the primary source when he has knowledge of any purchase made or to be made from him by or for the Government or by others with funds derived through the Military Assistance Program or otherwise through the Government;

(ii) The primary source separately agrees with the Government that upon such advice to him from the second source or from the Government or otherwise as to any such a purchase or prospective purchase, he will negotiate with the Department concerned an appropriate reduction in his charges to the second source in recognition of any Government rights in patents or data; and

(iii) The agreement between the primary and second sources further provides that in the event of any such purchase and resulting reduction in charges, the second source shall pass on this reduction to the Government by giving the Government a corresponding reduction in the purchase price of the article or service.

(2) If the agreement provides that no charge is to be made to the second source for data or patent rights to the extent to which the Government has rights, the Department concerned shall:

(i) Evaluate the acceptability of the provision before indicating its approval; or

(ii) Explicitly condition its approval on the right to evaluate the acceptability of the provision at a later time.

(d) When there is a technical assistance agreement between the primary source and the Government related to the agreement between the primary and second sources that is under review, the latter agreement shall reflect the arrangements contemplated with respect thereto by the Government's technical assistance agreement with the primary source.

(e) Every agreement shall provide that any license rights transferred under the agreement are subject to existing rights of the Government.

(f) In connection with every agreement referred to in (b) above, a request shall be made to the primary source (1) to identify the patents, data, and other technical assistance to be provided to the second source by the primary source or any of his subcontractors, (2) to identify any such patents and data in which, to the knowledge of the primary source, the Government may have rights, and (3) to segregate the charges made to the second source for each such category or item of patents, data, and other technical assistance. Reviewing personnel shall verify this information or, where the primary source does not furnish it, obtain such information from Governmental sources so far as practicable.

(g) The Department concerned shall make it clear that its approval of any agreement does not necessarily recognize the propriety of the charges or the amounts thereof, or constitute approval of any of the business arrangements in the agreement, unless the Department expressly intends by its approval to commit itself to the fairness and reasonableness of a particular charge or charges. In any event, a disclaimer should be made to charges or business terms not affecting any purchase made by or for the Government or by others with funds derived through the Military Assistance Program or otherwise through the Government.

20. A new Subpart 227.70, consisting of sections 227.7000 through 272.7013, is added to read as follows:

Subpart 227.70—Infringement Claims, Licenses, and Agreements

272.7000 Scope.

This subpart prescribes policy, procedures, and instructions for use of clauses with respect to processing licenses, assignments, and infringement claims.

227.7001 Policy.

Whenever a claim of infringement of privately-owned rights in patented inventions or copyrighted works is asserted against any Department or Agency or the Department of Defense, all necessary steps shall be taken to investigate, and to settle administratively, deny, or otherwise dispose of such claim prior to suit against the United States. This subpart 227.7 does not apply to licenses or assignments acquired by the Department of Defense under the Patent Rights clauses.

227.7002 Statutes Pertaining to Administrative Claims of Infringement.

Statutes pertaining to administrative claims of infringement in the Department of Defense include the following: the Foreign Assistance Act of 1961, 22 U.S.C. 2356 (formerly the Mutual Security Acts of 1951 and 1954); the Invention Secrecy Act, 35 U.S.C. 181–188; 10 U.S.C. 2386; 28 U.S.C. 1498; and 35 U.S.C. 286.

227.7003 Claims for Copyright Infringement.

The procedures set forth herein will be followed, where applicable, in copyright infringement claims.

227.7004 Requirements for Filing an Administrative Claim for Patent Infringement.

(a) A patent infringement claim for compensation, asserted against the United States under any of the applicable statutes cited in 227.7002, must be actually communicated to and received by a Department, agency, organization, office, or field establishment within the Department of Defense. Claims must be in writing and should include the following:

(1) An allegation of infringement;

(2) A request for compensation, either expressed or implied;

(3) A citation of the patent or patents alleged to be infringed;

(4) A sufficient designation of the alleged infringing item or process to permit identification, giving the military or commercial designation, if known, to the claimant;

(5) A designation of at least one claim of each patent alleged to be infringed; or

(6) As an alternative to (4) and (5) above, a certification that the claimant has made a bona fide attempt to determine the item or process which is alleged to infringe, but was unable to do so, giving reasons, and stating a reasonable basis for his belief that his patent or patents are being infringed.

(b) In addition to the information listed in (a) above, the following material and information is generally necessary in the course of processing a claim of patent infringement. Claimants are encouraged to furnish this information at the time of filing a claim to permit the most expeditious processing and settlement of the claim.

(1) A copy of the asserted patent(s) and identification of all claims of the patent alleged to be infringed.

(2) Identification of all procurements known to claimant which involve the alleged infringing item or process, including the identity of the vendor or contractor and the Government procuring activity.

(3) A detailed identification of the accused article or process, particularly where the article or process relates to a component or subcomponent of the item procured, an element by element comparison of the representative claims with the accused article or process. If available, this identification should

include documentation and drawings to illustrate the accused article or process in suitable detail to enable verification of the infringement comparison.

(4) Names and addresses of all past and present licenses under the patent(s), and copies of all license agreements and releases involving the patent(s).

(5) A brief description of all litigation in which the patent(s) has been or is now involved, and the present status thereof.

(6) A list of all persons to whom notices of infringement have been sent, including all departments and agencies of the Government, and a statement of the ultimate disposition of each.

(7) A description of Government employment or military service, if any, by the inventor and/or patent owner.

(8) A list of all Government contracts under which the inventor, patent owner, or anyone in privity with him performed work relating to the patented subject matter.

(9) Evidence of title to the patent(s) alleged to be infringed or other right to make the claim.

(10) A copy of the Patent Office file of each patent, if available to claimant.

(11) Pertinent prior art known to claimant, not contained in the Patent Office file, particularly publications and foreign art. In addition to the foregoing, if claimant can provide a statement that the investigation may be limited to the specifically identified accused articles or processes, or to a specific procurement, it may materially expedite determination of the claim.

(c) Any Department receiving an allegation of patent infringement which meets the requirements of this paragraph shall acknowledge the same and supply the other Departments* which may have interest therein with a copy of such communication and the acknowledgement thereof.

*For the Department of the Army, Chief, Patents, Copyrights, and Trademarks Division, U.S. Army Legal Services Agency; for the Department of the Navy, The Patent Counsel for Navy, Office of Naval Research; for the Department of the Air Force, Chief, Patents Division, Office of The Judge Advocate General; for the Defense Logistics Agency, The Office of Counsel; for the National Security Agency, the General Counsel; for the Defense Communications Agency, the Counsel; for the Defense Nuclear Agency, The General Counsel; and for the Defense Mapping Agency, The Counsel.

(d) If a communication alleging patent infringement is received which does not meet the requirements set forth above, the sender shall be advised in writing—

(i) That his claim for infringement has not been satisfactorily presented, and

(ii) Of the elements considered necessary to establish a claim.

(e) A communication making a proffer of a license in which no infringement is alleged shall not be considered as a claim for infringement.

227.7005 Indirect Notice of Patent Infringement Claims.

(a) A communication by a patent owner to a Department of Defense contractor alleging that the contractor has committed acts of infringement in performance of a Government contract shall not be considered a claim within the meaning of 227.7004 until it meets the requirements specified therein.

(b) Any Department receiving an allegation of patent infringement which meets the requirements of 227.7004 shall acknowledge the same and supply the other Departments* which may have an interest therein with a copy of such communication and the acknowledgement thereof.

* For the Department of the Army, Chief, Patents, Copyrights, and Trademarks Division, U.S. Army Legal Services Agency; for the Department of the Navy, The Patent Counsel for Navy, Office of Naval Research; for the Department of the Air Force, Chief, Patents Division, Office of The Judge Advocate General; for the Defense Logistics Agency, The Office of Counsel; for the National Security Agency, the General Counsel; for the Defense Communications Agency, the Counsel; for the Defense Nuclear General Agency, The General Counsel; and for the Defense Mapping Agency, The Counsel.

(c) If a communication covering an infringement claim or notice which does not meet the requirements of 227.7004(a) is received from a contractor, the patent owner shall be advised in writing as covered by the instructions of 227.7004(d).

227.7006 Investigation and Administrative Disposition of Claims.

An investigation and administrative determination (denial or settlement) of each claim shall be made in accordance with instructions and procedures established by each Department, and subject to the following:

(i) When the procurement responsibility for the alleged infringing item or process is assigned to a single Department or only one Department is the purchaser of the alleged infringing item or process, and the funds of that Department only are to be charged in the settlement of the claim, that Department shall have the sole responsibility for the investigation and administrative determination of the claim and for the execution of any agreement in settlement of the claim. Where, however, funds of another Department are to be charged, in whole or in part, the approval of such Department shall be obtained as required by 208.7002. Any agreement in settlement of the claim, approved pursuant to 208.7002 shall be executed by each of the Departments concerned.

(ii) When two or more Departments are the respective purchasers of alleged infringing items or processes and the funds of those Departments are to be charged in the settlement of the claim, the investigation and administrative determination shall be the responsibility of the Department having the predominant financial interest in the claim or of the Department or Departments as jointly agreed upon by the Departments concerned. The Department responsible for negotiation shall, throughout the negotiation, coordinate with the other Departments concerned and keep them advised of the status of the negotiation. Any agreement in the settlement of the claim shall be executed by each Department concerned.

227.7007 Notification and Disclosure to Claimants.

When a claim is denied, the Department responsible for the adminstrative determination of the claim shall so notify the claimant or his authorized representative and provide the claimant a reasonable rationale of the basis for denying the claim. Disclosure of information or the rationale referred to above shall be subject to applicable statutes, regulations, and directives pertaining to security, access to official records, and the rights of others.

227.7008 Settlement of Indemnified Claims.

Settlement of claims involving payment for past infringement shall not be made without the consent of, and equitable contribution by, each indemnifying contractor involved, unless such settlement is determined to be in the best interests of the Government and is coordinated with the Department of Justice with a view to preserving any rights of the Government against the contractors involved. If consent of and equitable contribution by the contractors are obtained, the settlement need not be coordinated with the Department of Justice.

227.7009 Patent Releases, License Agreements, and Assignments.

This section contains clauses for use in patent release and settlement agreements, license agreements, and assignments, executed by the Government, under which the

Government acquires rights. Minor modifications of language (e.g., pluralization of "Secretary" or "Contracting Officer") in multidepartmental agreements may be made if necessary.

227.7009-1 Required Clauses.

(a) *Officials Not To Benefit.* Insert the clause at FAR 52.203-1.

(b) *Covenant Against Contingent Fees.* Insert the clause at FAR 52.203-5.

(c) *Gratuities.* Insert the clause at FAR 52.203-3.

(d) *Assignment of Claims.* Insert the clause at FAR 52.232-23.

(e) *Disputes.* Pursuant to FAR 33.014, insert the clause at FAR 52.233-1.

(f) *Non-Estoppel.* Insert the clause at 252.227-7000.

227.7009-2 Clauses To Be Used When Applicable.

(a) *Release of Past Infringement.* The clause at 252.227-7001 is an example which may be modified or omitted as appropriate for particular circumstances, but only upon the advice of cognizant patent or legal counsel. (See footnotes at end of clause.)

(b) *Readjustment of Payments.* The clause at 252.227-7002 shall be inserted in contracts providing for payment of a running royalty.

(c) *Termination.* The clause at 252.227-7003 is an example for use in contracts providing for the payment of a running royalty. This clause may be modified or omitted as appropriate for particular circumstances, but only upon the advice of cognizant patent or legal counsel.*

*For the Department of the Army, Chief, Patents, Copyrights, and Trademarks Division, U.S. Army Legal Services Agency; for the Department of the Air Force, Chief, Patents Division, Office of the Judge Advocate General; for the Defense Logistics Agency, The Patent Counsel; for the Department of the Navy, the Patent Counsel for the Navy, Office of Naval Research; for the Defense Communications Agency, The Counsel; for the Defense Nuclear Agency, The General Counsel; and for the Defense Mapping Agency, The Counsel.

227.7009-3 Additional Clauses—Contracts Except Running Royalty Contracts.

The following clauses are examples for use in patent release and settlement agreements, and license agreements not providing for payment by the Government of a running royalty.

(a) *License Grant.* Insert the clause at 252.227-7004.

(b) *License Term.* Insert one of the clauses at 252.227-7005 Alternate I or Alternate II, as appropriate.

227.7009-4 Additional Clauses—Contracts Providing for Payment of a Running Royalty.

The clauses set forth below are examples which may be used in patent release and settlement agreements, and license agreements, when it is desired to cover the subject matter thereof and the contract provides for payment of a running royalty.

(a) *License Grant—Running Royalty.* No Department shall be obligated to pay royalties unless the contract is signed on behalf of such Department. Accordingly, the License Grant clause at 252.227-7006 should be limited to the practice of the invention by or for the signatory Department or Departments.

(b) *License Term—Running Royalty.* The clause at 252.227-7007 is a sample form for expressing the license term.

(c) *Computation of Royalties.* The clause at 252.227-7008 providing for the computation of royalties, may be of varying scope depending upon the nature of the royalty bearing article, the volume of procurement, and the type of contract pursuant to which the procurement is to be accomplished.

(d) *Reporting and Payment of Royalties.* (1) The contract should contain a provision specifying the office designated within the specific Department involved to make any necessary reports to the contractor of the extent of use of the licensed subject matter by the entire Department, and such office shall be charged with the responsibility of obtaining from all procuring offices of that Department the information necessary to make the required reports and corresponding vouchers necessary to make the required payments. The clause at 252.227-7009 is a sample for expressing reporting and payment of royalties requirements.

(2) Where more than one Department or Government Agency is licensed and there is a ceiling on the royalties payable in any reporting period, the licensing Departments or Agencies shall coordinate with respect to the pro rata share of royalties to be paid by each.

(e) *License to other Government Agencies.* When it is intended that a license on the same terms and conditions be available to other departments and agencies of the Government, the clause at 252.227-7010 is an example which may be used.

227.7010 Assignments.

(a) The clause at 252.227-7011 is an example which may be used in contracts of assignment of patent rights to the Government.

(b) To facilitate proof of contracts of assignments, the acknowledgement of the contractor should be executed before a notary public or other officer authorized to administer oaths (35 U.S.C. 261).

227-7011 Procurement of Rights in Inventions, Patents, and Copyrights.

Even though no infringement has occurred or been alleged, it is the policy of the Department of Defense to procure rights under patents, patent applications, and copyrights whenever it is in the Government's interest to do so and the desired rights can be obtained at a fair price. The required and suggested clauses at 252.227-7004 and 252.227-7010 shall be required and suggested clauses, respectively, for license agreements and assignments made under this paragraph. The instructions at 227.7009-3 and 227.7010 concerning the applicability and use of those clauses shall be followed insofar as they are pertinent.

227.7012 Contract Format.

The format at 252.227-7012 appropriately modified where necessary, may be used for contracts of release, license, or assignment.

227.7013 Recordation.

Executive Order No. 9424 of 18 February 1944 requires all executive Departments and agencies of the Government to forward through appropriate channels to the Commissioner of Patents and Trademarks, for recording, all Government interests in patents or applications for patents.

PART 231—CONTRACT COST PRINCIPLES AND PROCEDURES

231.205-18 [Amended]

21. Section 231.205-18 is amended by redesignating the existing paragraph (c) as (c)(1)(vii), and by removing the existing paragraphs (c)(1) and (c)(2).

231.205-22 [Removed]

22. Section 231.205-22 is removed.

PART 242—CONTRACT ADMINISTRATION

23. Section 242.302 is amended by adding paragraph (S-74) to read as follows:

242.302 Contract Administration Functions.

* * * * *

(S-74) In connection with the provisions of paragraph (b) of the clause at FAR 52.225-10, Duty-Free Entry, and paragraph (c) of the clause at 252.225-7008, Duty-Free Entry—Qualifying Country End Products and Supplies,

negotiate and issue appropriate contract modifications reducing contract prices.

PART 252—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

24. Section 252.208-7003 is amended by revising paragraph (b) to read as follows:

252.208-7003 Required Sources for High Carbon Ferrochrome (HCF).

As prescribed at 208.7803(a), insert the following clause:

Required Sources for High Carbon Ferrochrome (Aug 1984)

* * * * *

(b) The Contractor agrees that end items, components and processed materials thereof delivered under this contract shall contain HCF of U.S. manufacture, and/or it has met the requirements of paragraph (g) of this clause.

* * * * *

252.225-7007 [Amended]

25. Section 252.225-7007 is amended by removing the reference "225.605(a)(S-70)" in the introductory paragraph and inserting in its place "225.605."

26. Section 252.225-7008 is revised to read as follows:

252.225-7008 Duty-Free Entry—Qualifying Country End Products and Supplies.

As prescribed at 225.605, insert the following clause:

Duty-Free Entry—Qualifying Country End Products and Supplies (Aug 1984)

(a) The requirements of this clause apply to this contract and subcontracts, which term includes purchase orders, that involve supplies to be accorded duty-free entry, whether—

(1) placed directly with a foreign concern as a prime contract; or

(2) as a subcontract or purchase order under a contract placed with a domestic concern.

(b) Except as otherwise approved by the Contracting Officer, no amount is or will be included in the contract price on account of duty with respect to—

(1) All end items which constitute "qualifying country end products" (as defined in DoD FAR Supplement 225.001) to be delivered under this contract; and

(2) All supplies (including, without limitation, raw materials, components, and intermediate assemblies) produced or made in qualifying countries, which are to be incorporated in the end items to be delivered under this contract; *Provided*, That such end items are manufactured in the United States or in a qualifying country, except supplies imported into the United States prior to the date of this contract or, in the case of supplies imported by a first or lower tier subcontractor hereunder, prior to the date of the subcontract.

(c) Unless the Contracting Officer otherwise agrees, duty-free entry certificates will not be furnished under fixed-price contracts which were based on supplying a domestic end item or component unless the Contractor agrees to negotiate an appropriate reduction in contract price if the Contractor, subsequent to award, decides to furnish a qualifying country end product or component.

(d) The Contractor warrants that all such qualifying country supplies, for which duty-free entry is to be claimed, are intended to be delivered to the Government or incorporated in the end items to be delivered under this contract and that duty shall be paid by the Contractor to the extent that such supplies, or any portion thereof (if not scrap or salvage) are directed to nongovernmental use other than as a result of a competitive sale made, diverted, or authorized by the Contracting Officer.

(e) The Government agrees to execute duty-free entry certificates and to afford such assistance as appropriate in order to obtain the duty-free entry of qualifying country end products as to which the shipping documents bear the notation specified in paragraph (f) below, except as the Contractor may otherwise agree.

(f) All shipping documents submitted to Customs, covering foreign end products or supplies for which duty-free entry certificates are to be issued in accordance with this clause, shall (1) consign the shipments to the appropriate (i) Military Department in care of the particular Contractor, including the Contractor's delivery address, or (ii) the appropriate military installation; and (2) bear the following information:

(i) Prime contract number plus delivery order, if applicable;

(ii) Number of the subcontract/purchase order for foreign supplies, if applicable;

(iii) Identification of carrier;

(iv) The notation: "UNITED STATES GOVERNMENT, DEPARTMENT OF DEFENSE Duty-Free Entry to be claimed pursuant to Schedule 8, Part 3, Item No. 832.00, Tariff Schedules of the United States. Upon arrival of shipment at the appropriate port of entry, District Director of Customs, please release shipment under 19 CFR 142 and notify Commander, Defense Contract Administration Services Region (DCASR), New York, ATTN: Customs Function, 201 Varick Street, New York, New York 10014, for execution of Customs Form 7501, 7501A, or 7506 and any required duty-free entry certificates." (Note: The above notation shall be used only for direct shipments to a U.S. military installation. In cases where the shipment will be consigned to other than a military installation, e.g., a domestic contractor's plant, the shipping document notation shall be altered to insert the name and address of the Contractor, agent or broker who will notify the Commander, Defense Contract Administration Services Region (DCASR), New York, for execution of the duty-free entry certificates.)

(v) Gross weight in pounds (if freight is based on space tonnage, state cubic feet in addition to gross shipping weight);

(vi) Estimated value in U.S. dollars; and

(vii) Activity Address Number of the Contract Administration Office (CAO) actually administering the prime contract, e.g., for DCASMA Dayton, DLA8DP.

(g) Preparation of Customs Forms.

(1) Except for shipments consigned to a military installation, the Contractor shall prepare, or authorize an agent to prepare, any customs forms required for the entry of foreign supplies in connection with DoD contracts into the United States, its possessions, or Puerto Rico. The completed customs forms shall be submitted to the District Director of Customs with a copy to DCASR NY for execution of any required duty-free entry certificates. Shipments consigned directly to a military installation will be released in accordance with Sections 10.101 and 10.102 of the U.S. Customs Regulations.

(2) For shipments containing both supplies which are to be accorded duty-free entry and supplies which are not, the Contractor shall identify on the customs forms those items which are eligible for duty-free entry.

(h) The Contractor agrees to prepare (if this contract is placed direct with a foreign supplier) or to instruct the foreign supplier to prepare a sufficient number of copies of the bill of lading (or other shipping document) so that at least two of the copies accompanying the shipment will be available for use by the District Director of Customs at the port of entry and to consign the shipment as specified in (f) above, and to mark the exterior of all packages as follows:

(1) "UNITED STATES GOVERNMENT, DEPARTMENT OF DEFENSE" and

(2) the Activity Address Number applicable to the contract administration office actually administering the prime contract.

(i) The Contractor agrees to ensure that the Contracting Officer administering the prime contract is notified in writing of any purchase under the contract of qualifying country supplies to be accorded duty-free entry that are to be imported into the United States for delivery to the Government or for incorporation in end items to be delivered to the Government. Such notice shall be furnished to the CAO immediately upon the award to the qualifying country supplier. The notice shall identify:

(1) Prime contract number plus delivery order number if applicable;

(2) Total dollar value of the prime contract or delivery order;

(3) Expiration date of the prime contract or delivery order;

(4) Foreign supplier name;

(5) Number of the subcontract/purchase order for foreign supplies;

(6) Total dollar value of the subcontract for foreign supplies;

(7) Expiration date of the subcontract for foreign supplies;

(8) List of items purchased; and

(9) Certification by the purchaser of foreign supplies: I certify that all such supplies for which duty-free entry is to be claimed are intended to be delivered to the Government or incorporated in the end items to be delivered under this contract, and that duty shall be paid by the Contractor to the extent that such supplies, or any portion thereof (if not scrap or salvage) are diverted to nongovernmental use other than as a result of a competitive sale made, directed or authorized by the Contracting Officer;

(10) The qualifying country; and

(11) The scheduled delivery date(s).

(j) This clause shall not apply to purchases of qualifying country supplies in connection with this contract if (1) such qualifying country supplies are identical in nature with supplies purchased by the Contractor or any subcontractor hereunder in connection with its commercial business; and (2) it is not economical or feasible to account for such supplies so as to assure that the amount of such supplies for which duty-free entry is claimed pursuant to this clause does not exceed the amount thereof purchased in connection with this contract.

(k) The Contractor agrees to insert the substance of this clause, including this paragraph (k), in all subcontracts for supplies hereunder. Each such subcontract shall require the subcontractor to identify this contract by its contract number on any shipping documents submitted to Customs covering supplies for which duty-free entry is to be claimed pursuant to this clause. The Contractor also agrees to ensure that the name and address of the Contracting Officer administering the prime contract (name and address of the CAO cognizant of the prime contract), and its Activity Address Number (Appendix N of the DoD FAR Supplement), and the information required by (i) (1), (2) and (3) above is included in applicable subcontracts.

(End of clause)

252.225-7012 [Amended]

27. Section 252.225-7012 is amended to add the word "Rico" between the words "Puerto" and "Provided" in the first sentence of the clause.

28. Section 252.225-7014 is revised to read as follows:

252.225-7014 Duty-Free Entry—Additional Provisions.

As prescribed at 225.605, insert the following clause:

Duty-Free Entry—Additional Provisions (Aug 1984)

(a) The requirements of this clause supplement the clause of this contract entitled Duty-Free Entry, and both of these clauses apply to this contract and subcontracts, which term includes purchase orders, that involve supplies to be accorded duty-free entry whether—

(1) Placed directly with a foreign concern as a prime contract; or

(2) As a subcontractor purchase order under a contract placed with a domestic concern.

(b) Notification for Supplies Not Previously Identified. The Contractor shall send the notification required by paragraph (b)(1) of the Duty-Free Entry clause contained in this contract to the Contracting Officer administering this contract.

(c) Notification Applicable to All Foreign Supplies. In addition to any data required by paragraph (b)(1) of the Duty-Free Entry clause, the Contractor shall furnish the following for all foreign supplies to be imported pursuant to paragraph (a) or (b) of the Duty-Free Entry clause. This information must be furnished to the Contracting Officer administering the prime contract immediately upon award of any contract or subcontract involving supplies to be accorded duty-free entry.

(1) Prime contract number plus delivery order number, if applicable;

(2) Total dollar value of the prime contract or delivery order;

(3) Expiration date of the prime contract or delivery order;

(4) Foreign supplier name;

(5) Number of the subcontract/purchase order for foreign supplies;

(6) Total dollar value of the subcontract for foreign supplies;

(7) Expiration date of the subcontract for foreign supplies;

(8) List of items purchased; and

(9) Certification by the purchaser of foreign supplies; I certify that all such supplies for which duty-free entry is to be claimed are intended to be delivered to the Government or incorporated in the end items to be delivered under this contract, and that duty shall be paid by the Contractor to the extent that such supplies, or any portion thereof (if not scrap or salvage) are diverted to nongovernmental use other than as a result of a competitive sale made, directed or authorized by the Contracting Officer.

(d) *Inclusion in Subcontracts.* The Contractor agrees to incorporate the substance of this clause, including this paragraph, in any subcontract (including purchase orders) in accordance with paragraph (i) (eye) of the Duty-Free Entry clause of this contract. The Contractor agrees to ensure that the name and address of the Contracting Officer administering the prime contract (name and address of the CAO cognizant of the prime contract and its Activity Address Number (Appendix N of the DoD FAR Supplement)) and the information required by (c) (1), (2), and (3) above are included in applicable subcontracts.

(e) *Shipping Documents.* For the purpose of properly completing the shipping document instructions as required by paragraph (f) of the Duty-Free Entry clause, the Contractor shall insert Defense Contract Administration Services Region (DCASR) New York, ATTN: Customs Function, 201 Varick Street, New York, New York 10014, as the cognizant contract administration office (for paragraph (f) only) in those cases when the shipment is consigned directly to a military installation. In cases when the shipment will be consigned to other than a military installation, e.g., a domestic contractor's plant, the shipping document notation required by paragraph (f) of the clause shall be altered to insert the name and address of the Contractor, agent or broker who will prepare the customs documentation in accordance with applicable customs directives in anticipation of the execution of the Duty-Free Entry certificates. In either case, the shipping documents will contain the following items in addition to those required by paragraph (f) of the Duty-Free Entry clause:

(1) If applicable, delivery order number on the Government prime contract;

(2) Number of the subcontract/purchase order for foreign supplies, if applicable;

(3) Activity Address Number of the Contract Administration Office (CAO) actually administering the prime contract, e.g., for DCASMA Dayton, DLA8DP.

(f) *Preparation of Customs Forms.* Except for shipment consigned to a military installation, the Contractor shall prepare, or authorize an agent to prepare, any customs forms required for the entry of foreign supplies in connection with DoD contracts into the United States, its possessions, or Puerto Rico. The completed customs forms shall be submitted to the District Director of Customs with a copy of DCASR NY for execution of any required duty-free entry certificates. For shipments containing both supplies which are to be accorded duty-free entry and supplies which are not, the Contractor shall identify on the customs forms those items which are eligible for duty-free entry in accordance with the provisions of the Duty-Free Entry clause contained in this contract. Shipments consigned directly to a military installation will be released in accordance with Sections 10.101 and 10.102 of the U.S. Customs Regulations.

(g) *Exterior Markings.* The Contractor shall ensure that all exterior containers are marked in accordance with paragraph (g) of the Duty-Free Entry clause, including the following additional data:

(1) "UNITED STATES GOVERNMENT, DEPARTMENT OF DEFENSE."

(2) The Activity Address Number applicable to the contract administration office actually administering the prime contract.

(End of clause)

29. Sections 252.227-7000 through 252.227-7012 are added to read as follows:

252.227-7000 Non-Estoppel.

As prescribed at 227-7009-1, insert the following clause in patent releases, license agreements, and assignments:

Non-Estoppel (Oct 1966)

The Government reserves the right at any time to contest the enforceability, validity, scope of, or the title to any patent or patent application herein licensed without waiving or forfeiting any right under this contract.

(End of clause)

252.7001 Release of Past Infringement.

As prescribed at 227.7009-2(a), insert the following clause in patent releases, license agreements, and assignments:

Release of Past Infringement (Aug 1984)

The Contractor hereby releases each and every claim and demand which he now has or may hereafter have against the Government for the manufacture or use by or for the Government prior to the effective date of this contract, of any inventions covered by (i) any of the patents and applications for patent identified in this contract, and (ii) any other patent or application for patent owned or hereafter acquired by him, insofar as and only to the extent that such other patent or patent application covers the manufacture, use, or disposition of [description of subject matter].*

(End of clause)

*Bracketed portions of the clause may be omitted when not appropriate or not encompassed by the release as negotiated.

252.227-7002 Readjustment of Payments.

As prescribed at 227.7009-2(b), insert the following clause in patent releases, license agreements, and assignments:

Readjustment of Payments (Oct 1966)

(a) If any license, under substantially the same patents and authorizing substantially the same acts which are authorized under this contract, has been or shall hereafter be granted within the United States, on royalty terms which are more favorable to the licensee than those contained herein, the Government shall be entitled to the benefit of such more favorable terms with respect to all royalties accruing under this contract after the date such more favorable terms become effective, and the Contractor shall promptly notify the Secretary in writing of the granting of such more favorable terms.

(b) In the event any claim of any patent hereby licensed is construed or held invalid by decision of a court of competent jurisdiction, the requirement to pay royalties under this contract insofar as it arises solely by reason of such claim, and any other claim not materially different therefrom, shall be interpreted in conformity with the court's decision as to the scope of validity of such claims; *Provided*, however, that in the event such decision is modified or reversed on appeal, the requirement to pay royalties under this contract shall be interpreted in conformity with the final decision rendered on such appeal.

(End of clause)

252.227-7003 Termination.

As prescribed at 227.7009-2(c), insert the following clause in patent releases, license agreements, and assignments:

Termination (Aug 1984)

Notwithstanding any other provision of this contract, the Government shall have the right to terminate the within license, in whole or in part, by giving the Contractor not less than thirty (30) days notice in writing of the date such termination is to be effective; *Provided*, however, that such termination shall not affect the obligation of the Government to pay royalties which have accrued prior to the effective date of such termination.

(End of clause)

252.227-7004 License Grant.

As prescribed at 227.7009-3(a), insert the following clause in patent releases, license agreements, and assignments:

License Grant (Aug 1984)

(a) The Contractor hereby grants to the Government an irrevocable, nonexclusive, nontransferable, and paid up license under the following patents, applications for patent, and any patents granted on such applications, and under any patents which may issue as the result of any reissue, division or continuation thereof, to practice by or cause to be practiced for the Government throughout the world, any and all of the inventions thereunder, in the manufacture and use of any article or material, in the use of any method or process, and in the disposition of any article or material in accordance with law:

U.S. Patent No. _____
Date _____
Application Serial No. _____
Filing date _____

together with corresponding foreign patents and foreign applications for patents, insofar as the Contractor has the right to grant licenses thereunder without incurring an obligation to pay royalties or other compensation to others solely on account of such grant.

(b) No rights are granted or implied by the agreement under any other patents other than as provided above or by operation of law.

(c) Nothing contained herein shall limit any rights which the Government may have obtained by virtue of prior contracts or by operation of law or otherwise.

(End of clause)

252.227-7005 License Term.

As prescribed at 227.7009-3(b), insert one of the following clauses in patent releases, license agreements, and assignments:

(ALTERNATE I)

License Term (Aug 1984)

The license hereby granted shall remain in full force and effect for the full term of each of the patents referred to in the "License Grant" clause of this contract and any and all patents hereafter issued on applications for patent referred to in such "License Grant" clause.

(End of clause)

(ALTERNATE II)

License Term (Aug 1984)

The license hereby granted shall terminate on the —— day of ———— 19——; *Provided*, however, that said termination shall be without prejudice to the completion of any contract entered into by the Government prior to said date of termination or to the use or disposition thereafter of any articles or materials manufactured by or for the Government under this license.

(End of clause)

252.227-7006 License Grant—Running Royalty.

As prescribed at 227.7009-4(a), insert the following clause in patent releases, license agreements, and assignments:

License Grant—Running Royalty (Aug 1984)

(a) The Contractor hereby grants to the Government, as represented by the Secretary of ————, an irrevocable, nonexclusive, non transferable license under the following patents, applications for patent, and any patents granted on such applications, and under any patents which may issue as the result of any reissue, division, or continuation thereunder to practice by or cause to be practiced for the Department of ————, throughout the world, any and all of the inventions thereunder in the manufacture and use of any article or material, in the use of any method or process, and in the disposition of any article or material in accordance with law:

U.S. Patent No. _____
Date _____
Application Serial No. _____
Filing date _____

together with corresponding foreign patents and foreign applications for patent, insofar as the Contractor has the right to grant licenses thereunder without incurring an obligation to pay royalties or other compensation to others solely on account of such grant.

(b) No rights are granted or implied by the agreement under any other patents other than as provided above or by operation of law.

(c) Nothing contained herein shall limit any rights which the Government may have obtained by virtue of prior contracts or by operation of law or otherwise.

(End of clause)

252.227-7007 License Term—Running Royalty.

As prescribed at 227.7009-4(b), insert the following clause in patent releases, license agreements, and assignments:

License Term—Running Royalty (Aug 1984)

The license hereby granted shall remain in full force and effect for the full term of each of the patents referred to in the "License Grant" clause of this contract and any and all patents hereafter issued on applications for patent referred to above unless sooner terminated as elsewhere herein provided.

(End of clause)

252.227-7008 Computation of Royalties.

As prescribed at 227.7009-4(c), insert the following clause in patent releases, license agreements, and assignments:

Computation of Royalties (Aug 1984)

Subject to the conditions hereinafter stated, royalties shall accrue to the Contractor under this agreement on all articles or materials embodying, or manufactured by the use of, any or all inventions claimed under any unexpired United States patent licensed herein, upon acceptance thereof by the Department of ————, at the rate of —— percent of the net selling price of such articles or materials (amount) per (name of item)* whether manufactured by the Government or procured under a fixed price contract, and at the rate of (amount) per (name of item) acquired or manufactured by a Contractor performing under a cost-reimbursement contract. With respect to such articles or materials made by the Department of ————, "net selling price," as used in this paragraph, means the actual cost of direct labor and materials without allowance for overhead and supervision.

(End of clause)

*Use bracketed matter as appropriate.

252.227-7009 Reporting and Payment of Royalties.

As prescribed at 227.7009-4(d), insert the following clause in patent releases, license agreements, and assignments:

Reporting and Payment of Royalties (Aug 1984)

(a) The (procuring office) shall, on or before the sixtieth (60th) day next following the end of each yearly* period ending ——— during which royalties have accrued under this license, deliver to the Contractor, subject to military security regulations, a report in writing furnishing necessary information relative to royalties which have accrued under this contract.

(b) Royalties which have accrued under this contract during the yearly* period ending ——— shall be paid to the Contractor (if appropriations therefor are available or become available) within sixty (60) days following the receipt of a voucher from the Contractor submitted in accordance with the report referred to in (a) of this clause; *Provided*, that the Government shall not be obligated to pay, in respect of any such yearly period, on account of the combined royalties accruing under this contract directly and under any separate licenses granted pursuant to the "License to Other Government Agencies" clause (if any) of this contract, an amount greater than —— dollars ($——), and if such combined royalties exceed the said maximum yearly obligation, each department or agency shall pay a pro rata share of the said maximum yearly obligation as determined by the proportion its accrued royalties bear to the combined total of accrued royalties.

(End of clause)

*The frequency, date, and length of reporting periods should be selected as appropriate to the particular circumstances of the contract.

252.227-7010 License to Other Government Agencies.

As prescribed at 227-7009-4(e), insert the following clause in patent releases, license agreements, and assignments:

License to Other Government Agencies (Aug 1984)

The Contractor hereby agrees to grant a separate license under the patents, applications for patents, and improvements referred to in the "License Grant" clause of this contract, on the same terms and conditions as appear in this license contract, to any other department or agency of the Government at any time on receipt of a written request for such a license from such department or agency; *Provided*, however, that as to royalties which accrue under such separate licenses, reports and payments shall be made directly to the Contractor by each such other department or agency pursuant to the terms of such separate licenses. The Contractor shall notify the Licensee hereunder promptly upon receipt of any request for license hereunder.

(End of clause)

252.227-7011 Assignments.

As prescribed at 227.7010, insert the following clause in assignments:

Assignment (Aug 1984)

The Contractor hereby conveys to the Government, as represented by the Secretary of ———, the entire right, title, and interest in and to the following patents (and applications for patent), in and to the inventions thereof, and in and to all claims and demands whatsoever for infringement thereof heretofore accrued, the same to be held and enjoyed by the Government through its duly appointed representatives to the full end of the term of said patents (and to the full end of the terms of all patents which may be granted upon said applications for patent, or upon any division, continuation-in-part or continuation thereof):

U.S. Patent No. ———
Date ———
Name of Inventor ———
U.S. Application Serial No. ———
Filing Date ———
Name of Inventor ———

together with corresponding foreign patents and applications for patent insofar as the Contractor has the right to assign the same.

(End of clause)

252.227-7012 Patent License and Release Contract.

As prescribed at 227.7012, insert the following clause in patent releases, license, agreements, and assignments:

——— (Contract No.)

Patent License and Release Contract (Aug 1984)

This Contract is effective as of the —— day of ——— 19——, between the United States of America (hereinafter called the Government), and ——— (hereinafter called the Contractor), a corporation organized and existing under the laws of the State of ———), (a partnership consisting of ———), (an individual trading as ———), of the City of ——— in the State of ———.

Whereas, Contractor warrants that he has the right to grant the within license and release, and the Government desires to procure the same, and

Whereas, this contract is authorized by law, including 10 U.S.C. 2386.

Now Therefore, in consideration of the grant, release and agreements hereinafter recited, the parties have agreed as follows:

Article 1. License Grant.*

(Insert the clause at 252.227-7004 for a paid up license, or the clause at 252.227-7006 for a license on a running royalty basis.)

Article 2. License Term.*

(Insert the appropriate alternative clause at 252.227-7005 for a paid up license, or the clause at 252.227-7007 for a license on a running royalty basis.)

Article 3. Release of Past Infringement.

(Insert the clause at 252.227-7001.)

Article 4. Non-Estoppel.

(Insert the clause at 252.227-7000.)

Article 5. Payment.

The Contractor shall be paid the sum of —— Dollars ($ ——) in full compensation for the rights herein granted and agreed to be granted. (For a license on a running royalty basis, insert the clause at 252.227-7006 in accordance with the instructions therein, and also the clause as specified at 252.227-7002 and 252.227-7009 and 252.227-7010.)

Article 6. Officials Not to Benefit.

(Insert the clause at FAR 52.203-1.)

Article 7. Covenant Against Contingent Fees.

(Insert the clause at FAR 52.203-5.)

Article 8. Assignment of Claims.

(Insert the clause at FAR 52.232-23.)

Article 9. Gratuities.

(Insert the clause at FAR 52.203-3.)

Article 10. Disputes.

(Insert the clause at FAR 52.223-1.)

Article 11. Successors and Assignees.

This Agreement shall be binding upon the Contractor, his successors** and assignees, but nothing contained in this Article shall authorize an assignment of any claim against the Government otherwise than as permitted by law.

In Witness Whereof, the parties hereto have executed this contract.

The United States of America.

By ———
Date ———
(Signature and Title of Contractor)

———

By ———
Date ———

*If only a release is procured, delete this article; if an assignment is procured, use the clause at 252.227-7011.

**When the Contractor is an individual, change "successors" to "heirs;" if a partnership modify appropriately.

252.227-7013 [Amended]

30. Section 252.227-7013 is amended by redesignating the existing paragraphs (e) and (f) of the clause to read "(f)" and "(g)" respectively, adding a sentence at the end of paragraph (d)(2), and adding paragraph (e) to read as follows:

252.227-7013 Rights in Technical Data and Computer Software.

* * * * *

(d) * * *

(2) * * * In either case, the Government shall give written notice to the Contractor of the action taken.

(e) *Relation to Patents.* Nothing contained in this clause shall imply a license to the Government under any patent or be construed as affecting the scope of any license or other right otherwise granted to the Government under any patent.

* * * * *

252.227-7025 [Amended]

31. Section 252.227-7025 is amended by inserting the word "not" between the words "does" and "include" in the last sentence of the undesignated paragraph entitled "Technical Data" in paragraph (a) of the clause.

32. Section 252.236–7005 is revised to read as follows:

252.236–7005 Salvage Materials and Equipment.

As prescribed at 236.572–2, insert the following clause:

Salvage Materials and Equipment (Jan 1965)

The Contractor shall maintain adequate property control records for all materials or equipment specified to be salvaged. These records may be in accordance with the Contractor's system of property control, if approved by the property administrator. The Contractor shall be responsible for the adequate storage and protection of all salvaged materials and equipment and shall replace, at no cost to the Government, all salvage materials and equipment which are broken or damaged during salvage operations as the result of his negligence, or while in his care.

(End of clause)

33. Section 252.236–7008 is amended by adding paragraph (a)(ii) to the clause to read as follows:

252.236–7008 Superintendence of Subcontractors.

* * * * *

(a) * * *

(i) * * *

(ii) If 70% or more of the value of the work is subcontracted, the Contractor shall be required to furnish two such superintendents to be responsible for coordinating, directing, inspecting and expediting the subcontract work.

* * * * *

34. Section 252.236–7011 is amended by inserting the word "landing" between the words "the" and "areas" in paragraph (e)(1) of the clause, and adding a footnote at the end of the clause to read as follows:

252.236–7011 Airfield Safety Precautions.

* * * * *

(End of clause)

*At some airfields the width of the primary surfaces is 1,500 feet (750 feet on each side of the runway centerline). In such instances, substitute the proper width in the clause.

[FR Doc. 85–7208 Filed 3–27–85; 8:45 am]

BILLING CODE 3810–01–M

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48 CFR Parts 202, 204, 208, 212, 217, 228, 230, 236, 242, 243, and 252

[Defense Acquisition Circular 84–4]

DoD FAR Supplement

AGENCY: Department of Defense.

ACTION: Final rule.

SUMMARY: Defense Acquisition Circular (DAC) 84–4 amends the DoD FAR Supplement with respect to change of contracting activity designation, contract reporting, high carbon ferrochrome (HCF), master agreement for repair and alteration of vessels; and patents, data, and copyrights; and provides a statement regarding limitations contained in the DoD FY 1984 Appropriation Act with respect to termination liabilities.

EFFECTIVE DATE: April 1, 1984.

FOR FURTHER INFORMATION CONTACT: Charles W. Lloyd, Executive Secretary, Defense Acquisition Regulatory Council, OUSDRE(AM) (DARS), OUSDRE(M&RS), Room 3D139, Pentagon, Washington, D.C. 20301–3062, telephone (202) 697–7268.

SUPPLEMENTARY INFORMATION:

Background

The DoD FAR Supplement is codified in Chapter 2, Title 48 of the Code of Federal Regulations.

The October 1, 1984 revision of the CFR is the most recent edition of that title. It reflects amendments to the 1984 edition of the DoD FAR Supplement made by Defense Acquisition Circulars 84–1 through 84–3.

Interested parties may submit proposed revisions to this Supplement directly to the DAR Council.

List of Subjects in 48 CFR Ch. 2

Government procurement.

James T. Brannan,

Director, Defense Acquisition Regulatory Council.

Defense Acquisition Circular

[Number 84–4]

March 23, 1984.

All DoD FAR Supplement and other directive material contained in this Defense Acquisition Circular is effective April 1, 1984.

Defense Acquisition Circular (DAC) 84–4 amends the DoD FAR Supplement and prescribes procedures to be followed. The following is a summary of the amendments and procedures:

Item I—DoD Appropriation Act—Termination Liabilities

Contracting activities engaged in lease, charter, or similar agreements for vessels, aircraft or vehicles should be aware of the following limitations contained in the DoD FY 1984 Appropriation Act:

Sec. 778. No funds available to the Department of Defense during the current fiscal year may be used to enter into any contract with a term of three years or more, inclusive of any option for contract extension or renewal, for any vessels, aircraft or vehicles, through a lease, charter, or similar agreement, that imposes an estimated termination liability (excluding the estimated value of the leased item at the time of termination) on the Government exceeding 50 per centum of the original purchase value of the vessel, aircraft, or vehicle involved for which the Congress has not specifically provided authority in an appropriation act for the obligation of 10 per centum of such termination liability.

Item II—Change of Contracting Activity Designation

Section 202.1(a) is revised to substitute "U.S. Army Ballistic Missile Defense Organization" for "U.S. Army Ballistic Missile Defense Systems Command," in the list of designated contracting activities for the Army. This revises the designation made in the DoD FAR Supplement at the time of its initial printing.

Item III—Subpart 204.6, Contract Reporting

Subpart 204.6 has been revised in its entirety to make corrections to misspelled words and make other nonsubstantive corrections as dicovered in the initial publication of the DoD FAR Supplement. Section 204.671–5 is corrected to include proper references. Section 204.672–5 is corrected to include coverage omitted at publication of original text.

Item IV—Subpart 208.76, High Carbon Ferrochrome (HCF)

A new Subpart 208.76 has been developed which establishes procedures for restrictive procurement of high carbon ferrochrome used by DoD. The related clause is included in Part 252.

Item V—Subpart 217.71, Master Agreement for Repair and Alteration of Vessels

A new Subpart 217.71 is added to provide guidance for use of the Master Agreement for Repair and Alteration of Vessels. Required clauses and clauses to be used as applicable, prescribed at 217.7104, are included in Part 252.

Item VI—Deletion of Subpart 236.72, Patents, Data, and Copyrights

To conform to FAR implementation guidance which was Departmentally directed by the DAR Council at its meeting of March 7, 1984, Subpart 236.72 is deleted from the Supplement in its entirety. Federal Acquisition Circular (FAC) No. 1 to the FAR contains substantial coverage on patent policies, procedures and clauses, thereby precluding the need for such coverage in the DoD FAR Supplement.

Item VII—Editorial Corrections

Section 212.302 is amended for clarity.

Section 230.7106 is revised to add the words "is not" which were inadvertently omitted from the DoD FAR Supplement at the time of its initial publication.

Adoption of Amendments

Therefore, the DoD FAR Supplement contained in 48 CFR Chapter 2 is amended as set forth below.

1. The authority for 48 CFR Chapter 2 reads as follows:

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

PART 202—DEFINITIONS OF WORDS AND TERMS

202.1 [Amended]

2. In section 202.1, paragraph (a) is amended by revising the entry reading "U.S. Army Ballistic Missile Defense Systems Command" to read "U.S. Army Ballistic Missile Defense Organization."

PART 204—ADMINISTRATIVE MATTERS

3. Section 204.671–5 is amended by revising "Code 8" in paragraph (c)(2), by revising the second sentence of paragraph (d)(1)(v), by revising the reference in paragraph (d)(13)(i) reading "7–104.35 (a) or (b)" to read "252.232–16" and by revising the reference in paragraph (d)(13)(ii) reading "7–104.35" to read "252.232–7004" as follows:

204.671–5 Instructions for Completion of DD Form 350.

* * * * *

(c) * * *

(2) * * *

Code	Reason
* * * * *	
8	procurement for which a foreign government reimburses the Department for the cost of the procurement of the property, supplies, or services for such government and only one source is available, or the terms of an international agreement or treaty between the United States and a foreign government authorize or require that all such procurement shall be from sources specified within such international agreement or treaty;
* * * * *	

(d) * * *

(1) * * *

(v) * * * A nonprofit institution is defined as any corporation, foundation, trust, or institution not organized for profit, no part of the net earnings of which inure to the benefit of any private shareholder or individual. * * *

4. Section 204.672–5 is amended by revising paragraph (c)(2) and adding paragraph (c)(3) to read as follows:

204.672–5 Instructions for Completion of the DD Form 1057.

* * * * *

(c) * * *

(2) Enter on Line 3.a., the number and dollar value of actions of $10,000 or less which were negotiated under 10 U.S.C. 2304(a)(3) and are small business-small purchase set-asides in accordance with FAR 13.105.

(3) Enter on Line 3.b., the number and dollar value of actions of $25,000 or less which were negotiated under 10 U.S.C. 2304(a)(3) and are not small business-small purchase set-asides in accordance with FAR 13.105.

* * * * *

204.673–5 [Amended]

5. Section 204.673–5 is amended by revising the figure in paragraph (n)(1) reading "$500,400.49" to read "$500,500.49"

PART 208—REQUIRED SOURCES OF SUPPLIES AND SERVICES

6. Subpart 208.76, consisting of sections 208.7601 through 208.7603, is added to read as follows:

Subpart 208.76—High Carbon Ferrochrome (HCF)

208.7601 Definitions.

"U.S. manufacture" means high carbon ferrochrome (HCF) manufactured in the United States, regardless of the source of the chrome ore. HCF means ferrochromium alloy that contains three percent or more carbon and 50 percent or more chromium.

208.7602 Policy.

It has been determined that defense requirements for HCF must be acquired from U.S. manufacturing sources (to the maximum extent practical). Accordingly, all acquisitions of HCF and all acquisitions of items containing HCF shall include, except as provided in 208.7603 below, a requirement that such HCF and HCF incorporated in items delivered under the contract be of U.S. manufacture only.

208.7603 Procedures.

(a) The clause set forth at 252.208–7003, Required Sources of HCF, shall be inserted in all contracts except:

(1) When the Contracting Officer knows that the item being acquired does not contain HCF;

(2) In small purchases using small purchase procedures other than in purchase of HCF as the end item;

(3) Purchase of standard commercial end items, other than purchases of HCF as the end item, or steel plate, sheet or ingots and the like that incorporate HCF;

(4) Purchases made overseas for overseas use; or

(5) In cases where we have memoranda of understanding (MOU)/Offset agreements with our NATO Allies and non-domestic HCF is incorporated in the end item being furnished in support of defense contracts.

(b) Subsequent to the award of a contract, the Contracting Officer may waive the requirements set forth at 252.208–7003, Required Sources for HCF. Such waiver may be granted on a case-by-case basis when adequate U.S. supplies of HCF are not available to meet DoD needs on a timely basis. Such waivers will only be granted to the extent and for the period of time necessary to permit the contractor to acquire and use U.S. HCF.

PART 212—CONTRACT DELIVERY OR PERFORMANCE

7. Section 212.302(S–70) is amended by revising the last sentence to read as follows:

212.302 General.

(S–70) DoD Priorities and Allocations Manual. * * * Authorized deviations to the priorities and allocations rules and regulations are published in the Manual.

PART 217—SPECIAL CONTRACTING METHODS

8. Subpart 217.71, consisting of sections 217.7100 through 217.7104, is added to read as follows:

Subpart 217.71—Master Agreement For Repair and Alteration of Vessels

217.7100 Scope of Subpart.

Acquisition policies and procedures applicable to the Master Agreement for Repair and Alteration of Vessels are set forth in this part.

217.7101 Definitions.

(a) *Master Agreement for Repair and Alteration of Vessels*—The Master Agreement is not a contract and contains no statement of work. It is a written compilation of both required clauses and clauses used as applicable which establishes in advance the terms and conditions upon which a contractor will effect repairs, alterations, and/or additions to vessels, under the provisions of job orders awarded by contracting activities from time to time. The clauses comprising the Master Agreement for Repair and Alteration of Vessels are set forth in 217.7104.

(b) *Job Order*—A fixed price contract entered into with a contractor which has previously executed a Master Agreement for Repair and Alteration of Vessels. The job order applies to a

specific acquisition and sets forth the scope of work, price, delivery date, and additional matters peculiar to the requirements of the specific acquisition. The job order incorporates by reference or appends the clauses of the Master Agreement as required or applicable.

217.7102 Policy.

(a) The Master Agreement for Repair and Alteration of Vessels shall be entered into with all prospective contractors located within the United States, its possessions, or Puerto Rico, which request ship repair work and which possess the organization and facilities to perform such work satisfactorily. Issuance of the Master Agreement for Repair and Alteration of Vessels does not constitute approval of the contractor's facilities for any particular acquisition.

(b) When using the Master Agreement for Repair and Alteration of Vessels in work with prospective contractors located outside the United States, its possessions, or Puerto Rico, the applicable portions of 217.7104 shall be used as a guide.

(c) The Government may from time to time desire to issue job orders under the Master Agreement for Repair and Alteration of Vessels to effect repairs, alterations, and/or additions to vessels belonging to foreign governments. Vessels of a foreign government will be treated as if they were vessels of the United States Government, whenever so requested by the contracting officer. The IFB, RFP, or RFQ and job order will identify the vessel and the foreign government.

217.7103 Procedures.

217.7103-1 Content and Format.

The Master Agreement for Repair and Alteration of Vessels shall contain a set of "Contract Clauses." These contract clauses shall be classified into two groups. The first group, identified as Part 217.7104(a), shall include all clauses made mandatory by statute, executive order, or the Federal Acquisition Regulation, and shall be incorporated into job orders awarded under the Master Agreement for Repair and Alteration of Vessels. The second group, identified as Part 217.7104(b), shall include those clauses to be incorporated into job orders awarded under the Master Agreement for Repair and Alteration of Vessels, as applicable. The format set forth below may be adapted to fit specific circumstances.

MASTER AGREEMENT FOR REPAIR AND ALTERATION OF VESSELS

This Agreement is entered into this — day of ———, 19—, by the United States of America, hereinafter called the "Government," represented by the Contracting Officer, ————, and ————, a corporation organized and existing under the laws of the State of ———, hereinafter called the "Contractor." The clauses of the Federal Acquisition Regulation (FAR) and the Department of Defense (DoD) FAR Supplement, as set forth herein, have been agreed upon by the parties hereto for use in Invitations for Bids, Requests for Proposals, Requests for Quotations, and/or Job Orders to effect repairs, alterations, and/or additions to vessels, issued by the Government from time to time under this Agreement. It is further agreed that the clauses set forth in DoD FAR Supplement 217.7104(a) are mandatory and shall, by reference or attachment, be incorporated in each job order awarded pursuant to this Agreement.

This Agreement may be cancelled by either party upon thirty (30) days written notice without affecting rights and liabilities under any job order existing at the time of cancellation; *Provided, however,* that the Contractor shall perform and complete under the terms hereof all work covered by any job order entered into hereunder prior to the effective date of cancellation, as such job order may be modified by any change order issued under clause 252.217-7101 entitled *Changes*, hereof.

This Agreement may be modified only by mutual agreement of the parties. However, the Government has the right to cancel this Agreement upon thirty (30) days written notice at any time the parties fail to agree upon any modification to this Agreement which is required by statute, executive order, the Federal Acquisition Regulation, or the DoD FAR Supplement. A modification of this Agreement shall not affect any job order in existence at the time of modification, unless the parties so agree.

The rights and obligations of the parties to this Agreement shall be subject to and governed by the provisions of this Agreement, the provisions of job orders issued hereunder, and the drawings, design plans, and specifications. To the extent of any inconsistency between this Agreement and any job order, including any drawings, design plans, and specifications, the provisions of this Agreement shall govern.

IN WITNESS WHEREOF, the parties have executed this Agreement as of the day and year first above written.

THE UNITED STATES OF AMERICA

By _____
(Contracting Officer)

_____
(Contractor)

By _____
(Title)

217.7103-2 Period of Agreement.

Either party to the Agreement shall have the right to cancel it without affecting the rights and liabilities under any job order in existence at the time of cancellation by giving 30 days written notice; *Provided,* however, that the contractor shall perform and complete under the terms thereof all work covered by any job order, and any modifications thereto, entered into prior to the effective date of cancellation. The Master Agreement for Repair and Alteration of Vessels will remain in force until cancelled by either party thereto.

217.7103-3 Inviting Bids, Proposals, or Quotations for Job Orders.

(a) When a requirement arises for the type of work covered by the Master Agreement for Repair and Alteration of Vessels within the United States, bids, proposals or quotations will be solicited from prospective contractors which have previously executed a Master Agreement for Repair and Alteration of Vessels and from prospective contractors which possess the necessary qualifications to perform the work and agree to execute a Master Agreement for Repair and Alteration of Vessels before award of a job order.

(b) The contracting officer shall ensure that solicitations are prepared in the Uniform Contract Format and in accordance with FAR Part 14, Subpart 14.2 or Part 15, Subpart 15.4 as applicable. Solicitations shall include the clauses in 217.7104(a) and, as applicable, the clauses in 217.7104(b). Whenever the Government shall invite the contractor to submit a bid or proposal for the repair, completion, alteration of or addition to a vessel, the contracting officer shall notify the contractor in reasonable detail of (i) the nature of the work to be performed, (ii) the date the vessel will be available to the contractor, and (iii) the date the work is to be completed. Whenever bulk ammunition is aboard the vessel, the notice shall so state. Unless the notice otherwise states, bids or proposals shall be submitted on the basis that the work will be performed at the contractor's site.

(c) In the event that the contractor is willing and able to perform the work, the contractor, where practicable, shall be afforded an opportunity to inspect the items of work to be accomplished on such vessel, and the contractor shall submit a bid, proposal, or quotation as requested by the contracting officer for the performance of the work as set forth in the solicitation. If the contracting officer requests the contractor to negotiate, the contractor shall submit a proposal which shall include a breakdown of the price in such form and supported by such reasonable detail as the contracting officer may request, but in any case indicating at a minimum the amount proposed for (i) direct labor, (ii) material, (iii) overhead, and (iv) contingencies and profit.

217.7103-4 Pre-Award Survey.

In addition to the procedures set forth in FAR 9.104 for making the determination called for by FAR 9.100, the contracting officer may make, before awarding a job order, a pre-award survey of the contractor's operations, including any analysis of the contractor's proposed subcontractors, to insure the adequacy and suitability of facilities, including safety standards and adequacy of fire protection, adequacy of facilities for the health, comfort, and welfare of the crew of the vessel, and adequate plant protection to safeguard the vessel and Government property.

217.7103-5 Award of a Job Order.

After the receipt and evaluation of bids or proposals and selection of the contractor, the price for the work and other pertinent data shall be set forth in a job order (SF 26, SF 33). This job order, by its terms, is subject to the provisions of the Master Agreement for Repair and Alteration of Vessels. When the acquisition has been formally advertised, issuance of a job order, signed by the contracting officer only, constitutes an award. When the procurement has been negotiated, the job order must also be signed by the contractor and returned to the contracting officer.

217.7103-6 Emergency Work.

Under the following circumstances, the contracting officer, without inviting bids or proposals, may issue a written order for work to a contractor who has previously executed a Master Agreement for Repair and Alteration of Vessels: (i) When a vessel, its cargo, or stores would be endangered by delay in the performance of necessary repair work, or (ii) when military necessity requires immediate work on a vessel. As soon as practicable after the issuance of such an order, the parties are required by the Master Agreement for Repair and Alteration of Vessels to negotiate a price for the work. When agreement is reached upon a price, the contracting officer will issue a job order pricing the work.

217.7103-7 Repair Costs not Readily Ascertainable.

If the nature of any repairs is such that their extent and probable costs are not readily ascertainable, the contracting officer may issue a job order, on a negotiated or formally advertised basis, to determine the nature and extent of required repairs. The job order shall provide that upon such determination, the contractor, if requested by the contracting officer, shall negotiate prices for the performance of such work as the contracting officer may deem necessary to accomplish the repairs. The prices so agreed upon shall be set forth in a modification to the job order.

217.7103-8 Modification of Master Agreements for Repair and Alteration of Vessels.

Whenever the Federal Acquisition Regulation and/or the DoD FAR Supplement is revised, the Master Agreement shall also be revised to incorporate all changes made necessary by the revision.

217.7104 Contract Clauses.

(a) The contracting officer shall insert the following required clauses in all job orders awarded under the Master Agreement for Repair and Alteration of Vessels:

(1) 252.217-7100 Definitions.
(2) 252.217-7101 Changes.
(3) 252.217-7102 Extras.
(4) 252.217-7103 Job Orders and Compensation.
(5) 252.217-7104 Inspection and manner of doing work.
(6) 252.217-7105 Title.
(7) 252.217-7106 Payments.
(8) 252.217-7107 Assignment of Claims.
(9) 252.217-7108 Bonds.
(10) 252.217-7109 Federal, State, Local and Foreign Taxes.
(11) 252.217-7110 Default.
(12) 252.217-7111 Disputes.
(13) 252.217-7112 Performance.
(14) 252.217-7113 Access to Vessel.
(15) 252.217-7114 Certain Communist Areas.
(16) 252.217-7115 Contract Work Hours and Safety Standards Act—Overtime Compensation.
(17) 252.217-7116 Walsh-Healey Public Contracts Act.
(18) 252.217-7117 Equal Opportunity Clause.
(19) 252.217-7118 Officials Not to Benefit.
(20) 252.217-7119 Covenant Against Contingent Fees.
(21) 252.217-7120 Termination for Convenience of the Government.
(22) 252.217-7121
(23) 252.217-7122
(24) 252.217-7123 Responsibility for Inspection.
(25) 252.217-7124 Liability and Insurance.
(26) 252.217-7125 Pricing of Adjustments.
(27) 252.217-7126 Affirmative Action for Disabled Veterans and Veterans of the Vietnam Era.
(28) 252.217-7127 Affirmative Action for Handicapped Workers.
(29) 252.217-7128 Clean Air and Water.
(30) 252.217-7129 Invoices.
(31) 252.217-7130 Guarantees.
(32) 252.217-7131 Discharge of Liens.
(33) 252.217-7132 Department of Labor Safety and Health Regulations for Ship Repairing.

(b) The Contracting Officer shall insert the following clauses in job orders awarded under the Master Agreement for Repair and Alteration of Vessels as applicable.

(1) 252.217-7200 Workmen's Compensation and War Hazard Insurance Overseas.
(2) 252.217-7201 Buy American Act and the Balance of Payments Program.
(3) 252.217-7202 Notice to the Government of Labor Disputes.
(4) 252.217-7203
(5) 252.217-7204
(6) 252.217-7205 Contract Schedule Subline Items Not Separately Priced.
(7) 252.217-7206
(8) 252.217-7207
(9) 252.217-7208 Military Security Requirements.
(10) 252.217-7209 Utilization of Small Business and Small Disadvantaged Business Concerns.
(11) 252.217-7210 Examination of Records by Comptroller General.
(12) 252.217-7211 Gratuities.
(13) 252.217-7212 Convict Labor.
(14) 252.217-7213 Priorities, Allocations, and Allotments.
(15) 252.217-7214 Utilization of Labor Surplus Area Concerns.
(16) 252.217-7215 Limitation on Withholding of Payments.
(17) 252.217-7216 Equal Opportunity Pre-Award Clearance of Subcontracts.
(18) 252.217-7217 Subcontracts.
(19) 252.217-7218 Government Property.
(20) 252.217-7219 Federal, State, Local, and Foreign Taxes.
(21) 252.217-7220 Quality Program.
(22) 252.217-7221 Price Reduction for Defective Cost or Pricing Data.
(23) 252.217-7222 Duty-Free Entry.
(24) 252.217-7223 Duty-Free Entry of Qualifying Country Supplies.
(25) 252.217-7224 Inspection System.
(26) 252.217-7225 Advance Payments.
(27) 252.217-7226
(28) 252.217-7227 Required Sources for Miniature and Instrument Ball Bearings.
(29) 252.217-7228 Interest.
(30) 252.217-7229 Competition in Subcontracting.
(31) 252.217-7230 Audit by Department of Defense.
(32) 252.217-7231 Subcontractor Cost or Pricing Data.

(33) 252.217-7232 Value Engineering.
(34) 252.217-7233 Reserved.
(35) 252.217-7234 Required Sources for Precision Components for Mechanical Time Devices.
(36) 252.217-7235 New Material.
(37) 252.217-7236 Government Surplus.
(38) 252.217-7237 Utilization of Women-Owned Business Concerns (Over $10,000).
(39) 252.217-7238 Material Inspection and Receiving Report.
(40) 252.217-7239 Protection of Government Buildings, Equipment and Vegetation.
(41) 252.217-7240 Government Delay of Work.
(42) 252.217-7241 Distribution of Defense Subcontracts Placed Overseas.
(43) 252.217-7242 Safety Precautions for Ammunition and Explosives.
(44) 252.217-7243 Cost Accounting Standards.
(45) 252.217-7244 Notification of Changes.
(46) 252.217-7245 Engineering Change Proposals (ECP's).
(47) 252.217-7246 Change Order Accounting.
(48) 252.217-7247 Contracts Conditioned Upon the Availability of Funds.
(49) 252.217-7248 Preference for Domestic Specialty Metals.
(50) 252.217-7249 Preference for United States-Flag Air Carriers.
(51) 252.217-7250 Exclusionary Policies and Practices of Foreign Governments.
(52) 252.217-7251 Hazardous Material Identification and Material Safety Data.
(53) 252.217-7252 Certification of Requests for Adjustment or Relief Exceeding $100,000.
(54) 252.217-7253 Qualifying Country Sources as Subcontractors.
(55) 252.217-7254 Stop Work Orders.

PART 228—BONDS AND INSURANCE

9. Section 228.7102 is amended by revising paragraph (a)(2) to read as follows:

228.7102 Safety Precautions for Ammunition and Explosives.

(a) * * *

(2) flammable liquids, acids or other chemicals having fire or explosive characteristics unless such chemicals are intended for initiation, propulsion or detonation as an integral or component part of an ammunition or explosive end item or weapon system.

* * * * *

PART 230—COST ACCOUNTING STANDARDS

10. Section 230.7106 is revised to read as follows:

230.7106 Preaward Capital Employed Application.

An offset to the profit objectives as set forth in FAR 15.9 is not required for CAS 417 cost of money.

PART 236—CONSTRUCTION AND ARCHITECT-ENGINEER CONTRACTS

236.7200 through 236.7205-3 [Removed]

11. Subpart 236.72, consisting of sections 236.7200 through 236.7205-3, is removed.

PART 242—CONTRACT ADMINISTRATION

12. Section 242.1402 is amended by revising the last sentence of paragraph (a)(2)(S-70) to read as follows:

242.1402 Volume Movements Within the Continental United States.

* * * * *

(a)(2)(S-70) * * * The transportation office will review the contracts and report planned volume movements in accordance with Chapter 201 of the Military Traffic Management Regulation (AR 55-355, NAVSUP INST 4600.70, AFM 75-2, MCO P4600 14A, DLAR 4500.3) (MTMR).

* * * * *

PART 243—CONTRACT MODIFICATIONS

243.301 [Amended]

13. Section 243.301 is amended by revising the words "Block 12" appearing in the undesignated paragraph following paragraph (a)(2)(ii)(E)*b.* to read "Item 14."

PART 252—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

14. Section 252.208-7003 is added to read as follows:

252.208-7003 Required Sources for High Carbon Ferrochrome (HCF).

As prescribed at 208.7603(a), insert the following clause:

REQUIRED SOURCES FOR HIGH CARBON FERROCHROME (APR 1984)

(a) For the purpose of this clause: "U.S. manufacture" means high carbon ferrochrome manufactured in the United States regardless of source of the chrome ore. HCF means ferrochrome alloy that contains three percent or more carbon and 50 percent or more chromium.

(b) The Contractor agrees that end items, components and processed materials thereof delivered under this contract shall contain HCF of U.S. manufacture only.

(c) The Contractor agrees to insert this clause, including this paragraph (c), in every subcontract and purchase order issued in performance of this contract, unless he knows that the item being purchased contains no HCF.

(d) The Contractor agrees to retain until the expiration of three (3) years from the date of final payment under this contract and to make available during such period, upon request of the Contracting Officer, records showing compliance with this clause.

(e) The requirement for delivery in (b) above may be waived in whole or in part on a case-by-case basis by the Contracting Officer when such waiver is determined to be in the Government's interest and it meets the provisions of Subpart 208.76 of the DoD FAR Supplement.

(f) The provisions of this clause do not apply to the Contractor when he obtains an end item in support of DoD Memoranda of Understanding (MOU)/offset agreements with NATO Allies and nondomestic HCF is incorporated in the end item being furnished in support of the defense contract.

(g) The Contractor or subcontractor that uses HCF to produce end items, components or processed material is not required to keep its inventory of U.S. versus foreign produced HCF separate for storage or control purposes. However, Contractor or subcontractor must be able to show (when requested by the Contracting Officer) that U.S. HCF in adequate quantities has been procured in support of the defense contract when required end items, components or processed material incorporate HCF in the manufacturing process.

(End of clause)

15. Sections 252.217-7100 through 252.217-7254 are added to read as follows:

252.217-7100 Definitions.

As prescribed at 217.7104(a), insert FAR clause 52.202-1 (APR 1984).

252.217-7101 Changes.

As prescribed at 217.7104(a), insert the following clause:

CHANGES (APR 1982)

The Contracting Officer may at any time, by written change order, and without notice to the sureties, make changes within the general scope of any job order issued under this agreement in (i) drawings, designs, plans and specifications, (ii) work itemized in any job order, (iii) place of performance of the work, and (iv) time of commencement or completion of the work, and may otherwise vary the requirements of the job order within the general scope thereof. If any such change causes an increase or decrease in the cost of, or the time required for, performance of the job order, whether changed or not changed by any such change order, an equitable adjustment shall be made in the price or in the date of completion, or both, and the job order shall be modified in writing accordingly. The price adjustment for the

change order and the adjustment in the date of completion shall be agreed upon and reduced to writing at the time the change is ordered or as soon thereafter as practicable. A request for price adjustment, together with the Contractor's written estimate of the increased cost, must be asserted within ten (10) days from the date of receipt by the Contractor of the modification of change or within such further time as the Contracting Officer may allow on request made by the Contractor during such period; *Provided, however,* that the Contracting Officer, if he decides that the facts justify such action, may receive and act upon any such request asserted at any later time prior to final payment under the job order, except that in such event no profit shall be allowed to the Contractor. Where the cost of property made obsolete or excess as result of a change is included in the Contractor's claim for adjustment, the Contracting Officer shall have the right to prescribe the manner of disposition of such property. Failure to agree to any adjustment shall be a dispute concerning a question of fact within the meaning of clause 252.217-7111 entitled DISPUTES hereof. However, nothing in this clause shall excuse the Contractor from proceeding with the job order as changed.

(End of clause)

252.217-7102 Extras.

As prescribed at 217.7104(a), insert FAR clause 52.232.11 (APR 1984).

252.217-7103 Job Orders and Compensation.

As prescribed at 217.7104(a), insert the following clause:

JOB ORDERS AND COMPENSATION (APR 1982)

(a)(1) When the Contracting Officer invites bids for the performance of work under this agreement and, upon receipt of a bid in accordance therewith from the Contractor, determines that such work should be awarded to the Contractor, the price for the work shall be set forth in a job order and such job order shall be signed and issued by the Contracting Officer. The issuance of such job order shall constitute an award of the work to the Contractor in response to his bid. Such job order shall be deemed to incorporate the terms and conditions of this agreement.

(2) When the Contracting Officer requests proposals or quotations for the performance of work under this agreement on a negotiated basis and, upon receipt of proposals or quotations in accordance therewith from the Contractor, determines that the work should be performed by the Contractor, the price for the work shall be set forth in a job order, and such job order shall be signed and issued by the Contracting Officer and signed and acknowledged by the Contractor. Such job order shall be deemed to incorporate the terms and conditions of this agreement.

(b) Whenever the Contracting Officer determines that a vessel, its cargo or stores would be endangered by delay or whenever the Contracting Officer determines that military necessity requires immediate performance of work on a vessel, the Contracting Officer may issue a written order, with which the Contractor hereby agrees to comply, to perform work on such vessel within his capabilities. As soon as practicable after the issuance of such written order, the Contracting Officer and the Contractor shall negotiate a price for the work and the Contracting Officer shall issue a job order covering such work. In connection with negotiation of a price for such work, the Contractor shall, upon request, furnish the Contracting Officer with a breakdown of costs incurred by the Contractor and an estimate of costs expected to be incurred in the performance of such work as required by the Contracting Officer. The Contractor shall keep records showing the cost of performing such work, and such records shall be available for inspection by the Government at reasonable times. Failure of the parties to agree upon the price of such work shall constitute a dispute within the meaning of clause 252.217-7111 entitled "DISPUTES." In the meantime, the Contractor shall diligently proceed with the performance of the work.

(c) If the nature of any repairs is such that their extent and probable cost are not readily ascertainable, the Contracting Officer may issue a job order, on a negotiated or formally advertised basis, for the work necessary to determine the nature and extent of repairs. Upon determining the nature and extent of repairs, the Contractor shall, if so requested by the Contracting Officer, negotiate prices at which the Contractor will perform such work as the Contracting Officer may determine necessary to accomplish the repairs, and the prices so agreed upon shall be set forth in a modification of the job order. Failure of the parties to so agree shall constitute a dispute within the meaning of clause 252.217-7111. In the meantime, the Contractor shall diligently proceed with the performance of the work specified in the job order as determined necessary by the Contracting Officer.

(End of clause)

252.217-7104 Inspection and Manner of Doing Work.

As prescribed at 217.7104(a), insert the following clause:

INSPECTION AND MANNER OF DOING WORK (APR 1982)

(a) Work shall be performed hereunder in accordance with the job order, and any drawings and specifications made a part thereof, as modified by any change order issued under clause 252.217-7101 entitled "CHANGES" hereof.

(b) Unless otherwise specifically provided in the job order, all operational practices of the Contractor and all workmanship and material, equipment and articles used in the performance of work hereunder shall be in accordance with the rules and requirements of the American Bureau of Shipping, the U.S. Coast Guard, and the Institute of Electrical and Electronic Engineers, in effect at the time of the Contractor's submission of bid (or acceptance of the job order, if negotiated), and the best commercial marine practices, except when Navy specifications are specified in the job order, in which case Naval standards of material and workmanship shall be followed. The solicitation shall prescribe the Navy standard whenever applicable, and the decision of the Contracting Officer shall be final.

(c) All material and workmanship shall be subject to inspection and test at all times during the Contractor's performance of the work to determine their quality and suitability for the purpose intended and compliance with the job order. In case any material or workmanship furnished by the Contractor is found prior to redelivery of the vessel to be defective, or not in accordance with the requirements of the job order, the Government, in addition to its rights under clause 252.217-7130 entitled "GUARANTEES" hereof, shall have the right prior to redelivery of the vessel to reject such material or workmanship, and to require its correction or replacement by the Contractor at the Contractor's cost and expense. If the Contractor fails to proceed promptly with the replacement or correction of such material or workmanship, as required by the Contracting Officer, the Government may, by contract or otherwise, replace or correct such material or workmanship and charge to the Contractor the excess cost occasioned the Government thereby. As specified in the job order, the Contractor shall provide and maintain an inspection system acceptable to the Government covering the work specified in the job order. Records of all inspection work by the Contractor shall be kept complete and available to the Government during the performance of the job order and for a period of ninety (90) days after completion of all work required by the job order.

(d) No welder shall be permitted to work in connection with repairs, completion, alterations, or additions to vessels unless he is at the time, qualified to the standards established by the U.S. Coast Guard, American Bureau of Shipping, or Department of the Navy for the type of welding being performed. Qualifications of a welder for this purpose shall be as specified in the job order. No welder shall be permitted to work on production applications of welding other than those for which he has qualified.

(e) The Contractor shall exercise reasonable care to protect the vessel from fire, and the Contractor shall maintain a reasonable system of inspection over the activities of welders, burners, riveters, painters, plumbers, and similar workers, particularly where such activities are undertaken in the vicinity of the vessel's magazines, fuel oil tanks or storerooms containing flammable materials. A reasonable number of hose lines shall be maintained by the Contractor ready for immediate use on the vessel at all times while the vessel is berthed alongside the Contractor's pier or in drydock or on a marine railway. Unless otherwise provided in the job order, the Contractor shall provide sufficient security patrols to reasonably maintain a fire watch for protection of the vessel when the ship is in the Contractor's custody. All tanks under alteration or repair shall be cleaned, washed and steamed out or otherwise made safe by the Contractor if and to the extent necessary, and the Contracting Officer shall be furnished with a "gas-free" or "safe-for-hotwork" certificate before any hot

work is done on a tank. The contents of any tanks shall be treated as Government property in accordance with clause 252.217-7218 entitled "GOVERNMENT PROPERTY." Any disposition of said contents shall be at the direction and with the concurrence of the Contracting Officer.

(f) Except as otherwise provided in the job order, when the vessel is in the custody of the Contractor or in drydock or on a marine railway and the temperature becomes as low as thirty-five degrees (35°) Fahrenheit, the Contractor shall keep all hose, pipe lines, fixtures, traps, tanks, and other receptacles on the vessel drained to avoid damage from freezing, or if this is not practicable, the vessel shall be kept heated to prevent such damage. The vessel's stern tube and propeller hubs shall be protected from frost damage by applied heat through the use of a salamander or other proper means.

(g) The work shall, whenever practicable, be performed in such manner as not to interfere with the berthing and messing of civilian or military personnel attached to the vessel, and provisions shall be made so that personnel assigned shall have access to the vessel at all times, it being understood that such personnel will not interfere with the work or the Contractor's workmen.

(h) The Government does not guarantee the correctness of the dimensions, sizes, and shapes set forth in any job order, sketches, drawings, plans or specifications prepared or furnished by the Government, except when a job order requires that the work be performed by the Contractor prior to any opportunity to make the necessary inspection. The Contractor shall be responsible for the correctness of the shape, sizes, and dimensions of part to be furnished hereunder except as above set forth and other than those furnished by the Government.

(i) The Contractor shall at all times keep the site of the work on the vessel free from accumulation of waste material or rubbish caused by his employees or the work, and at the competition of the work shall remove all rubbish from and about the site of the work and shall leave the work in its immediate vicinity "broom clean," unless more exactly specified in the job order.

(End of clause)

252.217-7105 Title.

As prescribed at 217.7104(a), insert the following clause:

TITLE (APR 1982)

Unless title to materials and equipment acquired or produced for, or allocated to, the performance of this agreement shall have vested previously in the Government by virtue of other provisions of this agreement, title to all materials and equipment to be incorporated in any vessel or part thereof, or to be placed upon any vessel or part thereof in accordance with the requirements of the job order, shall vest in the Government upon delivery thereof at the plant or such other location as may be specified in the job order for the performance of the work: *Provided*, however, that the provision of this clause or other provisions of this agreement shall not be construed as relieving the Contractor from the full responsibility for all such Contractor-furnished materials and equipment or the restoration of any damaged work or as a waiver of the right of the Government to require the fulfillment of all the terms of this agreement, it being expressly understood and agreed that the Contractor shall assume without limitation the risk of loss for any such materials and equipment until such time as all work is completed and accepted by the Government and the vessel is redelivered to the Government. Upon completion of the job order, or with the approval of the Contracting Officer at any time during the performance of the job order, all such Contractor-furnished materials and equipment not incorporated in any vessel or part thereof, or not placed upon any vessel or part thereof, in accordance with the requirements of the job order, shall become the property of the Contractor, except those materials and equipment the cost of which has been reimbursed by the Government to the Contractor.

(End of clause)

252.217-7106 Payments.

As prescribed at 217.7104(a), insert the following clause:

PAYMENTS (APR 1982)

(a) Progress payments (which are hereby defined as payments prior to completion of work in progress under any job order) shall be made as the work progresses upon the submission by the Contractor of invoices therefor in such form and with such copies as the Contracting Office may prescribe. Such invoices may be submitted semi-monthly or more frequently if expenditures by the Contractor warrant. No progress payment will be required under this clause upon invoices aggregating less than $5,000. Such progress payments shall be made upon the basis of the value, computed on the price of the job order, of labor and materials incorporated in the work, materials suitably stored at the site of the work, and preparatory work already completed, all as estimated or approved by the Contracting Officer, less the aggregate of any previous payments. For the purpose of enabling the Contracting Officer to make such estimate or give such approval, the Contractor will furnish to the Contracting Officer, upon request, such reports concerning expenditures on the work to date as may be requested.

(b) In making such progress payments, there shall be retained five percent (5%) of the amount estimated or approved by the Contracting Officer pursuant to paragraph (a) above until final completion and acceptance of all work covered by the job order.

(c) If the Contracting Officer so directs, progress payments under paragraph (a) of this clause shall be based upon the price of the job order as adjusted from time to time as a result of change orders under clause 252.217-7101 entitled CHANGES hereof. If the Contracting Officer has not directed that the increase or decrease in price as a result of any change order be taken into account for purposes of progress payments under paragraph (a) of this clause, (i) payments on account of such increases shall be made from time to time when the increase is determined pursuant to clause 252.217-1701 entitled CHANGES; and (ii) reductions on account of such decreases shall be made for the purposes of subsequent progress payments as soon as the amounts thereof are determined pursuant to clause 252.217-1701 entitled CHANGES hereof.

(d) Upon completion of the work under a job order and final inspection and acceptance thereof and upon submission of invoices therefor in such form and with such copies as the Contracting Officer may prescribe, the Contractor shall be paid for the price of the job order, as adjusted pursuant to clause 252.217-7101 entitled CHANGES hereof, less the amount of all previous payments.

(e) All materials, equipment, and other property or work in process covered by progress payments made by the Government shall upon the making of such progress payments become the sole property of the Government, and shall be subject to the provision of clause 252.217-7105 entitled TITLE hereof.

(End of clause)

252.217-7107 Assignment of Claims.

As prescribed at 217.7104(a), insert FAR clause 52.232-23 (APR 1984).

252.217-7108 Bonds.

As prescribed at 217.7104(a), insert the following clause:

BONDS (APR 1982)

(a) If the solicitation requires a bid bond to be furnished, the Contractor may furnish in lieu thereof an annual bid bond, or evidence thereof, or an annual performance and payment bond, or evidence thereof. If bonds are not required by the solicitation, the Government reserves the right at the discretion of the Contracting Officer to require a performance and payment bond, in form, amount, and with a surety acceptable to the Contracting Officer, and if said bond is in fact required, then the bid price shall be increased upon the award of a job order in an amount not to exceed the premium of a corporate surety bond; and the Contractor by submitting a bid warrants that he has not included in his price any contingency to cover the premium of said bond.

(b) If any surety upon any bond furnished in connection with a job order under this agreement becomes unacceptable to the Government, or if any such surety fails to furnish reports as to his financial condition from time to time as requested by the Government, the Contractor shall promptly furnish such additional security as may be required from time to time to protect the interests of the Government and of persons supplying labor or materials in the prosecution of the work contemplated by this agreement.

(End of clause)

252.217-7109 Federal, State, Local, and Foreign Taxes.

As prescribed at 217.7104(a), insert FAR clause(s) 52.229-3, 52.229-4, 52.229-5, 52.229-6, and 52.229-7 (APR 1984), as applicable.

252.217-7110 Default.

As prescribed at 217.7104(a), insert the following clause:

DEFAULT (APR 1982)

(a) The Government may, subject to the provisions of paragraph (b) below, by written Notice of Default to the Contractor, terminate the whole or any part of a job order in any one of the following circumstances:

(i) if the Contractor fails to make delivery of the supplies or to perform the services within the time specified in a job order or any extension thereof; or

(ii) if the Contractor fails to perform any of the other provisions of this agreement or a job order issued hereunder, or so fails to make progress as to endanger performance of the job order in accordance with its terms.

(b) Except with respect to defaults of subcontractors, the Contractor shall not be liable for any excess costs if any failure to perform the job order arises from causes beyond the control and without the fault or negligence of the Contractor. Such causes may include, but are not restricted to, acts of God or of the public enemy, acts of the Government in either its sovereign or contractual capacity, fires, floods, epidemics, quarantine restrictions, strikes, freight embargoes, and unusually severe weather; but in every case failure to perform must be beyond the control and without the fault or negligence of the Contractor. If the failure to perform is caused by the default of a subcontractor, and if such default arises out of causes beyond the control of both the Contractor and the subcontractor, and without the fault or negligence of either of them, the Contractor shall not be liable for any excess costs for failure to perform, unless the supplies or services to be furnished by the subcontractor were obtainable from other sources in sufficient time to permit the Contractor to perform the job order within the time specified therein. As used in this clause, the word "subcontractor" means subcontractor at any tier.

(c) In the event the Government terminates the job order in whole or in part as provided in paragraph (a) of this clause, the Government may, upon such terms and in such manner as the Contracting Officer may deem appropriate, arrange for the completion of the work so terminated, at such plant or plants, including that of the Contractor, as may be designated by the Contracting Officer; *Provided*, that the Contractor shall continue the performance of the job order to the extent not terminated under the provisions of this clause. If the work is to be completed at the plant, the Government may use all tools, machinery, facilities and equipment of the Contractor determined by the Contracting Officer to be necessary for that purpose. If the cost to the Government of the work procured or completed (after adjusting such cost to exclude the effect of changes in the plans and specifications made subsequent to the date of termination) exceeds the price fixed for work under the job order (after adjusting such price on account of changes in the plans and specifications made prior to the date of termination), the Contractor or his surety, if any, shall be liable for such excess.

(d) If a job order is terminated in whole or in part as provided in paragraph (a) of this clause, the Government, in addition to any other rights provided in this clause, may require the Contractor to transfer title and delivery to the Government, in the manner and to the extent directed by the Contracting Officer, (i) any completed supplies and (ii) such partially completed supplies and materials, parts, tools, dies, jigs, fixtures, plans, drawings, information and contract rights (hereinafter called "manufacturing materials") as the Contractor has specifically produced or specifically acquired for the performance of such part of the job order as has been terminated; and the Contractor shall, upon direction of the Contracting Officer, protect and preserve property in possession of the Contractor in which the Government has an interest. The Government shall pay to the Contractor the job order price for completed items of work delivered to and accepted by the Government, and the amount agreed upon by the Contractor and the Contracting Officer for manufacturing materials delivered to an accepted by the Government, and for the protection and preservation of property. Failure to agree shall be a dispute concerning a question of fact within the meaning of clause 252.217-7111 entitled DISPUTES hereof.

(e) If, after notice of termination of the job order under the provisions of this clause, it is determined for any reason that the Contractor was not in default under the provisions of this clause, or that the default was exusable under the provisions of this clause, the rights and obligations of the parties shall be the same as if the notice of termination has been issued pursuant to the clause 252.217-7120 hereof entitled TERMINATION FOR CONVENIENCE OF THE GOVERNMENT.

(f) If the Contractor fails to complete the performance of a job order within the time specified therein, or any extension thereof, the actual damage to the Government for the delay will be difficult or impossible to determine. Therefore, in lieu of actual damage, the Contractor shall pay to the Government as fixed, agreed, and liquidated damages for each calendar day of delay, the amount, if any, set forth in the job order (prorated to the nearest hour for fractional days). Alternatively, the Government may terminate the job order in whole or in part as provided in paragraph (a) of this clause, and in that event the Contractor shall be liable, in addition to the excess costs provided in paragraph (c) above, for such liquidated damages accruing until such time as the Government may reasonably obtain completion of the work described in the job order. The Contractor shall not be charged with liquidated damages when the delay arises out of causes beyond the control and without the fault or negligence of the Contractor, as defined in paragraph (b) above, and in such event, subject to the provisions of clause 252.217-7111 entitled DISPUTES of this agreement, the Contracting Officer shall ascertain the facts and the extent of the delay and shall extend the time for performance when in his judgment the findings of fact justify an extension.

(g) The rights and remedies of the Government provided in this clause shall not be exclusive and are in addition to any other rights and remedies provided by law under this agreement.

(End of clause)

252.217-7111 Disputes.

As prescribed at 217.7104(a), insert FAR clause 52.233-1 (APR 1984).

252.217-7112 Performance.

As prescribed at 217.7104(a), insert the following clause:

PERFORMANCE (APR 1982)

(a) Upon the issuance of a job order, the Contractor shall promptly commence the work specified therein and in any plans and specifications made a part thereof, and shall diligently prosecute the work to completion. The Contractor shall not commence work until the job order has been issued, except in the case of work ordered by the Contracting Officer as provided in paragraph (b) of clause 252.217-7103 entitled JOB ORDERS AND COMPENSATION hereof.

(b) The Government shall deliver the vessel described in the job order at such time and location as may be specified in the job order, and, upon completion of the work, the Government shall accept delivery of the vessel at such time and location as may be specified in the job order.

(c) The Contractor shall, without charge and without specific requirement thereof in a job order:

(i) Make available at the plant to personnel of the vessel while in drydock or on a marine railway, toilet and similar facilities acceptable to the Contracting Officer as adequate in number and sanitary standards. Supply and maintain, in such condition as the Contracting Officer may reasonably require, suitable brows and gangways from the pier, drydock or marine railway to the vessel;

(ii) Test salvage, scrap, or other ship's material of the Government resulting from performance of the work as items of Government-Furnished Property in accordance with the provisions of clause 252.217-7218 entitled GOVERNMENT PROPERTY.

(iii) Perform, or pay the cost of, any repair, reconditioning or replacement made necessary as the result of the use by the Contractor of any of the vessel's machinery, equipment or fittings, including, but not limited to, winches, pumps, rigging, or pipe lines; and

(iv) Furnish suitable offices, office equipment and telephones at or near the site of the work as the Contracting Officer reasonably requires for himself and his staff.

(d) Except as otherwise provided in the job order, the Contractor shall furnish all necessary material, labor, services, equipment, supplies, power, accessories, facilities, and such other things and services as are necessary for accomplishing the work specified in the job order subject to the right reserved in the Government under clause 252.217-7218 entitled GOVERNMENT PROPERTY.

(e) Dock and sea trials of the vessel when required by the Government shall be specified in the job order. Unless otherwise

expressly provided in the job order, during the conduct of such trials the vessel shall be under the control of the vessel's commander and crew with representatives of the Contractor and the Government on board to determine whether or not the work done by the Contractor has been satisfactorily performed. Dock and sea trials not specified by the job order which the Contractor requires for his own benefit shall not be undertaken by the Contractor without prior notice to and approval of the Contracting Officer; any such dock trials shall be conducted at the expense of the Contractor, and any such sea trials shall be conducted at the risk and expense of the Contractor. The Contractor shall provide and install all fittings and appliances which may be necessary for the dock and sea trials, to enable the representatives of the Government to determine whether the requirements of the job order, plans, and specifications have been met, and the Contractor shall be responsible for the care, installation and removal of instruments and apparatus furnished by the Government for such trials.

(End of clause)

252.217-7113 Access to Vessel.

As prescribed at 217.7104(a), insert the following clause:

ACCESS TO VESSEL (MAY 1983)

(a) A reasonable number of officers, employees, and associates of the Government, or other prime Contractors with the Government, and their subcontractors, shall, as authorized by the Supervisor, have at all reasonable times, admission to the plant, and access to vessel(s) to perform and fulfill their respective obligations to the Government on a noninterference basis. The Contractor shall make reasonable arrangements with the Government or Contractors of the Government, as shall have been identified and authorized by the Supervisor, to be given admission to the Contractor's facilities and access to the vessel(s) and to office space, work areas, storage or shop areas, or other facilities and services, necessary for the performance of their respective responsibilities and reasonable to their performance. All such above personnel shall be required to comply with all Contractor rules and regulations governing personnel at its shipyard, including those relative to safety and security.

(b) The Contractor further agrees as authorized by the Supervisor, to afford to a reasonable number of officers, employees, and associates of offerors on other contemplated work, the same privileges of admission to the Contractor's plant and access to the vessel(s) on a noninterference basis subject to all Contractor rules and regulations governing personnel in its shipyard, including those relative to safety and security.

(c) The vessel, its equipment, movable stores, cargo, or other ship's material shall not be considered Government-Furnished Property.

(End of clause)

252.217-7114 Certain Communist Areas.

As prescribed at 217.7104(a), insert FAR clause 52.225-11 (APR 1984).

252.217-7115 Contract Work Hours and Safety Standards Act—Overtime Compensation.

As prescribed at 217.7104(a), insert FAR clause 52.222-4 (APR 1984).

252.217-7116 Walsh-Healey Public Contracts Act.

As prescribed at 217.7104(a), insert FAR clause 52.222-20 (APR 1984).

252.217-7117 Equal Opportunity Clause.

As prescribed at 217.7104(a), insert FAR clause 52.222-26 (APR 1984).

252.217-7118 Officials Not to Benefit.

As prescribed at 217.7104(a), insert FAR clause 52.203-1 (APR 1984).

252.217-7119 Covenant Against Contingent Fees.

As prescribed at 217.7104(a), insert FAR clause 52.203-5 (APR 1984).

252.217-7120 Termination for Convenience of the Government.

As prescribed at 217.7104(a), insert FAR clause(s) 52.249-1 or 52.249-2 (APR 1984), as applicable.

252.217-7121 Authorization and Consent.

As prescribed at 217.7104(a), insert FAR clause 52.227-1 (APR 1984).

252.217-7122 Notice and Assistance Regarding Patent and Copyright Infringement.

As prescribed at 217.7104(a), insert FAR clause 52.227-2 (APR 1984).

252.217-7123 Responsibility for Inspection.

As prescribed at 217.7104(a), insert FAR clause 52.246-1 (APR 1984).

252.217-7124 Liability and Insurance.

As prescribed at 217.7104(a), insert the following clause:

LIABILITY AND INSURANCE (AUG 1983)

(a) The Contractor shall exercise reasonable care and use his best efforts to prevent accidents, injury or damage to all employees, persons and property, in and about the work, and to the vessel or part thereof upon which work is done.

(b) The Contractor shall not, unless otherwise directed or approved in writing by the Department, carry or incur the expense of any insurance against any form of loss or damage to the vessels or to the materials or equipment therefor to which the Government has title or which have been furnished by the Government for installation by the Contractor. The Government assumes the risks of loss of and damage to the vessels and such materials and equipment. The Government does not assume any risk with respect to loss or damage compensated for by insurance or otherwise or resulting from risks with respect to which the Contractor has failed to procure or maintain insurance, if available, as required or approved by the Department; *Provided, further,* that under this clause the Government does not assume any risk with respect to, and will not pay for any costs of the Contractor for the inspection, repair, replacement, or renewal of any defects themselves in the vessel(s) or such materials and equipment due to (A) defective workmanship or defective materials or equipment performed by or furnished by the Contractor or its subcontractors; or (B) workmanship or materials or equipment performed by or furnished by the Contractor or its subcontractors which do(es) not conform to the requirements of the contract, whether or not any such defect is latent or whether or not any such nonconformance is the result of negligence; *Provided, further,* that under this clause the Government does not assume the risk of and will not pay for the costs of any loss, damage, liability or expense caused by, resulting from, or incurred as a consequence of delay or disruption of any type whatsoever; or willful misconduct or lack of good faith on the part of any of the Contractor's directors, officers and any of its 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 operation at any one plant; *Provided,* however, that as to such risk assumed and borne by the Government, the Government shall be subrogated to any claim, demand or cause of action against third persons which exists in favor of the Contractor, and the Contractor shall, if required, execute a formal assignment or transfer of claims, demands or causes of action; *Provided, further,* that nothing contained in this paragraph shall create or give rise to any right, privilege or power in any person except the Contractor, nor shall any person (except the Contractor) be or become entitled thereby to proceed directly against the Government, or join the Government as a co-defendant in any action against the Contractor brought to determine the Contractor's liability or for any other purpose. Notwithstanding the foregoing, the Contractor shall bear the first five thousand dollars ($5,000) of loss or damage from each occurrence or incident the risk of which the Government otherwise would have assumed under the provisions of this paragraph.

(c) The Contractor indemnifies and holds harmless the Government, its agencies and instrumentalities, the vessel and its owners, against all suits, actions, claims, costs or demands (including, without limitation, suits, actions, claims, costs or demands resulting from death, personal injury and property damage) to which the Government, its agencies and instrumentalities, the vessel or its owner may be subject or put by reason of damage or injury (including death) to the property or person of any one other than the Government, its agencies, instrumentalities and personnel, the vessel or its owner, arising or resulting in whole or in part from the fault,

negligence, wrongful act or wrongful omission of the Contractor, or any subcontractor, his or their servants, agents or employees; *Provided*, that the Contractor's obligation to indemnify under this paragraph (c) shall not exceed the sum of three hundred thousand dollars ($300,000) on account of any one accident or occurrence in respect of any one vessel. Such indemnity shall include, without limitation, suits, actions, claims, costs or demands of any kind whatsoever, resulting from death, personal injury or property damage occurring during the period of performance of work on the vessel or within *ninety (90)* days after redelivery of the vessel; and with respect to any suits, actions, claims, costs, or demands resulting from death, personal injury or property damage occurring after the expiration of such period, the rights and liabilities of the Government and the Contractor shall be as determined by other provisions of this *agreement* and by law; *Provided*, however, that such indemnity shall apply to death occurring after such period which results from any personal injury received during the period covered by the Contractor's indemnity as provided herein.

(d) The Contractor shall, at his own expense, procure, and thereafter maintain such casualty, accident and liability insurance, in such forms and amounts as may be approved by the Government, insuring the performance of its obligations under paragraph (c) of this clause. Further, the Contractor shall procure and maintain in force Workmen's Compensation Insurance (or its equivalent) covering its employees engaged on the work and shall insure the procurement and maintenance of such insurance by all subcontractors engaged on the work. The Contractor shall provide such evidence of such insurance as may be, from time to time, required by the Government.

(e) No allowance shall be made the Contractor in the job order price for the inclusion of any premium expense or charge for any reserve made on account of self-insurance for coverage against any risk assumed by the Government under this clause.

(f) As soon as practicable after the occurrence of any loss or damage the risk of which the Government has assumed, written notice of such loss or damage shall be given by the Contractor to the Contracting Officer, which notice shall contain full particulars of such loss or damage. If claim is made or suit is brought thereafter against the Contractor as the result or because of such event, the Contractor shall immediately deliver to the Government every demand, notice, summons or other process received by him or his representatives. The Contractor shall cooperate with the Government and, upon the Government's request, shall assist in effecting settlements, securing and giving evidence, obtaining the attendance of witnesses and in the conduct of suits; and the Government shall pay to the Contractor the expense, other than the cost of maintaining the Contractor's usual organization, incurred in so doing. The Contractor shall not, except at his own cost, voluntarily make any payment, assume any obligation or incur any expense other than shall be imperative for the the protection of the vessel or vessels at the time of said occurrence of such event.

(g) In the event of loss of or damage to any of the vessels or any of the materials or equipment therefor which may result in a claim against the Government under the insurance provisions of this contract, the Contractor promptly shall notify the Contracting Officer of such loss or damages, and the Contracting Officer may, without prejudice to any other right of the Government, either:

(i) Order the Contractor to proceed with replacement or repair, in which event the Contractor shall effect such replacement or repair. The Contractor shall submit to the Contracting Officer a request for reimbursement of the cost of such replacement or repair together with such supporting documentation as the Contracting Officer may reasonably require, and shall identify such request as being submitted under the "Insurance" clause of the contract. If the Government determines that the risk of such loss or damages is within the scope of the risks assumed by the Government under this clause, the Government will reimburse the Contractor for the reasonable, allowable cost of replacement or repair, plus a reasonable profit (if the work of replacement or repair was performed by the Contractor) less the deductible amount specified in paragraph (b) of this clause. Payments by the Government to the Contractor under this Insurance Clause are outside the scope of and shall not affect the pricing structure of the contract (firm fixed price or incentive type arrangement, as applicable), and are additional to the compensation otherwise payable to the Contractor under this contract; or

(ii) In the event the Contracting Officer decides that the loss or damage shall not be replaced or repaired,

(A) Modify the contract appropriately consistent with the reduced requirements reflected by the unreplaced or unrepaired loss or damage, or

(B) Terminate the repair of any part or all of the vessel(s) under the clause of this contract entitled "TERMINATION FOR CONVENIENCE OF THE GOVERNMENT."

(End of clause)

252.217-7125 Pricing of Adjustments.

As prescribed at 217.7104(a), insert DoD FAR Supplement clause 252.243-7001 (APR 1984).

252.217-7126 Affirmative Action for Disabled Veterans and Veterans of the Vietnam Era.

As prescribed at 217.7104(a), insert FAR clause 52.222-35 (APR 1984).

252.217-7127 Affirmative Action for Handicapped Workers.

As prescribed at 217.7104(a), insert FAR clause 52.222-36 (APR 1984).

252.217-7128 Clean Air and Water.

As prescribed at 217.7104(a), insert FAR clause 52.223-2 (APR 1984).

252.217-7129 Invoices.

As prescribed at 217.7104(a), insert FAR clause 52.213-2 (APR 1984).

252.217-7130 Guarantees.

As prescribed at 217.7104(a), insert the following clause:

GUARANTEES (APR 1982)

In case any work done or materials furnished by the Contractor under this agreement on or for any vessel or the equipment thereof, shall within ninety (90) days from the date of redelivery of the vessel by the Contractor, prove defective or deficient, such defects or deficiencies shall, as required by the Government in writing, be corrected and repaired by the Contractor or at his expense to the satisfaction of the Contracting Officer; *Provided*, that for any guarantee secured by the Contractor or any subcontractor covering work done on materials furnished which exceeds the 90-day period, the Government shall be entitled to rely upon said guarantee until the expiration; and *Provided* further, that with respect to any individual work item identified and listed as incomplete at the redelivery of the vessel the guarantee period shall run from the date of completion of such item. The government shall, if and when practicable, afford the Contractor an opportunity to effect such corrections and repairs himself, but when, because of the condition or the location of the vessel or for any other reason, it is impracticable or undesirable to return it to the Contractor, or the Contractor fails to proceed promptly with any such repairs as directed by the Contracting Officer, such corrections and repairs shall be effected at the Contractor's expense at such other locations as the Government may determine. Where correction and repairs are to be effected by other than the Contractor, due to nonreturn of the vessel to him, the Contractor's liability may be discharged by an equitable deduction in the price of the job. The Contractor's liability shall only extend for an additional 90-day guarantee period on those defects or deficiencies which he corrected and in no event to those for which payment was made; *Provided*, however, that nothing in this clause shall be deemed to limit the responsibility of the Contractor under clause 252.217-7124 entitled "LIABILITY AND INSURANCE" hereof or relieve him of his liability under that clause. At the option of the Contracting Officer, defects and deficiencies may be left in their then condition, and an equitable deduction from the job order price, as agreed by the Contractor and the Contracting officer, shall be made therefor. If the Contractor and the Contracting Officer fail to agree upon the equitable deduction from the job order price to be made, the dispute shall be determined as provided in clause 252.217-7111 entitled "DISPUTES" hereof.

(End of clause)

252.217-7131 Discharge of Liens.

As prescribed at 217.7104(a), insert the following clause:

DISCHARGE OF LIENS (APR 1982)

The Contractor shall immediately discharge or cause to be discharged any lien or right *in rem* of any kind, other than in favor or the Government, which at any time

exists or arises in connection with work done or materials furnished under any job order hereunder with respect to the machinery, fittings, equipment or materials for any of the vessels. If any such lien or right *in rem* is not immediately discharged, the Government may discharge or cause to be discharged such lien or right at the expense of the Contractor.

(End of clause)

252.217-7132 Department of Labor Safety and Health Regulations for Ship Repairing.

As prescribed at 217.7104(4), insert the following clause:

DEPARTMENT OF LABOR SAFETY AND HEALTH REGULATIONS FOR SHIP REPAIRING (APR 1982)

Attention of the Contractor is directed to the Occupational Safety and Health Act of 1970 (29 U.S.C. 651–678), and to the Safety and Health Regulations for Ship Reparing (29 CFR 1915), promulgated under Public Law 85–742, amending Section 41 of the Longshoremen's and Harbor Workers' Compensation Act (33 U.S.C. 941), and adopted by the Department of Labor as occupational safety or health standards under Section 6(a) of the Occupational Safety and Health Act of 1970 (see 29 CFR 1910.13). These regulations apply to all ship repair and related work, as defined in the regulations, performed under this agreement on the navigable waters of the United States including any drydock or marine railway. Nothing contained in this agreement or any job order hereunder shall be construed as relieving the Contractor from any obligations which it may have for compliance with the aforesaid regulation.

(End of clause)

252.217-7200 Workmen's Compensation and War Hazard Insurance Overseas.

As prescribed at 217.7104(b), insert FAR clause 52.228–4 (APR 1984), as applicable.

252.217-7201 Buy American Act and the Balance of Payments Program.

As prescribed at 217.7104(b), insert the clause at 52.225–7001 (OCT 1980), as applicable.

252.217-7202 Notice to the Government of Labor Disputes.

As prescribed at 217.7104(b), insert FAR clause 52.222–1 (APR 1984), as applicable.

252.217-7203 Patent Indemnity.

As prescribed at 217.7104(b), insert FAR clause 52.227–3 (APR 1984), as applicable.

252.217-7204 Filing of Patent Applications.

As prescribed at 217.7104(b), insert FAR clause 52.227–10 (APR 1984), as applicable.

252.217-7205 Contract Schedule Subline Items Not Separately Priced.

As prescribed at 217.7104(b), insert DoD FAR Supplement clause 252.204–7000 (APR 1984), as applicable.

252.217-7206 Reporting and Refund of Royalties.

As prescribed at 217.7104(b), insert FAR clauses 52.227–8 and 52.227–9 (APR 1984), as applicable.

252.217-7207 Rights in Data and Computer Software.

As prescribed at 217.7104(b), insert clause 52.227–7013 (MAY 1981), as applicable.

252.217-7208 Military Security Requirements.

As prescribed at 217.7104(b), insert FAR clause 52.204–2 (APR 1984), as applicable.

252.217-7209 Utilization of Small Business and Small Disadvantaged Business Concerns.

As prescribed at 217.7104(b), insert FAR clause(s) 52.219–8, 52.219–9, and 52.219–10 (APR 1984), as applicable.

252.217-7210 Examination of Records by Comptroller General.

As prescribed at 217.7104(b), insert FAR clause 52.215–1 (APR 1984), as applicable.

252.217-7211 Gratuities.

As prescribed at 217.7104(b), insert FAR clause 52.203–3 (APR 1984), as applicable.

252.217-7212 Convict Labor.

As prescribed at 217.7104(b), insert FAR clause 52.222–3 (APR 1984), as applicable.

252.217-7213 Priorities, Allocations, and Allotments.

As prescribed at 217.7104(b), insert FAR clause 52.212–8 (APR 1984), as applicable.

252.217-7214 Utilization of Labor Surplus Area Concerns.

As prescribed at 217.7104(b), insert FAR clauses 52.220–3 and 52.220–4 (APR 1984), as applicable.

252.217-7215 Limitation on Withholding of Payments.

As prescribed at 217.7104(b), insert FAR clause 52.232–9 (APR 1984), as applicable.

252.217-7216 Equal Opportunity Preaward Clearance of Subcontracts.

As prescribed at 217.7104(b), insert FAR clause 52.222–28 (APR 1984), as applicable.

252.217-7217 Subcontracts.

As prescribed at 217.7104(b), insert FAR clause 52.244–1 (APR 1984), as applicable.

252.217-7218 Government Property.

As prescribed at 217.7104(b), insert FAR clause 52.245–2 (APR 1984), as applicable.

252.217-7219 Federal, State, Local, and Foreign Taxes.

As prescribed at 217.7104(b), insert FAR clause 52.229–2 (APR 1984), as applicable.

252.217-7220 Quality Program.

As prescribed at 217.7104(b), insert FAR clause 52.246–11 (APR 1984), as applicable.

252.217-7221 Price Reduction for Defective Cost or Pricing Data.

As prescribed at 217.7104(b), insert FAR clause 52.214–27 or 52.215–22 (APR 1984), as applicable.

252.217-7222 Duty-Free Entry.

As prescribed at 217.7104(b), insert FAR clause 52.225–10 (APR 1984), as applicable.

252.217-7223 Duty-Free Entry of Qualifying Country Supplies.

As prescribed at 217.7104(b), insert clause 252.225–7008 (JAN 1981), as applicable.

252.217-7224 Inspection System.

As prescribed at 217.7104(b), insert FAR clause 52.246–11 (APR 1984), as applicable.

252.217-7225 Advance Payments.

As prescribed at 217.7104(b), insert FAR clause 52.232–12 (APR 1984), as applicable.

252.217-7226 Required Sources for Jewel Bearings and Related Items.

As prescribed at 217.7104(b), insert FAR clause 52.208–1 (APR 1984), as applicable.

252.217-7227 Required Sources for Miniature and Instrument Ball Bearings.

As prescribed at 217.7104(b), insert DoD FAR Supplement clause 252.208–7000 (JUL 1971), as applicable.

252.217-7228 Interest.

As prescribed at 217.7104(b), insert FAR clause 52.232–17 (APR 1984), as applicable.

252.217-7229 Competition in Subcontracting.

As prescribed at 217.7104(b), insert FAR clause 52.244–5 (APR 1984), as applicable.

252.217-7230 Audit by Department of Defense.

As prescribed at 217.7104(b), insert FAR clause(s) 52.214-26 or 52.215-2 (APR 1984), as applicable.

252.217-7231 Subcontractor Cost or Pricing Data.

As prescribed at 217.7104(b), insert FAR clause 52.215-25 (APR 1984), as applicable.

252.217-7232 Value Engineering.

As prescribed at 217.7104(b), insert FAR clause 52.248-1 (APR 1984), as applicable.

252.217-7233 [Reserved]

252.217-7234 Required Sources for Precision Components for Mechanical Time Devices.

As prescribed at 217.7104(b), insert DoD FAR Supplement clause 252.208-7001 (AUG 1971), as applicable.

252.217-7235 New Material.

As prescribed at 217.7104(b), insert FAR clause 52.210-5 (APR 1984), as applicable.

252.217-7236 Government Surplus.

As prescribed at 217.7104(b), insert FAR clause 52.210-6 or 52.210-7 (APR 1984), as applicable.

252.217-7237 Utilization of Women-Owned Business Concerns.

As prescribed at 217.7104(b), insert FAR clause 52.219-13 (APR 1984), as applicable.

252.217-7238 Material Inspection and Receiving Report.

As prescribed at 217.7104(b), insert DoD FAR Supplement clause 252.246-7000 (DEC 1969), as applicable.

252.217-7239 Protection of Government Buildings, Equipment, and Vegetation.

As prescribed at 217.7104(b), insert FAR clause 52.237-2 (APR 1984), as applicable.

252.217-7240 Government Delay of Work.

As prescribed at 217.7104(b), insert FAR clause 52.212-15 (APR 1984), as applicable.

252.217-7241 Distribution of Defense Subcontracts Placed Overseas.

As prescribed at 217.7104(b), insert DoD FAR Supplement clause 252.204-7005 (JUN 1982), as applicable.

252.217-7242 Safety Precautions for Ammunition and Explosives.

As prescribed at 217.7104(b), insert DoD FAR Supplement clause 252.228.7007 (SEP 1970), as applicable.

252.217-7243 Cost Accounting Standards.

As prescribed at 217.7104(b), insert FAR clause(s) 52.230-3 and 52-230-4 (APR 1984), as applicable.

252.217-7244 Notification of Changes.

As prescribed at 217.7104(b), insert FAR clause 52.243-7 (APR 1984), as applicable.

252.217-7245 Engineering Change Proposals (ECP's).

As prescribed at 217.7104(b), insert DoD FAR Supplement clause 252.243-7000 (APR 1984), as applicable.

252.217-7246 Change Order Accounting.

As prescribed at 217.7104(b), insert FAR clause 52.243-6 (APR 1984), as applicable.

252.217-7247 Contracts Conditioned Upon the Availability of Funds.

As prescribed at 217.7104(b), insert FAR clause(s) 52.232-18 or 52.232-19 (APR 1984), as applicable.

252.217-7248 Preference for Domestic Specialty Metals.

As prescribed at 217.7104(b), insert the clause at 252.225-7012 (OCT 180), as applicable.

252.217-7249 Preference for United States-Flag Air Carriers.

As prescribed at 217.7104(b), insert FAR clause 52.247-63 (APR 1984), as applicable.

252.217-7250 Exclusionary Policies and Practices of Foreign Governments.

As prescribed at 217.7104(b), insert the clause at 252.225-7019 (JAN 1977).

252.217-7251 Hazardous Material Identification and Material Safety Data.

As prescribed at 217.7104(b), insert FAR clause 52.223-3 (APR 1984), as applicable.

252.217-7252 Certification of Requests for Adjustment or Relief Exceeding $100,000.

As prescribed at 217.7104(b), insert DoD FAR Supplement clause 252.233-7000 (FEB 1980), as applicable.

252.217-7253 Qualifying Country Sources as Subcontractors.

As prescribed at 217.7104(b), insert clause 252.225-7002 (OCT 1980).

252.217-7254 Stop Work Orders.

As prescribed at 217.7104(b), insert FAR clause 52.212-13 (APR 1984), as applicable.

252.219-7000 [Amended]

16. Section 252.219-7000 is amended by adding the word "cognizant" after the word "Contractor's" and before the word "Contract" appearing in the clause.

252.231-7000 [Amended]

17. Section 252.231-7000 is amended by removing the word "are" appearing in the clause and inserting in its place the word "is;" and by revising the reference in the clause reading "Subpart 41.2" to read "Subpart 31.2."

[FR Doc. 85-7201 Filed 3-27-85; 8:45 am]
BILLING CODE 3810-01-M

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48 CFR Parts 204, 209, 211, 213, 215, 219, 225, 227, 230, 236, 237, 242, 245, 252, 270

[Defense Acquisition Circ. 84-6]

DoD FAR Supplement

AGENCY: Department of Defense.

ACTION: Final rule.

SUMMARY: Defense Acquisition Circular (DAC) 84-6 amends the DoD FAR Supplement with respect to procurement instrument identification numbers; consolidated list of debarred, suspended, and ineligible contractors; acquisition and distribution of commercial products; discounts, negotiated procurements; standard forms for use in contracting for construction or dismantling, demolition, or removal of improvements; production surveillance and reporting—assignment of criticality designator; Government property—plant clearance program; DD Form 882, Report of Inventions and Subcontracts (Pursuant to "Patent Rights" Contract Clause); acquisition of computer resources; and provides an index to the DoD FAR Supplement.

EFFECTIVE DATE: Upon receipt, in accordance with DoD FAR Supplement 201.301(S-70)(4).

FOR FURTHER INFORMATION CONTACT: Charles W. Lloyd, Executive Secretary, Defense Acquisition Regulatory Council, OUSDRE (AM)(DARS), OUSDRE(M&RS), Room 3D139, Pentagon, Washington, D.C. 20301-3062, telephone (202) 697-7268.

SUPPLEMENTARY INFORMATION:

Background

The DoD FAR Supplement is codified in Chapter 2, Title 48 of the Code of Federal Regulations.

The October 1, 1984 revision of the CFR is the most recent edition of that title. It reflects amendments to the 1984 edition of the DoD FAR Supplement made by Defense Acquisition Circulars 84-1 through 84-3.

Interested parties may submit proposed revisions to this Supplement directly to the DAR Council.

List of Subjects in 48 CFR Ch. 2

Government procurement.

James T. Brannan,

Director, Defense Acquisition Regulatory Council.

Defense Acquisition Circular

[Number 84-6]

June 15, 1984.

All DoD FAR Supplement and other directive material contained in this Defense Acquisition Circular is effective upon receipt in accordance with DoD FAR Supplement 201.301(S-70)(4).

Defense Acquisition Circular (DAC) 84-6 amends the DoD FAR Supplement and prescribes procedures to be followed. The following is a summary of the amendments and procedures:

Item I—Notes and Filing Instructions for DoD FAR Supplement

Beginning with the issuance of this DAC, there will be included a list of all replacement pages (DoD loose-leaf edition). This list is provided to facilitate filing and may be used as a check list to ensure no pages are missing because of mechanical error in printing.

Item II—Procurement Instrument Identification Numbers

Paragraph 204.7003-1(c) is revised to add Instrument Code K, Short Form Research Contract.

Item III—Consolidated List of Debarred, Suspended, and Ineligible Contractors

Paragraph 209.405(c) is revised to substitute "Department of Defense" for "Government."

Item IV—Acquisition and Distribution of Commercial Products

A change is made to 211.005(b) to identify Pub. L. 98-63 and 98-212. This information was not included when the coverage was initially published in DAC 84-2.

Item V—Discounts, Negotiated Procurements

A new subparagraph (xlx) is added to 213.505-2(S-73)(1) to prescribe the use of the provision at 252.214-7000, Discounts. A new section 215.407(S-70) is added to prescribe use of the provision at 252.214-7000, Discounts, in solicitations where prompt payment discounts may be offered. The preface at 252.214-7000 is revised to add reference to the paragraphs cited above.

Item VI—Standard Forms for Use in Contracting for Construction or Dismantling, Demolition, or Removal of Improvements

Paragraph (c) is added to 236.701 to state that Optional Forms 347 and 348 are not authorized for use in the Department of Defense.

Item VII—Production Surveillance and Reporting—Assignment of Criticality Designator

A change is made to 242.1105(b) to remove language which is considered unnecessary, and to conform the coverage to DoD Directive 4410.6

Item VIII—Government Property—Plant Clearance Program

A new section 245.603-70 is added to adopt use, on an optional basis, of a modified plant clearance program. It is expected that this program will reduce administrative interface between contractor and Government personnel, and at the same time provide adequate surveillance requirements to protect the Government's interests.

Item IX—DD Form 882, Report of Inventions and Subcontracts (Pursuant to "Patent Rights" Contract Clause)

A revised DD Form 882, Report of Inventions and Subcontracts (Pursuant to "Patent Rights" Contract Clause), 82 OCT, is included in this DAC. (DoD forms are not printed in the **Federal Register**.) The 1982 edition of the form replaces the 1975 edition which was included in the initial printing of the DoD FAR Supplement.

Item X—Acquisition of Computer Resources

As a result of review of Part 270, the following changes are made:

Section 270.302-29(d) is revised to add a reference to 270.8. Section 270.307(c) is revised to delete the phrase "and subject to the types of funds available (e.g., O&M, Procurement, etc.)," to conform to legislation. Section 270.309 is revised to accommodate small purchases. Subpart 270.6 is amended by relocating the format referenced in 270.604(f)(1) immediately following 270.604. New clauses have been added at 252.270-7061 through 252.270-7064. These clauses were adopted by GSA after completion of drafting of the DoD FAR Supplement and do not represent any substantive changes to acquisition procedures. Paragraphs 270.1103(a) and (c) are revised to include prescription for use of the additional clauses.

The clause at 252.270-7045 is revised to add to the list of Federal Information Processing Standards (FIPS), FIPS PUB 95, Code for the Identification of Federal and Federally-assisted organizations.

Item XI—Index to the DoD FAR Supplement

Included in this DAC is a Topical Index to the DoD FAR Supplement which was not available at the time of initial printing of the Supplement. (Topical Index is not published in the Federal Register.)

Item XII—Editorial Corrections

Paragraph 225.102(S-71)(2) is revised to change the dollar figure cited from $25,000 to $250,000.

Subparagraph (b)(iv) of the clause at 252.225-7000, inadvertently included in the initial printing of the clause in DAC 84-1, is deleted.

Subparagraph (d)(iii) of the clause at 252.225-7008 is revised to reflect the correct address for DCASMA New York.

Paragraph (e) of the clause at 252.229-7000 is revised to change the word "refundable" to "nonrefundable."

Adoption of Amendments

Therefore, the DoD FAR Supplement contained in 48 CFR Chapter 2 is amended as set forth below.

1. The authority for 48 CFR Chapter 2 reads as follows:

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

PART 204—ADMINISTRATIVE MATTERS

2. Section 204.7003-1 is amended by adding Instrument Code K in alphabetical sequence to paragraph (c) to read as follows:

204.7003-1 Elements of Number.

* * * * *

(c) * * *

K Short Form Research Contract

* * * * *

204.7004-4 [Amended]

3. Section 204.7004-4 is amended by revising the entry reading "1A" to read "2A" in the phrase reading "then 1A, 2B, and so on to 2Z" in paragraph (b)(4).

PART 209—CONTRACTOR QUALIFICATIONS

209.405 [Amended]

4. Section 209.405 is amended by substituting the words "Department of Defense" for the word "Government" in paragraph (c).

PART 211—ACQUISITION AND DISTRIBUTION OF COMMERCIAL PRODUCTS

5. Section 211.005 is revised to read as follows:

211.005 Acceptability.

(b) The 1983 Supplemental Appropriations Act (Pub. L. 98–63) contained a provision limiting the acquisition of commercial products by Department of Defense contracts; this same provision was enacted as Section 779 of the 1984 DoD Appropriations Act (Pub. L. 98–212). When using funds appropriated by these acts, or any future appropriation act containing the same provision, no solicitation shall impose a requirement that in order to be eligible to submit a bid or an offer on a contract to be let for the supply of commercial or commercial-type products, a small business concern must demonstrate that its product is accepted in the commercial market (except to the extent that may be required to evidence compliance with the Walsh-Healey Public Contracts Act) or satisfy any other prequalification to submitting a bid or an offer for the supply of any such product. Under this prohibition, solicitations may not exclude small business concerns from being considered for award, whether or not former suppliers under detailed specifications, solely because the product of the small business does not meet the definition of a "commercial product" or "commercial-type product" in FAR 11.001.

PART 213—SMALL PURCHASE AND OTHER SIMPLIFIED PURCHASE PROCEDURES

6. Section 213.505–2 is amended by adding paragraph (S–73)(1)(xlx) to read as follows:

213.505–2 Agency Order Forms in Lieu of Optional Forms 347 and 348.

* * * * *

(S–73) * * *

(1) * * *

(xlx) In accordance with FAR 14.407–3, insert the provision at 252.214–7000, Discounts.

PART 215—CONTRACTING BY NEGOTIATION

7. Section 215.407 is added to read as follows:

215.407 Solicitation Provisions.

(S–70) Pursuant to the policy of FAR 14.407–3, the contracting officer shall insert the provision at 252.214–7000, Discounts, in solicitations where prompt payment discounts may be offered.

PART 219—SMALL BUSINESS AND SMALL DISADVANTAGED BUSINESS CONCERNS

219.505 [Amended]

8. Section 219.505 is amended by redesignating paragraphs (c), (d), and (e) as (d), (e), and (f) respectively.

PART 225—FOREIGN ACQUISITION

225.102 [Amended]

9. Section 225.102 is amended by substituting $250,000 for $25,000 in paragraph 225.102(S–71)(2).

PART 227—PATENTS, DATA, AND COPYRIGHTS

227.412 [Amended]

10. Section 227.412 is amended by removing a duplicate paragraph (n).

PART 230—COST ACCOUNTING STANDARDS

230–7003 [Amended]

11. Section 230.7003 is amended by substituting the word "net" for the word "new" in the second sentence of paragraph (a).

12. Section 230.7006 is amended by revising paragraph (a) to read as follows:

230.7006 Post Award Facilities Capital Applications.

(a) *Interim Billings Based on Costs Incurred.* Contract Facilities Capital Cost of Money may be included in cost reimbursement and progress payment invoices. The amount that qualifies as cost incurred for purposes of the "Cost Reimbursement, Fee and Payment" or "Progress Payment" clause of the contract is the result of multiplying the incurred portions of the overhead pool allocation bases by the latest available Cost of Money Factors. Like applied overhead at forecasted overhead rates, such computations are interim estimates subject to adjustment. As each year's data are finalized by computation of the actual Cost of Money Factors under CAS 414 and FAR 31.205–10, the new factors should be used to calculate contract facilities cost of money for the next accounting period.

* * * * *

PART 236—CONSTRUCTION AND ARCHITECT-ENGINEER CONTRACTS

13. Part 236 is amended by adding new Subpart 236.7, consisting of section 236.701, to read as follows:

Subpart 236.7—Standard Forms for Contracting for Construction, Architect-Engineer Services, and Dismantling, Demolition, or Removal of Improvements

236.701 Standard Forms for Use in Contracting for Construction or Dismantling, Demolition, or Removal of Improvements.

(c) Optional Forms 347 and 348 are not authorized for use in the Department of Defense (see 213.505–2(S–70)).

PART 237—SERVICE CONTRACTING

14. Section 237.7002 is amended by revising paragraph (a) and amending the last line of paragraph (b) by revising the words "(Manpower, Reserve Affairs and Logistics)" to read "(Manpower, Installations and Logistics)" as follows:

237.7002 Contracting for Engineering and Technical Services.

(a) General. Every contract calling for engineering and technical services, whether it calls for only those services or whether it calls for those services in connection with the furnishing of an end item, shall show those services as a separate and identifiable line item separately priced. The contract shall contain definitive specifications for the services and shall show the man-months involved.

* * * * *

PART 242—CONTRACT ADMINISTRATION

15. Section 242.1105 is amended by revising paragraph (b) to read as follows:

242.1105 Assignment of Criticality Designator.

* * * * *

(b) DoD contract items on which a priority 01, 02, 03, or 06 (if emergency supply of clothing) has been assigned based on DoDD 4410.6, Uniform Material Movement and Issue Priority System, shall fall under Criticality Designator A.

PART 245—GOVERNMENT PROPERTY

16. Sections 245.603 and 245.603–70 are added to read as follows:

245.603 Disposal Methods.

245.603–70 Contractor Performance of Selected Plant Clearance Duties and Responsibilities.

(1) A DoD Component may, at its option and under the guidance in this section, provide instructions to its contract administration offices which would authorize selected contractors

under its administrative cognizance to perform certain plant clearance functions under the surveillance of the contracting officer or a designated representative. Such authorizations should be considered by the DoD Component only when plant clearance personnel are stationed at the facility where the contractor's plant clearance function operates and when the DoD Component and the contractor agree that the volume of plant clearance actions warrants such an authorization.

(2) Such authorizations shall be made in writing and shall, as a minimum:

(i) Specify the plant clearance functions to be performed;

(ii) Apply to all Government contracts which contain a Government Property clause at one or more plants, as appropriate;

(iii) Specify that the authorization may be unilaterally cancelled in whole or in part by the Government through written notice by the contracting officer or a designated representative;

(iv) Provide for such direct Government participation in plant clearance cases as may be required by Government regulation or circumstances at hand. The authorization shall be approved at a level above the contract administration office as designated by the DoD Component having administrative cognizance over the contractor; and

(v) Designate the contractor authorized under (1) above to perform specified plant clearance functions as an "accredited contractor."

(3) In each case of such an authorization, the DoD Component will plan and conduct a program of surveillance which will insure effective and regular evaluations of contractor performance and prompt corrective actions when appropriate. The plant clearance case file maintained by the contractor shall be the official case file.

(4) When paragraphs (1) and (2) above are implemented, the following additional responsibilities shall be performed by the plant clearance officer:

(i) Evaluate the adequacy of contractor procedures for the performance of the tasks prescribed in (5) below. Insure that these procedures are complied with. Discrepant conditions must be promptly resolved in order for the contractor to remain accredited;

(ii) Advise the accredited contractor of the identity of redistribution screening activities and the number of copies of inventory schedules to be submitted to these activities for screening. This includes screening prescribed herein and prescribed by inventory control points and the plant clearance officer;

(iii) Review and act on the contractor's proposals to withdraw items of Government-furnished property from inventory schedules (see FAR 45.606–4);

(iv) Continuously evaluate physical, quantitative, and technical allocability of contractor inventory prior to its disposal by the accredited contractor. These evaluations shall be incorporated within the surveillance program required by (3) above. Greatest emphasis shall be placed on high dollar value property that constitutes a claim against the Government. In the event that assets are considered to be nonallocable, the contractor will be directed to delay disposition pending the contracting officer's resolultion of the issue. Completion of SF 1423, Inventory Verification Survey is not required. However, the applicable questions on the SF 1423 should be answered as part of the evaluation program;

(v) Establish, with contractor assistance, criteria under which certain disposal determinations by the contractor will be reviewed and approved or disapproved by the plant clearance officer. The criteria should be detailed in the accredited contractor's plant clearance procedures;

(vi) Complete the first endorsement section of DD Form 1640, Request for Plant Clearance, upon receipt of incoming referral cases for subcontractor inventory. Inventory schedules will be forwarded to the contractor for plant clearance. Upon case completion, obtain the case file from the contractor, prepare a DD Form 1640, and forward the file to the referring activity;

(vii) Work with the contractor, buyers, and screeners of contractor inventory to the extent required to assure that the Government shall realize maximum asset reutilization and disposal proceeds; and

(viii) Provide continuous training and assistance to the contractor as requested or as necessary.

(5) The accredited contractor will perform the following designated tasks which are identified within the referenced paragraphs as plant clearance officer functions. The accredited contractor shall:

(i) Assign the Automatic Release Date (ARD) and screening release date (SRD), initiate screening prescribed herein or as prescribed by the plant clearance officer, and effect resulting transfer and donation actions (see FAR 45.608, 45.609);

(ii) Withdraw items, except for Government-furnished property, from inventory schedules without plant clearance officer approval and notify the affected screening activities. Plant clearance officer approval will be obtained for withdrawal of Government-furnished property from inventory schedules (see FAR 45.606–4);

(iii) Assure acceptability of inventory schedules. DD Form 1637, Notice of Acceptance of Inventory, is not required but may be used for internal contractor case coordination (see FAR 45.606–3);

(iv) Suspend disposition of property when assets are determined to be nonallocable by the plant clearance officer (see FAR 45.606–3);

(v) Arrange for the physical inspection of property by prospective transferees as appropriate;

(vi) Determine the method of disposal under established priorities (see FAR 45.603) and document disposal decisions and actions (see FAR 45.609, 45.610, 45.611, 45.613). Use of the DD Form 1641, Disposal Determination Approval, is not required as long as equivalent documentation is maintained. The plant clearance officer shall be notified in writing in advance in each instance when the contractor is bidding on property to be sold under FAR 45.610. Sales under FAR 45.610–3 shall not be conducted by an accredited contractor;

(vii) Account for disposal of all contractor inventory and application of proceeds. SF 1424, Inventory Disposal Report, or a contractor form containing comparable data elements is required to be submitted to the plant clearance officer (see FAR 45.610–3, 45.615);

(viii) Maintain the donable property file (see FAR 45.609);

(ix) Release property to eligible donees (see FAR 45.609);

(x) Properly prepare, approve, sign, and maintain official plant clearance files and required forms including:

(A) Plant clearance case number (see FAR 45.7102–4);

(B) DD Form 1635, Plant Clearance Case Register, or comparable contractor document (see FAR 45.7101–8);

(C) SF 120, Reporting of Excess Personal Property (see FAR 45.608–2, 45.608–8);

(D) DD Form 1342, DoD Property Record, and transmittal letter (see FAR 45.7102–3); and

(E) DD Form 1348–1, DoD Single Line Item Release/Receipt Document, for transfers (turn-ins) to the Defense Property Disposal Service or inventory control points; and

(xi) All completed case files and subcontractor inventory cases received for plant clearance shall be retained by the contractor in the official case file.

245.610 [Amended]

17. Section 245.610–1 is amended by redesignating (a)(2)(iii), Bid reservations, and (iv), Approval of sale, to read (iv) and (v) respectively.

PART 252—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

18. Section 252.214–7000 is amended by revising the introductory text to read as follows:

252.214–7000 Discounts.

As prescribed at 213.505–2(S–73)(1)(xlx), 214–407–3, and 215.407(S–70), insert the following provision:

* * * * *

252.225–7000 [Amended]

19. Section 252.225–7000 is amended by removing paragraph (b)(iv) of the clause.

252.225–7008 [Amended]

20. Section 252.225–7008 is amended by revising the address of DCASMA New York to read "201 Varick Street, New York, NY 10014" in place of "60 Hudson Street, New York, NY 10013."

252.229–7000 [Amended]

21. Section 252.229–7000 is revised to change the word "refundable" to read "nonrefundable" in the first sentence of paragraph (e) of the clause.

22. Section 252.270–7045 is amended to add FIPS PUB 95 at the end of the list of Federal Information Processing Standards in the clause as follows:

252.270–7045 Interchange of Machine Processable Data Between and Among Agencies.

* * * * *

FIPS PUB 95 Code for the Identification of Federal and Federally-Assisted Organizations.

(End of clause)

23. Sections 252.270–7061 through 252.270–7064 are added to read as follows:

252.270–7061 Additional American Standard Code for Information Interchange (ASCII) Controls for Character-Imaging ADP Equipment or Services.

As prescribed by 270.1105(a)(38), insert the following clause:

Additional American Standard Code for Information Interchange (ASCII) Controls for Character-Imaging ADP Equipment or Services (Jun 1984)

All applicable ADP character-imaging equipment or services (e.g., interactive ADP terminals of the display and printer type, line printers, microfilm printers, typesetting composers, word processors, and related devices or services using such devices) offered as a result of this solicitation shall comply with the requirements set forth in FIPS PUB 86 when such equipment or services employ the character set and encoding conventions prescribed in FIPS PUB 1–1 and FIPS PUB 35, employ primarily character-oriented controls, and are consistent with the architectural assumptions for devices in Appendix B, ANS X3.64–1979. All ADP terminals that meet these conditions are included in this requirement if they contain alphanumeric keyboards CRT displays or printers that may be used in any form of on-line interactive application or standalone off-line data preparation. Computer resident control software may be used, but is not required, to implement specific features of FIPS PUB 86, unless specified otherwise in this document (insert reference).

(End of clause)

252.270–7062 Cryptographic Components, Equipment, Systems, and Services.

As prescribed in 270.1103(c)(9), insert the following clause:

Cryptographic Components, Equipment, Systems, and Services (Jun 1984)

If a requirement for the encryption protection of unclassified digital information in the telecommunications environment is specified elsewhere in this solicitation, all cryptographic components, equipment, systems, and services offered to meet that requirement shall comply with FED–STD 1027 and be endorsed as so complying by the National Security Agency prior to being proposed. These items include standalone DES cryptographic equipment as well as any Data Terminal Equipment and Data Circuit-Terminating Equipment utilizing the DES algorithm (described in FIPS PUB 46) for digital encryption. Arrangements for endorsement may be made with the Communications Protection Special Projects Office (S84), National Security Agency, 9800 Savage Road, Fort George G. Meade, MD 20755.

(End of clause)

252.270–7063 Acquisition, Design, or Development of Group 3 Facsimile Apparatus.

As prescribed by 270.1103(c)(10), insert the following clause:

Acquisition, Design, or Development of Group 3 Facsimile Apparatus (Jun 1984)

All Group 3 facsimile apparatus designed, developed, or offered for use over voice band analog circuits shall comply with FED–STD 1062.

(End of clause)

252.270–7064 Acquisition, Design, or Development of Group 1, 2, and 3 Facsimile Apparatus.

As prescribed by 270.1103(c)(11), insert the following clause:

Acquisition, Design, or Development of Group 1, 2, and 3 Facsimile Apparatus (Jun 1984)

All Group 1, 2, and 3 facsimile apparatus designed, developed, or offered for use over voice band analog circuits shall comply with FED–STD 1063.

(End of clause)

PART 270—ACQUISITION OF COMPUTER RESOURCES

270.101 [Amended]

24. Section 270.101 is amended by revising the last sentence in paragraph (c) to read "Policies and procedures for these 'other acquisitions' are contained in Subpart 270.6 and FAR Subpart 8.8" and by removing from paragraph (d) the last sentence which reads: "Acquisitions of all other software shall be in accordance with Subpart 270.75."

25. Section 270.302–2 is amended by revising paragraph (d) to read as follows:

270.302–2 Exceptions.

* * * * *

(d) Services. GSA approval is not required for other services. (But see 270.8 for use of the GSA Teleprocessing Services Program.)

26. Section 270.307 is amended by revising the introductory text of paragraph (c) to read as follows:

270.307 Evaluation Factors.

* * * * *

(c) Unless waived in accordance with Departmental procedures, the contracting officer shall solicit and evaluate, over the projected systems life, all forms of financing an acquisition. These include:

* * * * *

27. Section 270.309 is amended by revising the introductory text to read as follows:

270.309 Determination of Selection Factors.

The prices offered for the systems or items life and conversion costs, whether based on prices offered or a Government estimate, shall be included in determining the lowest overall cost. Determination of system/item life is optional for a system/item with a purchase price of $25,000 or less; however, this does not apply if the system/item is to be leased or rented. The following are examples of other factors to be considered:

* * * * *

Subpart 270.6 [Amended]

28. Subpart 270.6 is amended by relocating the format at the end of Section 270.608 to follow at the end of Section 270.604.

29. Section 270.1103 is amended by adding paragraphs (a)(38) and (c)(9), (10), and (11) to read as follows:

270.1103 Solicitation Provisions and Contract Clauses.

(a) * * *

(38) 252.270-7061, Additional American Standard Code for Information Interchange (ASCII) Controls for Character-Imaging ADP Equipment or Services; when acquiring ADPE such as interactive terminals, line and microfilm printers, word processors and other types of character-imaging equipment subject to 270.1103(a)(1) and (14).

* * * * *

(c) * * *

(9) 252.270-7062, Cryptographic Components, Equipment, Systems, and Services; when acquiring these items to be used in a telecommunication environment and this clause is more appropriate for use than the one indicated at 270.1103(a)(16).

(10) 252.270-7063, Acquisition, Design, or Development of Group 3 Facsimile Apparatus; when acquiring, designing or developing Group 3 fascimile equipment. This clause is not applicable to equipments subject to Military Standard 188-161 or equipments to be used in the transmission of mixed mode information (e.g., code character data and image data).

(11) 252.270-7064, Acquisition, Design, or Development of Group 1, 2, and 3 Facsimile Apparatus; when acquiring, designing or developing Group 1, 2, and 3 facsimile equipment.

[FR Doc. 85-7207 Filed 3-27-85; 8:45 am]
BILLING CODE 3810-01-M

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48 CFR Parts 213, 214, 217, 225, 231, 235, 252, 253, and 270

[Defense Acquisition Circular 84-5]

DoD FAR Supplement

AGENCY: Department of Defense.

ACTION: Final rule.

SUMMARY: Defense Acquisition Circular (DAC) 84-5 amends the DoD FAR Supplement with respect to make-or-buy programs, purchase orders, mistakes in bids; real property construction, repair, and maintenance—Balance of Payments Program; applicability of contract cost principles and procedures—construction and architect-engineer contracts, lobbying cost principle, short form research contracts, DoD contract simplification test, acquisition of computer resources; and provides guidance with respect to OMB clearance of DoD Acquisition Regulatory System, and a policy statement on the use of DAR and FAR Forms.

EFFECTIVE DATE: Upon receipt, in accordance with DoD FAR Supplement 201.301(S-70)(4).

FOR FURTHER INFORMATION CONTACT: Charles W. Lloyd, Executive Secretary, Defense Acquisition Regulatory Council, OUSDRE(AM) (DARS), OUSDRE(M&RS), Room 3D139, Pentagon, Washington, D.C. 20301-3062, telephone (202)697-7268.

SUPPLEMENTARY INFORMATION:

Background

The DoD FAR Supplement is codified in Chapter 2, Title 48 of the Code of Federal Regulations.

The October 1, 1984 revision of the CFR is the most recent edition of that title. It reflects amendments to the 1984 edition of the DoD FAR Supplement made by Defense Acquisition Circulars 84-1 through 84-3.

Interested parties may submit proposed revisions to this Supplement directly to the DAR Council.

List of Subjects in 48 CFR Ch. 2

Government procurement.

James T. Brannan,

Director, Defense Acquisition Regulatory Council.

Defense Acquisition Circular

[Number 84-5]

April 30, 1984.

All DoD FAR Supplement and other directive material contained in this Defense Acquisition Circular is effective upon receipt in accordance with DoD FAR Supplement 201.301(S-70)(4).

Defense Acquisition Circular (DAC) 84-5 amends the DoD FAR Supplement and prescribes procedures to be followed. The following is a summary of the amendments and procedures:

Item I—Paperwork Reduction Act (Public Law 96-511), OMB Clearance of DoD Acquisition Regulatory System

The Office of Management and Budget (OMB) recently issued a rule (5 CFR Part 1320), 48 FR 13666, clearly establishing applicability of the Paperwork Reduction Act to collection of information associated with Federal acquisition. Requests for information from 10 or more firms in connection with the acquisition of goods or services by the Federal Government are now subject to the same review and approval requirements as are other collections of information under the act. In compliance with that ruling, blanket clearances have been obtained for the Defense acquisition Regulatory System (which includes the DAR and Military Services/Defense Agency implementation thereof); for solicitations, primarily for the purpose of covering information collection not mandated by the DAR, and for the Acquisition Management Systems and Data Requirements Control List (AMSDL). These clearance numbers and their applicability are as follows:

OMB Number 0704-0189 covers the Defense Acquisition Regulatory System, including the Defense Acquisition Regulation and implementation/supplementation thereof by the Military Services and Defense agencies. This clearance number has been approved through March 31, 1987.

OMB Number 0704-0188 applies to all information collection requirements contained in the existing AMSDL or those contained in previous lists which are in contracts now in place. It is valid through June 30, 1986.

OMB Number 0704-0187 applies to all DoD solicitations and covers all information collection in support of the DoD acquisition process necessary to evaluate bids and responses from potential suppliers for the purpose of making awards. This clearance number remains in effect and is valid through April 30, 1986.

OMB Number 0704-0193 covers the Department of Defense Supplements to the Federal Acquisition Regulation including the DoD FAR Supplement and all such supplementing and implementing regulations of the Military Services and Defense agencies. This clearance number is valid through March 31, 1986.

For purposes of compliance with the requirement to display the applicable OMB clearance numbers, a notice is published in the **Federal Register**, in addition to this information item, and the numbers need not be physically affixed to solicitations, contract documents, and other information collection requests.

Item II—Policy Statement on the Use of DAR and FAR Forms

It has come to the attention of the DAR Council that some contracting offices are experiencing difficulties in obtraining new and revised Standard Forms in a format which may be used in their automated systems. This is especially true of Standard Forms 26, 30, and 36. In order to address this situation, the DAR Council has added the following clarifying language to paragraph (d) of the policy statement on

the use of DAR and FAR forms which appeared in DAC 84-1:

It should be noted that, in the event new editions of Standards Forms are not available in the medium, e.g., pin-fed version, used by the contracting office, the form is deemed unavailable for implementation. In such cases the contracting office may continue to use the obsolete edition of the Standard Form or the superseded DD Form in the required medium until the new editions of the Standard Forms become available in that medium.

Item III—Make-or-Buy Programs

Pending action on a proposed revision to 15.704 of the Federal Acquisition Regulation (FAR) and notwithstanding language in the DoD FAR Supplement, for the Department of Defense, the actual application of the general rule set forth in FAR as to the content of make-or-buy programs is that, as a general guideline, a make-or-buy program should not include items or work efforts costing less than 1% of the total estimated contract price or $500,000, whichever is less.

Item IV—Purchase Orders

Paragraph 213.505-2(S-70) is amended to delete reference to Standard Form 44 which is covered in FAR 13.505-3.

Coverage is added to 213.505-3(b)(1) to permit use of Standard Form 44 for purchases of aviation fuel and oil in amounts up to $10,000.

Item V—Mistakes in Bids

The Federal Acquisition Regulation (FAR) authorizes new policy and procedures with regard to mistake-in-bid cases. Specifically, FAR 14.406-3(c) authorizes the contracting officer to permit withdrawal of a mistake in bid only after the agency head or a high level designee has elected not to take action in the case. Moreover, FAR 14.406-3(c)(2) authorizes withdrawal of a bid when the evidence reasonably supports the existence of a mistake but is not clear and convincing. Without clarifying guidance, these two authorizations would constitute major changes to DoD policy and procedures for handling alleged mistakes in bids. To preclude this unintended result, 214.406-3(e) of the DoD FAR Supplement has been revised to allow delegation of appropriate authority to the contracting officer to handle simple withdrawal of bid cases. Moreover, the revision also clarifies DoD policy that a bid should generally neither be corrected nor withdrawn when the evidence of mistakes is less than clear and convincing.

Item VI—Real Property Construction, Repair and Maintenance—Balance of Payments Program

Revision has been made to 225.302(a)(S-71) to clarify that the special International Balance of Payments analyses for overseas construction projects do not require application of Balance of Payments Program evaluation procedures as set forth at 225.303, but rather are accomplished by project sponsors and engineering personnel in the design and project approval phases prior to construction contracting. Any direct purchase of construction material for use overseas will fall under the current Balance of Payments procedures set forth in 225.303.

Item VII—Applicability of Contract Cost Principles and Procedures—Construction and Architect-Engineer Contracts

In pricing construction and related contracts and contract modifications, FAR 31.105(d) recognizes that a contractor's accounting records may not be adequate to determine actual cost data for both ownership and operating costs of construction equipment. Accordingly, FAR 31.105(d)(2)(i)(A) authorizes the contracting agency to specify the use of a schedule of predetermined rates. To clarify DoD policy in this area, 231.105(d)(2)(i)(A) is added to the DoD FAR Supplement specifying use of either the Construction Equipment Ownership and Operating Expense Schedule, published by the U.S. Army Corps of Engineers, or any other published schedule that does not include costs that are otherwise unallowable under the FAR or the DoD FAR Supplement cost principles. The Council recognizes that it may be desirable to provide additional guidance on how to modify rates to make them compatible with the cost principles, and is considering this topic as well as possible future revisions to the FAR itself.

Item VIII—Lobbying Cost Principle

The Office of Management and Budget (OMB) has directed that the agencies implement the intent and substance of the OMB Circular A-122 lobbying cost principle in FAR Subpart 31.2, Contracts with Commercial Organizations. Federal Acquisition Circular (FAC) 84-2 contains a complete revision to FAR 31.205-22 that defines unallowable lobbying cost activity in a manner consistent with the OMB circular.

The revised cost principle contained in FAC 84-2 becomes effective July 1, 1984; therefore, 231.205-22 of this Supplement will remain in effect until July 1, 1984, and should be deleted from this Supplement on that date.

Item IX—Subpart 235.70, Short Form Research Contract

A new Subpart 235.70, Short Form Research Contract, is added to provide guidance for use of a Short Form Research Contract (SFRC) for awards to educational institutions and nonprofit organizations whose primary purpose is the conduct of scientific research, when the basis of award is an unsolicited proposal. Related clauses are included in Part 252, and DD Forms 2222 through 2222-2 are provided in Part 253.

Item X—DoD Contract Simplification Test

Item VIII of DAC #76-47, dated December 15, 1983, published three omnibus clauses to be used in the DoD Contract Simplification Test. The deviation authority for the test, originally granted by the Deputy Secretary of Defense on March 5, 1982, has been renewed for the FAR under the provisions of 201.402 and 201.404 of the DoD FAR Supplement.

To continue the use of the omnibus clauses and provisions, they are being republished using the new FAR citations. The omnibus clause for fixed-price supply contracts, 7-110, is being republished as 252.252-7000. DAR 7-1913, for services, is being republished as 252.252-7001.

The solicitation provisions originally published as DAR 7-2004 are changed to 252.252-7002 and 252.252-7003 for negotiated and formally advertised contracts, respectively. All contracts and solicitations that incorporate FAR provisions or clauses by reference must contain the provision at FAR 52.252-1 and the clause at FAR 52.252-2.

These omnibus clauses and provisions may be cited by reference and included in contracts and solicitations. Use of these omnibus clauses and provisions is authorized only for use at Service and DLA designated test activities for noncomplex supplies and services up to $500,000.

Item XI—Acquisition of Computer Resources (Subparts 270.1 and 270.4)

An editorial change is made to 270.101(b) to remove the sentence at the end of (b)(5) and to place a parenthetical note ("see also Subpart 270.4") at (b) since it applies to all of paragraph (b) and not merely (b)(5).

Revision is made to 270.400(e) to add a line which was omitted in the initial printing of the DoD FAR Supplement.

A new 270.402 is added to provide guidance in procedures to be used in acquiring automatic data processing resources covered by 10 U.S.C. 2315 authority.

Item XII—Editorial Corrections

DAC #84-4 (Item V), dated March 23, 1984, issued new coverage at Subpart 217.71, Master Agreement for Repair and Alteration of Vessels.

Titles to certain clauses referenced in 217.7104 were inadvertently omitted at that time and are included in this DAC.

Subpart 225.71 is revised to add 225.7103, Guarantee by Canadian Government, which was omitted from the DoD FAR Supplement in its initial printing.

Adoption of Amendments

Therefore, the DoD FAR Supplement contained in 48 CFR Chapter 2 is amended as set forth below.

1. The authority for 48 CFR Chapter 2 reads as follows:

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

PART 213—SMALL PURCHASE AND OTHER SIMPLIFIED PURCHASE PROCEDURES

2. Section 213.505-2 is amended by removing the last sentence of paragraph (S-70), by revising paragraphs (S-73)(1)(ix) and (xxi), by revising the reference reading "252.225-7013" in paragraph (S-73)(1)(xxx) to read "252.225-7019" and by revising the references to "252.227-7011" and "252.227-7012" in paragraph (S-73)(2)(ii)(E) to read "252.225-7011" and "252.225-7012" as follows:

213.505-2 Agency Order Forms in Lieu of Optional Forms 347 and 348.

* * * * *

(S-73) * * *

(1) * * *

(ix) When the order is for Military Assistance Program items, the United States Products Certificate (Military Assistance Program), at 252.225-7015, and the clause, United States Products (Military Assistance Program), in 252.225-7016, shall be inserted in the Schedule, and Clause 6, Foreign Supplies, of the General Provisions shall be deleted. In addition, the contractor's signature shall be obtained on DD Form 1155r.

* * * * *

(xxi) At the contracting officer's discretion, the clause, Duty-free Entry—Qualifying Country End Products and Supplies, at 252.225-7008 may be used (see 225.605(a)(S-72)).

* * * * *

3. Section 213.505-3 is added to read as follows:

213.505-3 Standard Form 44, Purchase Order—Invoice—Voucher.

(b)(1) The $2,500 limitation applies to all purchases except for aviation fuel and oil purchases which will not exceed $10,000.

PART 214—FORMAL ADVERTISING

4. Section 214.406-3 is amended by redesignating the introductory text of paragraph (e) as (e)(1), redesignating the existing paragraphs (e)(1) through (e)(8) as (e)(1)(i) through (e)(1)(viii), revising redesignated paragraphs (e)(1) (iv), (vi), (vii), and (viii), and adding paragraph (e)(2) to read as follows:

214.406-3 Other Mistakes Disclosed Before Award.

(e)(1) * * *

(iv) Defense Logistics Agency: The General Counsel and Assistant General Counsel.

* * * * *

(vi) Defense Communications Agency: The General Counsel.

(vii) Defense Nuclear Agency: The General Counsel.

(viii) Defense Mapping Agency: The General Counsel.

(e)(2) Authority to elect not to correct a bid but to allow withdrawal when clear and convincing evidence establishes only the existence of the mistake may be delegated, without power of redelegation, to any procuring activity having legal counsel available. Any case involving evidence that is less than clear and convincing shall be processed under FAR 14.406-3(d) and paragraph (1) above.

* * * * *

PART 217—SPECIAL CONTRACTING METHODS

5. Section 217.7104 is amended by revising paragraphs (a)(22), (23), (b)(4), (5), (7), (8), and (27) to read as follows:

217.7104 Contract Clauses.

(a) * * *

(22) 252.217-7121 Authorization and Consent.

(23) 252.217-7122 Notice and Assistance Regarding Patent and Copyright Infringement.

* * * * *

(b) * * *

(4) 252.217-7203 Patent Indemnity.

(5) 252.217-7204 Filing of Patent Applications.

* * * * *

(7) 252.217-7290 Reporting and Refund of Royalties.

(8) 252.217-7207 Rights in Data and Computer Software.

* * * * *

(27) 252.217-7226 Required Sources for Jewel Bearings and Related Items.

* * * * *

PART 225—FOREIGN ACQUISITION

6. Section 225.302 is amended by revising paragraph (a)(S-71) to read as follows:

225.302 Policy.

(a) * * *

(S-71) Real Property Construction, Repair, and Maintenance.

(1) Contracts for construction, repair, and maintenance of real property outside the United States will, to the extent required by DoD Directive, specify that U.S. materials will be used, or that Government materials and equipment will be furnished, only when the cost of the U.S. items (including costs associated with transportation and handling) does not exceed the cost of acceptable foreign items plus 50 percent. A differential greater than 50 percent may be used when specifically authorized in accordance with departmental procedures.

(2) The evaluation referred to in (1) above is normally accomplished in the estimating process prior to solicitation for award of a real property construction, repair or maintenance contract. This paragraph does not apply to direct contracts for acquisition of construction materials and equipment for use outside the United States. The procedures of 225.303 shall be used for such acquisitions (also see 225.302(S-73)).

7. Section 225.7103 is added to read as follows:

225.7103 Guarantee by Canadian Government.

The Canadian Government guarantees to the U.S. Government all commitments, obligations, and convenants of the Canadian Commercial Corporation in connection with any contract or order issued to said Corporation by any contracting activity of the U.S. Government. The Canadian Government has likewise waived notice of any change or modification which may be made from time to time in these commitments, obligations, or convenants.

PART 231—CONTRACT COST PRINCIPLES AND PROCEDURES

8. Section 231.105 is added to read as follows:

231.105 Construction and Architect-Engineer Contracts.

(d)(2)(i)(A) When the contracting officer cannot determine actual cost data for both ownership and operating costs for each piece of equipment, or groups of similar serial or series equipment, from the contractor's accounting records, costs shall be determined in accordance with the Construction Equipment Ownership and Operating Expense Schedule, published by the U.S. Army Corps of Engineers, unless another schedule is specified in the contract. Costs otherwise unallowable under this part shall not become allowable through the use of any schedule (see FAR 31.109(c)). For example, a schedule must be adjusted for Government contract costing purposes if it is based on replacement cost, includes unallowable interest costs, or uses improper cost-of-money rates or computations.

PART 235—RESEARCH AND DEVELOPMENT CONTRACTING

9. Subpart 235.70, consisting of sections 235.7000 through 235.7009, is added to read as follows:

Subpart 235.70—Short Form Research Contract

235.7000 Scope of Subpart.

This subpart prescribes procedures for contracting for research on a cost-reimbursement basis with educational institutions or nonprofit organizations within the United States whose primary purpose is the conduct of scientific research, when the basis for award is an unsolicited proposal.

235.7001 Definitions.

(a) Educational institution means an institution of higher learning providing facilities for teaching and research and authorized to grant academic degrees.

(b) Nonprofit organization—organizations of the type described in Section 501(c)(3) and (d) of the Internal Revenue Code of 1954 (26 U.S.C. 501(c)) and exempt from taxation under Section 501(a) of the Internal Revenue Code (26 U.S.C. 501(a)), or any nonprofit scientific organization qualified under a state nonprofit organization statute.

(c) Research includes all effort described as research in 235.001 including that part of exploratory development applicable to applied research.

235.7002 Applicability.

(a) The procedures contained in this subpart may be used for contracting:

(1) whenever the principal purpose is the acquisition of research from an educational institution or a nonprofit organization; or

(2) when the work is to be accomplished on a cost-reimbursement basis;

(3) when the basis for award is an unsolicited proposal; and

(4) when the contract requires the delivery of designs, drawings or reports as end items.

(b) When the circumstances in (a) above are present, the Short Form Research Contract (SFRC) may be used. The SFRC shall not be used for any purpose other than as described herein.

235.7003 Content of Unsolicited Proposals.

Unsolicited proposals submitted for award in accordance with these procedures shall contain all the information in FAR 15.505. A contract may be awarded on the basis of the unsolicited proposal exactly as submitted or as subsequently amended by the offeror, if the proposal contains the information listed in (a) through (h) below.

(a) In addition to the information identified in FAR 15.505(b), a statement of work in accordance with 235.005 and FAR 35.005 and a breakdown on the time, identifying man-days, man-months or man-years to be devoted to the contract by the principal investigator and any associates (see FAR 35.015(a)). A separate work statement which can be incorporated by reference in the SFRC is preferred.

(b) In addition to information identified in FAR 15.505(c), the following executed representations and certifications and DD Form 2222-1:

(1) Organization Conflicts of Interest—FAR 15.505(c)(6);

(2) Contingent Fee Representation and Agreement—FAR 52.203-4;

(3) Certification of Nonsegregated Facilities—FAR 52.222-21;

(4) Previous Contracts and Compliance Reports—FAR 52.222-22;

(5) Affirmative Action Compliance—FAR 52.222-25;

(6) Clean Air and Water Certification (if proposal exceeds $100,000) in FAR 52.223-1;

(7) Insurance—Immunity from Tort Liability—FAR 52.228-7. Offerors may elect to submit the representations and certifications on a one-time basis to each contracting office. Such representations and certifications would be valid for all SFRC contract awards; *Provided*, for each proposal submitted, the offeror references the submission and confirms in writing its validity for the research proposal.

(c) A statement that the Government may award a contract in accordance with the procedures of this Subpart 235.70 as applicable.

(d) Identification of property, as defined in 252.235-7005 showing, when possible, the description or title and estimated or known cost of each item. For facilities only (FAR 45.301), the offeror must include a statement as to why it is necessary to acquire these items with contract funds and express in writing his unwillingness or financial inability to acquire the items with his own resources. When special test equipment or components are proposed, individual items of less than $1,000 may be grouped by category (FAR 45.307-2). The description or title of all property for which contract funds are requested should be in sufficient detail to enable the contracting officer to:

(1) determine whether or not the Government will furnish such property, pursuant to 235.014, FAR 35.014 and FAR 45.302-1 and,

(2) for property which may be contractor-acquired (versus Government-furnished)—

(i) accept it as advance notification required by FAR 52.244-2; and

(ii) authorize acquisition at the time of award.

(e) A Contract Pricing Proposal Cover Sheet (SF 1411) or acceptable substitute. Information for subcontracts listed in FAR 52.244-2, subparagraph (b), shall be as prescribed by that subparagraph.

(f) If the proposal includes data that the efferor does not want disclosed for any purpose other than evaluation, he shall mark the title page and each restricted sheet as prescribed by FAR 15.509. If the offeror grants permission to the Government to have non-Government evaluators review his proposal, he should either make this statement in his offer or check block A on page 2 of the DD Form 2222-2.

(g) The offeror's proposal shall include the following statement:

"This proposal incorporates by reference, and makes a part thereof, all applicable clauses in DFARS 252.235-7005 in effect on the date of this proposal or such other date as may be mutually agreed upon."

(h) The parties may also incorporate, by mutual consent, any other FAR or DFARS clauses which are determined to be applicable because of the nature of the particular acquisition.

235.7004 Contracting Procedures.

(a) The contracting officer may award an SFRC resulting from an unsolicited proposal when the requirements of FAR 15.505 and 235.7003 are satisfied, and noncompetitive award is appropriate under 215.507 and FAR 15.507

(b) Contracts resulting from unsolicited proposals may be affected by using the procedures in either (c) or (d) below, as appropriate.

(c) When the unsolicited proposal, either as submitted initially, or as amended in writing by the offeror, is satisfactory to the Government, the proposal should be accepted by the contracting officer and a contract formed by incorporating the entire proposal by reference, or by incorporating the statement of work by reference and executing the SFRC.

(d) When acceptance of the entire proposal is not considered advantageous to the Government, the contracting officer should use such parts of the unsolicited proposal as are considered appropriate, either by actual attachment or incorporation by reference, to develop a contract for execution by both parties. In this event, the SFRC shall be executed by the contractor prior to signature by the Government.

(e) Modifications shall be effected by use of the DD Form 2222.

(f) The offeror may offer options to the Government or the parties may agree to options to conduct research effort beyond the initial research program proposed. The initial dollar amount and period of performance specified at the time of award shall not include the cost and period of the options. The cost and period of such options shall be separately identified. The option may be exercised by the Government by unilateral modification of the contract.

(g) The policy and background regarding vesting of title in property to organizations defined in 235.7001 are set forth in 235.014 and FAR 35.014. Title to property which is not vested in the contractor or for which the determination regarding vesting of title is deferred shall be identified in the DD Form 2222.

(h) By submission of his proposal pursuant to this subpart 235.70, the offeror must agree to be bound by all terms and conditions of the resulting contract.

235.7005 Advance Payments.

SFRCs awarded to institutions and organizations authorized to receive advance payments in accordance with subpart 232.4 and FAR Subpart 32.4, shall be clearly marked to read "ADVANCED PAYMENT POOL CONTRACT PURSUANT TO ATTACHED PAYMENT PROVISION."

235.7006 Methods of Funding.

SFRCs may be fully or incrementally funded in accordance with departmental procedures. If incrementally funded, the SFRC shall specify the total estimated cost for the full period of the research program, both funded or unfunded, and the amount of funds currently obligated. For the purpose of establishing the period covered by the incremental funds available, the funds available will be prorated by dividing the number of months into the dollars available. If this method is not acceptable, the offeror shall specify an alternate method of establishing the time period.

235.7007 Proposal Format.

Contractors are encouraged to use DD Form 2222-2 in the submission of research proposals for SFRC awards. Use of this format will promote consistency in award procedures among DoD funding agencies and expedite the award of the SFRC.

235.7008 SFRC Clauses.

(a) The clauses in 252.235-7005 are applicable to all SFRC awards of $10,000 or more as of the date of the offeror's proposal, unless such date is modified by mutual agreement. Such modification may be included in the offeror's proposal or may be specifically identified in the contract document. Inclusion of the change in the contract document will necessitate execution of the contract by the signature of both contracting parties.

(b) Uniform contract clauses to be used in Short Form Research Contracts (SFRCs) with educational institutions and other nonprofit organizations are set forth in 252.235-7005.

(c) For purposes of this subpart, "contract action" is defined as the amount of the initial contract of the amount of a modification for new procurement to the contract. It does not include the amount of any unexercised options.

(d) Clauses specified in 252.235-7005 are considered part of the General Provisions of an SFRC unless inapplicable in accordance with the conditions set forth at the clause citation.

(e) SFRC awards of less than $10,000 shall identify the clauses in 252.235-7005 which are not applicable when the contract amount is under $10,000.

235.7009 Price Negotiation Memorandum.

The price negotiation memorandum (FAR 15.808/DFARS 215.808) shall include information necessary for appropriate contract administration. Included, for example, will be a statement as to whether FAR clause 52.215-30 or 52.215-31 is applicable (Facilities Capital Cost of Money clauses).

PART 252—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

10. Section 252.235-7005 is added to read as follows:

252.235-7005 Short Form Research Contract Clauses.

As prescribed in 235.7008(b), insert the following clauses in SFRC awards to educational institutions and nonprofit organizations. The clauses set forth below are incorporated with the same force and effect as if set forth in full. Clauses with a single asterisk (*) are applicable to educational institutions only. Clauses with a double asterisk (**) are applicable to nonprofit institutions only. For awards where the amount is less than $10,000, the inapplicable clauses shall be identified in the contract.

Definitions. FAR 52.202-1.
Assignment of Claims. FAR 52.232-23 Alternate I.
Disputes. FAR 52.233-1.
Equal Opportunity. FAR 52.222-26. Alternate I shall be added as a special provision when applicable per Alternate I instructions.
Officials Not to Benefit. FAR 52.203-1.
Covenant Against Contingent Fees. FAR 52.203-5.
Notice and Assistance Regarding Patent and Copyright Infringement. FAR 52.227-2 (applicable only if amount of contract action exceeds $25,000).
Affirmative Action for Special Disabled Veterans and Vietnam Era Veterans. FAR 52.222-35.
Utilization of Small Business Concerns and Small Disadvantaged Business Concerns. FAR 52.219-8.
Examination of Records by Comptroller General. FAR 52.215-1.
Convict Labor. FAR 52.222-3.
Utilization of Labor Surplus Area Concerns. FAR 52.220-3 (applicable only if contract action exceeds $25,000).
Audit—Negotiation. FAR 52.215-2.
Excusable Delays. FAR 52.249-14.
Termination for the Convenience of the Government (Educational and *Other* Nonprofit Institutions). FAR 52.249-5 (applicable as set forth in clause preamble).
Authorization and Consent. FAR 52.227-1, and Alternate I. FAR 52.246-9.
Government Property (Cost-Reimbursement, Time and Material, or Labor-Hour Contracts). FAR 52.245-5 and Alternate I.
Affirmative Action for Handicapped Workers. FAR 52.222-36.
Subcontracts Under Cost-Reimbursement and Letter Contracts. FAR 52.244-2.
Allowable Cost and Payment. FAR 52.216.
Rights in Technical Data and Computer Software. (See 252.227-7013 of this Supplement.)
Identification of Technical Data. (See 252.227-7029 of this Supplement.)
Restrictive Markings on Technical Data. (See 252.227-7018 of this Supplement.)

Insurance—Liability to Third Persons. FAR 52.228-7. Alternates I or II apply under the circumstances set forth herein.
Government Supply Sources. FAR 52.251-1.
Preference for United States—Flag Air Carriers. FAR 52.247-63.
Patent Rights—Retention by the Contractor (Short Form). FAR 52.227-11.
Patents—Subcontracts. 252.227-7034.
Competition in Subcontracting. FAR 52.244-5 (applies only if contract action exceeds $25,000).
Utilization of Women—Owned Small Businesses. FAR 52.219-13 (applicable only if contract action exceeds $25,000).
Payment for Overtime Premiums. FAR 52.222-2. (Note: The word "zero" is inserted in the blank space indicated by an asterisk. Clause applicable only in contracts over $100,000.)
Care of Laboratory Animals. 252.235-7003.
Limitation of Cost. FAR 52.232-20 (applicable only when contract action is fully funded).
Limitation of Funds. FAR 52.232-22 (applicable only when contract action is incrementally funded).
Clean Air and Water. FAR 52.223-2 (applicable only if contract action exceeds the dollar amount set forth in the preamble to the clause).
Overseas Distribution of Defense Subcontracts. 252.204-7005 (applicable only when contract action exceeds $500,000 or when any modification increases contract amount to more than $500,000).
Gratuities. FAR 52.203-3.
Certification of Requests for Adjustment or Relief Exceeding $100,000. 252.233-7000 (applicable only if contract action exceeds $100,000).
Ordering From Government Supply Sources. (See 252.251-7000 of this Supplement.)
*Predetermined Indirect Cost Rates. FAR 52.216-15 (applicable only when the contractor has an executed negotiation agreement with the cognizant contract administration office).
**Limitation on Withholding of Payments. FAR 52.232-9.
**Notice of Intent to Disallow Costs. FAR 52.242-1.
**Subcontractor Cost or Pricing Data. FAR 52.215-24 (applicable only if contract action exceeds $500,000).
**Technical Data—Withholding of Payment. (See 252.227-7030 of this Supplement.)
**Fixed Fee. FAR 52.216-8 (applicable only in cost-plus-fixed-fee contracts).
**Price Reduction for Defective Cost or Pricing Data. FAR 52.215-22 (applicable only if contract action exceeds $500,000).
**Cost Accounting Standards. FAR 52.230-3 (applicable only if contract action exceeds $100,000 and the contract is not exempt per FAR 30.301).
**Disclosure and Consistency of Cost Accounting Practices. FAR 52.230-5 (applicable only if contract action exceeds $100,000 and the contract is not exempt per FAR 30.301).
**Administration of Cost Accounting Standards. FAR 52.230-4 (applicable only if contract action exceeds $100,000 and the contract is not exempt per FAR 30.301).
**Changes—Cost-Reimbursement. FAR 52.243-2 and Alternate V.
**Facilities Capital Cost of Money. FAR 52.215-30 (applicable as set forth in the clause).
**Waiver of Facilities Capital Cost of Money. FAR 52.215-31 (applicable as set forth in the clause).
**Termination (Cost-Reimbursement). FAR 52.249-6 (applicable only to cost-plus-fixed-fee contracts).
**Excusable Delays. FAR 52.249-14 (applicable only to contracts to which FAR clause 52.249-6 "Termination (Cost-Reimbursement)" is applicable).

Work to be Performed.

WORK TO BE PERFORMED (AUG 1983)

The Contractor shall perform research as specified in the unsolicited proposal and identified in the Short Form Research Contract (SFRC) document.

(End of clause)

Acknowledgement of Sponsorship.

ACKNOWLEDGEMENT OF SPONSORSHIP (APR 1984)

(a) The Contractor agrees that in the release of information relating to an SFRC, such release shall include a statement to the effect that the project or effort depicted was or is sponsored by the agency set forth in the SFRC, and that the content of the information does not necessarily reflect the position or the policy of the Government, and no official endorsement should be inferred.

(b) For the purpose of this clause, information includes news releases, articles, manuscript, brochures, advertisements, still and motion pictures, speeches, trade association proceedings, symposia, etc.

(c) Nothing in the foregoing shall affect compliance with the requirements of the clause entitled "Security Requirements" (FAR 52.204-2), if such clause is a part of the contract.

(End of clause)

Publications.

PUBLICATIONS (AUG 1983)

Publication of results of the research project in appropriate professional journals is encouraged as an important method of recording and reporting scientific information. One copy of each paper planned for publication will be submitted to the Scientific Program Officer simultaneously with its submission for publication. Following publication, copies of published papers shall be submitted to the Scientific Program Officer, or to the other addresses in quantities as may be directed by the Contracting Officer.

(End of clause)

Reporting Requirements.

REPORTING REQUIREMENTS (APR 1984)

(a) Reporting shall be as specified in the SFRC. Unless specified otherwise, reporting requirements will include annual letter reports for multiyear research programs and a final technical report due within sixty (60) days after the expiration date of the SFRC.

(b) The Contracting Officer, after coordination with the Scientific Program Officer, will specify the form and content of the required reports. These requirements may be furnished the Contractor as may be mutually agreed.

(c) Technical data and computer software, as defined in 252.227-7013 shall be delivered to the Scientific Program Officer. Unless otherwise specified in the SFRC, these items shall be delivered as part of the final technical report.

(End of clause)

Option to Extend the Term of the SFRC.

OPTION TO EXTEND THE TERM OF THE SFRC (APR 1984)

(a) If the Contractor's proposal covers an additional period(s) which could be treated as an optional period(s), such additional period(s) of research may be added to the contract, at the option of the Government, by the Contracting Officer's giving written notice exercising such option(s) at anytime during the performance period specified in the contract or any extensions thereof.

(b) If the Government exercises an option, the Contractor agrees to the following:

(i) to comply with the applicable clauses listed in the SFRC; and

(ii) to comply with the policies and regulations for the SFRC as set forth in Subpart 235.70.

(End of clause)

Contractor-Acquired Property.

CONTRACTOR-ACQUIRED PROPERTY (APR 1984)

(a) As used in this clause, "property" is as defined in subparagraph (b)(1) of the clause of this contract entitled "Title to Contractor-Acquired Property" which has been specifically identified in the Contractor's proposal which is the basis for award or modification.

(b) The identification and description in the Contractor's proposal of property to be Contractor-acquired may be accepted by the Contracting Officer as advance notification required by subparagraphs (a) and (b) of the clause of this contract entitled "Subcontracts Under Cost-Reimbursement and Letter Contracts" (FAR 52.244-2).

(c) Award of this contract, and modifications thereto, shall constitute the written consent of the Contracting Officer, required by subparagraph (c) of FAR 52.244-2, to acquire property identified in the Contractor's proposal, except for those items specifically identified in the contract as required by Block 27A of the DD Form 2222.

(d) The decision to approve subcontracts for acquisition of items listed in Block 27A of the contract will be made subsequent to award of the contract or modification pursuant to FAR 52.244-2.

(End of clause)

Title to Contractor-Acquired Property.

TITLE TO CONTRACTOR-ACQUIRED PROPERTY (APR 1984)

(a) This paragraph implements subparagraph (c)(4) of the clause of this contract entitled "Government Property

(Cost-Reimbursement, Time and Material, or Labor Hour Contracts)" and FAR 35.014.

(b) For purposes of this paragraph, "property" is all nonexpendable tangible personal property, except material:

(1) as described in FAR 45.101, including ADPE defined in FAR 31.001 and facilities defined in FAR 45.301; and

(2) which is acquired with funds available for the conduct of research; and

(3) For which the Contracting Officer has authorized acquisition by the Contractor: (i) at the time of award of the contract or modification as provided in 252.235–7005; or (ii) subsequent to award pursuant to the Subcontracts clause of this contract.

(c) Title to all property having an acquisition cost of $1,000 or more which is specifically identified in the Contractor's proposal shall vest in the Contractor without further obligation to the Government, unless the determination regarding vesting of title is deferred until after acquisition. Property for which the determination regarding title is deferred shall be identified in Block 27B of DD Form 2222, and title to such property shall vest in accordance with the provisions of (d) below.

(d) Title to all property having an acquisition cost of $1,000 or more which was not specifically identified in the Contractor's proposal, or for which the determination regarding title is deferred pursuant to (c) above, shall vest as follows:

(1) in the Government pursuant to FAR 35.014; or

(2) in the Contractor; or

(3) in the Contractor subject to the right of the Government to direct transfer of the title back to the Government or third parties. This right may be exercised at anytime up to and including the twelfth (12th) month after completion or termination of the contract. The Government may at anytime remove an item of property from this category and transfer title to the Contractor without right of the Government to direct transfer of the title back to the Government or to third parties.

(e) Transfer of title back to the Government or third parties shall not be the basis for any claim by the institution. The provisions of the clause of this contract entitled "Government Property (Cost-Reimbursement, Nonprofit)" apply to any changes in property.

(f) Until title to property acquired with funds made available under this contract has been vested in the Contractor, without right of the Government to direct transfer of the title back to the Government or third parties, it shall be considered Government Property and subject to the provisions of FAR 52.245–5 and Alternate I.

(g) The Contractor shall furnish the Contracting Officer a list of all property having an acquisition cost of $1,000 or more acquired under this contract, to which title has not been vested in the Contractor, within forty-five (45) days following the end of the calendar year of the Contractor's fiscal year during which such property was acquired.

(End of clause)

Research Responsibility.

RESEARCH RESPONSIBILITY (APR 1984)

(a) The Contractor shall bear responsibility for the conduct of the research specified in the Contractor's unsolicited proposal identified in the SFRC. The Contractor will exercise judgment in attaining the stated research objectives within the limits of the terms and conditions of the SFRC; *Provided*, however, that the Contractor will obtain the Contracting Officer's approval to change the Statement of Work. Consistent with the foregoing, the Contractor shall conduct the work as set forth in his proposal and accepted by the contract award.

(b) When the decision to enter into the SFRC is based upon the principal investigator's knowledge of the field of study, and his capabilities to manage the research project in an effective and productive manner, the principal investigator identified in the unsolicited proposal shall be continuously responsible for the conduct of the research project, and shall be closely involved with the research efforts.

(c) The Contractor shall advise the Contracting Officer if the principal investigator(s) identified in the SFRC plans to devote substantially less effort to the work than set forth in the proposal.

(d) The Contractor shall obtain the Contracting Officer's approval prior to changing the principal investigator(s) identified in the proposal.

(End of clause)

Restriction on Printing.

RESTRICTION ON PRINTING (AUG 1983)

The Government authorizes the reproduction of reports, data, or other written materials, if required; *Provided*, the material produced does not exceed 5,000 production units of any page, and items consisting of multiple pages do not exceed 25,000 production units in the aggregate. The Contractor shall obtain the express prior written authorization of the Contracting Officer to reproduce material in excess of the quantities cited above.

(End of clause)

Contract Items Requiring Experimental, Developmental or Research Work.

CONTRACT ITEMS REQUIRING EXPERIMENTAL, DEVELOPMENTAL OR RESEARCH WORK (AUG 1983)

For purposes of defining the nature of the work and the scope of rights in data granted to the Government pursuant to the Rights in Technical Data and Computer Software clause of this contract, it is understood and agreed that the work to be performed under this contract requires the performance of experimental, developmental, or research work. This clause does not constitute a determination as to whether or not any data required to be delivered under this contract falls within the definition of limited rights data.

(End of clause).

Advance Payments.

ADVANCE PAYMENTS (AUG 1983)

Advance payments shall be made under this contract pursuant to the advance payment pool agreement between the Contractor and one or more Military Departments applicable to this contract, in effect as of the date of this contract. If such an agreement is not in effect as of the date of award of this contract, the Contractor will be paid in accordance with the clause of this contract entitled "Allowable Cost and Payment."

(End of clause)

11. Sections 252.252–7000 through 252.252–7003 are added to read as follows:

252.252–7000 Simplified Supply Contract Required Clauses.

The following clause for fixed price supply contracts may be used only by contracting offices authorized by their Department to use the test procedures of the DoD Contract Simplification Progam:

SIMPLIFIED SUPPLY CONTRACT REQUIRED CLAUSES (APR 1984)

The clauses set forth below by reference are incorporated herein with the same force and effect as if set forth in full.

Title and date	FAR or DoD FAR supplement clause
Definitions (APR 1984)	52.202–1
Officials Not to Benefit (APR 1984)	52.203–1
Gratuities (APR 1984)	52.203–3
Covenant Against Contingent Fees (APR 1984)	52.203–5
New Material (APR 1984)	52.210–5
Used or Reconditioned Material, Residual Inventory, and Former Government Surplus Property (APR 1984)	52.210–7
Priorities, Allocations and Allotments (APR 1984)	52.212–8
Variation in Quantity (APR 1984)	52.212–9
Utilization of Small Business Concerns and Small Disadvantaged Business Concerns (APR 1984)	52.219–8
Utilization of Labor Surplus Area Concerns (APR 1984)	52.220–3
Notice to the Government of Labor Disputes (APR 1984)	52.222–1
Convict Labor (APR 1984)	52.222–3
Walsh-Healey Public Contract Act (APR 1984)	52.222–20
Equal Opportunity (APR 1984)	52.222–26
Affirmative Action for Special Disabled and Vietnam Era Veterans (APR 1984)	52.222–35
Affirmative Action for Handicapped Workers (APR 1984)	52.222–36
Buy American Act, Trade Agreements Act, and the Balance of Payments Program (APR 1984)	252.225–7006
Federal, State, and Local Taxes (APR 1984)	52.229–3
Payments (APR 1984)	52.232–1
Discounts for Prompt Payment (APR 1984)	52.232–8
Interest (APR 1984)	52.232–17
Assignment of Claims (APR 1984)	52.232–23
Invoices (OCT 1982)	252.232–7000
Disputes (APR 1984)	52.233–1
Changes (APR 1984)	52.243–1
Contractor Inspection Requirements (APR 1984)	52.246–1
Inspection of Supplies—Fixed Price (APR 1984)	52.246–2
Responsibilities for Supplies (APR 1984)	52.246–16
Termination for Convenience of the Government (Fixed Price) (APR 1984)	52.249–2
Default (Fixed Price Supply and Service) (APR 1984)	52.249–8

(End of clause)

252.252-7001 Simplified Services Contract Required Clauses.

The following clause for fixed price services contracts may be used only by contracting offices authorized by their Department to use the test procedures of the DoD Contract Simplification Program:

SIMPLIFIED SERVICES CONTRACT REQUIRED CLAUSES (APR 1984)

The clauses set forth below by reference are incorporated herein with the same force and effect as if set forth in full.

Title and date	FAR or DoD FAR supplement clause
Definitions (APR 1984)	52.202-1
Officials Not to Benefit (APR 1984)	52.203-1
Gratuities (APR 1984)	52.203-3
Covenant Against Contingent Fees (APR 1984)	52.203-5
Utilization of Small Business Concerns and Small Disadvantaged Business Concerns (APR 1984)	52.219-8
Utilization of Labor Surplus Area Concerns (APR 1984)	52.220-3
Notice to the Government of Labor Disputes (APR 1984)	52.222-1
Convict Labor (APR 1984)	52.222-3
Contract Work Hours and Safety Standards Act—Overtime Compensation (JAN 1984)	DAR 207-103.16(a)
Payrolls and Basic Payroll Records (JAN 1984)	DAR 207-103-16(c)
Equal Opportunity (APR 1984)	52.222-26
Affirmative Action for Special Disabled and Vietnam Era Veterans (APR 1984)	52.222-35
Affirmative Action for Handicapped Workers (APR 1984)	52.222-36
Service Contract Act of 1965 (JAN 1984)	DAR 207-1903.41(a)
Federal, State, and Local Taxes (APR 1984)	52.229-3
Payments (APR 1984)	52.232-1
Discounts for Prompt Payment (APR 1984)	52.232-8
Interest (APR 1984)	52.232-17
Assignment of Claims (APR 1984)	52.232-23
Invoices (OCT 1982)	252.232-7000
Disputes (APR 1984)	52.233-1
Changes—Fixed-Price, Alternate II (APR 1984)	52.243-1
Inspection of Services—Fixed Price (APR 1984)	52.246-4
Default (Fixed-Price Supply and Service) (APR 1984)	52.249-8

(End of clause)

252.252-7002 Simplified Supply and Services Provisions (Negotiated).

The following solicitation provision for fixed-price negotiated contracts may be used only by contracting offices authorized by their Department to use the test procedures of the DoD Contract Simplification Program:

SIMPLIFIED SUPPLY AND SERVICES PROVISIONS (NEGOTIATED) (APR 1984)

The solicitation provisions set forth below by reference are incorporated herein with the same force and effect as if set forth in full.

Title and date	FAR provision
Solicitation Definitions (APR 1984)	52.215-5
Unnecessarily Elaborate Proposals or Quotations (APR 1984)	52.215-7
Acknowledgement of Amendments to Solicitations (APR 1984)	52.215-8
Submission of Offers (APR 1984)	52.215-9
Restriction on Disclosure and Use of Data (APR 1984)	52.215-12
Preparation of Offers (APR 1984)	52.215-13
Explanation to Prospective Offerors (APR 1984)	52.215-14
Failure to Submit Offer (APR 1984)	52.215-15
Contract Award (APR 1984)	52.215-16
Order of Precedence (APR 1984)	52.215-18

(End of provision)

252.252-7003 Simplified Supply and Services Provisions (Advertised).

The following soliciation provision for fixed-price advertised contracts may be used only be contracting offices authorized by their Department to use the test procedures of the DoD Contract Simplification Program:

SIMPLIFIED SUPPLY AND SERVICES PROVISIONS (ADVERTISED) (APR 1984)

The solicitation provisions set forth below by reference are incorporated herein with the same force and effect as if set forth in full.

Title and date	FAR provision
Solicitation Definitions—Formal Advertising (APR 1984)	52.214-1
Acknowledgement of Amendments to Invitations for Bids (APR 1984)	52.214-3
False Statements in Bids (APR 1984)	52.214-4
Submission of Bids (APR 1984)	52.214-5
Explanation to Prospective Bidders (APR 1984)	52.214-6
Failure to Submit Bid (APR 1984)	52.214-8
Contract Award—Formal Advertising (APR 1984)	52.214-10
Order of Precedence—Formal Advertising (APR 1984)	52.214-11
Preparation of Bids (APR 1984)	52.214-12

(End of provision)

PART 253—FORMS

253.270 [Amended]

12. The following forms are added to the list following section 253.270:

* * * * *

253.303-70-DD-2222 DD Form 2222: Short Form Research Contract (SFRC) Modification (Page 1)

253.303-70-DD-2222 DD Form 2222: Short Form Research Contract (SFRC) Modification (Page 2)

253.303-70-DD-2222 Instructions for Completing DD Form 2222

253.303-70-DD-2222-1 DD Form 2222-1: Representations and Certifications From Offerors Submitting Proposals Under DFARS 235.70

253.303-70-DD-2222-1 DD Form 2222-1: Representations and Certifications From Offerors Submitting Proposals Under DFARS 235.70 (Page 2)

253.303-70-DD-2222-2 DD Form 2222-2: Short Form Research Contract Research Proposal Cover Page

253.303-70-DD-2222-2 DD Form 2222-2: Short Form Research Contract Research Proposal (Page 2)

PART 270—ACQUISITION OF COMPUTER RESOURCES

270.101 [Amended]

13. Section 270.101 is amended by adding "(see also Subpart 270.4)" at the end of the introductory text of paragraph (b) and removing the last sentence of paragraph (b)(5).

14. Section 270.400 is amended by revising paragraph (e)(9) to read as follows:

270.400 Scope of Subpart.

* * * * *

(e) * * *

* * * * * *

(9) Logistics systems which provide direct support to operating forces or provide direct support to maintenance of weapons systems (e.g., organic supply, software support facilities for weapon systems, etc.). This does not include logistic systems supporting, contracting, accounting, disbursement and budgeting, etc.

15. Section 270.402 is added to read as follows:

270.402 Procedures.

Unless the contracting officer elects to use the procedures at 270.3, normal acquisition procedures as prescribed in the FAR and this Supplement shall be used in acquiring automatic data processing resources covered by the 10 U.S.C. 2315 authority. Other DoD and Departmental regulations treating acquisition and management of ADP resources may also apply.

[FR Doc. 85-7206 Filed 3-27-85; 8:45 am]

BILLING CODE 3810-01-M

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

Endangered and Threatened Wildlife and Plants; Determination of Threatened Status and Critical Habitat for the Big Spring Spinedace

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Final rule.

SUMMARY: The Service determines the Big Spring spinedace (*Lepidomeda mollispinis pratensis*) to be threatened and delineates its critical habitat. This action is being taken because one population of this fish has been

eliminated and the one remaining population is potentially threatened by habitat alteration and the possible introduction of exotic species. Also, the present limited distribution of the existing population leaves it vulnerable to extirpation by a major flood or severe drought. The Big Spring spinedace occurs in a single location, Meadow Valley Wash in Condor Canyon, northeast of Panaca, Nevada, which is being designated as critical habitat. A special rule allowing take for certain purposes in accordance with State laws and regulations is included. This final rule will implement the protection provided by the Endangered Species Act of 1973, as amended.

DATES: The effective date of this rule is April 29, 1985.

ADDRESSES: The complete file for this rule is available for inspection during business hours at the U.S. Fish and Wildlife Service, Suite 1692, Lloyd 500 Building, 500 NE. Multnomah Street, Portland, Oregon 97232.

FOR FURTHER INFORMATION CONTACT: Mr. Wayne White, Chief, Division of Endangered Species, U.S. Fish and Wildlife Service, Suite 1692, Lloyd 500 Building, 500 NE. Multnomah Street, Portland, Oregon 97232 (503/231-6131 or FTS 429-6131).

SUPPLEMENTARY INFORMATION:

Background

The big Spring spinedace (*Lepidomeda mollispinis pratensis*) is one of seven taxa belonging to the Plagopterini, a unique tribe of cyprinid fishes. The fishes of this tribe are restricted to the lower Colorado River System and are characterized by the possession of two spiny rays in the dorsal fin and reduction in scales in some species (Miller and Hubbs, 1960; Uyeno and Miller, 1973). The Big Spring spinedace is the representative of this tribe within Meadow Valley Wash. During pluvial times, 10,000 to 40,000 years ago the area referred to as Meadow Valley Wash contained Lake Carpenter, and its outflow river, the Carpenter River (Hubbs *et al.*, 1974). The Carpenter River flowed into the Colorado River by way of the White River, and as these waters dried the spinedace was restricted to remnant habitats that retained water.

When the Big Spring spinedace was originally described, it was known only from specimens collected in the 1930's from a marshy area adjacent to Big Spring near Panaca, Nevada (Miller and Hubbs, 1960). By the time of the description in 1960, it was believed that the fish was extinct. Agricultural modification of the area as well as the introduction of the exotic mosquitofish, *Gambusia affinis*, had apparently caused its extinction from the marsh and spring area (Miller, 1961; Miller and Hubbs, 1960).

During 1978, personnel from the Nevada Department of Wildlife discovered a few individuals of this "extinct" subspecies in Condor Canyon, just northeast of Panaca. Condor Canyon is a small area of Meadow Valley Wash with perennially flowing water. Since the discovery of the Condor Canyon population, some of the fish have been transplanted above a barrier falls and now occur in most of the available habitat within Condor Canyon. The relocation of fish above the barrier falls was carried out by the Nevada Department of Wildlife (Hardy, 1980a). However, the available habitat within the approximately 4-mile-long Condor Canyon is limited. This restricted habitat is threatened by the possible introduction of exotic species and by habitat alteration. The habitat could also be threatened by a major flood (Cal Allan, Nevada Department of Wildlife, retired, pers. comm.; Hardy, 1980b) or a severe drought. Renovation of former habitat in areas downstream from the area where it presently occurs could reduce this threat.

The Big Spring spinedace was included in the Service's Notice of Review of Vertebrate Wildlife published December 30, 1982 (47 FR 58454). The Service received a petition from the Desert Fishes Council on April 12, 1983, to add the Big Spring Spinedace to the List of Endagered and Threatened Species. The petition was evaluated and found to present substantial information supporting the petitioned action, and a notice of finding to this effect was published on June 14, 1983 (48 FR 27273). A proposal to list the Big Spring spinedace as threatened with critical habitat was published on November 30, 1983 (48 FR 54082).

Summary of Comments and Recommendations

In the November 30, 1983, proposed rule (48 FR 54082), and associated notifications, all interested parties were requested to submit factual reports or information that might contribute to development of a final rule. Appropriate State agencies, county governments, Federal agencies, scientific organizations, and other interested parties were contacted and requested to comment. A notice was published in the following newspapers: *Las Vegas Review Journal* (December 26, 1983), *Ely Daily Times* (December 29, 1983), and *Lincoln County Record* (December 29, 1983). Six letters of comment were received and are discussed below.

Comments were received from The Nature Conservancy, Nevada State Office of Community Services; Nevada Department of Wildlife (NDOW); Nevada Division of State Parks; Nevada Wildlife Federation; and Dr. James E. Deacon, University of Nevada, Las Vegas. All comments supported the proposed rule. The Nevada Division of State Parks pointed out that 40 acres at the upper end of Condor Canyon are owned by The Nature Conservancy, and that Condor Canyon is on the Nevada National Heritage Site list but is not afforded any extra protection by such designation. The Nature Conservancy expressed an interest in a further, clearer definition of the boundaries of the critical habitat area and in working with agencies in the future to protect the spinedace. The Service is satisfied that the critical habitat description adopted in the final rule is sufficiently precise to alert Federal agencies of their consultation responsibilities under Section 7(a)(2). NDOW commented that several introduced game fishes are present upstream of the proposed critical habitat in several miles of stream and two reservoirs. NDOW expressed concern that these areas support an important recreational fishery, and that listing of the Big Spring spinedace should consider any possible consequences to this fishery. The Service notes that it may only consider scientific and commercial data in making a listing determination; consideration of economic or other impacts is appropriate only for critical habitat designation. Nevertheless, the Service responds that no known effect(s) on the existing fishery upstream of Condor Canyon will occur because of listing as a threatened species with critical habitat. Since the presence of exotic fishes is an identified threat to the Big Spring spinedace, the accidental introduction of upstream fishes into Condor Canyon during periods of high runoff is a possibility. Such an occurrence appears highly unlikely, however, since the upstream reservoir fishery has existed for many years, yet no non-native fishes are known to have successfully established populations within Condor Canyon. In the unlikely event that fishes from upstream reservoirs became established, prompt removal of the exotics within the spinedace habitat would be required and would necessitate coordination and agreement between responsible agencies, (U.S. Fish and Wildlife Service (USFWS), Bureau of Land Management (BLM), and (NDOW).

Summary of Factors Affecting the Species

After a thorough review and consideration of all information available, the Service has determined that the Big Spring spinedace should be classified as a threatened 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 Part 424) were followed. A species may be determined to be an endangered or threatened species due to one or more of the five factors described in Section 4(a)(1). These factors and their application to the Big Spring spinedace (*Lepidomeda mollispinis pratensis*) are as follows:

A. *The present or threatened destruction, modification, or curtailment of its habitat or range.* Prior to the mid-1930's, Big Spring flowed unrestricted to the west and south creating a substantial marsh area adjacent to the spring. During the 1930's spinedace were collected from this marsh and these fish were subsequently described as a new subspecies, *Lepidomeda mollispinis pratensis* (Miller and Hubbs, 1960). Visits by ichthyologists to the marsh area during 1959 revealed that the spinedace had been eliminated because of diversion of the water for agricultural purpose, and the introduction of the exotic mosquitofish. Currently, Big Spring flows toward the north and west in a highly modified canal system (Cal Allan, Nevada Department of Wildlife, retired pers. comm.).

The Big Spring spinedace is presently known from one locality, Meadow Valley Wash in Condor Canyon. This restricted habitat could be easily disrupted by a reduction or alteration in water flow. Activities such as overgrazing, groundwater pumping, diversion and channelization of the stream, loss of riparian vegetation, or a combination of these factors could result in the Big Spring spinedace becoming endangered.

B. *Overutilization for commercial, recreational, scientific, or educational purposes.* Not applicable.

C. *Disease or predation.* Not applicable.

D. *The inadequacy of existing regulatory mechanisms.* Although Nevada State law adequately regulates the taking of the Big Spring spinedace, there are no protective regulations for spinedace habitat under State law.

E. *Other natural or manmade factors affecting its continued existence.* The introduction of exotic organisms, especially fishes, is detrimental to the Big Spring spinedace. The introduction of mosquitofish (*Gambusia affinis*) into Big Spring contributed to the extirpation of the spinedace at that locality (Miller, 1961; Miller and Hubbs, 1960). The introduction of exotic fishes is usually detrimental to native fishes because of competition, predation, or the introduction of exotic parasites and diseases (Deacon *et al.*, 1964; Hubbs and Deacon, 1964). Although unlikely, accidental introduction of non-native game fishes from two existing upstream reservoirs could possibly occur during high runoff if either reservoir overflowed.

Because of the restricted range of the Big Spring spinedace in Condor Canyon, a severe flood could also eliminate the spinedace from parts or all of its habitat (Hardy, 1980b). This problem could be reduced or possibly alleviated by renovation of former habitat and reintroduction of the Big Spring spinedace.

The Service has carefully assessed the best scientific and commercial information available regarding the past, present, and future threats faced by this species in determining to make this rule final. Based on this evaluation, the preferred action is to list the Big Spring spinedace as threatened with critical habitat. Threatened status is appropriate because, although not immediately in danger of extinction, the species is likely to become endangered if trends in population decline and habitat alteration continue. Proper and adequate management could prevent the species from becoming endangered. Reasons for critical habitat designation are discussed in the "Critical Habitat" section of this rule.

Critical Habitat

Critical habitat, as defined by Section 3 of the Act, means: (i) The specific areas within the geographical area occupied by a species, at the time it is listed in accordance with the Act, on which are found those physical or biological features (I) essential to the conservation of the species and (II) that may require special management considerations or protection, and (ii) specific areas outside the geographical area occupied by the species at the time it is listed, upon a determination that such areas are essential for the conservation of the species.

Section 4(a)(3) of the Act requires that critical habitat be designated to the maximum extent prudent and determinable concurrent with the determination that a species is endangered or threatened. Critical habitat is being designated for the Big Spring spinedace as follows: 4 stream miles along Meadow Valley Wash in Condor Canyon, Lincoln County, Nevada, and a 50 foot riparian zone on either side of the stream. The 50 foot riparian zone along each side of the stream is included in the critical habitat designation because this zone is helpful in preventing runoff pollutants from entering the stream and in reducing siltation, and thereby protects the chemical and physical properties of the stream ecosystem. The vegetation in the riparian zone provides shading to the stream, which helps stabilize the water temperature and dissolved oxygen levels. The area proposed as critical habitat satisfies all known criteria for the ecological, behavorial, and physiological requirements of the subspecies. The area proposed includes most of the presently occupied habitat of this subspecies.

Section 4(b)(8) requires, for any proposed or final regulation that designates critical habitat, the inclusion of a brief description and evaluation of those activities (public or private) which may adversely modify such habitat or may be affected by such designation. Major alteration of the critical habitat could eliminate the Big Spring spinedace. Activities such as channelization, water diversion, or removal of groundwater could result in significant changes in the environment of the Big Spring spinedace. Any activity that would alter the existing chemical and physical characteristics of the aquatic habitat in Meadow Valley Wash could adversely impact the Big Spring spinedace. Such activities include overgrazing or removal of riparian vegetation thereby causing increased silt loads, lowering of the water table, and diversion of water from the main channel of the stream. The introduction of exotic fishes contributed to the decline and ultimately the extirpation of one population of the Big Spring spinedace. Any exotic fishes introduced into the critical habitat could alter the habitat of the Big Spring spinedace.

One Federal activity known to potentially affect critical habitat in Condor Canyon is the issuance of leases for livestock grazing on the Bureau of Land Management (BLM) lands that include approximately half of the total critical habitat. However, the grazing allotments are currently in non-use status. Any federally authorized increase in grazing (or reactivation of the current allotment) could result in overgrazing and the removal of riparian vegetation. This would result in siltation and reduce the ability of the soil to retain water, resulting in lower water levels. Removal of riparian vegetation

would also result in higher temperatures and reduced dissolved oxygen levels. If in the future such activities are proposed on Federal lands, coordination through Section 7 to ensure the protection of the spinedace will be necessary.

A Union Pacific Railroad line is present within the critical habitat area on BLM land in Condor Canyon. There are also several railroad bridge crossings in the area. The rail line has not been used by Union Pacific for several years and was proposed for abandonment at one time. Recently, the rail line was proposed as one of three alternative corridors to supply coal for the proposed White Pine Power Project (WPPP). The WPPP involves construction of a 1,500 megawatt coal-fired generating plant to be located at one of three sites in White Pine County, Nevada. Selection of the rail corridor alternative within the critical habitat area would require upgrading of the rail line and bridges. Possible selection of this alternative rail corridor and subsequent upgrading activities were addressed in a Section 7 consultation regarding the WPPP. Upgrading activities and use of the rail line were found to have the potential to adversely modify the proposed critical habitat. This rail line, however, is not the preferred corridor. The preferred corridor utilized the existing Nevada Northern Railroad Line. It is not expected that the Union Pacific Railroad line on BLM land within the proposed critical habitat will be the corridor selected as the supply route for the WPPP.

An irrigation diversion which supplies private lands below the mouth of Condor Canyon is present on BLM land near the downstream end of the canyon. The BLM does not anticipate any changes in the irrigation diversion that would affect the proposed critical habitat. BLM management of the irrigation diversion is expected to be compatible with the designation of critical habitat.

Section 4(b)(2) of the Act requires the Service to consider economic and other impacts of specifying a particular area as critical habitat. The Service has considered the critical habitat designation in light of relevant information obtained through the comment process and concludes that no adjustments to the area proposed as critical habitat is appropriate.

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 possible 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 of Federal agencies and the prohibitions against taking and harm are discussed, in part, below.

Section 7(a) of the Act, as amended, requires Federal agencies to evaluate their actions with respect to any species that is proposed or listed as endangered or threatened and with respect to its critical habitat. 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 29990; 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 or to destroy or adversely modify its critical habitat. If a Federal action may affect a listed species or its critical habitat, the responsible Federal agency must enter into formal consultation with the Service. With the exception of grazing allotments mentioned above, there is no known Federal involvement expected for this species.

The Act and its implementing regulations, found at 50 CFR 17.21 and 17.31, set forth a series of general prohibitions and exceptions that apply to all threatened fish or wildlife. These prohibitions, in part, make it illegal for any person subject to the jurisdiction of the United States to take, import or export, ship in interstate commerce in the course of a commercial activity, or sell or offer for sale in interstate or foreign commerce any listed species. It also is illegal to possess, sell, deliver, carry, transport, or ship any such wildlife that had been taken illegally. Certain exceptions apply to agents of the Service and State conservation agencies.

Permits may be issued to carry out otherwise prohibited activities involving threatened wildlife species under certain circumstances. Regulations governing permits are at 50 CFR 17.22, 17.23, and 17.32. Such permits are available for scientific purposes, to enhance the propagation or survival of the species, and/or for incidental take in connection with otherwise lawful activities. For threatened species there are also permits for zoological exhibition, educational purposes, or special purposes consistent with the purposes of the Act.

Section 4(d) of the Act authorizes the Secretary to issue special regulations for a threatened species that are necessary and advisable for the conservation of the species. A special rule is included in this regulation, which will allow take for certain purposes in accordance with State game and fish laws and regulations. The State laws and regulations in Nevada prohibit taking of the Big Spring spinedace without a valid State collecting permit. This special rule, adopted substantially as proposed, will allow for more efficient conservation activities for the species and thus enhance the status of the species. Without this special rule, all the prohibitions of endangered status would apply to the species. The Big Spring spinedace is threatened primarily by habitat disturbance or alteration, not by intentional, direct taking of the species. The State's collection permit system is more adequate to protect the species from excessive taking. For these reasons the Service concludes that the special rule is necessary and advisable for the conservation of the Big Spring spinedace.

National Environmental Policy Act

The Fish and Wildlife Service has determined that an environmental assessment, as defined under authority of the National Environmental Policy Act of 1969, need not be prepared in connection with regulations adopted pursuant to Section 4(a) of the Endangered Species Act of 1973, as amended. A notice outlining the Service's reasons for this determination was published in the **Federal Register** on October 25, 1983 (48 FR 49244).

Regulatory Flexibility Act and Executive Order 12291

The Department of the Interior has determined that designation of critical habitat for this species will not constitute a major action under Executive Order 12291 and certifies that this designation will not have a significant economic effect on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). There is no known involvement of Federal funds or permits for activities occurring on private lands within the critical habitat for the spinedace. This designation of critical habitat is not expected to result in any significant economic impacts to activities occurring on Federal land. These determinations are based on a Determination of Effects that is

available from the Regional Director, U.S. Fish and Wildlife Service, Suite 1692, Lloyd 500 Building, 500 NE. Multnomah Street, Portland, Oregon 97232. This rule contains no information collection or recordkeeping requirements as defined by the Paperwork Reduction Act of 1980.

Literature Cited

Deacon, J.E., C. Hubbs, and B.J. Zahuranec. 1964. Some effects of introduced fishes on the native fish of southern Nevada. Copeia 1964:384–388.

Hardy, T. 1980a. The inter-basin area report—1978. Proc. Desert Fishes Council 10:5–21.

Hardy, T. 1980b. Interbasin report to the Desert Fishes Council—1979. Proc. Desert Fishes Council 11:68–70.

Hubbs, C., and J.E. Deacon. 1964. Additional introductions of tropical fishes into southern Nevada. Southwestern Nat. 9:249–251.

Hubbs, C.L., R.R. Miller, and L.C. Hubbs. 1974. Hydrographic history and relict fishes of the north-central Great Basin. Memoirs California Acad. Sci. 7:1–259.

Miller, R.R. 1961. Man and the changing fish fauna of the American Southwest. Pap. Michigan Acad. Sci. Arts Letters 46:365–405.

Miller, R.R., and C.L. Hubbs. 1960. The spiny-rayed cyprinid fishes (Plagopterini) of the Colorado River System. Misc. Publ. Mus. Zool., Univ. Michigan 115:1–39.

Uyeno, T., and R.R. Miller. 1973. Chromosomes and the evolution of the plagopterin fishes (Cyprinidae) of the Colorado River System. Copeia 1973:776–782.

Author

The primary author of this final rule is Dr. Randy M. McNatt, U.S. Fish and Wildlife Service, 4600 Kietzke Lane, Building. C, Reno, Nevada 89502 (702/784–5227 or FTS 470–5227).

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 Code of Federal Regulations, is amended as set forth below:

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

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

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

§ 17.11 Endangered and threatened wildlife.

* * * * *

(h) * * *

Species		Historic range	Vertebrate population where endangered or threatened	Status	When listed	Critical habitat	Special rules
Comon name	Scientific name						
FISHES							
*	*	*	*	*		*	
Spinedace, Big Spring	*Lepidomeda mollispinis pratensis.*	U.S.A. (NV)	Entire	T	173	17.95(e)	17.44(i)
*	*	*	*	*		*	

3. Add the following as a new paragraph (i) to § 17.44:

§ 17.44 Special rules—fishes

* * * * *

(i) Big Spring spinedace, *Lepidomeda mollispinis pratensis.*

(1) All the provisions of § 17.31 apply to this species, except that it may be taken in accordance with applicable State fish and wildlife conservation laws and regulations in the following instances: educational purposes, scientific purposes, the enhancement of propagation or survival of the species, zoological exhibition, and other conservation purposes consistent with the Act.

(2) Any violation of applicable State fish and wildlife conservation laws or regulations with respect to this species will also be a violation of the Endangered Species Act.

* * * * *

4. Amend § 17.95(e) by adding critical habitat of the Big Spring spinedace as follows: (The position of this entry under § 17.95(e) will follow the same sequence as the species occurs in § 17.11.)

§ 17.95 Critical habitat—Fish and wildlife.

(e) * * *

* * * * *

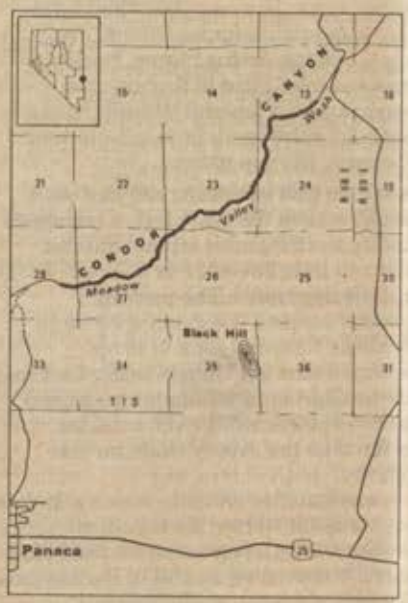
Big Spring Spinedace (Lepidomeda mollispinis pratensis)

Nevada. Condor Canyon, Lincoln County. Four stream miles of Meadow Vally Wash and 50 feet on either side of the stream as it flows through the following sections: T. 1 S., R. 68 E., Sections 13, 23, 24, 26, 27, and 28.

Known constituent elements include clean permanent flowing spring-fed stream with deep pool areas and shallow marshy areas along the shore and the absence of exotic fishes.

BIG SPRING SPINEDACE

Lincoln County, NEVADA



Dated: February 27, 1985.

J. Craig Potter,

Acting Assistant Secretary for Fish and Wildlife and Parks.

[FR Doc. 85–7357 Filed 3–27–85; 8:45 am]

BILLING CODE 4310-55-M

50 CFR Part 17

Endangered and Threatened Wildlife and Plants; Determination of Threatened Status for Hutton Tui Chub and Foskett Speckled Dace

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Final rule.

SUMMARY: The Service determines the Hutton tui chub (*Gila bicolor* ssp.) and Foskett speckled dace (*Rhinichthys osculus* ssp.) to be threatened species. A special rule is included, allowing take for certain purposes in accordance with Oregon State laws and regulations. Critical habitat is not being determined for these two fishes. This action is being taken because these species have a very restricted range, occur in low numbers, and occupy small springs that are extremely vulnerable to destruction or modification. Federal protection provided by the Endangered Species Act of 1973, as amended, will apply to the Hutton tui chub and the Foskett speckled dace on the effective date given below.

DATES: The effective date of this rule is April 29, 1985.

ADDRESSES: The complete file for this rule is available for inspection, by appointment, during normal business hours at the Office of Endangered Species, U.S. Fish and Wildlife Service, 500 NE. Multnomah Street, Suite 1692, Portland, Oregon 97232.

FOR FURTHER INFORMATION CONTACT: Mr. Wayne S. White, Chief, Division of Endangered Species, at the above address (503/231–6131 or FTS 429–6131).

SUPPLEMENTARY INFORMATION:

Background

The Hutton tui chub is found only in Hutton Spring, a small spring system with surface flow in two areas, located in the now dry Alkali Lake, in Lake County, south-central Oregon, and in another smaller unnamed spring, ⅜ mile southeast of Hutton Spring. Its numbers are estimated at no more than 450 (Bills 1977). The Foskett speckled dace occurs in Foskett Spring, a small spring system found in the Coleman Basin on the west side of the Warner Valley, Lake County, south-central Oregon. Current numbers are estimated at 1,500 (C. Bond, Oregon State University, pers. comm.). A transplant attempt was made in 1982 whereby some Foskett speckled dace were moved to a small pool on the south side of the Foskett Spring system. The evaluation of the success of this transplant is not yet available (N. Armantrout, Oregon Office of Bureau of Land Management, pers. comm.).

The tui chub, *Gila bicolor*, and the speckled dace, *Rhinichthys osculus*, were both described by Charles Girard in 1856. Descriptions of the undescribed subspecies, Hutton tui chub and the Foskett speckled dace, are being prepared under the direction of Dr. Carl Bond, Oregon State University.

Both fishes occur on private land and are threatened by actual or potential modification of their habitats. These fishes have extremely limited distributions, occur in low numbers naturally, and inhabit springs that are susceptible to human disturbance. Factors that may jeopardize the species include: ground water pumping for irrigation, excessive trampling of the habitats by livestock, channeling of the springs for agricultural purposes, other mechanical manipulation of the spring habitats, and the presence of a chemical waste disposal site near Hutton Spring.

On December 30, 1982, the Service published a Review of Vertebrate Wildlife for Listing as Endangered or Threatened Species (47 FR 58454). The Hutton tui chub and Foskett speckled dace were included in the review as category-1 taxa, indicating that the Service had substantial information on hand to support proposing to list these fishes as endangered or threatened. On April 12, 1983, the Service was petitioned by the Desert Fishes Council to list these two fishes. The Service reviewed and evaluated the petition and determined that it did present evidence that the petitioned action may be warranted. The notice of finding for this petition was published in the **Federal Register** on June 14, 1983 (48 FR 27273). The proposal by the Service to list these two fishes as threatened was published on April 17, 1984 (49 FR 15099). A proposed special rule was included to allow take for certain purposes in accordance with Oregon State laws and regulations.

Summary of Comments and Recommendations

In the April 17, 1984, proposed rule (49 FR 15099) and associated notifications, all interested parties were requested to submit factual reports or information that might contribute to the development of a final rule. Appropriate State agencies, county governments, Federal agencies, scientific organizations, and other interested parties were contacted and requested to comment. A newspaper notice was published in *The Oregonian* on May 25, 1984, *The Bend Bulletin* on June 11, 1984, and *The Lake County Examiner* on May 30, 1984, which invited general public comment. Seven comments were received and are discussed below. No public hearing was requested or held.

Of the seven comments received, four were in support of the listing, two did not state whether or not they supported the listing, and the last was not substantive. Mr. William Haight of the Oregon Department of Fish and Wildlife supported the listing and suggested some minor rewording of the threat posed by further livestock grazing. Mr. Haight indicated it is his impression that current grazing levels by livestock prevent the two springs from becoming overgrown with vegetation and therefore less suitable for the fishes. He believes an increase in grazing and trampling above current levels could definitely have adverse impacts on the fishes and their habitats. The Service agrees.

Comments submitted by the Peila family, the owners of Hutton Spring, stated that Hutton Spring is fenced and has been since at least 1976, thus precluding cattle from wallowing in the spring or "excessively trampling" the immediate area around the spring. The Service has reworded the "Factors Affecting the Species" section dealing with Hutton Spring to incorporate these comments. The Peilas did not state whether they supported or opposed listing these fishes but indicated they were concerned that listing the Hutton tui chub may be disadvantageous to the conservation of the species by drawing attention to its location. The Service shares this concern, but believes it has been adequately addressed by not designating critical habitat for either species, which would have required publication of a map giving the location of the springs.

Dr. Carl Bond, Oregon State University, supported threatened status for both the species. Based on his work with these fishes, he believes that as long as access to open water is provided, they should survive.

A research biologist, Dr. Fred Bills, informed us that there is another spring, ⅜ mile from Hutton Spring, that contains Hutton tui chub. This second spring, which is part of the Hutton Spring system, is even smaller than the first and is only 11 feet in diameter. This second spring and its ephemeral outflow channel contains at most 150 chub. According to Dr. Bills, the site is unfenced and vulnerable to damage by livestock and human activities. He supported listing the Hutton tui chub and made no comments on the Foskett speckled dace.

Mr. Curt Soper, the Nature Conservancy's Data Base coordinator in Portland, Oregon, stated that trampling by livestock, particularly at Foskett Spring, is a detrimental factor that has resulted in a change in water flow, siltation, and accelerated erosion. The Nature Conservancy has been in active contact with the owners of both Foskett Spring and Hutton Spring in the hope of acquiring or otherwise protecting the two sites. As of yet, no official agreement has been reached.

One comment from Dr. Carl Schreck of the Service's Cooperative Fisheries Research Unit, indicated that fencing could create problems by allowing establishment of plants that would encroach on fish habitat. He did not state whether or not he supported listing.

Although there is obviously a difference of opinion as to the necessity to fence springs, it is clear that excessive livestock use has the potential to detrimentally affect the habitat. The measures required to maintain and/or enhance the habitat will be discussed and evaluated during development of recovery plans for these species.

Summary of Factors Affecting the Species

After a thorough review and consideration of all information available, the Service has determined that the Hutton tui chub and Foskett speckled dace should be classified as threatened 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 Part 424) were followed. A species may be determined to be an endangered or threatened species due to one or more of the five factors described in Section 4(a)(1). These factors and their application to the Hutton tui chub (*Gila bicolor* ssp.) and Foskett speckled dace (*Rhinichthys osculus* ssp.) are as follows:

A. *The present or threatened destruction, modification, or curtailment of its habitat or range.* The Hutton tui chub is limited in distribution to two small springs and their outflows, which are vulnerable to modification or destruction. A portion of the larger Hutton Spring has already been enlarged by mechanical means. Channeling of water or ground water pumping (which could lower the water table) for irrigation purposes could destroy the spring ecosystem. Although excessive trampling of the habitat by watering livestock has occurred in the past (G. Kobetich, U.S. Fish and Wildlife Service, pers. comm., C Bond pers. comm.), Hutton Spring is fenced and livestock do not wallow in the spring or drink directly from it. The smaller spring is unfenced. Any further livestock trampling of the spring above current use levels could have a negative impact on Hutton tui chub.

The Foskett speckled dace has a very restricted distribution, occurring only in Foskett Spring and its outflow. It may also occur in a small spring pool on the south side of the Foskett Spring system where it was transplanted in 1982. Pumping of ground water and concomitant lowering of the water table pose a potential threat to this subspecies. Mechanical modification of the aquatic ecosystem has occurred in the past as evidenced by remnants of a rock dam. Additional changes could be detrimental to the fish. The spring is also a livestock watering area and use above current levels would have a negative impact. The vulnerability of the habitat is accentuated by its very small size (flow rate less than 0.5 cfs).

B. *Overutilization for commercial, recreational, scientific, or educational purposes.* There is no indication that the Hutton tui chub or Foskett speckled dace are overutilized for any of these purposes.

C. *Disease or predation.* There are no known threats to the Hutton tui chub or Foskett speckled dace from disease or predation.

D. *The inadequacy of existing regulatory mechanisms.* The State of Oregon lists both the Hutton tui chub and Foskett speckled dace as "fully protected subspecies" under the Oregon Department of Fish and Wildlife regulations. These regulations prohibit taking of the fishes without an Oregon scientific collecting permit. However, no protection of the habitat is included in such a designation and no management or recovery plan exists for these subspecies.

E. *Other natural or manmade factors affecting its continued existence.* Hutton Spring is located approximately 1¾ miles north of a large chemical disposal site. Wastes from this dump have already contaminated the adjacent ground water, surface water, and air in the Alkali Lake area. It is likely that the spring habitat of the Hutton tui chub will become contaminated within the foreseeable future as levels of these toxic chemicals increase. This could endanger the Hutton tui chub and possibly result in its extinction if measures are not taken to prevent contamination of its habitat.

Additional threats include the possible introduction of exotic fishes into the springs, which could have disastrous effects on the endemic Hutton tui chub and Foskett speckled dace, either through competitive exclusion, predation, or introduced disease. Because these fishes occur in such limited and remote areas, vandalism also poses a potential threat.

The Service has carefully assessed the best scientific information available regarding the past, present, and future threats faced by these species in determining to make this rule final. Based on this evaluation, the preferred action is to list the Hutton tui chub and Foskett speckled dace as threatened. Because these species are still extant in their isolated spring habitats and the threats to them can be removed, these species are not in imminent danger of extinction and thus endangered status would not be appropriate.

Critical Habitat

Section 4(a)(3) of the 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 designation of critical habitat is not prudent for these sub-species at this time. In the case of the Hutton tui chub and the Foskett speckled dace, the Service believes such critical habitat designations would be imprudent because they would increase the likelihood of vandalism to the small isolated springs that these fishes inhabit. The location of the springs is not well-known. A critical habitat proposal would necessitate publication of detailed maps depicting the exact location of the springs. Publication of critical habitat descriptions would make these species even more vulnerable, would increase enforcement problems, and would not be in the best interest of conserving these fishes.

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 possible 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 of Federal agencies and the prohibitions against taking and harm are discussed, in part, below.

Section 7(a) of the Act, as amended, requires Federal agencies to evaluate their actions with respect to any species that is proposed or listed as endangered or threatened and with respect to its critical habitat. 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 29990; 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 or to destroy or adversely modify its critical habitat. If a Federal action may affect a listed species or its critical habitat, the responsible Federal agency must enter into formal consultation with the Service.

Several activities involving Federal agencies are presently known which may have an impact on the Hutton tui chub and Foskett speckled dace. With regard to the Hutton tui chub, during 1976, approximately 25,000 55-gallon drums of 2, 4-dichlorophenoxyacetic acid (2, 4–D) and methylchlorophenoxyacetic acid (MCPA) manufacturing residues were buried along the southwest margin of Alkali Lake. The barrels were severely damaged when initially buried and have since contaminated the ground water, surface water, and air in the Alkali Lake area. The disposal site is located approximately 1¾ miles south of Hutton Spring. Environmental dispersal of these herbicides and their by-products threatens the Hutton tui chub by contamination of the aquifers that supply water to the spring, contamination of the spring via surface flows, and by contamination of the spring by airborne evaporites. The Bureau of Land Management (BLM) and Environmental Protection Agency, in cooperation with the Oregon Department of Environmental Quality, are presently considering reclamation of the toxic waste disposal site. One commentor expressed the concern that a bombing range is being proposed for the Alkali Lake area. The Service has considered this potential action and believes that it would have no effect on the Hutton tui chub.

Grazing occurs in the vicinity of both Foskett Spring and Hutton Spring. Although the exact impact of grazing on the fishes has not been determined, uncontrolled trampling of the springs by livestock could probably have a negative effect on their aquatic ecosystems.

The Act and implementing regulations found at 50 CFR 17.21 and 17.31 set forth a series of general prohibitions and exceptions that apply to all threatened wildlife. These prohibitions, in part, make it illegal for any person subject to the jurisdiction of the United States to take, import or export, ship in interstate commerce in the course of a commercial activity, or sell or offer for sale in interstate or foreign commerce any listed species. It also is illegal to possess, sell, deliver, carry, transport, or ship any such wildlife that has been taken illegally. Certain exceptions apply to agents of the Service and State conservation agencies.

Permits may be issued to carry out otherwise prohibited activities involving threatened wildlife species under certain circumstances. Regulations governing permits are at 50 CFR 17.32. Such permits are available for scientific purposes, to enhance the propagation or survival of the species, for incidental take in connection with otherwise lawful activities, for zoological exhibition, educational purposes, or special purposes consistent with the purposes of the Act.

The above discussion generally applies to threatened species of fish and wildlife. However, the Secretary has discretion under Section 4(d) of the Act to issue such special regulations as are necessary and advisable for the conservation of a threatened species. These fishes are threatened primarily by habitat disturbance or alteration, not by intentional, direct taking of the species or by commercialization. Given this fact and the fact that the State regulates direct taking of the species through the requirement of State collecting permits, the Service has concluded that the State's collection permit system is more than adequate to protect the species from excessive taking, so long as taking is limited to: Educational purposes, scientific purposes, the enhancement of propagation or survival of the species, zoological exhibition, and other conservation purposes consistent with the Endangered Species Act. A separate Federal permit system is not required to address the current threats to the species. Therefore, the special rule allows takes to occur for the above stated purposes without the need for a Federal permit if a State collection permit is obtained and all other State wildlife conservation laws and regulations are satisfied. It should be recognized that any activities involving the taking of these species not otherwise enumerated in the special rule are prohibited. Without this special rule all of the prohibitions under 50 CFR 17.31 would apply. The Service believes that this special rule will allow for more efficient management of the species, thereby facilitating their conservation. For these reasons, the Service has concluded that this regulatory action is necessary and advisable for the conservation of the Hutton tui chub and Foskett speckled dace.

National Environmental Policy Act

The Fish and Wildlife Service has determined that an Environmental Assessment, as defined under authority of the National Environmental Policy Act of 1969, need not be prepared in connection with regulations adopted pursuant to Section 4(a) of the Endangered Species Act of 1973, as amended. A notice outlining the Service's reasons for this determination was published in the **Federal Register** on October 25, 1983 (48 FR 49244).

Literature Cited

Bills, Frederick. 1977. Taxonomic status of isolated populations of tui chub referred to as *Gila bicolor oregonensis* (Snyder). M.A. Thesis, Oregon State Univ., Corvallis, Oregon.

Author

The primary author of this final rule is Dr. Kathleen E. Franzreb, U.S. Fish and Wildlife Service, Endangered Species Office, 2800 Cottage Way, Room E–1823, Sacramento, California 95825 (916/484–4935 or FTS 468–4935).

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 Code of Federal Regulations, is amended as set forth below:

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

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

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

§ 17.11 Endangered and threatened wildlife.

* * * * *

(h) * * *

Species		Historic range	Vertebrate population where endangered or threatened	Status	When listed	Critical habitat	Special rules
Common name	Scientific name						
FISHES							
*	*	*	*	*	*	*	
Chub, Hutton tui	*Gila bicolor* ssp.	U.S.A. (OR)	Entire	T	174	NA	17.44(f)
Dace, Foskett speckled	*Rhinichthys osculus* ssp.	do	do	T	174	NA	17.44(f)
*	*	*	*	*	*	*	

3. Add the following paragraph (f) as a special rule to § 17.44.

§ 17.44 Special rules—fishes.

* * * * *

(f) Hutton tui chub (*Gila bicolor* subspecies) and Foskett speckled dace (*Rhinichthys osculus* subspecies).

(1) No person shall take these species, except in accordance with applicable State fish and wildlife conservation laws and regulations in the following instances: for educational purposes, scientific purposes, the enhancement of propagation or survival of the species, zoological exhibition, and other conservation purposes consistent with the Act.

(2) Any violation of applicable State fish and wildlife conservation laws or regulations with respect to the taking of these species will also be a violation of the Endangered Species Act.

(3) No person shall possess, sell, deliver, carry, transport, ship, import, or export, by any means whatsoever, any such species taken in violation of these regulations or in violation of applicable State fish and wildlife conservation laws or regulations.

(4) It is unlawful for any person to attempt to commit, solicit another to commit, or cause to be committed, any offense defined in paragraphs (f) (1) through (3) of this section.

* * * * *

Dated: March 13, 1985.

J. Craig Potter,

Acting Assistant Secretary for Fish and Wildlife and Parks.

[FR Doc. 85-7358 Filed 3-27-85; 8:45 am]

BILLING CODE 4310-55-M

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50 CFR Part 17

Endangered and Threatened Wildlife and Plants; Determination of Threatened Status for Solidago spithamaea (Blue Ridge Goldenrod)

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Final rule.

SUMMARY: The Service determines a plant, *Solidago spithamaea* M. A. Curtis (Blue Ridge goldenrod) to be a threatened species under the authority contained in the Endangered Species Act of 1973 (Act), as amended. *Solidago spithamaea* is endemic to high mountain peaks in North Carolina and Tennessee. Only three populations of *Solidago spithamaea* are known to exist; one is on public land administerd by the U.S. Forest Service and the other two are on privately owned lands. Past loss of habitat and populations has occurred due to the recreational development of the high mountain peaks where this plant occurs. The continued existence of this plant is threatened by trampling and habitat disturbance due to heavy recreational use. This action will implement the protection provided by the Act, for *Solidago spithamaea*.

DATE: The effective date of this rule is April 29, 1985.

ADDRESSES: A complete file for this rule is available for inspection, by appointment, during normal business hours at the Asheville Endangered Species Field Station, U.S. Fish and Wildlife Service, 100 Otis Street, Room 224, Asheville, North Carolina 28801.

FOR FURTHER INFORMATION CONTACT: Mr. Robert Currie, Asheville Endangered Species Field Station (see **ADDRESSES** above, 704/259-0321 or FTS 672-0321).

SUPPLEMENTARY INFORMATION:

Background

Solidago spithamaea (Blue Ridge goldenrod) was described from material collected in North Carolina by M. A. Curtis in the 1830's (Massey, Whitson, and Atkinson 1980). Today, three populations of the species are known: Two in Avery County, North Carolina, and one on the border of Mitchell County, North Carolina, and Carter County, Tennessee. Two populations are located on privately owned lands and one is located on public lands administered by the U.S. Forest Service. Two additional populations were historically known for the species, but both sites have been developed and no Blue Ridge goldenrod have been relocated there during recent searches. It is believed either that the plant is extirpated from these sites or that the original reports were erroneous.

Solidago spithamaea is an erect perennial herb that arises from a short, stout rhizome and is a member of the aster family. The yellow flowers are borne in heads arranged in a corymbiform inflorescence. *Solidago spithamaea* grows above 4,600 feet (1,400 meters) in dry rock crevices of granite outcrops on the high peaks of the Blue Ridge Mountains. The continued existence of *Solidago spithamaea* is threatened by trampling and habitat disturbance due to heavy recreational use of its habitat by hikers. Construction on new trails and other recreational improvements at any of the three sites where populations of this plant exists could further jeopardize the plant's continued existence. This rule determines *Solidago spithamaea* to be a threatened species and implements the protection provided by the Endangered Species Act of 1973, as amended.

Past Federal Government actions affecting this plant began with section 12 of the Endangered Species Act of 1973, which directed the Secretary of the Smithsonian Institution to prepare a report on those plants considered to be endangered, threatened, or extinct. The Secretary of the Smithsonian presented this report (House Document No. 94-51) to Congress on January 9, 1975. On July 1, 1975, the Service published a notice of review in the **Federal Register** (40 FR 27823) of its acceptance of the report of the Smithsonian Institution as a petition within the context of section 4(c)(2) of the Act (petition acceptance is now governed by section 4(b)(3) of the Act, as amended). *Solidago spithamaea* was included in the Smithsonian report and the 1975 notice of review. On December 15, 1980, the Service published a revised notice of review of native plants in the **Federal Register** (45 FR 82480), and *Solidago spithamaea* was included in that notice as a category-1 species. Category-1 species are those for which date in the Service's possession indicate listing is warranted.

Section 4(b)(3)(B) of the Endangered Species Act, as amended in 1982, requires the Secretary to make certain findings on pending petitions within 12 months of their receipt. Section 2(b)(1) of the 1982 Amendments further requires that all petitions pending on October 13, 1982, be treated as having been newly submitted on that date. This was the case for *Solidago spithamaea* because of the acceptance of the 1975 Smithsonian report as a petition. On October 13, 1983, the Service found that the petitioned listing of *Solidago spithamaea* was warranted, and that although other pending proposals had precluded its proposal, expeditious

progress was being made to add species to the list. Notice of the finding was published in the **Federal Register** on January 20, 1984 (49 FR 2485). On July 23, 1984, the Service published, in the **Federal Register** (49 FR 29629), a proposal to list *Solidago spithamaea* as a threatened species. That proposal constituted the next one-year finding as required by the 1982 Amendments to the Endangered Species Act. The proposal provided information on the species' biology, status, and threats, and the potential implications of listing. The proposal also solicited comments on the status, distribution, and threats to the species.

Summary of Comments and Recommendations

In the July 23, 1984, proposed rule (49 FR 29629) and associated notifications, all interested parties were requested to submit factual reports or information that might contribute to the development of a final rule. Appropriate State agencies, county governments, Federal agencies, scientific organizations, and other interested parties were contacted and requested to comment. Newspaper notices inviting general public comment were published in the *Avery Journal* on August 9, 1984, the *Elizabethton Star* on August 6, 1984, and the *Tri-County News Journal* on August 9, 1984. Seven comments were received and are discussed below.

The Commissioner of the North Carolina Department of Agriculture commented that that agency concurred with the Service's proposal to list the Blue Ridge goldenrod as a threatened species and agreed that designation of critical habitat could prove deterimental to the species.

The Natural Heritage Program of the North Carolina Department of Natural Resources and Community Development's Division of Parks and Recreation responded that its data indicate that the Blue Ridge goldenrod should be listed as a threatened species. It supported the decision not to designate critical habitat because of the potential harm such a designation might have on the species.

The Tennessee Department of Conservation's Ecological Services Division indicated that its data support the proposal to list the Blue Ridge goldenrod as a threatened species. It stated that protection of the Roan Mountain population of this species would provide protection for at least six other rare plant species. It concurred with the decision not to designate critical habitat.

The Tennessee Valley Authority's Regional Natural Heritage Project agreed that *Solidago spithamaea* should be designated a threatened species. It suggested that the author of the species' name be used the first time that a scientific name is cited in future proposed or final rules. This is standard practice in biological writings, and in some cases the omission of the author's name could lead to confusion and ambiguity. This suggestion has been followed.

The U.S. Department of Agriculture's Forest Service concurred with the proposal to list the species as threatened and agreed with the conservation measures discussed in the proposed rule.

The International Union for Conservation of Nature and Natural Resources thanked the Service for providing a copy of the proposed rule and stated that it had no additional information to add concerning the status of Blue Ridge goldenrod.

The Southern Appalachian Highlands Conservancy stated that it agreed with and supported the comments of the Tennessee Department of Conservation.

The Service agrees with the comments that the Blue Ridge goldenrod qualifies for protection under the Endangered Species Act and that designation of critical habitat could be deterimental to the species. The Service also concurs with the comment that use of the author's name for a plant species is appropriate in order to avoid confusion and ambiguity. A public hearing was neither requested nor held.

Summary of Factors Affecting the Species

After a thorough review and consideration of all information available, the Service has determined that *Solidago spithamaea* (Blue Ridge goldenrod) should be classified as a threatened 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 (to be codified at 50 CFR Part 424, 49 FR 38900, October 1, 1984) were followed. A species may be determined to be an endangered or threatened species due to one or more of the five factors described in section 4(a)(1). These factors and their application to *Solidago spithamaea* M. A. Curtis (Blue Ridge goldenrod) are as follows:

A. *The present or threatened destruction, modification, or curtailment of its habitat or range.* Three populations of *Solidago spithamaea* are known to exist in Avery and Mitchell Counties, North Carolina, and Carter County, Tennessee. Two other historically known populations are assumed extirpated or the original reports are believed to be erroneous; both sites have been developed and the Blue Ridge goldenrod has not been relocated at the sites for over 60 years, although searches have been conducted. Of known extant populations, two are located on privately owned lands and one is located on public land administered by the U.S. Forest Service. The greatest damage to *Solidago spithamaea* in the past probably came from the commercial development of the open mountain summits where it occurs. The construction of observation platforms, trails, parking lots, roads, suspension bridges, etc., has taken its toll either through the actual construction process or later by trampling due to hikers and sightseers (Kral, 1979). Today, heavy recreational use occurs at two locations where *Solidago spithamaea* is known to be extant (Massey *et al.*, 1980). Some of the open areas where this plant grows might be better protected by routing visitors away from the sites so that trampling could be avoided. With anticipated increased usage by sightseers, rock climbers, and hikers at all three localities where *Solidago spithamaea* occurs, significant impact on this species in the form of increased soil erosion, soil compaction, and trampling could occur if protection is not provided. Likewise, additional development at any of the locales, such as expansion of trails or sidewalks, could further threaten this species if proper planning does not occur. To quote one botanist, *Solidago spithamaea* ". . . seems to have an instinct for growing in the most scenic sites, thus coming underfoot and underseat."

B. *Overutilization for commercial, recreational, scientific, or educational purposes.* Not applicable to this species.

C. *Disease or predation.* Not applicable to this species.

D. *The inadequacy of existing regulatory mechanisms.* In 1979, North Carolina passed legislation to protect its rare plants. *Solidago spithamaea* is protected under that State law (North Carolina General Statute 19–B, 202.12–202.19) as an endangered species. This legislation provides protection from intrastate trade and provisions for monitoring and proper management. Tennessee does not currently have State legislation to protect endangered plants.

The Forest Service's regulations prohibit removing, destroying, or damaging any plant that is classified as a threatened, endangered, rare, or unique species (36 CFR Part 261). These regulations, however, are difficult to enforce. The Endangered Species Act

will offer additional protection to this species through Section 7—interagency cooperation requirements and recovery planning.

E. *Other natural or manmade factors affecting its continued existence.* *Solidago spithamaea* is an early pioneer species growing on rock ledges in full sun. Depending upon the elevation and suitability of the site for supporting woody vegetation, invasion of ericaceous shrubs may occur, which could eliminate *Solidago spithamaea* by over-crowding and shading. This is a very slow process. However, proper management planning for *Solidago spithamaea* would need to address this aspect of the species' biology. Natural rock slides, severe storms, or other natural events may also eliminate populations of this plant.

The Service has carefully assessed the best scientific and commercial information available regarding the past, present, and future threats faced by this species in determining to make this rule final. Based on this evaluation, the preferred action is to list *Solidago spithamaea* as threatened. Critical habitat is not being determined for reasons discussed below. With only three populations known to exist, this plant warrants protection under the Endangered Species Act. Threatened status is preferred since one population is located on public lands (affected by section 7 of the Act) and the present private land owners are cooperative.

Critical Habitat

Section 4(a)(3) of the 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 designation of critical habitat is not prudent for *Solidago spithamaea* at this time. As discussed in the "Summary of Factors" section, all known locations for *Solidago spithamaea* receive visitor use, and associated trampling is a major threat to this species. Designation of these areas as critical habitat would increase public interest and possibly lead to vandalism and taking at the heavily used sites and thereby increase the threat to the plant. No public notification benefits would be derived from a critical habitat designation since the owners and managers of the three sites are already aware of the presence of *Solidago spithamaea*. Vandalism and taking of listed plants are not regulated by the Endangered Species Act, except for a prohibition against removal and reduction to possession of endangered plants from lands under Federal jurisdiction. These regulations and those of the Forest Service are also extremely hard to enforce. Publication of critical habitat descriptions would make this species even more vulnerable and increase enforcement problems. Therefore, it would not be prudent to determine critical habitat for *Solidago spithamaea* 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 possible 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 of Federal agencies and the prohibitions against taking are discussed, in part, below.

Section 7(a) of the Act, as amended, requires Federal agencies to evaluate their actions with respect to any species that is proposed or listed as endangered or threatened and with respect to its critical habitat. 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 29990; 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 or result in the destruction or adverse modification of its critical habitat. If a Federal action may affect a listed species or its critical habitat, the responsible Federal agency must enter into formal consultation with the Service. One population of *Solidago spithamaea* occurs on public lands administered by the U.S. Forest Service; proper protection and management plans are needed for the species at this site, but no major conflicts are expected.

The Act and its implementing regulations found at 50 CFR 17.71 and 17.72 set forth a series of general trade prohibitions and exceptions that apply to all threatened plant species. With respect to *Solidago spithamaea*, all trade prohibitions of section 9(a)(2) of the Act, implemented by 50 CFR 17.71, apply. These prohibitions, in part, make it illegal for any person subject to the jurisdiction of the United States to import or export, transport in interstate or foreign commerce in the course of a commercial activity, or sell or offer for sale this species in interstate or foreign commerce. Seeds from cultivated specimens of threatened plant species are exempt from those prohibitions provided that a statement of "cultivated origin" appears on their containers. Certain exceptions can apply to agents of the Service and State conservation agencies. The Act and 50 CFR 17.72 also provide for the issuance of permits to carry out otherwise prohibited activities involving threatened species under certain circumstances. It is anticipated that few trade permits would ever be sought or issued since *Solidago spithamaea* is not common in cultivation or in the wild.

Section 9(a)(2)(B) of the Act, as amended in 1982, prohibits the removal and reduction to possession of endangered plant species from areas under Federal jurisdiction. Section 4(d) allows for the provision of such protection to threatened species through regulations. This protection will apply to *Solidago spithamaea* once revised regulations are promulgated. Permits for exceptions to this prohibition are available through sections 10(a) and 4(d) of the Act, until revised regulations are promulgated to incorporate the 1982 Amendments. Proposed regulations implementing this prohibition were published on July 8, 1983 (48 FR 31417), and it is anticipated that these will be made final following public comment. 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 (703/235–1903 or FTS 235–1903).

National Enviromental Policy Act

The Fish and Wildlife Service has determined that an Environmental Assessment, as defined by the National Environmental Policy Act of 1969, need not be prepared in connection with regulations adopted pursuant to section 4(a) of the Endangered Species Act of 1973, as amended. A notice outlining the Service's reasons for this determination was published in the **Federal Register** on October 25, 1983 (48 FR 49244).

Literature Cited

Kral, R. 1979. *Solidago spithamaea*, individual species reports submitted to the U.S. Forest Service, Southeastern Area, as part of Cooperative Agreement #42–283.

Massey, J.R., P.D. Whitson, and T.A. Atkinson. 1980. Endangered and Threatened Plant Survey of Twelve Species in the Eastern Part of Region 4.

Report submitted to U.S. Fish and Wildlife Service, Region 4, under contract 14-16-004-78-108.

Authors

The primary author of this final rule is Mr. Robert R. Currie, Endangered Species Field Station, U.S. Fish and Wildlife Service, 100 Otis Street, Room 224, Asheville, North Carolina 28802. Ms. E. LaVerne Smith of the Washington Office of Endangered Species served as editor.

List of Subjects in 50 CFR Part 17

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

Regulation Promulgation

PART 17—[AMENDED]

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

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

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

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

§ 17.12 Endangered and threatened plants.

* * * * *

(h) * * *

Species		Historic range	Vertebrate population where endangered or threatened	Status	When listed	Critical habitat	Special rules
Scientific name	Common name						
Asteraceae—Aster family:							
*	*	*	*	*	*		
Solidago spithamaea	Blue Ridge goldenrod	U.S.A. (NC, TN)		T	172	NA	NA
*	*	*	*	*	*		

Dated: March 8, 1985.

J. Craig Potter,

Acting Assistant Secretary for Fish and Wildlife and Parks.

[FR Doc. 85-7330 Filed 3-27-85; 8:45 am]

BILLING CODE 4310-55-M

Proposed Rules

Federal Register
Vol. 50, No. 60
Thursday, March 28, 1985

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

FEDERAL RESERVE SYSTEM

12 CFR Part 210

[Docket No. R-0544]

Regulation J; Collection of Checks and Other Items and Wire Transfers of Funds; Proposed Amendments

AGENCY: Board of Governors of the Federal System.

ACTION: Request for comment on proposed rule.

SUMMARY: The Board seeks comment on proposed amendments to Regulation J that would:

(1) Permit the owner or other subsequent holder of a check or other item injured by a Reserve Bank's alleged failure to exercise ordinary care or act in good faith in collecting an item to bring an action against the Reserve Bank, regardless of whether that person in a "sender" as currently defined in Regulation J;

(2) Establish a two-year limitation period for actions against a Reserve Bank for alleged mishandling of items under Subpart A or wire transfer items or requests under Subpart B, and for actions against paying banks for failure to comply with the notification of nonpayment requirements of Subpart A;

(3) Permit Reserve Banks to require any prior indorser to defend a breach of indorsement warranty suit, even if the Reserve Bank has not been sued directly;

(4) Authorize depository institutions to deposit with Reserve Banks for collection instruments drawn on payors located in foreign countries where the Reserve Banks have made arrangements for their collection;

(5) Clarify that Reserve Banks are not liable for consequential damages in handling wire transfers of funds;

(6) Add the Northern Mariana Islands to the Twelfth District for collection purposes;

(7) Adopt the definitions of the Uniform Commercial Code for terms that are used but not defined in Regulation J.

DATE: Comments must be received by May 21, 1985.

ADDRESS: Comments, which should refer to Docket No. R-0544, may be mailed to Mr. William W. Wiles, Secretary, Board of Governors of the Federal Reserve System, 20th Street and Constitution Avenue, NW., Washington, D.C. 20551, or delivered to Room B-2223 between 8:45 a.m. and 5:15 p.m. Comments may also be inspected at Room B-1122 between 8:45 a.m. and 5:15 p.m., except as provided in § 261.6(a) of the Board's Rules Regarding Availability of Information, 12 CFR 261.6(a).

FOR FURTHER INFORMATION CONTACT: Joseph R. Alexander, Attorney, Legal Division (202-452-2489), or William S. Brown, Manager, Division of Federal Reserve Bank Operations (202-452-3760), Board of Governors of the Federal Reserve System, Washington, D.C. 20551.

SUPPLEMENTARY INFORMATION: The Board is requesting public comment on seven proposals to amend Regulation J, 12 CFR Part 210, which governs the collection of checks and other items by Federal Reserve Banks and the handling by Reserve Banks of wire transfers of funds.

1. Reserve Bank Liability to Remote Parties

Section 210.6(a) of Regulation J provides that in collecting items a Reserve Bank acts only as the agent of its sender (i.e., the depository institution that forwards an item to a Reserve Bank for collection), and does not act as agent or subagent for any other person. Because the liability of a collecting bank (such as a Reserve Bank) is predicated upon its status as agent, this provision has the effect of insulating a Reserve Bank from liability in collection cases from all parties except the sender. Accordingly, a third party that did not immediately precede a Reserve Bank in the collection process cannot successfully sue the Reserve Bank, even if it is able to demonstrate that it has been injured by the Reserve Bank's failure to exercise ordinary care in handling an item. This provision has been upheld by several courts. See, e.g., *Childs* v. *Federal Reserve Bank of Dallas*, 719 F.2d 812 (5th Cir. 1983).

Collecting banks other than Reserve Banks do not, however, have the benefit of such a rule. Under § 4-201(a) of the Uniform Commercial Code ("U.C.C."), a collecting bank is an agent or subagent of the owner of the item. Accordingly, the collecting bank may be held liable to parties other than the immediately preceding party if its improper handling of an item causes them harm.

In view of the universality of the U.C.C. rule, the Board seeks comment on whether it would be desirable for the Federal Reserve to conform Regulation J to the rule applicable to other collecting banks. The Board also seeks comment on whether it would also be desirable to amend Regulation J to make it clear that warranties made by collecting banks and other prior parties under state law, e.g., U.C.C. 4-207(2), run to Reserve Banks as well as other collecting banks.

2. Limitation Period

a. *Action Against a Reserve Bank.* Regulation J is silent as to when a person may bring an action against a Reserve Bank for mishandling checks or other items (in subpart A) and wire transfer items or requests (in subpart B). Consequently, courts ordinarily apply the appropriate state law. This has resulted in a lack of uniform treatment among Reserve Banks, since applicable laws vary from state to state, and it is often unclear even within a state which limitation period applies. See *Bank of America N.T. & S.A.* v. *Security Pacific National Bank*, 23 Cal. App. 3d 638, 100 Cal. Rep. 438 (1972); *First State Bank* v. *Tanner*, 495 S.W.2d 267 (Tex. Civ. App. 1973).

Given the identical functions performed by Reserve Banks and their offices in collecting checks and handling wire transfers, the Board believes that it may be desirable to apply a single period of limitations to actions against Reserve Banks that arise from their collection and wire transfer activities. Accordingly, the Board seeks comment on whether to establish as a uniform federal rule a two-year limitation period for the commencement of actions against Reserve Banks for mishandling check collections and wire transfers.

b. *Action Against a Paying Bank for Failure to Give Notice of Nonpayment.* The Board recently adopted an amendment to subpart A of Regulation J requiring paying banks to provide notice to depository banks when they return unpaid large-dollar items presented by Reserve Banks. 50 FR 5734 (1985). This

amendment takes effect on October 1, 1985. In responding to the Board's request for comment on this proposal, one commenter asked what statute of limitations applied to the depository bank's claim against the paying bank for failure to comply with the notification requirement. As is the case with actions against Reserve Banks, the limitations period of the state in which the paying bank is located would ordinarily be applied. See U.C.C. 4–102(2). The Board believes, however, that a uniform rule may be appropriate; otherwise, a paying bank in one state might be in jeopardy for a longer period than a paying bank in another state even though they would be alleged to have violated a uniform requirement of a federal regulation in exactly the same way. Accordingly, the Board seeks comment on whether to amend Regulation J to establish the same two-year limitation period applicable to actions against a Reserve Bank to actions against a paying bank for failing to make the notice of nonpayment required by Regulation J.

3. Tender of Defense

Section 210.5 of Regulation J establishes a procedure that allows a Reserve Bank, when sued by a subsequent collecting or paying bank, to demand that the sender undertake defense of the action. This "tender of defense" provision simplifies forged indorsement cases by requiring the party that should have obtained a proper indorsement to come into the action and defend.[1] This provision, however, applies only when the action has been brought directly against a Reserve Bank. The Board believes that, in order to reduce litigation, it may be desirable to eliminate the requirement that an action be brought against a Reserve Bank and permit defense to be tendered by a Reserve Bank to a prior party when defense is tendered to a Reserve Bank by a subsequent party. Accordingly, the Board seeks comment on a proposed amendment that would accomplish this result.

The proposed amendment also incorporates a provision found in the uniform provisions of the Reserve Banks' operating circulars on the collection of cash items that makes it clear that if a Reserve Bank tenders defense of an action to a prior party, the Reserve Bank is not responsible for defending the action.

4. Deposit of Foreign Instruments

Section 210.2(g) defines the term "item" to include only instruments payable within a Federal Reserve District (i.e., the United States, Puerto Rico, the U.S. Virgin Islands, Guam, and American Samoa). This definition prohibits depository institutions from sending instruments drawn on payors located outside the United States to their Reserve Banks for collection. Many small institutions have indicated that this restriction imposes substantial hardships on them, because it requires them to sort their checks prior to depositing them with a Reserve Bank in order to separate out instruments payable outside a Federal Reserve District. This is particularly true with respect to instruments drawn on banks located in Canada. Consequently, they have requested that Reserve Banks collect such instruments in order to reduce the operating burden the current limitation imposes.

Board and Reserve Bank staffs are currently developing a procedure for the efficient collection of foreign instruments as a new, priced service of the Federal Reserve Banks. If this new service is adopted, Reserve Banks will probably begin by collecting instruments drawn on payors located in Canada, although the service may be extended to other countries if conditions warrant. Under the proposed service, one or more Reserve Banks would enter into arrangements with U.S. offices of Canadian banks to have the Canadian banks act as agents for presenting the instruments to the Canadian payors. Reserve Banks participating in the program would send Canadian instruments to the designated Reserve Banks for forwarding to the presentment agents. Reserve Banks accepting Canadian instruments would provide credit to the senders in accordance with a pre-established availability schedule; the sender would bear any exchange risk through an adjustment that would be made after the Reserve Bank had received final settlement from the payor. Details of this service are still being worked out. The proposed amendment, if adopted, would clear any regulatory obstacles to the implementation of this service.

Accordingly, the Board seeks comment on an amendment to Regulation J that would allow depository institutions to deposit with their Reserve Banks instruments payable in foreign countries where Reserve Banks have made arrangements for their collection. The proposed amendment provides that the applicable foreign law will be applied with regard to the duties of a foreign payor, while Regulation J would apply to the rights and duties of parties located in the United States or its territories, dependencies, or possessions.

5. Damages for Wire Transfers

Section 210.38(b) of Regulation J provides that a Reserve Bank may be liable for damages if it fails to exercise ordinary care or act in good faith in handling a wire transfer of funds. The regulation, however, does not clearly specify that a Reserve Bank is liable only for direct damages and is not liable for consequential damages. It appears that, as a result of contractual agreements between depository institutions offering wire transfer services and their customers, the general rule is that the institutions have no liability for consequential damages in handling wire transfers. The Board seeks comment on whether it would be consistent with standard commercial practice for the Board to amend Regulation J to limit a Reserve Bank's liability to direct damages, which would include no more than the amount of the item, the cost of the transfer, and forgone interest. The Board also seeks comment on whether it should adopt such an amendment. The proposed amendment would limit a Reserve Bank's liability for mishandling wire transfer items and requests to damage that is directly and immediately attributable to the mishandling, and would make it clear that a Reserve Bank will not be liable for consequential damages.

If the Board adopts the proposed amendment, the Reserve Banks also intend to amend their operating circulars that govern their handling of automated clearing house items to provide for the same standard of liability.

6. Northern Mariana Islands

On December 26, 1981, Congress amended section 2(a) of the Federal Deposit Insurance Act, 12 U.S.C. 1813(a), to make banking institutions located in the Trust Territory of the Pacific Islands eligible for FDIC insurance. Pub. L. 97–110, section 103(a), 95 Stat. 1513. Thus, these institutions are also depository institutions within the meaning of the Monetary Control Act and, hence, eligible to receive Reserve Bank check collection and other services. See 12 U.S.C. 248a, 461(b). Within the past several months a bank located in the Northern Marianas has requested a

[1] A similar provision is found in U.C.C. 3–803. The U.C.C. provision differs from the Regulation J tender provision in that the U.C.C. allows the person tendered defense to require other prior parties to defend the action. The U.C.C. provision also does not clearly permit the person tendering defense to recover the amount of the judgment and expenses of litigation by charging the prior indorser's account.

routing number so that collecting banks may process checks drawn on it automatically. The Board believes that an amendment defining the Twelfth District to include the Northern Marianas would conform Regulation J to the amended statute and is consistent with previous amendments defining the Twelfth District to include Guam and American Samoa, and seeks comment on such an amendment.

7. Incorporating U.C.C. Definitions

Section 210.2 of Regulation J defines several terms for purposes of subpart A. For the most part, these definitions define terms that are not found in the U.C.C. (e.g., "paying bank" and "sender") or define terms differently than the U.C.C. does (e.g., "bank"). Other terms, however, that are not defined in Regulation J, such as "good faith," "presentment," and "holder." As these terms are used in subpart A without any definition, the Board seeks comment on whether subpart A should be clarified by adopting the terminology of the U.C.C. where it is not inconsistent with the definitions specifically provided in the regulation or where the context does not require a different interpretation.

The Board does not believe that these proposed amendments will have a significant economic impact on a substantial number of small businesses or organizations.

List of Subjects in 12 CFR Part 210

Banks, Banking, Federal Reserve System.

PART 210—[AMENDED]

Pursuant to its authority under section 13 of the Federal Reserve Act, 12 U.S.C. 342, section 16 of the Federal Reserve Act, 12 U.S.C. 248(o) and 360, section 11(i) of the Federal Reserve Act, 12 U.S.C. 248(i), and other provisions of law, the Board requests comment on the proposals to amend 12 CFR Part 210, Regulation J, as set forth below:

1. By adding a new undesignated paragraph to the end of § 210.2; and by revising footnote 1 to read as follows:

§ 210.2 Definitions.

* * * * *

Unless the context otherwise requires, the terms not defined herein have the meanings set forth in the Uniform Commercial Code.

[1] For purposes of this subpart, the Virgin Islands and Puerto Rico are deemed to be in the Second District, and Guam, American Samoa, and the Northern Mariana Islands in the Twelfth District.

2. In § 210.3, new paragraph (e) is added to read as follows:

§ 210.3 General Provisions.

* * * * *

(e) *Foreign instruments.* A Reserve Bank also may receive and handle certain instruments payable outside a Federal Reserve District, as provided in its operating circulars. The handling of such instruments in a state is governed by this subpart, and the handling of such instruments outside a state is governed by the local law.

3. In § 210.5, paragraphs (a)(2), (b), and (c) are revised to read as follows:

§ 210.5 Senders Agreement; Recovery by Reserve Bank.

(a) * * *

(2) warrants to each Reserve Bank handling the item that: (i) The sender has good title to the item or is authorized to obtain payment on behalf of one who has good title (whether or not this warranty is evidenced by the sender's express guaranty of prior indorsements on the item); and (ii) to the extent prescribed by state law applicable to a Reserve Bank or subsequent collecting bank handling the item, the item has not been materially altered; but this subparagraph (a)(2) does not limit any warranty by a sender or other prior party arising under state law; and

* * * * *

(b) *Recovery by Reserve Bank.* If an action or proceeding is brought against (or if defense is tendered to) a Reserve Bank that has handled an item, based on:

(1) The alleged failure of the sender to have the authority to make the warranty and agreement in subparagraph (a)(1) of this section;

(2) Any action by the Reserve Bank within the scope of its authority in handling the item; or

(3) Any warranty made by the Reserve Bank under § 210.6(b) of this subpart,

The Reserve Bank may, upon entry of a final judgment or decree, recover from the sender the amount of attorney's fees and other expenses of litigation incurred, as well as any amount the Reserve Bank is required to pay because of the judgment or decree or the tender of defense, together with interest thereon.

(c) *Methods of recovery.* The Reserve Bank may recover the amount stated in paragraph (b) of this section by charging any account on its books that is maintained or used by the sender (or if the sender is another Reserve Bank, by entering a charge against the other Reserve Bank through the Interdistrict Settlement Fund), if:

(1) The Reserve Bank made seasonable written demand on the sender to assume defense of the action or proceeding; and

(2) The sender has not made any other arrangement for payment that is acceptable to the Reserve Bank.

The Reserve Bank is not responsible for defending the action or proceeding before using this method of recovery. A Reserve Bank that has been charged through the Interdistrict Settlement Fund may recover from its sender in the manner and under the circumstances set forth in this paragraph. A Reserve Bank's failure to avail itself of the remedy provided in this paragraph does not prejudice its enforcement in any other manner of the indemnity agreement referred to in paragraph (a)(3) of this section.

* * * * *

4. In § 210.6, paragraph (a)(1) is revised, and new paragraph (c) is added as set forth below:

§210.6 Status, Warranties, and liability of Reserve Banks.

(a)(1) *Status and liability.* A Reserve Bank shall act only as agent or subagent of the owner or holder in respect of an item. This agency terminates not later than the time the Reserve Bank receives payment for the item in actually and finally collected funds and makes the proceeds available for use by the sender. A Reserve Bank shall not have or assume any liability in respect of an item or its proceeds except for the Reserve Bank's own lack of good faith or failure to exercise ordinary care and except as provided in paragraph (b) of this section.

* * * * *

(c) *Time for commencing action against Reserve Bank.* A claim against a Reserve Bank for lack of good faith or failure to exercise ordinary care shall be barred unless the action on the claim is commenced within two years after the claim accrues. A claim accures on the date when a Reserve Bank's alleged failure to exercise ordinary care or to act in good faith first results in damages to the claimant.

5. In § 210.12, paragraph (c) is amended by adding a new paragraph (c)(10):

§210.12 Return of Cash Items.

* * * * *

(c) * * *

(10) A claim for failure to comply with the requirements of this paragraph is barred unless the action on the claim is

commenced within two years after the date upon which the notice was required to be received by the depositary bank.

6. In § 210.38, paragraph (b) is revised to read as follows:

§ 210.38 Reserve Bank Liability.

* * * * *

(b) *Damages.* (1) A Reserve Bank is liable to its immediate transferor for a failure to credit the amount of a transfer item or request to the transferee's account caused by a Reserve Bank's failure to exercise ordinary care or act in good faith. A Reserve Bank's liability for such a failure to credit is limited to damages that are attributable directly and immediately to the failure to credit, but does not include damages that are attributable to the consequences of the failure to credit, even if such consequences were foreseeable at the time of such failure.

(2) A claim against a Reserve Bank for failure to exercise ordinary care or to act in good faith shall be barred unless the action on the claim is commenced within two years after the claim accrues. A claim accrues on the date a Reserve Bank's alleged failure to exercise ordinary care or to act in good faith first results in damages to the claimant.

* * * * *

By order of the Board of Governors, March 22, 1985.

William W. Wiles,

Secretary of the Board.

[FR Doc. 85-7305 Filed 3-27-84; 8:45 am]

BILLING CODE 6210-01-M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 85-ACE-02]

Proposed Alteration of Transition Area; O'Neill, NE

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of Proposed Rulemaking (NPRM).

SUMMARY: This notice proposes to alter the 700-foot transition area at O'Neill, Nebraska, to provide additional controlled airspace for aircraft executing a new instrument approach procedure to the O'Neill, Nebraska, Minicipal Airport, utilizing the O'Neill VORTAC as a navigational aid.

DATE: Comments must be received on or before May 6, 1985.

ADDRESSES: Send comments on the proposal to: Federal Aviation Administration, Manager, Operations, Procedures and Airspace Branch, Air Traffic Division, ACE-540, 601 East 12th Street, Kansas City, Missouri 64106, Telephone (816) 374-3408.

The official docket may be examined at the Office of the Regional Counsel, Central Region, Federal Aviation Administration, Room 1558, 601 East 12th Street, Kansas City, Missouri.

An informal docket may be examined at the Office of the Manager, Operations, Procedures and Airspace Branch, Air Traffic Division.

FOR FURTHER INFORMATION CONTACT: Dale L. Carnine, Airspace Specialist, Operations, Procedures and Airspace Branch, Air Traffic Division, ACE-540, FAA, Central Region, 601 East 12th Street, Kansas City, Missouri 64106, Telephone (816) 374-3408.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons may participate in the proposed rulemaking by submitting such written data, views or arguments as they may desire. Communications should identify the airspace docket number, and be submitted in duplicate to the Operations, Procedures and Airspace Branch, Air Traffic Division, Federal Aviation Administration, 601 East 12th Street, Kansas City, Missouri 64106. All communications received on or before the closing date for comments will be considered before action is taken on the proposed amendment. The proposal contained in this Notice may be changed in light of the comments received. All comments received will be available both before and after the closing date for comments in the Rules Docket for examination by interested persons.

Availability of NPRM

Any person may obtain a copy of this NPRM by submitting a request to the Federal Aviation Administration, Operations, Procedures and Airspace Branch, 601 East 12th Street, Kansas City, Missouri 64106, or by calling (816) 374-3408.

Communications must identify the notice number of this NPRM. Persons interested in being placed on a mailing list for further NPRMs should also request a copy of Advisory Circular No. 11-2A which describes the application procedure.

Discussion

The FAA is considering an amendment to Subpart G, § 71.181 of the Federal Aviation Regulations (14 CFR 71.181) by altering the 700-foot transition area at O'Neill, Nebraska. To enhance airport usage, an additional instrument approach procedure to the O'Neill, Nebraska, Municipal Airport is being established utilizing the O'Neill VORTAC as a navigational aid. The establishment of this new instrument approach procedure based on this navigational aid entails alteration of the transition area at O'Neill, Nebraska, at and above 700 feet above ground level within which aircraft are provided air traffic control service. The intended effect of this action is to ensure segregation of aircraft using the approach procedure under Instrument Flight Rules (IFR) and other aircraft operating under Visual Flight Rules (VFR). Section 71.181 of Part 71 of the Federal Aviation Regulations was republished in Handbook 7400.6A, dated January 2, 1985.

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

List of Subjects in 14 CFR Part 71

Aviation safety, Transition areas.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me, the Federal Aviation Administration proposes to amend § 71.181 of Part 71 of the Federal Aviation Regulations (14 CFR Part 71), by altering the following transition area:

O'Neill, Nebraska

That airspace extending upward from 700 feet above the surface within a 5.5 mile radius of the O'Neill Municipal Airport (latitude 42°28'15" N., longitude 98°41'15" W.); within 3.5 miles each side of the O'Neill VORTAC 315° radial, extending from the 5.5 mile radius to 12 miles northwest of the VORTAC and within 3.25 miles each side of the O'Neill VORTAC 129° radial, extending from the 5.5 mile radius to 8.5 miles southeast of the VORTAC.

(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. 11.65 of the Federal Aviation Regulations (14 CFR 11.65))

Issued in Kansas City, Missouri, on March 19, 1985.

James O. Robinson,

Acting Director, Central Region.

[FR Doc. 85-7289 Filed 3-27-85; 8:45 am]

BILLING CODE 4910-13-M

14 CFR Part 71

[Airspace Docket No. 84-ACE-13]

Proposed Designation of Transition Area; Macon, MO

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of Proposed Rulemaking (NPRM).

SUMMARY: This notice proposes to designate a 700-foot transition area at Macon, Missouri, to provide controlled airspace for aircraft executing a new instrument approach procedure to the Fower Memorial Airport, Macon, Missouri, utilizing the Macon, Missouri VOR as a navigational aid. This proposed action will change the airport status from VFR to IFR.

DATES: Comments must be received on or before May 6, 1985.

ADDRESSES: Send comments on the proposal to: Federal Aviation Administration, Manager, Operations, Procedures and Airspace Branch, Air Traffic Division, ACE-540, 601 East 12th Street, Kansas City, Missouri 64106, Telephone (816) 374-3408.

The official docket may be examined at the Office of the Regional Counsel, Central Region, Federal Aviation Administration, Room 1558, 601 East 12th Street, Kansas City, Missouri.

An informal docket may be examined at the Office of the Manager, Operations, Procedures and Airspace Branch, Air Traffic Division.

FOR FURTHER INFORMATION CONTACT: Lewis G. Earp, Airspace Specialist, Operation, Procedures, and Airspace Branch, Air Traffic Division, ACE-540, FAA, Central Region, 601 East 12th Street, Kansas City, Missouri 64106, Telephone (816) 374-3408.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons may participate in the proposed rulemaking by submitting such written data, views or arguments as they may desire. Communications should identify the airspace docket number, and be submitted in duplicate to the Operations, Procedures and Airspace Branch, Air Traffic Division, Federal Aviation Administration, 601 East 12th Street, Kansas City, Missouri 64106. All communications received on or before the closing date for comments will be considered before action is taken on the proposed amendment. The proposal contained in this Notice may be changed in light of the comments received. All comments received will be available both before and after the closing date for comments in the Rules Docket for examination by interested persons.

Availability of NPRM

Any person may obtain a copy of this NPRM by submitting a request to the Federal Aviation Administration, Operations, Procedures and Airspace Branch, 601 East 12th Street, Kansas City, Missouri 64106, or by calling (816) 374-3408.

Communications must identify the notice number of this NPRM. Persons interested in being placed on a mailing list for further NPRMs should also request a copy of Advisory Circular No. 11-2A which describes the application procedure.

Discussion

The FAA is considering an amendment to Subpart G, § 71.181 of the Federal Aviation Regulations (14 CFR 71.181) by designating a 700-foot transition area at Macon, Missouri. To enhance airport usage, a new instrument approach procedure is being developed for the Fower Memorial Airport, Macon, Missouri, utilizing the Macon VOR as a navigational aid. This navigational aid will provide navigational guidance for aircraft utilizing the airport. The establishment of a new instrument approach procedure based on this navigational aid entails designation of a transition area at Macon, Missouri, at and above 700 feet above ground level 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 operations, and while transiting between the terminal and enroute environment. The intended effect of this action is to ensure segregation of aircraft, using the 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. Section 71.181 of Part 71 of the Federal Aviation Regulations was republished in Handbook 7400.6A, dated January 2, 1985.

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

List of Subjects in 14 CFR Part 71

Aviation safety, Transition areas.

PART 71—[AMENDED]

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me, the Federal Aviation Administration proposes to amend § 71.181 of Part 71 of the Federal Aviation Regulations (14 CFR Part 71), by designating the following transition area:

Macon, Missouri

That airspace extending upwards from 700 feet above the surface within a 5 mile radius of the Fower Memorial Airport (Latitude 39°43' 40" N. Longitude 92°27'25" W.) and that airspace 3 miles either side of the Macon, Missouri VORTAC 003° Radial extending from 5 miles radius to 6 miles NE of the 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 § 11.65 of the Federal Aviation Regulations (14 CFR 11.65))

Issued in Kansas City, Missouri, on March 19, 1985.

James O. Robinson,

Acting Director, Central Region.

[FR Doc. 7290 Filed 3-27-85; 8:45 am]

BILLING CODE 4910-13-M

FEDERAL TRADE COMMISSION

16 CFR Part 13

[File No. 851-0019]

Allied Corp., et al.; Proposed Consent Agreement With Analysis To Aid Public Comment

AGENCY: Federal Trade Commission.

ACTION: Proposed Consent Agreement.

SUMMARY: The Federal Trade Commission has provisionally accepted a consent order with Allied Corporation

and King Radio Corporation in settlement of a proposed complaint alleging violations of Section 7 of the Clayton Act and Section 5 of the Federal Trade Commission Act. The proposed order would require Allied to divest the King Weather Radar Line to Narco Avionics, Inc., or another Commission approved buyer. With certain exceptions, the proposed order would also prohibit Allied, for a period of ten (10) years, from acquiring, without prior Commission approval, any interest in any company that manufactures or sells general aviation weather detection systems in the United States.

DATE: Comments must be received on or before May 28, 1985.

ADDRESS: Comments should be directed to: FTC/Office of the Secretary, Room 136, 6th St. and Pa. Ave., NW., Washington, D.C. 20580.

FOR FURTHER INFORMATION CONTACT: Sandra G. Wilkof, L-501, Washington, D.C. 20580, (202) 254-8644.

SUPPLEMENTARY INFORMATION: Pursuant to section 6(f) of the Federal Trade Commission Act, 38 Stat. 721, 15 U.S.C. 46 and § 2.34 of the Commission's rules of practice (16 CFR 2.34), notice is hereby given that the following consent agreement containing a consent order to cease and desist and an explanation thereof, having been filed with and accepted, subject to final approval, by the Commission, has been placed on the public record for a period of sixty (60) days. Public comment is invited. Such comments or views will be considered by the Commission and will be available for inspection and copying at its principal office in accordance with § 4.9(b)(14) of the Commission's rules of practice (16 CFR 4.9(b)(14)).

List of Subjects in 16 CFR Part 13

Aviation weather detection systems, Trade practices.

This document contains material that has been deleted pending confidentiality requests. The deleted material has been replaced in the text by the symbol [* * *].

Before Federal Trade Commission

[File No. 851-0019]

Agreement Containing Consent Order

In the matter of Allied Corporation, a corporation, and King Radio Corporation, and corporation.

The Federal Trade Commission (the "Commission") have initiated an investigation of the proposed acquisition of shares of King Radio Corporation ("King Radio") by Allied Corporation ("Allied"), and Allied and King Radio having been furnished with a copy of a draft complaint that the Bureau of Competition has presented to the Commission for its consideration and which, if issued by the Commission, would charge Allied and King Radio with violations of the Clayton Act and Federal Trade Commission Act, and it now appearing that Allied and King Radio are willing to enter into an agreement containing an order to divest certain assets.

It is hereby agreed by and between Allied and King Radio, by their duly authorized officers and their attorneys, and counsel for the Commission that:

1. Allied is a corporation organized under the laws of New York with its executive offices at Columbia Road & Park Avenue, Morris Township, New Jersey 07960. King Radio is a corporation organized under the laws of Kansas with its executive offices at 400 North Rogers Road, Olathe, Kansas 66062.

2. Allied and King Radio admit all jurisdictional facts set forth in the attached draft of complaint.

3. Allied and King Radio waive:

a. Any further procedural steps;

b. The requirement that the Commission's decision contain a statement of findings of fact and conclusions of law;

c. All rights to seek judicial review or otherwise challenge or contest the validity of the order entered pursuant to this Agreement; and

d. Any claim under the Equal Access to Justice Act.

4. This Agreement shall not become a part of the public record unless and until it is accepted by the Commission. If this Agreement is accepted by the Commission, it, together with the draft of complaint contemplated thereby, will be placed on the public record for a period of sixty (60) days and information in respect thereto publicly released. The Commission thereafter may either withdraw its acceptance of the Agreement and so notify Allied and King Radio, in which event it will take such action as it may consider appropriate, or issue and serve its complaint (in such form as the circumstances may require) and decision in disposition of the proceeding.

5. This Agreement is for settlement purposes only and does not constitute an admission by Allied or King Radio that the law has been or may be violated as alleged in the draft of complaint here attached.

6. This Agreement contemplats that, if it is accepted by the Commission, and if such acceptance is not subsequently withdrawn by the Commission pursuant to the provisions of § 2.34 of the Commission's Rules, the Commission may, without further notice to Allied or King Radio, (1) issue its complaint corresponding in form and substance with the draft of the complaint attached hereto and its decision containing the following order to divest in disposition of the proceeding, and (2) make information public with respect thereto. When so entered, the order to divest shall have the same force and effect and may be altered, modified or set aside in the same manner and within the same time provided by statute for other orders. The order shall become final upon service. Delivery by the U.S. Postal Service of the complaint and decision containing the agreed-to order to Allied's and King Radio's addresses as stated in this agreement shall constitute service. Allied and King Radio waive any right they might have to any other manner of service. The complaint may be used in construing the terms of the order, and no agreement, understanding, representation or interpretation not contained in the order or the agreement may be used to vary or to contradict the terms of the order.

7. Allied and King Radio have read the draft of complaint and order contemplated hereby. Allied understands that once the order has been issued, it will be required to file one or more compliance reports showing that it intends to comply, is complying or has fully complied with the order. Allied and King Radio further understand that they may be liable for civil penalties in the amount provided by law for each violation of the order after it become final.

Order

For the purposes of this Order, the following defintions shall apply:

(A) "Allied" means Allied Corporation, its predecessors, divisions, subsidiaries, groups and affiliates controlled by Allied and their respective directors, officers, employees, agents and representatives and their respective successors and assigns.

(F) "King Radio" means King Radio Corporation, its predecessors, divisions, subsidiaries, groups and affiliates controlled by King Radio and their respective directors, officers, employees, agents and representatives and their respective successors and assigns.

(C) "King Weather Radar Line" means all airborne weather detection systems currently manufactured, sold or owned by King Radio, including but not limited to the KWX 56 and the KWX 58 weather radar systems; all airborne weather detection systems that King Radio has under development, [* * *] and improvements or modifications to the

KWX 56 or KWX 58 systems; and any other plans or research related to airborne weather detection systems. The KWX 56 and the KWX 58 weather radar systems shall be construed to include, respectively, the KI 244 and KI 248 control/indicators, the KA 126 and the KA 128 combined antenna/receiver/transmitter units and the KGR 356 and the KGR 358 graphics interface units.

(D) "Airborne weather detection system" means (1) a product, consisting of a display, a sensor device and an antenna, that uses radio waves to detect and display weather conditions and is designed to enable a pilot to evaluate and avoid adverse weather conditions and is designed for use in aircraft; or (2) a receiver system designed for use in aircraft that detects lightning and is designed to enable a pilot to evaluate and avoid adverse weather conditions. "Airborne weather detection system" shall also include any device that performs that same function in the same manner as the King Radio products designated KGR 356 and KGR 358 for display on the products, defined in D(1) and D(2) above.

(E) "Piece Parts" are components and raw materials purchased or made by King Radio for use in manufacturing, producing or repairing the King Weather Radar Line or spare parts. "Kits" are all Piece Parts required to assemble a specific quantity of the King Weather Radar Line.

I

It is ordered that:

(A) Within eight (8) months from the date this Order becomes finals, Allied shall divest, absolutely and in good faith all of the assets described below, so as to transfer the King Weather Radar Line as a viable product line such that a purchaser could compete as a manufacturer and seller of airborne weather detection systems.

(1) All inventories, including Piece Parts, Work-In-Process, finished goods and kits solely dedicated to the King Weather Radar Line, as determined pursuant to a physical inventory to be taken approximately seven (7) days in advance of the closing of the sale, except that Allied may retain, at its discretion, sufficient quantities of Finished Goods and spare parts as to be able to service, maintain and repair its products in the field and fulfill those contracts not assignable to the purchaser.

(2) All tooling, whether or not in the custody of vendors, and test equipment, including fixtures thereof, solely dedicated to the King Weather Radar Line.

(3) All know-how and trade secrets, if any, solely dedicated to the King Weather Radar Line, including one patent (no. 3973145) and one patent application (no. 412913).

(4) All engineering, and design drawings, including but not limited to all documentation for software contained in or used in the manufacture of the King Weather Radar Line; [* * *] all documentation related to a design for a test adapter to enable the testing of the KGR 356 and KGR 358 graphics interface units utilizing [* * *] and all other documentation, design and development studies, inventory, models and other data related to the King Weather Radar Line.

(5) All processes, bills of material, maintenance manuals, pilots' guides, TSO reports, advertising literature and brochures solely dedicated to the King Weather Radar Line; vendor and distribution lists; and documentation related to a sales history and marketing of the King Weather Radar Line to the extent that such documentation is separable from other confidential information not related to the King Weather Radar Line.

(6) All purchase orders for Piece Parts on order to the extent that they are assignable and solely dedicated to the King Weather Radar Line, all customer lists for King Weather Radar Line products and all contracts for the sale of King Weather Radar Line to the extent they are assignable.

(B) Divestiture of the King Weather Radar Line shall be made to Narco Avionics, Inc. pursuant to the terms of the Agreement of Purchase and Sale attached hereto as Exhibit A, or to such other purchaser or purchasers that receive(s) the prior approval of the Commission and only in a manner that receives prior approval of the Commission.

(C) For a period of ninety (90) days following the divestiture of the King Weather Radar Line, or such longer period (not to exceed six (6) months) as agreed between the purchaser and Allied, Allied shall assist the purchaser in the start-up and manufacturing process of the King Weather Radar Line by making personnel available to train and educate employees of the purchaser selected by it in all facets of the startup, manufacture, production and repair of the King Weather Radar Line. Allied shall name a single technical coordinator to serve as the focal point for such technical assistance. For such technical assistance, Allied may assess the purchaser an amount in accord with the terms of the Agreement of Purchase and Sale attached hereto as Exhibit A; or may charge the purchaser an amount not to exceed its cost for the time and materials (plus a reasonable material burden rate) involved, plus its reasonable travel, lodging and subsistence costs, if any.

(D) Pending the divestiture of the King Weather Radar Line required by this Order, Allied shall use its best efforts to advertise, promote, manufacture and sell the King Weather Radar Line at substantially present levels. Allied shall also continue to fund all ongoing research and development projects with regard to the King Weather Radar Line at 1984 levels. Allied shall be required to designate an appropriate King Radio employee to be responsible for managing the King Weather Radar Line pending its divestiture.

(E) Pending the divestiture of the King Weather Radar Line required by this Order, Allied and King shall maintain the viability, integrity and marketability of the properties described in Paragraph I(A) and shall not cause or permit the destruction, removal or impairment of any assets to be divested except in the ordinary course of business and except for ordinary wear and tear.

II

It is further ordered, that, for a period of ten (10) years from the date this Order becomes final, Allied shall not, without the prior approval of the Commission, directly or indirectly, acquire any stock, share capital or equity interest in any concern engaged in, or any assets used in the manufacture and sale in or to the United States, of airborne weather detection systems designed for use in general aircraft; provided, however, that nothing in this Order shall prohibit Allied from (i) acquiring, for investment purposes only, an interest of not more than one (1) percent of the stock, share capital or equity or any such concern; or (ii) making purchases, in the ordinary course of business, of components and equipment used to manufacture airborne weather detection systems *(e.g.*, tools, test equipment and components). For the purposes of this Paragraph, the term "general aviation aircraft" means those aircraft predominantly used for private purposes rather than (i) for military purposes or (ii) for the transport of people or cargo for a fee.

III

It is further ordered, that if Allied has not accomplished the divestiture required by Paragraph I of this Order within the eight-month period, Allied shall consent to the appointment of a trustee who shall have the power and authority to accomplish the divestiture at the most favorable price and terms

available consistent with the Order's unconditional obligation to divest. The trustee shall be a person with experience and expertise in acquisitions and divestitures and shall be selected by the Commission subject to Allied's consent, which shall not be unreasonably withheld. The trustee shall serve at the cost and expense of Allied based on reasonable and customary terms. The trustee's compensation shall be based at least in significant part on a commision arrangement contingent on the trustee divesting the trust assets. The trustee shall have the cooperation of Allied in accomplishing the divestiture within a reasonable period not to exceed ten (10) months and subject to the prior approval of the Federal Trade Commission. The appointment of a trustee shall not preclude the Commission from seeking civil penalties and other relief available to it for any failure by Allied to comply with Paragraphs I through VI of the Order.

IV

It is further ordered, that within sixty (60) days from the date on which this Order becomes final and the first two sixty (60) days periods thereafter and every ninety (90) days thereafter until Allied has fully complied with the provisions of Paragraph I of this Order, Allied shall submit in writing to the Commission a verified report setting forth in detail the manner and form in which it intends to comply, is complying or has complied with that provision of this Order. All such compliance reports shall include a summary of all discussions and negotiations with any persons who are potential purchasers of the assets to be divested as specified in Paragraph I of this Order, including the identity of all such persons, copies of all written communications to and from such persons, and all internal memoranda, reports and recommendations concerning divestiture.

V

It is further ordered, that for a period of ten (10) years from the date on which this Order becomes final, Allied shall notify the Commission at least thirty (30) days prior to any proposed corporate changes that may affect compliance obligations arising out of this Order, such as dissolution, assignment or sale resulting in the emergence of successor corporations and the creation or dissolution of subsidiaries.

VI

On the first anniversary of the date this Order becomes final and on every anniversary date thereafter for the following nine (9) years, Allied shall submit to the Commission a verified written report setting forth the manner and form in which it has complied or is complying with this Order.

Exhibit A—Agreement of Purchase and Sale

This agreement made and entered on this 23rd day of January, 1985 (the "Agreement") by and between Narco Avionics, Inc., a Delaware corporation, with its principal offices at 270 Commerce Drive, Fort Washington, Pennsylvania 19034 ("Buyer") and King Radio Corporation, a Kansas corporation, with its principal offices at 400 North Rodgers Road, Olathe, Kansas 66062 ("Seller").

Buyer desires to purchase from Seller, and Seller desires to sell to Buyer, on the terms and conditions set forth herein, a portion of the assets used in the business and operations of Seller set forth in paragraph 1 below, which has been generally identified by Seller as its Weather Radar Product Line and Graphics Interface Product Line, more particularly described as:

(a) All Airborne Weather Detection Systems currently manufactured, sold or owned by Seller, including but not limited to:

(1) The KWX 56 Weather Radar System consisting of the KA 126 Antenna/Receiver/Transmitter and the KI 244 Control/Indicator;

(2) The KWX 58 Weather Radar System consisting of the KA 128 Antenna/Receiver/Transmitter and the KI 248 Control/Indicator;

(3) The KGR 356 Graphics Interface Unit; and

(4) The KGR 358 Graphics Interface Unit;

(b) All Airborne Weather Detection Systems that Seller has under development, including but not limited to the KWX 57 and KWX 460, and improvements or modifications to the KWX 56 or KWX 58 systems; and

(c) Any other plans or research related to Airborne Weather Detection Systems.

all of which to be sometimes hereinafter referred to individually as the "Products", and collectively (including the items set forth in paragraph 1) as the "Product Lines".

In consideration of the mutual covenants, agreements, representations and warranties hereinafter contained, the parties agree as follows:

1. *Purchase and Sale.*

At the closing (the "Closing") as hereinafter defined in paragraph 3.1(a), Seller shall sell, transfer and convey to Buyer, and buyer shall purchase and accept:

(a) *Inventories.* All inventories, including Piece Parts, Work-In-Process, Finished Goods and Kits solely dedicated to the Product Lines subject to the provisions of paragraph 1.1 and 1.2.

(b) *Tooling and Test Equipment.* All tooling, whether or not in the custody of vendors and test equipment including fixtures thereof, solely dedicated to the Product Lines, as set forth in *Exhibit 1(b).*

(c) *Industrial Property Rights.* All know-how, and trade secrets, if any, solely dedicated to the Product Lines, one patent (no. 3973145), one patent application (no. 412913). Copies of the assignment of the patent and patent application are annexed to this Agreement as *Exhibit 1(c).*

(d) *Documents, Lists and Design Data.* All engineering and design drawings including but not limited to processes, bills of material, maintenance manuals, pilots' guides, TSO reports, advertising literature and brochures solely dedicated to the Product Lines; vendor and distribution lists; all documentation for software contained in or used in the manufacture of the Products; [* * *] all documentation related to a design for a test adapter to enable testing of the KGR 356 and KGR 358 graphics interface units utilizing [* * *] all other documentation, disign and development studies, inventory, models and other data related to the Products; and documentation related to a sales history and marketing of the Product Lines to the extent that such documentation is separable from other confidential information not related to the Product Lines.

(e) *Purchase Orders and Contracts.* All purchase orders for Piece Parts on order to the extent that they are assignable and solely dedicated to the Product Lines, all customer lists for the Product Lines and all contracts for the sale of Products to the extent that they are assignable, as set forth in *Exhibit 1(e)* to be provided at the Closing.

1.1 *Limitation on Inventory.* Anything to the contrary notwithstanding, Buyer, at its election, shall not be obligated to purchase, accept and pay for Piece Parts in excess of those necessary to manufacture more than a cumulative total of [* * *] Weather Radar Products and, in addition thereto, a cumulative total of [* * *] Graphics Interface Products.

1.2 *Retention by Seller*

(a) Anything to the contrary notwithstanding, Seller shall retain and not convey to buyer all Piece Parts, purchase orders for Piece Parts not

solely dedicated to the Product Lines, and purchase orders for Piece Parts solely dedicated to the Product Lines that are not assignable after efforts are made to request such vendors to permit such assignment from Seller to Buyer. Seller shall also retain and not convey to Buyer contracts for the sale of spare parts, and for Products that are not assignable after efforts are made to request such vendors to permit such assignment from Seller to Buyer.

Seller shall also retain the right to continue to conduct business with vendors and distributors set forth on the vendor and distributor lists. Seller shall also retain and not convey to Buyer a sufficient quantity of Finished Goods and spare parts, in Seller's discretion, as to be able to service, maintain and repair its Products in the field and fulfill any contracts not assignable to buyer.

(b) Buyer shall grant to Seller a nonexclusive, irrevocable, royalty free license (including the right to grant sublicenses) (i) under the patent and patent application to be conveyed herein, to make, have made, use, and sell Piece Parts and (ii) to utilize the tooling (in the custody of vendors) to be conveyed herein, only as necessary for Seller to service, maintain and repair the Products sold by Seller to third parties prior to the Closing. Such license shall be for the duration of any patents that are in existence or may be issued that are conveyed herein, and for the life of the tooling. The license to be used is set forth as *Exhibit 1(c)*, annexed to this Agreement.

1.3 *Definitions.* As used herein the following terms apply:

(a) "Finished Goods" shall mean each completed Product.

(b) "Piece Parts" shall mean components and raw material purchased or made by Seller for use in manufacturing, producing, maintaining or repairing the Products or spare parts.

(c) "Kits" shall mean all required Piece Parts to assemble a specific quantity of the Products.

(d) "Work-In-Process"'shall mean Products in various stages of manufacture or production.

(e) The phrase "solely dedicated to the Product Lines" in connection with assets to be conveyed herein, shall mean those assets which have no use or value to Seller in connection with its business other than for the Product Lines.

(f) "Weather Radar Products" shall mean the KWX 56 and KWX 58 weather radar systems.

(g) "Graphics Interface Products" shall mean the KGR 356 and KGR 358 Graphics Interface units.

(h) "Airborne Weather Detection System" shall mean (1) a product, consisting of a display, a sensor device and an antenna, that uses radio waves to detect and display weather conditions and is designed to enable a pilot to evaluate and avoid adverse weather conditions and is designed for use in aircraft; or (2) a receiver system designed for use in aircraft that detects lightening and is designed to enable a pilot to evaluate and avoid adverse weather conditions. "Airborne Weather Detection System" shall also include any device that performs the same function in the same manner as the Seller's products designated KGR 356 and KGR 358 for display on the products defined in (h)(1) and (h)(2) above.

2. *Purchase Price.* The purchase price shall consist of a payment made at the Closing as set forth in paragraph 2.1 below, payments or credits as set forth in paragraph 2.2 below, and payments made over a period [* * *] as set forth in paragraph 2.3 below.

2.1 *Current Payment.* At the Closing, Buyer shall pay to Seller as part of the purchase price, [* * *] Such payment shall be made by certified check or wire transfer at the election of the Seller.

2.2 *Payments and Credits.*

(a) Buyer shall also pay to Seller, as part of the purchase price, a sum [* * *] for Finished Goods on hand at the Closing (and in the production process) to be conveyed to Buyer, plus [* * *] of such costs for variance factors, and a sum [* * *] for its Kits, Piece Parts and Work-In-Process on hand at the Closing (and in the production process) to be conveyed to Buyer, plus [* * *] of such costs as a material burden rate.

(b) The Buyer shall receive a credit of [* * *] which credit shall be deducted from sums due Seller under paragraph 2.2(a). The net amount due Seller after deduction of the credit shall be payable in accordance with the terms of paragraph 2.2(c).

(c) Such sums due Seller pursuant to paragraph 2.2(b) shall be payable in principal increments of [* * *] until fully paid, in accordance with a promissory note bearing a rate of interest of [* * *] per annum in the form set forth as *Exhibit 2.2(c)* annexed to this Agreement. If less than [* * *] is due Seller, the full sum shall be paid to Seller on the [* * *] following the Closing Date, plus interest due. In the event an adjustment in the cost inventory that was in production is necessary, such an adjustment shall be made pursuant to paragraph 4.7.

2.3 *Additional Payments.*

(a) In addition, Buyer will pay, as part of the purchase price, the sum of [* * *] with interest at [* * *] per annum, payable in [* * *] equal installments of [* * *] and a final installment of [* * *] in accordance with an unsecured promissory note set forth in *Exhibit 2.3(a)*. Payments shall commence on the [* * *] day following the final payment due under the promissory note set forth in *Exhibit 2.2(c)*, and shall continue on each [* * *] thereafter, until fully paid.

3. *The Closing.*

3.1 *Closing.* The purchase and sale of the Product Lines contemplated by this Agreement and the assignment, conveyance and transfer thereof by Seller to Buyer, and payment, delivery of a promissory note, execution of a license agreement, guarantees, security interests, and performance of other obligations as set forth in this Agreement, which are considered conditions of Closing, shall take place at: the offices of Allied Bendix Aerospace, 1000 Wilson Boulevard, Arlington, Virginia 22209, at such time and date to be mutually agreed upon after appropriate approvals are obtained from the FTC pursuant to the FTC investigation, or at such other time and place as the parties say agree to in writing ("Closing Date").

3.2 *Instruments of Transfer.* At the Closing, Seller will deliver to Buyer an Assignment and Bill of Sale, passing all right, title and interest in and to the Product Lines free and clear of all liens, security interests and other encumbrances in the form set forth in *Exhibit 3.2*, annexed to this Agreement.

4. *Standard Costs, Physical Inventory Count and Transfer of Inventory.*

4.1 The inventories, including Finished Goods, Kits, Piece Parts and Work-In-Process have been valued at [* * *] in accordance with Seller's accounting practices.

4.2 Within approximately seven days prior to the Closing, Seller and Buyer together, will count the inventory on hand, not committed to production, (including test counts and sample counts, where total counting is impractical), and establish an agreed upon quantity which will be valued at Seller's cost plus [* * *] Seller and Buyer will supervise the packaging and sealing of the cartons of such inventory. The quantities as established will not be subject to adjustment, since Buyer will have partaken in the inventories count and sealing of such cartons.

4.3 Seller will continue production until approximately one day prior to Closing. An estimated amount of inventory in production will be established and valued at Seller's cost plus [* * *].

4.4 At the Closing, the cost of inventory on hand (plus [* * *]) and the

cost of the estimated inventory in production (plus [* * *]) will serve as the basis of payment pursuant to the promissory note described in paragraph *2.2(c)*.

4.5 As soon as practicable after the Closing Date, per agreement of the parties, the inventory on hand (not in production) will be shipped to Buyer on a carrier designated by Buyer, f.o.b. Seller's plant.

4.6 Within thirty (30) days after the Closing, as soon as practicable, Seller will gather up the inventory that was in production (possibly in three plants) and place it in a central location at Seller's plant. Seller and Buyer will count the inventory that was in production and will supervise the packaging and sealing of the cartons of such inventory, which will be valued at Seller's cost (plus [* * *].) The quantities established will not be subject to adjustment.

4.7 An adjustment between the estimated quantity of inventory that was in production given at the Closing by Seller, and the actual quantity of such inventory will be made, if required, and such adjustment in terms of costs will be reflected in a new promissory note to be executed by Buyer containing the same terms as set forth in *Exhibit 2.2(c)* (except for the adjustment in principal), which new promissory note shall bear interest at [* * *]) from the Closing Date, and the original note will be destroyed.

4.8 The inventory in production will be shipped to Buyer as soon as practicable after packaging it, on a common carrier designated by Buyer, f.o.b. Seller's plant.

4.9 Buyer will, in its discretion, within forty-five days from the Closing Date, examine the valuation of the inventory as Seller's cost (plus [* * *]) to determine whether Seller accurately and consistently applied its standard costs to the inventory. Adjustments, if necessary, in terms of costs will be reflected in the new promissory note. The new promissory note will be substituted for the original promissory note as set forth in *Exhibit 2.2(c)* and delivered to Seller within sixty days after the Closing Date.

4.10 Seller will take reasonable steps to secure the inventory while it is in Seller's custody. The risk of loss shall pass from Seller to Buyer in accordance with the terms set forth in paragraph 11.14.

4.11 In the event Buyer and Seller do not agree on the quantity of the inventories or the consistency or accuracy of the application of the valuation of such inventories, then the issues involved in the dispute whall be referred to an auditor to be mutually agreed upon, and such auditor shall perform an independent review of the facts in order to resolve specific issues. The determination of such auditor shall be final with respect to the matters in dispute. All costs associated with such aduitor shall be shared equally by Buyer and Seller.

4.12 Any payments received by Seller in error for purchasses made from Buyer by Buyer's customers after the Closing Date, will be endorsed over to Buyer or remitted to Buyer.

5. *Representations and Warranties of Seller.*

5.1 *Organization.* Seller is a corporation duly organized, validly existing and in good standing under the laws of the State of Kansas and has all necessary corporate power and authority to own, lease and operate its properties and to carry on its business and the business of the Product Lines as now being conducted. No party, other than Seller, has any right, title or interest, or to the knowledge of Seller, has asserted any such right, title, or interest, in and to the Product Lines.

5.2 *Authority.*

(a) At the Closing Seller will have the full corporate power and authority to enter into this Agreement and to carry out the transactions contemplated hereby, and all proceedings required to be taken by Seller to authorize the execution, delivery and performance of this Agreement have been properly taken and this Agreement constitutes a valid and binding obligation of Seller enforceable in accordance with its terms.

Other than an investigation of the Federal Trade Commission ("FTC") regarding the acquisition by The Bendix Corporation ("Bendix") of Seller's voting stock, which investigation may determine that Seller be required to dispose of the Product Lines that are the subject of this Agreement to a Buyer to be approved by the FTC (hereinafter referred to as the "FTC Investigation"), there is no litigation, proceeding, or investigation pending, or to the best of Seller's knowledge threatened, which questions the validity or enforceability of this Agreement or seeks to enjoin the consummation of any of the transactions contemplated hereby.

(b) Other than the FTC Investigation and agreements between the FTC, Bendix and/or Seller that may have been entered into pursuant to such investigation, neither the execution and delivery hereof, nor the consummation of the transactions contemplated hereby, nor compliance by Seller with any of the provisions hereof will (1) conflict with or result in a breach of or default under any of the terms, conditions or provisions of any agreement, instrument or obligation to which Seller is a party, related to the Product Lines, or by which it or its properties and assets may be bound or affected or (2) result in violation of any order, writ, injunction, decree, statute,rule or regulation applicable to Seller or the Product Lines.

5.3 *Inventories, etc.* The inventories of Seller regarding the Product Lines on the Closing Date will consist of items of a quality and quantity usable and salable in the ordinary course of business as it was conducted by Seller during the past year. Such inventories have been valued at [* * *] in accordance with the normal inventory valuation practices of the Seller for the Product Lines. The market value of the tooling and test equipment, cumulatively to be conveyed herein equals or exceeds [* * *]. The value of the inventories to be conveyed to Buyer will exceed [* * *].

5.4 *Brokers and Finders.* Seller has not retained any broker or finder or paid or agreed to pay any broker's or finder's fee or commission for or on account of the transactions contemplated by this Agreement.

5.5 *Manufacturing Capability.* The assets of the Product Lines conveyed by Seller herein contain sufficient information, data and other assets for Seller to be able to manufacture the Products. Seller does not guarantee that Piece Parts conveyed herein (exclusive of the Kits) are sufficient to allow full assembly of individual Products.

5.6 [* * *]

5.7 *Product Values.* Except as stated in this subparagraph Seller has no knowledge of any circumstances which would make the Product Lines obsolete or diminish the market for the Product Lines taken as a whole. The parties understand, however, that the KWX 58 Product may diminish the sales of the KWX 56 Product and the KGR 358 Product may diminish the sales of the KGR 356 Product, and the parties further understand that the markets may naturally diminish by virtue of Buyer being a new entrant into the marketplace.

5.8 *Disclosure.* No representation or warranty by Seller in this Agreement, and no statement, certificate or other document furnished, or to be furnished, by or on behalf of Seller under this Agreement, and the Exhibits hereto, contains or will contain any untrue statement of material fact or intentionally omits any material fact necessary to make the statements contained herein or therein not misleading.

6. *Representations and Warranties of Buyer.* Buyer represents and warrants to Seller as follows:

6.1 *Organization.* Buyer is a corporation duly organized, validly existing, and in good standing under the laws of the State of Delaware and has all necessary corporate power and authority to conduct its business as such business is now being conducted, and to own its property and the Product Lines.

6.2 *Authority.* At the Closing Buyer will have full corporate power and authority to enter into this Agreement and carry out the transactions contemplated hereby; all proceedings required to be taken by it to authorize the execution, delivery and performance of this Agreement have been properly taken; and this Agreement constitutes a valid and binding obligation of Buyer enforceable in accordance with its terms.

6.3 *Brokers and Finders.* Buyer has not retained any broker or finder or paid or agreed to pay any broker's or finder's fee or commission for or on account of the transactions contemplated by this Agreement.

6.4 *Litigation or Proceedings.*

(a) Other than the FTC investigation, there is no litigation, proceedings, or investigation pending, or to the best of Buyer's knowledge threatened, which questions the validity or endorsement of this Agreement or seeks to enjoin the consummation of any of the transactions contemplated hereby.

(b) Neither the execution and delivery hereof, nor the consummation of the transactions contemplated hereby, nor compliance by Buyer with any of the provisions hereof, will result in violation of any order, writ, injunction, decree, statute, rule or regulation applicable to Buyer.

6.5 *Collateral.* The collateral given to secure payment of sums due under paragraph 2.2 herein is valued at approximately [* * *] and other than Seller's lien to be placed thereon, is and will contain only one prior lien, to wit, a first mortgage held by The Crocker Bank in a sum not to exceed [* * *] there being sufficient remaining equity to secure payments under paragraph 2.2 herein. Buyer will offer to Seller a second mortgage on the collateral set forth in paragraph 11.3 to secure such payments.

6.6 *Disclosure.* No representation or warranty by Buyer in this Agreement, and no statement, certificate or other document furnished or to be furnished by or on behalf of Buyer under this Agreement, and the Exhibits hereto, contains or will contain any untrue statement of material fact or intentionally omits any material fact necessary to make the statements contained herein or therein not misleading.

7. *Conditions Precedent to Buyer's Performance.* All obligations of Buyer to consummate the transactions as contemplated by this Agreement are subject to the fulfillment of each of the following conditions at or prior to Closing (unless waived in writing by Buyer):

7.1 All representations and warranties of Seller contained herein, and in any document delivered pursuant hereto, shall be true and correct in all material respects when made and as of the Closing.

7.2 All obligations required by the terms of this Agreement to be performed by Seller shall have been duly and properly peformed in all material respects and Buyer shall have received a certificate, dated the Closing Date, signed by an officer of Seller to such effect.

7.3 Seller shall have delivered to Buyer a certified copy of a resolution adopted by the Board of Directors of Seller authorizing the execution, delivery and performance of this Agreement.

7.4 There shall have been no change in the Product Lines, except changes in the ordinary course of business none of which shall have been materially adverse to any Product.

7.5 There shall not have been any legal action or other proceedings brought by third parties to restrain or prohibit the consummation of the transactions contemplated by this Agreement, or to obtain other relief in connection with this Agreement, or the transactions contemplated hereby, nor shall any such actions be pending or threatened.

7.6 The FTC shall have approved this transaction in a final order of a consent decree and shall have permitted the acquisition by Bendix of Seller's voting stock, or in the alternative, the FTC shall have affirmatively indicated that no consent decree is required.

7.7 The FTC shall have approved Buyer as a party to this transaction.

7.8 Buyer shall have received from counsel for Seller a written opinion dated as of the Closing Date, addressed to Buyer, in a form and substance to be mutually agreed upon by Buyer's and Seller's counsel.

8. *Conditions Precedent to Seller's Performance.* All obligations of Seller to consummate the transactions as contemplated by this Agreement are subject to the fulfillment of each of the following conditions at or prior to the Closing (unless waived in writing by Seller):

8.1 All representations and warranties of Buyer contained herein, and in any document delivery pursuant hereto, shall be true and correct in all material respects when made and as of the Closing.

8.2 All obligations required by the terms of this Agreement to be performed by Buyer shall have been duly and properly performed in all material respects and Seller shall have received a certificate, dated the Closing Date, signed by an officer of Buyer to such effect.

8.3 Buyer shall have delivered to Seller a certified copy of the resolution adopted by the Board of Directors of Buyer authorizing the execution, delivery and performance of this Agreement.

8.4 There shall not have been any legal action or other proceedings brought by third parties to restrain or prohibit the consummation of the transactions contemplated by this Agreement, or to obtain other relief in connection with this Agreement, or the transactions contemplated hereby, nor shall any such actions be pending or threatened.

8.5 The FTC shall have approved this transaction in a final order of a consent decree and shall have permitted the acquisition by Bendix of Seller's voting stock, or in the alternative, the FTC shall have affirmatively indicated that no consent decree is required.

8.6 The FTC shall have approved Buyer as a party to this transaction.

8.7 Seller shall have received from counsel for Buyer a written opinion dated as of the Closing Date, addressed to Seller, in a form and substance to be mutually agreed upon by Buyer's and Seller's counsel.

9. *Idemnification.*

9.1 *Seller's Indemnity.*

(a) Seller shall indemnify and hold harmless Buyer, for a period of one year from the Closing Date, against any damage, loss, cost, liability or expense (including reasonable attorneys' fees), which arise out of or result from (a) the incorrectness or breach of any of the representations or warranties of Seller contained in this Agreement, or given in writing on the Closing Date, and (b) the failure on the part of Seller to perform any convenants or agreements on its part to be performed.

(b) Buyer shall give Seller prompt written notice of any matter which may give rise to Buyer's right to indemnity hereunder. Such notice shall identify the nature of the matter and, if appropriate, the persons making the claim from which Buyer's rights to indemnity may arise. Prior to the settlement of any

claim, or the defense of any litigation with a third party which may give rise to indemnity hereunder, Seller shall be given the opportunity to participate in negotiation and settlement discussions or assume the defense of such litigation, as the case may be. Any claim of indemnification made hereunder shall include a statement specifying the nature and amount of the damages, losses, costs, liabilities and expenses incurred by Buyer, for which indemnification is claimed hereunder.

9.2 *Buyer's Indemnity.*

(a) Buyer shall indemnify and hold harmless Seller, for a period of one year (except for the payments due under this Agreement, which period of indemnification shall be seven years) from the Closing Date, against any damage, loss, cost, liability or expense (including reasonable attorneys' fees), which arise out of or results from (a) the incorrectness or breach of any of the representations or warranties of Buyer contained in this Agreement, or given in writing on the Closing Date, and (b) the failure on the part of Buyer to perform any covenants or agreements on its part to be performed.

(b) Seller shall give Buyer prompt written notice of any matter which may give rise to Seller's right to indemnity hereunder. Such notice shall identify the nature of the matter and, if appropriate, the persons making the claim from which Seller's rights to indemnity may arise. Prior to the settlement of any claim or the defense of any litigation with a third party which may give rise to indemnity hereunder, Buyer shall be given the opportunity to participate in negotiation and settlement discussions or assume the defense of such litigation, as the case may be. Any claim of indemnification made hereunder shall include a statement specifying the nature and amount of the damages, losses, costs, liabilities and expenses incurred by Seller, its successors or assigns, for which indemnification is claimed hereunder.

10. *Nature and Survival of Representations and Warranties.* All statements contained in this Agreement and in any certificate, instrument, or document delivered by or on behalf of either of the parties pursuant hereto shall be deemed representations and warranties by the respective parties hereunder. All representations and warranties made hereunder shall survive the Closing for a period of one year from the Closing Date.

11. *General Provisions*

11.1 *Guarauntees.* At the Closing, Buyer shall have obtained and delivered to Seller, a Guarantee by Edward M. Zimmer, Jr., in his personal capacity, and not as an officer of Narco, that Edward M. Zimmer, Jr. shall be and remain primarily liable as a guarantor of any payments due Seller under this Agreement. Such Guarantee shall be in the form annexed to the promissory notes.

11.2 *Accelerated Schedule.* On a best efforts basis, Seller, on the signing of this Agreement up to the Closing Date, shall accelerate its schedule of manufacturing Products and Kits to a reasonable rate as determined by Seller in excess of its current rate of production.

11.3 *Collateral.* Buyer shall offer the following collateral as security to secure all sums due Seller under the promissory note set forth in paragraph 2.2(c), and shall execute at the Closing all documents reasonably required by Seller to enable Seller to perfect its security interest in the collateral.

Collateral: A commercial building owned by Edward M. Zimmer, Jr., Trust, located on Monroe Avenue, Houston, Texas valued at approximately [* * *] the appraisal to be supplied at Closing.

11.4 *Allocation of Payments.* Seller and Buyer agree that the purchase price shall be allocated in accordance with [* * *].

11.5 *Product Support, Product Liability.*

(a) Buyer shall be responsible for supporting all Products and spare parts sold by it to Buyer's customers, including repairs to Products and spare parts, whether or not under warranty, and shall be responsible for and, upon the Closing, automatically assume the costs and expenses, including expenses affiliated with the defense of lawsuits and claims, that arise in connection with Products and spare parts sold by Buyer to its customers.

(b) Seller shall be responsible for supporting all Products and spare parts sold by it to Seller's customers, including repairs to Products and spare parts, whether or not under warranty, and shall be responsible for and, upon the Closing, automatically assume the costs and expenses, including expenses affiliated with the defense of lawsuits and claims, that arise in connection with Products and spare parts sold by Seller to its customers. Sales of Products and spare parts by Seller to Buyer, in connection with this transaction shall not be deemed a sale to Seller's "customer", and accordingly, Buyer and not Seller shall be responsible for and, upon the Closing, shall automatically assume the Product support, repairs, costs, and expenses, including the expenses affiliated with lawsuits and claims, that arise in connection with Products and spare parts, if any, sold by Seller to Buyer as part of this transaction. Sales of Products from Seller to Buyer as part of this transaction shall be serialized and identified at the Closing in *Exhibit 11.5(b).* Anything to the contrary notwithstanding, after consummation of this transaction, in the event Seller purchases Products or spare parts from Buyer to support Seller's Products in the field, or for systems installations, Buyer shall extend to Seller the same warranty it offers to its other customers.

11.7 *Technical Assistance.* Seller shall assist Buyer in the start-up and manufacturing process of the Product Lines by making personnel available to train and educate employees of Buyer in all facets of the start-up, manufacture, production and repair of the Products and the transfer of Seller's research and development concerning the Products. The individual employees of Seller and the number of such employees made available for such technical assistance shall be determined by the Seller. A single technical coordinator shall be named by Seller to serve as the focal point for such technical assistance. Such technical assistance shall be made available, as may be required by Buyer, for a period of [* * *] following the Closing (but may be extended by mutual consent of the parties). Such technical assistance for [* * *] following the Closing shall be made available as part of the purchase price and is valued by the parties at [* * *] Any technical assistance rendered by Seller to Buyer, per agreement of the parties, after such [* * *] period shall be paid for by Buyer on a time and material basis, for the costs incurred by Seller, [* * *] for each labor hour expended by Seller's personnel in rendering technical assistance. In addition, for technical assistance rendered after the [* * *] the Buyer shall pay to Seller the cost of material paid for or expended by Seller [* * *] related to the technical assistance. Such technical assistance may be rendered at Seller's or Buyer's plant or at other places to be mutually agreed upon. Buyer shall pay all reasonable costs expended for transportation, lodging and subsistance of Buyer's and Seller's personnel involved in the technical assistance program when travel away from home is required. Seller shall invoice Buyer for such technical assistance, costs and expenses and such invoices shall be due and payable within thirty days after receipt thereof.

11.8 [* * *]

11.9 *Sale Made "As Is, Where Is".* The sale of the Product Lines is made on an "as is, where is" basis which shall be

reflected in the Assignment and Bill of Sale.

11.10 *"King" Name.*

(a) The Buyer shall not utilize the "King" name and logo in the manufacture, marketing, distribution and sale of products, except to indicate in its advertising literature and brochures, for a period not to exceed three years from the Closing Date, that the Products were "formerly manufactured by King Radio Corporation". Buyer shall have the exclusive use of the nomenclature KWX 56, KWX 58, KGR 356, KGR 358, KA 128, KI 244 and KI 248 for the Product Lines acquired hereunder. All tooling shall be modified by Buyer to remove the King name and logo, and such name and logo shall be removed by Buyer from all Products and Piece Parts manufactured by Buyer. With respect to Products manufactured by Seller and sold to Buyer, as part of this transaction for subsequent resale to Buyer's customers, Buyer shall place a permanently affixed label on such products indicating that they were sold by Buyer.

(b) The "King" name and logo shall not be placed on the front panel of Airborne Weather Detection Systems for a period of seven years from the Closing Date. Anything to the contrary notwithstanding, Seller will be permitted to advertise "Bendix" weather radar equipment together and in connection with Seller's non-weather radar equipment, provided further that Seller will not identify "King" as the source of manufacture of any weather radar except as required by law.

11.11 *Further Assurances and Cooperation.* In connection with the transactions contemplated by this Agreement, the parties agree to execute such additional documents and papers, and perform and do such additional acts and things as may be reasonably necessary or proper to effectuate and carry out all of the provisions and the intent of this Agreement.

11.12 *Notices.* All notices to be given by either party to this Agreement to the other party hereto shall be in writing and shall be given in person or by depositing such notice in the United States mail, registered or cetified, postage prepaid addressed as follows (unless either party designates a different address in writing to the other party for communicating notices):

To Buyer:

Narco Avionics, Inc., 270 Commerce Drive, Fort Washington, PA 19304, Attention: President

With a carbon copy to:

Edward M. Zimmer, Jr., Post Office Box 277, Laguna Beach, CA 92652

To Seller:

King Radio Corporation, 400 North Rodgers Road, Olathe, KS 66062, Attention: President

With a carbon copy to:

Allied Bendix Aerospace, 1000 Wilson Boulevard, Arlington, VA 22209, Attention: General Counsel

11.13 *Payment of Expenses, Taxes and Closing Costs.* Each of the parties shall pay all costs and expenses incurred or to be incurred by it in negotiating and preparing this Agreement and in closing and carrying out the transactions contemplated hereby. All sales taxes and like taxes payable in connection with the sale, conveyances, assignments, transfers and deliveries to be made to Buyer hereunder, shall be borne by the Buyer.

11.14 *Deliveries and Risk of Loss.* The Product Lines to be conveyed by Seller to Buyer pursuant to the Agreement shall be delivered f.o.b. Seller's factory, 400 North Rodgers Road, Olathe, Kansas to Buyer, or to a private or common carrier acceptable to Buyer, for delivery to premises designated by Buyer, as soon after the Closing as practicable. Irrespective of the date upon which such Product Lines are delivered to Buyer, or to a private or common carrier, and notwithstanding any agreement, express or implied, that Seller and Buyer may enter into for Seller to hold or store such Product Lines on a temporary basis for Buyer after the Closing, the risk of loss, damage or destruction of such Product Lines shall pass from Seller to Buyer on the Closing Date, immediately after consummation of such Closing.

11.15 *Announcements.* No public or other announcement, including any press releases regarding this Agreement, or the transactions contemplated hereby, shall be made by either Seller or Buyer without advance notice to and prior approval by the other party which notice shall include the text of such announcement or release.

11.16 *Entire Agreement.* This writing constitutes the entire Agreement of the parties with respect to the subject matter hereof and may not be modified, amended or terminated except by a written agreement specifically referring to this Agreement and signed by the parties hereto.

11.17 *Waiver.* No waiver of any breach or default hereunder shall be considered valid unless in writing and signed by the party giving such waiver, and no such waiver shall be deemed a waiver of any subsequent breach or default of the same or similar nature.

11.18 *Successors and Assigns.* This Agreement shall be binding upon and inure to the benefit of each of the parties hereto, and their successors and assigns.

11.19 *Severability.* If any clause or provision of this Agreement shall be held invalid or unenforceable by the final determination of a court of competent jurisdiction, and all appeals therefrom shall have failed or the time for such appeals shall have expired, such clause or provisions shall be deemed eliminated from this Agreement but the remaining provisions shall nevertheless be given full force and effect.

11.20 *Captions.* The paragraph headings contained herein are for the purpose of convenience and are not intended to define or limit the contents of said paragraphs.

11.21 *Choice of Law.* This Agreement shall be construed, interpreted and enforced in accordance with the laws of the State of Kansas.

In witness whereof, the parties have duly executed this Agreement as of the day, month and year first above written.

By: King Radio Corporation.

Louis J. Giuliano,

Vice President & Group Exe., Bendix Aerospace Sector, NARCO Avionics, Inc.

Edward M. Zimmer, Jr.,

President.

Radar Tooling

[* * *]

Assignment

Whereas, King Radio Corporation, a Kansas corporation, located at 400 North Rodgers Road, Olathe, Kansas, hereinafter "Assignor," is sole owner of and desires to formally assign to Assignee the U.S. Letters Patent and Patent Application listed below; and having conveyed certain tooling in an Assignment and Bill of Sale dated, ———, to Assignee; and

Whereas, Narco Avionics, Inc., a Delaware corporation located at 270 Commerce Drive, Fort Washington, Pennsylvania 19034, hereafter "Assignee", desires to acquire the entire right, title and interest in and to said U.S. Letters Patent and Patent Application, subject to the grant to the Assignor of certain license rights therein; and desires to acquire the right, title and interest to tooling set forth in an Assignment and Bill of Sale dated ——— from Assignor to Assignee, subject to the grant, to the Assignor of certain license rights in such tooling:

UNITED STATES PATENT

Patent No.	Issue date	Title	Inventor
3973145	Aug. 3, 1976	Weather Radar Transistorized Pulse Modulator	Jerry C. Schmitt, Terry K. Michie.

UNITED STATES PATENT APPLICATION

Serial No.	Filing Date	Title	Inventor
412913	Aug. 30, 1982	Apparatus and method for the correction of attenuation induced errors in a weather radar receiver.	James Lyall.

Now, therefore, this deed witnesseth: that for and in consideration of One Dollar ($1.00) to Assignor in hand paid and other good and valuable consideration, the receipt of which is hereby acknowledged, that Assignor has sold, assigned, transferred and set over, and by these presents does hereby sell, assign, transfer and set over unto the said Assignee, the entire right, title and interest in and to said U.S. Letters Patent and Patent Application, and any reissues or extensions thereof, together with all rights to recover for past infringements thereof, subject to the grant to the Assignor of a non-exclusive, irrevocable, royalty-free, license, with rights to sublicense, to make, have made, use and sell Piece Parts under said U.S. Letters Patent and Patent Application and any reissues or extensions thereof, for the life of the patent and any patent issued under the Patent Application listed herein, the same to be held and enjoyed by Assignee, for its own use and benefit and for the use and benefit of its successors, assigns and legal representatives, subject to the license granted herein.

Furthermore, Assignee grants to Assignor the license and right to use tooling in the custody of vendors to make, have made, use and sell for itself and its successors and assigns, certain Piece Parts from said tooling in the custody of vendors, for the life of such tooling, which tooling was conveyed to Assignee pursuant to an Assignment and Bill of Sale dated ———, from Assignor to Assignee.

In witness whereof, the Assignor and Assignee hereunto set their respective hands and affixed their respective seals, this ——— day of ———, 1985, by their duly authorized representatives.

Attest: King Radio Corporation, Assignor.
Title: ———
By: ———
Title: ———
(Seal)

Attest: Narco Avionics, Inc., Assignee
Title: ———
By: ———
(Seal)
Title: ———

Attestation for Assignor

County of ———
State of ———

On this ——— day of ———, 1985, before me personally appeared ———, to me personally known, who being by me duly sworn, did say that he is ——— of King Radio Corporation, the Assignor above-named and acknowledged that he executed the foregoing instrument on behalf of said Assignor and pursuant to authority duly received.

Notary Public ———
My Commission Expires:——— ———
(Seal)

Attestation for Assignee

County of ———
State of ———

On this ——— day of ———, 1985, before me personaly appeared ———, to me personally known, who being by me duly sworn, did say that he is ——— of Narco Avionics, Inc., the Assignee above-named and acknowledged that he executed the foregoing instrument on behalf of said Assignee and pursuant to authority duly received.

Notary Public ———
My Commission Expires: ———
(Seal)

Promissory Note

$ ——— Date: ———

For value received, the undersigned, Narco Avionics, Inc., a Delaware corporation, ("Narco") promises to pay to the order of King Radio Corporation, a Kansas corporation, ("King") the principal sum of $——— payable with interest as hereinafter provided at the offices of King Radio Corporation, 400 North Rodgers Road, Olathe, Kansas 66062, Attention: Chief Financial Officer, or at such other place as the holder may designate in writing. The principal of this Note is payable in ——— equal installments of [* * *] and one final installment of the principal balance due, with such installment payments commencing on the [* * *] from the date hereof, and each following installment due [* * *] following the previous payment date, until fully paid.

Interest on the unpaid principal balance of this Note shall accrue from the date hereof at the rate of [* * *] percent per annum. Accrued interest shall be payable from time to time on the dates for payments of installments of principal as herein provided. The undersigned shall have the right to prepay all or any part of this Note without penalty.

Any amounts not paid as herein provided shall bear interest at the rate of [* * *] percent per annum. Default in the payment of any part of the principal or interest, when due, shall, at the option of the holder hereof, at once mature the whole of the principal and interest due under this Note, without notice to the maker, endorsers, or guarantors, if any.

It is expressly agreed that if suit is brought on this Note, or if collected through bankruptcy, insolvency, or other judicial proceedings, the holder hereof shall be entitled to recover all reasonable expenses incurred in connection with such collection, suit or proceedings, including reasonable attorney's fees and legal expenses.

The undersigned and all endorsers and guarantors hereby waive presentation for payments, notice of payment extensions, protest, notice of protest, and diligence in bringing suit against any maker, endorser or guarantor, hereof. The endorsers shall also waive notice of default and nonpayment, but Narco and any guarantors shall be entitled to a notice of default and nonpayment, in writing, and shall have [* * *] from the receipt of such notice to cure the default and nonpayment.

NARCO Avionics, Inc.
By ———
Authorized Officer
Seal

Guarantee

The undersigned, Edward M. Zimmer, Jr., in his personal capacity, and not as an officer of the maker of the above Note, shall be primarily liable for payments due under the above Note, and hereby guarantees to the holder of the above Note, prompt payment of all sums which shall become due to the holder pursuant to the foregoing Promissory Note whether or not extended by the parties to the above Note, and hereby waives, with respect to the above Note, notice of payment extensions, protest, notice of protest, and diligence in bringing any suit against any maker, endorser or guarantor of the above Note, and further agrees to remain primarily liable in the event the terms of payment of principal

or interest are extended under the Note. Edward M. Zimmer, Jr. shall be entitled to notice of default and nonpayment in writing and shall have ten (10) days from receipt of such notice to cure such default and nonpayment.

Edward M. Zimmer, Jr.,

Individually.

Promissory Note

[* * *] Date: ———

For value received, the undersigned, Narco Avionics, Inc., a Delaware corporation ("Narco") promises to pay to the order of King Radio Corporation, a Kansas corporation, ("King") the principal sum of [* * *] payable with interest as hereinafter provided at the offices of King Radio Corporation, 400 North Rodgers Road, Olathe, Kansas 66062, Attention: Chief Financial Officer, or at such other place as the holder may designate in writing. The principal of this Note is payable in [* * *] equal installments of [* * *] each, and one final installment of [* * *] with such installment payments commencing on the [* * *] from the date following the final payment due under a promissory note of same date as herein from Narco to King given pursuant to an Agreement of Purchase and Sale dated ———, and each following installment due [* * *] following the previous payment date, until fully paid.

Interest on the unpaid principal balance of this Note shall accrue from the date here of at the rate of [* * *] percent per annum. Accrued interest shall be payable from time to time on the dates for payments of installments of principal as herein provided. The undersigned shall have no right to prepay all or any part of this Note without the written consent of King.

Any amounts not paid as herein provided shall bear interest at the rate of [* * *] percent per annum.

It is expressly agreed that if suit is brought on this Note, or if collected through bankruptcy, insolvency, or other judicial proceedings, the holder hereof shall be entitled to recover all reasonable expenses incurred in connection with such collection, suit or proceedings, including reasonable attorney's fees and legal expenses.

The undersigned and all endorsers and guarantors hereby waive presentation for payments, notice of payment extensions, protest, notice of protest, and diligence in bringing suit against any maker, endorser or guarantor, hereof. The endorsers shall also waive notice of default and nonpayment, but Narco and any guarantors shall be entitled to a notice of default and nonpayment, in writing, and shall have [* * *] from the receipt of such notice to cure the default and nonpayment.

Narco Avionics, Inc.

By ———

Authorized Officer

Seal

Guarantee

The undersigned, Edward M. Zimmer, Jr., in his personal capacity, and not as an officer of the maker of the above Note, shall be primarily liable for payments due under the above Note, and hereby guarantees to the holder of the above Note, prompt payment of all sums which shall become due to the holder pursuant to the foregoing Promissory Note whether or not extended by the parties to the above Note, and hereby waives, with respect to the above Note, notice of payment extensions, protest, notice of protest, and diligence in bringing any suit against any maker, endorser or guarantor of the above Note, and further agrees to remain primarily liable in the event the terms of payment of principal or interest are extended under the Note. Edward M. Zimmer, Jr., shall be entitled to notice of default and nonpayment in writing and shall have ten (10) days from receipt of such notice to cure such default and nonpayment.

Edward M. Zimmer, Jr.,

Individually.

Assignment and Bill of Sale

Know All Men by These Presents:

That, King Radio Corporation, a Kansas corporation ("Transferor"), for good and valuable consideration paid to Transferor by Narco Avionics, Inc., a Delaware corporation ("Transferee"), receipt of which is hereby acknowledged, and in accordance with the terms of an Agreement of Purchase and Sale, dated as of ———, 1985 between Transferor and Transferee (the "Purchase Agreement"), by these presents does hereby sell, convey, transfer and assign unto Transferee, its successors and assigns, the following assets of Transferor on an "as is, where is" basis:

(a) *Inventories.* Inventories, including Piece Parts, Work-In-Process, Finished Goods and Kits set forth in an inventory list annexed hereto, subject to adjustment within thirty (30 days after the Closing Date in accordance with an Agreement of Purchase and Sale dated) ———, between Transferor and Transferee.

(b) *Tooling and Test Equipment.* Tooling, and test equipment including fixtures thereof, as set forth in *Exhibit 1(b)* annexed hereto, subject to a license and right by Transferor to make, use and have made Piece Parts utilizing the tooling in the custody of vendors, for the life of such tooling.

(c) *Industrial Property Rights.* All know-how, and trade secrets, if any, solely dedicated to the Product Lines, and one patent (no. 3973145), one patent application (no. 412913) pursuant to an assignment of such patent and patent application (subject to a license to Seller) set forth in *Exhibit 1(c)* annexed hereto.

(d) *Documents, List and Design Data.* All engineering and design drawings in reproducible form, including processes, bills of material, maintenance manuals, pilots' guides, TSO reports, advertising literature and brochures solely dedicated to the Product Lines; vendor and distribution lists; applicable documentation for software contained or related to the manufacture of the Weather Radar Products; documentation as it exists related to [* * *] documentation related to a design for a test adapter to enable testing the Graphics Interface Products utilizing [* * *] other design and develoment studies and documentation related to the Products; studies, documentation, inventory, models and all other data related to weather radar units under development if any, including but not limited to the KWX 57 and KWX 460 projects; and documentation related to a sales history and marketing of the Product lines to the extent that such documentation is separable from other confidential information not related to the Product Lines.

(e) *Purchase Orders and Contracts.* All purchase orders for Piece Parts and all contracts for the sale of Products as set forth in *Exhibit 1(e)* annexed hereto.

To have and to hold the same to Transferee, its successors and assigns, forever.

1. Transferor does for itself and for its successors and assigns, covenant to Transferee, its successors and assigns that Transferor is the sole owner of all of the assets which are to be sold and conveyed to Transferee hereunder and Transferor has all necessary power and authority to sell and convey such assets to Transferee, and that such assets are free and clear of all mortgages, liens, and encumbrances of any nature which are not of record.

2. Transferor agrees that, at any time and from time to time after the date hereof, it will, upon the request of Transferee, execute and deliver all such further documents and take all such further action as may be required for the better conveyance, transfer and assignment of the assets, properties and

rights intended to be conveyed, transferred and assigned hereby.

3. This instrument and the covenants and agreements contained herein shall be binding upon Transferor, its successors and assigns and shall inure to the benefit of Transferee, its successors and assigns.

In witness whereof, King Radio Corporation has executed this instrument in its corporate name by its duly authorized officer as of ———, 1985.

King Radio Corporation.

By ———

SEAL

Purchase Price Allocation

[* * *]

Analysis of Proposed Consent Order to Aid Public Comment

The Federal Trade Commission has accepted an agreement to a proposed consent order from Allied Copporation ("Allied") and King Radio Corporation ("King") concerning the acquisition of King by Allied's wholly-owned subsidiary, the Bendix Corporation ("Bendix"). The proposed order requires that Allied divest King's weather radar product line to Narco Avionics, Inc. ("Narco") or to another Commission-approved buyer within eight months. The proposed order requires that such divestiture be made in a manner which preserves and transfers the assets and business as a viable product line such that the buyer can compete in the airborne weather detection systems business. Pursuant to the proposed order, Allied must divest itself of all of King's assets that are uniquely related to the manufacture and sale of weather radar and must provide technical assistance to the buyer to enable it to produce the product line. Finally, the proposed order bans Allied for a ten year period from acquiring more than a one percent interest for investment purposes in any U.S. firms engaged in the manufacture or sale of general aviation airborne weather detection systems, absent Commission approval.

The proposed consent order has been placed on the public record for sixty (60) days for reception of comments by interested persons. Comments received during this period will become part of the public record. After sixty (60) days, the Commission will again review the agreement and the comments received and will decide whether it should withdraw from the agreement or make final the agreement's proposed order.

Allied, a New York corporation, is a major supplier of industrial chemicals, petroleum and natural gas, scientific laboratory instruments, typesetting equipment, semiconductor components, automotive parts and aviation and aerospace products. The Bendix Aerospace Sector of Allied develops and manufactures, among other things, avionics for use in commercial airlines, government related markets, and general aviation aircraft. The Aerospace Sector's range of general aviation avionics includes weather radar systems, communication/navigation/identification ("CNI") systems; flight control systems and navigational display screens. In 1983, Allied's sales amounted to $10.02 billion.

King, a Kansas corporation, is engaged primarily in the design, manufacture and distribution of CNI equipment, weather radar, and flight control equipment for general aviation aircraft. King also sells avionics for commercial and military applications as well as marine electronics and land mobile communications equipment. In 1983, King's sales were approximately $86 million.

Narco is a privately held corporation, with its principal place of business in Fort Washington, Pennsylvania. Narco is 100% owned by Edward M. Zimmer, Jr. Narco currently produces a broad range of avionics products for general aviation aircraft, with an emphasis on panel-mounted CNI equipment for single and light twin piston aircraft.

On September 26, 1984, Allied and owners of a majority interest in King entered into a series of agreements pursuant to which King would become a wholly-owned subsidiary of Bendix, itself a wholly-owned subsidiary of Allied. The total transaction has been valued at $109.8 million. Allied and King consummated the acquisition on January 31, 1985.

The complaint underlying the proposed consent order alleges that Allied's acquisition of King violates Section 5 of the Federal Trade Commission Act and Section 7 of the Clayton Act in that the effects of the acquisition may be substantially to lessen competition or tend to create a monopoly in the production and sale of airborne weather detection systems for use in general aviation (non-commercial and non-military) aircraft. Airborne weather detection systems include (a) systems designed for use in aircraft, consisting of a display, a sensor device and an antenna, that use radio waves to detect and display weather conditions to enable a pilot to evaluate and avoid adverse weather conditions, and (b) systems designed for use in aircraft, consisting of a receiving system, that detect lightning enabling a pilot to evaluate and avoid adverse weather conditions.

The first paragraph of the proposed order details the King assets, uniquely related to the design, production and sale of weather radar, that Allied must divest. The paragraph also requires that the divestiture be accomplished within eight months.

The second paragraph imposes on Allied a ten year ban on acquiring more than a one percent interest for investment purposes in any U.S. firm that manufactures or sells airborne weather detection systems for general aviation aircraft. Paragraph III outlines the procedures that must be followed if Allied is unable to divest King's weather radar product line within the eight months provided in the first paragraph. Specifically, at the end of eight months, a trustee selected by the Commission will be appointed to accomplish the divestiture.

Paragraphs IV, V and VI require Allied to make reports to the Commission detailing its ongoing compliance with the terms of the proposed consent order, and to notify the Commission prior to any change in Allied which would affect compliance.

The purpose of this analysis is to facilitate public comment on the proposed order and the acceptability of Narco as the proposed buyer of the King weather radar product line, and it is not intended to constitute an official interpretation of the agreement and proposed order or to modify in any way their terms.

Emily H. Rock,

Secretary.

[FR Doc. 85-7190, Filed 3-27-85; 8:45 am]

BILLING CODE 6750-01-M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

18 CFR Part 2

[Docket No. RM83-8-000]

Ratemaking Treatment of Investment Tax Credits for Natural Gas Pipeline Companies; Extention of Time for Comments

March 21, 1985.

AGENCY: Federal Energy Regulatory Commission, DOE.

ACTION: Notice of proposed rulemaking; extension of comment period.

SUMMARY: On February 22, 1985, the Commission issued a Notice of Proposed Rulemaking involving the ratemaking

treatment of investment tax credits for natural gas pipeline companies (50 FR 8138, February 28, 1985). The comment period is being extended at the request of the Interstate Natural Gas Association of America.

DATE: Comments must be submitted on or before May 1, 1985.

ADDRESS: Submit comments to: Office of the Secretary, Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, D.C. 20426.

FOR FURTHER INFORMATION CONTACT: Kenneth F. Plumb, Secretary (202) 357-8400.

On March 18, 1985, the Interstate Natural Gas Association of America (INGAA) filed a motion for extension of time to file comments in response to the Commission's Notice of proposed Rulemaking issued February 22, 1985, in the above-docketed proceeding. INGAA's motion states that due to the press of other business and the complexity of the subject matter, additional time is required to fully address the issues proposed in the Commission's Notice.

Upon consideration, notice is hereby given that an extension of time is hereby granted to and including May 1, 1985.

Kenneth F. Plumb,

Secretary.

[FR Doc. 85-7319 Filed 3-27-85; 8:45 am]

BILLING CODE 6717-01-M

18 CFR Part 157

[Docket Nos. RM81-19-000 and RM81-29-000]

Interstate Pipeline Blanket Certificates for Routine Transactions and Sales and Transportation by Interstate Pipelines and Distributors

March 22, 1985.

AGENCY: Federal Energy Regulatory Commission, DOE.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Federal Energy Regulatory Commission (Commission) proposes to amend its regulations governing blanket cetificates for the transportation of natural gas by interstate pipelines to specific categories of end-users. Under the proposed revisions to 18 CFR 157.209(e) (1) and (2), the Commission would extend until December 31, 1985, the eligibility of low priority end-uses, including industrial and boiler fuel uses of natural gas, for certain transportation services under the Commission's blanket certificate program, pending the Commission's ongoing examination of several aspects of the interstate transportation of natural gas. The Commission also proposes to allow end-users that seek transportation services under § 157.209(e) (2) to file, on behalf of pipeline suppliers, a request for authorization under the applicable prior notice procedures.

DATES: Comments must be in writing and received by the Secretary of the Commission prior to 4:30 p.m. EST, on April 18, 1985. An original and fourteen copies should be filed.

ADDRESSES: All filings should refer to Docket Nos. RM81-19-000 and RM81-29-000 and should be addressed to: Office of the Secretary, Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, D.C. 20426.

FOR FURTHER INFORMATION CONTACT: James J. Hoecker, Rulemaking and Legislative Analysis, Office of the General Counsel, Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, D.C. 20426, (202) 357-8530.

SUPPLEMENTARY INFORMATION:

I. Introduction

The Federal Energy Regulatory Commission (Commission) proposes to amend its regulations governing blanket certificates for the transportation of natural gas by interstate pipelines to specific categories of end-users. Under the proposed revisions to 18 CFR 157.209(e) (1) and (2), the Commission would extend until December 31, 1985, the eligibility of low priority end-uses, including industrial and boiler fuel uses of natural gas, for certain transportation service under the Commission's blanket certificate program, pending the Commission's ongoing examination of several aspects of the interstate transportation of natural gas. The Commission also proposes to allow end-users that seek transportation services under § 157.209(e)(2) to file, on behalf of pipeline suppliers, a request for authorization under the applicable prior notice procedures.

II. Background

Section 7 of the Natural Gas Act, 15 U.S.C. 717f (1982), provides that a natural gas company may not engage in the transportation and sale of natural gas in interstate commerce for resale, in the construction of facilities used in those activities, without first obtaining Commission approval. Although these activities are traditionally authorized by certificates granted on a case-by-case basis, the Commission has in recent years authorized a variety of routine transactions automatically or with streamlined notice and protest procedures under blanket certificates granted to interstate pipeline companies, pursuant to the Natural Gas Act.[1]

Effective on August 5, 1983, the Commission established procedures that permit end-users to have their gas transported by interstate pipelines under blanket certificate authorization.[2] For gas owned and developed by a high-priority end-user, transportation is authorized automatically for 10 years or the life of the reserves, whichever is less.[3] For gas purchased by a high-priority end-user in a first sale (if not owned or developed by that end-user) or from an intrastate pipeline or from the local supply of a distribution company, transportation is automatically authorized for five years or less.[4] If the transportation arrangement is for longer periods, the notice and protest procedures of § 157.205 apply.

The regulations established by Order No. 319 also state that the Commission can, under §157.209(e), provide for such transportation for other end-users. In conjunction with this basic blanket certification program, therefore, the Commission initiated a limited-term program to expand eligibility for blanket transportation authorization to transportation for all categories of end-users.[5] Under existing § 157.209(e), transportation service to industrial and boiler fuel users is eligible for blanket certificate authorization until June 30, 1985. Short-term transactions are automatically authorized. Any transportation arrangement to an industrial or boiler fuel user for a period of more than 120 days would be subject to the notice and protest procedures of § 157.205, however. In support of this program, the Commission stated that

> authorization of interstate pipeline transportation would be greatly expedited, and the Commission hopes that this flexibility will more easily permit gas to reach markets at prices reflective of the supply and demand characteristics of those markets. In addition, it may mitigate the pressures being felt by interstate pipelines

[1] 15 U.S.C. 717-717w (1982). The blanket certificate program, portions of which are found in Parts 157 and 284 of the Commission's regulations, were established in two phases. Interstate Pipeline Certificates for Routine Transactions, 47 FR 24254 (June 1, 1982) (Order No. 234); Sales and Transportation by Interstate Pipelines and Distributors; Expansion of Categories of Activities Authorized Under Blanket Certificate, 49 FR 34875 (Aug. 1, 1983) (Order No. 319).

[2] 18 CFR 157.209 (1984).

[3] 18 CFR 157.209(a)(1)(ii) (1984).

[4] 18 CFR 157.209(a)(1)(i) (1984).

[5] Interstate Pipeline Blanket Certificates for Routine Transactions and Sales and Transportation by Interstate Pipelines and Distributors, 48 FR 34872 (Aug. 1, 1983) (Order No. 234-B).

because of high take-or-pay obligations and shield customers without alternate fuel capability from increased pipeline fixed costs. The Commission believes that this designation will encourage willing buyers and sellers of natural gas to enter into purchase contracts directly. At the same time, this rule should provide some stimulus to the exploration and development of long-term domestic gas reserves.[6]

III. The Commission's Proposal

A. Extension of the Order No. 234–B Program

Although the past two years' experience with the Order No. 234–B program has fulfilled the Commission's expectations for its success in moving gas expeditiously to end-users,[7] the Commission desires the benefit of further study in conjunction with its recent Notice of Inquiry in the gas transportation area.[8] Many commenters that participated in Phase I of the proceedings, particularly in the public conference, addressed themselves to the eligibility criteria of the blanket certificate program as it applies to end-user transportation. In order to permit continued examination of this issue and to afford both pipelines and their industrial or boiler fuel direct customers ample time to plan future transactions, the Commission now proposes to extend for six months, through December 31, 1985, the eligibility of non-high priority end-uses for transportation services under the blanket certificate program.

With respect to transportation arrangements in effect on June 30, 1985, but subject to termination under the sunset provisions in existing § 157.209(e)(1) and (2), the Commission intends that, under its proposal, such arrangements could continue without interruption through December 31, 1985, or for the term otherwise allowed by the regulations. In other words, no new filing or notice and protest procedure would be required as a result of the proposed extension of time for transactions in effect on June 30, 1985. Any 120-day transaction automatically authorized under § 157.209(e)(1) between February 1, 1985, and June 30, 1985, would be permitted to run its full 120 days.[9] Likewise, the duration of any lengthier transaction authorized under § 157.209(e)(2) and § 157.205 before the December 31, 1985, deadline would be limited only by the new December 31, 1985, deadline.

B. Filings by End-Users

For Order No. 234–B transportation transactions extending beyond 120 days, a pipeline must request Commission authorization, allowing prior notice of the transaction and an opportunity for protests and intervention. 18 CFR 157.205(d). If a pipeline fails to request authorization in sufficient time to avoid a lapse in authorization of the transaction at the end of 120 days, the end-user could suffer an unforeseen and detrimental interruption of deliveries.

When presented with such facts, the Commission recently announced that it would seek to minimize this difficulty by proposing a rule to allow the end-user that stood to lose gas supplies because of lapsed authorization to file for continued authorization under §§ 157.209(e)(2) and 157.205 on the pipeline's behalf. The Commission stated that "there is merit to the view that an end-user should not suffer because a pipeline was slow in complying with the prior notice requirements of our regulations."[10] The Commission continues to believe that affording this additional avenue to continued authorization under Order No. 234–B would benefit all parties to the transaction, without diminishing the opportunity of others to object. The Commission therefore proposes to amend § 157.209(e) to allow an end-user to file for authorization on behalf of its pipeline supplier, but only with respect to transactions eligible under Order No. 234–B.

IV. Written Comment Procedure

The Commission invites all interested persons to submit written data, views, and other information concerning the proposed extension of the Order No. 234–B program. All comments in response to this notice should be submitted to the Secretary, Federal Energy Regulatory Commission, 825 North Capitol Street, N.E., Washington, D.C. 20426, and should refer to Docket Nos. RM81–19–000 and RM81–29–000. An original and fourteen copies should be filed. All comments received prior to 4:30 p.m. EST, on April 18, 1985 will be considered by the Commission.

Written submissions will be placed in the public file established in these dockets and will be available for public inspection during regular business hours in the Commission's Division of Public Information, Room 1000, 825 North Capitol Street, NE., Washington, D.C.

V. Regulatory Flexibility Act

The Regulatory Flexibility Act[11] requires the Commission to describe the impact that a proposed rule would have on small entities or to certify that the rule will not have a significant economic impact on a substantial number of small entities. The purpose of this rulemaking is to make the certificate process more efficient by streamlining and expediting the Commission's review of routine certificate applications. This blanket certificate program is specifically designed to reduce the regulatory burdens of the certificate process on all entities, large and small, who ultimately may be affected by the process, either directly or indirectly.

Therefore, in view of the nature of the blanket certificate program which is to reduce regulatory burdens, direct and indirect, on large and small entities, the Commission finds that the amendments to the program by this final rule do not impose any regulatory or administrative burdens on a significant number of small entities and that they do not require an expense of resources by such entities. Accordingly, the Commission certifies that the rule does not have a significant economic impact on a substantial number of small entities.

List of Subjects in 18 CFR Part 157

Natural gas.

In consideration of the foregoing, the Commission proposes to amend its regulations in Part 157, Chapter I, Title 18, Code of Federal Regulations, as set forth below.

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[6] 48 FR at 34873.

[7] Based on actual reports and filed projections, the Commission estimates that 497 Bcf of gas were transported under the Order No. 234–B program between its inception and December 31, 1984. Meanwhile, several predictions by commenters on the Notice of Proposed Rulemaking and by applicants for rehearing, e.g., that declining gas reserves would result in curtailments before 1985 and that transportation for non-high priority end-uses would usurp substantial system supplies and create higher residential and commercial gas rates, have apparently not come to pass.

[8] Interstate Transportation of Gas for Others, 50 FR 114 (Jan. 2, 1985) (Notice of Inquiry (Phase I)). Natural Gas Pipeline Ratemaking, Risk, and Financial Implications After Partial Wellhead Decontrol, 50 FR 3801 (Jan. 28, 1985) (Notice of Inquiry (Phases II and III)). The Commission's proposal in Order No. 234–B (48 FR 34873) to review the status of the blanket certificate rule in light of the current gas market is comprehended within these notices. The Commission has requested comment on the Order No. 234–B eligibility criterion. 50 FR 115.

[9] As both Order No. 234–B and its rehearing order made clear, however, 120 days is a maximum term for a single transaction. There is no automatic renewal or rollover. Interstate Pipeline Blanket Certificates for Routine Transactions and Sales and Transportation by Interstate Pipelines and Distributors, 48 FR 51438, 51444 (Nov. 9, 1983) (Order Granting in Part and Denying in Part Applications for Rehearing of Order Nos. 319 and 234–B) (Order No. 319–A).

[10] Columbia Gulf Transmission, 29 FERC ¶ 61,260 at 61,538 (1984).

[11] 5 U.S.C. 601–612 (1982).

By direction of the Commission.

Lois D. Cashell,

Acting Secretary.

1. The authority citation for Part 157 continues to read as follows:

Authority: Natural Gas Act, 15 U.S.C. 717–717w (1982); Department of Energy Organization Act, 42 U.S.C. 7101–7352 (1982); Natural Gas Policy Act of 1978, 15 U.S.C. 3301–3432 (1982); EO 12,009, 3 CFR 142 (1978).

2. In § 157.209, paragraphs (e)(1) and (e)(2) are each amended by deleting the words "June 30, 1985," and inserting in lieu thereof the words "December 31, 1985,".

3. In § 157.209, paragraph (e) is amended by adding a new paragraph (e)(3) to read as follows:

§157.209 Transportation.

* * * * *

(e) *Designation of End Uses* * * *

(3) For any transportation of natural gas authorized pursuant to paragraph (e)(2) of this section, the applicable end-user may file for authorization under § 157.205(b) on behalf of the certificate holder.

* * * * *

[FR Doc. 85–7359 Filed 3–27–85; 8:45 am]

BILLING CODE 6717-01-M

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

23 CFR 420 and 450

[FHWA Docket No. 85–10]

Highway Planning Program Administration

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: This document proposes a revised regulation which consolidates and amends current regulations that prescribe policies and procedures related to program approval, authorization, conduct, and reporting of highway planning and research projects undertaken with Federal-aid highway planning and research funds (HPR, PR, and PL). The proposed regulation has been written to be consistent with section 156 of the Surface Transportation Assistance Act of 1982, the urban transportation planning regulations published on June 30, 1983 (48 FR 30332) and FHWA's published policy for administering HPR funds (47 FR 49965). It is intended to provide States the maximum possible flexibility in selecting activities to be funded with highway planning and research funds.

DATE: Comments must be received on or before May 28, 1985.

ADDRESS: Submit written comments, preferably in triplicate, to FHWA Docket No 85–10, Federal Highway Administration, Room 4205, HCC-10, 400 Seventh Street, SW., Washington, D.C. 20590. All comments received will be available for examination between 7:45 a.m. and 4:15 p.m., ET, Monday through Friday, except legal holidays. These desiring notification of receipt of comments must include a self-addressed, stamped postcard.

FOR FURTHER INFORMATION CONTACT:

Mr. Barna Juhasz, Office of Highway Planning, (202) 426–0175,

Mr. Sam W. Rea, Jr. (for metropolitan planning issues), Office of Highway Planning, (202) 426–2961, or

Mr. Mike Laska, Office of the Chief Counsel, (202) 426–0761, Federal Highway Administration, 400 Seventh Street, SW., Washington, D.C. 20590. Office hours are from 7:45 a.m. to 4:15 p.m., ET, Monday through Friday, except legal holidays.

SUPPLEMENTARY INFORMATION: This document proposes changes to FHWA regulations for highway planning in 23 CFR Parts 420, Subpart A and 450, Subpart C.

Paperwork Reduction Act

This proposed rulemaking contains information collection requirements in Sections 420.105(b), 420.105(f), 420.109(a), 420.109(b), 420.113 (b) and (c), 420.115(a) which have been approved by the Office of Management and Budget under the provisions of the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 et seq.) and have been assigned OMB control numbers 2125–0028, 2125–0532, 2125–0032, 2132–0031, 2125–0039, 2125–0506.

Background

Sections 134 and 307 of Title 23, United States Code, provide for highway planning and research activities in the Federal-aid highway program. Section 307, implemented at 23 CFR Part 420, defines eligible planning and research activities and establishes the framework for financing highway planning and research by State highway departments (States). One and one-half percent of the sums apportioned to the States each year under 23 U.S.C. 104 and 144 may be expended only for eligible planning and research activities. An additional one-half percent of primary, secondary, and urban system funds may be spent on planning and research at the option of the State. Section 134, implemented at 23 CFR Part 450, defines transportation planning activities required in urbanized areas before Federal-aid highway projects may be approved. Section 104(f) of Title 23, U.S.C., provides one-half percent of all Federal-aid system funds apportioned to the States each year for carrying out the urbanized area transportation planning requirements of 23 U.S.C. 134. The three classes of highway planning funds are HPR, PR, and PL. The HPR funds are the 1½ percent funds required to be expended on highway planning and research. The PR funds are the optional additional ½ percent funds available for planning and research. The PL funds are the ½ percent funds for urbanized area transportation planning.

Due to recent changes in highway legislation and regulations, 23 CFR Part 420, Subpart A, concerning the administration of highway planning projects undertaken with highway planning and research funds (HPR and PR) and 23 CFR Part 450, Subpart C, concerning metropolitan planning funds (PL) need to be revised. The Surface Transportation Assistance Act of 1982 provided for: (1) Deductions from bridge program funds, in addition to Interstate, primary, secondary, and urban system funds, to finance highway planning and research; (2) administration of HPR funds derived from all sources (Interstate, primary, secondary, and urban systems, and bridge program) as a single fund; and (3) establishment of a minimum standard 85 percent Federal share for HPR and PR funded projects. The first provision provides additional HPR funds to help meet the increasing costs of highway planning by State highway agencies. The other two provisions will allow simplified procedures for administering HPR and PR funds.

On June 30, 1983, the Federal Highway Administration (FHWA) and the Urban Mass Transit Administration (UMTA) promulgated a final regulation on urban transportation planning (48 FR 30332) which was effective on August 1, 1983. These regulations: (1) Increased flexibility at the State and local level; (2) reduced redtape and simplified administration of the urban transportation planning process; and (3) shifted certain responsibilities from the Federal level to the State and local level, while maintaining an appropriate Federal oversight role.

The FHWA previously published in the **Federal Register** (44 FR 2400, January 11, 1979, Docket No. 78–24) a proposed change to 23 CFR Part 420, Subpart A. That regulation was intended to allow greater flexibility and reduce the

administrative requirements placed on States and local agencies in administering highway planning projects undertaken with HPR and PR funds. It also included provisions for work program format, submission and reporting requirements not contained in the existing regulation. A total of 23 comments were received. Several of the commenters raised concern over the proposed reporting requirements and recommended that administrative requirements for the use of PL funds be included in the regulation. FHWA's flexibility in dealing with the comments on reporting requirements was limited when the Office of Management and Budget (OMB) established uniform standards for grant administration in OMB Circular Number A-102. The reporting requirements contained in the proposed regulations are the minimum needed by FHWA to properly monitor the use of Federal funds. The currently proposed regulation has been developed in accordance with the reporting provisions of OMB Circular Number A-102. The proposed regulation provides the maximum possible flexibility in reporting frequency. In response to the earlier comments, the proposed regulation incorporates the requirements for administration of PL funds currently found in 23 CFR Part 450, Subpart C. Accordingly, when made effective, this regulation will replace both 23 CFR Part 420, Subpart A, and 23 CFR Part 450, Subpart C.

On November 4, 1982, the FHWA published a policy for the use of Federal-aid highway funds for planning, research, and development activities (47 FR 49965). This allows States maximum flexibility in their use of HPR and PR funds for planning, as well as research and development. This same management policy with regard to the use of PL funds is inherent in the new urban transportation planning regulation (23 CFR Part 450, Subpart A). The policy also recognized that OMB Circulars A-102 and A-87 will provide the appropriate standards and cost principles that States will follow in administering these funds. When promulgated, this regulation will wholly incorporate the prior policy statement making further reference to the policy statement unnecessary. The proposed regulation also recognizes that the standards and cost principles in the OMB Circulars shall also be applied to a State's subgrantees (e.g., metropolitan planning organizations) except where specifically prohibited by law.

Section-by-Section Analysis

In view of the interest in these regulations, 23 CFR Part 420, Subpart A and 23 CFR Part 450, Subpart C, and the substantive changes proposed from the previously published proposed regulation, and since each section of the existing regulation is being revised, each section of this rule is discussed below, briefly highlighting the significant changes.

Section 420.101 Purpose.

This section is essentially the same as previously proposed except that the administrative procedures for handling metropolitan planning funds and research and development activities will now be included in this regulation.

Section 420.103 Definitions.

This section is proposed to be revised to include the metropolitan planning organization work program. The definition of "Class of Fund" is now being retitled "Type of Fund" and further discussed in the preamble of the regulations.

Section 420.105 Policy.

This section has been extensively revised from what was previously proposed. It incorporates the HPR policy (47 FR 49965) published on November 4, 1982, as the policy to be followed in administering the HPR and PR funded activities and recognizes the final rule promulgated by FHWA and UMTA governing urbanized area transportation planning as the basis for administering the PL supported planning program. This section also recognizes that the planning funds will be administered in accordance with 23 U.S.C. and the Office of Management and Budget Circulars Nos. A-102 "Uniform Administrative Requirements for Grants-in-Aid to State and Local Governments" and A-87 "Cost Principles Applicable to Grants and Contracts with State and Local Governments." It also identifies the State as having primary responsibility for administering the FHWA planning funds passed through to the metropolitan planning organizations.

Section 420.107 Allocation of PL Funds.

Proposed § 420.107 is essentially the same as the current rule in 450.202 "Allocation" except that paragraph (d) has been changed slightly to be more consistent with statutory language for States that receive the minimum apportionment of PL funds.

Section 420.109 Work Program.

Although this section will extensively revise what was previously proposed, the revisions substantially represent existing procedures utilized by the States and FHWA.

Proposed § 420.109(a) will require submission of a work program in a format that is acceptable to the FHWA. Although approval of work program format continues to be the responsibility of FHWA field offices, it is FHWA's intention to allow States the maximum flexibility in selecting a work program format that will be most useful for its own program management purposes. Highway planning and research activities may be administered in various combinations of work programs as stated in § 420.105(d). All activities may be contained in one inclusive work program document or combined in various combinations (i.e., statewide planning and research, statewide planning and all urbanized area planning, individual urbanized area programs). Instructions for numbering highway planning and research programs (projects) are found in FHWA's "Fiscal Management Information System Handbook," Appendix D-9.[1]

Section 420.109(c)(1) will require a work program to provide cost estimates for each federally-funded activity and those State funded activities of national significance. The proposed regulation requests that States continue to provide cost estimates for other State/local funded activities. These estimates should be included in a work program as a matter of good practice to describe the overall planning effort for a State or local area. At the State's option, these cost estimates may be submitted to FHWA, since they provide information necessary for assessing the overall size of the highway planning programs in the States and the adequacy of HPR, PR, and PL funding levels. Comments on this provision are solicited.

This section will also make the Federal share for all classes of funds (HPR, PR, and PL) in a State the same, thus simplifying fiscal procedures for the States and FHWA.

Section 420.111 Approval and Authorization Procedures.

This section will incorporate the various provisions of § 420.109 "Authorization Procedures" of the existing regulation and the previously proposed § 420.111 "Approval and Authorization Procedures."

Proposed § 420.111(c)(2) requires States to prepare highway planning and research reports suitable for publication. Publication requires prior FHWA

[1] This handbook is available for inspection and copying as prescribed in 49 CFR Part 7, Appendix D.

approval. This section continues current FHWA practice of allowing States to request a waiver of the publication approval. Publication approval does not imply FHWA approval or endorsement of a report's findings or recommendations.

Section 420.113 Program Monitoring and Reporting.

This section will incorporate the various provisions of § 420.109 "Reporting Requirements" of the previous NPRM and is consistent with the reporting requirements of OMB Circular A-102, Attachments H and I. This section also proposes to establish an annual reporting frequency unless the FHWA determines that it should be more frequent. Comments on this provision are solicited.

Section 420.115 Financial Management System and Audit Requirements.

This new section will require that State highway agencies and metropolitan planning organizations maintain accurate, current, and complete financial management systems and make arrangements for organization-wide independent audits in accordance with 23 CFR Part 12. Responsibility for such audits rests with State and metropolitan planning organizations.

Section 420.117 Fiscal Procedures.

This section is similar to § 420.113 "Fiscal Procedures" of the previous NPRM. Section 420.117 (b) and (c) have been added to identify the standards States and metropolitan planning organizations should follow when they are procuring services, supplies, or equipment and in maintaining and disposing of the property acquired with Federal funds. Section 420.117(d) is included to establish FHWA procedures regarding program income from planning projects. Attachment E of OMB Circular A-102 specifies three options available to the Federal agency for handling program income. The three options are to: (1) Add the income to the funds committed and use them to further eligible program objectives, (2) finance the non-Federal share of the project, or (3) deduct the income from total project costs for the purpose of determining the net costs on which the Federal share of costs will be based. The FHWA's current policies and procedures and the proposed rule are based on the principle that any project income must be credited to the project to determine the net cost of the project prior to determining the Federal share. However, there are indications that treatment of minor income may have been varied. Comments on this provision are solicited.

Regulatory Impact

These proposed regulations are considered to be nonmajor under Executive Order 12291 and nonsignificant under the DOT regulatory policies and procedures (44 FR 11034, February 26, 1979). A draft regulatory evaluation/initial regulatory flexibility analysis has been prepared and is available for inspection in the public docket.

Since the impact of this proposal is expected to be minimal, the agency certifies that it will not have a significant economic impact on a substantial number of small entities.

In consideration of the foregoing, the FHWA hereby proposes to amend Chapter I of Title 23, Code of Federal Regulations, by removing Part 450, Subpart C, "Metropolitan Planning Funds," and revising Part 420, Subpart A, to read as set forth below.

(Catalog of Federal Domestic Assistance Program Number 20.205, Highway Research, Planning and Construction. The regulations implementing Executive Order 12372 regarding intergovernmental consultation on Federal programs and activities apply to this program)

List of Subjects in 23 CFR 420 and 450

Grant programs—transportation, Highway and roads—planning, Reporting and recordkeeping requirements.

Issued on: March 21, 1985.

R.A. Barnhart,

Federal Highway Administrator, Federal Highway Administration.

The FHWA hereby proposes to amend Chapter I of Title 23, Code of Federal Regulations, as follows:

PART 450—[AMENDED]

Subpart C—Metropolitan Planning Funds [Removed]

1. Part 450, Subpart C is removed from 23 CFR Chapter I.

2. Part 420, Subpart A is revised to read as set forth below:

PART 420—PROGRAM MANAGEMENT AND COORDINATION

Subpart A—Highway Planning Program Administration

Sec.

Authority: 23 U.S.C. 104, 120, 307, and 315; 49 CFR 1.48(b) and 1.51(f); and OMB Circular Nos. A-87 and A-102.

Subpart A—Highway Planning Program Administration

§ 420.101 Purpose.

This regulation prescribes the Federal Highway Administration (FHWA) policies and procedures for the administration of highway planning projects undertaken with highway planning and research funds (HPR, PR, and PL). Additional policies and procedures regarding research and development are contained in 23 CFR Part 511.

§ 420.103 Definitions.

(a) *Type of fund*—HPR, PR, or PL Funds. HPR fund are the 1½ percent funds authorized under 23 U.S.C. 307(c)(2) and PR funds are the optional ½ percent funds authorized under 23 U.S.C. 307(c)(3) to carry out the provisions of 23 U.S.C. 307(c)(1). The PL funds are the ½ percent metropolitan planning funds authorized under 23 U.S.C. 104(f) to carry out the provisions of 23 U.S.C. 134.

(b) *Work program*—Periodic statements of proposed work and estimated costs that document the highway planning and research/development efforts of the State highway department (State) and/or the metropolitan planning organizations.

§ 420.105 Policy.

(a) It is FHWA policy to administer the HPR/PR supported highway planning program according to the following general principles:

(1) Allow States Maximum possible flexibility in their planning and research activities while ensuring legal use of Federal highway planning and research funds and avoiding duplication of efforts.

(2) Allow States to utilize available planning and research resources to meet the highway and transportation needs at the national, State, and local levels.

(3) Allow for the cooperation of the States in providing the necessary planning and research resources to meet national transportation needs.

(4) Within the limitations of available funding and with the understanding that planning activities of national significance are being adequately addressed, the States shall determine which eligible activities they desire to support with Federal highway planning

and research funds and at what funding level.

(b) The States shall provide data that supports FHWA responsibilities to Congress and to the public. These data will include information required for preparing reports to Congress and proposed legislation; allow evaluation of the extent, performance, condition, and use of the Nation's various highway systems; provide the basis for analyzing existing and proposed Federal-aid funding methods and levels and the assignment of user cost responsibility; contribute to the critical information base on fuel availability, use and revenues generated; and be used in calculating apportionment factors.

(OMB Control Numbers 2125–0028 and 2125–0032)

(c) It is FHWA policy to administer the PL-supported planning program in accordance with 23 CFR Part 450 which explains the cooperative relationship between the States and metropolitan planning organizations.

(d) The statewide planning, urbanized area planning and research/development activities may be administered separately, paired in various combinations, or brought together as a single work program.

(e) The States shall ensure that HPR, PR, and PL funds are expended for purposes pursuant to sections 134 and 307(c) of Title 23, United States Code, and administered in accordance with 23 U.S.C.; 23 CFR Chapter 1, Subchapters A and B; and applicable sections of OMB Circulars A–102 and A–87.

(f) The State shall obtain FHWA approval of its Highway Planning and Research (HPR) Work Program and the metropolitan planning organizations' endorsed work programs within the State. The State shall have primary responsibility for administering the Federal planning funds passed through to the metropolitan planning organizations.

(OMB Control Number 2125–0532)

(g) The provisions of 49 CFR Part 21, with respect to Title VI, Civil Rights Act of 1964, shall apply to all highway planning activities supported with FHWA funds.

(h) The State shall administer the planning program consistent with its overall efforts to implement section 105(f) of the Surface Transportation Assistance Act of 1982 regarding business concerns owned and controlled by socially and economically disadvantaged individuals as defined by 15 U.S.C. 637(d) (Pub. L. 97–424; 49 CFR Part 23).

§ 420.107 Allocation of PL funds.

(a) Funds authorized by 23 U.S.C. 104(f) shall be allocated to metropolitan planning organizations in accordance with a formula developed by the State and approved by the FHWA. When developing or revising the allocation formula, the State shall, to the extent possible, consult with the affected metropolitan planning organization(s).

(b) The allocation formula shall consider, but not necessarily be limited to population, status of planning, and metropolitan area transportation needs.

(c) As soon as practicable after PL funds have been appropriated to the State, the State shall inform the metropolitan planning organizations and the FHWA of the amounts allocated to each area.

(d) If a State receiving the minimum apportionment of PL funds determines that the share of funds to be allocated to any metropolitan planning organization(s) results in the metropolitan planning organization(s) receiving more funds than is necessary to carry out the provisions of 23 U.S.C. 134, the State may, after considering the views of the appropriate metropolitan planning organizations and with the approval of the FHWA, use these funds to finance transportation planning outside of urbanized areas.

§ 420.109 Work program.

(a) State work program. The highway planning and research work program shall support the expenditure of Federal funds and be in a format that is acceptable to the FHWA. The expenditure of PL funds for transportation planning outside of urbanized areas under 23 CFR 420.107(d) shall be supported by an appropriate planning work program. Research and development work program requirements are found in 23 CFR 511.5.

(OMB Control Number 2125–0532)

(b) Urbanized area transportation planning work program. The expenditure of Federal transportation funds for planning purposes in urbanized areas shall be documented as required by 23 CFR 450.108.

(OMB Control Number 2132–0031)

(c) *Funding Information.* (1) For each work program the funding information shall include a cost estimate for each activity, including those activities for producing FHWA-required data (23 CFR 420.105(b)) using 100 percent State and/or local funds. Cost estimates should also be provided for other planning activities using 100 percent State and/or local funds. The information shall include a summary identifying the source of all Federal and matching funds showing:

(i) Federal share by type of fund,

(ii) Matching rate by type of fund,

(iii) State and/or local matching share, and

(iv) Other State/local funds.

(2) States that use separate projects in accordance with 23 CFR 420.105(d) should submit, in addition to the funding information required for each project, one overall summary showing the funding for the entire State planning and research/development effort.

(3) HPR funds and PL funds shall each be administered as a single fund. Each class of PR funds (primary, secondary, or urban) shall be administered separately. PR funds may be selected from available balances of any one or combination of the appropriate classes of funds up to the limiting amount in each fund.

(4) The rate of Federal participation with HPR, PR, and PL funds shall be 85 percent except that in States having nontaxable Indian lands and public domain lands exclusive of national forests and national parks and monuments, exceeding 5 percent of the total area in such State, the Federal share shall be increased to a maximum of 95 percent calculated as described in 23 U.S.C. 120(i).[2]

(5) FHWA will participate in the actual cost incurred by State and local agencies provided the costs:

(i) Are verifiable from the State or local agency's records;

(ii) Are not included as contributions for any other federally-assisted program;

(iii) Are necessary and reasonable for proper and efficient accomplishment of project objectivities;

(iv) Are types of charges that would be allowable under OMB Circular A–87 as modified by 23 CFR;

(v) Are not paid by the Federal Government under another assistance agreement unless authorized to be used as match under the other Federal agreement and the laws and regulations it is subject to, and

(vi) Are provided for in the approved budget.

(6) Contributions where no costs have been incurred, such as volunteer services or donated property, shall not be accepted as the non-Federal share.

§ 420.111 Approval and authorization procedures.

(a) *Approval.* The State and metropolitan planning organization shall obtain work program approval and

[2] Refers to the (i) added by Sec. 156(c), Pub. L. 97–424, Jan. 6, 1983 (96 Stat. 2134).

funding authorization prior to beginning work on activities in the work program. Such approvals and authorizations should be based on final work program documents. The State and metropolitan planning organizations shall also obtain prior approval and authorization when a revision to an individual activity or the work program will be necessary for any of the following reasons:

(1) Changes in scope or objectives,

(2) Addition of an activity (except activities requested by FHWA),

(3) The need for additional FHWA funds in the total project cost, or

(4) The acquisition of nonexpendable personal property costing over $1000.

(b) *Availability of funds.* (1) Authorization to proceed with the work program in whole or in part shall be deemed a contractual obligation of the Federal Government pursuant to 23 U.S.C. 106 and shall require that appropriate funds be available for the full Federal share of the cost of work authorized.

(2) Those States that do not have sufficient FHWA funds to obligate the full Federal share of their entire work program may request authorization to proceed with that portion of their program for which FHWA funds are available. Authorization to proceed may be given for either selected work activities or for a portion of the State's program period. Such authorization to proceed shall not constitute any commitment of FHWA to fund the remaining portion of the work program should additional funds become available.

(c) *Project Agreement.* (1) A Federal-Aid Project Agreement (PR-2) shall be executed in accordance with 23 CFR Part 630, Subpart C, for each planning or research and development work program, urbanized area transportation planning work program, or any combination administered as a single Federal-aid project in accordance with 23 U.S.C. 110(a). The project agreement shall be executed when the State has been authorized to proceed with the work program in whole or in part and appropriate funds are available for Federal participation in the cost of the work. However, in the event the project agreement is executed for only part of the work program, the project agreement shall be amended by execution of Form PR-2A, Modification of Federal Aid Project Agreement, at such time as the State is authorized to proceed with the remaining part.

(2) A provision of the Federal-aid Project Agreement (PR-2) requires the States to prepare suitable reports to document the results of certain activities. It also requires prior FHWA approval before publishing the reports. The State may request a waiver of the requirement for prior approval. Publication approval shall not imply FHWA approval or endorsement of a report's findings or recommendations.

§ 420.113 Program monitoring and reporting.

(a) The State shall monitor all activities, including those of the metropolitan planning organizations, supported by FHWA funds to assure that the work is being managed and performed satisfactorily and that time schedules are being met.

(b) The State shall submit a performance report, including a report from each metropolitan planning organization, that contains as a minimum:

(1) Comparison of actual performance with established goals,

(2) Progress in meeting schedules,

(3) Comparison of budgeted (approved) amounts and actual costs incurred,

(4) Cost overruns/underruns,

(5) Approved planning program revisions, and

(6) Other pertinent supporting data.

(OMB Control Number 2125-0039)

(c) The State shall submit an expenditure report, including a report from each metropolitan planning organization, that provides the status of program expenditures in a format compatible with the work program.

(OMB Control Number 2125-0506)

(d) The frequency of reports required by paragraphs (b) and (c) of this section will be annually unless more frequent reporting is determined to be necessary by FHWA; but in no case will reports be required more frequently than quarterly. These reports are due 90 days after the end of the reporting period for annual and final reports and no later than 30 days after the end of the period for other reports.

(e) Events that have significant impact on the work program(s) shall be reported as soon as they become known. The type of events or conditions that require reporting include: Problems, delays, or adverse conditions that will materially affect the ability to attain program objectives. This disclosure shall be accompanied by a statement of the action taken, or contemplated, and any Federal assistance needed to resolve the situation.

§ 420.115 Financial management system and audit requirements.

The financial management systems used by the States and metropolitan planning organizations shall provide that:

(a) Costs are supported by source documents.

(b) Information pertaining to FHWA approvals, authorizations, obligations, and unobligated balances are maintained.

(c) Recordkeeping and retention requirements comply with 23 CFR Part 17.

(d) Effective control and accountability is exercised over FHWA funds to assure that these funds are used solely for FHWA authorized purposes.

(e) Costs are allowable in accordance with 23 CFR Parts 1 and 140, Subpart G.

(f) Indirect costs of the metropolitan planning organization are determined in accordance with OMB Circular Number A-87 as modified by 23 CFR.

(g) Expenditures charged on an indirect cost basis by metropolitan planning organizations utilizing multiple funding sources shall be supported by an approved indirect cost allocation plan and indirect cost proposal.

(h) Audits are performed in accordance with 23 CFR Part 12.

§ 420.117 Fiscal procedures.

(a) *Reimbursement.* Requests for reimbursement of the FHWA share shall be in accordance with 23 CFR Part 140, Subpart A, Reimbursement Vouchers. The FHWA funds shall not be used to reimburse the States or metropolitan planning organizations for any work accomplished prior to the fiscal year for which the funds are made available.

(b) *Procurement Standards.* Procedures for the procurement of services, supplies or equipment using FHWA funds shall be in accordance with 23 CFR Part 172.

(c) *Property Management Standards.* (1) The States and metropolitan planning organizations shall account for nonexpendable tangible property acquired with FHWA funds in accordance with the following procedural requirements:

(i) Property records shall be maintained accurately and shall include:

(A) Description of the property, identifying numbers, manufacturer and vendor, and location;

(B) Acquisition date, unit acquisition cost, percentage of Federal participation, and who has retained title to property;

(C) Maintenance records, use and condition of property and the date the information was reported;

(D) Ultimate disposition data including date of disposal and sales price or the method used to determine

current fair market value where FHWA is compensated for its share.

(ii) A physical inventory of property furnished by or acquired with FHWA funds shall be taken and the results reconciled with the property records at least once every 2 years. Any differences between quantities determined by the physical inspection and those shown in the accounting records shall be investigated to determine the cause of the difference. The State and or metropolitan planning organization shall, in connection with the inventory, verify the existence, current utilization, and continued need for the property.

(iii) A control system shall be in effect to ensure adequate safeguards to prevent loss, damage, or theft of the property. Any loss, damage or theft of nonexpendable property shall be investigated and fully documented. If the property was owned by the Federal Government, the FHWA shall be promptly notified.

(iv) Adequate maintenance procedures shall be implemented to keep the property in good condition.

(v) Where the State or metropolitan planning organization is authorized or required to sell the property, proper sales procedures shall be established which would provide for competition to the extent practicable and result in the highest possible return.

(2) When nonexpendable tangible property acquired in connection with a Federal-aid highway project is no longer needed, it shall be used in connection with its other federally-sponsored activities in the following order of priority:

(i) Activities sponsored by the Federal Highway Administration.

(ii) Activities sponsored by other Department of Transportation Agencies.

(iii) Activities sponsored by other Federal Agencies.

(3) When the State or metropolitan planning organization no longer needs or cannot use the property as provided in paragraph (c)(2) of this section, the property may be disposed of or used according to the following standards:

(i) Property with a unit cost of less than $1000 may be used for any purpose or sold without making a credit to Federal funds.

(ii) Property with a unit cost of $1000 or more may be used for any purpose or sold, after a credit is made to the Federal funds in an amount computed by applying the Federal percentage of participation in the cost of its original acquisition to the sale proceeds. If the property is sold, the State or metropolitan planning organization shall do so in a manner which maximizes competition and the return from the sale. The State or metropolitan planning organization shall be permitted to deduct and retain from the Federal share $100 or 10 percent of the proceeds, whichever is larger, for selling and handling expenses.

(d) Program income (i.e., income attributable to activities of a work program including, but not limited to, income from service fees, sales of commodities, usage or rental fees) shall be shown and deducted to determine the net costs on which the FHWA share will be based.

[FR Doc. 85-7302 Filed 3-27-85; 8:45 am]
BILLING CODE 4910-22-M

DEPARTMENT OF THE TREASURY

Fiscal Service

31 CFR Part 206

Regulation Governing the Management of Federal Agency Receipts and Operation of the Cash Management Improvements Fund

AGENCY: Financial Management Service, Fiscal Service, Treasury.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Fiscal Service is issuing this Notice of Proposed Rulemaking (NPRM) to implement Section 2652 of the Deficit Reduction Act of 1984, which gives the Secretary of the Treasury the authority to:

(1) Prescribe the methods by which agencies will collect and deposit monies to the Treasury;

(2) Prescribe the time within which agencies collecting monies must deposit such monies to Treasury;

(3) Assess charges for noncompliance in the amount determined to be the cost to the general fund of such noncompliance;

(4) Credit any charges imposed into the Cash Management Improvements Fund;

(5) Authorize use of any monies in the Fund for the payment of expenses incurred in developing and carrying out improved methods of collection and deposit.

This proposed regulation prescribes the policies and guidelines for promoting effective cash management through improved billing, collection, and deposit that result in improved availability of funds.

DATE: Comments on this proposed rule must be received in writing no later than May 28, 1985.

ADDRESS: Send written comments to: Director, Cash Management Division, Financial Management Service, Department of the Treasury, Treasury Annex No. 1, Room 711-PB, Washington, DC 20226.

FOR FURTHER INFORMATION CONTACT: Susan Veintemillas, Program Initiatives Branch, Financial Management Service, Washington, DC (202/634-2016).

SUPPLEMENTARY INFORMATION:

Legislative Background

The Deficit Reduction Act of 1984 (Public Law 98-369) requires the Secretary of the Treasury to prescribe regulations to achieve full implementation of section 2652 of the Act by October 1, 1986. This notice of Proposed Rulemaking (NPRM) is intended to result in publication of a Final Rule to be effective October 1, 1985, to ensure that this legislative requirement is fulfilled.

Development of the Notice of Proposed Rulemaking

The Department of the Treasury, Financial Management Service (hereinafter referred to as "the Service"), has been delegated the responsibility for developing regulation(s) and supporting procedures to implement section 2652 of the Act.

Due to the governmentwide impact of the legislation, it was determined that agency involvement in the development of the regulations(s) and supporting procedures would be crucial.

A decision was made to convene a governmentwide task force coordinated by Service personnel to assist in implementation of the legislation.

This NPRM was developed by a task force group consisting of representatives from the Departments of Agriculture, Defense, Education, Treasury, Housing and Urban Development, the Small Business Administration, and the Office of Management and Budget (OMB).

A separate task force group has met to update the Treasury Financial Manual (TFM) as a result of the regulation contained in this NPRM.

Regulatory Text

The following information details background related to specific sections of the regulatory text which the governmentwide task force group felt required supplementary information.

Scope and Application (Section 206.1)

The primary purpose of this regulation is to cause agencies to utilize the most effective and efficient collection systems, not to assess penalties for noncompliance. The proposed regulation takes into account the significant cash management improvements already

instituted by agencies. Over the last several years, the 20 Reform '88 agencies have been actively working with Treasury and OMB to initiate and implement substantial cash management improvements. Each of the 20 agencies has a designated cash management officer, and a reporting system has been developed which has documented substantial savings related to over 400 initiatives governmentwide.

The approach in developing the regulatory text is to make cash management an integral part of each agency's overall management planning process. Treasury intends to continue working with each agency in a cooperative manner, and to act as a consultant and aid to agencies in developing cash management improvements. As stated before, this approach is based on the understanding that most agenices to date have cooperated with Treasury and OMB in making cash management improvements. Treasury does, on the other hand, have a responsibility to ensure that agencies continue these efforts on a long-term basis. Each agency must, therefore, be aware that Treasury, in fulfilling the responsibility which comes with this new authority, is required under the law to recover the Govenment's losses that result from inappropriate collection practices.

Definitions (Section 206.2)

Agency. The definition of an executive agency was based on 31 U.S.C. 3701(a)(4), formerly 31 U.S.C. 951.

Monies. The legislation empowers Treasury to assess charges when receipts are held undeposited by an agency beyond a specified period of time or are caused to be received/deposited through an inefficient collection mechanism. Most governmental receipts are in payment of amounts owed, and are clearly within the intended scope of the law. Less obvious is the applicability of the law to the relatively smaller volume of receipts that relate to donations and other voluntary contributions to specific or general government purposes. There is no distinction between cash management principles related to voluntary contributions and those related to amounts owed, and often the two types are physically intermingled.

Collection and Deposit Procedures (Section 206.5)

The Deficit Reduction Act of 1984 amends subsection (c) of 31 U.S.C. 3302 to require agencies to deposit receipts within 3 days, and also authorize the Secretary of Treasury to prescribe through regulation a greater or lesser period of time for deposit of receipts. Good cash management calls for deposit of receipts as soon as possible after they are received. Therefore, this proposed regulation provides that agencies will achieve same day deposit. Many factor can impact on an agency's ability to achieve this goal. Volume and location of receipts, time of day received, depositary cutoff times, and seasonality are some of these. Therefore, this proposed regulation provides that agencies may make next-day deposits if it is not cost-effective or practicable to achieve same day deposits.

It is expected that, to the extent possible, techniques such as color-coded envelopes, a unique post office box, etc., will be used to meet the same day deposit requirement.

Cash Management Planning and Review (Section 206.6)

The intent of this section of the regulation is to advise agencies of the need for an internal Cash Management Plan. In order for agencies to be effective in their cash management activities, they need to develop an annual strategy or "Plan", establishing realistic objectives for the next fiscal year. The Plan therefore should be developed on an annual basis; a copy should be given to Treasury by October 1 of each year. The requirement for an agency Cash Management Plan already exists in the TFM Chapter 6–8000, therefore the preparation of the Plan will not cause substantial additional workload for each agency. The Service will provide guidance to agencies concerning suggested format and content of the Plan in TFM Chapter 6–8000. Periodic reporting on agency implementation of its Cash Management Plan will be limited to a level of detail which will not create a reporting burden on the agencies.

Operation of and Payments From the Cash Management Improvements Fund (Section 206.8)

The regulation provides for the establishment in the Treasury of the United States of a revolving fund to be known as the "Cash Management Improvements Fund." Section 2652 of the Deficit Reduction Act of 1984 decrees that "sums in the Fund shall be available without fiscal year limitation for the payment of expenses incurred in developing (prescribed) methods of collection and deposit (of agency funds)." The Fund shall also be available for the payment of "expenses incurred in carrying out collections and deposits using such methods, including the costs of personal services and the costs of the lease or purchase of equipment and operating facilities."

Special Analyses

The Financial Management Service has determined that this proposal is not a major rule for purposes of E.O. 12291. Therefore, no regulatory impact analysis is required.

It has been certified that the rulemaking proposed herein will not have a significant economic impact on a substantial number of small entities. Accordingly, a Regulatory Flexibility Act analysis is not required.

List of Subjects in 31 CFR Part 206

Banks, banking.

Carole Jones Dineen,

Fiscal Assistant Secretary.

March 21, 1985.

For the reasons set out in the preamble, it is proposed to add a new Part 206 to 31 CFR, Chapter II, to read as follows:

PART 206—MANAGEMENT OF FEDERAL AGENCY RECEIPTS AND OPERATION OF THE CASH MANAGEMENT IMPROVEMENTS FUND

Sec.

Authority: 31 U.S.C. 321; 31 U.S.C. 3301, 3302, and 3720.

§ 206.1 Scope and Application.

This regulation applies to all government departments and agencies in the Executive Branch (except Tennessee Valley Authority) which collect monies owed to the Government. This regulation does not apply to interagency transfers. Policies and guidelines are prescribed for promoting effective cash management through improved billing, collection, and deposit that result in improved availability of funds. Authority to implement this regulation has been delegated within Treasury to the Commissioner of the Financial Management Service, hereinafter referred to as "the Service." The Service maintains the final authority as granted under the Deficit Reduction Act of 1984 to specify use of a particular method or mechanism of collection and deposit by an agency and to recover costs that result from noncompliance. Agencies are prohibited

under this regulation from entering into new contractual agreements which affect the cash management processes of agency collections without the prior approval of the Service, as described in the Treasury Financial Manual (TFM) Chapter 6–8000.

§ 206.2 Definitions.

For the purposes of this regulation, the following definitions apply:

(a) "Agency" means: Any department, instrumentality, office, commission, board, service, government corporation, or other establishment in the Executive Branch. This regulation does not apply to the Tennessee Valley Authority, as prescribed by the Deficit Reduction Act of 1984.

(b) "Billing" means: Any of a variety of means by which the Government places a demand for payment against an entity that is indebted to the Government. The term encompasses invoices, notices, initial demand letters, and other forms of notifications.

(c) "Collect" means: The process of effecting a collection.

(d) "Collection" means: The transfer of monies from a source outside the Federal Government to an agency or to a financial institution acting as an agent of the Government.

(e) "Collection Mechanism" means: Any one of a number of tools or systems by which monies are transferred to the Government from a source outside the Government.

(f) "Cutoff time" means: A time predesignated by the financial institution beyond which transactions presented or actions requested will be considered the next banking day's business.

(g) "Same Day Deposit" means: A deposit made before the cutoff time on the day on which the funds to be deposited were received by the agency. For example, if any agency receives funds for deposit at 10 am on Monday and transmits the deposits by 1 pm on Monday (the bank's cutoff time) then same-day deposit has been achieved.

(h) "Next Day Deposit" means: A deposit made before the cutoff time on the day following the day on which the funds to be deposited were received by the agency. For example, if an agency receives funds for deposit at 3 pm on Monday, and transmits the deposits to the bank by 1 pm on Tuesday (the bank's next cutoff time) then next-day deposit requirements are met.

(i) "Deposit" means: As a noun, means money that is being or has been transferred to the credit of the U.S. Treasury. Such transfers can be made by agencies or directly by the remitter. All such transfers are effected through a Federal Reserve bank or other financial institution. As a verb, means the act of making a transfer of money to the credit of the U.S. Treasury by an official of an agency.

(j) "Depositary" means: A bank or other financial organization which has been designated by the U.S. Treasury to receive monies for credit to the U.S. Treasury.

(k) "Fund" means: The Cash Management Improvements Fund—

(l) "Monies" (same as "recipients") means: Currency, negotiable instruments, and/or demand deposits owed to or collected by an agency.

(m) "Service" means: The Financial Management Service (formerly the Bureau of Government Financial Operations), Department of the Treasury.

(n) "Treasury Financial Manual" means: Manual produced by Treasury containing procedures to be observed by all government departments and agencies in relation to central accounting, financial reporting, and other governmentwide fiscal responsibilities of the Department of the Treasury. Volume I, Chapter 6–8000 of the Manual contains cash management procedures to be followed pertaining to these regulations.

§ 206.3 Billing Policy and Procedures.

The billing process is considered an indispensable part of an effective cash management program. In those situations where bills are required and the failure to bill would affect the cash flow, bills will be prepared and transmitted within 5 business days of the creation of an account receivable. Agencies may prepare and transmit bills later than the 5 day timeframe if they can demonstrate that it is cost effective to do so. In addition, the bill must include the terms and dates of payments, and late payment provisions, if applicable. Terms and dates of payments will be no worse than industry standards. The TFM Chapter 6–8000 describes detailed billing policies, procedures, and industry standards, and will be enforceable under this regulation.

§ 206.4 Collection Mechanisms.

(a) Agencies' collection processes shall include procedures which provide for prompt and continuing action to collect monies owed to that agency. The TFM Chapter 6–8000 prescribes guidelines to be followed in developing and implementing such procedures. Any such system must expedite credit and availability of these monies to the U.S. Treasury. Collections are made through a number of alternative collection mechanisms. The most fundamental, but least desirable, form of collection mechanism requires the remitter to deliver monies to the offices of the agency to whom the monies are owed. The most desirable means of processing collections is through the use of some form of electronic funds transfer, which expedites credit and availability of funds into the banking system, thereby bypassing agency handling of monies.

(b) In proposing an appropriate collection mechanism, agencies will attempt to minimize total costs to the Government, including known or estimated agency personnel costs, costs of procurement, equipment and system implementation and maintenance costs, and interest costs. A feasibility study, including a cost-benefit analysis, which addresses possible collection mechanisms, will precede any decision on implementation of a certain mechanism. Improvements to the existing system will be addressed as one option. Interest savings should be measured against the existing deposit system. Future year cash flows will be considered especially if significant increases or decreases are projected. Seasonality and the nature of the collection items (e.g., cash, check, money order) also must be considered. Interest savings will be addressed by source; e.g., elimination or reduction of mail, processing, and availability float.

(c) Selection of the best collection mechanism is a joint responsibility of the agencies and the Service. Agencies have the primary responsibility for conducting cash management reviews; documenting their collection systems; gathering volume and dollar data relative to the operation of the systems; taking the initiative to improve the mechanism for effecting their collections; and, funding any implementation and operational costs above those normally funded by Treasury. The Service's primary role is as consultant, facilitator, and regulator and it will conduct periodic reviews of agencies' cash management programs in furtherance of that role. The Service is also the required approval authority when an agency desires to convert from one collection mechanism to another. The Service's approval must also be obtained prior to an agency entering into new contractual agreements which would affect the cash management processes of agency collections.

(d) In view of the significant cash management savings that can accrue as a result of converting from one collection mechanism to another, the Service is empowered to prescribe the use of a specific collection mechanism

for mandatory use in a designated portion of an agency's collection system. In so doing, the Service shall give consideration to agency program requirements, an agency's costs of implementation, recurring operational costs, and other management improvements.

§ 206.5 Collection and deposit procedures.

(a) Prompt collection and deposit of monies are imperative to good cash management. This regulation prescribes the following timeframe requirements:

(1) Agencies will achieve same day deposit of monies. Where same day deposit is not cost-effective or is impracticable, next day deposit of monies must be achieved.

(2) Deposits will be made at a time of the day prior to the depositary's specified cutoff time, but as late as possible in order to maximize daily deposit amounts.

(3) When cost-beneficial to the Government, agencies will make multiple deposits.

(b) Exceptions to the above policies are as follows:

(1) Collections of less than $1,000 may be accumulated and deposited when the total reaches $1,000. When the agency can fully cost-justify retaining collections in excess of $1,000, it may retain them. However, in no case will deposits be made less frequently than weekly.

(2) The mailing of deposits to Federal Reserve Banks may be used when all other methods of deposit cannot be cost-justified or no other method of deposit is available.

(c) Agencies will use expeditious procedures and processes in their receipt processing. Priority will be given to procedures which will impact the timeliness of availability of funds to the Treasury. Automation will be used when it is beneficial to the Government. The current and future projection of volume of receipts will be given full consideration in all upgrades to systems.

§ 206.6 Cash management planning and review.

(a) The primary responsibility to implement an effective cash management program rests with the agencies. As part of an agency's overall responsibility, the agency must constantly seek methods to bring about cash management savings and periodically perform cash management reviews to identify areas needing improvement.

(b) Separately, or as part of its cash management review process, agencies are expected to document cash flows in order to provide an overview of an agency's cash activities and to identify areas that will yield the highest savings after cash management initiatives are implemented.

(c) An agency's initial and subsequent cash management reviews should provide the basis for preparation of an internal Cash Management Plan for its use, a copy of which should be provided to the Service as prescribed by the TFM Chapter 6–8000. The Plan must include appropriate audit trial information that can be used to determine compliance and performance. TFM Chapter 6–8000 provides guidance to agencies in performing periodic cash management reviews, developing a Cash Management Plan, and submitting periodic reporting on the Plan. These procedures include the information, format, and timeframe requirements. The TFM Chapter 6–8000 also prescribes the procedures to be followed by the Service in reviewing and approving agency submissions. At a minimum, periodic reports must be submitted by the agencies to the Service on progress made in implementing the Plan and cash management savings resulting from implementation of each cash management initiative.

(d) Treasury will periodically review an agency's cash management program to ensure that adequate progress is being made to improve overall cash management at the agency. As part of Treasury oversight authority, it may visit the agency and review all or specific cash management activities of the agency. Agencies will be notified in advance of Treasury's review and will be required to provide Treasury with documentation of its cash flows within the timeframes and format required by the TFM Chapter 6–8000.

§ 206.7 Charges.

(a) As discussed in Section 206.6, the Service will monitor agency performance. Part of the monitoring process will include discussion and/or correspondence between the Service and the agency in which improved methods of cash management will be suggested and discussed. The agency will be given a full opportunity to concur or nonconcur and to recommend alternative solutions. Following the conclusion of this process, the agency will be given a reasonable period of time to improve its cash management performance. The Service will consider objections which the agency may have to a suggested cash management improvement and will consider alternative mechanisms or implementation schedules which the agency may propose. In cases where noncompliance in a specific area has continued past the established target date, the Commissioner, Financial Management Service, will authorize imposition of a charge against the agency in the amount determined to be the cost to the general fund of such noncompliance. A separate charge will be imposed for each deficiency. The charge will be calculated following procedures outlined in TFM Chapter 6–8000, and will be assessed for appropriate periods of time. The agency will absorb the charge from within funds available for the administration or operation of the program(s) to which the collections relate.

(b) The Commissioner, Financial Management Service, will formally terminate the charge when the Commissioner has determined that the agency has complied. In addition, on an annual basis, the Commissioner will review the agency performance and calculation of the charge, and will notify the agency of any changes to the amount being charged.

§ 206.8 Operation and payments from the Cash Management Improvements Fund.

(a) The Cash Management Improvements Fund will be operated as a revolving fund by the Financial Management Service. Monies will be paid into the Fund based on charges assessed under Section 206.7. The Financial Management Service will also disburse any payments from the Fund.

(b) As prescribed by the authorizing legislation, sums in the Fund shall be available without fiscal year limitation for the payment of expenses incurred in developing improved methods of collection and deposit and the expenses incurred in carrying out collections and deposits using such methods, including the costs of personal services and the costs of the lease or purchase of equipment and operating facilities.

(c) In addition to all reports required by law and regulation, the Treasury will prepare and publish a full report on receipts, disbursements, balances of the Fund, and full disclosure on projects financed by the Fund.

[FR Doc. 85–7310 Filed 3–27–85; 8:45 am]

BILLING CODE 4810-35-M

DEPARTMENT OF DEFENSE

Office of the Secretary

32 CFR Part 97

[DoD Directive 5405.xx]

Release of Official Information in Litigation and Testimony by Department of Defense Personnel as Witnesses

ACTION: Proposed rule; correction.

SUMMARY: This document corrects a proposed rule that appeared on page 10248 in the **Federal Register** on Thursday, March 14, 1985 (50 FR 10248). This action is necessary to correct typographical errors and changes to subject rule.

DATE: Written comments must be received by April 15, 1985.

ADDRESS: Assistant General Counsel for Legal Counsel, Office of the Secretary of Defense, Department of Defense, Room 3E988, The Pentagon, Washington, DC 20301–1600.

FOR FURTHER INFORMATION CONTACT: Ms. Kathleen A. Buck, telephone (202) 697–2714.

The following corrections are made to 50 FR 10248 (issue of March 14, 1985):

§ 97.6 [Corrected]

1. On page 10249 (subparagraph 97.6(b), line 7), the words "paragraph 97.6(a)" is corrected to read "paragraph (a)".

2. On page 10249 (subparagraph 97.6(b)(5), line 12), insert the word "exempt" between the words "matters" and "from".

3. One page 10250 (subparagraph 97.6(d)):

Line 3: Date of DoD 7230.7 to read "January 29, 1985"

Line 5: The words "subsection 97.6(a)" is corrected to read "paragraph (a) of this section".

Patricia H. Means,

OSD Federal Register Liaison Officer, Department of Defense.

March 25, 1985.

[FR Doc. 85–7373 Filed 3–27–85; 8:45 am]

BILLING CODE 3810–01–M

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 100

[CGD13 85–04]

Regatta; Seattle Seafair Budweiser APBA Gold Cup Race

AGENCY: Coast Guard, DOT.

ACTION: Notice of proposed rule making.

SUMMARY: The Coast Guard is considering a proposal to establish an area of controlled navigation upon the waters of Lake Washington, Washington, from July 31 until August 4, 1985. This is necessary due to the unlimited hydroplane races scheduled for this time period as part of Seattle's Seafair Budweiser APBA Gold Cup Race. The Coast Guard through this action intends to insure the safety of spectators and participants in this event.

DATES: Comments must be received on or before May 13, 1985.

ADDRESSES: Comments should be mailed to Commander (osr), Thirteenth Coast Guard District, 915 Second Ave., Seattle, WA 98174. The comments and other materials referenced in this notice will be available for inspection and copying at the Thirteenth Coast Guard District Office, Search and Rescue Branch, Room 3542, 915 Second Ave., Seattle, WA 98174. Normal office hours are between 8:00 a.m. and 4:00 p.m., Monday through Friday, except holidays. Comments may also be hand delivered to this address.

FOR FURTHER INFORMATION CONTACT: CAPT D.J. BLUETT, Chief, Search and Rescue Branch, (206) 442–5880.

SUPPLEMENTARY INFORMATION: Interested persons are invited to participate in this rule making by submitting written views, data, or arguments. Persons submitting comments should include their names and addresses, identify this notice (CGD13 85–04) and the specific section of the proposal to which their comments apply, and give reasons for each comment. Receipt of comments will be acknowledged if a stamped self-addressed postcard or envelope is enclosed. The regulations may be changed in light of comments received. All comments received before the expiration of the comment period will be considered before final action is taken on this proposal. No public hearing is planned, but one may be held if written requests for a hearing are received and it is determined that the opportunity to make oral presentations will aid the rule-making process.

Drafting Information

The drafters of this notice are CDR D.H. HAGEN, USCGR, project officer, Thirteenth Coast Guard District Search and Rescue Branch, and LCDR D.G. BECK, USCG, project attorney, Thirteenth Coast Guard District Legal Office.

Discussion of Proposed Regulations

Each year, SEAFAIR INC., a non-profit corporation, sponsors an unlimited hydroplane regatta on the waters of Lake Washington. This year, that organization is sponsoring the Seattle Seafair Budweiser APBA Gold Cup Race. This five (5) day event draws several thousand spectators to the beaches and waters surrounding the Lake Washington race course. A large number of these spectators view the event from over eight hundred (800) pleasure craft which anchor around the race course. To insure the safety of both the spectators and the participants, special navigational rules are required.

By the authority contained in Title 46, U.S. Code, section 454, as implemented by Title 33, Part 100, Code of Federal Regulations, a special local regulation controlling navigation on the waters described is required. By the same authority, the waters involved will be patrolled by vessels of the U.S. Coast Guard. Coast Guard Officers and/or Petty Officers will enforce the regulations and cite persons and vessels in violation.

Economic Assessment and Certification

These proposed regulations are considered to be non-major under Executive Order 12291 on Federal Regulation and nonsignificant under Department of Transportation regulatory policies and procedures (44 FR 11034; February 26, 1979). The economic impact of this proposal is expected to be so minimal that a full regulatory evaluation is unnecessary. The regulations affect only spectators and participants to the race and applies to a small area of Lake Washington. In addtion it will be in effect for only five (5) days, two (2) of those days being Saturday, and Sunday. There is no commercial traffic in this area of the lake.

Since the impact of this proposal is expected to be minimal, the Coast Guard certifies that, if adopted, it will not have a significant economic impact on a substantial number of small entities.

List of Subjects in 33 CFR Part 100

Marine safety, Navigation (Water).

Proposed Regulations

In consideration of the foregoing, the Coast Guard proposes to amend Part 100 of Title 33, Code of Federal Regulations, by adding § 100.35–1314 to read as follows:

§ 100.35-1314 Lake Washington 1985 Seattle Seafair Budweiser APBA Gold Cup Race.

(a) From July 31 to August 3, 1985, this regulation will be in effect from 8:00 a.m. until 5:00 p.m. On August 4, 1985, this regulation will be in effect from 8:00 a.m. until one hour after the conclusion of the last race.

(b) The area where the Coast Guard will restrict general navigation by this regulation during the hours it is in effect is:

(1) The waters of Lake Washington bounded by the Mercer Island (Lacey V. Murrow) Bridge, the western shore of Lake Washington, and the east/west line drawn tangent to Bailey Peninsula and along the shoreline of Mercer Island.

(c) The area described in paragraph (b) has been divided into two zones. The zones are separated by a log boom and a line from the southeast corner of the boom to the northeast tip of Bailey Peninsula. The western zone is designated Zone I, the eastern zone, Zone II. (Refer to NOAA chart 18447).

(d) The Coast Guard will maintain a patrol consisting of active and auxiliary Coast Guard Vessels in Zone II. The Coast Guard patrol of this area is under the direction of the Coast Guard Patrol Commander (the "Patrol Commander"). The Patrol Commander is empowered to control the movement of vessels on the race course and in the adjoining waters during the periods this regulation is in effect.

(e) Only authorized vessels may be allowed to enter Zone I during the hours this regulation is in effect. Vessels in the vicinity of Zone I shall maneuver and anchor as directed by Coast Guard Officers or Petty Officers.

(f) During the times in which this regulation is in effect, swimming, wading, or otherwise entering the water in Zone I by any person is prohibited.

(g) Vessels proceeding in either Zone I or Zone II during the hours this regulation is in effect shall do so only at speeds which create minimum wake, seven (7) miles per hour or less. This maximum speed may be reduced at the discretion of the Patrol Commander.

(h) Upon completion of the daily racing activities, all vessels leaving either Zone I or Zone II shall proceed at speeds of seven (07) miles per hour or less. This maximum speed may be reduced at the discretion of the Patrol Commander.

(i) A succession of sharp, short signals by whistle or horn from vessels patrolling the areas under the direction of the U.S. Coast Guard Patrol Commander shall serve as a signal to stop. Vessels signalled shall stop and shall comply with the orders of the patrol vessel; failure to do so may result in expulsion from the area, citation for failure to comply, or both.

(46 U.S.C.A. 454; 49 U.S.C. 1655(b); 49 CFR 1.46(b); 33 CFR 100.35)

Dated: March 22, 1985.

H. W. Parker,

Rear Admiral, U.S. Coast Guard, Commander, 13th Coast Guard District.

[FR Doc. 85-7355 Filed 3-27-85; 8:45 am]

BILLING CODE 4910-14-M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[A-5-FRL-2806-2]

Approval and Promulgation of Implementation Plans; Indiana

AGENCY: U.S. Environmental Protection Agency (USEPA).

ACTION: Proposed rulemaking.

SUMMARY: USEPA is proposing rulemaking on revisions to the Indiana State Implementation Plan (SIP) for ozone. These revisions pertain to rules developed by the State to satisfy the Clean Air Act's Reasonably Available Control Technology (RACT) requirements for stationary sources of volatile organic compounds (VOC), which are addressed in the USEPA's Group I and Group II Control Technique Guidelines (CTGs). On October 27, 1982 (47 FR 47552) and January 18, 1983 (48 FR 2124), USEPA approved Indiana's VOC RACT I and II regulations, respectively, on the condition that Indiana correct deficiencies. Indiana submitted revisions to its regulations, including those which responded to six of these conditions, and extended the applicability of these regulations to St. Joseph and Elkhart Counties. USEPA has preliminarily determined that these revisions satisfy these six conditions. It is generally proposing to approve the revisions, to remove the six conditions which the revisions satisfy, and to conditionally approve the regulations as they apply to St. Joseph and Elkhart Counties. USEPA will rulemake on the remaining two conditions in the future **Federal Register** notice.

DATE: Comments on this revision and on the proposed USEPA action must be received by May 28, 1985.

ADDRESSES: Copies of the SIP revision are available at the following addresses for review: (It is recommended that you telephone Uylaine E. McMahan, at (312) 353-0396, before visiting the Region V office.)

U.S. Environmental Protection Agency, Region V, Air and Radiation Branch, 230 South Dearborn Street, Chicago, Illinois 60604

Indiana Air Pollution Control Division, Indiana State Board of Health, 1330 West Michigan Street, Indianapolis, Indiana 46206

Comments on this proposed rule should be addressed to: (Please submit an original and three copies, if possible.) Gary Gulezian, Chief, Regulatory Analysis Section, Air and Radiation Branch (5AR-26), U.S. Environmental Protection Agency, Region V, 230 South Dearborn Street, Chicago, Illinois 60604.

SUPPLEMENTARY INFORMATION:

Part I

Under Section 107 of the Clean Air Act, USEPA has designated certain areas in Indiana as not attaining the National Ambient Air Quality Standards (NAAQS) for ozone. See 43 FR 8962 (March 3, 1978) and 43 FR 45993 (October 5, 1978).

Part D of the Act requires the State to revise its SIP to meet specific requirements for areas designated as nonattainment. These SIP revisions must demonstrate attainment of the ozone NAAQS as expeditiously as practicable, but not later than December 31, 1982 (in certain cases by December 31, 1987). The requirements for an approvable SIP are described in a General Preamble for Part D rulemaking published on April 4, 1979 (44 FR 20372) and at 44 FR 38583 (July 2, 1979), 44 FR 50371 (August 28, 1979), 44 FR 53761 (September 17, 1979), and 44 FR 67182 (November 23, 1979).

An adequate SIP for ozone is one which includes sufficient control of VOC emissions from stationary and mobile sources to provide for attainment of the ozone standard. For stationary sources, the plan must include, at a minimum, legally enforceable requirements reflecting the application of RACT for those sources for which USEPA has published a CTG. In general, where the State regulations are not supported by the information in the CTGs, the State must provide a demonstration that its regulations represent RACT or amend the regulations to be consistent with the information in the CTGs.

In response to the requirements of Part D of the Act, the State of Indiana revised its SIP to require control of VOC emissions from stationary industrial sources addressed in USEPA's Groups I and II CTGs. On February 11, 1980, the State submitted to USEPA a revision to the ozone portion of its SIP for the Group I sources of VOC emissions. USEPA took final action to conditionally

approve the Group I sources' regulation on October 27, 1982 (47 FR 47552).[1] based on a commitment from the State to correct deficiencies in the regulation. In this same rulemaking, USEPA took no action on the "bubble" provision in this regulation.

On November 25, 1980, the State submitted to USEPA as a revision to its ozone SIP amendments to its VOC regulation, now codified as 325 IAC Article 8,[2] which controlled VOC emissions from the Group II sources. USEPA took final action to conditionally approve this revision on January 18, 1983 (48 FR 2124) based on a commitment from the State to correct deficiencies in the regulation.

In response to these conditional approvals, on June 21, 1984, the Indiana Air Pollution Control Board (Board) promulgated revised VOC regulations 325 IAC 8-1.1, 8-2, 8-4 and 8-5. The Board submitted these revisions to USEPA on July 3, 1984, to satisfy certain conditions of USEPA's approval. On September 7, 1984, the state submitted additional revisions that extended the applicability of the regulations to St. Joseph and Elkhart Counties.

Part II

Anaylsis of Revisions

A listing of each conditional approval item will be followed by a discussion of the State's corrected action and USEPA proposal.

1. *Conditional Approval Item—40 CFR 52.777(c)(1)(i).* For regulation 325 IAC 8-4, Section 6 (Stage I Gasoline Dispensing Facilities), the State committed itself to conduct a study to demonstrate that even with the exemption from control of sources smaller than 20,000 gallons per month throughput, the source category as a whole still meets RACT emission reduction requirements. If the demonstrated emissions resulting from the State's exemption are not essentially equivalent to those resulting from the CTG's RACT requirements, then the State agreed to submit to USEPA a rule which requires control of emissions from storage tanks at gasoline dispensing facilities with either a 10,000 gallons per month or more throughout or a 2,000 gallons or greater capacity.

Analysis. Neither a study nor an amended regulation has been submitted to satisfy this conditional approval item. However, Indiana has informed USEPA that they are working on a study. This conditional approval item remains outstanding and USEPA will propose rulemaking on this issue at a later date.

2. *Conditional Approval Item—40 CFR 52.777(c)(1)(ii).* For regulation 325 IAC 8-2-2(b), 7(b), and 8(b), Surface Coating Operations, the State committed itself (1) to replace the transfer efficiency equations in this regulation with a statement addressing transfer efficiency improvement on a case by case basis and (2) to submit the new rules to USEPA as a SIP revision.

Analysis. The transfer efficiency equations discussed above have been deleted. This constitutes an acceptable resolution of this conditional approval item. For an Indiana source to obtain credit for use of improved transfer efficiency equipment, a site-specific SIP revision must be obtained.

3. *Conditional Approval Item—40 CFR 52.777(c)(1)(iii).* For regulation 325 IAC 8-2 Section 6, Fabric and vinyl Coating, the State committed itself to revise the rule to meet the requirements of RACT and to submit the new rule to USEPA as a SIP revision.

Analysis. Indiana's fabric and vinyl coating rules, 325 IAC 8-2-6, were repealed, as noted by Indiana in its July 3, 1984, submittal. Therefore, this conditional approval item was not satisfied with this submittal. However, Indiana has submitted a new fabric and vinyl coating rule as part of a September 7, 1984, submittal which primarily deals with RACT regulations for St. Joseph and Elkhart Counties. For USEPA's proposed action on the fabric and vinyl coating condition, see PART III.

4. *Conditional Approval Item—40 CFR 52.777(c)(1)(iv).* For regulation 325 IAC 8-1.1 Section 4, Text Methods and Procedures, the State committed itself to add USEPA approved test methods and procedures and to submit the new rule to USEPA as a SIP revision.

Analysis. Indiana has added a new subsection (e) to 325 IAC 8-1.1-4, Test Methods and Procedures. This new subsection is as follows:

(e) The VOC emissions and control efficiency for bulk gasoline terminals may be determined by using reference test procedures specified in USEPA guideline document EPA-450/2-77-026.

This new subsection satisfies the above condition. It should be noted that this condition only refers to bulk gasoline terminals (as per the March 15, 1982, RACT I notice of Proposed Rulemaking 47 FR 11044). The test procedures in EPA-450/2-77-026 are appropriate for this source category. If Indiana allows use of non USEPA test method, its use must be submitted to USEPA as a SIP revision.

5. *Conditional Approval Item—40 CFR 52.777(c)(1)(v).* For regulation 325 IAC 8-5, Section 6, Perchloroethylene Dry Cleaning, the State committed itself to study whether the State's exemption of sources using less than 1,500 gallons per year still allows the State to meet the RACT requirements for this source category. If the emission reductions resulting from the State's exemption are not essentially equivalent to those resulting from RACT requirements, then the State committed itself to submit to USEPA a rule which requires control of emissions from dry cleaning sources using less than 1,500 gallons of perchloroethylene per year.

Analysis. Instead of submitting a study on the 1,500 gallons per year exemption, Indiana included perchloroethylene in their list of exempt (nonphotochemically reactive) compounds and repealed 325 IAC 8-5-6, Indiana's perchloroethylene dry cleaning regulations.

On October 24, 1983 (48 FR 49097), USEPA proposed to add perchloroethylene to the list of organic compounds which are negligibly reactive.[3] Thus, if USEPA takes final action to add perchloroethylene to the list of negligibly reactive organic compounds, this conditional approval item may no longer be relevant, and Indiana's repeal of 325 IAC 8-5-6 may be approvable.

USEPA is proposing to take action on Indiana's perchloroethylene SIP consistent with its final rulemaking on the reactivity of perchloroethylene. If it determines that perchloroethylene is negligibly reactive such that RACT regulations on perchloroethylene dry cleaning sources are not required, then USEPA is proposing to approve the State's revised regulations with respect to perchloroethylene. [Based on the October 24, 1983, proposal, USEPA proposed to remove the perchloroethylene condition on May 15, 1984 (49 FR 20521).] Alternately, if USEPA determines that perchloroethylene is reactive (or that RACT regulations on perchloroethylene dry cleaning sources are required for

[1] For more detail on conditional approvals see 44 FR 38583 (July 2, 1979) and 44 FR 38583 (November 23, 1979).

[2] On October 6, 1980, the State resubmitted 1980 APC 15, recodified as 325 IAC Article 8. USEPA approved the State's recodification, but not the underlying regulations, on July 16, 1982 (47 FR 30972). On January 18, 1983, when USEPA codified its conditional approval of the RACT II regulations, it additionally revised the codification of the conditions of its October 27, 1982, approval of the RACT I regulation, 1980 APC 15, to reflect Indiana's recodification of that regulation to 325 IAC Article 8.

[3] If USEPA's Final Rulemaking on perchloroethylene is consistent with the October 24, 1983, Notice of Proposed Rulemaking, then regulation of perchloroethylene dry cleaners for purposes of ozone control may not be required.

other reasons), then USEPA is proposing to disapprove the revision and keep the perchloroethylene condition outstanding. USEPA will not, however, take final action on this proposal (or on its proposal to remove the outstanding perchloroethylene condition) until it takes final action on its October 24, 1983, proposal to add perchloroethylene to the list of negligibly reactive compounds.

6. *Conditional Approval Item—40 CFR 52.777(c)(1)(vi).* For regulation 325 IAC 8-1.1 Section 4, Test Methods and Procedures, the State committed itself to add USEPA approved test methods and procedures for determining VOC emissions from external floating roof tanks, synthesized pharmaceutical manufacturing, pneumatic rubber tire manufacturing, and graphic arts systems and to submit the new rule to USEPA as a SIP revision.

Analysis. Indiana has adopted test procedures for synthesized pharmaceutical manufacturing, pneumatic rubber tire manufacturing, graphic arts and external floating roof tanks. These procedures are referenced in new subsections (f) and (g) of 325 IAC 8-1.1-4.

If Indiana allows use of a non USEPA test method, its use must be submitted to USEPA as a SIP revision.

This conditional approval item is, therefore, satisfied by adoption of subsection (f) and (g).

7. *Conditional Approval Item—40 CFR 52.777(c)(1)(vii).* For regulation 325 IAC 8-4 Section 3, Petroleum (liquid storage), the State committed itself to revise the rule to meet the requirements of RACT on petroleum storage tanks for primary and secondary seals, to add recordkeeping and reporting requirements, and to submit the new rule to USEPA as a SIP revision.

Analysis. Section 3(c) pertains to petroleum liquid storage in external floating roof tanks. Recordkeeping and reporting requirements have been added in Section 3(d) which meet USEPA requirements.

In addition, Indiana revised Section 3(c)(2)(B)(iii), which concerns primary and secondary seal gaps, such that it now meets the requirements of RACT.

8. *Conditional Approval Item—40 CFR 52.777(c)(1)(viii).* For regulation 325 IAC 8-5 Section 5, Graphic Arts, the State committed itself to revise the rule to require capture system efficiencies of 75 percent for packaging rotogravure processes and 70 percent for flexographic printing processes and to submit the new rule to USEPA as a SIP revision.

Analysis. Indiana has revised this rule consistent with the requirements specified in the conditional approval item. Therefore, this condition has been satisfied.

9. *Miscellaneous Rule Change.* One rule revision was noted in addition to those changes described above. A revision was made to 325 IAC 8-2-3(b)(4), the portion of the can coating regulations dealing with end sealing compound operations. An interim limitation was changed from 4.2 pounds per gallon to 5.5 pounds per gallon of VOC, excluding water. This minor change is approvable. The final limitation of 3.7 pounds per gallon, which is effective after December 31, 1985, has not been changed.

Part III

St. Joseph and Elkhart Counties are nonattainment areas for ozone. Existing sources in these counties were not initially included in Indiana's VOC RACT I and RACT II regulations.

On September 7, 1984, Indiana submitted revisions to 325 IAC Article 8 which amend various Sections of 325 IAC 8-1.1, 8-2, 8-4, and 8-5 to include existing sources located in Elkhart and St. Joseph Counties. Essentially in parallel, the Board also adopted and submitted on September 12, 1984, VOC RACT I and II regulations developed by St. Joseph County for existing sources in that county only. These RACT VOC regulations are essentially identical to Indiana's September 7, 1984 version of 325 IAC Article 8, and state that they "do not apply to any facility subject to regulations under 325 IAC Article 8 by the Board". Because all RACT I and RACT II Source categories (except dry cleaning) are covered by Indiana's RACT regulation, USEPA is not discussing these St. Joseph County regulations nor is it rulemaking on them.

The significant amendments to 325 IAC Article 8 in Indiana's September 7, 1984, submittal are as follows:

1. *325 IAC 8-1.1-3* (Compliance Schedules) was amended to impose the following compliance schedule on the RACT I and RACT II sources in St. Joseph and Elkhart Counties.

(1) Plans and specifications for meeting the requirements of 325 IAC Article 8 must be submitted to the Board by June 30, 1985.

(2) Contracts for emission control systems or process modification must be awarded or purchase orders must be issued by August 31, 1985.

(3) On-site construction or installations must be initiated by October 31, 1985.

(4) On-site construction or installations must be completed by September 30, 1986.

(5) Final compliance must be demonstrated by December 31, 1986.

USEPA Position. These regulations were adopted by the Board in September, 1984 and promulgated in November, 1984. Therefore, the subject sources have about 2 years to comply with these RACT regulations. This is generally consistent with the amount of time sources have been given to comply with VOC RACT I and RACT II regulations. Therefore, this schedule is as expeditious as is now practicable, and USEPA is proposing it for approval.

2. *325 IAC 8-1.1-5* (Petition for Alternative Controls) was amended such that an owner or operator of a source constructed before January 1, 1980, in Elkhart and St. Joseph Counties may submit to the Board a petition for alternative controls by October 1, 1985. Additionally, an owner or operator of any source which is constructed after January 1, 1980, located in any county may at any time submit to the Board a petition for alternative controls. The petition for alternative controls must meet certain specified criteria.

USEPA Position. Indiana requires a detailed analysis before it approves an alternative analysis. USEPA has previously approved this mechanism for other counties in Indiana. Addtionally, the regulation states that Alternative Control Plans shall be submitted to the USEPA as a revision to the State Implementation Plan. USEPA will act upon these revisions accordingly. USEPA is proposing to approve this portion of the regulation.

3. *325 IAC 8-1.1-6* (Regarding Requirements for New Sources) was amended such that new facilities (as of January 1, 1980), which have potential emissions of 22.7 megagrams (25 tons) or more per year, located anywhere in the State, which are not otherwise regulated by other provisions of this Article, shall reduce their VOC emissions using Best Available Control Technolgy (BACT).

USEPA Position. The requirement of BACT is more appropriate for new sources than the State's previous requirement of at least 85 percent reduction in emissions. BACT is an appropriate standard for new sources in attainment areas as well as for new sources in nonattainment areas which are not otherwise subject to Indiana's Lowest Achievable Emission Rate (LAER) requirement in the State's new source review rules. USEPA is proposing to approve this provision.

4. *325 IAC 8-2* (Fabric and Vinyl Coating) was amended by adding a new Section 325 IAC 8-2-12 which specifically covers fabric and vinyl coating sources. This section allows

compliance by use of low solvent coatings (2.9 pounds per gallon (lbs/gal) for fabric coating and 4.8 lbs/gal for vinyl coating) or use of add-on controls. If an add-on control device is used the following requirements must be satisfied: Overall control efficiency of 67.5 percent, capture efficiency of 75 percent, and control efficiency of 90 percent.

USEPA Position. Indiana has documented that 4.8 lbs VOC/gal is RACT for the only vinyl coating source in Indiana (Uniroyal in St. Joseph County). It is, therefore, proposed that the 4.8 lbs VOC/gal limitation be approved as RACT in the State. Indiana has also demonstrated that 75 percent capture efficiency represents RACT, for Uniroyal. The technical bases for these RACT determinations are contained in USEPA's November 20, 1984, technical support document.

Conclusion

In the notices of final rulemaking, published on October 27, 1982 and January 18, 1983, USEPA conditionally approved 325 IAC Article 8. Although Indiana's amended VOC RACT I and II rules were submitted one year later than the State's earlier committed date of July 1983, they do satisfy six of USEPA's conditions. Additionally, Indiana has made its VOC RACT regulations applicable in St. Joseph and Elkhart Counties. USEPA has determined that these amended regulations meet six of the eight conditions and can be generally proposed for approval. With the exception of the portions of the regulations dealing with perchloroethylene, it is doing so. As to perchloroethylene, it will take final rulemaking action on these portions of the regulations after the Agency makes its ultimate determination on the reactivity of this compound. In general, EPA is proposing to approve these portions if the compound is determined to be negligibly reactive and will disapprove these portions otherwise.

Although these amendments are generally approvable and meet the requirements of six of the eight conditions, the following RACT deficiencies remains:

1. Indiana regulations exempt perchloroethylene dry cleaners from control. USEPA proposed on October 24, 1983, that control of perchloroethylene may no longer be required. Therefore, this exemption in Indiana's rule may ultimately be approvable.

2. Indiana's *Stage I Gasoline Dispensing Regulations* are subject to an outstanding conditional approval item which must be addressed by the State.

USEPA proposed action on the first of these two conditions on May 15, 1984, and will take further action on this and the second deficiency in future **Federal Register** notices.

USEPA will propose action on these two conditions in future **Federal Register** notices.

Under Executive Order 12291, today's action is not "Major". It has been submitted to the Office of Management and Budget (OMB) for review. Any comments from OMB to USEPA, and any USEPA response, are available for public inspection at the USEPA Region V office listed above.

Under 5 U.S.C. Section 605(b), the Administrator has certified that SIP approvals do not have a significant economic impact on a substantial number of small entities. (See 46 FR 8709.)

List of Subjects in 40 CFR Part 52

Air pollution control, Carbon monoxide, Hydrocarbons, Intergovernmental relations, Lead, Nitrogen dioxide, Ozone, Particulate Matter, Sulfur oxides.

(Secs. 110, 172 and 301(a) of the Clean Air Act, as amended (42 U.S.C. 7410, 7502, and 7601(a)))

Dated: December 31, 1984.

Valdas V. Adamkus,

Regional Administrator.

[FR Doc. 85-7337 Filed 3-27-85; 8:45 am]

BILLING CODE 6560-50-M

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40 CFR Part 81

[EPA Docket No. 107-PA-24; A-3-FRL-2804-6]

Designation of Areas for Air Quality Planning Purposes; Attainment Status Designations; Pennsylvania

AGENCY: Environmental Protection Agency.

ACTION: Proposed rule.

SUMMARY: EPA is proposing to approve a request from the Commonwealth of Pennsylvania to revise the attainment status designation of the Allegheny County portion of the Southwest Pennsylvania Intrastate Air Quality Control Region (AQCR) with respect to nitrogen dioxide (NO_2) to "Better Than National Standards."

Allegheny County is currently designated "Cannot Be Classified" with respect to the primary and secondary National Ambient Air Quality Standards (NAAQS) for No_2. The request for redesignation has been made based upon eight quarters of monitoring data demonstrating attainment of the NO_2 NAAQS.

The purpose of this notice is to discuss the results of EPA's review of the Commonwealth's redesignation request and to solicit public comments on the revisions and EPA's proposed action.

DATE: Comments must be submitted on or before April 29, 1985.

ADDRESSES: Copies of the proposed redesignation request and accompanying support material are available for public inspection during normal business hours at the following locations:

U.S. Environmental Protection Agency, Region III, Air Management Division, 841 Chestnut Street, Philadelphia, PA 19107, Attn: Denis Lohman

Commonwealth of Pennsylvania, Department of Environmental Resources, Bureau of Air Quality Control, 200 North 3rd Street, Harrisburg, PA 17120, Attn: Gary Triplett

Allegheny County Health Department, Bureau of Air Pollution Control, 301 Thirty-ninth Street, Pittsburgh, PA 15201, Attn: Roger Westman

All comments on the proposed revision submitted with 30 days of publication of this notice will be considered and should be directed to Mr. Glenn Hanson, Chief of the PA/WVA Section, EPA Region III, 841 Chestnut Street, Philadelphia, PA 19107, EPA Docket No. 107-PA-24.

FOR FURTHER INFORMATION CONTACT: Denis Lohman (3AM11) at the EPA, Region III address above or call (215) 597-8375.

SUPPLEMENTARY INFORMATION: Under section 107(d) of the Clean Air Act (ACT), the Administrator of EPA has promulgated the NAAQS attainment status for all areas within each state (see, 43 FR 8962 (March 3, 1978)). These area designations are subject to revision whenever sufficient data become available to warrant a redesignation.

Background

The Pennsylvania Department of Environmental Resources endorsed and forwarded to the U.S. Environmental Protection Agency (EPA), on December 24, 1984, a request from the Allegheny County Health Department (ACHD) to redesignate Allegheny County with respect to NO_2 from "Cannot Be Classified" to "Better Than National Standards."

The present "Cannot Be Classified." designation for NO_2 in the County was based upon a lack of available monitoring data. At the time of the

preparation of the 1979 State Implementation Plan (SIP) the ACHD did not monitor for NO_2. However, there was reason to believe that the County was not nonattainment with respect to NO_2. First, the estimated emissions of NO_2 were about half of the national average on a per capita basis. Secondly, the emissions from mobile sources, comprising 52 percent of the total emissions, were expected to decrease with implementation of the Federal Motor Vehicle Control Program. In addition, there were no known plans for expansion or construction of major NO_2 emission sources.

As a part of the NO_2 control strategy in the 1979 SIP, the ACHD agreed to install at least two NO_2 monitors at different locations in the County. One monitor was to be in an area of mixed residential, commercial and industrial character outside of and downwind of the central business district. The second monitor was to be in the central business district.

The monitoring of NO_2 began, as planned, in April of 1980, at the downwind location (Lawrenceville). Monitoring in the central business district began in January of 1981. Because of problems with equipment malfunctions, the initial data, although indicating compliance with the NO_2 ambient standards, did not meet the complete data criteria of 75% data availability.

However, by the end of the third quarter of 1984, eight consecutive quarters of complying data, meeting the completeness criteria, had been collected at the Lawrenceville site. At the Downtown site the latest five quarters of data met the completeness criteria. The remaining data were slightly less complete than required. The data measured were consistent with the Lawrenceville site and the averages were well below the NAAQS. The greatest 12-month average concentration of NO_2 was 0.036 parts per million (ppm) at the Downtown location. This concentration is 72% of the NAAQS of 0.05 ppm (100 micrograms per cubic meter).

Therefore, after reviewing the data submitted and considering the information summarized above, EPA is proposing to approve this redesignation request.

Interested parties are invited to submit comments on this action. EPA will consider comments received within 30 days of publication of this notice.

Administrative Procedures

Under 5 U.S.C. 605(b), the Administrator has certified that redesignations do not have a significant economic impact on a substantial number of small entities (see 46 FR 8709).

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

List of Subjects in 40 CFR Part 81

Air pollution control, National parks, Wilderness areas.

(Sec. 107(d), Clean Air Act, as amended (42 U.S.C. 7407))

Dated: February 20, 1985.

Stanley L. Laskowski,

Acting Regional Administrator.

[FR Doc. 85-7088 Filed 3-27-85; 8:45 am]

BILLING CODE 6560-50-M

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40 CFR Part 261

[SW-1-FRL-2804-2]

Hazardous Waste Management System; Identification and Listing of Hazardous Waste; Correction and Extension of Comment Period

AGENCY: U.S. Environmental Protection Agency.

ACTION: Proposed rules; Correction and Extension of Comment Period.

SUMMARY: The Environmental Protection Agency (EPA) today is making several technical corrections to a proposed rule and request for comment published in the **Federal Register** on February 26, 1985 (50 FR 7882-7900). That amendment proposed to exclude solid wastes generated at six particular generating facilities from the lists of hazardous wastes contained in 40 CFR 261.31 and 261.32. The preamble to that proposal described the Agency's approach to determine whether a petitioned waste can be excluded. In particular, the approach incorporates a modelling scheme which predicts reasonable worst case contaminant levels in ground water in nearby receptor wells (*i.e.*, the model estimates the ability of an aquifer to dilute the toxicant from a specific volume of waste). The receptor well concentration determined by the model will then be compared directly to a health-based standard. The preamble discussion included a number of technical errors with respect to the concentration of toxic constituents in receptor wells. In that proposal, the Agency explained that it would apply a maximum dilution factor of 50 times the health-based standard when small quantities of waste were involved. However, in several instances, the values reported did not reflect this maximum value. This notice, therefore, intends to correct those receptor well values, where appropriate. The corrections made today will not have any effect on the decisions proposed on February 26, 1985. These corrections are being made only for the sake of clarity since this was the first presentation of our modelling approach in delisting evaluations.

DATES: The comment period on the February 26, 1985, proposal, including this correction notice, is extended to April 29, 1985.

FOR FURTHER INFORMATION CONTACT: RCRA Hotline, toll free at (800) 424-9346, or at (202) 382-3000. For technical information, contact Mr. Myles Morse, Office of Solid Waste (WH-562B), U.S. Environmental Protection Agency, 401 M Street, SW., Washington, D.C. 20460, (202) 475-8551.

SUPPLEMENTARY INFORMATION:

Petitions

Today's corrections involve Keymark Corporation, Peekskill, New York; Monroe Automobile, Paragould, Arkansas; and Vermont American Corporation, Newark, Ohio.

I. Keymark Corporation

Table 2 in Section B: Agency Analysis and Action should read as follows:

VHS MODEL: CALCULATED RECEPTOR WELL CONCENTRATIONS (PPM)

	As	Ba	Cd	Pb	Hg	Ni	Se	Ag
Filter sludge	<0.00004	<0.002	<0.0002	<0.002	<0.00002	0.002	<0.00002	<0.0002

HEALTH-BASED STANDARDS

0.05	1.0	0.01	0.05	0.002	0.932	0.01	0.05

II. Monroe Auto

Table 5 in Section B: Agency Analysis and Action should read as follows:

VHS MODEL: CALCULATED RECEPTOR WELL CONCENTRATIONS (PPM)

	As	Ba	Pb	Hg	Se	Ag
Filter sludge	<0.02	<0.05	<0.02	<0.001	<0.004	<0.02

HEALTH-BASED STANDARD

0.05	1.0	0.05	0.002	0.01	0.05

III. Vermont American Corporation

Table 2 in Section A: Petition for Exclusion should read as follows:

MAXIMUM LEACHATE CONCENTRATION (PPM)

	Cd	Cr	Ni	CN [1]	As	Ba	Pb	Hg	Se	Ag
Filter cake	<0.01	1.23	0.41	<0.01	0.035	<0.2	<0.1	0.0046	<0.005	<0.01

[1] Distilled water extract.

Table 3 in Section B: Agency Analysis and Action should read as follows:

VHS MODEL: CALCULATED RECEPTOR WELL CONCENTRATIONS (PPM)

	Cd	Cr	Ni	CN
Filter cake	<0.0002	0.024	0.008	<0.0002

HEALTH-BASED STANDARD

0.01	0.05	0.632	0.2	

Table 4 should read as follows:

VHS MODEL: CALCULATED RECEPTOR WELL CONCENTRATIONS (PPM)

	As	Ba	Pb	Hg	Se	Ag
Filter cake	<0.0007	<0.004	<0.002	<0.00009	<0.0001	<0.0002

HEALTH-BASED STANDARD

0.05	1	0.05	0.002	0.01	0.05

List of Subjects in 40 CFR Part 261

Hazardous materials, Waste treatment and disposal, Recycling.

Dated: March 12, 1985.

Jack W. McGraw,

Acting Assistant Administrator for Solid Waste and Emergency Response.

[FR Doc. 85-7089 Filed 3-27-85; 8:45 am]

BILLING CODE 6560-50-M

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[MM Docket No. 83-520; RM-4417]

TV Broadcast Stations in Chandler, MN

AGENCY: Federal Communications Commission.

ACTION: Proposed Rule; Dismissal of Petition.

SUMMARY: Action taken herein dismisses a petition filed by West Central Minnesota Educational Television Company, to assign UHF Television Channel *28 to Chandler, Minnesota. The petition is dismissed because no expression of interest has been filed by the petitioner or any other party.

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

FOR FURTHER INFORMATION CONTACT: Kathleen Scheuerle, Mass Media Bureau, (202) 634-6530.

SUPPLEMENTARY INFORMATION:

List of Subjects in 47 CFR Part 73

Television broadcasting.

Report and Order

In the matter of Amendment of § 73.606(b), Table of Assignments, TV Broadcast Stations. (Chandler, Minnesota) (MM Docket No. 83-520, RM-4417).

Adopted: March 6, 1985.

Released: March 21, 1985.

By the Chief, Policy and Rules Division.

1. Before the Commission is the *Notice of Proposed Rule Making*, 48 FR 28490, published June 22, 1983, proposing the assignment of UHF Television Channel *28 to Chandler, Minnesota, for noncommercial educational broadcast use, in response to a petition filed by West Central Minnesota Educational Television Company.

2. The Commission did not receive comments from the petitioner, or any other party, and consistent with the policies and procedures set forth in the Appendix to the *Notice*, we shall dismiss the petition to assign a television channel to Chandler, Minnesota.

3. In view of the foregoing, it is ordered, that the petition of West Central Minnesota Educational Television Company proposing the assignment of UHF Television Channel *28 to Chandler, Minnesota, is hereby dismissed.

4. It is further ordered, that this proceeding is terminated.

5. For further information concerning this proceeding, contact Kathleen Scheuerle, Mass Media Bureau, (202) 634-6530.

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

Federal Communications Commission.

Charles Schott,

Chief, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 85-7300 Filed 3-27-85; 8:45 am]

BILLING CODE 6712-01

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

49 CFR Part 531

[Docket No. FE-85-01, Notice 1]

Passenger Automobile Average Fuel Economy Standards Post-1985 Model Years

AGENCY: National Highway Traffic Safety Administration (NHTSA), DOT.

ACTION: Request for comments; Grant of petitions for rulemaking.

SUMMARY: General Motors (GM) and Ford have submitted petitions for rulemaking requesting that NHTSA reduce the automotive fuel economy standards for passenger cars for the 1986 model year and beyond from 27.5 mpg to 26.0 mpg. This notice grants the GM and Ford petitions and requests comments on the issues raised by the petitioners with respect to model year 1986.

The Motor Vehicle Information and Cost Savings Act specifies a standard of 27.5 mpg for passenger automobiles for those model years, but allows the agency to amend that standard and establish a different one if the agency determines that the maximum feasible level of fuel economy is other than 27.5 mpg. Both GM and Ford state that they may be unable to meet the 27.5 mpg standard unless they take drastic measures such as product restrictions. According to the petitioners, such actions could result in significant losses of jobs and other economic harms.

DATE: Written comments on this notice must be submitted no later than April 29, 1985.

ADDRESSES: Comments on this notice must refer to the docket and notice numbers set forth above and be submitted (preferably in 10 copies) to the Docket Section, National Highway Traffic Safety Administration, Room 5109, 400 Seventh Street, SW., Washington, D.C. 20590. Submissions containing information for which confidential treatment is requested should be submitted (3 copies) to Chief Counsel, National Highway Traffic Safety Administration, Room 5219, 400 Seventh Street, SW., Washington, D.C. 20590, and 7 additional copies from which the purportedly confidential information has been deleted should be sent to the Docket Section.

FOR FURTHER INFORMATION CONTACT: Mr. William Boehly, Office of Market Incentives, National Highway Traffic Safety Administration, 400 Seventh Street, SW., Washington, D.C. 20590 (202-426-1740).

SUPPLEMENTARY INFORMATION: On November 28, 1984, NHTSA published a notice announcing that it was commencing a rulemaking proceeding to consider whether the fuel economy standards for passenger cars manufactured in model years 1987 and thereafter should be amended (49 FR 46770). This action was taken in response to a petition for rulemaking from the Center for Auto Safety (CFAS) requesting that those standards be increased.

This notice grants petitions from GM and Ford requesting the reduction of the fuel economy standards for passenger cars manufactured in model years 1986 and thereafter and thereby expands the scope of the agency's ongoing consideration of fuel economy standards to include the 1986 model year. Those petitioners state that factors beyond their control have reduced their fuel economy capability. Primary among those factors are lower gasoline prices and resultant greater consumer demand for larger cars and engines.

As a first step in its consideration of the fuel economy standards for passenger cars, the agency is focusing its attention on the 1986 model year. NHTSA believes that this approach is appropriate in view of the possibility of serious economic harm cited by GM and Ford and the limited remaining time for amending the 1986 standard. If the agency were to propose to adopt a rule reducing the standard for 1986, it would have to complete the rulemaking before the beginning of that model year. As discussed by the agency in a previous **Federal Register** notice, amendments reducing a standard for a particular model year may be made until the beginning of that year, but not after that time. See 49 FR 41250, 41254-5 (October 22, 1984). Since model years begin in the fall, a final rule reducing the 1986 standard would have to be issued by this fall. The nearness of that deadline would necessitate that each phase of the rulemaking, including the period for commenting on a proposal, be shortened so that the rulemaking could be completed in a timely fashion.

The agency wishes to emphasize that the granting of a petition and the discussion of these timely problems does not necessarily mean that a rule will be proposed or adopted. The determination of whether to take those steps will be made in the course of the rulemaking proceeding, in accordance with statutory criteria.

NHTSA has already begun the process of carefully analyzing available data to determine whether a proposal to reduce the 1986 standard should be issued. In order to help it make that decision, the agency has sent letters to the petitioners requesting additional information. Copies of those letters have been placed in the public docket for this rulemaking. The agency is also requesting that the public provide comments on the effects of both reducing the 27.5 mpg standard and retaining it for that model year. The agency is particularly interested in quantitative evaluations of anticipated economic impacts and energy conservation impacts.

Interested persons are invited to submit comments. It is requested but not required that 10 copies be submitted. A 30-day comment period is provided.

All comments must be limited not to exceed 15 pages in length. (49 CFR 553.21) Necessary attachments may be appended to these submissions without regard to the 15-page limit. This limitation is intended to encourage commenters to detail their primary arguments in a concise fashion.

If a commenter wishes to submit certain information under a claim of confidentiality, three copies of the complete submission, including purportedly confidential information, should be submitted to the Chief Counsel, NHTSA, at the street address given above, and seven copies from which purportedly confidential information has been deleted should be submitted to the Docket Section. A request for confidentiality should be accompanied by a cover letter setting forth the information specified in the agency's confidential business information regulation (49 CFR Part 512).

All comments received before the close of business on the comment closing date indicated above will be considered, and will be available for examination in the docket at the above address both before and after that date. To the extent possible, comments filed after the closing date will also be considered. The NHTSA will continue to file relevant material as it becomes available in the docket after the closing date, and it is recommended that interested persons continue to examine the docket for new material.

Those persons desiring to be notified upon receipt of their comments in the rules docket should enclose, in the envelope with their comments, a self-addressed stamped postcard. Upon receiving the comments, the docket supervisor will return the postcard by mail.

List of Subjects in 49 CFR 531

Energy conservation, Gasoline, Imports, Motor vehicles.

(Sec. 9, Pub. L. 89-670, 80 Stat. 931 (49 U.S.C. 1657); sec. 301, Pub. L. 94-163, 89 Stat. 901 (15 U.S.C. 2002); delegations of authority at 49 CFR 1.50 and 49 CFR 501.8)

Issued on March 25, 1985.

Barry Felrice,

Associate Administrator for Rulemaking.

[FR Doc. 85-7326 Filed 3-27-85; 8:45 am]

BILLING CODE 4910-59-M

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

Endangered and Threatened Wildlife and Plants; Proposal To Determine Oxypolis Canbyi (Canby's Dropwort) To Be an Endangered Species

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Proposed rule.

SUMMARY: The Service proposes to determine *Oxypolis canbyi* (Canby's dropwort) as an endangered plant, and thereby provide the species needed protection under the authority contained in the Endangered Species Act of 1973, as amended. This species is known from one site in Maryland, one site in North Carolina, two in South Carolina, and three in Georgia. Its continued existence is threatened by the loss of wetland habitats in the coastal plain of the mid-Atlantic region. Drainage of lowland areas for additional croplands, pasture, and/or pine plantations has been the major cause of the species' decline. Highway improvements could also threaten both South Carolina populations. Critical habitat is not being determined. Comments are solicited.

DATES: Comments from all interested parties must be received by May 28, 1985. Public hearing requests must be received by May 13, 1985.

ADDRESSES: Comments and materials concerning this proposal should be sent to: Regional Director, U.S. Fish and Wildlife Service, One Gateway Center, Suite 700, Newton Corner, Massachusetts 02158. Comments and materials received will be available for public inspection, by appointment, during normal business hours at the above address.

FOR FURTHER INFORMATION CONTACT: Richard W. Dyer at the above address (617/965-5100 or FTS 829-9316).

SUPPLEMENTARY INFORMATION:

Background

Canby's dropwort is a plant of the parsley family (*Apiaceae*) found at only seven locations in Maryland, Georgia, North Carolina, and South Carolina. The perennial plants ahve a slight dill fragrance, stand 0.8–1.2 meters tall, have slender "quill-like" leaves, and bear compound umbels of small flowers. The five-parted flowers appear in May through early August and have white petals and pale green sepals, some of which are tinged with red. The species' habitats include swamps, shallow pineland ponds, and wet pine savannas.

Oxypolis canbyi was originally described as a variety of a more common species, *Oxypolis filiformis*, by Coulter and Rose in 1900; however, Meritt L. Fernald elevated the taxon to a full species in 1939. Recent work by Tucker *et al.* (1983) and Kral (1981) confirms Fernald's treatment. Although superficial examination has been cause for some confusion between the two taxa, *Oxypolis canbyi* is clearly distinguishable from *Oxypolis filiformis* on analysis of the mature fruit, leaves, and, most notably, the rootstock. *Oxypolis canbyi* has a strong colonizing habit and spreads vigorously by a pale, fleshy rhizome. The most significant threat to *Oxypolis canbyi* has been and continues to be the loss of wetland habitats on the lowland plain of the mid-Atlantic coast. Several populations have been lost as shallow ponds and wetlands were ditched and drained for conversion to lowland pasture, pine plantations, soybean fields, and other agricultural uses. Alteration of groundwater tables as a result of suburban sprawl, road construction, and other forms of human encroachment is also believed to be a cause of the species' decline.

Seven populations are known to occur in the States of Maryland, North Carolina, South Carolina, and Georgia; the species is believed extirpated from Delaware. A brief State-by-State summary of the species' status follows.

Delaware: Oxypolis canbyi has not been known to occur in the State since 1894. At least 18 collections of the plant were made in "swamps and meadows" of Ellendale in Sussex County between the years 1867 and 1894. No other historical collections are known to exist from the State. Much of the area south of Ellendale, where the population was believed to have occurred, has been ditched and drained for agricultural purposes. Recent intensive field searches of the area for this historical site or other populations have been unproductive. The ditching and draining with subsequent changes in vegetative succession and land use has greatly modified the area, and the plant is now considered extirpated from the State.

Maryland: One population of approximately 36 stems (Boone *et al.* 1984) was found within the Chester River watershed in Queen Anne's County in 1982. Previously, the species had not been known to occur in the State. The population, however, is within the area of the proposed Upper Chester River Watershed Channelization Project. The Soil Conservation Service (SCS) has been officially advised of the species' occurrence in the project area and of the U.S. Fish and Wildlife Service's (FWS) intention to proceed with the preparation of this proposed rule. The FWS is optimistic that proper project design and implementation will provide solutions to protecting the site.

Georgia: Oxypolis canbyi is officially listed by the State of Georgia as an endangered plant species. Extant populations are known in Burke, Lee, and Sumter Counties. There is a record for Dooly County near Unadilla but the last known occurrence was in 1953. Two Burke County records were known from the vicinity of Waynesboro.

North Carolina: Oxypolis canbyi is recorded for one site in North Carolina. The population occurs in a Carolina bay (physiographic land forms which are shallow egg-shaped depressions) in Scotland County. The site was first discovered in 1984 and is owned in part by the Nature Conservancy.

South Carolina: Oxypolis canbyi is recorded from four sites in the State, only two of which now support the species. A vigorous population of approximately 600 stems occurs on private land in Bamberg County and a second population of about 500 stems in colonies of 10–20 stems each, exists in Colleton County. The Colleton site is now owned by The Nature Conservancy. Protection efforts are also underway for the Bamberg site; however, both populations could be threatened by possible roadside maintenance or improvements.

The historical Hampton County population is along a railroad near Luray. It has not been observed since 1956 and is believed extirpated. The former Berkeley County population near Pineville was last confirmed in 1961. The Berkeley County habitat, a grass-sedge Carolina bay, is now bisected by a small secondary road. Although *Oxypolis canbyi* was positively identified at the site in 1961, recent investigations have determined that only *Oxypolis filiformis* now occurs there. Road construction may have possibly altered the hydrology

and vegetative succession of the site, as the area is no longer suitable for *O. canbyi*.

Oxypolis canbyi was first recommended for Federal listing as a threatened plant species by the Smithsonian Institution in its December 15, 1974, report to Congress, "Report on Endangered and Threatened Plant Species of the United States." On July 1, 1975, the Service published a notice of review in the **Federal Register** (40 FR 27823–27924) of its acceptance of the Smithsonian report as a petition within the context of Section 4(c)(2) of the Act (petition acceptance is now covered by Section 4(b)(3) of the Act, as amended). Canby's dropwort was recognized as a "category 2" candidate in the Service's **Federal Register** notice of December 15, 1980 (45 FR 82479). Category 2 candidates are defined as taxa for which existing information indicates the possible appropriateness of proposing to list as endangered or threatened, but for which sufficient information is not presently available to biologically support a proposed rule.

In recent years, intensive field investigations have been undertaken by State natural resource agencies, private conservation groups, and professional botanists to more thoroughly assess this species' status throughout its range. As a result of this work, *Oxypolis canbyi* was determined to be a category 1 plant in the Service's November 28, 1983, supplement (48 FR 53639) to the 1980 notice. Category 1 taxa are defined as species for which sufficient information is on hand to support the biological appropriateness of proposing to list.

The Endangered Species Act Amendments of 1982 required that all petitions pending as of October 13, 1982, be treated as having been newly submitted on that date. The species listed in the December 15, 1980, notice of review were considered to be petitioned and the deadline for a finding on those species, including *Oxypolis canbyi* was October 13, 1983. October 13, 1983, and again on October 13, 1984, the petition finding was made that listing *Oxypolis canbyi* was warranted but precluded by other pending listing actions, in accordance with Section 4(b)(3)(B)(iii) of the Act; notification of the 1983 finding was published in the January 20, 1984, **Federal Register** (49 FR 2485). Such a finding requires a recycling of the petition, pursuant to Section 4(b)(3)(c)(i) of the Act. Therefore, a new finding must be made on or before October 13, 1985; this proposed rule constitutes the finding that the petitioned action is warranted, and proposes to implement the action in accordance with section 4(b)(3)(ii) of the Act.

Summary of Factors Affecting the Species

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 (to be codified at 50 CFR Part 424, see 48 FR 38900, October 1, 1984) set forth the procedures for adding species to the Federal lists. A species may be determined to be an endangered or threatened species due to one or more of the five factors described in Section 4(a)(1). These factors and their application to *Oxypolis canbyi* (Coulter and Rose) Fernald are as follows:

A. *The present or threatened destruction, modification, or curtailment of its habitat or range.* The most significant threat to *Oxypolis canbyi* is the direct loss or alteration of its wetland habitats. Ditching and draining of lowland areas has altered the groundwater table and changed the vegetative composition in many areas of the mid-Atlantic coastal plain where the species historically occurred. Most of the ditching and draining has been for agricultural purposes, including increasing acreage for soybean production, lowland pasture, and pine plantations. Some shallow ponds and depressions have also been dredged to create small reservoirs and "tanks" for watering livestock. In addition to causing direct loss of wetland habitats, the lowering of the water table enables other plants to become established, modifies vegetative succession, and makes sites less conducive to the growth and reproduction of *Oxypolis canbyi*. Road construction at the Berkeley County, South Carolina, site may have altered the groundwater table at a site where the plant historically occurred. Roadside maintenance or improvements could also threaten the two remaining South Carolina populations.

The only known Maryland population is within the area of the SCS Channelization Project for the Upper Chester River Watershed. The purposes of the project are to provide watershed protection, flood protection and agricultural drainage on 134 hectares (331 acres) of cropland and wildlife habitat in both Maryland and Delaware. The project would be completed over a seven-year period and require 156 kilometers (97 miles) of drainage channel. Flexibility in final project design and fulfillment of the provisions of an interagency agreement signed by the SCS and the FWS on January 13, 1983, will assist in developing solutions to potential conflicts.

The extant populations in southwestern Georgia and North Carolina are also threatened by the continued loss or drainage of shallow wetlands and wet pineland savannas. The draining of areas for pine plantations and soybean fields causes the most significant impacts.

B. *Overutilization for commercial, recreational, scientific or educational purposes.* Although many collections were made at the now extirpated Ellendale, Delaware site, scientific collecting does not appear to have been a major cause of the species' decline. Because only six populations are now known to occur, however, most of which are located in easily accessible sites, the existing populations could be exploited for educational or scientific purposes.

C. *Disease or predation.* Not applicable to this species.

D. *The inadequacy of existing regulatory mechanisms.* Georgia presently lists *Oxypolis canbyi* as a State endangered species under protection of the Georgia Wild Flower Preservation Act of 1973, which prohibits digging, removal, or sale of State listed plants from public lands without the approval of the State management authority (Georgia Department of Natural Resources). North Carolina's legislation to protect rare plants (N.C. General Statute 19–B, 202.12–202.19) provides protection from intrastate trade and provisions for monitoring and proper management. Section 404 of the Federal Water Pollution Control Act could potentially provide some protection to the species' habitats; however, many of the sites where the plants occur do not meet "wetlands" criteria under Section 404. South Carolina, Maryland, and Delaware do not have state legislation protecting rare and endangered plants. The Endangered Species Act will provide additional protection.

E. *Other natural or man-made factors affecting its continued existence.* Alteration or modification of the groundwater table by increasing suburban development, drawdown for water supply, road construction, etc., could indirectly impact the species' habitats. There are indications that roads and highways have altered the groundwater regime where *Oxypolis canbyi* historically occurred. Although it is difficult to state with certainty that one specific factor caused the plants' demise, the impacted areas no longer provide the plants' needed life requirements.

The Service has carefully assessed the best scientific information available regarding the past, present, and future

threats faced by this species in determining to propose this rule. Based on this evaluation, the preferred action is to list *Oxypolis canbyi* as endangered. Due to the immediate and continuing loss of wetland habitats, the remaining populations are particularly vulnerable and in need of protection. In addition, the protection of the local areas where the plants occur may not provide sufficient protection if development or actions in other areas of the watershed (i.e., tributary streams) affect the local flow regime or groundwater table. An understanding of the groundwater flow regime and total watershed management considerations, therefore, becomes particularly crucial to properly protecting existing *Oxypolis* sites.

Critical Habitat

Section 4(a)(3) of the Act, as amended, requires that to the maximum extent prudent and determinable, the Secretary designate any habitat of a species which is considered to be critical habitat at the time the species is determined to be endangered or threatened. The Service finds that designation of critical habitat is not prudent for this species at this time. The Service, the natural resource agencies of the states in which the species occur, and The Nature Conservancy believe that publication of specific areas in which *Oxypolis canbyi* occurs would likely subject the species to increased disturbance by curiosity seekers and vandals. These potential threats are of particular significance since the sites are easily accessible, the habitats are fragile, and increased public access would be difficult to control under existing authorities. Consequently, no critical habitat is proposed for this plant species.

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 and State agencies, private conservation organizations and individuals. Because of the precarious status of *Oxypolis canbyi*, The Nature Conservancy has already made significant contributions to conserving the species by acquiring the habitat of one of the known populations, and is actively working to protect other sites as well. Other conservation measures, including required protection efforts by Federal agencies and prohibitions against taking are discussed, in part, below.

Section 7(a) of the Act, as amended, requires Federal agencies to evaluate their actions with respect to any species that is proposed or listed as endangered or threatened, and with respect to its critical habitat, if any is being designated. Regulations implementing this interagency cooperation provision of the Act are codified at 50 CFR Part 402, and are now under revision (see proposal at 48 FR 29990, June 29, 1983). Section 7(a)(4) requires Federal agencies to informally confer with the Service on any action that is likely to jeopardize the continued existence of a proposed species or result in destruction or adverse modification of proposed critical habitat. If a species is subsequently listed, 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 such a species or to destroy or adversely modify its critical habitat. If a Federal action may affect a listed species or its critical habitat, the responsible agency must enter into formal consultation with the Service. The only known current Federal action that may affect *Oxypolis canybi* is the SCS Channelization Project for the Upper Chester River Watershed. Cooperative discussions between the FWS and the SCS have been initiated and field inspections are currently being planned.

The Act and its implementing regulations found at 50 CFR 17.61, 17.62, and 17.63 set forth a series of general trade prohibitions and exceptions that apply to all endangered plant species. With respect to *Oxypolis canbyi*, all trade prohibitions of Section 9(a)(2) of the Act, implemented by 50 CFR 17.61, would apply. With certain exceptions, these prohibitions would make it illegal for any person subject to the jurisdiction of the United States to import or export, transport in interstate or foreign commerce in the course of a commercial activity, or sell or offer for sale this species in interstate or foreign commerce. The Act and 50 CFR 17.62 and 17.63 also provide for the issuance of permits to carry out otherwise prohibited activities involving endangered species under certain circumstances. There is no known commercial trade in *Oxypolis canbyi* and the Service therefore anticipates few, if any, requests for such permits.

Section 9(a)(2)(B) of the Act, as amended in 1982, prohibits the removal and reduction to possession of endangered plant species from areas under Federal jurisdiction. Permits for exceptions to this prohibition are available through Section 10(a) of the Act, until revised regulations are promulgated to incorporate the 1982 Amendments. Proposed regulations implementing this new prohibition were published on July 8, 1983 (48 FR 31417), and it is anticipated that these will be made final following public comment. This prohibition would apply to *Oxypolis canbyi* although no known populations exist on Federal lands. 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 (703/235–1903).

Public Comments Solicited

The Service intends that any final rule adopted will be accurate and as effective as possible in the conservation of endangered or threatened species. Therefore, any comments or suggestions from the public, other concerned governmental agencies, the scientific community, industry, or any other interested party concerning any aspect of these proposed rules are hereby solicited. Comments are particularly sought concerning:

(1) Biological, commercial trade, or other relevant data concerning any threat (or lack thereof) to *Oxypolis canbyi;*

(2) The location of any additional populations of this species and the reasons why any habitat should or should not be determined to be critical habitat as provided by Section 4 of the Act;

(3) Additional information concerning the range and distribution of this species; and

(4) Current or planned activities that may impact existing populations.

Final promulgation of a regulation on *Oxypolis canbyi* will take into consideration the comments and any additional information received by the Service, and such communications may lead to a final regulation that differs from this proposal.

The Endangered Species Act provides for a public hearing on this proposal, if requested. Requests must be filed within 45 days of the date of the proposal. Such requests must be made in writing and addressed to the Regional Director, U.S. Fish and Wildlife Service, One Gateway Center, Suite 700, Newton Corner, Massachusetts 02158.

National Environmental Policy Act

The Service has determined that an Environmental Assessment, as defined by the National Environmental Policy Act of 1969, need not be prepared in connection with regulations adopted

pursuant to Section 4(a) of the Endangered Species Act of 1973, as amended. A notice outlining the Service's reasons for this determination was published in the **Federal Register** on October 25, 1983 (48 FR 49244).

Literature Cited

Boone, D.D., G.H. Fenwick, and F. Hirst. 1984. The Rediscovery of *Oxypolis canbyi* on the Delmarva Peninsula. Bartonia 50:21–22.

Kral, R.D. 1981. Notes on Some "Quill"-Leaved Umbellifers. Sida 9:124–134.

Tucker, A.O., N.H. Dill, C.R. Broome, C.E. Phillips, and M.J. Maciarello. 1979. Rare and Endangered Vascular Plant Species in Delaware. U.S. Fish and Wildlife Service, Region 5, Newton Corner, Massachusetts.

Tucker, A.O., N.H. Dill, T.D. Pizzolato, and R.D. Kral. 1983. Nomenclature, Distribution, Chromosome Numbers, and Fruit Morphology of *Oxypolis canbyi* and *Oxypolis filiformis* (Apiaceae). Systematic Botany. 8:299–304.

Author

The author of this proposed rule is Richard W. Dyer, Endangered Species Staff, U.S. Fish and Wildlife Service, One Gateway Center, Suite 700, Newton Corner, Massachusetts 02158 (617/965–5100 or FTS 829–9316).

List of Subjects in 50 CFR Part 17

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

Proposed Regulation Promulgation

PART 17—[AMENDED]

Accordingly, it is hereby proposed to amend Part 17, Subchapter B of Chapter I, Title 50 of the Code of Federal Regulations, as set forth below:

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

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

§ 17.12 [Amended]

2. It is proposed to amend § 17.12(h) by adding the following, in alphabetical order under family *Apiaceae*, to the List of Endangered and Threatened Plants:

* * * * *

(h) * * *

Species		Historic range	Status	When listed	Critical habitat	Special rules
Scientific name	Common name					
*	*	*	*	*	*	
Apiaceae—Parsley family						
Oxypolis canbyi	Canby's dropwort	U.S.A. (DE, GA, MD, NC, SC).	E		N/A	N/A
*	*	*	*	**	*	

Dated: March 12, 1985.

J. Craig Potter,

Acting Assistant Secretary for Fish and Wildlife and Parks.

[FR Doc. 85–7331 Filed 3–27–85; 8:45 am]

BILLING CODE 4310–55–M

50 CFR Part 17

Endangered and Threatened Wildlife and Plants; Notice of Withdrawal of Proposed Rules to List Hedeoma diffusum and Phlox pilosa var. longipilosa

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Withdrawal of proposed rules.

SUMMARY: The Service is withdrawing the rules published in the **Federal Register** of June 29, 1983 (48 FR 29929), and August 29, 1983 (48 FR 39093), that proposed *Hedeoma diffusum* (Flagstaff pennyroyal) and *Phlox pilosa* var. *longipilosa* (long-haired phlox), respectively, to be threatened species. New data indicate *Hedeoma diffusum* is more widely distributed than known at the time of proposal, with several of the new sites located and protected in the Red Rock-Secret Mountain Wilderness Area. New data indicate *Phlox pilosa* var. *longipilosa* is more abundant in its habitat and subject to less threat than believed at the time of the proposed rule. These species are not considered likely to become endangered in the foreseeable future.

DATE: The withdrawal is effective March 28, 1985.

ADDRESS: The complete file for this notice is available for inspection, by appointment, during normal business hours at the Regional Office, U.S. Fish and Wildlife Service, 500 Gold Avenue, SW., Room 4000, Albuquerque, New Mexico 87103.

FOR FURTHER INFORMATION CONTACT: Peggy Olwell or Charles McDonald, Endangered Species Botanists, Region 2, (See **ADDRESSES** section) (505/766–3972 or FTS 474–3972).

SUPPLEMENTARY INFORMATION:

Background

Hedeoma diffusum Withdrawal

The Service is withdrawing the proposed rule to list *Hedeoma diffusum* (Flagstaff pennyroyal) as a threatened species. A notice of review was published in the **Federal Register** on December 15, 1980 (45 FR 82480), which included *Hedeoma diffusum* as a category 1 candidate species. Category 1 consists of taxa for which the Service has sufficient information to support the biological appropriateness of their being listed as endangered or threatened. A proposed rule to list *Hedeoma diffusum* as threatened was published in the **Federal Register** on June 29, 1983 (48 FR 29929). *Hedeoma diffusum* was believed to be endemic to the Flagstaff, Arizona area and restricted to 10 known localities. As stated in the proposal, the major threat to the species was thought to be loss of habitat due to urban development.

Six written comments were received on the proposal. The International Union for Conservation of Nature and Natural Resources, the Desert Botanical Garden of Phoneix, Arizona, and the Curator of the Herbarium of the University of Arizona had no additional information on the species. Comments of non-support were received from the Arizona Commission on Agriculture and Horticulture (ACAH) and from one private individual. The ACAH expressed concern that designating the species as endangered would make it difficult to protect, and as long as the Forest Service would fence the area it did not think people would bother it. Comments from the U S. Forest Service concurred with the listing of *Hedeoma diffusum* as then known, but also stated that additional populations were expected to be located in unserveyed potential habitat.

The Forest Service identified a number of previously unknown sites of the Flagstaff pennroyal during the 1983 field season and requested a six-month extension on the proposed rule on April 6, 1984. The request was granted and on June 13, 1984, a notice of the six-month extension of the deadline was published in the **Federal Register** (49 FR 24416). This extension enabled the Forest Service to substantiate its preliminary findings and to further survey potential habitat for the species.

The Forest Service contracted with Dr. B.G. Phillips, Museum of Northern Arizona, to conduct a survey in July and

August 1984 to more completely delineate the species' distribution and to analyze population parameters, habitat requirements, and effects of habitat utilization. The taxon has been documented from two population areas. The discovery of the second major population area seven miles southwest of the one previously known near Flagstaff was the most significant finding of the study. The survey brought the total number of localities of *Hedeoma diffusum* over 100 sites with over 50 sites having at least 100 plants, and 5 sites having over 1000 plants (Phillips, 1984). *Hedeoma diffusum* was found to exist in rock pavement, cliff, and limestone break habitats in the ponderosa pine vegetation type (Phillips, 1984). These populations occur on public land and private inholdings in the Coconino National Forest and on University of Northern Arizona and private land outside of the Coconino National Forest. The Forest Service's regulation governing the land on which the majority of the populations occur prohibits removing, destroying, or damaging any plant that is classified as a threatened, endangered, rare, or unique species (36 CFR 261.9) and *Hedeoma diffusum* is on the U.S. Forest Service, Region 3, Sensitive Plant List.

The U.S. Forest Service has developed a management plan for *Hedeoma diffusum* in the Elden, Flagstaff, Mormon Lake, and Sedona Ranger Districts of the Coconino National Forest (U.S.D.A. Forest Service, 1984) that fully recognizes the significance and sensitivity of *Hedeoma diffusum* and its habitat. This management plan takes into consideration forest practices and operations that could affect the Flagstaff pannyroyal and provides management guidelines designed to mitigate potential problems. The U.S. Forest Service program will contribute significantly to the protection of vulnerable populations of this plant.

The recent study of *Hedeoma diffusum* shows an extension of the known range into farily inaccessible and protected areas, concludes that light to moderate disturbance associated with timbering activity does not significantly affect the populations, and notes that prescibed burning may be an effective management tool for *Hedeoma diffusum* (Phillips, 1984). The Service concludes, after analyzing this new data, that *Hedeoma diffusum* does not warrant theatened status at this time. If new information becomes available to indicate that *Hedeoma diffusum* is likely to become endangered within the foreseeable future, the Service will again propose to list it as threatened.

Phlox pilosa var. longipilosa Withdrawal

The Service is withdrawing the proposed rule to list *Phlox pilosa* var. *longipilosa* (long-haired phlox) as a threatened species. Ayensu and DeFilipps (1978) considered *Phlox pilosa* var. *longipilosa* to be an endangered species. The species was included as a category-1 (see explanation under *Hedeoma* discussion) candidate plant in a December 15, 1980 (45 FR 82480), notice of review published in the **Federal Register.** A proposed rule to list *Phlox pilosa* var. *longipilosa* as threatened was published in the **Federal Register** on August 29, 1983 (48 FR 39093). *Phlox pilosa* var. *longipilosa* is an endemic known only from the Quartz Mountain region of the Wichita Mountains of southwestern Oklahoma. The proposed rule stated that the major threats to the plant were quarrying, grazing, development, and recreation.

Three written comments on the proposal were received and all supported listing the plant as threatened. The Rose Garden Club of Durant, Oklahoma made only general comments and supported the plant's protection from all forms of habitat disturbance. The Oklahoma Tourism and Recreation Department stated that although the listing would directly affect its activities at the Quartz Mountain State Park, it suported the action. It provided information on facilities and management activities at the park and on potential conflict between these activities and protection of the *Phlox*. It also noted that steps were being taken to survey populations and develop a management plan for the plant in the park. The U.S. Bureau of Reclamation furnished information on its proposed Safety of Dams Program, W.C. Austin Project at the Lake Altus Dam. It noted its participation in plans to survey for *Phlox* on Bureau of Reclamation lands (Quartz Mountain State Park), particularly in the vicinity of quarries that might be used in the dam modification project. It provided a report of a meeting held October 21, 1983, between the Bureau of Reclamation, the Fish and Wildlife Service, the Oklahoma Department of Tourism and Recreation, and Southwestern Oklahoma State University personnel, during which plans for the *Phlox* survey were discussed. Through a joint agreement between the Fish and Wildlife Service and the Bureau of Reclamation, Mr. Ian H. Butler of the Oklahoma Tourism and Recreation Department was asked to develop a report on the status of *Phlox pilosa* var. *longipilosa* on Bureau of Reclamation land at Lake Altus, Oklahoma. This land, most of which is leased to the Oklahoma Department of Tourism and Recreation for use as Quartz Mountain State Park, constitutes the principal habitat for the plant. Six localities for *Phlox pilosa* var. *longipilosa* are known, all but one being on Bureau of Reclamation land within three miles of Altus Dam. On May 5–6, 1984, a team of about 20 volunteers from Federal and State agencies and several Oklahoma academic institutions conducted an intensive survey of known *Phlox* habitat on Bureau of Reclamation land. Data from this survey and additional field studies done by Mr. Butler on May 29–31, 1984, were incorporated into a status report (Butler, 1984), the pertinent findings of which are summarized in the following paragraphs.

Phlox pilosa var. *longipilosa* is a herbaceous perennial with individual plants having 1–20 stems. Plants grow on rocky hillsides in granitic soils of varying depths and apparent organic content. Associated vegetation varies from mixed native grass prairie to post oak or live oak woodland. Plants are occasionally associated with annual grasses and mosses on xeric rock ledges. Populations in the 1984 survey appeared to be thriving with all plants showing fruit. Seedlings were seen in woodland habitat. Seedlings were probably elsewhere but were most evident in the woodland because they were easily observed protruding through the post oak leaf litter. Adult plants appear capable of growing in a varety of altered conditions. Plants in two different areas survived wildfire in 1980; plants were seen in heavily grazed private land in the Baldy Point area adjoining Federal property; and plants were seen on packed granite fill of Lugert Dike located between Mt. Lugert and Hicks Mountain. During the census taken May 5–6, 1984, more than 7,000 clumps of plants were counted. The total estimated number of plants, including seedlings and non-flowering plants is 14,000 to 20,000 on Federal land.

Present populations of *Phlox pilosa* var. *longipilosa*, although restricted in distribution, appear to be thriving and the threats of quarrying, grazing, development, and recreation reported by Taylor and Taylor (1981) do not appear as great as believed at the time of proposal. The Bureau of Reclamation's Safety of Dam project will require intensive but very local development of quarries and dikes at the dam. The project will affect or eliminate about 100 plants (approximiately 1.5 percent of those counted in the 1984 survey). It is not believed that this loss of plants or degree of habitat destruction will have a significant detrimental effect on the

long-term survival of the *Phlox*. Grazing has not been permitted at Quartz Mountain State Park since before its establishment in th 1940's and there are no current plans to change this policy. In addition, plants were found in heavily grazed areas adjacent to the park, so adult plants, at least, seem tolerant of this form of disturbance. Further development of the park is not presently planned and, because of the rugged terrain, intensive development of recreation facilities is not anticipated. Presently, most park use involves the lake, with only light use of camp sites and nature trails. No damaged plants were seen along nature trails during the 1984 survey. In part this may result from the fact that plants complete flowering prior to the period of greatest visitor use later in the season.

The recent study of the primary habitat for *Phlox pilosa* var. *longipilosa*, on Bureau of Reclamation land in the Quartz Mountains of southwestern Oklahoma, indicates that populations are vigorous and not subject to the degree of threats previously supposed. The Service concludes, after analyzing the new data, that *Phlox pilosa* var. *longipilosa* does not warrant threatened status at this time. If new information becomes available to indicate that *Phlox pilosa* var. *longipilosa* is in danger of extinction within the foreseeable future, the Service will again propose to list it as threatened.

Finding and Withdrawal

In compliance with sections 4(b)(6)(A)(i)(IV) and 4(b)(6)(B)(ii) of the Endangered Species Act, as amended, the Service hereby withdraws its proposed rules of June 29, 1983 (49 FR 29929), and August 29, 1983 (48 FR 39093), to list *Hedeoma diffusum* (Flagstaff pennyroyal) and *Phlox pilosa* var. *longipilosa* (long-haired phlox) as threatened. New data for *Hedeoma diffusum* indicate an increase in the number of known individuals and populations and also indicate that the threats upon which the proposal was based are not as great or as iminent as previously thought. New data for *Phlox pilosa* var. *longipilosa* indicate that populations are vigorous and also indicate that the threats upon which the proposal was based are not as great or as imminent as previously throught.

Literature Cited

Ayensu, E.S., and Robert A. DeFilips. 1978. Endangered and Threatened Plants of the United States. Smithsonian Institution. Washington, D.C. 403 pp.

Butler, I.H. 1984. Report on the status of *Phlox pilosa* var. *longipilosa*. Office of Endangered Species, U.S. Fish and Wildlife Service, Alburquerque, New Mexico. 24 pp.

Phillips, B.G. 1984. Field survey for *Hedeoma diffusum* Greene, Coconino National Forest, Flagstaff, Arizona. 22 pp.

Taylor, R.J., and C.E. Taylor. 1981. Status report: *Phlox pilosa* var. *longipilosa*. Office of Endangered Species, U.S. Fish and Wildlife Service, Albuquerque, New Mexico. 18 pp.

U.S.D.A. Forest Service. 1984. Management plan for *Hedeoma diffusum* Green. Coconino National Forest, Flagstaff, Arizona. 6 pp.

Authors

The authors of this notice are Peggy Olwell and Charles McDonald, Endangered Species Botanists, Region 2 (See **ADDRESS** section) (505/766–3972 or FTS 474–3972).

Authority

The authority for this action is the Endangered Species Act (16 U.S.C. 1531 *et seq.*; 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).

List of Subjects in 50 CFR Part 17

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

Dated: March 21, 1985.

Susan Recce,

Acting Assistant Secretary for Fish and Wildlife and Parks.

[FR Doc. 85–7332 Filed 3–27–85; 8:45 am]

BILLING CODE 4310–55–M

Notices

Federal Register
Vol. 50, No. 60
Thursday, March 28, 1985

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Food and Nutrition Service

Determining Eligibility for Free and Reduced Price Meals and Free Milk; Income Eligibility Guidelines

AGENCY: Food and Nutrition Service, USDA.

ACTION: Notice.

SUMMARY: This Notice announces the Department's annual adjustments to the Income Eligibility Guidelines to be used in determining eligibility for free and reduced price meals or free milk for the period from July 1, 1985–June 30, 1986. These guidelines are used by schools, institutions, and centers participating in the National School Lunch and School Breakfast Programs, Special Milk Program for Children, Child Care Food Program and by commodity schools. The annual adjustments are made pursuant to section 9 of the National School Lunch Act. The guidelines are intended to direct benefits to those children most in need and are revised annually to account for increases in the Consumer Price Index.

EFFECTIVE DATE: July 1, 1985.

FOR FURTHER INFORMATION CONTACT: Mr. Lou Pastura, Branch Chief, Policy and Program Development Branch, Child Nutrition Division, FNS, USDA, Alexandria, Virginia 22302 (703) 756–3620.

SUPPLEMENTARY INFORMATION:

Classification

This Notice has been reviewed under Executive Order 12291 and has not been classified major because it does not meet any of the three criteria identified under the executive order. The action announced in the notice will not have an annual effect on the economy of $100 million, will not cause a major increase in costs or prices and will not have a significant impact on competition, employment, investment, productivity, innovation or on the ability of United States based enterprises to compete with foreign based enterprises in domestic or export markets.

This Notice is subject to the provisions of Executive Order 12372, which requires intergovernmental consultation with State and local officials. See 7 CFR Part 3015, Subpart V (48 FR 29112, June 24, 1983).

This Notice has also been reviewed with regard to the requirements of Public Law 96–354, the Regulatory Flexibility Act. The Administrator of the Food and Nutrition Service has certified that this action will not have a significant adverse economic impact on a substantial number of small entities.

This Notice imposes no new reporting or recordkeeping provisions that are subject to OMB review in accordance with the Paperwork Reduction Act of 1980 (44 U.S.C. 3587).

Background

Pursuant to sections 9 and 17 of the National School Lunch Act (42 U.S.C. 1758 and 42 U.S.C. 1766), and sections 3 and 4 of the Child Nutrition Act of 1966 (42 U.S.C. 1772 and 1773 (e)), the Department annually issues the Income Eligibility Guidelines for *free and reduced price meals* in the National School Lunch Program (7 CFR Part 210), School Breakfast Program (7 CFR Part 220), Child Care Food Program (7 CFR Part 226), commodity schools (7 CFR Part 210) and the guidelines for *free milk* in the Special Milk Program (7 CFR Part 215). These eligibility guidelines are based on the Federal income poverty guidelines and are stated by household size.

The Department requires schools and institutions which charge for meals separately from other fees, to serve *free meals* to all children from any household with income at or below *130* percent of the poverty guidelines. The Department also requires such schools and institutions to serve *reduced price meals* to all children from any household with income higher than *130* percent of the poverty guidelines, but at or below *185* percent of the poverty guidelines. Schools and institutions participating in the Special Milk Program may, at local option, serve free milk to all childern from any household with income at or below 130 percent of the poverty guidelines.

Definition of Income

"Income," as the terms is used in this notice means income before any deductions such as income taxes, social security taxes, insurance premiums, chartitable contributions and bonds. It includes the following: (1) Monetary compensation for services, including wages, salary, commissions or fees; (2) net income from nonfarm self-employment; (3) net income from farm self-employment; (4) social security; (5) dividends or interest on savings or bonds or income from estates or trusts, (6) net rental income; (7) public assistance or welfare payments; (8) unemployment compensation; (9) government civilian employee or military retirement, or pensions or veterans payments; (10) private pensions or annuties; (11) alimony or child support payment; (12) regular contributions from persons not living in the household; (13) net royalties; and (14) other cash income. Other cash income would include cash amounts received or withdrawn from any source including savings, investments, trust accounts and other resources which would be available to pay the price of a child's meal.

"Income," as the term is used in this Notice, does not include any income or benefits received under any Federal programs which are excluded from consideration as income by any legislative prohibition. Furthermore, the value of meals or milk to childern shall not be considered as income to their households for other benefits programs due to prohibitions in the National School Lunch Act and the Child Nutrition Act of 1966.

The Income Eligibility Guidelines

The following are the Income Eligibility Guidelines to be effective from July 1, 1985 through June 30, 1986. The Department's guidelines for free meals and milk and reduced price meals were obtained by multiplying the Federal income poverty guidelines by *1.30* and *1.85* respectively, and by rounding the result upward to the next whole dollar. Weekly and monthly guidelines were computed by dividing annual income by 52 and 12 respectively, and by rounding upward to the next whole dollar.

INCOME ELIGIBILITY GUIDELINES

[Effective from July 1, 1985 to June 30, 1986]

Household size	Federal poverty guidelines			Free meals—130 percent			Reduced price meals—185 percent		
	Year	Month	Week	Year	Month	Week	Year	Month	Week
48 CONTINGUOUS UNITED STATES, DISTRICT OF COLUMBIA, GUAM AND TERRITORIES									
1	5,250	438	101	6,825	569	132	9,713	810	187
2	7,050	588	136	9,165	764	177	13,043	1,087	251
3	8,850	738	171	11,505	959	222	16,373	1,365	315
4	10,650	888	205	13,845	1,154	267	19,703	1,642	379
5	12,450	1,038	240	16,185	1,349	312	23,033	1,920	443
6	14,250	1,188	275	18,525	1,544	357	26,363	1,197	508
7	16,050	1,338	309	20,865	1,739	402	29,693	2,475	572
8	17,850	1,488	344	23,205	1,934	447	33,023	2,725	636
For each additional family member add	+1,800	+150	+35	+2,340	+195	+45	+3,330	+278	+65
Alaska									
1	6,560	547	127	8,528	711	164	12,136	1,012	234
2	8,810	735	170	11,453	955	221	16,299	1,359	314
3	11,060	922	213	14,378	1,199	277	20,461	1,706	394
4	13,310	1,110	256	17,303	1,442	333	24,624	2,052	474
5	15,560	1,297	300	20,228	1,686	389	28,786	2,339	554
6	17,810	1,485	343	23,153	1,930	446	32,949	2,746	634
7	20,060	1,672	386	26,078	2,174	502	37,111	3,093	714
8	22,310	1,860	430	29,003	2,417	558	41,274	3,440	794
For each additional family member add	+2,250	+188	+44	+2,925	+244	+57	+4,163	+347	+81
Hawaii									
1	6,040	504	117	7,852	655	151	11,174	932	215
2	8,110	676	156	10,543	879	203	15,004	1,251	289
3	10,180	849	196	13,234	1,103	255	18,833	1,570	363
4	12,250	1,021	236	15,925	1,328	307	22,663	1,889	436
5	14,320	1,194	276	18,616	1,552	358	26,492	2,208	510
6	16,390	1,366	316	21,307	1,776	410	30,322	2,527	584
7	18,460	1,539	355	23,998	2,000	462	34,151	2,846	657
8	20,530	1,711	395	26,689	2,225	514	37,981	3,166	731
For each additional family member add	+2,070	+173	+40	+2,691	+225	+52	+3,830	+320	+74

Authority: (42 U.S.C. 1758 Sec. 803 Pub. L. 97-35, 95 Stat. 521-535).

Dated: March 25, 1985.

Robert E. Leard,

Administrator, Food and Nutrition Service.

[FR Doc. 85-7328 Filed 3-27-85; 8:45 am]

BILLING CODE 3410-30-M

Forest Service

Okanogan National Forest Grazing Advisory Board; Meeting

The Okanogan National Forest Grazing Advisory Board will meet at 7:30 p.m., April 16, 1985 at the Supervisor's Office, 1240 South Second Avenue, Okanogan, WA 98840. The purpose of the meeting is to prepare By-Laws, and review and discuss a management plan problem of a Permittee.

The meeting will be open to the public. Persons who wish to attend should notify Don Pridmore, Okanogan National Forest Supervisor's Office, 1240 S. Second Avenue, Okanogan, WA, 509-422-2704. Written statements may be filed with the committee before or after the meeting.

The committee has established the following rules for public participation: Public comments will be heard during the first 30 minutes of the meeting.

James A. Schelhaas,

Acting Forest Supervisor.

March 20, 1985.

[FR Doc. 85-7455 Filed 3-27-85; 8:45 am]

BILLING CODE 3410-11-M

Soil Conservation Service

Finding of No Significant Impact; North Pine/Spring Valley Creek Watershed Spokane County, WA

AGENCY: Soil Conservation Service, USDA.

ACTION: Notice of a finding of no significant impact.

SUMMARY: Pursuant to the National Environmental Policy Act (NEPA) of 1969, as amended; the Council on Environmental Quality NEPA Regulations (40 CFR Parts 1500-1508); and the Soil Conservation Service NEPA Procedures (7 CFR Part 650); the Soil Conservation Service, U.S. Department of Agriculture, gives notice that an environmental impact statement is not being prepared for the North Pine/Spring Valley Creek Watershed, Spokane County, Washington.

FOR FURTHER INFORMATION CONTACT: Lynn A. Brown, State Conservationist, Soil Conservation Service, W. 920 Riverside, Room 360, Spokane, Washington, 99201-1080, telephone 509-456-3711.

SUPPLEMENTARY INFORMATION: The environmental assessment of this federally assisted action indicates that the project will not cause significant local, regional, or national impacts on the environment. As a result of these findings, Lynn A. Brown, State Conservationist, has determined that the preparation and review of an environmental impact statement are not needed for this project.

The project concerns a plan for soil conservation and improvement of soil resources and water quality. The planned works of improvement include onfarm land treatment practices, and wildlife habitat plantings.

The Notice of a Finding of No Significant Impact (FONSI) as been forwarded to the Environmental Protection Agency and to various Federal, State, and local agencies and interested parties. A limited number of copies of the FONSI are available to fill single copy requests at the above address. Basic data developed during the environmental assessment are on file and may be reviewed by contacting Lynn A. Brown.

No administrative action on implementation of the proposal will be

taken until 30 days after the date of this publication in the **Federal Register**.

Dated: March 20, 1985.

Lynn A. Brown,

State Conservationist.

[FR Doc. 85-7442 Filed 3-27-85; 8:45 am]

BILLING CODE 3410-16-M

DEPARTMENT OF COMMERCE

Office of the Secretary

Agency Form Under Review by the Office of Management and Budget (OMB)

DOC has submitted to OMB for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

Agency: NOAA

Title: Licensing of OTEC Facilities and Plantships

Form Number: Agency—None; OMB—0648-0144

Type of Request: Revision of a currently approved collection

Burden: 2,000 respondents; 1,800 reporting hours

Needs and uses: This information is required from an applicant in support of an OTEC application. The information is used by NOAA in determining the feasibility of issuing a license for construction, ownership and operation of an OTEC facility or plantship and for monitoring environmental impacts.

Affected Public: Businesses or other for-profit

Frequency: Annually

Respondent's Obligation: Required to obtain or retain a benefit

OMB Desk Officer: Sheri Fox, 395-3785.

Copies of the above information collection proposal can be obtained by calling or writing DOC Clearance Officer, Edward Michals (202) 377-4217, Department of Commerce, Room 6622, 14th and Constitution Avenue NW., Washington, D.C. 20230.

Written comments and recommendations for the proposed information collections should be sent to Sheri Fox, OMB Desk Officer, Room 3235, New Executive Office Building, Washington, D.C. 20503.

Dated: March 22, 1985.

Edward Michals,

Departmental Clearance Officer.

[FR Doc. 85-7321 Filed 3-27-85; 8:45 am]

BILLING CODE 3510-07-M

Minority Business Development Agency

Financed Assistance Application Announcements; Ohio

AGENCY: Minority Business Development Agency, Commerce.

ACTION: Notice.

SUMMARY: The Minority Business Development Agency (MBDA) announces that it is soliciting competitive applications under its Minority Business Development Center (MBDC) Program to operate a MBDC for a 3 year period, subject to available funds. The cost of performance for the first twelve (12) months is estimated at $280,500 for the project performance of July 1, 1985 to June 30, 1986. The MBDC will operate in the Cincinnati, Ohio Metropolitan Statistical Area (MSA) with a satellite office in Dayton, Ohio. The first year cost for the MBDC will consist of $238,425 in Federal funds and a minimum of $42,075 in non-Federal funds which can be a combination of cash, in-kind contribution and fees for services). The award number will be 05-10-85007-01.

The funding instrument for the MBDC will be a cooperative agreement and competition is open to individuals, nonprofit and for-profit organization, local and state governments, American Indian tribes and educational institutions.

The MBDC will provide management and technical assistance to eligible clients for the establishment and operation of businesses. The MBDC program is designed to assist those minority businesses that have the highest potential for success. In order to accomplish this, MBDA supports MBDC programs that can: coordinate and broker public and private sector resources on behalf of minority individuals and firms; offer them a full range of management and technical assistance; and serve as a conduit of information and assistance regarding minority business.

Applications will be judged on the experience and capability of the firm and its staff in addressing the needs of minority business individuals and organizations; the resources available to the firm in providing management and technical assistance; the firm's proposed approach to performing the work requirements included in the application; and the firm's estimated cost for providing such assistance. It is advisable that applicants have an existing office in the geographic region for which they are applying.

The MBDC will operate for a 3 year period with periodic reviews culminating in annual evaluations to determine if funding for the project should continue. Continue funding will be at the discretion of MBDA based on such factors as a MBDC's satisfactory performance, the availability of funds, and Agency priorities.

CLOSING DATE: The closing date for applications is April 25, 1985. Applications must be postmarked on or before April 25, 1985.

ADDRESS: Chicago Regional Office, Minority Business Development Agency, 55 East Monroe Street, Suite 1440, Chicago, Illinoi 60603, 312/353-0182.

FOR FURTHER INFORMATION CONTACT: David Vega, Regional Director, Chicago Regional Office.

SUPPLEMENTARY INFORMATION: Questions concerning the preceding information, copies of application kits and applicable regulations can be obtained at the above address.

11.800 Minority Business Development (Catalog of Federal Domestic Assistance)

David Vega,

Regional Director, Chicago Regional Office.

March 25, 1985.

[FR Doc. 85-7306 Filed 3-27-85; 8:45 am]

BILLING CODE 3510-21-M

National Oceanic and Atomospheric Administration

Intent To Prepare a Draft Environmental Impact Statement on an Amendment to the Rhode Island Coastal Resources Management Program (RICRMP)

AGENCY: National Oceanic and Atmospheric Administration, National Ocean Service, Office of Ocean and Costal Resource Management, Commerce.

ACTION: Notice of Intent to Prepare a Draft Environmental Impact Statement as Required under the National Environmental Policy Act 42 U.S.C. 4321, *et seq.*, (NEPA).

SUMMARY: Notice is hereby given of the intent to prepare a Draft Environmental Impact Statement (DEIS) on the proposed approval of an amendment to the Rhode Island Coastal Resources Management Program (RICRMP or Program) under the provisions of Section 306 of the Federal Coastal Zone Management Act of 1972 (P.L. 92-583, as amended), and distribute it in May 1985.

Federal approval of the amended RICRMP would continue to make the State eligible for program administration grant funds and require that Federal actions be consistent with the Program.

The Office of Ocean and Coastal Resource Management (OCRM), National Ocean Service, National Oceanic and Atmospheric Administration (NOAA) has received a request from the Governor of the State of Rhode Island to amend its coastal program to include the *Rhode Island Coastal Resources Management Program as amended June 28, 1983*, and amended December 13, 1984, which replaces Chapters 1–5 of the original Progam approved by NOAA in 1978; selected, relevant sections of the *Rhode Island State Guide Plan Overview;* and the *Rhode Island Salt Pond Region Special Area Management Plan.*

The amended Program would provide a streamlined processing of routine project permits by allowing staff review and approval instead of requiring all permits to go before the full 17 member Coastal Resource Management Council (CRMC), as was required in the original RICRMP. It also establishes a "layered" management approach which imposes specific regulatory requirements based on: (1) the type of water body which is adjacent to an activity being proposed; (2) the shoreline feature, such as a beach or wetland, on which an activity is proposed; and (3) the type of activity, such as housing or a marina, that is being proposed.

Selected sections of the State Guide Plan are proposed for incorporation into the RICMP to assure continued compliance with the requirements of Section 923.82(a)(1)(i)(A) of the Coastal Zone Management Act (CZMA) regulations which require the Program boundaries to be of sufficient width to incorporate land and water uses with direct and significant impacts on the coastal waters. Since the jurisdiction of the CRMC does not extend inland more than 200 feet in some cases, the inclusion of relevant sections of the State Guide Plan into the Program would assure that significant State and Federal activities will be consistent with the coastal program.

The Salt Pond Region Special Area Management Plan is proposed for incorporation because it provides more detail on CRMC policies in the Salt Pond area and expands the inland boundary of CRMC for certain activities.

The amended Program could result in some short-term economic impacts on coastal users but should lead to increased long-term protection of the State's coastal resources. Federal alternatives to approval of the amended Program will include delaying or denying approval if certain requirements of the CZMA have not been met.

In order to determine the scope and significance of issues to be addressed in the DEIS, the OCRM would like to solicit comments on the proposed action, particularly with respect to the following issues:

(1) The adequacy of the scope and geographic coverage of the amended Program's laws and regulations to manage impacts on wetlands and other vulnerable natural resources;

(2) The adequacy of the mechanisms for administrative review and enforcement of compliance of agency decisions;

(3) The adequacy of the mechanisms for State agency coordination and consultation in order to effectively implement the RICRMP.

Copies of the three documents proposed to be amended into the RICRMP have been widely distributed in Rhode Island and are available from OCRM.

Persons or organizations wishing to submit comments on these or other issues should do so 30 days from the publication of this notice. Any comments received after that time will be considered in the response to comments received on the DEIS.

Requests for the above described documents and all comments should be made to: Kathryn Cousins, Regional Manager, North Atlantic Region, Office of Ocean and Coastal Resource Management, 3300 Whitehaven Street, NW., Washington, D.C. 20235, (202) 634–4126.

(Federal Domestic Assistance Catalog 11.419 Coastal Zone Management Program Administration)

Dated: March 21, 1985.

Peter L. Tweedt,

Director, Office of Ocean and Coastal Resource Management.

[FR Doc. 85–7456 Filed 3–27–85; 8:45 am]

BILLING CODE 3510-08-M

Marine Mammals; Proposed Modification to Permit No. 417 (P319); Dolphin Biology Research Associates, Inc.

Notice is hereby given that Mr. Randall S. Wells, Dolphin Biology Research Associates, Inc., 163 Siesta Drive, Sarasota, Florida 33581, has requested a second modification to Permit No. 417 issued on May 10, 1983, (48 FR 22181), and first modified on July 3, 1984, (49 FR 27361), under the authority of the Marine Mammal Protection Act of 1972 (16 U.S.C. 1362–1407), and the Regulations Governing the Taking and Importing of Marine Mammals (50 CFR Part 216).

The Permit Holder is requesting to extend the duration of the Permit to December 31, 1988, and to take under the provisions of the Permit an additional twenty (20) bottlenose dolphins (*Tursiops truncatus*) per year during 1986, 1987 and 1988; and to recapture selected individuals up to three (3) times per year for follow-up testing under the conditions of the Permit.

Concurrent with the publication of this notice in the **Federal Register**, the Secretary of Commerce is forwarding copies of the modification request to the Marine Mammal Commission and the Committee of Scientific Advisors.

Written data reviews, or requests for a public hearing on this modification request should be submitted to the Assistant Administrator for Fisheries, National Marine Fisheries Service, U.S. Department of Commerce, Washington, D.C. 20235, within 30 day of the publication of this notice. Those individuals requesting a hearing should set forth the specific reasons why a hearing on this particular request 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 request are summaries of those of the Applicant and do not necessarily reflect the views of the National Marine Fisheries Service.

Documentation pertaining to the above modification request is available for review is the following offices:

Assistant Administrator for Fisheries, National Marine Fisheries Service, 3300 Whitehaven Street, NW., Washington, D.C.; and

Regional Director, National Marine Fisheries Service, Southeast Region, 9450 Koger Boulevard, St. Petersburg, Florida 33702.

Dated: March 22, 1985.

Richard B. Roe,

Director, Office of Protected Species and Habitat Conservation National Marine Fisheries Service.

[FR Doc. 85–7424 Filed 3–27–85; 8:45 am]

BILLING CODE 3510-22-M

Marine Mammals; Singapore Zoological Gardens; Receipt of Application for Permit

Notice is hereby given that an Applicant has applied in due form for a Permit to take marine mammals as authorized by the Marine 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 Singapore Zoological Gardens.

b. Address 80 Mandai Lake Road, Singapore, 2572.

2. Type of Permit Public Display.

3. Name and Number of Animals: California sea lion (*Zalophus californianus*) 6.

4. Type of Take: Beached and stranded or captive born.

5. Location of Activity: N/A.

6. Period of Activity: 4 years.

As a request for a permit to take living marine mammals to be maintained in areas outside the jurisdiction of the United States, this application has been submitted in accordance with National Marine Fisheries Service policy concerning such applications (40 FR 11619, March 12, 1975). In this regard, no application will be considered unless:

(a) It is submitted to the Assistant Administrator for Fisheries, National Marine Fisheries Service, through the appropriate agency of the foreign government;

(b) It includes:

(i) A certification from such appropriate government agency verifying the information set forth in the application;

(ii) A certification from such government agency that the laws and regulations of the government involved permit enforcement of the terms of the conditions of the permit, and that the government will enforce such terms;

(iii) A statement that the government concerned will afford comity to a National Marine Fisheries Service decision to amend, suspend or revoke a permit.

In accordance with the above cited policy, the certification and statements of the City Veterinary Center, Primary Production Department have been found appropriate and sufficient to allow consideration of this permit application.

The arrangements and facilities for transporting and maintaining the marine mammals requested in the above described application have been inspected by a licensed veterinarian, who has certified that such arrangements and facilities are adequate to provide for the well-being of the marine mammals involved.

Concurrent with the publication of this notice in the **Federal Register**, the Secretary of Commerce is forwarding copies of this application to the Marine Mammal Commission and the Committee of Scientific Advisors.

Written data or views, or requests for a public hearing on this application should be submitted to the Assistant Administrator for Fisheries, National Marine Fisheries Service, U.S. Department of 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, BIN C15700 Seattle, Washington, 98115.

Regional Director, National Marine Fisheries Service, Southwest Region, 300 South Ferry Street, Terminal Island, California 90731; and

Regional Director, National Marine Fisheries Service, Northeast Region, Federal Building, 14 Elm Street, Gloucester, Massachusetts 01930–3799.

Regional Director, National Marine Fisheries Service, Southeast Region, 9450 Koger Boulevard, St. Petersburg, Florida 33702 and

Regional Director, National Marine Fisheries Service, Alaska Region, P.O. Box 1668, Juneau, Alaska 99802.

Dated: March 22, 1985.

Richard B. Roe,

Director, Office of Protected Species and Habitat Conservation, National Marine Fisheries Service.

[FR Doc. 85–7423 Filed 3–27–85; 8:45 am]

BILLING CODE 3510-22-M

Marine Mammals; Notice of Receipt of Application for Permit; Moss Landing Marine Laboratories

Notice is hereby given that an Applicant has applied in due form for a Permit to take endangered species as authorized by 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: Jo Guerrero (P355).

b. Address: Moss Landing Marine Laboratories, P.O. Box 450, Moss Landing, California 95039.

2. Type of Permit: Scientific Research/Scientific purposes.

3. Names and Number of Animals: Gray whale (*Eschrichtius robustus*) up to 36.

4. Type of Take: Up to 36 whales may be approached, observed, radio-tagged, and streamer-tagged in order to study the feeding ecology and behavioral patterns of the animals.

5. Location of Activity: Southeastern Bering Sea and St. Matthew Island.

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 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.; and

Regional Director, Alaska Region, National Marine Fisheries Service, P.O. Box 1668, Juneau, Alaska 99802.

Dated: March 22, 1985.

Richard B. Roe,

Director, Office of Protected Species and Habitat Conservation, National Marine Fisheries Service.

[FR Doc. 85–7422 Filed 3–27–85; 8:45 am]

BILLING CODE 3510-22-M

Patent and Trademark Office

Interim Protection for Mask Works of Japanese Nationals Domiciliaries and Sovereign Authorities

AGENCY: Patent and Trademark Office, Commerce.

ACTION: Notice of Initiation of Proceeding.

SUMMARY: The Secretary of Commerce has delegated the authority under section 914 of 17 U.S.C. to make findings and issue orders for interim protection of mask works to the Assistant Secretary and Commissioner of Patents and Trademarks by Amendment 1 to Department Organization Order 10–14. Guidelines for the submission of petitions for the issuance of interim orders were published on November 7, 1984 in the **Federal Register**, 49 FR 44517–9 and on November 13, 1984 in the *Official Gazette*, 1048 O.G. 30.

On October 22, 1984, prior to the November 8, 1984, effective date of Pub.L. 98–620 which added Chapter 9 to 17 U.S.C., the Electronic Industries Association of Japan (EIAJ) through its attorneys submitted a request for the issuance of an interim order. That original request has since been supplemented by additional information from the Government of Japan sufficient to bring it into compliance with the aforementioned guidelines. Consequently, in accordance with paragraph F of the guidelines, this notice announces the initiation of a proceeding with respect to Japan for consideration of the issuance of an interim order.

In the interests of time and because of the rapidly approaching July 1, 1985 registration cut-off date for chips first commercially exploited on or after July 1, 1983, a date is being set both for the submission of comments in accordance with paragraph F(a), and a hearing date with respect to paragraph F(b) of the guidelines.

DATES: Comments must be submitted on or before April 22, 1985 and a public hearing will be held May 6, 1985 at 9:30 a.m.; requested to present oral testimony should be received on or before April 22, 1985.

ADDRESS: Address written comments to: Commissioner of Patents and Trademarks, Attention Assistant Commissioner for External Affairs, Box 4, Washington, D.C. 20231.

The hearing will be held in the Commissioner's Conference Room, 11th Floor, Crystal Plaza Building 3, Room 11–C–10, 2021 Jefferson Davis Highway, Arlington, Virginia. Written comments and a transcript of the public hearing will be available for public inspection in Room 11C28 Crystal plaza 3, 2021 Jefferson Davis Highway, Arlington, Virginia.

FOR FURTHER INFORMATION CONTACT: Michael K. Kirk, Assistant Commissioner for External Affairs, by telephone at (703) 557–3065 or by mail marked to his attention and addressed to Commissioner of Patents and Trademarks, Box 4, Washington, D.C. 20231.

SUPPLEMENTARY INFORMATION: Chapter 9 of 17 U.S.C. establishes an entirely new form of intellectual property protection for mask works that are fixed in seimiconductor chip products. Mask works are defined in 17 U.S.C. 901(a)(2) as:

> A series of related images, however, fixed or encoded—
>
> (A) having or representing the predetermined, three-dimensional pattern of metallic, insulating or semiconductor material present or removed from the layers of a semiconductor chip product; and
>
> (B) in which series the relation of the images to one another is that each image has the pattern of the surface of one form of the semiconductor chip product.

Chapter 9 further provides for a 10 year term of protection for original mask works measured from their date of registration in the U.S. Copyright Office, or their first commercial exploitation anywhere in the world. Mask works must be registered within 2 years of their first commercial exploitation to maintain this protection. Section 913(d)(1) provides that mask works first commercially exploited on or after July 1, 1983 are eligible for protection provided that they are registerd in the U.S. Copyright Office before July 1, 1985.

Foreign mask works are eligible for protection under this Chapter under basic criteria set out in section 902; first, that the owner of the mask works is a national, domiciliary, or sovereign authority of a foreign nation that is a party to a treaty providing for the protection of the mask works to which the United States is also a party, or a stateless person wherever domiciled; second that the mask work is first commercially exploited in the United States; or that the mask work comes within the scope of a Presidential proclamation. Section 902(a)(2) provides that the President may issue such a proclamation upon a finding that:

> A foreign nation extends to mask works of owners who are nationals or domiciliaries of the United States protection (A) on substantially the same basis as that on which the foreign nation extends protection to mask works of its own nationals and domiciliaries and mask works first commercially exploited in that nation, or (B) on substantially the same basis as provided under this chapter, the President may by proclamation extend protection under this chapter to mask works (i) of owners who are, on the date on which teh mask works are registered under section 908, or the date on which the mask works are first commercially exploited anywhere in the world, whichever occurs first, nationals, domiciliaries, or sovereign authorities of that nation, or (ii) which are first commercially exploited in that nation.

Although this chapter generally does not provide protection to foreign owners of mask works unless the works are first commercially exploited in the United States, it is contemplated that foreign nationals, domiciliaries and sovereign authorities may obtain full protection if their nation enters into an appropriate treaty or enacts mask works protection legislation. In order to encourage steps toward a regime of international comity in mask works protection, section 914(a) provides that the Secretary of Commerce may extend the privilege of obtaining interim protection under chapter 9 to nationals, domiciliaries and sovereign authorities of foreign nations if the Secretary finds:

> (1) That the foreign nation is making good faith efforts and reasonable progress toward—
>
> (A) Entering into a treaty described in section 902(a)(1)(A), or
>
> (B) Enacting legislation that would be in compliance with subparagraph (A) or (B) of section 902(a)(2); and
>
> (2) That the nationals, domiciliaries, and sovereign authorities of the foreign nation, and persons controlled by them, are not engaged in the misappropriation, or unauthorized distribution or commercial exploitation of mask works; and
>
> (3) That issuing the order would promote the purposes of this chapter and international comity with respect to the protection of mask works.

On October 22, 1984, prior to the November 8, 1984 effective date of Pub. L. 98–620 which added Chapter 9 to 17 U.S.C., the Eletronic Industries Association of Japan (EIAJ), through its attorneys, submitted a request for the issuance of an interim order to Secretary Baldrige. The Secretary informed EIAJ's attorneys that the request had been referred to the Patent and Trademark Office, and that the Commissioner would advise them if additional information were required. On November 15, 1984, Commissioner Mossinghoff met with Japanese officials to discuss a letter from Mr. Yuji Tanahashi of the Japanese Ministry of International Trade and Industry, and what additional information might be required to complete the EIAJ submission. The results of this meeting were confirmed on November 30, 1984, in a letter to Mr. Tanahashi. No response was received from Mr. Tanahashi. On January 22, 1985, Acting Commissioner Quigg wrote Mr. Taizo Yokayama pointing out what additional information would be required. On March 4, 1985, Mr. Tanahashi wrote to Mr. Quigg to supplement the original request with sufficient information to permit the commenement of proceedings under the guidelines. The original

petition and the supplemental information are reproduced below.

In his remarks in the *Congressional Record* of October 10, 1984 at page E4434 Representative Kastenmeier suggests that "[i]n making determinations of good faith efforts and progress . . . , the Secretary should take into account the attitudes and efforts of the foreign nation's private sector, as well as its government. If the private sector encourages and supports action toward chip protection, that progress is much more likely to continue . . . With respect to the participation of foreign nationals and those controlled by them in chip piracy, the Secretary should consider whether any chip designs, not simply those provided full protection under the Act, are subjected to misappropriation. The degree to which a foreign concern that distributes products containing misappropriated chips knows or should have known that it is selling infringing chips is a relevant factor in making a finding under section 914(a)(2). Finally, under section 914(a)(3), the Secretary should bear in mind the role that issuance of the order itself may have in promoting the purposes of this chapter and international comity."

In view of these admonitions, comments are invited on this petition and the supplemental information. Particularly, views are solicited as to the relation of the proposed Japanese legislation and Chapter 9 of 17 U.S.C.; and to the existence or non-existence of any misappropriation of mask works in Japan.

Dated: March 22, 1985.

Donald J. Quigg,

Acting Commissioner of Patents and Trademarks.

October 22, 1984.

Hon. Malcolm Baldridge,
Secretary of Commerce, Washington, D.C.

Dear Mr. Secretary: Enclosed please find a letter and petition from Mr. Akio Morita with respect to Section 914 of the Semiconductor Chip Protection Act of 1984. Mr. Morita's petition is made in his capacity as President of our client, the Electronic Industries Association of Japan.

Please let us know how we may be of the most assistance in answering questions and providing further information in support of the enclosed petition.

Sincerely yours,

Tanaka Walders & Ritger

By:

Robert S. Schwartz.

October 18, 1984.

The Honorable Malcolm Baldrige,
Secretary of Commerce, Washington, D.C.
Re: *Semiconductor Chip Protection Act of 1984*

Dear Mr. Secretary: Enclosed please find a petition that I have executed today, on behalf of the Electronic Industries Association of Japan. I hope it will meet with your favorable consideration.

Sincerely yours,

Akio Morita,

President, Electronic Industries, Association of Japan, Chairman and Chief Executive Officer, Sony Corporation.

Before the Secretary of Commerce

In re Japan: Petition of Akio Morita on Behalf of the Electronic Industries Association of Japan Under Section 914(a) of the Semiconductor Chip Protection Act of 1984.

Whereas section 914(a) of the Semiconductor Chip Protection Act of 1984 provides that the Secretary of Commerce may issue an order with respect to protection afforded nationals, domiciliaries, and sovereign authorities of any nation upon the petition of any person, and

Whereas the Electronic Industries Association of Japan ("EIAJ") is a business association which includes the major semiconductor manufacturers based in Japan, and the undersigned serves as its President,

The Undersigned, on behalf of the EIAJ, does not petition the Secretary to issue an order respecting Japan, effective as of the date of enactment of that Act and for such time period as the Secretary may decide is reasonable under the circumstances. It is further petitioned that said order be issued expeditiously in the case of Japan, in conformance with the statutory criteria and legislative history pertaining to the Act.

In support of the expeditious issuance of an order with respect to Japan, effective as of the date of enactment, reference is made to the following facts:

1. The private semiconductor industry in Japan, as represented by EIAJ, during the pendency of the Act advised the U.S. Congress by official letter (Appendix I hereto) of its support for the Act and its support for expeditious legislation in Japan.

2. The Government of Japan, through the joint recommendations of the United States-Japan Work Group on High Technology Industries, has agreed to a bilateral declaration in support of such legislation. In this regard, the Industrial Structure Council, an advisory committee to the Minister of International Trade and Industry, has organized a formal study group, the Subcommittee on Legislative Problems Concerning Semiconductor Chips, to draft appropriate legislation. The first meeting of the Subcommittee has been scheduled for October 24, 1984.

3. Japan has a substantial semiconductor industry. In light of the above considerations with respect to progress toward legislation in Japan, expedited issuance of an order is appropriate to encourage and facilitate efforts to establish international comity.

4. Insofar as can be determined, Japan's commercial entities are not engaging in, and have not in the recent past engaged in, the activities described in section 914(a)(2) of the Act.

Wherefore, on behalf of the EIAJ I do petition that an order, as described, issue expeditiously with respect to Japan.

Dated: October 18, 1984.

Respectfully submitted,

Akio Morita,

President, Electronic Industries Association of Japan, Chairman and Chief Executive Officer, Sony Corporation.

Appendix I

July 18, 1984.

Hon. Robert W. Kastenmeier,
Chairman, Subcommitte on Courts, Civil Liberties and the Administration of Justice, Judiciary Committee, U.S. House of Representatives, Washington, D.C., U.S.A.

Dear Rep. Kastenmeier: The Electronic Industries Association of Japan (EIAJ) has been following the progress, through the Congress, of legislation that would afford a new form of protection for semiconductor chip products. In our view, the passage of such legislation is highly desirable, both of itself and as an indication of the proper direction for the international protection of such intellectual property. In this latter respect, we note the joint recommendations of the U.S.-Japan Work Group on High Techology Industries, made in November, 1983. One such recommendation of this government-to-government group was:

III. Technology

3. Both governments should recognize that some form of protection to semiconductor producers for their intellectual property is desirable to provide the necessary incentives for them to develop new semiconductor products. And both governments should take their own appropriate steps to discourage the unfair copying of semiconductor products and the manufacturing and distribution of the unfairly copied semicoinductor products.

Since the U.S. legislation will be the first of its kind in the world, we hope that it will meet the challenge posed by the development of a new class of intellectual property by affording it a commensurately new form of protection. We expect that this approach by the U.S. will serve as a model for other countries. In this respect we feel it would very beneficial for such legislation to maintain an incentive for foreign nations to "catch up", without departing from the principle of full national treatment. This could be accomplished by a reasonable interim period for full-term registration, not limited by considerations of nationality, domicile, or place of first commercial

exploitation. This suggestion was spelled out in a July 9 letter from our Washington counsel (which is attached). We have also suggested, through counsel, some important technical clarifications of interpretation. I would be grateful if you could consider our suggestions in any conference proceedings.

In this connection, we have been asked whether EIAJ has a review as to probable or appropriate legislative action in Japan. Speaking on behalf of the semiconductor manufacturers of Japan, EIAJ recognizes the need for, and importance of, protection in Japan for the intellectual property embodied in semiconductor chips. Accordingly, we will ask the Government of Japan to provide such protection, as expeditiously as possible, through a new legislative framework.

Thank you for any consideration you can give to the approach we suggest. As always, my personal best wishes,

Sincerely yours,

Akio Morita,

President, Electronic Industries Association of Japan, Chairman & Chief Executive Officer, Sony Corporation.

July 18, 1984.

Hon. Charles McC. Mathias,

Chairman, Subcommittee on Patents, Copyrights and Trademarks, Judiciary Committee, U.S. Senate, Washington, D.C., U.S.A.

Dear Sen. Mathias: I was sorry to have missed the opportunity to see you during my recent trip to Washington. I do hope, however, that we will have another chance before too long. In the meantime, I did want to call to your attention something that is of great interest in my capacity as President of the Electronic Industries Association of Japan (EIAJ).

EIAJ has been following the progress, through the Congress, of legislation that would afford a new form of protection for semiconductor chip products. In our view, the passage of such legislation is highly desirable, both of itself and as an indication of the proper direction for the international protection of such intellectual property. In this latter respect, we note the joint recommendations of the U.S.-Japan Work Group on High Technology Industries, made in November, 1983. One such recommendation of this government-to-government group was :

III. Technology

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Thank you for any consideration you can give to the approach we suggest. As always, my personal best wishes,

Sincerely yours,

Akio Morita,

President, Electronic Industries Association of Japan, Chairman and Chief Executive Officer, Sony Corporation.

March 4, 1985.

Mr. Donald J. Quigg,

Acting Commissioner of Patents and Trademarks.

Dear Mr. Quigg: I would like to relate the following to you in connection with the efforts we have made and the progress we have achieved in legislative initiatives for the protection of semiconductor chips in Japan since I wrote to Mr. Mossinghoff on November 13, 1984.

On January 22, 1985, the Subcommittee on the Legal Problems Concerning Semiconductor Chips under the Industrial Structure Council, after seven sessions since October, 1984 reached a conclusion that, in sum, a new law similar to the Semiconductor Chip Protection Act of the United States is necessary for optimal protection of the layout of semiconductor chips in Japan, and recommended that the Ministry of International Trade and Industry ("MITI") start preparation for enactment of such a law as soon as possible. I believe you have received an English text of the report of the Subcommittee, since we turned it in to the United States Embassy in Japan.

Mr. Akio Morita, President of the Electronics Industry Association of Japan ("EIAJ"), also requested that the Minister of International Trade and Industry promptly enact a new law similar to that of the United States.

Under these circumstances, MITI, as a governmental agency in charge of developing legislation for the protection of mask works, is making an energetic effort to submit a legislative bill to the present session of the Diet. We are drafting the bill with due consideration for the views expressed on the outline of the bill by the semiconductor industry, including foreign affiliates. Although there is no fundamental objection to this effort among governmental agencies, the decision of the Japanese government as a whole to submit the bill will be made most probably in the middle of March since adjustments are necessary within the government pursuant to the ordinary legislative procedure.

Meanwhile, MITI has good grounds for believing that neither Japan nor Japanese nationals or domiciliaries are engaged in the misappropriation, or unauthorized distribution or commercial exploitation of mask works. As you are aware, MITI has taken action to make people and industries concerned thoroughly understand the view expressed in the recommendation of the Japan-U.S. High Tech Work Group—"Both governments should take their own appropriate steps to discourage the unfair copying of semiconductor products and the manufacturing and distribution of unfairly copied semiconductor products", and I believe the Japanese semiconductor industry has been responding sincerely to this action.

A petition under Section 914 of the Semiconductor Chip Protection Act of 1984 (17 U.S.C.) was filed with the Secertary of Commerce by Mr. Akio Morita of EIAJ. Considering the circumstances mentioned above, I believe conditions for issuance of an order under 17 U.S.C. Section 914(a)(1)(B) are fully satisfied.

Yours sincerely,

Yuji Tanahashi,

Deputy Director-General, Machinery and Information Industries Bureau, Ministry of International Trade and Industry.

Semiconductor Integrated Circuit Protection Bill of Japan (Summary)

February, 1985.

1. Definitions

(1) A "semiconductor integrated circuit product" means any product having transistors and other elements which are inseparably formed on the surface of a semiconductor or insulating material, or inside the semiconductor material, and intended to perform circuitry functions.

(2) A "circuit layout" means a three-dimensional layout of elements and wires in a semiconductor integrated circuit product.

(3) "Utilize" means manufacture, transfer, lease, exhibition or import of semiconductor integrated circuit products embodying a circuit layout.

2. The following rights can be claimed

(1) The holder of a circuit layout right shall have an exclusive right to utilize, for business purposes, the circuit layout.

(2) The holder of a circuit layout right or an exclusive licensee may seek an injunction against a person who infringes or likely to infringe on the circuit layout right or exclusive license.

(3) The manufacture, transfer, etc., for business purposes, of articles, such as masks, to be used exclusively for the manufacture of the infringing semiconductor integrated circuit products shall be deemed to be an infringement of the circuit layout right.

(4) The infringing party shall be liable for damages for infringement and shall be subject to criminal punishment.

3. Registration system

(1) A person who has originally developed the circuit layout, or his successor, may apply for registration for the establishment of a circuit layout right within two years of the date on which he first transferred, leased or exhibited the concerned semiconductor integrated circuit products for business purposes.

(2) The circuit layout right shall come into force upon registration for its establishment. (The registration system shall be a simple one.)

4. Term of protection

The term of protection shall be ten years from the date on which the right was created.

5. Limitation of exclusive rights

(1) The experimental manufacturing for the purpose of analyzing or evaluating the circuit layout, electronic circuitry or logic circuitry of a semiconductor integrated circuit product embodying a circuit layout right shall not constitute an infringement.

(2) Utilizing an originally developed circuit layout based upon electronic circuitry or logic circuitry analyzed and evaluated as described in paragraph (1) shall not constitute an infringement.

(3) When the holder of a right to a semiconductor integrated circuit product transfers it to another, the transferee thereof may transfer, lease, exhibit or import the product without the authority of the holder of the right ("first sale doctrine").

(4) A bona fide purchaser, without (gross) negligence, of an infringing semiconductor integrated circuit product who has transferred it to another after learning of the infringement shall be held responsible for the payment of a fair price to the legitimate holder of the right but shall not be subject to injunction or damages.

6. Protection of a circuit layout developed by a foreigner under consideration

(The law shall extend protection without discrimination to a circuit layout developed by a national or a domiciliary of a foreign country at least if a circuit layout developed by a Japanese national or a domiciliary of Japan is protected by that country.)

7. Other provisions

Other provisions to be established include provisions concerning exclusive and non-exclusive licenses and a provision to the effect that if an employee of a company develops a circuit layout, the right concerning the layout shall, unless otherwise agreed, belong to the company.

November 13,1 984.

Mr. Gerald J. Mossinghoff,
Commissioner of Patents and Trademarks Office, Department of Commerce.

Dear Mr. Mossinghoff: As co-chairman of the Japan-U.S. High Tech Work Group I would like to relate the following to you in connection with the materialization of your country's Semiconductor Chip Protection Act of 1984.

At the September 14th meeting of the High Tech Work Group it was requested of me that, in consideration of the enactment of the Semiconductor Chip Protection Act in the United States, Japan enact legislation to the same effect. I myself have agreed with the High Tech Work Group's recommendation made in November 1983 as to the need for Japanese legislation to protect developers of semiconductor chips, and I am now pleased to let you know that serious consideration of this issue has begun with abovementioned request taken into account.

A subcommittee on legislative issues concerning semiconductor chips has been set up within the Industrial Structure Council and was convened for the first time on October 24th. I would like to add that participating in the subcommittee are Japanese representatives of Intel Japan K.K. (a U.S. affiliate) and Texas Instruments Japan Ltd. (a U.S. affiliate). Because the authority to enact laws rests with Japan's legislative body, the Diet, and because of differences between our legal system and that of the United States, I am not able to state anything definitive as yet. But I do want to consolidate the views of those of us within the Government and lay a bill before the Diet at the earliest possible date.

In addition to more effectively protecting rights relating to semiconductor chips in line with the High Tech Work Group's recommendation, on a fundamental level we are interested in making efforts towards drafting a proposed law similar to that enacted by your country.

Finally, I am sure we agree that close cooperation between our two Governments is essential to the sound growth of the semiconductor chip industry and also of trade in this item. Let us, then, cooperate closely in the future application of the Semiconductor Chip Protection Act and in the enactment of a new law in Japan.

Your sincerely,

Yuji Tanahashi,
Chairman of the Japan-U.S. Work Group on High Technology Industries, Deputy Director-General, Machinery and Information Industries Bureau, Ministry of International Trade and Industry.

P.S. In connection with the above, I would like to add that I have been informed that Mr. Morita, representing the views of the Japanese semiconductor industry, has presented a petition to the Secretary of Commerce in accordance with Article 914 of the U.S. Semiconductor Chip Protection Act.

Mr. Yuji Tanahashi
Chairman of the Japan-U.S. Work Group on High Technology Industries, Deputy Director-General, Machinery and Information Industries Bureau, Ministry of International Trade and Industry, 1-3-1 Kasumigaseki, Chiyoda-ku, Tokyo 100, Japan.

Dear Mr. Tanahashi: Thank you for your earlier inquiry concerning the extension of interim protection to Japanese mask works under Section 914 of the Semiconductor Chip Protection Act of 1984. On November 15, 1984, I met with Mr. Taizo Yokoyama and Mr. Nobuo Tanaka of the Japanese Embassy here in Washington to discuss a number of matters related to chip protection. I would like to assure you, as I assured them, that any Japanese request for the issuance of an order extending interim protection will be given serious and prompt consideration. However, there are certain factors that must be considered in arriving at a determination to issue or not to issue such an order.

Although requests for the issuance of an order may be submitted by any party, Section 914 requires that the Secretary of Commerce make certain findings with respect to the activities of foreign governments and sovereign authorities as well as organizations controlled by them. Section 914(a)(1) requires that the Secretary must find that the foreign nation is making good faith efforts and reasonable progress toward entering into a treaty or enacting appropriate legislation. This finding must be made with respect to the government involved. As I informed Mr. Yokoyama and Mr. Tanaka, we will require a statement attesting to good faith efforts and reasonable progress from an agency which can speak for your Government, especially in view of the potential dispute between your Ministry and the Ministry of Education over jurisdiction for the preparation of semiconductor chip legislation. In view of the differences in our legislation processes, such a statement should include as much information as is available on the nature of the protection under consideration and the processes to be followed in its implementation into law.

I agree that close cooperation between our two nations, which are leaders in the development of this new technology, is important. I hope that we can work together in a way that will promote international comity in mask work protection.

Sincerely,

Gerald J. Mossinghoff,
Commissioner of Patents and Trademarks.

January 22, 1985.

Mr. Tazio Yokoyama,
Embassy of Japan, 2520 Massachusetts Avenue, NW., Washington, D.C.

Dear Mr. Yokoyama: I am writing to follow up on an earlier conversation that you had with Commissioner Gerald J. Mossinghoff on November 15, 1984, concerning the protection of Japanese mask works. As you may recall, Mr. Mossinghoff assured you that any Japanese request for the issuance of an interim order under section 914 of the Semiconductor Chip Protection Act of 1984 would receive prompt and serious consideration.

At that meeting, Mr. Mossinghoff advised you that before we could consider further Japan's request we would require additional information regarding the efforts and progress toward enacting chip legislation in Japan, and that this information should be provided by an agency that could speak for the Japanese Government. You also informed Mr. Mossinghoff that he would receive a letter from MITI Deputy Director General Tanahashi attesting to MITI's efforts. On November 30, 1984, we responded to Mr. Tanahashi's letter and advised him of our need for further information in view of the potential jurisdictional dispute between MITI

and the Ministry of Education. To date, we have not received the information that we requested.

In view of the July 1, 1985 deadline for registration of chips first commercially exploited after July 1, 1983, time is of the essence. We are anxious to obtain the needed assurances from the Government of Japan that you are progressing on legislation that would protect the mask works of U.S. nationals in a fashion similar to the protection provided under the new U.S. law.

I hope that we will soon receive the statements that will permit us to initiate proceedings with respect to Japan's eligibility for protection under the U.S. legislation.

Sincerely,

Donald J. Quigg,

Acting Commissioner of Patents and Trademarks.

[FR Doc. 85-7363 Filed 3-27-85; 8:45 am]

BILLING CODE 6717-01-M

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Extending Coverage of Export Visa Requirement To Include Certain Cotton Apparel Produced or Manufactured in Taiwan

March 21, 1985.

The Chairman of the Committee for the Implementation of Textile Agreements (CITA), under the authority contained in E.O. 11651 of March 3, 1972, as amended, has issued the directive published below to the Commissioner of Customs to be effective on April 1, 1985. For further information contact Eve Anderson, International Trade Specialist (202) 377-4212.

Background

Under the terms of the agreement of December 1, 1982, the American Institute in Taiwan (AIT) and the Coordination Council for North American Affairs (CCNAA) have agreed to amend the existing export visa requirement to include cotton vests in Category 359 pt. (only TSUSA numbers 379.0258, 379.0654, 379.3949, 379.5700, 379.5820, 383.0648, 383.0652, 383.4200, and 383.4320), which will be visaed as 359-V. This coverage is in addition to the coverage of cotton, wool and man-made fiber textiles and textile products described in the CITA directive of September 27, 1972, as previously amended. The visa stamp is not being changed and the official authorized to issue visas also remains unchanged at this time.

The expanded visa coverage will be effective on April 1, 1985 for the aforementioned product in Category 359 pt., produced or manufactured in Taiwan and exported on and after April 1, 1985. Merchandise in this category exported before April 1, 1985 will not be denied entry for lack of a visa.

A description of the textile categories in terms of T.S.U.S.A. numbers was published in the **Federal Register** on December 13, 1982 (47 FR 55709), as amended on April 7, 1983 (48 FR 15175), May 3, 1983 (48 FR 19924), December 14, 1983 (48 FR 55607), December 30, 1983 (48 FR 57584), April 4, 1984 (49 FR 13397), June 28, 1984 (49 FR 26622), July 16, 1984 (49 FR 28754), November 9, 1984 (49 FR 44782), and in Statistical Headnote 5, Schedule 3 of the Tariff Schedules of the United States Annotated (1985).

Ronald I. Levin,

Acting Chairman, Committee for the Implementation of Textile Agreements.

March 21, 1985.

Committee for the Implementation of Textile Agreements

Commissioner of Customs,
Department of the Treasury, Washington, D.C.

Dear Mr. Commissioner: This directive further amends, but does not cancel, the directive of September 27, 1972, as amended, which established an export visa requirement for certain cotton, wool and man-made fiber textiles and textile products produced or manufactured in Taiwan.

Effective on April 1, 1985 cotton textile products in Category 359pt. (Only TSUSA numbers 389.0258, 379.0654, 379.3949, 379.5700, 379.5820, 383.0648, 393.0652, 383.4200, and 383.4320) will be visaed as follows: 359-V. Merchandise in Category 359pt. exported before April 1, 1985 shall not be denied entry for lack of a visa.

The Committee for the Implementation of Textile Agreements has determined that this action falls within the foreign affairs exception to the rulemaking provisions of 5 U.S.C. 553.

Sincerely,

Ronald I. Levin,

Acting Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 85-7371 Filed 3-27-85; 8:45 am]

BILLING CODE 3510-DR-M

DEPARTMENT OF DEFENSE

Department of the Air Force

USAF Scientific Advisory Board; Meeting

March 18, 1985.

The USAF Scientific Advisory Board Ad Hoc Committee on Options for Attack of Strategic Relocatable Targets will meet at the MITRE Corporation, Bedford, Massachusetts, on April 22, 1985 from 1:30 p.m. to 4:30 p.m.

The purpose of the meeting will be to hold classified discussions on ways in which existing and programmed systems may be effectively applied to attack of mobile ballistic missiles. The meeting will be closed to the public in accordance with section 552(c) of Title 5, United States Code, specifically subparagraph (1) thereof.

For further information contact the Scientific Advisory Board Secretariat at (202) 697-4811.

Norita C. Koritko,

Air Force Federal Register Liaison Officer.

[FR Doc. 85-7448 Filed 3-27-85; 8:45 am]

BILLING CODE 3910-01-M

USAF Scientific Advisory Board; Meeting

March 18, 1985.

The USAF Scientific Advisory Board's Ad Hoc Committee on High Power Microwave Systems will meet at Brooks AFB, TX on April 16, 1985.

The purpose of the meeting will be to hold a working session to work on a final report. The meeting will convene from 8:30 a.m. to 5:00 p.m. on April 16.

The meeting concerns matters listed in section 552b(c) of Title 5, United States Code, specifically subparagraph (1) thereof, and accordingly, will be closed to the public.

For further information, contact the Scientific Advisory Board Secretariat at 202-697-8845.

Norita C. Koritko,

Air Force Federal Register Liaison Officer.

[FR Doc. 85-7449 Filed 3-27-85; 8:45 am]

BILLING CODE 3910-01-M

Intent to Prepare a Draft Environmental Impact Statement; Westover Air Force Base, MA

The Defense Communication Agency proposes to expand the capacity and responsiveness of the National Communications System by constructing a Northeast Regional Communications Facility (NRCF) in the vicinity of Westover Air Force Base, Massachusetts.

The National Communications System (NCS) consists of a program and network of technical facilities which provide for the transmission and reception of communications data to and from many U.S. government agencies. The primary user is the Department of Defense; however, the NCS provides communications for civilian needs during times of emergency or national disaster. The Defense Communications Agency (DCA) has the overall responsibility for the operation of the NCS with the Air Force

performing as the executive agency for DCA.

The Department of the Air Force, acting on behalf of DCA and under the auspices of the National Communications System, proposes to locate the operations and receiver components of the NRCF on Westover AFB, near Springfield, Massachusetts, using existing government property and facilities. The transmitter component is provisionally located near Hawley, Massachusetts. A microwave repeater will be installed on an existing tower at one of several potential sites which can see both the proposed transmitter site and the receiver/operations sites.

Construction at the transmitter site near Hawley MA will consist of a transmitter building (approximately 18,000 Sq Ft), utility building (approximately 2,500 Sq Ft), and emergency power building (approximately 2,000 Sq Ft), and a small guard post. The receiver and operations facilities will be on existing sites and in buildings presently existing on Westover AFB. Construction of the facilities is proposed to begin in 1986, with operations beginning in 1987. When fully operational, the facility will employ approximately 15 personnel at the transmitter site and an additional 27 personnel at the receiver and network control facilities.

The Air Force estimates that the Draft Environmental Impact Statement will be available for public review and comment in late summer of 1985.

Questions concerning the proposal, scoping meetings or the Draft EIS may be directed to Major Ken Small, Hq USAF/LEEVP, Bolling AFB, DC 20332-5000, telephone (202) 767-6244.

Norita C. Koritko,

Air Force Federal Register Liaison Officer.

[FR Doc. 85-7445 Filed 3-27-85; 8:45 am]

BILLING CODE 3910-01-M

Corps of Engineers; Department of the Army

Intent To Prepare a Draft Environmental Impact Statement (DEIS) for the City of Rossville, KS; Flood Protection Study

AGENCY: US Army Corps of Engineers, Kansas City District, DOD.

ACTION: Notice of Intent To Prepare a Draft Environmental Impact Statement (DEIS).

SUMMARY: 1. The purpose of this study is to determine the feasibility for providing protection to the town of Rossville, Kansas, from flood flows arising on Cross Creek.

2. Reasonable alternatives for flood protection that will be studied include:

a. *No Action.* Without Federal involvement, flooding would continue to adversely impact residential units, businesses, churches, a school, and the city's water plant.

b. *Floodwall/Levee Construction.* This plan would consist of two ring levees and a floodwall. One ring levee would be small and encompass the northwest corner of Rossville. The larger ring levee would encircle the remainder of the city. The floodwall would be located from where Cross Creek meets the northwest edge of town to a point where it leaves the southwest corner of town.

c. *Levee Construction and Channel Relocation.* Two plans are being considered. The first plan would eliminate the segment of Cross Creek which flows through Rossville. The construction of a relocated channel would allow Cross Creek flood waters to by-pass the town of Rossville. In addition to channel relocation, there would be a levee built around the entire town using material excavated from the new channel to the greatest extent practicable. The second plan is a variation of the first and includes the same channel relocation; however, levee construction would extend from the northwest corner of town northeast to the edge of the floodplain and southerly where the relocated channel meets the old channel to a point approximately one mile downstream.

d. *Channel Relocation Only.* This plan would allow Cross Creek flood waters to by-pass the town of Rossville as described in paragraph 2c; however, the plan would not include construction of levees around the town.

3. Scoping Process:

a. *Public Involvement:* A meeting with Rossville officials was held on December 5, 1983. A public meeting is not currently scheduled to be held before the Draft Feasibility Report and Draft Environmental Impact Statement are released to the public in July, 1985. A public meeting will be held in August, 1985 after review of the draft reports. Draft documents, resulting from the Rossville Flood Protection Study, will be distributed to Federal/State agencies and interested members of the public for review and comment. Since the participation of the public and Governmental agencies is invited during all stages of the planning process, no formal "scoping" meeting will be held.

b. Environmental consultation and review will be conducted in accordance with the requirements of the National Environmental Policy Act of 1969, Council on Environmental Quality Regulations (40 CFR Parts 1500-1508), and other applicable laws, regulations, and guidelines.

ADDRESS: Questions concerning the proposed study and the DEIS should be directed to Mr. Dick Taylor, Chief, Environmental Resources Branch, Corps of Engineers, 700 Federal Building, Kansas City, Missouri 64106-2896. Phone: 816-374-3672 or FTS 758-3672.

Dated: March 21, 1985.

Philip L. Rotert,

Chief, Planning Division.

[FR Doc. 85-7411 Filed 3-27-85; 8:45 am]

BILLING CODE 3710-KN-M

Department of the Army

Army Science Board, Ad Hoc Subgroup on Ballistic Missile Defense Follow-On; 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: Wednesday and Thursday, 17 and 18 April 1985.

Times of meeting: 0930-1700 hours on 17 April (Closed); 0800-1500 hours on 18 April (Closed).

Place: The Pentagon, Washington, D.C.

Agenda: The Army Science Board Ad Hoc Subgroup on Ballistic Missile Defense Follow-On will meet for classified briefings by and discussions with representatives from the U.S. Army Advanced Technology Center on the Discrimination Program Plan. 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 ASB Administrative Officer, Sally Warner, may be contacted for further information at (202) 695-3039 or 695-7046.

Sally A. Warner,

Administrative Officer, Army Science Board.

[FR Doc. 85-7375 Filed 3-27-85; 8:45 am]

BILLING CODE 3710-08-M

Army Science Board, Ad Hoc Subgroups on U.S. Army Electronic Warfare Laboratory Effectiveness Review; 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: Monday, 15 April 1985.

Times of meeting: 0830–1700 hours (Closed).

Place: U.S. Army Electronic Warfare Laboratory (EWL), Fort Monmouth, New Jersey.

Agenda: The Army Science Board Ad Hoc Subgroup on U.S. Army Electronic Warfare Laboratory (EWL) Effectiveness Review will meet for a follow-up review of the facility and EWL technical programs. The study purpose is to provide an independent evaluation of EWL to ensure its continued excellence. 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 ASB Administrative Officer, Sally Warner, may be contacted for further information at (202) 695–3039 or 695–7046.

Sally A. Warner,

Administrative Officer Army Science Board.

[FR Doc. 85–7374 Filed 3–27–85; 8:45 am]

BILLING CODE 3710–08–M

Army Science Board; Ad Hoc Subgroup on U.S. Army Electronic Warfare Laboratory; 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: Monday & Tuesday, 22 & 23 April 1985.

Times of meeting: 0830–1700 hours on both days (Closed).

Place: White Sands Missile Range, New Mexico.

Agenda: The Army Science Board Ad Hoc Subgroup on U.S. Army Electronic Warfare Laboratory (EWL) Effectiveness Review will meet for an on-site visit of the Office of Missile Electronic Warfare, a sub-element of EWL. The study purpose is to provide an independent evaluation of EWL to ensure its continued excellence. 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 ASB Administrative Officer, Sally Warner, may be contacted for further information at (202) 695–3039 or 695–7046.

Sally A Warner,

Administrative Officer, Army Science Board.

[FR Doc. 85–7377 Filed 3–27–85; 8:45 am]

BILLING CODE 3710–08–M

Army Science Board; Doctrine and Training Integration Subpanel; 1985 Summer Training and Training Technology; 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, 24 April 1985.

Time: 1000–1200 hours and 1300–1600 hours, 24 April (Open).

Place: Nellis Air Force Base, Nevada.

Agenda: The Doctrine and Training Integration Subpanel of the Army Science Board 1985 Summer Study on Training and Training Technology—Applications for AirLand Battle and Future Concepts/Army 21 will meet to receive orientations on Air Force training technology supporting force on force training and discuss Army/Air Force training integration. 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. The ASB Administrative Officer, Sally Warner, may be contacted for further information at (202) 695–3039/7046.

Sally A. Warner,

Administrative Officer, Army Science Board.

[FR Doc. 85–7379 Filed 3–27–85; 8:45 am]

BILLING CODE 3710–08–M

Army Science Board; Mobilization Subpanel; 1985 Summer Study on Manpower Implications of Logistic Support; 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: Tuesday, 23 April 1985.

Time: 0800–1700 hours (Open).

Place: Washington, D.C.

Agenda: The Mobilization Subpanel of the Army Science Board 1985 Summer Study on Manpower Implications of Logistic Support for Army 21 will meet at the Selective Service Bureau for briefings and discussions on the Bureau's current and planned procedures to induct personnel into the Service in the event of mobilization. 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. The ASB Administrative Officer, Sally Warner, may be contacted for further information at (202) 695–3039/7046.

Sally A. Warner,

Administrative Officer, Army Science Board.

[FR Doc. 85–7378 Filed 3–27–85; 8:45 am]

BILLING CODE 3710–08–M

Army Science Board; 1985 Summer Study Panel on Training and Training Technology—Application for AirLand Battle and Future Concepts/Army 21; 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).

Dates of Meeting: Monday & Tuesday, 22 & 23 April 1985.

Time: 1400–1700 hours, 22 April (Open); 0400–1600 hours, 23 April (Open).

Place: Fort Irwin, California.

Agenda: The Army Science Board 1985 Summer Study Panel on Training and Training Technology—Applications for AirLand Battle and Future Concepts/Army 21 will meet to receive orientations on Army training programs, training technology support, and training evaluation in a battalion level training scenario. 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. The ASB Administrative Officer, Sally Warner, may be contacted for further information at (202) 695–3039/7046.

Sally A. Warner,

Administrative Officer Army Science Board.

[FR Doc. 85–7376 Filed 3–27–85; 8:45 am]

BILLING CODE 3710–08–M

Army Science Board; Training Effectiveness Subpanel; 1985 Summer Study on Training and Training Technology; 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).

Dates of meeting: Wednesday–Friday, 24–26 April 1985.

Time and place: 1000–1200 hours and 1300–1600 hours, 24 April at Camp Pendleton, California (Open); 0900–1200 hours and 1300–1600 hours, 25 April and 0800–1200 hours, 26 April at Fort Lewis, Washington (Open).

Agenda: The Training Effectiveness Subpanel of the Army Science Board 1985 Summer Study on Training and Training Technology—Applications for AirLand Battle and Future Concepts/Army 21 will meet at Camp Pendleton to observe and evaluate the Marine Tactical Warfare Simulation Evaluation Analysis System and discuss application of concepts to Army training. The Subpanel will meet at Fort Lewis to receive orientations on Army Development and Employment Agency projects relating to training effectiveness and visit units to discuss training programs and effectiveness issues. 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. The ASB Administrative Officer, Sally Warner, may be contacted for further information at (202) 695-3039/7046.

Sally A. Warner,

Administrative Officer, Army Science Board.

[FR Doc. 85-7380 Filed 3-27-85; 8:45 am]

BILLING CODE 3710-08-M

Army Science Board; Training Technology Subpanel; 1985 Summer Study on Training and Training Technology; 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).

Dates of meeting: Wednesday-Friday, 24-26 April 1985.

Times and places: 1300-1600 hours, 24 April (Open) at Linda Vista Armory, San Diego, California; 0900-1200 hours and 1300-1600 hours, 25 April (Open) and 0800-1200 hours, 26 April (Open) at the Army Development and Employment Agency (ADEA), Fort Lewis, Washington.

Agenda: The Training Technology Subpanel of the Army Science Board 1985 Summer Study on Training and Training Technology—Applications for AirLand Battle and Future Concepts/Army 21 will meet at Linda Vista Armory to evaluate the concept of the National Guard Armory supported by automated training technology. The Subpanel will meet at Fort Lewis to receive orientations on ADEA projects relating to training effectivenes and visit units to discuss training programs and effectiveness issues. 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. The ASB Administrative Officer, Sally Warner, may be contacted for further information at (202) 695-3039/7046.

Sally A. Warner,

Administrative Officer Army Science Board.

[FR Doc. 85-7381 Filed 3-27-85; 8:45 am]

BILLLING CODE 3710-08-M

DEPARTMENT OF ENERGY

National Petroleum Council, U.S. Petroleum Refining Coordinating Subcommittee on U.S. Petroleum Refining; Meeting

Notice is hereby given that the Coordinating Subcommittee on U.S. Petroleum Refining will meet in April 1985. The National Petroleum Council was established to provide advice, information, and recommendations to the Secretary of Energy on matters relating to oil and natural gas or the oil and natural gas industries. The Coordinating Subcommittee on U.S. Petroleum Refining will address previous Council refining studies and evaluate future refinery operations and their impact on petroleum markets. Its analysis and findings will be based on information and data to be gathered by the various task groups.

The U.S. Petroleum Refining Coordinating Subcommittee will hold its fifth meeting on Tuesday, April 16, 1985, starting at 9:00 a.m., in the Conference Room of the National Petroleum Council Suite 600, 1625 K Street, N.W., Washington, D.C.

The tentative agenda for the U.S. Petroleum Refining Coordinating Subcommittee meeting is as follows:

1. Opening remarks by the Chairman and Government Cochairman.
2. Discuss study assignments.
3. Review task group assignments.
4. Discuss any other matters pertinent to the overall assignment from the Secretary of Energy.

The meeting is open to the public. The Chairman of the U.S. Petroleum Refining Coordinating Subcommittee is empowered to conduct the meeting in a fashion that will, in his judgment, facilitate the orderly conduct of business. Any member of the public who wishes to file a written statement with the U.S. Petroleum Refining Coordinating Subcommittee will be permitted to do so, either before or after the meeting. Members of the public who wish to make oral statements should inform Ms. Carolyn Klym, Office of Oil, Gas, Shale and Coal Liquids, Fossil Energy, 301/353-2709, prior to the meeting and reasonable provision will be made for their appearance on the agenda.

Summary minutes of the meeting will be available for public review at the Freedom of Information Public Reading Room, Room 1E-190, DOE Forrestal Building, 1000 Independence Avenue, SW., Washington, D.C., between the hours of 9:00 a.m. and 4:00 p.m., Monday through Friday, except Federal holidays.

Issued at Washington, D.C., on March 20, 1985.

William A. Vaughan,

Assistant Secretary, Fossil Energy.

[FR Doc. 85-7421 Filed 3-27-85; 8:45 am]

BILLING CODE 6450-01-M

Bonneville Power Administration

Final Nonfirm Energy Policy for Consumer Alternate Fuel Loads

AGENCY: Bonneville Power Administration (BPA), DOE.

ACTION: Notice of final policy.

SUMMARY: BPA began looking at nonfirm service to loads with an alternate fuel source in 1982 as firm loads began to decline and firm power rates rose. BPA sought to (1) supplement its revenues and maximize use of nonfirm energy that would otherwise be wasted; (2) to allow BPA's Northwest utility purchasers and their consumers and BPA's direct service industrial purchasers to enjoy the economic benefits of nonfirm energy; and (3) insure that firm load was not lost by converting it to nonfirm load.

Nonfirm energy can be interrupted on very short notice. Therefore, a load receiving service under this policy must have an alternate energy source which can carry the load if nonfirm energy becomes unavailable. An example of an alternate fuel source is a gas or oil-fired boiler.

A summary of the policy development to date and a discussion of the main issues are contained in the first part of this notice, the Record of Decision (ROD). The second part of this notice contains the policy itself. The policy details conditions and terms of service, equipment requirements, and conditions for return to firm service if desired.

EFFECTIVE DATE: This policy shall become effective on the date of its publication in the **Federal Register.**

FOR FURTHER INFORMATION CONTACT: Ms. Donna L. Geiger, Public Involvement Office, P.O. Box 12999, Portland, Oregon 97212. Telephone: 503-230-3478. Oregon callers may use 800-452-8429; callers in California, Idaho, Montana, Nevada, Utah, Washington, and Wyoming may use 800-547-6048. Information may also be obtained from:

Mr. George Gwinnutt, Lower Columbia Area Manager, Suite 288, 1500 Plaza Building, 1500 NE. Irving Street, Portland, Oregon 97232, 503-230-4551

Mr. Ladd Sutton, Eugene District Manager, Room 206, 211 East Seventh Avenue, Eugene, Oregon 97401, 503-687-6952

Mr. Wayne Lee, Acting Upper Columbia Area Manager, Room 561, West 920 Riverside Avenue, Spokane, Washington 99201, 509-456-2518

Mr. George E. Eskridge, Montana District Manager, 800 Kensington, Missoula, Montana 59801, 406-329-3060

Mr. Ronald K. Rodewald, Wenatchee District Manager, P.O. Box 741, Wenatchee, Washington 98801, 509-662-4377, extension 379

Mr. George T. Reich, Acting Puget Sound Area Manager, 415 First Avenue North, Room 250, Seattle, Washington 98109, 206-442-4130

Mr. Thomas Wagenhoffer, Snake River Area Manager, West 101 Poplar, Walla Walla, Washington 99362, 509–522–6226

Mr. Robert N. Laffel, Idaho Falls District Manager, 531 Lomax Street, Idaho Falls, Idaho 83401, 208–523–2706

Mr. Frederic D. Rettenmund, Boise District Manager, Owyhee Plaza, Suite 245, 1109 Main Street, Boise, Idaho 83707, 208–334–9137.

Table of Contents

I. Record of Decision

A. Policy Development to Date

In late 1981, firm loads in the Northwest began to decline as the region entered a recession. Loads continued at reduced levels until 1983 when loads began to increase again. During that period, BPA has experienced normal or better water years, resulting in the availability of more nonfirm energy than existing markets for such energy.

Further more, BPA has a surplus of unsold firm resources, which added to the availability of nonfirm energy.

In the summer of 1982, Umatilla Electric Cooperative, a BPA preference customer, was faced with the loss of over 20 percent of its firm load due to the prospect that increasing rates would cause three of its large food processor industrial consumers to switch to gas-fired boilers from electric boilers. Umatilla asked BPA to make energy available for these loads under the nonfirm rate schedule. BPA staff began working with Umatilla to develop an agreement to provide nonfirm energy for those electric boilers.

On November 30, 1982, BPA requested recommendations from the public on ways it could effectively market surplus firm energy (47 FR 53928). A number of the 58 respondents suggested BPA investigate new ways to market nonfirm energy in the Northwest.

1. *Interim Principles for Sales of Nonfirm Energy for Interruptible Loads.* In January 1983, BPA drafted principles for selling nonfirm energy to its Northwest utility customers for industrial loads with alternate fuel energy sources. BPA made sales of this type available to Northwest utilities on an interim basis, pending completion of this policy. BPA discussed the interim principles under which these sales were made with representatives of publicly owned utilities, investor-owned utilities, the direct-service industries, and industrial consumers of Northwest utilities.

2. *Request for Comments on Interim Principles.* On March 15, 1983, BPA requested comments on the interim principles for sales of nonfirm energy for interruptible industrial and irrigation loads (48 FR 10903). Comments on the interim principles were generally supportive, but specific comments on the contract restrictions contained within the interim principles were made. In light of these comments, BPA took the actions described below.

3. *Proposed Policy for Nonfirm Energy Sales for Utilities' Industrial Loads.* On July 12, 1983, BPA issued its proposed policy for sales of nonfirm energy to utilities for alternate fuel industrial loads. The proposed policy was published in the **Federal Register** on July 22, 1983 (48 FR 33518). The comment period expired August 31, 1983. BPA held a Public Information Forum on July 26, and Public Comment Forums in Portland, Spokane, and Seattle on August 8, August 10, and August 12, respectively. BPA mailed a summary of comments to interested parties on November 23, 1983.

4. *Revised Proposed Policy.* BPA issued a Revised Proposed Nonfirm Energy Policy for Consumer Alternate Fuel Loads on September 10, 1984. The revised proposed policy was published in the **Federal Register** on September 12, 1984 (49 FR 35853). The **Federal Register** Notice of the revised proposed policy also notified interested parties of the availability of a Staff Evaluation of the Record and a proposed generic contract for alternate fuel loads.

5. *Addendum to the Staff Evaluation of the Record.* An Addendum to Staff Evaluation of the Official Record was distributed for public comment Janaury 21, 1985. Comments were due February 5, 1985. This addendum discussed several new issues brought up through public review of the revised proposed policy and recommended a number of changes to the policy. Comments received on the Addendum have been reviewed by staff and are discussed in section 7 below. BPA is now issuing a final policy on nonfirm energy for alternate fuel loads.

6. *Experience to Date.* During 1983, six utilities signed interim nonfirm energy sales contracts under the interim principles.

a. *Umatilla Electric Cooperative* purchased up to 40 megawatts for three potato processing plants. Deliveries of about 17 MW began January 9, 1983. These plants have natural gas-fired and oil boilers as alternate fuel sources.

b. *The City of Port Angeles* purchased approximately 7 MW of nonfirm energy for an electric boiler at a Crown Zellerbach paper mill beginning February 1, 1983. The mill can use wood waste or oil in lieu of electricity.

c. *Cowlitz County Public Utility District* purchased approximately 75 MW of nonfirm energy for electric boilers at the Longview Fibre and Weyerhaeuser mills beginning February 25, 1983. Longview Fibre can use hogfuel and fuel oil as fuel. Weyerhaeuser can use gas, oil, coal, and hogfuel as fuels.. Cowlitz also purchases 12 MW of nonfirm energy for service to Kalama Chemical. Kalama has natural gas boilers.

d. *Tillamook County People's Utility District* purchased approximately 3 MW of nonfirm energy beginning June 11, 1983, for service to a boiler owned by the Tillamook County Creamery Association. The creamery can oil as an alternate fuel.

e. *Snohomish County Public Utility District* purchased approximately 45 megawatts of nonfirm energy for service to the electric boiler loads of the Weyerhaeuser Kraft Paper and Lumber Manufacturing Facility and the Boeing Commercial Airplane Company beginning May 11, 1983. Weyerhaeuser can run alternate fuel boilers with natural gas, oil, or black liquor, a by-

product fo kraft pulp production. Boeing can fire boilers with natural gas or oil in lieu of electricity.

f. *Lewis County Public Utility District* purchased approximately 3 megawatts of nonfirm energy beginning June 9, 1983, for service to the American Crossarm and Conduit Company. Lewis received nonfirm service under the curtailment provisions of the interim nonfirm principles (i.e., for the portion of their load that would not have otherwise operated due to economic conditions).

BPA has renewed the interim contracts mentioned above, with Umatilla Electric Cooperative, the City of Port Angeles, Cowlitz County Public Utility District, Tillamook County Peoples' Utility District, and Snohomish County Public Utility District until June 30, 1985. BPA also entered into an interim alternative fuel nonfirm energy contract with Kaiser Aluminum and Chemical Corporation, a direct service industrial customer, for a 7-megawatt electric boiler at Kaiser's Mead plant. Kaiser has a gas-fired boiler as an alternate fuel facility.

7. *Staff Evaluation of Additonal Comments Received.* Comments were received on the Addendum to the Staff Evaluation of the Record. These comments are considered here.

Issue 1: Congeneration

a. Statement of Issue.

The policy may result in loss of firm load by encouraging congeneration to run more than it ordinarily would, or by encouraging new congeneration.

b. Position in Addendum.

The Addendum limits qualifying congeneration to—

> A consumer's own cogeneration that is operational on the date of publication of this policy.

c. Public Comment.

Snohomish PUD commented that BPA should make a careful assessment of cogeneration facilities which are existing but not currently operating. Snohomish's concern is that, given—

> Regional surplus conditions, an end user that now purchases firm energy may indicate a desire to start serving his own firm loads under the expectation that sufficient nonfirm power is available to displace his production costs most months of the year.

d. Evaluation.

BPA shares Snohomish's concern that this policy may displace firm load if sufficient safeguards are not provided. However, BPA has provided in the Addendum that "BPA, the utility, and the consumer will work out the details of service on a case-by-case basis to avoid displacement of firm load." Furthermore, BPA has limited qualifying cogeneration to that which is "operational as of the date of publication of this policy."

e. Recommendation.

No change.

Issue 2: Metering Requirements

a. Statement of Issue.

Can there be any flexibility in regard to the requirement for remote metering?

b. Position in Addendum.

The Addendum states:

> The remote metering equipment will be required when BPA installs similar equipment at the BPA point of delivery that serves the load. The remote reading devices are needed to allow timely and accurate billing of both firm and nonfirm deliveries, as well as real time accounting of nonfirm deliveries for system operating purposes.

c. Public Comment.

The requirement for mandatory installation of remote metering equipment has been cited as burdensome, and in some cases, prohibitive. Tillamook PUD has commented that BPA should develop alternatives to this requirement.

d. Evaluation.

Remote metering equipment speeds billing time. Thousands of dollars in interest costs are saved in this manner. Without remote metering, the purchasers must mail in a meter tape—thus adding several days to the billing time. However, BPA has worked to develop alternatives to this requirement for use in cases where the remote metering requirement would prohibit a load from taking nonfirm energy. These alternatives include BPA leasing of remotes, electro-mechanical meter readers, or some less expensive model of remote. BPA may agree to a reduction of the decremental cost of the alternate fuel over some period based on the investment made in remote metering equipment. This reduction of decremental cost may make a consumer eligible for a lower nonfirm rate, thus achieving greater savings with which to amortize the metering investment. In certain cases, BPA may agree to accept meter tapes.

e. Recommendation.

PBA should allow some flexibility in the policy. Add the words "unless otherwise agreed by BPA" to the sentence on required remote equipment.

Issue 27: Alternatives to Unauthorized Increase Charge

a. Statement of Issue.

Can the Surplus Firm Energy Rate apply for service provided under this policy for forced outages and scheduled maintenance of the alternate fuel facility?

b. Position in Addendum

The Addendum states:

> Additionally, the policy should provide that if BPA determines that it has surplus firm power available, BPA will make surplus firm power available to the purchaser under the Surplus Firm Power Rate Schedule (SP-83 or its successor) in the event that the consumer has a forced outage of its alternate fuel facility which requires use of the nonfirm electrical facility during a period when BPA does not have nonfirm energy available. Furthermore, the policy should provide that if a consumer wants to do scheduled maintenance, the purchaser may, in advance of the maintenance, request availability of surplus firm power.

c. Public Comment.

Kalama Chemical commented that the surplus firm power rate contains a capacity charge which makes this power prohibitively expensive (i.e., as expensive as the unauthorized increase charge). (Kalama figured an average of 82 mills/kWh for use over a 1-to 5-day period.) They suggested using the surplus firm energy rate for forced outages and scheduled maintenance.

d. Evaluation.

BPA used the surplus firm power rate because forced outages usually require a capacity component as does scheduled maintenance. Surplus firm energy, however, can be provided by BPA to the extent that BPA has sufficient generating capability to meet the demand associated with the energy.

e. Recommendation.

Surplus firm energy may be provided, if determined to be available, for service to alternate fuel loads during forced outages or scheduled maintenance of the alternate fuel facility.

Issue 40: Flexibility.

a. Statement of Issue.

How much flexibility should the policy allow in its implementation?

b. Position in Addendum.

The Addendum states:

> . . . When a request or proposal for flexibility on an issue would conflict with a particular term of the policy, BPA's actions and decisions should conform with the policy.

c. Public Comment.

Seattle City Light suggested adding the following:

> BPA will work with its purchasers and their consumers to fashion and administer agreements that are workable for consumers, BPA's utility and DSI purchasers, and BPA, consistent with the policy objectives.

Seattle further explains:

> Since it is the *terms* of the policy that we wish to be flexible, this phrase should identify that the constraint of flexibility is the policy objectives not the terms of the policy.

d. Evaluation.

BPA could be flexible in administering the policy to the extent that flexibility does not conflict with a specific policy term and is consistent with policy objectives.

e. Recommendation.

Language which allows flexibility only to the extent that such flexibility does not conflict with specific policy terms should be added to section 2 of the policy, "Contract with the Purchaser."

Issue 41: Use of Non-BPA Energy

a. Statement of Issue.

Should utilities be allowed to arrange for supply of nonfirm energy from sources other than their own and BPA's?

b. Position in Addendum.

The Addendum states:

A computed requirements purchaser may serve an alternate fuel load using nonfirm generation from resources on its own system. However, such use of a purchaser's own nonfirm generation, or nonfirm energy from other non-BPA sources, in conjunction with BPA nonfirm energy to serve alternate fuel load will only be permitted in those cases where it will not result in an adverse impact on BPA operations, power marketing program, or existing contractual obligations. Metered requirements purchasers may not use nonfirm from their own resources to serve alternate fuel load because these purchasers must apply the total variable output of their resources to serve their firm load. However, metered requirements purchasers may use nonfirm energy from other non-BPA sources, so long as this does not adversely impact BPA's operations, power marketing program, or existing contractural obligations. In addition to other remedies that BPA may have, use of nonfirm energy from non-BPA sources, other than from a computed requirements customer's own resources, when BPA has nonfirm energy available at a rate less than the decremental costs of the alternate fuel load will be cause for termination of the purchaser's nonfirm energy contract with BPA, unless otherwise agreed in writing between BPA and the purchaser. BPA may determine that it will arrange for the supply of energy from other sources on behalf of individual purchasers or any group of purchasers pursuant to policies and conditions prescribed for ease of administration, maximization of service, or other purposes consistent with BPA's power marketing program, applicable operating limitations or existing contractural obligations.

c. Public Comment.

Seattle City Light commented that it sees:

No reason why a computed requirements customer cannot arrange for the supply of nonfirm energy for its consumer . . . .

Snohomish PUD recommended that:

BPA modify the policy . . . to specifically allow a computed requirements customer to serve alternate fuel loads with either BPA or the utilities own nonfirm power and then with nonfirm power from third parties only when BPA power, at a price capable of displacing the boiler, is not available.

d. Evaluation.

Under the interim agreements BPA is providing nonfirm energy, when it is available, from its system. When BPA nonfirm energy is not available at a price low enough to displace the alternate fuel load, BPA has been brokering nonfirm energy for service to alternate fuel loads. As an additional source of nonfirm, BPA has allowed computed requirements customers to serve alternate fuel loads with their own nonfirm energy.

BPA has not allowed computed requirements customers to provide nonfirm energy from other sources in the past and wishes to maintain maximum flexibility to impose conditions on providing brokering services in the future for the following reasons:

(1) Uncertainty over operation of the new arrangements; and

(2) To maintain maximum protection of BPA firm load.

e. Recommendation.

No change.

Issue 47: Environmental and Gas Industry Consideration of Cogeneration Displacement

a. Statement of Issue.

What are the environmental implications of displacing cogeneration loads under the policy? What are the effects on other fossil fuels, particularly natural gas, which may be displaced?

b. Position in Addendum.

Environmental concerns are addressed in the Environmental Assessment (EA).

The following Statement appeared in the Addendum, Issues 38:

There are no provisions in the revised proposed policy that were inserted specifically because of the natural gas industry. The policy is designed to allow an economical, beneficial use of nonfirm energy which may result in displacement of higher priced fuels.

c. Public Comment.

The Association of Washington Gas Utilities commented as follows:

It is submitted that BPA should not include displacement of cogeneration loads in its nonfirm energy policy. BPA should include in any policy for displacement of end-user alternate fuel cogeneration loads, if allowed at all, a requirement that no such displacement sales be made at times coal-fired generators are in operation; and that displacement of cogeneration, regardless of the alternate fuel used be allowed only after careful consideration of the severe inhibition against future cogeneration projects that displacement of alternate fuels, and in particular natural gas, might cause.

d. Staff Evaluation.

BPA did prepare an environmental assessment (EA) on the Nonfirm Energy Policy for Consumer Alternate Fuel Loads which was distributed for public comment on September 12, 1984. This EA was sent to several Pacific Northwest gas companies. The comment period on the EA closed on October 26, 1984. A Finding of No Significant Impact (FONSI) was issued on March 4, 1985.

BPA has no authority to force displacement of any coal-fired plant. It is highly unlikely that all coal-fired resources serving the region will ever be shut down concurrently with or without the policy or displacement of end-use cogeneration under the policy.

The policy will affect only that cogeneration which is existing at the time of publication of the final policy and which is end-use (i.e., those for which the facility's operator uses all the thermal, mechanical, and electrical output). Staff does not believe this sets any precedent with respect to other types of cogeneration or cogeneration to be developed in the future. Any future consideration of expanding the policy to other kinds of cogeneration will be subject to a separate decision making process which will be subject to an open public review and comment process and National Environmental Policy Act compliance activities, just as the policy now being finalized has been. Therefore, staff recommends that the policy in its current form should neither encourage or discourage future cogeneration.

About 210 NW of potential end-use cogeneration was identified by Ekono, Inc., in "A Report on Marketing Nonfirm Electrical Power to Pacific Northwest Manufacturing Industries for the Northwest Power Planning Council." Of this cogeneration, gas was listed as an optional fuel, along with hogfuel and No. 6 oil, for only one 7 MW facility. The Association's letter confirms that "there are relatively few cogeneration loads in the Northwest served by natural gas. . . ." It seems unlikely that the policy's effect on this small amount of gas-fired cogeneration would have the significant effects on natural gas marketing described in the Association's letter.

e. *Recommendation.*

No change from the Addendum is proposed.

8. *National Environmental Policy Act (NEPA) Compliance, (42 U.S.C. Sec. 4321, et seq.).* BPA analyzed environmental impacts of the proposed policy in an Environmental Assessment (EA) which was distributed on

September 12, 1984, for public comment. Based on the information in the EA, the review of the EA by government agencies, utilities, interested groups, and individuals, and consideration of the environmental implications of the policy changes made after the EA public comment period ended, it is the determination of DOE that the final policy in not a major Federal action significantly affecting the quality of the human environment within the meaning of NEPA (42 U.S.C. 4321, *et seq.*) and, therefore, an environmental impact statement will be required. A FONSI was signed on March 4, 1985.

B. Issues Identified and Resolved

A thorough evaluation of the comments and discussion of the issues can be found in the Staff Evaluation on the Record and the Addendum thereto and in the Staff Evaluation of Additional Comments Received, section 7 above. These documents are available on request and are incorporated into this ROD by reference. Below is a brief discussion of the major issues which were raised during the policy development process.

1. *Availability.* (a) In the earlier part of the policy development effort, a main question about availability of nonfirm energy was "What priority did alternate fuel loads have for nonfirm service?". The Direct Service Industries (DSIs), prior to the Supreme Court decision on the Central Lincoln case (Aluminum Company of America vs. Central Lincoln PUD, No. 82–1071 (June 5, 1984)) argued that BPA should limit availability of nonfirm energy to alternate fuel loads to periods when the Federal Columbia River Power System (FCRPS) was in spill condition or imminent spill. The DSIs feared that if alternate fuel loads were served with nonfirm energy at other than the standard rate, this would reduce the quality of service to the DSIs' top quartile. The resolution of the Central Lincoln case by the Supreme Court resulted in the DSIs' top quartile having priority over alternate fuel loads for nonfirm energy service. Thus service to alternate fuel loads under this policy will not threaten service to the DSIs' top quartile.

(b) BPA maintains the right to terminate availability of nonfirm energy at the end of any hour. The penalty for taking engergy after such a restriction is the unauthorized incease charge, currently 83 mills/kWh. BPA received many comments that this did not provide sufficient time for a consumer to bring its alternate fuel facility on line, and that this was a serious disincentive to participate in the program.

In response to these comments, BPA has included a provision concerning surplus firm energy in this final policy. If BPA determines that surplus firm energy is available at the end of a period of nonfirm availability, the purchaser may request and BPA may make this surplus firm energy available for the period needed to bring the alternate fuel facility on line. This period is defined as the "Transition Period" and is limited to a maximum 72 hours after nonfirm energy ceases to be available. This allows a consumer to bring the alternate fuel facility on line with surplus firm electric energy. Surplus firm energy is priced higher than nonfirm energy but is appreciably less than the unauthorized increase charge which would otherwise be incurred.

(c) Additionally, BPA has entered into interim agreements with utilities for brokerage of nonfirm replacement energy from other suppliers. Thus, BPA could extend the overall availability of nonfirm energy by supplementing its periods of unavailability with nonfirm from other suppliers. BPA will also allow a computed requirements customer to supply nonfirm energy from its own resources to an alternate fuel load, as long as this does not conflict with BPA's power marketing program, operating limitations or existing contractual obligations.

(d) BPA has also agreed to make surplus firm energy available to alternate fuel loads:

(1) if BPA determines that it has or had such energy available during forced outages of the alternate fuel facility; and

(2) if BPA agrees in advance to provide such energy during scheduled maintenance of the alternate fuel facility.

By adding these elements to the policy BPA hopes to make the policy more workable and attractive to potential consumers.

2. *Nature of Load.* BPA received comments that end-use cogeneration ought to be an allowable alternate fuel facility. In response to these comments, BPA has included existing end-use cogeneration as an allowable alternate fuel facility provided that the consumer can demonstrate to BPA's satisfaction that no firm load is or will be displaced.

3. *Equipment Requirements.* Several comments indicated that the equipment requirements, particularly those for remote metering on the alternate fuel load and the hard-copy terminal (used to notify the purchaser of nonfirm availability) were burdensome, unnecessary, and reduced the value of this policy to the Region. BPA has maintained these rquirements in a slightly modified form. The hard-copy terminal will only be required at such time as the number of alternate fuel loads justifies such an installation. The cost of hard-copy terminals should therefore be factored into a purchaser's decision to receive service under the policy. Remote metering equipment must be installed when BPA installs remote metering equipment at the purchaser's points of delivery, unless BPA agrees otherwise. Without this requirement, BPA could lose the value of the investment in remote metering equipment by incurring losses as a result of billing delays.

Separate metering for demand and energy is essential to determine the amount of nonfirm energy delivered and its contribution to a purchaser's peak. Since there is no demand charge for nonfirm energy, the demand associated with the nonfirm energy is backed out of a purchaser's peak for billing purposes.

BPA has waived the requirement for varhour metering except incases where BPA finds a specific operational or planning need for such metering.

4. *Firm Service.* BPA addressed the question of how loads served with nonfirm energy can later receive firm electric energy service in the Staff Evaluation of the Record.

In order to prevent a firm load from switching to nonfirm energy and then back to firm when nonfirm is not available, BPA will require a minimum of 2-years' notice for firm service to alternate fuel loads receiving service under this policy, unless BPA agrees otherwise. This is a requirement in addition to any provisions found in sections 8 or 9 of the power sales contract. The policy also stipulates that firm service may not be provided within the term of the agreement unless BPA agrees. Contracts offered under this policy will initially run until June 30, 1989.

The effect of this policy on contracted for or committed to loads is neutral. Taking nonfirm energy will in no way endanger a contracted for or committed to determination nor will it qualify a load that would not otherwise qualify for service at the PF rate.

5.5. *Restriction Notification.* As discussed in the availability section, BPA received comments that restriction of nonfirm energy at the end of any hour followed by an unauthorized increase charge was unworkable.

As discussed previously, BPA has attempted to mitigate this by providing surplus firm energy, when available, for the period required to bring alternate fuel loads on line and by brokering

energy from British Columbia (BC) Hydro.

Under normal conditions, however, a utility would receive more than an hours' notice that availability of nonfirm energy was to be restricted. If BPA comes into a period of fluctuating availability (e.g., diurnal availability) then alternate fuel loads which cannot operate under these conditions could choose to discontinue service with the electric energy provided by Bonneville and begin service with their alternate fuel.

6. *Incentives.* BPA has addressed the issue of incentives to build new electric facilities to take advantage of this policy. Generally, public comment indicated that the policy did not provide enough guarantee of availability and price of nonfirm energy on which to make a sound investment decision.

In the final policy, BPA allows the consumer a reduction of the decremental cost of the alternate fuel facility by some agreed upon amount in order to reflect investment in new electrical equipment installed to utilize nonfirm energy. By lowering the decremental cost the consumer may be eligible for a lower nonfirm rate, such as a displacement rate, thus achieving greater savings for the consumer, and expanding the nonfirm energy market for BPA.

7. *Contract Terms.* The duration of the contracts which will implement this policy has been an issue during the policy development process. It was generally agreed that the term had to be long enough to allow utilities and consumers to have several years operating experience under the policy. This will also provide consumers and utilities sufficient time to amortize any investments (i.e., metering equipment or new electric equipment) made to qualify for service under this policy. Thus, contracts offered under this policy will extend until June 30, 1989.

8. *BPA as Broker.* In order to augment availability of nonfirm energy, BPA has agreed to act as a broker for third party sources of nonfirm, such as energy from BC Hydro, for service to alternate fuel loads. BPA has entered into short term agreements with several utilities to act as a broker for nonfirm energy at times when BPA does not have nonfirm energy available. BPA is continuing work on longer term arrangements.

II. Policy for Nonfirm Energy Sales for Alternate Fuel Loads

A. Objectives

This policy is intended to accomplish the following objectives:

1. To utilize BPA nonfirm energy that would otherwise be wasted;
2. To avoid loss of firm load;
3. to allow BPA's Northwest utility purchasers and their consumers and BPA's direct service industrial purchasers to enjoy the economic benefits of nonfirm energy, which is expected to improve the region's economy;
4. to improve BPA revenues; and
5. to encourage the widest possible use of all electric energy that can be generated and marketed at the lowest possible rates consistent with sound business principles.

B. Implementation

The Bonneville Project Act (16 USC, Chapter 12B), and the Federal Columbia River Transmission System Act, Pub. L. 93–454, direct BPA to encourage the widest possible use of all electric energy that can be generated and marketed at the lowest possible rates consistent with sound business principles. BPA believes that this policy is consistent with that directive, and will continue to be so through the proposed term of the contracts to be issued under the policy (i.e., through June 30, 1989). During that term, BPA expects to have nonfirm energy available in excess of higher priority markets, in conditions encountered in most water years. During that term, subject to BPA's Pacific Northwest Power Act section 7(i) rate adjustment process, BPA will consider establishing nonfirm energy rates designed to be competitive with most alternate fuels during periods when BPA has nonfirm energy available in excess of the demand from higher priority markets. BPA will then offer to negotiate contracts with Northwest utilities and direct service industrial purchasers who have qualifying alternate fuel loads which are workable for the purchaser and the consumer and which are consistent with this policy.

Prior to the end of the initial contract term, BPA will review its nonfirm energy power marketing program and this policy to determine whether changed conditions require a change in the policy upon expiration of the initial contracts.

C. Definitions

1. "Alternate fuel capability" means the electric energy and demand levels required to serve the alternate fuel load at a level equivalent to the capability of the load's alternate fuel facilities.

2. "Alternate fuel facility" means the onsite energy source(s) capable of serving and available to fully serve the alternate fuel load. An end-use cogeneration facility which is operational on the date of publication of this policy may qualify as an alternate fuel facility.

3. "Alternate fuel load" means the portion of a consumer's energy load which is capable of being served by electric energy, and which has an alternate fuel facility (either a consumer's own end-use co-generation that is operational on the date of publication of this policy or a nonelectric source) capable of serving and available to serve the load when electric energy is not available. The load must be 1 average MW or greater to qualify for nonfirm energy service.

4. "Computed requirements purchaser" refers to a utility which operates automatic generation control equipment (i.e., a utility which operates equipment that regulates power output of electric generators within a control area in order to maintain system frequency).

5. "Consumer" refers to an account served by a utility or a qualifying direct service industrial customer.

6. "Contracted for or committed to determination" means a determination made pursuant to section 3(13)(A) of the Pacific Northwest Power Act as may be stated in Exhibit K, Table 2 of the purchaser's Pacific Northwest Power Act power sales contract, as applicable.

7. "Council" means the Pacific Northwest Electric Power and Conservation Planning Council, as defined in 3(6) of the Pacific Northwest Power Act.

8. "Critical period" means that portion of the historical streamflow record which defines the maximum amount of energy which the system is able to produce without failure; the period of record which would have produced the smallest amount of energy in the same monthly distribution as the system's firm loads.

9. "Demand" means the number of kilowatts (kW) of power served during the peak hour in a period.

10. "Energy" means total number of kilowatthours (kWh) of power served during a period.

11. "Energy meter" is a device which measures the total kilowatthours of energy flowing through a given point.

12. "Firm load" means the actual maximum integrated 1-hour monthly peak and average monthly energy loads of the purchaser's system in the Pacific Northwest, which BPA is obligated to supply with firm power. Firm load does not include any load that the purchaser has a unilateral right to restrict.

13. "Firm power" means power which is guaranteed by the supplier to be available at all times except for reason

of certain uncontrollable forces or continuity of service provisions.

14. "Firm power service level" means that portion of a consumer's load, served through the meters at the alternate fuel load, which data indicates has been served with firm power in part or that will be served with firm power. The firm power service level includes a "firm power demand level"—the number of kilowatts of firm power served during the peak hour in a period, and a "firm power energy level"—the total number of kilowatthours of firm power served in a period.

15. "Hourly recording demand meter" is a device which records the number of kilowatthours used for each consecutive 1-hour period at a given point.

16 "Maximum nonfirm energy service level" means the maximum amount of nonfirm energy which BPA will serve to a purchaser for a consumer's alternate fuel load. The maximum nonfirm service level is expressed in two parts: a maximum nonfirm demand level (in kW) and a maximum nonfirm energy level (in kWh).

17. "Metered requirements purchaser" refers to a purchaser that does not operate automatic generation control equipment (i.e., a utility that does not have equipment which regulates power output of electric generators within a control area in order to maintain system frequency) or refers to a direct service industrial customer.

18 "Nonfirm energy contract" means a contract which is offered as a result of this policy to provide nonfirm energy service to purchasers for service to their consumer's alternate fuel loads.

19. "Nonfirm Energy" means energy supplied or available under an arrangement which does not have the guaranteed continuous availability feature of firm power.

20. "Nonfirm service" means the service of nonfirm energy to a purchaser by BPA. BPA has the unilateral right to restrict this service at the end of any hour in which BPA determines that nonfirm energy is no longer available.

21. "Northwest" means that area described in section 3(14) of the Pacific Northwest Electric Power Planning and Conservation Act.

22. "Pacific Northwest Power Act" refers to the Pacific Northwest Electric Power Planning and Conservation Act, Pub. L. 96–501 (16 U.S.C., sections 839, *et seq.*)

23. "Pacific Northwest Power Act power sales contract" refers to the power sales contracts which were offered to the utilities and direct service industries of the Northwest pursuant to the Pacific Northwest Power Act.

24. "Point of delivery" is the point where BPA delivers power to a purchaser.

25. "Point of metering" in regard to this policy refers to the point at the consumer's alternate fuel load where power is metered. To determine the amount of nonfirm energy delivered at a purchaser's point of delivery, a loss factor is applied to the amount of nonfirm energy received at the consumer's point of metering at the alternate fuel load.

26. "Purchaser" refers to a utility or a direct service industrial customer which enters into a nonfirm contract as a result of this policy.

27. "Transition period" means the period required to bring a consumer's alternate fuel facilities on-line and up to a level sufficient to carry the alternate fuel load after a period of nonfirm energy availability. The transition period shall be defined in the nonfirm energy contract and shall in no case exceed 72 hours.

28. "Varhour meter" is a device which measures the reactive energy in a circuit.

D. Terms of the Policy

1. *Nature of Load and Level of Nonfirm Energy Service.* Alternate fuel loads shall have the capability of being served with electricity and shall have an alternate fuel source capable of serving and available to serve the load when nonfirm energy is not available. The alternate fuel load shall be 1 average MW or larger.

For consumers with end-use cogeneration which was operational as of the date of publication of this policy, BPA, the consumer, and the purchaser will work out the details of service on a case-by-case basis to avoid displacement of firm load.

The maximum amount of nonfirm energy which BPA will provide to a purchaser for service to an alternate fuel load shall be the energy and demand levels of the consumer's electrical facilities above historical firm service power levels of the electrical facilities that are equivalent to the historical operation during a month and maximum capability, respectively, of the alternate fuel facilities. Historic firm power level of the electrical facilities may be adjusted to reflect long range trends, and shall be agreed to by BPA and the Purchaser.

BPA may change the maximum nonfirm service levels of an alternate fuel load by issuing a revised exhibit of a purchaser's contract, if:

a. The purchaser requests an increase in such level and BPA determines that the alternate fuel capability has increased;

b. BPA determines that the alternate fuel capability has decreased; or

c. The purchaser requests a decrease in such level and a corresponding increase in the firm power service level, and BPA agrees to the increase in the firm power service level pursuant to section 10 of this policy.

In the case of b. above, BPA may revise the appropriate exhibit unilaterally.

In all cases, BPA will avoid loss of firm load to nonfirm energy service in determining firm service levels and maximum nonfirm service levels.

2. *Contract Between BPA and the Purchaser.* In order to implement this policy, BPA and interested purchasers with alternate fuel loads in their service areas shall negotiate and enter into nonfirm contracts extending through June 30, 1989. All such nonfirm energy contracts shall be substantially in the form prescribed by BPA, although BPA and a purchaser may agree to different contract provisions if such contract provisions are consistent with the terms of this policy. If a contract provision addresses matters not specifically dealt with by this policy, that contract provisions shall be consistent with the objectives of the policy.

A consumer may, with or without the aid of a utility, incur costs to install new electric facilities at a load which is being served by an alternate fuel for the purpose of taking advantage of nonfirm energy offered under this policy. In such case, the purchaser's contract with BPA may provide that those costs may be amortized over a reasonable period through a reduction in the decremental costs of the alternate fuel. A lower decremental cost of the alternate fuel may allow a consumer to qualify for a lower nonfirm energy rate. The amortization period should also consider any non-BPA energy sales to the load.

Consumers who install new electric facilities to take advantage of nonfirm energy offered under this policy and receive a reduction in decremental cost to help amortize the investment shall be served after all other alternate fuel loads within the appropriate customer class in the event of an allocation of nonfirm energy. Within this group, alternate fuel loads shall be served in order of executed contract (i.e., the first purchaser to execute a nonfirm energy contract shall receive first priority in allocation of nonfirm energy within this group).

The nonfirm energy contracts shall have the BPA General Contract

Provisions Form PSC–1, as amended, attached as an exhibit. The appropriate BPA rate schedules and general rate schedule provisions shall also be attached as an exhibit to each nonfirm energy contract. Nonfirm contracts shall also have exhibits specifying maximum nonfirm service levels, firm power service levels, if any, points of delivery, points of metering, the transition period, and distribution losses between the point of delivery and the point of metering. Each nonfirm contract shall provide that the purchaser shall obtain the right in its contract with the consumer to allow BPA to inspect the electric and alternate fuel facilities of the consumer, and to obtain reasonable information regarding service to the alternate fuel load by and the decremental cost of the alternate fuel facilities, and to update this information from time to time. The contract shall also provide that BPA and the purchaser shall consult at the end of the second and third contract years concerning their ability and desire to enter into a subsequent nonfirm contract, and to re-evaluate the status of the alternate fuel load.

Further, each nonfirm energy contract shall include a covenant by the purchaser stating that the nonfirm energy will not be used to supply any load under such conditions that discontinuance of deliveries would cause undue hardship to the consumer, the purchaser or otherwise in the purchaser's service area, and that the purchaser acknowledges full responsibility for any hardship that does occur.

3. *Availability of Nonfirm Energfy.* BPA shall determine the amount of nonfirm energy that it has available for sale on each hour at each nonfirm energy rate. Such determination shall be final and conclusive. BPA shall offer such energy for sale under BPA's nonfirm energy rate schedule, which may, from time to time, be revised in accordance with section 7(i) of the Pacific Northwest Power Act. In the event that allocation of available nonfirm energy is necessary, BPA shall allocate such energy in accordance with applicable law and BPA policy.

A computed requirements purchaser may serve an alternate fuel load using nonfirm generation from resources on its own system. However, such use of a purchaser's own nonfirm generation, or nonfirm energy from other non-BPA sources, in conjunction with BPA nonfirm energy, to serve alternate fuel load will only be permitted in those cases where it will not result in an adverse impact on BPA operations, power marketing program, or existing contractual obligations. Metered requirements purchasers may not use nonfirm from their own resources to serve alternate fuel load because those purchasers must apply the total variable output of their resources to serve their firm load. However, metered requirements purchasers may use nonfirm energy from other non-BPA sources, so long as this does not adversely impact BPA's operations, power marketing program, or existing contractual obligations. In addition to other remedies that BPA may have, use of nonfirm energy from non-BPA sources, other than nonfirm energy from a computed requirements purchaser's own resources, when BPA has nonfirm energy available at a rate less than the decremental costs of the alternate fuel load will be cause for termination of the purchaser's nonfirm energy contract with BPA, unless otherwise agreed in writing between BPA and the purchaser.

BPA may arrange for the supply of energy from other sources on behalf of individual purchases or any group of purchasers pursuant to policies and conditions prescribed for ease of administration, maximization of service, or other purposes consistent with BPA's power marketing program, applicable operating limitations or existing contractual obligations.

4. *Availability of Surplus Firm Energy.* In the event that nonfirm energy is restricted, a purchaser may request surplus firm energy under the SE–83 rate schedule or its successor for service to the alternate fuel load during all or part of the transition period. BPA will determine the amount and duration of surplus firm energy available after having met all other surplus firm markets and that BPA has sufficient generating capability available to serve such load. BPA will then inform the purchaser of such duration and amount of surplus firm energy. The purchaser may then agree to purchase such amount and duration of surplus firm energy, and BPA will make such energy available to the purchaser. The purchaser shall then be obligated to purchase the agreed upon quantity of nonfirm energy.

A purchaser may request, in advance of need, surplus firm energy for service to an alternate fuel load during scheduled maintenance of the alternate fuel facility. BPA may provide surplus firm energy under the SE–83 rate schedule or its successor if BPA determines that it has surplus firm energy available after having met all other surplus firm markets and that it has sufficient generating capability to serve such load.

A purchaser may request surplus firm energy for service to an alternate fuel load during a temporary forced outage of the alternate fuel facilities at the load. BPA may provide surplus firm energy under the SE–83 rate schedule or its successor if BPA determines that it has surplus firm energy available after having met all other surplus firm markets and that it has sufficient generating capability to serve such load.

5. *Notification.* a. Required Facilities.

(1) Prior to installation by BPA of the facilities described in paragraph (2), the purchaser shall provide and maintain a 24-hour phone number or a day and a night phone number for the purpose of receiving nonfirm availability information from BPA.

(2) If BPA determines that it is necessary to install a computer-initiated dial-up system for transmitting notification to purchasers with contracts pursuant to this policy, the purchaser shall provide a hard copy terminal equipped with an auto-answer modem (300 baud, Bell 103 compatible) connected to a dedicated phone line upon at least 4 months written notice from BPA. The consumer may provide similar facilities.

b. Notification of Availability.

(1) From time to time BPA shall notify purchasers of the projected availability of nonfirm energy, including projected price, projected amount, projected duration, and other relevant information. If a consumer has chosen to participate in the dial-up system described in paragraph (a)(2), BPA shall also provide notification to the consumer.

(2) At the end of a period of nonfirm energy availability or when the purchaser is notified by BPA that nonfirm energy will be restricted, the purchaser may request surplus firm energy for service during the transition period. BPA shall then inform the purchaser of the duration and amount of surplus firm energy which may be available for service during the transition period. The purchaser shall be obligated to purchase the amount and duration of energy which BPA and the purchaser then agree to for service to the alternate fuel load during the transition period.

(3) For surplus firm energy which BPA may make available for service to alternate fuel loads during scheduled maintenance or temporary forced outage of the alternate fuel facility, the procedures in section 4 shall apply.

c. Notification of Purchase.

During any period of nonfirm availability, each participating purchaser shall notify BPA of the level of nonfirm service it requests, in a manner consistent with the terms of its nonfirm energy contract. Computed requirements purchasers shall follow scheduling procedures required by their Pacific Northwest Power Act power sales contracts. BPA retains the right to require metered requirements purchasers: (1) To contact BPA by 1200 hours of the workday preceding the day of desired delivery of nonfirm energy to provide its requested hourly nonfirm energy service levels; and (2) to provide information each workday concerning the purchaser's nonfirm energy use for the previous day or days. Normally, however, BPA will require daily communication from metered requirements purchasers only in the event of a significant change in the requested nonfirm energy service level.

d. *Notification of Change in Availability.* BPA shall give maximum practicable notice of any change in price, amount, or duration of availability of nonfirm energy, but reserves the right to change the price, amount, or duration of availability, at the end of any hour.

It shall be the responsibility of each purchaser and consumer to respond to notification of any change in availability.

6. *Metering.* Each purchaser and/or consumer shall provide separate metering at the alternate fuel load. Such meters shall include an energy meter and an hourly recording demand meter. A varhour meter will be required at the alternate fuel load only where BPA has a planning or operating need for such meter. Such meters and meter installations must be approved by BPA for billing accuracy and compatibility with BPA remote reading equipment.

When BPA installs remote reading equipment at a point of delivery which serves an alternate fuel load, each purchaser and/or consumer shall provide for installation of remote reading equipment at each alternate fuel load's point of metering, unless otherwise agreed by BPA.

BPA and the purchaser shall agree on appropriate demand and energy loss factors between each alternate fuel load's point of metering and the purchaser's corresponding point of delivery. Distribution losses beween the point of delivery and the point of metering at the alternate fuel load are therefore added to the amount of nonfirm energy recorded at the consumer's load for purposes of BPA's billing of the purchaser.

Until installation of remotre reading equipment, the purchaser shall read meters at each nonfirm consumer's point of metering when meters are read at the corresponding point of delivery and shall immediately furnish BPA with the readings.

7. *Billing.* BPA shall bill purchasers for nonfirm energy, surplus firm energy, and surplus firm power delivered at each point of delivery. This amount shall be determined by applying an appropriate loss factor to the amount of energy metered at the alternate fuel load.

In order to back our demand associated with the nonfirm energy deliveries from a point of delivery's peak or coincidental peak, the data from the hourly recording demand meter will be used with appropriate loss factors applied.

8. *Rates.* BPA shall sell nonfirm energy to a purchaser at the applicable rate specified in BPA's nonfirm energy rate schedule. BPA may also sell surplus firm energy for the periods described in section 3 at the rate specified in the surplus firm energy rate schedule. Any energy taken by the purchaser for service to the alternate fuel load which is in excess of nonfirm energy or surplus firm energy made available by BPA shall be considered an unauthorized increase and subject to unauthorized increase charges. BPA may provide guaranteed deliveries of nonfirm energy in accordance with applicable terms of the nonfirm energy rate schedule.

9. *Customer Service Facilities.* The provisions of BPA's Customer Service Policy shall apply to determine responsibility for furnishing transmission, transformation, distribution, metering, or communications equipment to serve an alternate fuel load.

10. *Firm Service.* Purchasers receiving nonfirm service for qualifying loads under contracts executed pursuant to this policy shall not receive firm service for such loads during the terms of the contracts, unless otherwise agreed by BPA. In the event BPA agrees to an exception, firm service to a utility purchaser will be subject to sections 8 and 9 of the purchaser's Pacific Northwest Power Act power sales contract.

A load receiving nonfirm energy service pursuant to this policy shall not forfeit any rights the purchaser or consumer may have under sections 3(13) or 7(b) of Pub. L. 96-501 because of receiving such nonfirm service. As long as a load with alternate fuel capability continues to qualify and receive nonfirm service under this policy, sections 8 and 9 of the purchaser's Pacific Northwest Power Act power sales contract shall not apply to such load.

Purchasers receiving nonfirm service for qualifying loads under contracts executed pursuant to this policy may receive firm service to such loads after expiration of the contracts in accordance with sections 8 and 9 of the purchaser's Pacific Northwest Power Act power sales contract, in the case of a utility purchaser; *provided, however,* that any purchaser must provide at least 2-years' notice of its desire to receive firm service, unless otherwise agreed by BPA.

Issued in Portland, Oregon on March 14, 1985.

Peter T. Johnson,

Administrator.

[FR Do. 85-7429 Filed 3-27-85; 8:45 am]

BILLING CODE 6450-01-M

Economic Regulatory Administration

[ERA Docket No. 85-07-NG]

Natural Gas Imports, Great Lakes Transmission Co.; Application To Amend Import/Export Authorization

AGENCY: Economic Regulatory Administration, DOE.

ACTION: Notice of Application to Amend Authorization to Import and Export Natural Gas from Canada.

SUMMARY: The Economic Regulatory Administration (ERA) of the Department of Energy (DOE) gives notice of receipt on March 8, 1985, of an application from Great Lakes Gas Transmission Company (Great Lakes) to amend its existing authorization to import Canadian gas at the international boundary near Emerson, Manitoba, Canada, and to export the gas at two points on the international boundary near St. Clair and Sault Ste. Marie, Michigan. In order to provide the additional gas transportation service needed by TransCanada Pipelines Limited (TransCanada), Great Lakes requests that its current authorization be increased from 815,000 Mcf per day to 825,000 Mcf per day. The applicant proposes to enlarge its facilities near the Sault Ste. Marie interconnection with TransCanada's system to transport the additional volumes.

The application is filed with the Economic Regulatory Administration (ERA) pursuant to section 3 of the Natural Gas Act and DOE Delegation Order No. 0204-111. Protests, motions to intervene, notices of interventions, and written comments are invited.

DATE: Protests, motions to intervene or notices of intervention, as applicable, and written comments are to be filed no later than 4:30 p.m. on April 29, 1985.

FOR FURTHER INFORMATION CONTACT:

Tom Dukes, Natural Gas Division, Office of Fuels Programs, Economic Regulatory Administration, Forrestal Building, Room GA-007, 1000 Independence Avenue, SW., Washington, D.C. 20585, (202) 252-9590

Diane Stubbs, Office of General Counsel, Natural Gas and Mineral Leasing, U.S. Department of Energy, Forrestal Building, Room 6E-042, 1000 Independence Avenue, SW., Washington, D.C. 20585, (202) 252-6667.

SUPPLEMENTARY INFORMATION: Under Federal Power Commission (FPC) Order No. 521, Docket No. CP66-112, issued June 20, 1967, as amended by the FPC in Docket No. CP71-233, on June 21, 1971, Great Lakes was authorized to import up to 815,000 Mcf of natural gas per day from TransCanada and to export the same volumes for eventual sale in Canada over a term ending November 1, 1992. On January 23, 1985, the ERA issued Opinion and Order No. 70 [1 ERA ¶70,583], extending the term of Great Lakes' authorization from November 1, 1992, to November 1, 2005.

Under the arrangement, Great Lakes provides transportation services for TransCanada's account, importing the gas at the international border near Emerson, Manitoba, and returning an equivalent volume at St. Clair and Sault Ste. Marie, Michigan. Between the points of entry and exit, the Canadian gas is transported by Great Lakes across the states of Minnesota, Wisconsin, Illinois and Michigan.

In its March 8, 1985, application, Great Lakes requests that the currently authorized daily import/export volumes be increased from 815,000 Mcf to 825,000 Mcf beginning November 1, 1985, based on a February 28, 1985, amending agreement to the transportation contract between Great Lakes and TransCanada.

Great Lakes currently has a related application pending at the Federal Energy Regulatory Commission in Docket No. CP85-333 to construct approximately 15 miles of pipeline looping at Sault Ste. Marie needed to provide the increased transportation services.

Applicant indicates that the competitiveness of the arrangement, need and security of supply are not issues to be considered in this proceeding because the volumes being imported are redelivered to Canada and are not sold in U.S. markets.

A decision on this application will be made consistent with the Secretary of Energy's gas import policy guidelines and Delegation Order No. 0204-111 (49 FR 6690, February 22, 1984). Inasmuch as the proposed additional volumes would be imported solely for consumption in Ontario, Canada, the only relevant issue in this case is the impact of the import and export on Great Lakes and its customers. Parties that may oppose this application should address that issue in their comments.

Other Information

In response to this notice, any person may file a protest, motion to intervene, or notice of intervention, as applicable, and written comments. Any person wishing to become a party to the proceeding and to have the written comments considered as the basis for any decision on the application must, however, file a motion to intervene or notice of intervention, as applicable. The filing of a protest with respect to this application will not serve to make the protestant a party to the proceeding, although protests and comments received by persons who are not parties will be considered in determining the appropriate procedural action to be taken on the application. All protests, motions to intervene, notices of intervention, and written comments must meet the requirements that are specified by the regulations in 10 CFR Part 590. They should be filed with the Natural Gas Division, Office of Fuels Programs, Economic Regulatory Administration, Room GA-033-B, RG-43, Forrestal Building, 1000 Independence Avenue, S.W., Washington, D.C. 20585. They must be filed no later than 4:30 p.m., April 29, 1985.

The Administrator intends to develop a decisional record on the application through responses to the notice by parties, including the parties' written comments and replies thereto. Additional procedures will be used as necessary to achieve a complete understanding of the facts and issues. A party seeking intervention may request that additional procedures be provided, such as additional written comments, an oral presentation, a conference, or a trial-type hearing. Any request to file additional written comments should explain why they are necessary. Any request for an oral presentation should identify the substantial question of fact, law, or policy at issue, show that it is material and relevant to a decision in the proceeding, and demonstrate why an oral presentation is needed. Any request for a conference should demonstrate why the conference would materially advance the proceeding. Any request for a trial-type hearing must show that there are factual issues genuinely in dispute that are relevant and material to a decision and that a trial-type hearing is necessary for a full and true disclosure of the facts.

If an additional procedure is scheduled, the ERA will provide notice to all parties. If no party requests additional procedures, a final opinion and order may be issued based on the official record, including the application and responses filed by parties pursuant to this notice, in accordance with 10 CFR 590.316.

A copy of Great Lakes Transmission Company's application is available for inspection and copying in the Natural Gas Division Docket Room, GA-033-B, at the above address. The docket room is open between the hours of 8:00 a.m. and 4:30 p.m., Monday through Friday, except Federal holidays.

Issued in Washington, D.C., on March 21, 1985.

James W. Workman,

Director, Office of Fuels Programs.

[FR Doc. 85-7425 Filed 3-27-85; 8:45 am]

BILLING CODE 6450-01-M

Federal Energy Regulatory Commission

[Docket Nos. CP84-363-001, et al.]

Natural Gas Certificate Filings; ANR Pipeline Company, et al.

March 20, 1985.

Take notice that the following filings have been made with the Commission:

1. ANR Pipeline Company

[Docket No. CP84-363-001]

Take notice that on February 15, 1985, ANR Pipeline Company (ANR), 500 Renaissance Center, Detroit, Michigan 48243, filed in Docket No. CP84-363-001 an amendment to its application in Docket No. CP84-363-000 pursuant to section 7(c) of the Natural Gas Act for a certificate of public convenience and necessity authorizing the construction and operation of pipeline and related facilities and the transportation of natural gas for others through such facilities, all as more fully set forth in the amendment which is on file with the Commission and open for public inspection. ANR states that the purpose of the amendment is to reflect an increase in the volumes of natural gas to be transported by it and a resulting change in the facilities necessary to transport such increased volumes.

ANR proposes to construct and operate the following pipeline and related facilities.

Pipeline Facilities

Kendall County to Will County, Illinois, 25.1 miles, 42-inch O.D.
Will County to Porter County, Indiana, 37.2 miles, 42-inch O.D.
Berrien County, Michigan, to LaGrange County, Indiana, 59.8 miles, 30, inch O.D.
LaGrange County, Indiana, to Defiance County, Ohio, 61.6 miles, 30-inch O.D.

Compressor Facilities

Sandwich Compressor Station—Kendall County, Illinois, 13,000 horsepower
Bridgmann Compressor Station—Berrien County, Michigan, 8,000 horsepower
Defiance Compressor Station—LaGrange County, Ohio, 27,000 horsepower

Custody-Transfer Measurement

Gas measurement facilities at the proposed interconnection with Ohio Interstate Pipeline Company (Ohio Interstate) at Defiance County, Ohio, 7- to 16-inch meter runs

The estimated capital costs of the facilities proposed by ANR is $230.6 million in 1984 dollars.

ANR indicates that its proposed facilities would be installed in two phases, the 60 percent case and 100 percent case, in order to meet the volume buildup proposed by Tennessee Gas Pipeline Company, a Division of Tenneco Inc. (Tennessee), Transcontinental Gas Pipe Line Corporation (Transco), Texas Eastern Transmission Corporation (TETCO), Boundary Gas, Inc. (Boundary), and Algonquin Gas Transmission Company (algonquin), the Shippers, for whom ANR proposes to transport gas. ANR states that it proposes to provide firm transportation service for the Shippers up to the volumes set forth below:

Shippers	Volume (Mcf per day)	
	Summer design day	Winter design day
Algonquin	52,000	51,700
TETCO	154,000	153,100
Transco	333,000	338,600
Tennessee	415,400	413,000
Boundary	53,500	53,200
Receipt from Northern Border Pipeline Company (Northern Border) at Sandwich, Illinois	1,008,800	1,009,600
Volumes (to) and from ANR Storage Company for Transco's Account	(91,400)	433,400
Volumes retained for fuel	(19,000)	(16,000)
Total deliveries to Ohio Interstate	898,400	1,426,900

In the 60 percent case ANR proposes to charge an initial rate of $6.79 per Mcf of contract demand per month for all shippers' volumes transported from Sandwich, Illinois, to Defiance, Ohio, and an additional $1.78 per Mcf of contract demand per month for the transportation of the Transco's Union and storage volumes, transported between Defiance, Ohio, and Willow, Michigan. For volumes tendered by the Shippers in excess of their contract demand while the 60 percent case is in effect, which ANR accepts and redelivers on a best-efforts basis, ANR will change a rate of $.2232 per Mcf, for transportation of such volumes from Sandwich, Illinois, to Defiance, Ohio, and for the transportation of Transco's Union and storage volumes, between Defiance, Ohio, and William, Michigan, rates of $.0414 and $.1415 per Mcf during the Summer and Winter Periods, respectively.

In the 100 percent case ANR proposes to charge an initial rate of $6.29 per Mcf of contract demand per month for all the shipper's volumes transported from Sandwich, Illinois, to Definace, Ohio, and an additional $.94 per Mcf of contract demand per month for the transportation of Tranna's Union and storage volumes, transported between Defiance, Ohio, and Willow, Michigan. For volumes tendered by the Shippers in excess of contract demand, which ANR accepts and redelivers on a best-efforts basis, ANR will charge a rate of $.2068 per Mcf, for transportation of such volumes from Sandwich, illinois, to Defiance, Ohio, and for transportation of such volumes from Sandwich, Illinois, to Defiance, Ohio, and for transportation of Transco's Union and storage volumes, between Defiance, Ohio, and Willow, Michigan, rates of $.0529 and $.1566 during the Summer and Winter periods, respectively.

The foregoing rates are illustrative only, reflecting a cost of service and rate computation using estimated costs expressed in 1984 dollars and the current cost of ANR's existing facilities.

ANR states that the volume of natural gas proposed to be transported for the Shippers on a firm basis is equal to the volume of natural gas they presently propose to import from Canada into the northeastern United States (including the volume Transco proposes to store), plus associated fuels, in the consolidated proceedings presently pending before the Commission in *Bundary Gas, Inc., et al.*, Docket Nos. CP81–107–000 *et al.* (Phase II).

ARS states that its proposal is part of an overall plan, known as the Can-Am Pipeline Project, for the transportation of the volumes of natural gas which are proposed to be imported by the Shippers from Canada and is competitive with the proposals presently pending before the Commission for the transportation of such gas in the proceedings in *Boundary Gas, Inc., et al.* Docket No. CP81–107–000, *et al.*, by Niagara Interstate Pipeline System and Natural Gas Pipeline Company of America.

ANR states that in addition to ANR, the Can-Am Pipeline Project's sponsores include Foothills Pipe Line (YUKON) Ltd. (Foothills), Northern Border and Ohio Interstate. It is explained that under the CanAm Pipeline Project Foothills would deliver the Shipper's gas to Northern Border at Monchy, Saskatchewan, and that Northern Border would thereafter transport the gas eastward in its facilities; and, at the eastern terminus of the Northern Border system near Ventura, Iowa, Northern Border would construct a new pipeline from Ventura to an interconnection with the existing pipeline facilities of ANR at Sandwich, Illinois. ANR states that it would transport the gas delivered to it by Northern Border at Sandwich, Illinois, across its system to Defiance, Ohio, and that at Defiance, ANR would deliver the gas into the facilities proposed by Ohio Interstate, which facilities would be used to transport such gas to an interconnection with Tennessee in Columbiana County, Ohio, and to an interconnection with TETCO and Transco at Leidy, Pennsylvania. It is explained that from those points, new and/or existing facilities of the Shippers and/or other transporters would be utilized to transport the gas to markets. ANR further indicates that on February 14, 1985, Foothills filed an application with the National Energy Board of Canada (NEB) for authority, *inter alia*, to transport the Shipper's gas and that on February 15, 1985, Ohio Interstate and Northern Border filed supplemental applications with the Commission to implement their portions of the overall proposal.

ANR further states in addition to the volumes proposed to be transported for the Shippers, Foothills has applied for authority to transport the volumes of gas which the NEB has previously authorized for export to ANR, Texas Gas Transmission Corporation (TGT) and Natural Gas Pipeline company of America at Emerson, Manitoba. ANR states that while it is not now apply for authority to transport such volumes, Exhibit Z to its amendment shows that the volumes authorized for export to ANR and TGT can be economically transported through its system, that it is willing to transport such volumes and would apply for authority to achieve that objective when appropriate authorizations to import such gas are issued by the United States Economic Regulatory Administration.

By virtue of the Commission orders of July 5, 1983, 24 FERC ¶ 61,003, and October 2, 1984, 29 FERC ¶ 61,006, this

amended application is consolidated in the ongoing hearing proceedings in Docket No. CP81–107, *et al.*

Comment date: April 9, 1985, in accordance with the first subparagraph of Standard Paragraph F at the end of this notice.

2. ANR Storage Company

[Docket No. CP82–420–003]

Take notice that on February 15, 1985, ANR Storage Company (ANR), One Woodward Avenue, Detroit, Michigan 48226, filed in Docket No. CP82–420–003 a third amendment to its omission pending in Docket No. CP82–420–000 (third amendment) pursuant to Section 7(c) of the Natural Gas Act for a certificate of public convenience and necessity authorizing ANR to increase to 15,700,000 Mcf the gas storage service to be provided to Transcontinental Gas Pipe Line Corporation (Transco), all as more fully set forth in the third amendment which is on file with the Commission and open to the public inspection.

By the amendment filed in Docket No. CP82–420–002 on June 28, 1985, ANR requested authority to provide 10,000,000 Mcf of natural gas storage and related transportation service to Transco pursuant to a gas storage agreement dated May 22, 1984 (gas storage agreement). ANR states that it has now been advised by Transco that its seasonal natural gas storage and related transportation requirements have increased by 5,700,000 Mcf to 15,700,000 Mcf and that as a result, Transco and ANR have entered into an amendment to the gas storage agreement dated December 28, 1984 (storage agreement), which provides for an increase in the maximum injection and withdrawal quantities, compressor fuel requirements and storage and transportation service rates.

It is explained that among other things, the storage agreement provides that during the 1987 and subsequent summer periods, April 1–October 31, Transco would cause Great Lakes Gas Transmission Company (Great Lakes) to deliver to ANR for storage up to 15,700,000 Mcf of natural gas at daily volumes up to 118,000 Mcf, at an existing point of interconnection between the pipeline systems of Michigan Consolidated Gas Company (Michigan Consolidated) and Great Lakes in St. Clair County, Michigan, together with a volume of gas for compressor fuel usage equal to 1.4 percent of the volumes so delivered. It is stated that the storage amendment further provides that during the 1987–1988 and subsequent winter periods November 1–March 31, ANR would make available to Great Lakes at such interconnection such volumes of the previously stored natural gas as Transco shall request at daily volumes up to 250,000 Mcf, less a volume of gas for compressor fuel usage equal to 0.8 percent of the volumes so redelivered.

As consideration for providing this natural gas storage and related transportation service, Transco would pay ANR a monthly charge of $834,698.

ANR states that it has entered into a contract with Washington 28 which Washington 28 Gas Storage Company (Washington 28) under would provide a storage service to ANR for the account of Transco and that this arrangement follows the amended gas storage agreement between ANR and Transco and maintains contractual responsibility on behalf of ANR to Transco for the overall 15,700,000 Mcf storage service. Furthermore, it asserted, to accomplish the delivery and redelivery of storage gas for Transco's account from and to Great Lakes, ANR and Michigan Consolidated have entered into a transportation agreement. ANR stated that since ANR is purchasing these storage and transportation services directly from Washington 28 and Michigan Consolidated, respectively, so that it may provide to Transco the natural gas storage and transportation service, ANR requests permission to track any change in rates, upward or downward, which is made effective pursuant to the provisions of the Natural Gas Act by Michigan Consolidated and Washington 28.

ANR states that the proposed storage service would not necessitate the installation of any facilities by ANR.

ANR submits that the storage service proposed to be provided herein is and would be required by the present and furute public convenience and necessity in that Transco needs additional storage service to meet the peak day and winter period requirements of its customers during the 1987–1988 and subsequent heating seasons.

By virtue of the Commission order of July 5, 1983, 24 FERC ¶ 61,003, this amended application is consolidated in the ongoing hearing proceeding in Docket No. CP81–107, *et al.*

Common date: April 9, 1985, in accordance with the first subparagraph of Standard Paragraph F at the end of this notice.

3. Columbia Gas Transmission Corporation

[Docket No. CP85–367–000]

Take notice that on March 15, 1985, Columbia Gas Transmission Corporation (Columbia), 1700 MacCorkle Avenue, S.E., Charleston, West Virginia 25314, filed in Docket No. CP85–367–000 a request pursuant to § 157.205 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205) for authorization to transport natural gas on behalf of Hercules, Incorporated (Hercules) under the certificate issued in Docket No. CP83–76–000 pursuant to Section 7 of the Natural Gas Act, all as more fully set forth in the request which is on file with the Commission and open to public inspection.

Columbia proposes to transport up to 351 million Btu of natural gas per day, less retainage, for Hercules through June 30, 1985. Columbia states that the gas to be transported hereunder would be used as boiler fuel in Hercules' Donora, Pennsylvania, plant.

Columbia indicates that the gas to be purchased involves gas supplies released by Columbia and that such supplies are subject to the ceiling price provisions of sections 107 and 108 of the Natural Gas Policy Act of 1978. It is further stated that Columbia would receive the gas from Industrial Energy Services and redeliver such gas to Columbia Gas of Pennsylvania, Inc. (distribution company), which in turn redelivers the gas to Hercules.

Columbia states that it would charge its current rate of 29.93 cents per dt equivalent of volumes that are within the distribution company's total daily entitlement, or its current rate of 41.27 cents per dt equivalent of volumes that are in excess of distribution of company's total daily entitlement, exclusive of company-use and unaccounted-for gas. It is further stated that Columbia would retain for company-use and unaccounted-for gas a percentage of the gas delivered hereunder as reflected in Columbia's rate filings; this percentage is currently 2.43 percent.

Columbia also requests flexible authority to add or delete receipt/delivery points associated with sources of gas acquired by the end-user. The flexible authority requested applies only to points related to sources of gas supply not to delivery points in the market area. Columbia will file a report providing certain information with regard to the addition or deletion of sources of gas as further detailed in the application and any additional sources of gas would only be obtained to constitute the transportation quantities herein and not to increase those quantities.

Comment date: May 6, 1985, in accordance with Standard Paragraph G at the end of this notice.

4. Columbia Gas Transmission Corporation

[Docket No. CP85-339-000]

Take notice that on March 6, 1985, Columbia Gas Transmission Corporation (Columbia), 1700 MacCorkle Avenue, S.E., Charleston, West Virginia 25314, filed in Docket No. CP85-339-000 a request pursuant to § 157.205 of the Regulations under the Natural Gas Act (18 CFR 157.205) for authority to transport natural gas on behalf of Geo. W. Bollman & Co. (Geo W. Bollman), under the certificate issued in Docket No. CP83-76-000 under 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 proposes to transport through June 30, 1985, up to 450 million Btu equivalent of natural gas per day on behalf of Geo. W. Bollman. Columbia would receive gas from Park-Ohio Energy, Inc. (Park-Ohio Energy), at points of receipt in Ohio, West Virginia or Pennsylvania and redeliver to UGI Corporation (UGI) for ultimate delivery to Geo. W. Bollman's plant in Adamstown, Pennsylvania. Columbia states that the gas purchase agreement between Park-Ohio Energy and Geo. W. Bollman involve certain gas supplies released by Columbia. Columbia states these supplies are subject to the ceiling price provisions of sections 102, 103, 107 and 108 of the Natural Gas Policy Act of 1978.

Columbia states that it would charge one of the rates in its Rate Schedule TS-1 for the transportation service: gas received from receipt points other than Leach, Kentucky—29.93 cents per million Btu provided the volumes are within UGI's total daily entitlements. Columbia states that it would charge 41.27 cents per million Btu for gas received from receipt points other than Leach, Kentucky, if the volumes are in excess of UGI's total daily entitlements. It is stated that Columbia would retain 2.43 percent of the total quantity delivered into its system for company-use and unaccounted-for gas. In addition, Columbia states it would charge the current General R & D Funding Unit of the Gas Research Institute.

Comment date: May 6, 1985, in accordance with Standard Paragraph G at the end of this notice.

5. Columbia Gas Transmission Corporation Columbia Gulf Transmission Company

[Docket No. CP85-268-000]

Take notice that on February 6, 1985, Columbia Gas Transmission Corporation (Columbia Gas), 1700 MacCorkle Avenue, S.E., Charleston, West Virginia 25314, and Columbia Gulf Transmission Company (Columbia Gulf), 3805 West Alabama Avenue, Houston, Texas 77027, filed in Docket No. CP85-268-000 a request pursuant to § 157.205 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205) for certificates to transport natural gas on behalf of Carbonaire Company, Inc. (Carbonaire) under their 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 which is on file with the Commission and open to public inspection.

Columbia Gas and Columbia Gulf (Applicants) propose to transport up to 4.5 billion Btu equivalent of natural gas per day for Carbonaire for a term through June 30, 1985. Applicants state that the gas to be transported would be purchased by Carbonaire from Tenngasco Corporation, Tenngasco Exchange Corporation, Tenneco Oil Company, Houston Oil & Minerals Corporation, Tinco, Ltd., Tenneco Exploration, Ltd. and Tenneco Exploration II, Ltd. and would be used for process gas in Carbonaire's plant in Palmertown, Pennsylvania.

It is indicated that Columbia Gulf would receive up to 4.5 billion Btu equivalent of natural gas per day at an existing point of interconnection with Tennessee Gas Pipeline Company, a Division of Tenneco, Inc., at Egan, Louisiana, and would deliver such gas to Columbia Gas at existing points of interconnection. It is stated that Columbia Gas would then deliver the gas to Transcontinental Gas Pipe Line Corporation at an existing point of interconnection in Clinton County, Pennsylvania. The distributor serving Carbonaire is Union Gas Company, a Division of Penn Fuel and Gas Company, it is stated.

Columbia Gulf states that it would charge one of the rates set forth in Rate Schedule T-2 of its FERC Gas Tariff Original Volume No. 1, which are currently as follows: offshore to Kentucky—23.92 cents per dt equivalent of gas with retention of 1.69 percent of the total quantity of gas delivered into its system for company-use and unaccounted-for gas; lateral onshore to Kentucky—14.28 cents per dt equivalent of gas with retention of 1.50 percent; Rayne, Louisiana, to Kentucky 12.76 cent per dt equivalent of gas with retention of 1.50 percent; Corinth, Mississippi, to Kentucky—6.38 cents per dt equivalent of gas with retention of 0.75 percent.

Columbia Gas states that it would charge one of the rates in Rate Schedule TS-1 of its FERC Gas Tariff Original Volume No. 1, which when within its customer's total daily entitlement, currently are as follows: gas received from Columbia Gulf at Leach, Kentucky—21.16 cent per dt equivalent and gas received from Columbia Gulf at receipt points other than Leach, Kentucky—29.93 cents per dt equivalent. If volumes are in excess of the customer's total daily entitlement Columbia Gas states that it would charge 32.50 cents per dt equivalent for gas it receives from Columbia Gulf at Leach, Kentucky and 41.27 cents per dt equivalent for gas received from receipt points other than Leach, Kentucky. Columbia Gas futher states it would retain 2.43 percent of the total quantity of gas delivered into its system for company-use and unaccounted-for gas. In addition, Columbia Gas states it would collect the General R & D Funding Unit of the Gas Research Institute for all quantities transported under the transportation arrangement.

Applicants also requests flexible authority to add or delete receipt/delivery points associations with sources of gas acquired by the end-user. The flexible authority requested applies only to points related to sources of gas supply, not to delivery points in the market area. Applicants would file a report providing certain information with regard to the addition or deletion of sources of gas as further detailed in the application and any additional sources of gas would only be obtained to constitute the transportation quantities herein and not to increase those quantities.

Comment date: May 6, 1985, in accordance with Standard Paragraph G at the end of this notice.

Panhandle Eastern Pipe Line Company

[Docket No. CP85-276-000]

Take notice that on February 11, 1985, Panhandle Eastern Pipe Line Company (Panhandle), Post Office Box 1642, Houston Texas 77001, filed in Docket No. CP85-276-000 a request pursuant to § 157.205 of the Regulations under the Natural Gas Act (18 CFR 157.205) for authorization to add a new point of delivery for The Toledo Edison Company (Toledo Edison) under the certificate issued in Docket No. CP83-83-000 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.

It is stated that Panhandle and Toledo Edison, pursuant to a gas sales contract

dated January 7, 1985, propose to add a new delivery point for Toledo Edison in Defiance County, Ohio, at the existing facilities of Manville Building Materials Corporation (Manville), hereinafter referred to as the East Defiance delivery point. The contract, it is stated, replaces the existing contract dated May 14, 1984, which went into effect pursuant to Panhandle's settlement in Docket No. RP82–58. The term it is indicated, commences on May 1, 1985, and continues in effect until October 31, 1993, and year to year thereafter unless canceled by either party upon proper notice.

Panhandle submits that Toledo Edison is an existing jurisdictional customer served under Panhandle's Rate Schedule G–1 and that the new delivery point for Toledo Edison at East Defiance would not adversely affect Panhandle's ability to meet the requirements of its other customers. It is submitted that this proposal would not result in any change in the entitlements to Toledo Edison in the event that Panhandle should have to invoke Section 16 of Panhandle's F.E.R.C. Gas Tariff, Original Volume No. 1, which deals with curtailment and interruptions on its system. It is submitted that authorization would have no effect on Toledo Edison's respective base period data as specified in Panhandle's F.E.R.C. Gas Tariff, Original Volume No. 1–A.

Panhandle states that it would continue to have a maximum daily delivery obligation to Toledo Edison of 11,200 Mcf of natural gas, with no increase in peak day or annual entitlement, which would be allocated as necessary among the existing delivery points of Defiance and Delta and to the new delivery point, East Defiance. The new delivery point would enable Toledo Edison to serve Manville, it is stated.

Panhandle submits that Manville is an existing direct industrial customer and authorization for Panhandle to make deliveries to Manville at the East Defiance delivery point was certificated in Docket No. G–1714. Panhandle indicates that it would continue to serve Manville pursuant to its industrial gas contract. Panhandle further indicates that, since it would utilize its existing facilities at the Manville location to make deliveries to Toledo Edison, no disturbance of the environment would result from this proposal to add to new East Defiance delivery point.

Comment date: May 6, 1985, in accordance with Standard Paragraph G at the end of this notice.

7. Southern Natural Gas Company

[Docket No. CP84–46–001]

Take notice that on March 5, 1985, Southern Natural Gas Company (Petitioner), P.O. Box 2563, Birmingham, Alabama 35202–2563, filed in Docket No. CP84–46–001 a petition to amend the order issued April 9, 1984 in Docket No. CP84–46–000 pursuant to section 7(c) of the Natural Gas Act so as to authorize continued transportation for sale of natural gas to Crown Zellerbach Corporation (Crown Zellerbach) for an additional year and to change the rate charged, all as more fully set forth in the petition which is on file with the Commission and open to public inspection.

The April 9, 1984, order authorizes Petitioner to transport to Crown Zellerbach up to 12,000 Mcf of natural gas per day for a period of one year, on an interruptible basis, for sale at a price not to be less than the higher of Petitioner's system average load factor rate or its average Natural Gas Policy Act of 1978 (NGPA) Section 102 gas acquisition cost. Petitioner now requests that it be permitted to continue the transportation for sale of gas to Crown Zellerbach for an additional year. Petitioner also requests authorization to change the price at which gas may be sold to Crown Zellerbach to a charge not less than the commodity charge contained in Petitioner's Rate Schedule OCD–1. Petitioner also requests that the Commission modify the provision of its April 9, 1984, order concerning curtailment to make the provision applicable to gas supply deficiency curtailments only.

Comment date: April 10, 1985, in accordance with the first subparagraph of Standard Paragraph F at the end of this notice.

8. Tennessee Gas Pipeline Company, a Division of Tenneco Inc., Natural Gas Pipeline Company of America

[Docket No. CP76–370–006]

Take notice that on February 25, 1985, Tennessee Gas Pipeline Company, a Division of Tenneco Inc. (Tennessee), P.O. Box 2511, Houston, Texas 77001, and Natural Gas Pipeline Company of America (Natural), 701 East 22nd Street, Lombard, Illinois 60148 (Petitioners), filed in Docket No. CP76–370–006, a joint petition to amend the order issued April 18, 1980, in Docket No. CP76–370–000, as amended, pursuant to section 7(c) of the Natural Gas Act to add an additional excess exchange gas point of delivery to Petitioners' gas exchange agreement dated May 6, 1976, as amended, all as more fully set forth in the joint petition to amend which is on file with the Commission and open to public inspection.

Petitioners seek authorization for the addition of the Mobile LaGloria plant in Jim Wells County, Texas, as an excess exchange point of delivery as provided for by a January 19, 1984, amendment to the gas exchange agreement dated May 6, 1976, as amended, between Tennessee and Natural.

Petitioners state that during any period that Tennessee owes Natural imbalance gas, Natural shall receive excess exchange gas owed to it by Tennessee at the LaGloria plant before utilizing any of the other authorized onshore redelivery points as set forth in the gas exchange agreement. Petitioners state that this delivery arrangement would remain in effect until such time as Natural begins transporting gas from the LaGloria plant for Mobil Producing Texas and New Mexico, Inc. (Mobil), pursuant to a long-term gas transportation agreement between Natural and Mobil dated November 17, 1983. Petitioners assert that upon commencement of the transportation arrangement with Mobil, Natural would continue to receive gas from the LaGloria plant for Tennessee's account, but that the LaGloria plant would no longer be used for excess exchange gas deliveries. Petitioners state that upon such occurrence, a new redelivery point would be established and substituted for the LaGloria plant for deliveries of excess exchange gas.

Comment date: April 9, 1985, in accordance with the first subparagraph of Standard Paragraph F at the end of this notice.

9. Mid Louisiana Gas Company

[Docket No. CP85–284–000]

Take notice that on February 14, 1985, Mid Louisiana Gas Company (Mid Louisiana), 300 Poydras Street, New Orleans, Louisiana 70130, filed in Docket No. CP85–284–000 an application, as supplemented February 28, 1985, pursuant to section 7(c) of the Natural Gas Act for a certificate of public convenience and necessity authorizing the operation of a new delivery point to the Town of Slaughter (Slaughter), Louisiana, an existing jurisdictional customer, and to continue to operate facilities constructed prematurely to implement the new delivery point, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

Mid Louisiana states that the need for the new delivery point developed because of an agreed to alteration in the area served by Slaughter and the Town of St. Francisville (St. Francisville).

another Mid Louisiana resale customer. Mid Louisiana indicates that the service areas were changed to permit Slaughter to pick up 30 high-priority residential customers located in close proximity to Slaughter but served by St. Francisville. It is stated that St. Francisville sought the change because of the impending loss of a lateral which St. Francisville used to serve the customers. Mid Louisiana states that the highway department had demanded the removal of the lateral because the line crossed a bridge. Mid Louisiana states that a new delivery point was needed to permit Slaughter to serve the 30 customers.

Mid Louisiana indicates that no increases in its certificated volumes to Slaughter of 500 Mcf per day are proposed and that the gas would continue to be delivered under Mid Louisiana's currently effective Rate Schedule SG–1.

Mid Louisiana states that through an apparent miscommunication, the new delivery point was installed and placed into operation in November 1984. Mid Louisiana states that when it discovered the error it considered discontinuing service pending the receipt of certification but ascertained that any cessation was not practical since St. Francisville had already severed the line. Mid Louisiana has submitted its certificate application including a memorandum from the company outlining safeguards to prevent the repeating of errors similar to the one described above.

Mid Louisiana also has submitted a proposed superseding service agreement with Slaughter reflecting the new delivery point. Mid Louisiana requests waiver of Section 154.51 of the Commission's Regulations (18 CFR 154.51) to permit the superseding service agreement to become effective on the date of issuance of the requested certificate authorization.

Mid Louisiana also indicates that it constructed the tap and meter at a cost of $3,063.59.

Comment date: April 9, 1985, in accordance with Standard Paragraph F at the end of this notice.

10. Northern Border Pipeline Company

[Docket No. CP84–407–001]

Take notice that on February 14, 1985, Northern Border Pipeline Company (Northern Border), 224 South 108th Avenue, P.O. Box 3330, Omaha Nebraska 68103, filed in Docket No. CP84–407–001 an amendment to its pending application in Docket No. CP84–407–000 pursuant to Section 7(c) of the Natural Gas Act to reflect an increase in the volumes of natural gas to be transported and a corresponding change in the facilities to be constructed, all as more fully set forth in the amendment which is on file with the Commission and open to public inspection.

Northern Border proposes to construct and operate one new dual 16,000 horsepower unit compressor station, four new single unit 16,000 horsepower compressor stations, and five new single unit 32,000 horsepower compressor stations on its existing system, herein after referred to as Zone 1. Northern Border also proposes to construct and operate approximately 290 mile of 36-inch pipeline extending from the terminus of its existing system near Ventura, Iowa to a point of interconnection with the existing facilities of ANR Pipeline Company (ANR) near Sandwich, Illinois, hereinafter referred to as Zone 2. It is stated that five single unit 16,000 horsepower compressor stations, two meter stations and related facilities would be installed in Zone 2. Northern Border states that the summer design day capacity of Zone 1 with the proposed additional compression would be 2,061,700 Mcf of gas per day and of Zone 2 would be 1,022,200 Mcf of gas per day. In addition Northern Border requests authority to install anticipated interconnect facilities, up to 24-inch in diameter, which have not been identified at this time to meet the needs of pipeline companies for receipt or delivery points. It is explained that such interconnect facilities would consist of a two, ommission side valve, and blind flange and that the cost of each interconnect would not exceed $200,000, with reimbursement of the total actual cost of construction by the requesting pipeline.

The estimated total capital cost of the proposed facilities in 1984 dollars is approximately $588 million. Northern Border proposes to finance the construction of the proposed facilities on a project financing basis.

Northern Border states that its proposed facilities along with those of ANR and Ohio Interstate Pipeline Company (Ohio Interstate), which request for authorization is pending in Dockets Nos. CP84–363 and CP84–318, respectively, and that of Foothills Pipe Lines (Yukon) Ltd. (Foothills) pending before the National Energy Board Canada (NEB) provide an alternative to the primarily Canadian route and the facilities proposed by Niagara Interstate Pipeline System (NIPS) in its application pending in *Boundary Gas, Inc., et al* Docket No. CP81–107–000, *et al.* (Phase 2), and to the Midcontinental Transportation System sponsored by Natural Gas Pipeline Company of America in pending Docket No. CP84–325–001. It is that the facilities proposed herein are designed to accommodate the transportation of the new Canadian volumes, hereinafter referred to as Northeast volumes, proposed to be imported at Niagara Falls for transportation through the pipeline system proposed by NIPS.

Northern Border states it has been advised by the Northeast volume shippers that they would require only sixty percent of the maximum volume they propose to import during the period November 1, 1987, through October 31, 1988, the first contract year, to meet their market requirement. The specific volumes Northern Border proposes to transport on a firm basis, including fuel, by zone and by shipper for the first contract year and each subsequent contract year are set forth below.

MAXIMUM VOLUMES

[Mcf of gas per day]

Shipper	Zone 1		Zone 2	
	60 pct	100 pct	60 pct	100 pct
Tennessee	253,600	431,700	250,300	421,600
Transco	202,900	345,300	200,300	337,200
Texas Eastern	94,100	160,000	92,900	156,300
Algonquin	31,700	54,100	31,300	52,800
Boundary	32,600	55,600	32,200	54,300
	614,900	1,046,700	607,000	1,022,200

Northern Border indicates that it will transport the Northeast volumes pursuant to its cost of service tariff.

By virtue of the Commission orders of July 5, 1983, 24 FERC ¶ 61,003, and October 2, 1984, 29 FERC ¶ 61,006, this amended application is consolidated in the ongoing hearing proceeding in Docket No. CP81–107, *et al.*

Comment date: April 9, 1985, in accordance with the first subparagraph of Standard Paragraph F at the end of this notice.

11. Natural Gas Pipeline Company of America

[Docket No. CP85–308–000]

Take notice that on February 25, 1985, Natural Gas Pipeline Company of America (Applicant), 701 East 22nd Street, Lombard, Illinois 60148, filed in Docket No. CP85–308–000 an application, as supplemented March 4, 1985, pursuant to section 7(c) of the Natural Gas Act for a certificate of public convenience and necessity authorizing a long-term offshore transportation for Texas Gas Transmission Corporation (Texas Gas) on a firm basis, all as more fully set forth in its application, as supplemented, which is on file with the Commission and open for public inspection.

Applicant states that pursuant to a transportation agreement executed by Applicant and Texas Gas on December 1, 1984, Texas Gas would deliver up to 60 million Btu of natural gas per day, the demand quantity, from High Island Block A-462 to Applicant at an existing subsea tap located in High Island Block A-489, offshore Texas. Applicant further states that it would then transport and redeliver thermally equivalent volumes of gas, less five-tenths of one percent for gas lost and unaccounted for, on behalf of Texas Gas, at an existing point of interconnection between the facilities of Applicant and of High Island Offshore System located in High Island Block A-498, offshore Texas.

It is explained that the proposed service would continue for a term of five years commencing on the later of November 1, 1985, or the date Applicant receives the certificate of public convenience and necessity herein requested and year-to-year thereafter unless cancelled by either party upon one hundred eight days advance written notice.

Applicant states that Texas Gas would pay a transportation demand charge equal to seventy-nine cents times the demand quantity and that for volumes in excess of the demand quantity, Texas Gas would pay two and eight-tenths cents for each million Btu accepted for transportation by Applicant. Applicant states that the proposed rates for the subject transportation service are based on the incremental cost of service associated with the facilities necessary to provide the service. It is asserted that the incremental cost of service and the underlying transportation rates were developed using cost, rates and factors supporting Applicant's settlement approved by the Commission in Docket No. RP83-68.

For all quantities of liquid hydrocarbons received by Applicant for the account of Texas Gas, Applicant proposes to charge Texas Gas fifty-five cents per barrel for any liquids produced from wells connected prior to January 1, 1982, and one dollar and two and one-half cents per barrel for any liquids produced from wells connected on or after January 1, 1982.

Comment date: April 9, 1985, in accordance with Standard Paragraph F at the end of this notice.

12. National Fuel Gas Supply Corporation

[Docket No. CP85-307-000]

Take notice that on February 22, 1985, National Fuel Gas Supply Corporation (Applicant), Ten Lafayette Square, Buffalo, New York 14203, filed in Docket No. CP85-307-000 an application pursuant to section 7 of the Natural Gas Act for a certificate of public convenience and necessity authorizing the construction and operation of facilities and for permission to abandon existing facilities, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

Applicant proposes to replace a 5.7-mile segment of its pipeline, designated as Line K, located in the Borough of Lewis Run and Bradford Township, McKean County, Pennsylvania. Applicant states that the replacement of 16-inch bare pipe with 20-inch new coated steel line is a continuation of Applicant's program to upgrade the backbone of its pipeline system. Applicant indicates that increasing the delivery capacity of Line K would allow Applicant to take greater advantage of its lower priced sources of supply which it indicates it receives in Pennsylvania. Applicant indicates the total estimated cost of the project is $1,730,900 which cost would be financed through internally generated funds and/or interim short-term bank loans.

Comment date: April 9, 1985, in accordance with Standard Paragraph F at the end of this notice.

13. Ohio Interstate Pipeline Company

[Docket No. CP84-318-002]

Take notice that on February 15, 1985, Ohio Interstate Pipeline Company (Ohio Interstate), 500 Renaissance Center, Detroit, Michigan 48243, filed in Docket No. CP84-318-002 a second amendment to its pending application in Docket No. CP84-318-000 pursuant to section 7(c) of the Mutual Gas Act for a certificate of public convenience and necessity authorizing the construction and operation of pipeline and related facilities and the transportation of gas for others through such facilities, all as more fully set forth in the second amendment on file with the Commission and open for public inspection. Ohio Interstate states that the purpose of the second amendment is to reflect an increase in the volumes of natural gas to be transported by it and a resulting change in the facilities necessary to transport such increased volumes.

Ohio Interstate proposes to construct and operate 204.6 miles of 42-inch O.D. pipeline from a point of interconnection with ANR Pipeline Company's (ANR) compressor station located in Defiance County, Ohio, to a point of interconnection with the pipeline facilities of Tennessee Gas Pipeline Company, a Division of Tenneco Inc. (Tennessee), located in Columbiana County, Ohio (Columbiana delivery point). From the Columbiana Delivery Point, Point, Ohio Interstate proposes to construct and operate 173.9 miles of 36-inch O.D. pipeline to an interconnection with Texas Eastern Transmission Corporation's (Tetco) and Transcontinental Gas Pipe Line Corporation's (Transco) facilities located in Clinton County, Pennsylvania (Leidy delivery point). Ohio Interstate also proposes to install a 19,500 horsepower compressor station at Huron County, Ohio, a 13,000 horsepower compressor station at Columbiana County, Ohio, and an 11,000 horsepower compressor station at Leidy, Pennsylvania. Ohio Interstate states that the facilities would be installed in two phases, the 60 percent case and the 100 percent case, in order to accommodate the volume buildup proposed by Tennessee, Tetco, Transco, Boundary Gas Inc. (Boundary), and Algonguin Gas Transmission Company (Algonguin), Shippers, for whom Ohio Interstate proposes to transport natural gas.

The estimated capital cost of the facilities proposed by Ohio Interstate is $531.2 million is 1984 dollars and the facilities are proposed to be financed on a project basis.

Ohio Interstate indicates that it proposes to render a firm gas transportation service for the Shippers up to the volumes set forth below:

Shipper	Volume (Mcf/d) design day	Delivery point
Algonquin	51,000	Leidy, PA
Tetco	151,100	Do.
Transco	[1] 764,800	Do.
Tennessee	407,500	Columbiana, OH
Boundary	52,500	Do.

[1] Including 40,000 Mcf/d of storage withdrawal volumes.

In the 60% case, Ohio Interstate proposes to change an inital rate of $9.71 per Mcf of contract demand per month for deliveries to the Columbiana Delivery Point, and an initial rate of $21.45 per Mcf of Contract Demand per month for deliveries to the Leidy Delivery Point. For volumes tendered by the Shippers in excess of the contract demand, which Ohio Interstate accepts and redelivers on a best efforts basis, Ohio Interstate will change rates of $.3192 per Mcf and $.7052 per Mdf, respectively, for transportation of such volumes to the Columbiana and Leidy delivery points.

In the 100% case, Ohio Interstate proposes to charge an initial rate of $5.44 per Mcf of contract demand per month for deliveries to the Columbiana Delivery Point and $11.36 per Mcf of

Contract Demand per month for deliveries to the Leidy Delivery Point. For volumes tendered by the Shippers in excess of contract demand, which Ohio Interstate accepts and redelivers on a best-efforts basis, Ohio Interstate will charge rates of $.1788 per Mcf and $3735 per Mcf, respectively, for transportation of such volumes to the Columbiana and Leidy Delivery Points. During the initial year of operation (60% case) storage withdrawal volumes in excess of Canadian import volumes are not expected to be available for transportation via Ohio Interstate. For Transco's storage volumes, Ohio Interstate proposes to charge Transco $6.24 per Mcf of contract demand per month, beginning with the first storage withdrawal season, which is expected to be the period beginning November 1, 1988.

The foregoing rates are illustrative only, reflecting a cost of service and rate computation using estimated costs expressed in 1984 dollars.

Ohio Interstate states that the volume of natural gas proposed to be transported for the Shippers on a firm basis is equal to the volume of natural gas they propose to import from Canada into the northeastern United States, as well as the volume Transco proposes to store in the consolidated proceedings presently pending before the Commission in *Boundary Gas, Inc., et al.*, Docket No. CP81-107-000, *et al.* (Phase II).

Ohio Interstate states that its proposal is part of an overall plan known as the Can-Am Pipeline Project, for the transportation of the volumes of natural gas which are proposed to be imported by the Shippers. It is explained that the Can-Am Pipeline Projects sponsors also include Foothills Pipe Line (Yukon) Ltd. (Foothills), Northern Border Pipeline Company (Northern Border) and ANR. Ohio Interstate states that the Can-Am Pipeline Project is competitive with the projects being sponsored by Niagara Interstate Pipeline System and Natural Gas Pipeline Company of America for the transportation of the Shippers' gas.

Ohio Interstate states that under the Can-Am Pipeline Project Foothills would deliver the Shippers' gas to Northern Border at Monchy, Saskatchewan and that Northern Border would thereafter transport the gas eastward in its facilities and, at the eastern terminus of the Northern Border system, near Ventura, Iowa, Northern Border would construct a new pipeline from Ventura to an interconnection with the existing pipeline facilities of ANR at Sandwich, Illinois. It is explained that ANR would transport the gas delivered to it by Northern Border at Sandwich, Illinois, across its system to Defiance, Ohio, and that at Defiance, ANR would deliver the gas into the facilities proposed by Ohio Interstate, which facilities would be used to transport such gas to the Columbiana delivery point and to the Leidy delivery point. Ohio Interstate states that from those points, new and/or existing facilities of the Shippers and/or other transporters would be utilized to transport the gas to markets. Ohio Interstate further indicates that on February 14, 1985, Foothills filed an application with the National Energy Board of Canada (NEB) for the authority, *inter alia*, to transport the Shippers' gas and that on February 15, 1985, ANR and Northern Border filed supplemental applications with the Commission to implement their portions of the Can-Am Pipeline Project.

By virtue of the Commission orders of July 5, 1983, 24 FERC ¶ 61,003 and October 2, 1984, 29 FERC ¶ 61,006, this amended application is consolidated in the ongoing hearing proceeding in Docket No. CP81-107, *et al.*

Comment date: April 9, 1985, in accordance with the first subparagraph of Standard Paragraph F at the end of this notice.

14. United Gas Pipe Line Company

[Docket No. CP85-310-000]

Take notice that on February 25, 1985, United Gas Pipe Line Company (United), P.O. Box 1478, Houston, Texas 77001, filed in Docket No. CP85-310-000, an application for a certificate of public convenience and necessity authorizing United to operate two new delivery points and construct facilities at one of the new delivery points and for permission and approval to abandon part of a service to Southern Natural Gas Company, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

United states that it is authorized to sell gas to Southern at an interconnection of facilities on Ouachita Parish, Louisiana (Perryville), under a service agreement dated November 25, 1966, and an interconnection of facilities in Kosciusko, Mississippi (Kosciusko), under a service agreement dated May 25, 1966. United futher states that the term of these agreements expired on October 31, 1984, and have been superseded by short-term agreement expiring on October 31, 1985. The maximum daily quantity (MDQ) under the service agreement covering Perryville is 147,899 Mcf and the MDQ at Kosciusko is 149,134 Mcf, it is explained.

United and Southern have entered into a new 15-year service agreement dated November 5, 1984, that provides for the continuation of service subject to reallocation of volumes at Perryville and Kosciusko, for the addition of two new alternative delivery points and for a reduction of the currently effective MDQ to 175,000 Mcf, it is explained. The new service agreement has a proposed effective date of November 1, 1985, it is stated. United states that the new delivery points are: (1) a proposed interconnection of facilities in Lawrence County, Mississippi (Brookhaven) and (2) the outlet side of United's metering station located near Southern's Shadyside compressor station in St. Mary Parish, Louisiana (Shadyside). United states that the establishment of the Brookhaven point would require the construction of a tap, a dual 12-inch meter station and 120 feet of 12-inch pipeline. United estimates that those facilities would cost $586,892. United proposes to finance such cost from funds on hand.

United states that initially Southern's minimum billing demand under United's Rate Schedule PL-N would be reduced from 241,315 Mcf to 175,000 Mcf and that the formula used to determine Southern's minimum annual commodity bill would be revised to provide that the minimum volume would be the lesser of 66⅔ percent of Southern's MDQ or 7 percent of the total volume sold by Southern during the applicable calendar year. United further states that Southern's base requirements in each category of United's presently effective curtailment program would be reduced *pro rata* to reflect the reduction in MDQ from 297,000 Mcf to 175,000 Mcf.

Comment date: April 9, 1985, in accordance with Standard Paragraph F at the end of this notice.

15. United Gas Pipe Line Company

[Docket No. CP85-332-000]

Take notice that on March 4, 1985, United Gas Pipe Line Company (United), P.O. 1478, Houston, Texas 77001, filed in Docket No. CP85-332-000 an application pursuant to section 7(c) of the Natural Gas Act for a certificate of public convenience and necessity authorizing the construction and operation of certain pipeline and appurtenant facilities, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

United requests authority to construct and operate approximately 23 miles of 30-inch pipeline and related facilities extending from a gas treating plant being constructed by Mobil Oil Exploration and Producing Southeast, Inc., to a point of interconnection with

United's Lirette-Mobile 30-inch pipeline, all located in Mobile County, Alabama. The estimated cost of the propose facilities is $16.3 million which United states it would finance from funds on hand or from funds borrowed under its bank credit agreements.

United states that the proposed facilities are required to connect reserves in the Mobile Bay area to its system and to provide transportation service for others. United also states that its system is uniquely located to perform such service and to connect the Mobile Bay area reserves to its system.

Comment date: April 9, 1985, in accordance with Standard Paragraph F at the end of this notice.

16. United Gas Pipe Line Company

[Docket No. CP85-356-000]

Take notice that on March 12, 1985, United Gas Pipe Line Company (Applicant), P.O. Box 1478, Houston, Texas 77001, filed in Docket No. CP85-356-000 a request pursuant to § 157.205 of the Regulations under the Natural Gas Act (18 CFR 157.205) for authorization to transport natural gas on behalf of Courtaulds North America, Inc. (Courtaulds), under the blanket certificate issued in Docket No. CP82-430-000 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.

Applicant states that it has entered into a gas transportation agreement with Courtaulds. Pursuant to the terms of the agreement, Applicant proposes to transport up to 5,000 Mcf of gas per day which Courtaulds purchases from Mobil Oil Exploration and Producing Southeast Inc. (Mobil). Applicant indicates that it would receive such gas at the existing points of interconnection between the facilities of Applicant and Tennessee Gas Pipeline Company, a Division of Tenneco Inc., in the Topeka Field, Lawrence County, Mississippi, and in the Bovina Field, Warren County, Mississippi. It is stated that Applicant would deliver the gas to Courtaulds at the interconnection of Applicant's and Courtaulds' facilities on Applicant's 8-inch Courtaulds line near Axis, Mobile County, Alabama.

The gas would be used by Courtaulds for boiler fuel and miscellaneous plant uses.

Applicant states, that, pursuant to § 157.209(a)(2), the transportation service was commenced on January 9, 1985. Applicant requests authority to perform such service until June 30, 1985.

Pursuant to its Northern Zone rate, which includes a component for gas consumed in the operation of Applicant's system, Applicant proposes to charge Courtaulds 41.94 cents per Mcf of gas transported.

Comment date: May 6, 1985, in accordance with Standard paragraph G at the end of this notice.

17. United Gas Pipe Line Company

[Docket No. CP85-338-000]

Take notice that on March 6, 1985, United Gas Pipe Line Company (United), P.O. Box 1478, Houston, Texas 77001, filed in Docket No. CP85-338-000 a request pursuant to § 157.205 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205) for authorization to construct and operate a 2-inch sales tap under the certificate issued in Docket No. CP82-430-000 pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the request which is on file with the Commission and open to public inspection.

United states that the sales tap, which would be located on its existing 6-inch Houma Field line in Terrebonne Parish, Louisiana, would enable United to supply an estimated average 800 Mcf of natural gas per day to South Coast Gas Company (South Coast) for resale to the Louisiana Paving Company for industrial use, under United's Rate Schedule G-S.

United also states that it is authorized to provide all of South Coast's natural gas requirements for resale and distribution and that this new sales tap for South Coast would not result in an increase in South Coast's aggregate base requirements or contractual maximum daily quantity under United's curtailment plan.

Comment date: May 6, 1985, in accordance with Standard Paragraph G at the end of this notice.

18. United Gas Pipe Line Company

[Docket No. CP85-301-000]

Take notice that on February 21, 1985, United Gas Pipe Line Company (United), P.O. Box 1478, Houston, Texas 77001, filed in Docket No. CP85-301-000, an application pursuant to Section 7(c) of the Natural Gas Act for a certificate of public convenience and necessity authorizing an increase in the maximum daily quantity (MDQ) of natural gas transported and delivered to Lufkin Industries, Inc. (Lufkin), a direct sale customer, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

United states that Lufkin requires a small additional volume of gas for its operations located in Lufkin, Texas, to meet the demands of a competitive market and its customers for quick deliveries. United further states that the aggregate peak day MDQ increase from 350 Mcf to a total of 900 Mcf of gas, requested for Lufkin is only 550 Mcf per day which is expected to constitute an average day demand of approximately 427 Mcf of gas during the winter months and 8 Mcf during the summer season. Further, United states that it has surplus supplies available to serve the proposed requirements and that the requested MDQ increase would not result in a net increase in demand on its system but rather would replace a small portion of the substantial attrition of market that United has experienced.

Comment date: April 9, 1985, in accordance with standard Paragraph F at the end of this notice.

Standard Paragraphs

F. Any person desiring to be heard or make any protest with reference to said filing should on or before the comment date file with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., 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 385.211 and 385.214) and the Regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's Rules.

Take further notice that, pursuant to the authority contained in and subject to jurisdiction conferred upon the Federal Energy Regulatory Commission by sections 7 and 15 of the Natural Gas Act and the Commission's Rules of Practice and Procedure, a hearing will be held without further notice before the Commission or its designee on this filing if no motion to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that a grant of the certificate is required by the public convenience and necessity. If a motion for leave to intervene is timely filed, or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for the applicant to appear or be represented at the hearing.

G. Any person or the Commission's staff may, within 45 days after the 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. 85-7316 Filed 3-27-85; 8:45 am]

BILLING CODE 6717-01-M

[Docket Nos. ER85-346-000, et al.]

Connecticut Light and Power Co., et al.; Electric Rate and Corporate Regulation Filings

Take notice that the following filings have been made with the Commission:

1. Connecticut Light and Power Company

[Docket No. ER85-346-000]

March 18, 1985.

Take notice that on March 6, 1985, Connecticut Light and Power Company (CL&P) tendered for filing a proposed rate schedule pertaining to a Purchase Agreement with Respect to Middletown Unit No. 4 between the Hartford Electric Light Company (HELCO) and Bangor Hydro-Electric Company (Bangor) dated as of December 15, 1977.

CL&P states that it has succeeded HELCO by merger and that the Purchase Agreement provides for a sale to Bangor of specified percentages of capacity and associated energy from what is now CL&P's generating unit Middletown Unit No. 4 (the Unit) during the period November 1, 1984 through October 31, 1986.

CL&P requests that the Commission permit the rate schedule to become effective on November 1, 1984.

CL&P states that the capacity charge rate for the proposed service was a rate determined on a cost-of-service basis at the time that the Purchase Agreement was executed. The monthly transmission charge rate is equal to one-twelfth of the annual average cost of transmission service on the transmission systems of CL&P and its affiliated Northeast Utilities companies at the time that the Purchase Agreement was executed and is determined in accordance with Section 13.9 of the New England Power Pool (NEPOOL) Agreement and the uniform rules adopted by the NEPOOL Executive Committee. The monthly Transmission Charge is determined by the product of (i) the appropriate monthly transmission charge rate ($/KW-month), and (ii) the number of kilowatts of winter capability which Bangor is entitled to receive during such month. The Energy Charge is based on Bangor's portion of the applicable fuel expenses related to the Unit and no special cost-of-service studies were made to derive that charge.

According to CL&P the services to be provided under the Purchase Agreement are similar to services provided by HELCO relating to agreements between HELCO and Vermont Public Service Corporation (FERC Rate Schedule No. HELCO 206), and Public Service Company of New Hampshire (FERC Rate Schedule No. HELCO 203).

Copies of this filing have been served upon Hartford, and Bangor.

Comment date: April 2, 1985, in accordance with Standard Paragraph E at the end of this notice.

2. Iowa-Illinois Gas and Electric Company

[Docket No. ER85-344-000]

March 18, 1985.

Take notice that on March 6, 1985, Iowa-Illinios Gas and Electric Company (Iowa-Illinois) tendered for the filing a Second Amendment (Amendment) dated February 21, 1985, to the Interchange Agreement dated November 14, 1971, as supplemented and amended, between Iowa-Illinois and the City of Geneseo, Illinois (Geneseo), and a related Notice of Cancellation, dated as of the filing, in respect of Participation Power Transaction No. 3 (supplemental to Service Schedule K).

Iowa-Illinois states that the Amendment and Cancellation are each proposed effective on the consummation of a purchase by Geneseo of a one-half percent interest in Louisa Generating Station, and Iowa-Illinois seeks waivers of the Commission's notice requirements accordingly.

Iowa-Illinois states the Second Amendment provides for: deletion of Original Exhibit A in respect to Order No. 84, since resolved in Iowa-Illinois' Offer of Settlement (Docket No. ER84-592 *et al.*) adopted by reference and by revision to service schedules to which the same is applicable; additional service schedules having their own duration; potential ENEREX administration; additional points of connection, and associated metering; a revised emergency energy charge, a revised excess energy charge, and a revised short term power reservation charge; and service schedules related to economic dispatch and replacement energy and a schedule for transmission schedules under which Transmission Service Schedule No. 1 is a first addendum, providing for transformation and transmission services and associated losses compensated in kind, providing a scheduling path over Iowa-Illinois' facilities in respect to Geneseo's Louisa share.

Iowa-Illinois incorporates in this filing a Cancellation of Participation Power Transaction No. 3 under which Geneseo purchases 3 MW, a purchase which will have been obviated by the purchase by Geneseo of its Louisa share, equating to 3.25 MW.

Iowa-Illinois states that a copy of this filing has been mailed to Geneseo, the Illinois Commerce Commission and the Iowa State Commerce Commission.

Comment date: April 2, 1985, in accordance with Standard Paragraph E at the end of this notice.

3. Florida Power & Light Company

[Docket No. ER85-353-000]

March 20, 1985.

Take notice that on March 11, 1985, Florida Power & Light Company (FPL) tendered for filing the following documents:

Amendment Number Four to Agreement to Provide Specified Transmission Service Between Florida Power & Light Company and the City of Starke, Florida (Rate Schedule FERC No. 79).

Amendment Number Five to Agreement to Provide Specified Transmission Service Between Florida Power & Light Company and the City of Starke, Florida.

Amendment Number Six to Agreement or Provide Specified Transmission Service Between Florida Power & Light Company and the City of Starke, Florida.

FPL states that under Amendment Number Four, Amendment Number Five, and Amendment Number Six, FPL will transmit power and enegry for City of Starke as is required in the implementation of its interchange agreements with 1) Orlando Utilities Commission, 2) with the Seminole Electric Cooperative, Inc. and the City of Lake Worth; and 3) with the Utilities Commission, City of New Smyrna Beach respectively.

FPL requests waiver of the Commission's Regulations be granted

and that the proposed Amendments be made effective immediately.

Copies of this filing were served upon the City of Starke, Florida.

Comment date: April 4, 1985, in accordance with Standard Paragraph E at the end of this notice.

4. San Diego Gas & Electric Company

[Docket No. ER-85-354-000]

March 20, 1985.

Take notice that on March 11, 1985, San Diego Gas & Electic Company (SDG&E) tendered for filing Service Schedule B of the Interchange Agreement between SDG&E and the City of Riverside, California (Riverside).

SDG&E states that Service Schedule B provides for the terms and conditions for the exchange of short term firm capacity and associated energy.

SDG&E requests an effective date of February 27, 1985, and therefore requests waiver of the Commisssion's notice requirements.

Copies of this filing were served upon the Public Utilities Commission of the State of California.

Comment date: April 4, 1985, in accordance with Standard Paragraph E at the end of this notice.

5. Utah Power & Light Company

[Docket No. ER85-352-000]

March 20, 1985.

Take notice that on March 11, 1984, Utah Power & Light Company (UP&L) tendered for filing Agreement for transmission service between UP&L and Ogden Defense Depot dated October 1, 1965 and between UP&L and the Weber Basin Project dated April 1, 1965. These Agreement are being filed in compliance with the Commission's Order issued in Docket Nos. ER84-571 and ER84-572.

UP&L states that this filing does not change the rates or service rendered under these contracts and requests waiver of the Commission's Notice requirements to make these contracts effective retroactively as of October 1, 1965 (Ogden Defense Depot) and April 1, 1965 (Weber Basin Project).

A copy of this filing was served on the Ogden Defense Depot, the Weber Basin Project, the Utah Public Service Commission and all parties of record in Docket Nos. ER84-571 and ER84-572.

Comments date: April 4, 1985, in accordance with Standard Paragraph E at the end of this notice.

6. Wisconsin Public Service Corporation

[Docket No. ER 85-355-000]

March 20, 1985

Take notice that on March 11, 1985, Wisconsin Public Service Corporation (WPS) tendered for filing a 1st Revision to FERC Electric Tariff, Original Volume No. 1.

WPS states that the proposed tariff revision provides a new numbering format consistent with other FERC tariffs. Service Schedules B through F and Exhibit A (Form of Service Agreement) are also being assigned sheet numbers. These changes will simplify WPS's future filing procedures.

WPS further states that a number of other minor wording revisions are being made in a tariff to improve clarity.

According to WPS, except for the revision of the page numbering and the minor wording changes, this filing will result in no change in rates, schedules, or revenues of WPS.

WPS proposes an effective date of June 1, 1985 for the revision of this tariff.

Copies of this filing have been served upon Consolidated Water Power Company, Manitowoc Public Utilities, Marshfield Electric and Water Department and the Public Service Commission of Wisconsin.

Comment date: April 4, 1985, in accordance with Standard Paragraph E at the end of this notice.

7. Pacific Gas & Electric Co.

[Docket No. EL 85-24-000]

March 21, 1985

Take notice that on March 11, 1985, Pacific Gas & Electric Company (PGandE) submitted for filing a petition for declaratory relief pursuant to Rule 207 of the Commission's Rules of Practice and Procedure.

PGandE requests that the Commission issue an order declaring the rights and obligations of PGandE and Sacramento Municipal Utility District (SMUD) under the agreement as a result of SMUD's failure and refusal to construct Unit No. 2 and that SMUD's failure and refusal to begin construction of Unit No. 2, and to construct and operate Unit No. 2, constitute a failure of performance, a failure of condition, and a breach of its obligations under the Agreement, and have caused a failure of PGandE's consideration under the Agreement.

Further PGandE request that the Commission in its order declare that PGandE is no longer obligated under the Agreement to provide SMUD electric standby and support at the present contract rates, that PGandE may under the Agreement sell and charge SMUD for electric capacity and energy standby and support at appropriate filed rates, and that PGandE unilaterally may file appropriate wholesale rates with the Commission in accordance with Federal Power Act Section 205.

Comment date: April 12, 1985, in accordance with Standard Paragraph E at the end of this notice.

8. Texas-New Mexico Power Company

[Docket No. ES85-32-000]

March 21, 1985.

Take notice that on March 11, 1985, Texas-New Mexico Power Company (Applicant) filed an application pursuant to Section 204 of the Federal Power Act, with the Federal Energy Regulatory Commission, seeking authority to issue not more than $25 million of First Mortgage Bonds.

Comment date: April 12, 1985, in accordance with Standard Paragraph E at the end of this notice.

9. Texas-New Mexico Power Company

[Docket No. ES85-33-000]

March 21, 1985.

Take notice that on March 12, 1985, Texas-New Mexico Power Company (Applicant) filed an application pursuant to Section 204 of the Federal Power Act, with the Federal Energy Regulatory Commission, seeking authority to issue up to 2000 shares of common stock.

Comment date: April 12, 1985, in accordance with Standard Paragraph E at the end of this notice.

Standard Paragraphs

E. Any person desiring to be heard or to protest said filing should file a motion 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 and 385.214). All such motions or protests should be filed on or before the comment date. 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 motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 85-7325 Filed 3-27-85; 8:45 am]

BILLING CODE 6717-01-M

[Docket Nos. CP85-315-000, et al.]

El Paso Natural Gas Company, et al.; Natural Gas Certificate Filings

March 19, 1985.

Take notice that the following filings have been made with the Commission:

1. El Paso Natural Gas Company

[Docket No. CP85-315-000]

Take notice that on February 26, 1985, El Paso Natural Gas Company (Applicant), Post Office Box 1492, El Paso, Texas 79978, filed in Docket No. CP85-315-000 an application pursuant to Section 7(b) of the Natural Gas Act for permission and approval to abandon and convey, without cost, to Salt River Project Agricultural Improvement and Power District (Salt River) certain minor sales lateral pipeline facilities, with appurtenances, all as more fully set forth in the application which is on file with the Commission and open for public inspection.

Applicant states that pursuant to order, issued April 4, 1952, as amended in Docket No. G-1895, it constructed and operates approximately 2.1 miles of 10¾ inch O.D. pipeline, with appurtenances, extending from the outlet of Applicant's existing Kyrene electric generating power plant (Kyrene) sales meter station to a terminus within the Kyrene property. It is stated that such pipeline and appurtenances are utilized in the delivery and sale of natural gas to Salt River at Kyrene, pursuant to gas sales agreement, dated September 10, 1984, between Applicant and Salt River. Applicant further states that the proposed conveyance is pursuant to letter agreement, dated January 30, 1985, between Applicant and Salt River.

Applicant states that because of subsequent changes made in the Kyrene operating configuration, it prefers not to own pipeline facilities downstream of its meter station, within Salt River's Kyrene yard inasmuch as said pipeline facilities are effectively serving as plant facility piping in the operating of the Kyrene plant. It is stated that the proposed transfer would permit Appicant to make deliveries of natural gas to Salt River at the point where such gas is measured, giving Applicant a more precise degree of control of such deliveries. It is also stated that Salt River would more economically and conveniently operate and maintain the pipeline facilities as its own.

Comment date: April 9, 1985, in accordance with Standard Paragraph F at the end of this notice.

2. Northern Natural Gas Company, Division of InterNorth, Inc.

[Docket No. CP85-364-000]

Take notice that on March 13, 1985, Northern Natural Gas Company, Division of InterNorth, Inc. (Applicant), 2223 Dodge Street, Omaha, Nebraska 68102, filed in Docket No. CP85-364-000 an application pursuant to Section 7(c) of the Natural Gas Act for a certificate of public convenience and necessity authorizing Applicant to sell natural gas to its distribution customers in accordance with the provisions of an economic development rate schedule, referred to as Rate Schedule ED-1, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

Applicant requests authorization to establish a new sales rate schedule, Rate Schedule ED-1, proposed to be effective for a term of five years. Applicant states this new rate schedule is designed to provide its distribution customers opportunities to provide an economic incentive for development of new industries or expansion of existing industries. Other than establishing a new sales rate schedule applicable to the sale of natural gas pursuant to the provisions of the proposed Rate Schedule ED-1, Applicant states it proposes no changes in currently authorized facilities, method or terms of delivery, or other terms of sales.

Applicant asserts that during the past decade its sales have declined from approximately 875,000,000 Mcf of natural gas sold in 1973 to approximately 585,000,000 Mcf of natural gas sold in 1984. Applicant claims it has taken numerous steps to improve its competitive positon in the market place in order to increase sales and to regain lost sales. Such efforts are said to include:

(1) Obtaining Commission authorization to make sales under two discount rate schedules—Rate Schedule FPO and Rate Schedule LVCS. These rate schedules are said to provide Applicant rate flexibility to assist in the prevention of industrial customers switching to alternate fuels because of price competition.

(2) Stabilizing natural gas prices to assist Applicant in maintaining and managing sales. Applicant claims it has not increased its wholesale natural gas rates since October 27, 1982, and has passed several price decreases through to its customers totaling nearly $90 million.

(3) Renegotiating Applicant's two Canadian natural gas purchase contracts. Applicant states it has successfully renegotiated the terms of its two Canadian gas purchase contracts with Pan Alberta Gas, Ltd., and Consolidated Natural Gas Company for the contract year beginning November 1, 1984.

(4) Requesting Commission authorization to establish an incentive Summer Service Rate Schedule—Rate Schedule IS-1. It is claimed that Rate Schedule IS-1 is designed to provide Applicant's customers an opportunity and incentive to increase their purchases of natural gas through existing facilities during the summer months when Applicant and its customers annually experience reduced market requirements and associated excess gas deliverability.

Rate Schedule ED-1, Applicant asserts, is another effort by it to increase sales and to regain lost sales by providing an incentive rate for natural gas to its utility customers with qualifying end-users. Applicant avers that Rate Schedule ED-1 is designed to assist its distribution customers in their efforts to attract new or expand current industrial and large volume commercial gas use by offering a two-year incentive rate of natural gas service to qualifying customers. It is contended that unlike energy-related companies, such as electric distribution companies, Applicant does not currently have an incentive rate program which can be used to attract new and/or incremental loads resulting from industrial expansion. This proposed rate schedule is designed to provide an economic incentive to industrial consumers to use natural gas to serve their long-term energy needs, to allow Applicant to compete effectively with other sources of energy in attracting new natural gas loads, and to attract new industry into Applicant's market area which, due to the strong influence of the depressed agricultural economy, lags behind other regions of the country with respect to recovery from the last recession, it is stated.

It is further maintained that sales made under this rate schedule would materially benefit Applicant's customers both directly and indirectly. it is claimed Applicant's customers would receive salutory effects of sales made under this rate schedule through (1) realization of attendant community benefits associated with industrial expansion; (2) reduction in Applicant's current supply deliverability surplus; (3) reduction in Applicant's deficiency payment exposure; (4) achievement of a more stable load profile; and (5) contribution toward the recovery of the overall costs underling Applicant's currently effective sales rates.

Applicant reports that it continually works with state and local governments in promoting economic development in its marker area. The proposed rate schedule is an illustration of Applicant's efforts to further that goal, it is stated. Applicant believes Rate Schedule ED-1 would encourage economic development within the community thereby generating attendant benefits to the entire community in the form of

increased employment, additional residential and business load, additional tax revenue, community development and overall economic growth.

Approval of Rate Schedule ED–1, it is asserted, would provide Applicant's customers opportunities to increase sales or to regain lost sales from the industrial sector of the market. Applicant states the industrial market traditionally is representative of stable, high load factor customers and serves as a base load allowing a more constant operation of physical plant and a more constant production from the wellhead which contributes toward a more efficient operation of the pipeline and destribution system and attendant recovery of fixed costs to the benefit of the high priority customers. Applicant claims a year-round loss of the industrial market would exacerbate the cyclical summer/winter operation of its pipeline resulting in inefficient operations and reduced load along with the associated burden of fixed cost contribution. Volumes sold under Rate Schedule ED–1 would assist Applicant in achieving a more stable load profile and would assist producers in more stable gas production of their wells, it is averred. Rate Schedule ED–1 would not result in an increase in the cost of service to any Applicant's customers, it is stated.

Applicant indicates its currently effective rates are based upon total system sales of 587,000,000 Mcf and that sales are estimated to be 572,000,000 Mcf during 1985. Sales at the 572,000,000 Mcf level for 1985 would not, Applicant maintains, enable it to recover the fixed costs underlying its currently effective rates. It is stated that the availability of this proposed rate schedule would provide Applicant and its customers an opportunity to market additional gas to recover their fixed costs and to assist Applicant in maintaining stable rates and halting further sales loss and market erosion.

Applicant states it continues to experience a gas deliverability surplus and exposure to substantial deficiency payments and that for calendar year 1985 it estimates deficiency payment exposure to be approximately $120 million. Applicant contends sales made under the proposed rate schedule would assist it in continuing to manage effectively its gas deliverability surplus and to manage its deficiency payment exposure.

Applicant reports that the cost of energy is a significant component of a total economic development package that a community offers to prospective businesses to encourage development in the community and that such energy cost is a known factor in industrial planning. Applicant claims the results of a survey conducted by Industry Week Magazine, regarding major factors considered by executives in locating business site locations, demonstrates that energy costs are among the top eighteen factors considered in locating business sites. Additionally, Applicant states that a 1983 study conducted by Alexander Grant and Company, Certified Public Accountants, illustrates that energy costs are the most important factor that affect business location and success. Consequently, Applicant asserts the proposed Rate Schedule ED–1 would be an important attribute in the decision-making process to locate or expand facilities.

Rate Schedule ED–1 would be available to distribution customers who purchase contract demand from Applicant under Rate Schedules CD–1 and CDO–1. Natural gas purchased for specific end-users in accordance with proposed Rate Schedule ED–1 would be precluded from applicability under any of Applicant's other existing discount rate schedules (e.g., Rate Schedule(s) LVCS, FPO, IS–1).

Rate Schedule ED–1 is proposed to be effective for a term of five years commencing on the date of issuance of a Commission order. Rate Schedule ED–1 would apply to natural gas sold by Applicant's distribution customers to end-users with requirements in excess of 199 Mcf per day and end-users considering economic development either through the construction of new facilities, reactivation of existing facilities, or expansion of existing facilities may quality for Rate Schedule ED–1 by satisfying the following facility guidelines:

(1) *New Facility.* A facility with gas usage requirements exceeding 199 Mcf per day that is newly constructed and becomes operational after the effective date of Rate Schedule ED–1.

(2) *Reactivated Facility.* A facility with gas usage requirements in excess of 199 Mcf per day, that has been permanently shutdown and is reactivated subsequent to the effective date of Rate Schedule ED–1.

(3) *Expanded Facility.* A facility that expands its operations through capital investment or increased employment subsequent to the effective date of this rate schedule, resulting in additional gas requirements such that the resultant total daily requirements of natural gas at that facility exceeds 199 Mcf per day.

All distribution customers serving the qualifying facilities must request service under Rate Schedule ED–1 and must provide the qualification for the end-user as detailed below.

Applicant proposes to sell natural gas to its distribution customers who have negotiated contracts with qualifying end-users. Each executed contract for service under Rate Schedule ED–1 shall be for a term not to exceed two years. All contracts executed pursuant to this rate schedule shall be subject to approval by Applicant, and approval would be granted only when there is documented support of the end-user's qualification for usage of Rate Schedule ED–1. Applicant would be the sole judge in determining the eligibility under Rate Schedule ED–1 and the appropriate base year level. Applicant explains that base year level for the specific end-user is the latest billed calendar three-year annual average sales or the latest calendar year sales, whichever is greater. The base year level would apply only to an Expanded Facility.

Applicant indicates the procedure to be used when contracting for service under this rate schedule would be as follows:

(1) The distribution customer would contract for service with the end-user which it determines qualifies as a New Facility, Reactivated Facility, or Expanded Facility;

(2) The distribution customer would be required to provide to Applicant the data to establish the appropriate base year level;

(3) Applicant and the distribution customer would then contract for the service to be provided for the qualifying end-user;

(4) Applicant would require an affidavit from the distribution customer documenting the qualification of the applicable data including capital investment, inceased employment and/or base year level volumes.

(5) Applicant would reserve the right to reject any contract offered by the distribution customers and would inform the distribution customer as to the reasons for such rejection.

All gas sold under Rate Schedule ED–1 would be at Applicant's currently effective CD–1 or CDO–1 commodity rates adjusted by an amount to reflect a reduced fixed cost component of Applicant's currently effective commodity rate as follows:

First full contract year of service—50 percent reduction in fixed cost margin.

Second full contract year of service—25 percent reduction in fixed cost margin.

For a New Facility and a Reactivated Facility, the ED–1 rate would apply to all volumes sold, and for an Expanded Facility, the ED–1 rate would apply to

all the current contract sales volumes sold in excess of the established base year level. Base year level volumes would be sold at the appropriate CD–1 or CDO–1 commodity rate.

Applicant further indicates that to qualify for the ED–1 rate, the distribution customer must also agree to reduce the fixed cost margin in its applicable retail rate to the qualified end-user on a *pro rata* basis equivalent to Applicant's reduction. Applicant defines the distribution or pipeline customer's fixed cost rate component as the difference between its total rate and its variable cost component.

Applicant proposes to retain all revenues from this program to assist it in recovering the costs underlying its currently effective rates. Applicant claims it is proposing a voluntary reduction in its fixed cost margin to make these sales. Applicant maintains that since sales during 1985 are projected to be less than the sales level underlying existing approved rates, it is only equitable and reasonable to allow it to retain the remaining cost recovery underlying such sales until such time as new base tariff rates are established. Applicant asserts costs to be allocated to such sales and revenue treatment can and should be resolved as part of Applicant's next general rate proceeding and not made an issue in this certificate proceeding.

Applicant submits that Rate Schedule ED–1 is in the public interest for the following reasons:

(1) Since sales made under Rate Schedule ED–1 would not result in any increase in the cost of service to Applicant's customers, but would result in additional benefits to Applicant's customers, the sales made under Rate Schedule ED–1 would be to the betterment of Applicant's customers.

(2) Rate Schedule ED–1 would result in benefits to Applicant's market area communities in the form of increased employment, additional tax revenue, additional residential and business load, and community development.

(3) Rate Schedule ED–1 would provide Applicant's distribution customers with the opportunity to add additional load thereby increasing their recovery of costs.

(4) All customers would benefit from Rate Schedule ED–1 to the extent Applicant's exposure to deficiency payments would be reduced.

(5) Rate Schedule ED–1 would provide Applicant with an opportunity to send signals to its gas suppliers that it intends to establish and encourage a more stable load profile which in turn would assist the producer in more stable gas production of his wells. Further, such signals would assist Applicant in its efforts to negotiate for low cost supplies of natural gas for its customers.

(6) Rate Schedule ED–1 would a) assist in maintaining the economic viability of Applicant's pipeline; b) promote further stability by preventing erosion of Applicant's sales base; c) improve the operational characteristics of Applicant's pipeline and d) assist in the recovery of costs on Applicant's system underlying its currently effective sales rates.

(7) Rate Schedule ED–1 would assist in offsetting the agricultural problems currently plaguing Applicant's market area.

Comment date: April 9, 1985, in accordance with Standard Paragraph F at the end of this notice.

Standard Paragraphs

F. Any person desiring to be heard or make any protest with reference to said filing should on or before the comment date file with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., 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 385.211 and 385.214) and the Regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's Rules.

Take further notice that, pursuant to the authority contained in and subject to jurisdiction conferred upon the Federal Energy Regulatory Commission by Sections 7 and 15 of the Natural Gas Act and the Commission's Rules of Practice and Procedure, a hearing will be held without further notice before the Commission or its designee on this filing if no motion to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that a grant of the certificate is required by the public convenience and necessity. If a motion for leave to intervene is timely filed, or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for the applicant to appear or be represented at the hearing.

Kenneth F. Plumb,

Secretary.

[FR Doc 85–7320 Filed 3–27–85; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. TA85–2–47–000 and TA85–2–47–001]

MIGC, Inc.; Proposed Purchased Gas Adjustment Rate Change

March 22, 1985.

Take notice that on March 15, 1985, MIGC, Inc. tendered for filing copies of Thirty-Second Revised Sheet No. 32 and Seventh Revised Sheet No. 32–A to its FERC Gas Tariff Original Volume No. 1, as required by the Commission's Rules and Regulations under the Natural Gas Act.

MIGC's Thirty-Second Revised Sheet No. 32 and Seventh Revised Sheet No. 32–A provide for a Purchased Gas Adjustment rate decrease of 43.12¢ per MMBtu effective May 1, 1985 in order (1) to provide for a current gas cost adjustment to permit MIGC to reflect the lower cost of gas purchases which it is currently incurring (Table II); (2) to provide for an adjustment to MIGC's unrecovered Purchased Gas Cost Account as of January 31, 1984 and January 31, 1985 (Table III); (3) to recover carrying charges as permitted under FERC Order No. 47 (Table V) as set forth in MIGC's First Revised Sheet No. 31–A; and (4) to set forth projected incremental pricing surcharges to become effective May 1, 1985 (Seventh Revised Sheet No. 32–A) [1].

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, D.C. 20426, in accordance with Rules 214 and 211 of the Commission's rules of practice and procedure (18 CFR 385.214 and 385.211). All such motions or protests should be filed on or before March 29, 1985. 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 motion to intervene. Copies of this filing are on file with the

[1] None of MIGC's sale-for -resale customers has reported a MSAC for any prior month determined in the manner prescribed by § 282.504(d)(2) of the Commission's Regulations.

Commission and are available for the public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 85-7317 Filed 3-27-85; 8:45 am]

BILLING CODE 6717-01-M

[Docket Nos. ST81-207-003, et al.]

Monterey Pipeline Co., et al.; Extension Reports

March 21, 1985.

The companies listed below have filed extension reports pursuant to Section 311 of the Natural Gas Policy Act of 1978 (NGPA) and Part 284 of the Commission's regulations giving notice of their intention to continue transportation and sales of natural gas for an additional term of up to 2 years. These transactions commenced on a self-implementing basis without case-by-case Commission authorization. The sales may continue for an additional term if the Commission does not act to disapprove or modify the proposed extension during the 90 days preceding the effective date of the requested extension.

The table below lists the name and addresses of each company selling or transporting pursuant to Part 284; the party receiving the gas; the date that the extension report was filed; and the effective date of the extension. A letter "B" in the Part 284 column indicates a transportation by an interstate pipeline which is extended under § 284.105. A letter "C" indicates transportation by an intrastate pipeline extended under § 284.125. A "D" indicates a sale by an intrastate pipeline extended under § 284.146. A "G" indicates transportation by an interstate pipeline pursuant to § 284.221 which is extended under § 284.105. The following symbols are used for transactions pursuant to a blanket certificate issued under § 284.222 of the Commission's Regulations: A "G(HT)", "G(HS)" or "G(HA)", respectively, indicates transportation, sale or assignments by a Hinshaw pipeline; a "G(LT)" indicates transportation by a local distribution company, and a "G(LS)" indicates sales or assignments by a local distribution company.

Any person desiring to be heard or to make any protests with reference to said extension report should on or before April 10, 1985, 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 385.211 or 385.214). 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 party to a proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's rules.

Kenneth F. Plumb,

Secretary.

Docket No.	Transporter/seller	Recipient	Date filed	Part 284 subpart	Effective date
ST81-207-003	Monterey Pipeline Co., 821 Gravier St., New Orleans, LA 70112	Southern Natural Gas Co	12-14-84	C	03-27-85
ST81-296-002*	United Gas Pipe Line Co., P.O. Box 1478, Houston, TX77001	Natural Gas Pipeline Co. of America	02-20-85	G	05-19-85
ST81-318-002*	Southern Natural Gas Co., P.O. Box 2563, Birmingham, AL 35202	Northern Natural Gas Co	02-19-85	G	05-19-85
ST81-427-002	Northwest Pipeline Corp., P.O. Box 1526, Salt Lake City, UT 84110	Colorado Interstate Gas Co	02-28-85	G	06-01-85
ST82-306-002	Delta Natural Gas Co., Inc., Rt. 1, Box 30-A, Winchester, KY 40391	Columbia Gas Transmission Corp	02-21-85	G(HT)	05-24-85
ST82-413-001*	United Gas Pipe Line Co., P.O. Box 1478, Houston, TX 77001	Texas Eastern Transmission Corp	02-27-85	G	04-01-84
ST83-344-001*	United Gas Pipe Line Co., P.O. Box 1478, Houston, TX 77001	Delta Gas, Inc	02-19-85	B	04-01-85
ST83-395-001	Cranberry Pipeline Corp., P.O. Box 3710, Charleston, WV 25337	Tennessee Gas Pipeline Co	02-25-85	C	05-26-85
ST83-396-001	Cranberry Pipeline Corp., P.O. Box 3710, Charleston, WV 25337	Cabot Corp	02-25-85	C	05-26-85
ST83-431-001*	Tennessee Gas Pipeline Co., P.O. Box 2511, Houston, TX 77001	Esperanza Transmission Co	02-27-85	B	05-27-85
ST83-432-001*	Tennessee Gas Pipeline Co., P.O. Box 2511, Houston, TX 77001	Southern Natural Gas Co	02-26-85	G	05-26-85
ST83-433-001*	Tennessee Gas Pipeline Co., P.O. Box 2511, Houston, TX 77001	Southern Natural Gas Co	02-26-85	G	05-26-85
ST83-442-001	Acadian Gas Pipeline System, 1200 Milam, Houston, TX 77002	Florida Gas Transmission Co	02-27-85	C	06-01-85
ST83-450-001	Florida Gas Transmission Co., P.O. Box 44, Winter Park, FL 32790	Spindletop Gas Distribution Co	02-28-85	B	05-31-85
ST83-494-001	Panhandle Eastern Pipe Line Co., P.O. Box 1642, Houston, TX 77001	Peoples Natural Gas Co	02-19-85	B	05-20-85
ST83-495-001*	Trunkline Gas Co., P.O. Box 1642, Houston, TX 77001	Louisiana Industrial Gas Supply System	02-27-85	B	05-20-85
ST83-516-001*	ANR Pipeline Co., 500 Renaissance Center, Detroit, MI 48243	Louisana Industrial Gas Supply System	02-26-85	B	05-26-85
ST83-518-001*	ANR Pipeline Co., 500 Renaissance Center, Detroit, MI 48243	Louisiana Industrial Gas Supply System	02-20-85	B	05-19-85
ST83-521-001*	ANR Pipeline Co., 500 Renaissance Center, Detroit, MI 48243	Louisiana Industrial Gas Supply System	02-26-85	B	05-24-85
ST84-594-001	Columbia Gulf Transmission Co., P.O. Box 683, Houston, TX 77001	Southern Natural Gas Co	02-25-85	G	05-26-85

* These extension reports were filed after the date specified by the Commission's Regulation, and shall be the subject of a further Commission order.

NOTE.—The noticing of these filings does not constitute a determination of whether the filings comply with the Commission's Regulations.

[FR Doc. 85-7318 Filed 3-27-85; 8:45 am]

BILLING CODE 6717-01-M

[Docket Nos. QF85-283-000, et al.]

Small Power Production and Cogeneration Facilities; Qualifying Status; Certificate Applications, etc.; C&H Waste Energy, Inc., et al.

Comment date: Thirty days from pubication in the **Federal Register**, in accordance with Standard Paragraph E at the end of this notice.

March 22, 1985.

Take notice that the following filings have been made with the Commission:

1. C&H Waste Energy, Inc.

[Docket No. QF85-283-000]

On March 4, 1985, C&H Waste Energy, Inc. of Route 6, Box 464, Mooresville, North Carolina 28115 submitted for filing an application for certification of a facility as a qualifying small power production facility pursuant to § 292.207 of the Commission's regulations. No determination has been made that the submittal constitutes a complete filing.

The facility will be located on Wendover Road in Greensboro, North Carolina, adjacent to a manufacturing facility owned by Guilford Mills, Inc. It will consist of a rotary kiln incinerator exhausting to a waste heat recovery boiler which will produce steam for generation of electricity and for process use. The electric power production capacity of the facility will be 3375 kW. The primary energy source will be municipal solid waste, with oil or natural gas used only for startup and flame stabilization purposes. Construction of the facility is expected to begin in September 1985, and operation is expected to commence in February 1986.

2. TDEnergy, Inc. (Little Equinox Mountain)

[Docket No. QF85-288-000]

On March 8, 1985, TDEnergy, Inc. (Applicant), of 68 Broad Street, Boston, Massachusetts 02109 submitted for filing an application for certification of a facility as a qualifying small power

production facility pursuant to § 292.207 of the Commission's regulations. No determination has been made that the submittal constitutes a complete filing.

The 3.0 megawatt wind facility will be located on Little Equinox Mountain, Manchester, Vermont.

3. TDEnergy, Inc. (Bridgewater and Bristol)

[Docket No. QF85-289-000]

On March 8, 1985, TDEnergy, Inc. (Applicant), of 68 Broad Street, Boston, Massachusetts 02109 submitted for filing an application for certification of a facility as a qualifying small power production facility pursuant to § 292.207 of the Commission's regulations. No determination has been made that the submittal constitutes a complete filing.

The 6.0 megawatt wind facility will be located near Peeked Hill in Bridgewater and Bristol, New Hampshire.

4. Zond-PanAero Windsystem Partners II

[Docket No. QF85-263-000]

On February 27, 1985, Zond PanAero Windsystem Partners II of 112 South Curry Street, Tehachapi, California 93561 (Applicant) submitted for filing an application for certification of a facility as a qualifying small power production facility pursuant to § 292.207 of the Commission's regulations. No determination has been made that the submittal constitutes a complete filing.

The small power production facility will be located in the San Gorgonio Pass near Palm Springs, California. The facility will initially consist of an initial installation of one hundred (100) wind turbine generators. The initial electric power production capacity of the facility will be approximately 6.5 MW. The applicant intends to install additional increments of capacity over time up to an aggregate total of 10.4 MW. The primary and only energy source will be wind energy. Construction of the facility began in February 1985, and operation is expected to commence in May 1985.

Standard Paragraphs

E. Any person desiring to be heard or to protest said filing should file a motion 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 and 385.214). All such motions or protests should be filed on or before the comment date. 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 motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 85-7361 Filed 3-27-85; 8:45 am]

BILLING CODE 6717-01-M

[Docket Nos. ER85-368-000, et al.]

Electric Rate and Corporate Regulation Filings; Pacific Gas and Electric Co. et. al.

March 22, 1985.

Take notice that the following filings have been made with the Commission:

1. Pacific Gas and Electric

[Docket No. ER85-368-000]

Take notice that Pacific Gas and Electric Company (PG&E) on March 15, 1985, tendered for filing an Amendment and Addendum to the Comprehensive Agreement between PG&E and the California Department of Water Resources (DWR).

The Comprehensive Agreement Amendment No. 2 and Addendum (Amendment and Addendum) provide for generation tie service. Additionally, the Amendment provides for changes in delivery points. The Amendment eliminates DWR's Buena Vista, Wheeler Ridge and Wind Gap Pumping Plants as delivery points in recognition of DWR's ownership of a 75 percent share of the Midway-Wheeler Ridge transmission system. Such power will be delivered to DWR at Midway substation for these pumping plants under the Amendment.

PG&E proposes that the effective date for this Amendment and Addendum and rate schedule is May 15, 1985.

Copies of the filing and proposed termination were served upon DWR and the California Public Utilities Commission.

Comment date: April 5, 1985, in accordance with Standard Paragraph E at the end of this notice.

2. Pacific Gas and Electric Company

[Docket No. ER85-367-000]

Take notice that Pacific Gas and Electric Company (PG&E), on March 15, 1985, tendered for filing as an initial rate schedule the Bottle Rock Tie Line Agreement between PG&E and the California Department of Water Resources (DWR) dated May 19, 1983, the Bottle Rock Heavier Tower Agreement between PG&E and DWR dated October 30, 1981, and the Pine Flat Agreement between PG&E and DWR dated October 15, 1982.

The Bottle Rock Tie Line Agreement requires PG&E to design, construct, own, operate, and maintain for DWR's benefit the 230 kV tie line needed to connect DWR's Bottle Rock Project to PG&E's electrical system. PG&E will charge a transmission system average, special facilities charge for owning, operating, and maintaining the 230 kV tie line. The annual rate for the above services will be 6.39 percent of the costs associated with constructing the 230 kV tie line. The Bottle Rock Tie Line Agreement provides for rate adjustment to account for changes in PG&E's costs of service as filed with the Federal Energy Regulatory Commission.

The proposed effective date for the Bottle Rock Tie Line Agreement is May 15, 1985.

The Bottle Rock Heavier Tower Agreement requires PG&E to install, own, operate, and maintain a Heavier Tower to be part of the Geysers Unit 17 transmission line in order to accommodate the connection of Bottle Rock's transmission line to PG&E's system. PG&E will charge a transmission system average special facilities charge for owning, operating, and maintaining the Heavier Tower. The annual rate for the above services will be 6.39 percent of the additional costs associated with installing the Heavier Tower. The Bottle Rock Heavier Tower Agreement provides for rate adjustment to account for changes in PG&E's costs of service as filed with the Federal Energy Regulatory Commission.

The Pine Flat Agreement requires PG&E to make additions in order to allow the connection of DWR's Pine Flat Project transmission line to PG&E's Balch #2-McCall line, and to make additions at McCall Substation and Haas and Balch Powerhouses for the purpose of providing additional capacity on the #1 circuit of PG&E's Balch #2-McCall line for the delivery of DWR's power from the Pine Flat Project. PG&E will charge a transmission system average, special facilities charge for owning, operating, and maintaining the additions. The annual rate for the above services will be 6.39 percent of the costs associated with making the additions. The Pine Flat Agreement provides for a rate adjustment to account for changes in PG&E's costs of service as filed with the Federal Energy Regulatory Commission.

The proposed initial effective date for the Bottle Rock Heavier Tower Agreement is November 1, 1982. The proposed initial effective date for the Pine Flat Agreement is November 1,

1983. PG&E had requested waiver of the notice requirements of Section 35.3 of the Commission's Regulations so as to permit the initial effective dates proposed immediately above. The proposed effective date for the rate adjustment under these agreements pursuant to this filing is November 1, 1985.

Copies of this filing were served upon DWR and the California Public Utilities Commission.

Comment date: April 5, 1985, in accordance with Standard Paragraph E at the end of this notice.

3. Connecticut Light and Power Company

[Docket No. ER85-359-000]

Take notice that on March 11, 1985, Connecticut Light and Power Company (CL&P) tendered for filing as an initial rate schedule an agreement (the Agreement) between CL&P, Western Massachusetts Electric Company (WMECO, and together with CL&P, the NU Companies) and Potomac Electric Power Company (PEPCO). The Agreement, dated as of February 1, 1985, provides for the bilateral sale by the NU Companies or PEPCO of energy from their systems (system energy) that may be available on a daily or weekly basis (a transaction). CL&P states that the timing of transactions cannot be accurately estimated but that the NU Companies or PEPCO would offer to sell such system energy to the other only when it was economical to do so.

CL&P states that the buyer will pay an energy reservation charge to the seller for each transaction in an amount equal to the megawatthours of system energy reserved for the buyer by the seller during a transaction multiplied by the energy reservation charge rate negotiated prior to each transaction. The buyer will pay an energy charge for each transaction in an amount equal to the megawatthours delivered by the seller during such transaction times an energy charge rate. The energy charge rate is the weighted average forecasted energy charge rate for the energy resource(s) which the seller determines to be available to provide such energy at the time of a transaction.

CL&P requests that the Commission waive its customary notice period and allow the Agreement to become effective on February 1, 1985.

CL&P further states that copies of this filing have been mailed to WMECO and PEPCO.

Comment date: April 5, 1985, in accordance with Standard Paragraph E at the end of this notice.

4. Duke Power Company

[Docket No. ER85-360-000]

Take notice that on March 11, 1985, Duke Power Company (Duke Power) tendered for filing on March 11, 1985 a supplement to the Company's Electric Power contract with the City of Rock Hill. Duke Power states that this contract is on file with the Commission and has been designated Duke Power Company Rate Schedule FERC No. 228.

Duke further states that the Company's contract supplement, made at the request of the customer and with agreement obtained from the customer, provides for the following changes in contract demand: Delivery Point No. 1 from 35,000 KW to 30,000 KW, Delivery Point No. 3 from 35,000 KW to 30,000 KW and Delivery Point No. 4 from 15,000 KW to 30,000 KW.

Duke Power indicates that this supplement also includes an estimate of sales and revenues for twelve months immediately preceding and for the twelve months immediately succeeding the effective date. Duke Power proposes an effective date of February 18, 1985.

According to Duke Power, copies of this filing were mailed to the City of Rock Hill and the South Carolina Public Service Commission.

Comment date: April 4, 1985, in accordance with Standard Paragraph E at the end of this notice.

5. El Paso Electric Company

[Docket No. ER85-356-000]

Take notice that on March 11, 1985, El Paso Electric Company (El Paso) tendered for filing an initial rate schedule a "Nonfirm Transmission Service Agreement for Arizona between El Paso and Arizona Public Service Company (Arizona) dated February 20, 1985.

El Paso states that the Agreement provides for El Paso to provide Arizona with nonfirm transmission service upon request in the amounts up to the capacity of its transmission system. El Paso's service to Arizona is at a rate of one mill per KWH as provided under other agreements where El Paso provides nonfirm transmission service. No cost support data is required under § 35.23(e) of the Commission's regulations.

El Paso requests that the Agreement be made effective 60 days from the date of filing.

Copies of the filing have been served on the Public Utility Commission of Texas, New Mexico Public Service Commission and Arizona Public Service Company.

Comment date: April 5, 1985, in accordance with Standard Paragraph E at the end of this notice.

6. El Paso Electric Company

[Docket No. ER85-357-000]

Take notice that on March 11, 1985, El Paso Electric Company (El Paso) tendered for filing as an initial rate filing, an "Interchange Agreement between El Paso and Imperial Irrigation District," dated February 21, 1985 (Agreement). El Paso states that this Agreement provides a basis for the exchange of energy between parties on a returnable basis and on an economy basis. The Agreement also provides for emergency assistance and for nonfirm transmission services. El Paso requests that this Agreement be accepted for filing and made effective sixty (60) days from the date of filing.

El Paso further states that copies of this filing have been served upon the Public Utility Commission of Texas, the New Mexico Public Service Commission and Imperial Irrigation District.

Comment date: April 5, 1985, in accordance with Standard Paragraph E at the end of this notice.

7. Florida Power & Light Company

[Docket No. ER85-358-000]

Take notice that on March 11, 1985, Florida Power & Light Company (FP&L) tendered for filing a document entitled Amendment Number Sixteen to Agreement to Provide Specified Transmission Service Between FP&L and Fort Pierce Utilities Authority (Rate Schedule FERC No. 69).

FP&L states that under Amendment Number Sixteen, FP&L will transmit power and energy for Fort Pierce Utilities Authority as is required by the implementation of its interchange agreement with Florida Power Corporation.

FP&L requests waiver of the Commission's regulations be granted and that the proposed Amendment be made effective immediately.

Copies of the filing were served upon Fort Pierce Utilities Authority.

Comment date: April 5, 1985, in accordance with Standard Paragraph E at the end of this notice.

8. Florida Power & Light Company

[Docket No. ER85-362-000]

Take notice that on March 12, 1985, Florida Power & Light Company (FP&L) tendered for filing a document entitled Amendment Number Five to Agreement to Provide Specified Transmission Service Between FP&L and Orlando

Utilities Commission (Orlando) (Rate Schedule FERC No. 66).

FP&L states that under Amendment Number Five, FP&L will transmit power and energy for Orlando Utilities Commission as is required in the implementation of its interchange agreement with City of Starke, Florida.

FP&L requests waiver of the Commission's regulations be granted and that the proposed Amendment be made effective immediately.

According to FP&L copies of this filing were served on the Orlando Utilities Commission.

Comment date: April 5, 1985, in accordance with Standard Paragraph E at the end of this notice.

9. Florida Power & Light Company

[Docket No. ER85-361-000]

Take notice that on March 12, 1985, Florida Power & Light Company (FP&L) tendered for filing the following documents:

Amendment Number Five to Agreement to Provide Specified Transmission Service Between Florida Power & Light Company and Florida Power Corporation (FPC) (Rate Schedule FERC No. 61).

Amendment Number Six to Agreement to Provide Specified Transmission Service Between Florida Power & Light Company and Florida Power Corporation.

FP&L states that under Amendment Number Five, and Amendment Number Six, FP&L will transmit power and energy for FP&L Power Corporation as is required in the implementation of its interchange agreements with the City of Lake Worth, Florida and with Fort Pierce Utilities Authority, respectively.

FP&L requests waiver of the Commission's regulations be granted and that the proposed Amendments be made effective immediately.

According to FP&L copies of this filing were served on Florida Power Corporation.

Comment date: April 5, 1985, in accordance with Standard Paragraph E at the end of this notice.

Standard Paragraphs

E. Any person desiring to be heard or to protest said filing should file a motion 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 and 385.214). All such motions or protests should be filed on or before the comment date. 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 motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 85-7362 Filed 3-27-85; 8:45 am]

BILLING CODE 6717-01-M

[Docket Nos. CP85-319-000, et al.]

Natural Gas Certificate Filings; Seagull Interstate Corp., et al.

March 21, 1985.

Take notice that the following filings have been made with the Commission:

1. Seagull Interstate Corporation

[Docket No. CP85-319-000]

Take notice that on February 28, 1985, Seagull Interstate Corporation (Seagull Interstate), 1001 Fannin Street, Suite 1700, Houston, Texas 77002, filed in Docket No. CP85-319-000 an application pursuant to section 7(c) of the Natural Gas Act, for a certificate of public convenience and necessity authorizing the construction and operation of certain facilities from Galveston Island area Block 213 to State Block 214, offshore Texas, and the transportation of gas, for a limited term, for Seagull Marketing Services, Inc. (SMS), all as more fully set forth in the application which is on file with the Commission and open to public inspection.

Seagull Interstate states that it has entered into a transportation agreement with SMS, which resells gas, pursuant to which Seagull Interstate would transport up to 10 billion Btu's of gas per day, or greater quantities depending upon the availability of pipeline capacity, through a new, two-phase 6-inch pipeline proposed to be constructed by Seagull Interstate from Block 213 to Block 214. It is explained that this new facility would interconnect at Block 214 with an existing intrastate pipeline facility owned by Seagull Energy Corporation (Seagull Energy), which is an intrastate pipeline operating within Texas. At that point, it is stated, the gas would be delivered into the Seagull Energy line for transportation by Seagull Energy pursuant to section 311(a)(2) of the Natural Gas Policy Act of 1978 under a transportation agreement between Seagull Interstate and Seagull Energy. It is stated that Seagull Energy would redeliver the gas for Seagull Interstate's account to an existing interconnection between the intrastate pipeline facility of Seagull Energy and an existing intrastate pipeline facility owned by Houston Pipe Line Corporation (HPL), which is an intrastate pipeline operating within Texas. Seagull Interstate further explains that HPL would transport the gas on behalf of Seagull Interstate pursuant to section 311(a)(2) under a transportation agreement to be executed with Seagull Interstate and would redeliver the gas at five existing points of interconnection between the facilities of HPL and Amoco Gas Company, which would purchase the gas for its system supply from SMS.

Seagull Interstate proposes to construct and operate 5.67 miles of 6-inch pipeline between Block 213 and Block 214. Seagull Interstate estimates its proposed facility would cost approximately $1,500,000. Seagull Interstate proposes to finance the cost of the project from loans and contributions of capital to be made by its parent.

Seagull Interstate further seeks authority to transport gas on behalf of SMS through the new facility for a limited term of fifteen years. Seagull Interstate proposes to charge an initial rate of $.49 per million Btu for transportation through the new facility, plus the sum of the fair and equitable rates for transportation performed by Seagull Energy and HPL. Seagull Interstate anticipates the total initial transportation rate would equal $.74 per million Btu. It is explained that no demand charge or ship-or-pay obligation would be imposed on SMS by the transportation agreement.

Comment date: April 10, 1985, in accordance with Standard Paragraph F at the end of this notice.

2. SNG Intrastate Pipeline Inc.

[Docket No. CP85-331-000]

Take notice that on March 4, 1985, SNG Intrastate Pipeline Inc. (SNG Intrastate), Post Office Box 2563, Birmingham, Alabama 35202, filed in Docket No. CP85-331-000 an application pursuant to section 311(a)(2) of Natural Gas Policy Act of 1978 and § 284.127 of the Commission's Regulations for authorization to render a firm transportation service for Alabama Gas Corporation (Alagasco), all as more fully set forth in the application which is on file with the Commission and open to public inspection.

SNG Intrastate proposes to transport, on a firm basis, for Alagasco a maximum quantity of 20,000 Mcf of natural gas per day for a term extending to October 1, 1999. In addition, during the first and second years of the transportation agreement, dated October 1, 1984, SNG Intrastate

proposes to transport an additional 10,000 Mcf of gas per day and 5,000 Mcf of gas per day, respectively.

It is explained that Alagasco would purchase the gas to be transported for its system supply from Alabama Intrastate Supply (Alabama Supply) from reserves in Fayette and Lamar Counties, Alabama, which would deliver the gas to SNG Intrastate for transportation and redelivery to Southern Natural Gas Company (Southern) in Pickens and Tuscaloosa Counties, Alabama. Southern proposes in an application filed February 11, 1985, in Docket No. CP85-278-000, to transport and redeliver the subject gas to Alagasco at existing delivery points in the Birmingham area.

SNG Intrastate proposes to charge Alabama Supply for the transportation of gas for the account of Alagasco a rate of 35.0 cents per million Btu for all volumes redelivered to Southern.

Comment date: April 10, 1985, in accordance with the first subparagraph of Standard Paragraph F at the end of this notice.

3. Northwest Pipeline Corporation

[Docket No. CP83-213-010 and CP83-214-006]

Take notice that on February 28, 1984, Northwest Pipeline Corporation (Northwest), P.O. Box 1526, Salt Lake City, Utah 84110, filed in Docket Nos. CP83-213-010 and CP83-214-006 a petition to amend the Commission's order issued June 3, 1983, in Docket No. CP83-213-000, *et al.*, pursuant to section 7 of the Natural Gas Act so as to authorize an exchange and transportation of natural gas, all as more fully set forth in the petition which is on file with the Commission and open to public inspection.

Northwest requests that the June 3, 1983, order, as amended, be further amended to allow Northwest to exchange with Westcoast Transmission Company, Ltd. (Westcoast), and transport for The Washington Water Power Company (Water Power) 855,000 therms of natural gas for injection into the Jackson Prairie Storage Project (Jackson Prairie) for the account of British Columbia Hydro and Power Authority (B.C. Hydro) during the 1984-85 storage withdrawal period.

Northwest explains that the Commission's order issued May 21, 1984, amending the June 3, 1983, order, authorized, *inter alia*, the exchange and transportation during the injection season of a quantity of 21,825,000 therms for subsequent injections into Jackson Prairie for the account of B.C. Hydro. Northwest further explains that by the Commission's order issued December 7, 1984, also amending the June 3, 1983, order, the seasonal exchange and transportation quantity of 21,825,000 therms was restated to the intended quantity of 22,680,000 therms, an increase of 855,000 therms.

Northwest states that since the corrected seasonal quantity was not approved until December 7, 1984, considerably after the injection period ending September 30, 1984, B.C. Hydro was prevented from tendering its entire seasonal quantity for storage at Jackson Prairie. By letter dated February 1, 1985, B.C. Hydro requested that Northwest arrange to exchange and transport the additional 855,000 therms for injection during the current withdrawal period, it is explained. It is stated that B.C. Hydro needs the additional 855,000 therms of storage capacity to meet its customer demands during the remainder of the 1984-85 heating season.

Comment date: April 10, 1985, in accordance with the first subparagraph of Standard Paragraph F at the end of this notice.

4. Equitable Gas Company, a division of Equitable Resources, Inc.

[Docket No. CP85-327-000]

Take notice that on March 4, 1985, Equitable Gas Company, a division of Equitable Resources, Inc. (Applicant), 420 Boulevard of the Allies, Pittsburgh, Pennsylvania 15219, filed in Docket No. CP85-327-000 an application pursuant to section 7(c) of the Natural Gas Act for a certificate of public convenience and necessity authorizing Applicant to construct and operate minor facilities in order to sell natural gas to 300 new customers using less than 100 Mcf of natural gas per month, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

Applicant is requesting authority to install and operate facilities in order to make sales to 300 customers in Pennsylvania and West Virginia. The service Applicant seeks authority to render to the 300 customers in Pennsylvania and West Virginia would be for domestic needs and would enable Applicant to furnish part of its current surplus gas supply to new customers. It is explained that service would be provided pursuant to Applicant's tariffs on file with the Pennsylvania Public Utility Commission and the West Virginia Public Service Commission. Applicant expects that the great majority of the taps would service residential customers, whose usage would be at most approximately thirty to forty Mcf of gas per month. Applicant states that gas service would be provided by Applicant for a term of ten years and year to year thereafter, or for the life of the line serving the customer, whichever is greater, until terminated by either party at the end of a calendar year.

Consequently, Applicant requests that it be granted prospective authority to abandon the facilities installed when operational considerations on Applicant's system so require (subject to the ten year term guarantee of continued service under the gas service agreements). Applicant requests that the Commission's order authorizing the installations proposed allow Applicant a period of three years to complete the installation of the three hundred sales taps proposed. Applicant proposes to make semi-annual reports to the Commission stating the number of sales taps installed in the previous six-month period, the estimated volumes of gas to be sold through the installed taps, and the location of each.

Comment date: April 10, 1985, in accordance with Standard Paragraph F at the end of this notice.

5. Equitable Gas Company, a division of Equitable Resources, Inc.

[Docket No. CP85-335-000]

Take notice that on March 5, 1985, Equitable Gas Company, a division of Equitable Resources, Inc. (Applicant), 420 Boulevard of the Allies, Pittsburgh, Pennsylvania 15219, filed in Docket No. CP85-335-000 an application pursuant to section 7(c) of the Natural Gas Act for a certificate of public convenience and necessity authorizing the transportation of natural gas and the construction and operation of facilities associated therewith, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

Pursuant to an agreement dated December 12, 1984, with Peoples Natural Gas Company (Peoples), a local distribution company in the Pittsburgh area, Applicant proposes to transport quantities of natural gas delivered to Applicant by Peoples through Applicant's transmission system for subsequent redelivery to Peoples. Applicant states that its transportation obligation under its agreement with Peoples is subject to the limits of available capacity on Applicant's existing facilities and is also subservient to (a) Applicant's obligations to its customers served pursuant to Commission, Pennsylvania Public Utility Commission and West Virginia Public Service Commission tariffs; (b) the transportation of Applicant's own gas production and purchases; and (c)

precedent transportation and exchange agreements.

Subject to the above conditions, Applicant proposes to receive from Peoples up to 1,650 dt equivalent of natural gas per day, which includes an allowance for transportation shrinkage of 2.0 percent, at the following points of receipt:

(1) At an interconnection to be established at Applicant's Pratt field system on Applicant's Line F–120 at the Spragg Farm, Wayne Township, Greene County, Pennsylvania;

(2) At an interconnection to be established at Applicant's Pratt field system on Applicant's Line F–123 at the Butler Farm, Jefferson Township, Greene County, Pennsylvania; and

(3) At such other points as may be mutually agreed upon.

Applicant further proposes to redeliver all natural gas transported for Peoples hereunder at the following points of delivery:

(1) At an interconnection to be established on Applicant's Line H–112 and Peoples' Line P–1156 located south of Monongahela, Pennsylvania, at the Courtney Farm, Union Township, Washington County; and

(2) At such other points as may be mutually agreed upon.

It is explained that Peoples would pay Applicant for its transportation service in accordance with Applicant's Rate Schedule TS–1 which is on file with the Commission. Applicant states that the transportation agreement would be effective for a term of one year from the date of initial receipt of gas by Applicant and would continue from year to year thereafter until terminated by either party upon 60 days written notice to the other party prior to the end of such term or any anniversary thereof.

Applicant states that it would construct, operate and maintain all facilities deemed reasonably necessary by the parties to measure and regulate the natural gas at the various points of receipt and delivery and that Peoples would reimburse Applicant for Applicant's actual costs, including all normal overhead costs, for the construction of all of the interconnections between Applicant's facilities and those of Peoples necessary to effectuate the parties' agreement. Such facilities are estimated to cost $50,050, excluding fees.

Comment date: April 10, 1985, in accordance with Standard Paragraph F at the end of this notice.

6. Columbia Gas Transmission Corporation

[Docket No. CP85–353–000]

Take notice that on March 11, 1985, Columbia Gas Transmission Corporation (Columbia), 1700 MacCorkle Avenue, SE., Charleston, West Virgina 25314, filed in Docket No. CP85–353–000 an application pursuant to section 7 of the Natural Gas Act for a certificate of public convenience and necessity authorizing the construction and operation of certain gas facilities and for permission and approval to abandon certain natural gas facilities, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

Columbia proposes five main line construction and abandonment projects, stating that the four projects involving replacement of deteriorated pipeline segments are needed to maintain service to Columbia's existing wholesale customers at levels presently authorized by the Commission. One project involves the proposed abandonment of a transmission pipeline segment in order that it may be utilized as part of a gathering system. Columbia advises that none of the proposed projects would result in termination of service to any of Columbia's existing customers. A summary of Columbia's proposed projects follows.

Project and Description	Location
1—Line P: replacement of 4.1 miles of 20-inch pipeline, in four sections, with 4.2 miles of 24-inch pipeline.	Butler and Ceredo Districts, Wayne County, WV.
2—Line KA: replacement of 1.9 miles of 20-inch pipeline with 1.9 miles of 24-inch pipeline.	Magnolia District, Mingo County, WV.
3—Line KA: replacement of 10.6 miles of 20-inch pipeline, in two sections, with 10.8 miles of 24-inch pipeline.	Rural District, Pike County, WV.
4—Line KA: replacement of 7.1 miles of 20-inch pipeline with 7.4 miles of 24-inch pipeline and 0.1 mile of 8-inch pipeline.	Baileysville and Center Districts, Wyoming County, WV.
5—T System: abandonment of 7.0 miles of 16-inch pipeline from transmission service.	Kanawha and Roane Counties, WV.

It is estimated that the proposed construction would cost $18,586,900 including the Commission's filing fees, which cost would be financed with funds generated from internal sources.

Comment date: April 10, 1985, in accordance with Standard Paragraph F at the end of this notice.

Columbia Gas Transmission Corp. and Columbia Gulf Transmission Co.

[Docket No. CP85–337–000]

Take notice that on March 7, 1985, Columbia Gas Transmission Corporation (Columbia Transmission), 1700 MacCorkle Avenue, S.E., Charleston, West Virginia 25314, and Columbia Gulf Transmission Company (Columbia Gulf), P.O. Box, Houston, Texas 77001, collectively referred to as Applicants, filed in Docket No. CP85–337–000 an application pursuant to section 7(c) of the Natural Gas Act for a limited-term certificate of public convenience and necessity authorizing the transportation of natural gas for Consolidated Aluminum Corp. (Conalco), all as more fully set forth in the application which is on file with the Commission and open to public inspection.

Columbia Transmission and Columbia Gulf request authorization to transport up to 9,000 dt equivalent of natural gas per day through June 30, 1985. Columbia Gulf states that it would receive the gas in Lafourche Parish, Louisiana, and would transport and deliver the gas, less retainage, for the account of Conalco, to Columbia Transmission at an existing point of interconnection near Leach, Boyd County, Kentucky. It is indicated that Columbia Transmission would transport and redeliver the quantities so received, less retainage, for the account of Conalco at an existing point of delivery located in Monroe County, Ohio, to Columbia Gas of Ohio, Inc. (Columbia of Ohio), an existing wholesale customer of Columbia Transmission. It is stated that Columbia of Ohio would make the ultimate delivery of the gas to Conalco through an existing point of delivery at Conalco's plant near Hannibal, Ohio. Applicants state that the gas to be transported would be purchased by Conalco from Thermal Transfer, Inc., which purchases gas from GoldKing Production Company (GoldKing). Applicants allege that the authorizations herein are being requested by Applicant to maintain production levels and to prevent the watering-out of GoldKing's wells.

Applicants state that no additional facilities are required to effecuate the receipt and delivery of the gas to be transported hereunder since they indicate all receipts and deliveries would be accomplished at existing interconnections. It is stated that Columbia Transmission's transportation charge for the proposed service is presently 21.16 cents per dt equivalent if within Columbia of Ohio's total daily entitlement and 32.50 cents per dt equivalent if in excess of Columbia of Ohio's total daily entitlement, with retainage for company-use and unaccounted-for gas of 2.85 percent of the total quantity of gas received for the account of Conalco. Applicants also

indicate that Columbia Gulf's transportation charge for the proposed service is presently 14.28 cents per dt equivalent with 1.50 percent retainage for company-use and unaccounted-for gas of the total quantity of gas received for the account of Conalco.

Applicants request a limited term certificate to expire June 30, 1985.

Comment date: April 10, 1985, in accordance with Standard Paragraph F at the end of this notice.

8. Colorado Interstate Gas Company

[Docket No. CP85-321-000]

Take notice that on March 1, 1985, Colorado Interstate Gas Company (CIG), P.O. Box 1087, Colorado Springs, Colorado 80944, filed in Docket No. CP85-321-000 an application pursuant to section 7(b) of the Natural Gas Act for permission and approval to abandon sales of natural gas to Western Gas Interstate Company (Western), all as more fully set forth in the application which is on file with the Commission and open to public inspection.

CIG states that the sales to be abandoned are made pursuant to its FERC Rate Schedules G-1, PS-1, S-1 and EX-1. Specifically, CIG proposes to abandon sales of gas to Western in response to a formal request by Western dated February 22, 1985. Western asserts that, due to decline in its markets, purchases from CIG would no longer be required to meet the natural gas needs of its customers. CIG requests that the proposed abandonment be made effective June 1, 1985. CIG states that no facilities are to be abandoned and that no rate adjustments or tariff changes are proposed in the instant application.

Comment date: April 10, 1985, in accordance with Standard Paragraph F at the end of this notice.

9. Trunkline Gas Company

[Docket No. CP85-316-000]

Take notice that on February 27, 1985, Trunkline Gas Company (Trunkline), P.O. Box 1642, Houston, Texas 77001, filed in Docket No. CP85-316-000 an application pursuant to section 7(c) of the Natural Gas Act for a certificate of public convenience and necessity authorizing the transportation of natural gas for Chevron Chemical Company (Chevron), all as more fully set forth in the application which is on file with the Commission and open to public inspection.

It is stated that pursuant to a transportation agreement dated September 26, 1977, as amended January 11, 1985, among Trunkline, Natural Gas Pipeline Company of America (NGPL) and Chevron, Trunkline and NGPL agreed to transport up to 10,000 Mcf of natural gas per day for Chevron. Trunkline proposes herein to transport 25 percent of the total or 2,500 Mcf of natural gas per day. It is stated that NGPL would transport the remaining 75 percent of the volumes.

It is indicated that the transportation agreement provides for Trunkline to receive gas for Chevron's account at existing points of interconnection between Stingray Pipeline Company (Stingray) and Chevron USA Inc., the seller of the gas, in West Cameron Blocks 533 and 534, offshore Louisiana. Trunkline states that it would utilize its capacity in the Stingray system to deliver the gas to NGPL at an existing point of interconnection between Stingray and NGPL in Cameron Parish, Louisiana. It is indicated that NGPL would redeliver the gas for Chevron's account to United Gas Pipe Line Company (United) at the Texaco Henry plant in Vermilion Parish, Louisiana. It is stated that United would then redelvier the gas to Chevron at existing points of interconnection in St. Charles Parish, Louisiana, for use in Chevron's ammonia plant in Luling, Louisiana.

It is stated that Chevron would pay Trunkline a monthly charge of $8,575 for the proposed transportation service which has a term of 15 years from the date of initial deliveries.

Comment date: April 10, 1985, in accordance with Standard Paragraph F at the end of this notice.

10. Natural Gas Pipeline Co. of America and Mississippi River Transmission Corp.

[Docket No. CP75-224-001; Docket No. CP75-226-001]

Take notice that on February 21, 1985, Natural Gas Pipeline Company of America (Natural), 701 East 22nd Street, Lombard, Illinois, 60148, and Mississippi River Transmission Corporation (MRT), 9900 Clayton Road, St. Louis, Missouri, 63124, filed in Docket Nos. CP75-224-001 and CP75-226-001, respectively, a petition to amend the order issued June 19, 1975, in Docket Nos. CP75-224 and CP75-226 pursuant to section 7(c) of the Natural Gas Act so as to authorize the exchange of natural gas between Natural and MRT at an additional point of delivery in Harrison County, Texas, all as more fully set forth in the joint petition to amend on file with the Commission and open to public inspection.

It is stated that, pursuant to an amendment dated September 1, 1984, to the gas exchange agreement, Natural and MRT have agreed to add an additional point of delivery in Harrison County, Texas. Natural proposes to redeliver gas to MRT in the H. W. Vardeman Survey A-726, Harrison County, Texas. It is explained that no new facilities are required because the required meter and tap connection were previously constructed under Natural's blanket authorization in Docket No. CP82-402-000.

Comment date: April 12, 1985, in accordance with the first subparagraph of Standard Paragraph F at the end of this notice.

11. Panhandle Eastern Pipe Line Company

[Docket No. CP85-303-000]

Take notice that on February 22, 1985, Panhandle Eastern Pipe Line Company (Applicant), P.O. Box 1642, Houston, Texas, 77001, filed in Docket No. CP85-303-000 a request pursuant to § 157.205 of the Regulations under the Natural Gas Act (18 CFR 157.205) for authority to transport natural gas on behalf of a qualified end-user under its certificate issued in Docket No. CP83-83-000 pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the request which is on file with the Commission and open for public insepction.

Applicant requests authority to transport gas on behalf of The Alpha Corporation (Shipper) pursuant to a transportation agreement dated December 17, 1984, between Shipper and Applicant (agreement). Applicant states that the agreement provides for Applicant to receive a transportation quantity of up to 750 Mcf of gas per day on an interruptible basis, at an existing point of interconnection between Applicant and R. J. Patrick Operating Company (Seller) in Morton County, Kansas, and a proposed point in Baca County, Colorado. Applicant indicates that it would then transport and redeliver such gas, less a three and one-tenth percent reduction for fuel, to Trunkline Gas Company in Douglas County, Illinois, which in turn would make ultimate delivery to Shipper for its end use at its facilites in Collierville, Tennessee.

Applicant states that it would be compensated in accordance with its Rate Schedule IT, currently 31.20 cents per Mcf plus a gathering charge of 28.74 cents for each million Btu redelivered at the point of redelivery. Applicant also states that the Shipper would reimburse it for the cost of constructing the point of receipt in Baca County, Colorado, which is estimate to be $30,000.00.

Applicant states that the term of the authorization sought herein would be from the date automatic authorization

expires (May 15, 1985) until the earlier of (1) eighteen months from the effective date of the agreement (2) termination of the authorization as provided by Subpart F of Part 157 of the Regulations or (3) termination of the agreement by either party.

Applicant also requests flexible authority to add or delete receipt/delivery points associated with sources of gas acquired by the end-user. The flexible authority requested applies only to points in the market area. Applicant will file a report providing certain information with regard to the addition or deletion of sources of gas as further detailed in the application and any additional sources of gas would only be obtained to constitute the transportation quantities herein and not to increase those quantities.

Comment date: May 6, 1985, in accordance with Standard Paragraph G at the end of this notice.

Standard Paragraphs

F. Any person desiring to be heard or make any protest with reference to said filing should on or before the comment date file with the Federal Energy Regulatory Commission, 825 North Capitol Street, N.E., 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 385.211 and 385.214) and the Regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's Rules.

Take further notice that, pursuant to the authority contained in and subject to jurisdiction conferred upon the Federal Energy Regulatory Commission by sections 7 and 15 of the Natural Gas Act and the Commission's Rules of Practice and Procedure, a hearing will be held without further notice before the Commission or its designee on this filing if no motion to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that a grant of the certificate is required by the public convenience and necessity. If a motion for leave to intervene is timely filed, or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for the applicant to appear or be represented at the hearing.

G. Any person or the Commission's staff may, within 45 days after the 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. 85-7360 Filed 3-27-85; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. GP85-18-000]

State of Colorado, Section 102 NGPA Determination, Northwest Exploration Company, Battlement 1, FERC No. JD83-35517; Petition To Withdraw Well Category Determination

March 25, 1985.

On December 17, 1984, Northwest Exploration Company, P.O. Box 1526, Salt Lake City, Utah 84110 1526 filed with the Federal Energy Regulatory Commission a petition to withdraw well category determination for the Battlement 1 well, Garfield County, Utah, pursuant to the Commission's authority under the Natural Gas Policy Act of 1978 (NGPA), 15 U.S.C. 3301-3432 (Supp. III, 1979).

Northwest states that after a review of all its NGPA section 102 applications, it has determined that the subject well does not qualify under section 102 because of the existence of marker wells within a 2.5 mile radius of such well.

With respect to the question of refunds arising out of Northwest's petition, notice is hereby given that the question of whether refunds, plus interest computed under 18 CFR 154.102(d), will be required is a matter subject to the review and final decision of the Commission.

Any person desiring to be heard or to protest this petition should file, within 30 days after publication of this notice in the **Federal Register**, with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, D.C. 20426, a protest or a petition to intervene in accordance with sections 211 or 214 of the Commission's Rules of Practice and Procedure. All protests filed with the Commission will be considered, but will not make the protestants parties to the proceeding. Any person wishing to become a party to the proceeding or to participate as a party in any hearing must file a motion to intervene in accordance with the Commission's Rules.

Kenneth F. Plumb,

Secretary.

[FR Doc. 85-7368 Filed 3-27-85; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. TC85-10-000]

El Paso Natural Gas Co.; Tariff Filing

March 25, 1985.

Take notice that on March 11, 1985, El Paso Natural Gas Company (El Paso), P.O. Box 1492, El Paso, Texas 79978, pursuant to Section 4 of the Natural Gas Act and in compliance with Section 11.3(b) of the Service Rules set forth in the General Terms and Conditions of its FERC Gas Tariff, First Revised Volume No. 1 (and counterpart provisions of Third Revised Volume No. 2 and Original Volume No. 2A), tendered for filing and acceptance the following tariff sheets to its FERC Gas Tariff:

First Revised Volume No. 1

Third Revised Sheet No. 327
Third Revised Sheet No. 329
First Revised Sheet No. 531

Third Revised Volume No. 2

Eleventh Revised Sheet No. 1-M.1
Seventeenth Revised Sheet No. 1-M.3

Original Volume No. 2A

Eleventh Revised Sheet No. 7-MM.1
Seventeenth Revised Sheet No. 7-MM.3.

El Paso states that the tendered tariff sheets, if accepted for filing and permitted to become effective, would revise certain provisions of its FERC Gas Tariff as necessary to change the customer classification of West Texas Gas, Inc. (West Texas), from Category B to Category C for purposes of administering the aforementioned Service Rules which set forth the Permanent Allocation Plan established for use on El Paso's interstate pipeline system by the Stipulation and Agreement approved by Commission order issued March 26, 1981, in Docket No. RP72-6, *et al.* Such classification and appropriate tariff revisions are said to be a consequence of West Texas'

having purchased less than 1,000,000 Mcf of natural gas from El Paso during the 12-month period ending December 31, 1984. El Paso notes that the changes proposed in the instant filing are "Contemplated Modifications" within the meaning of Sections 6.1 and 6.2 of Article VI of the Stipulation and Agreement in Docket No. RP72-6, *et al.*, and, as such, can be made without unanimous consent of the parties thereto and the Commission staff.

El Paso requests that the tendered tariff sheets be accepted by the Commission and permitted to become effective 30 days after the date of filing.

Any person desiring to be heard or to make any protest with reference to said tariff filing should on or before April 4, 1985, file with the Federal Energy Regulatory Commission, Washington, D.C. 20426, a motion to intervene or a protest in accordance with the requirments of the Commission's Rules of Practice and Procedure (18 CFR 385.214 or 385.211). 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.

Kenneth F. Plumb,

Secretary.

[FR Doc. 85-7364 Filed 3-27-85; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RP85-114-000]

National By-Products, Inc. v. Northern Natural Gas Company, a Division of InterNorth, Inc., Complaint

March 26, 1985.

Take notice that on March 8, 1985, National By-Products, Inc. (National By-Products) tendered for filing a complaint against Northern Natural Gas Company, a Division of InterNorth, Inc. (Northern) for violations of its transportation tariff and discrimination in refusal to transport end-user natural gas and a request for an emergency order or, in the alternative, an order establishing procedures.

National BY-Products, a subsidiary of the Federal Company, uses natural gas at its plants in Omaha, Nebraska and Des Moines, Iowa. According to its complaint, National By-Products sought to buy natural gas directly for these plants and to arrange for transportation of the gas on Northern's system. National By-Products states that it requested and received from Northern a copy of Northern's end-user transportation tariff (Rate Schedule EUT-1). National By-Products states that Northern also enclosed a statement of Northern's "policy" with respect to the transportation of third-party gas. National By-Products asserts that it tendered natural gas to Northern for delivery and that Northern advised National By-Products that Northern was not in a position at this time to transport gas for National By-Products pursuant to Northern's Rate Schedule EUT-1.

National By-Products asserts that the gas it tendered was available in sufficient quantities, was of acceptable pipeline quality, and qualified for transportation under applicable provisions and regulations of the NGPA, the Commission's blanket certificate program and Northern's Rate Schedule EUT-1. According to National By-Products, Northern has not asserted that it does not hve sufficient capacity to transport gas for National By-Products, nor has Northern asserted any justification for refusal to transport other than that the rate authorized under Rate Schedule EUT-1 was too low. National By-Products further asserts: (1) Northern's statement of transportation policy has not been filed with or approved by the Commission; (2) Northern is transporting natural gas for Peoples Natural Gas Company, an affiliate of Northern and the local distributor supplying National By-Products' plant in Omaha; (3) Northern has received authorization to transport gas under Rate Schedule EUT-1 to be used as boiler fuel for an end-user and affiliate, Northern Gas Products Company; (4) Northern has reported certain self-implementing transactions to the Commission, in which Northern, in addition to collecting a rate under Rate Schedule EUT-1, acted as agent for arranging the purchase and transportation of gas and collected an agency fee; and (5) Northern has transported third-party natural gas under Rate Schedule EUT-1 to other industrial end-users who use it for boiler fuel and process uses and who otherwise purchase under interruptible rate schedules.

National By-Products asserts that Northern has chosen to transport natural gas for some end-users under Rate Schedule EUT-1 but has refused to transport for National By-Products, and that there is no basis in Rate Schedule EUT-1 for Northern's refusal. National By-Products believes that Northern's refusal to transport is unlawful, contrary to its published tariff, and discriminatory and anti-competitive in that transportation services are being provided to other end-users in Northern's service areas whose characteristics of service are not materially different from National By-Products.

National By-Products requests that the Commission issue an emergency order directing Northern to apply its tariff in non-discriminatory manner and to initiate transportation service on behalf of National By-Products' Des Moines, Iowa and Omaha, Nebraska facilities pursuant to Northern's filed and approved Rate Schedule EUT-1. In the alternatives, National By-Products requests that the Commission: (1) Initiate an investigation under Section 14 of the NGA to investigate all facts, conditions, practices and matters related to the transportation of natural gas by Northern; and/or (2) establish a hearing under Section 5 of the NGA to determine whether the classifications and practices of Northern with respect to the transportation of third-party gas under Rate Schedule EUT-1 are just and reasonable; and/or (3) reopen Northern's blanket certificate proceeding in Docket No. CP82-401-000 to consider the imposition of a condition requiring non-discriminatory transportation.

Under Rules 206(b) and 213(a), 18 CFR 385.206(b) and 385.213(a) (1984), Northern must file an answer to National By-Products' complaint with the Commission unless otherwise ordered by the Commission. Under Rule 213(e), any person failing to answer a complaint may be considered in default, and all relevant facts stated in such complaint may be deemed admitted. Northern shall file its answer with the Commission on or before April 25, 1985.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a 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 motions or protests should be filed on or before April 25, 1985. Protests will be considred 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 motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 85-7365 Filed 3-27-85; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. CI85-270-000]

Panhandle Eastern Pipe Line Company v. TXO Production Corp. and Essex Exploration, Inc.; Complaint

March 25, 1985.

Panhandle Eastern Pipeline Company on March 1, 1985, pursuant to Rule 206 of the Commission's Rules of Practice and Procedure, filed a complaint against the above respondents TXO Production Corp. (TXO) and Essex Exploration, Inc. (Essex). Panhandle states that in 1967 it entered into a gas purchase contract with W.B. Osborn, Jr., *et al.*, (Osborn) which provided for the purchase of gas produced from 4,156 acres, including acreage in sections 16, 17, and 18, Township 27 North, Range 15 West, Woods County, Oklahoma; that from 1967 to 1969 Panhandle purchased 1,981 MMcf of gas under such contract; and that in 1969 the Corporation Commission of Oklahoma established a plan of unitization requested by Osborn called the Northwest Avard Hunton Lime Unit (Unit) covering the Hunton Lime formation, a combination gas-oil reservoir underlying six adjoining sections, 16–21, including the contract acreage.

Panhandle alleges that at the time the Unit was formed it was intended by both Osborn and the Oklahoma Corporation Commission to include all of the Hunton Lime reservoir; that as a result of the Oklahoma Commission's order, the three gas wells delivering to Panhandle under the contract in sections 16, 17, and 18 were shut in to maintain pressure in the reservoir for the production of oil; that it was intended that the gas held in the reservoir would eventually flow to Panhandle under the contract when it was no longer needed for reservoir pressure maintenance. Panhandle further alleges that in 1980, Texas Oil & Gas Corp., corporate parent of respondent TXO, completed a gas well close to the contract acreage and the Unit; that Osborn requested the Oklahoma Commission to limit production of the TXO well to maintain reservoir pressure; that after an appeal to a state court, the Oklahoma Commission granted Osborn's request; that in 1982, the respondent Essex also completed a well close to the contract acreage and the Unit, and TXO completed a similar second well; that in 1983 the Unit requested the Oklahoma Commission to limit production of these wells; that while proceedings were still pending before the Oklahoma Commission, TXO purchased the Unit in settlement between itself, the Unit, and the royalty owners; that in 1984, the Unit, now owned by TXO, requested dismissal of all pending cases with the Oklahoma Commission and that such motion was granted by the Commission on the ground of mootness. According to Panhandle, large quantities of gas were withdrawn from the reservoir by the TXO and Essex wells and sold to Delhi Gas Pipeline Company and to Lukens Steel Company; that this withdrawal and sale continues; that TXO's and Essex's gas withdrawals have rendered nonproductive due to water encroachment two of the three wells originally flowing to Panhandle from the contract acreage and that the third well may be similarly affected; that TXO refuses to deliver gas to Panhandle under the contract (as successor to Osborn) or protest the gas withdrawal of still another party, Republic Resources Corporation, who has completed a well close to the Unit; and that as a result of the actions of TXO and Essex large quantities—up to 6.3 Bcf—of inexpensive NGPA section 104 reserves, certificated for sale in interstate commerce, have been lost to Panhandle and diverted from the interstate market without abandonment authorization required by section 7(b) of the Natural Gas Act. Panhandle requests that the Commission determine that TXO and Essex have unlawfully diverted the gas, order them to cease and desist; and require payback of low-cost gas supplies.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a 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 motions or protests should be filed on or before April 24, 1985. 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 motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection. Respondents' due date for answering the complaint is on or before April 24, 1985.

Kenneth F. Plumb,

Secretary.

[FR Doc. 85-7367 Filed 3-27-85; 8:45 am]

BILLING CODE 6717-01-M

[Project. No. 8123-001]

Paris Hydro Associates; Surrender of Preliminary Permit

March 25, 1985.

Take notice that Paris Hydro Associates, Permittee for the proposed Billings Project No. 8123, has requested that its preliminary permit be terminated. The preliminary permit was issued on August 20, 1984, and would have expired on January 31, 1986. The project would have been located on Little Androscoggin River in Oxford County, Maine. The Permittee states that a preliminary study found that the project would not be economically feasible to develop at this time.

The Permittee filed the request on February 25, 1985, and the preliminary permit for Project No. 8123 shall remain in effect through the thirtieth day after issuance of this notice unless that day is a Saturday, Sunday or holiday as described in 18 CFR 385.2007, in which case the permit shall remain in effect through the first business day following that day. New applications involving this project site, to the extent provided for under 18 CFR Part 4, may be filed on the next business day.

Kenneth F. Plumb,

Secretary.

[FR Doc. 85-7366 Filed 3-27-85; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. GP85-17-000]

State of West Virginia, Section 107 Determination, Anvil Oil Co., Inc., Bradley Davis No. 1 Well, FERC JD No. 85-02394; Petition To Reopen and Vacate Final Well Category Determination and Request To Withdraw

March 25, 1985.

On February 15, 1985, Anvil Oil Co., Inc. (Anvil) filed with the Federal Energy Regulatory Commission (Commission) a petition to reopen and a request to withdraw its application for a final well category determination that natural gas produced from the Bradley Davis No. 1 Well, located in Ritchie County, West Virginia, qualifies as high cost natural gas under section 107 of the Natural Gas Policy Act of 1978 (NGPA).[1] Subsequent to filing its application for a section 107 well category determination for the Bradley Davis Well, Anvil filed an application for a section 103 well category determination also for the same well. Although Anvil seeks to withdraw its application to have gas

[1] 15 U.S.C. 3301-3432 (1982).

produced from its Bradley Davis No. 1 Well qualified as high cost natural gas under section 107 of the NGPA, it desires that the gas continue to be qualified under section 103 of the NGPA. The determinations by the State of West Virginia Office of Oil and Gas that the natural gas produced from the Bradley Davis No. 1 Well was high cost gas under section 107 of the NGPA and new onshore production well under section 103 of the NGPA became final on November 30, 1984 and February 14, 1985, respectively.[2]

Anvil states that it was operating under a misapprehension of fact when it submitted its NGPA section 107 filing as it had no knowledge that the gas produced from the Bradley Davis well was already dedicated to Consolidated Gas Transmission Corporation (Consolidated), and would be purchased by Columbia Gas Transmission Corporation. Anvil States further that had it been properly informed that the subject gas was dedicated to Consolidated it would not have initially submitted a section 107 filing.

The Commission gives notice that the question of whether refunds plus interest as computed under § 154.102(c) will be required is a matter which is subject to the review and final determination of the Commission.

Within 30 days of publication in the **Federal Register**, any person may file a protest to Anvil's petition or a petition to intervene with the Federal Energy Regulatory Commission, 825 North Capitol Street NE. Washington, D.C. 20426. If you wish to become a party to this proceeding, you must file a petition to intervene. *See* Rules 214 or 211.[3]

Kenneth F. Plumb,

Secretary.

[FR Doc. 85-7369 Filed 3-27-85; 8:45 am]

BILLING CODE 6717-01-M

[2] NGPA section 503(d) and 18 CFR 275.202(a).

[3] 18 CFR 385.214 or 385.211 (1983).

Office of Hearings and Appeals Cases Filed; Week of March 1 through March 8, 1985

During the Week of March 1 through March 8, 1985, the appeals and applications for exception or other relief listed in the Appendix to this Notice were filed with the Office of Hearings and Appeals of the Department of Energy.

Under DOE procedural regulations, 10 CFR Part 205, any person who will be aggrieved by the DOE action sought in these cases may file written comments on the application within ten days of service of notice, as prescribed in the procedural regulations. For purposes of the regulations, the date of service of notice is deemed to be the date of publication of this Notice or the date of receipt by an aggrieved person of actual notice, whichever occurs first. All such comments shall be filed with the Office of Hearings and Appeals, Department of Energy, Washington, D.C. 20585.

George B. Breznay,

Director, Office of Hearings and Appeals.

March 18, 1985.

LIST OF CASES RECEIVED BY THE OFFICE OF HEARINGS AND APPEALS

[Week of Mar. 1 through Mar. 8, 1985]

Date	Name and location of applicant	Case No.	Type of submission
Mar. 4, 1985	Department of Interior, Washington, D.C.	HEE-0124	Exception from the certification rules. If granted: The Department of Interior would receive an exception from certain certification requirements applicable to first sellers of crude oil as set forth in 10 C.F.R. Part 212, with respect to its sales of onshore crude oil to Glenrock Refinery, Inc.
Do	Earl's Broadmoor Texaco, Washington, D.C.	HEF-0566	Implementation of special refund procedures. If granted: The Office of Hearings and Appeals would implement Special Refund Procedures pursuant to 10 C.F.R. Part 205, Subpart V, in connection with the August 31, 1981 Consent Order entered into with Earl's Broadmoor Texaco.
Do	Questor Petroleum Corporation and Kyle S. McAlister	HRD-0272, HRH-0272	Motion for discovery and request for evidentiary hearing. If granted: Discovery would be granted and an evidentiary hearing would be convened in connection with the Statement of Objections submitted by Questor Petroleum Corporation and Kyle S. McAlister in response to a Proposed Remedial Order issued to them (Case No. HRO-0269).
Do	Texaco, Inc., Washington, D.C.	HRH-0035	Request for evidentiary hearing. If granted: An evidentiary hearing would be convened in connection with the Statement of Factual Objections submitted by Texaco, Inc. in response to a Proposed Remedial Order issued to it (Case No. DRO-0199).
Mar. 5, 1985	Eason Oil Company, Washington, D.C.	HRD-0273, HRH-0273	Motion for discovery and request for evidentiary hearing. If granted: Discovery would be granted and an evidentiary hearing would be convened in connection with the Statement of Objections submitted by Eason Oil Company in response to a Proposed Remedial Order issued to it (Case No. HRO-0254).
Do	Petro Products, Inc., Anchorage, Alaska	HEE-0125	Exception to the reporting requirements. If granted: Petro Products, Inc. would not be required to file Form EIA 782B "Resellers/Retailers Monthly Petroleum Product Sales Report."
Do	William G. Sack, Western Springs, Illinois	HFA-0280	Appeal of an information request denial. If granted: The February 22, 1985 Freedom of Information Request Denial issued by the Inspector General would be rescinded and William G. Sack would receive access to a report on the Weatherization Program in Chicago (C.E.D.A.).
Mar. 6, 1985	Bock Water Heaters, Madison, Wisconsin	HEE-0126	Exception from the energy conservation program for consumer products. If granted: Bock Water Heaters would receive an exception from the provisions of 10 C.F.R. Part 430, which would permit the firm to modify the energy efficiency test procedures applicable to the Model 32E oil-fired water heater.
Do	Farstad Oil Company, Washington, D.C.	HEF-0567	Implementation of special refund procedures. If granted: The Office of Hearings and Appeals would implement Special Refund Procedures pursuant to 10 C.F.R., Part 205 Subpart V, in connection with the September 1, 1981 Consent Order entered into with Farstad Oil Company.
Mar. 7, 1985	Crown Central Petroleum Corporation, Washington, D.C.	HEA-0008	Appeal of a decision and order. If granted: The February 5, 1985 Economic Regulatory Administration Decision and Order No. 85-1 issued to Crown Central Petroleum Corporation by the Office of Enforcement Programs would be rescinded with respect to any findings regarding the acceptability of Crown Central Petroleum Corporation's March 20, 1981 refiling of its Refiner's Monthly Cost Allocation Reports.

LIST OF CASES RECEIVED BY THE OFFICE OF HEARINGS AND APPEALS—Continued

[Week of Mar. 1 through Mar. 8, 1985]

Date	Name and location of applicant	Case No.	Type of submission
Do	Donald Lee Espenshade, New York, New York	HFA-0261	Appeal of an information request denial. If granted: The February 15, 1985 Freedom of Information Request Denial issued by the Defense Program Office would be rescinded, and Donald Lee Espenshade would receive access to documents relating to his security clearance.
Do	Gulf Energy & Development Corp., Washington, D.C	HEF-0568	Implementation of special refund procedures. If granted: The Office of Hearings and Appeals would implement Special Refund Procedures pursuant to 10 C.F.R. Part 205, Subpart V, in connection with the May 16, 1984 Consent Order entered into with Gulf Energy & Development Corporation.
Mar. 8, 1985	Dersch Oil Company, Inc., Mt. Carmel, Illinois	HEE-0127	Exception to the reporting requirements. If granted: Dersch Oil Company, Inc. would not be required to file Form EIA-821 "Annual Fuel Oil and Kerosene Sales Report."

REFUND APPLICATIONS RECEIVED

[Week of Mar. 1 through Mar. 8, 1985]

Date	Name of refund proceeding/name of refund applicant	Case No.
3/4/85	Hertz/E.I. DuPont De Nemours & Company.	RF76-37.
3/4/85	Hertz/Owens/Corning Fiberglass Corp.	RF76-38.
3/4/85	Hertz/Merrill Lynch & Co., Inc.	RF76-39.
3/4/85	Hertz/G. K. Technologies, Inc.	RF76-40.
3/4/85	Hertz/National Broadcasting Co.	RF76-41.
3/4/85	Hertz/Warner-Lambert Company	RF76-42.
3/4/85	Hertz/Shearson/Lehman/American Express.	RF76-43.
3/4/85	Hertz/Great Lakes Dredge & Dock Company.	RF76-44.
3/4/85	Hertz/S. C. Johnson & Son, Inc.	RF76-45.
3/4/85	Hertz/Union Carbide Corp.	RF76-46.
3/4/85	Hertz/Revlon, Inc.	RF76-47.
3/4/85	Hertz/American Broadcasting Co.	RF76-48.
3/4/85	Amtel/Kerr McGee Corporation	RF47-50.
3/4/85	Van Gas/Burke Nicholson	RF68-16.
3/4/85	Amtel/Workingham's Friend Oil, Inc.	RF46-52.
3/4/85	Amtel/Cook Oil Co., Inc.	RF46-53.
3/4/85	Amtel/Tommy Oil Co., Inc.	RF46-54.
3/4/85	Amtel/Fairway Oil, Inc.	RF46-55.
3/4/85	Hertz/American Financial Corp.	RF76-49.
3/4/85	Hertz/Sperr Corporation	RF76-50.
3/4/85	Hertz/Outboard Marine Corp	RF76-51.
3/4/85	Hertz/Rexnord	RF76-52.
3/5/85	Hertz/Pitney Bowes, Inc.	RF76-74.
3/5/85	Hertz/LDS Church	RF76-76.
3/5/85	Hertz/West Point Pepperell	RF76-77.
3/5/85	Herz/Int'l Minerals & Chemical	RF76-78.
3/5/85	Hertz/TRW Systems Group	RF76-79.
3/5/85	Hertz/Pennzoil	RF76-80.
3/5/85	Hertz/Ferro Corp	RF76-81.
3/5/85	Hertz/Arco Oil & Gas Company	RF76-82.
3/5/85	Hertz/Brown Group, Inc.	RF76-83.
3/6/85	Hertz/Harris Corporation	RF76-75.
3/6/85	Amoco/Indiana	RQ21-165.
3/6/85	Hertz/Johnson Control Inc.	RF76-84.
3/6/85	Hertz/The Coco Corp	RF76-85.
3/6/85	Hertz/Consolidated Foods	RF76-86.
3/6/85	Hertz/H. K. Ferguson Company	RF76-87.
3/6/85	Hertz/Perkin Elmer	RF76-88.
3/6/85	Hertz/Kemper Group	RF76-89.
3/6/85	Hertz/ITT Corporation	RF76-90.
3/6/85	Hertz/Research Contrerell	RF76-91.
3/6/85	Hertz/Champion International Corp	RF76-92.
3/6/85	Hertz/Grumman Aerospace Corp	RF76-93.
3/6/85	Hertz/Mead Corporation	RF76-94.
3/6/85	Hertz/International Metals & Machine.	RF76-95.
3/6/85	Hertz/Nabisco Brands, Inc	RF76-96.
3/6/85	Hertz/AVCO Corporation	RF76-97.
3/6/85	Hertz/NCR Corporation	RF76-98.
3/6/85	Hertz/Westinghouse Electric Corp	RF76-99.
3/6/85	MAPCO/Northern Illinois Gas Company.	RF108-1.
3/6/85	MAPCO/Shell Oil Company	RF108-2.
3/7/85	Hertz/American Hospital Supply Corporation.	RF76-100.
3/7/85	Hertz/Bucyrus-Erie Company	RF76-101.
3/7/85	Hertz/The BOC Groups, Inc	RF76-102.
3/7/85	Hertz/Chesebrough-Ponds, Inc.	RF76-103.
3/7/85	Richards/Armour & Company	RF76-24.
3/8/85	Van Gas/Alfred B. Wiederholt	RF68-18.
3/8/85	Van Gas/James R. Forbes	RF68-19.
3/8/85	Hertz/Peabody International Corp.	RF76-104.
3/8/85	Palo Pinto/Mississippi	RQ5-166.
3/8/85	Palo Pinto/Alabama	RQ5-167.
3/8/85	Palo Pinto/Iowa	RQ5-168.

REFUND APPLICATIONS RECEIVED—Continued

[Week of Mar. 1 through Mar. 8, 1985]

Date	Name of refund proceeding/name of refund applicant	Case No.
3/8/85	Palo Pinto/Indiana	RQ5-169.
3/8/85	Palo Pinto/Ohio	RQ5-170.
3/8/85	Palo Pinto/Georgia	RQ5-171.
3/8/85	Palo Pinto/New Mexico	RQ5-172.
3/8/85	Palo Pinto/Arkansas	RQ5-173.
3/8/85	Palo Pinto/Rhode Island	RQ5-174.
3/8/85	Palo Pinto/West Virginia	RQ5-175.
3/8/85	Palo Pinto/Pennsylvania	RQ5-176.
3/8/85	Palo Pinto/South Carolina	RQ5-177.
3/8/85	Palo Pinto/Idaho	RQ5-178.
3/8/85	Palo Pinto/Colorado	RQ5-179.
3/8/85	Palo Pinto/Virginia	RQ5-180.
3/8/85	Palo Pinto/Minnesota	RQ5-181.
3/8/85	Palo Pinto/North Carolina	RQ5-182.
3/8/85	Palo Pinto/New Jersey	RQ5-183.
3/8/85	Palo Pinto/Michigan	RQ5-184.
3/8/85	Palo Pinto/New York	RQ5-185.
3/8/85	Palo Pinto/Missouri	RQ5-186.
3/8/85	Palo Pinto/Maryland	RQ5-187.
3/8/85	Palo Pinto/Puerto Rico	RQ5-188.
3/4/85 through 3/8/85	Gulf Refund Applications	RF40-1762 through RF40-1818.

[FR Doc. 85-7427 Filed 3-27-85; 8:45 am]

BILLING CODE 6450-01-M

Implementation of Special Refund Procedures

AGENCY: Office of Hearings and Appeals, DOE.

ACTION: Notice of Implementation of Special Refund Procedures.

SUMMARY: The Office of Hearings and Appeals of the Department of Energy solicits comments concerning the appropriate procedures to be followed in refunding $6,193.20 in consent order funds to members of the public. This money is being held in escrow following the settlement of an enforcement proceeding involving E.M. Bailey Distributing Company, Inc. of Paducah, Kentucky (Case No. HEF-0033).

DATE AND ADDRESS: Comments must be filed within 30 days of publication of this notice in the **Federal Register** and should be addressed to the Office of Hearings and Appeals, Department of Energy, 1000 Independence Avenue, SW., Washington, D.C. 20585. All comments should conspicuously display a reference to Case No. HEF-0033.

FOR FURTHER INFORMATION CONTACT: Richard W. Dugan, Associate Director, Office of Hearings and Appeals, 1000 Independence Avenue, SW., Washington, D.C. 20585, (202) 252-2860.

SUPPLEMENTARY INFORMATION: In accordance with § 205.282(b) of the procedural regulations of the Department of Energy, 10 CFR 205.282(b), notice is hereby given of the issuance of the Proposed Decision and Order set out below. The Proposed Decision relates to a consent order entered into by E.M. Bailey Distributing Company, Inc. (EMB) of Paducah, Kentucky, which settled possible pricing violations in the firm's sales of certain refined petroleum products to wholesale and retail customers during the audit period.

The Proposed Decision sets forth the procedures and standards that the DOE has tentatively formulated to distribute the contents of the escrow account funded by EMB pursuant to the consent order. The DOE has tentatively established procedures under which purchasers of refined petroleum products from EMB during the audit period may file claims for refunds from the consent order fund. Applications for refund should not be filed at this time. Appropriate public notice will be given when the submission of claims is authorized.

Any member of the public may submit written comments regarding the proposed refund procedures. Commenting parties are requested to submit two copies of their comments. Comments should be submitted within 30 days of publication of this notice in the **Federal Register**, and should be sent to the address set forth at the beginning of this notice. All comments received in this proceeding will be available for public inspection between the hours of 1:00 and 5:00 p.m., Monday through Friday, except Federal holidays, in the Public Docket Room of the Office of Hearings and Appeals, located in Room 1E-234, 1000 Independence Avenue, SW., Washington, D.C. 20585.

Dated: March 18, 1985.

George B. Breznay,

Director, Office of Hearings and Appeals.

Proposed Decision and Order of the Department of Energy

Special Refund Procedures

Name of Firm: E.M. Bailey Distributing Company, Inc.

Date of Filing: October 13, 1983.

Case Number: HEF-0033.

The procedural regulations of the Department of Energy (DOE) provide that the Economic Regulatory Administration (ERA) may request the Office of Hearings and Appeals (OHA) to implement special refund procedures for the purpose of providing restitution to persons who were injured by alleged or adjudicated violations of DOE regulations. *See* 10 CFR Part 205, Subpart V. The Subpart V process may be used in situations where the DOE is unable to identify readily those persons who may have been injured by such alleged or adjudicated violations or to ascertain readily the amounts of such persons' injuries. For a more detailed discussion of Subpart V and the authority of the OHA to fashion procedures to distribute refunds obtained as part of settlement agreements, see *Office of Enforcement*, 8 DOE ¶ 82,597 (1981) (*Vickers*).

I. Background

On October 13, 1983, the ERA filed a petition requesting that the OHA establish a refund proceeding in order to distribute funds received pursuant to a Consent Order entered into by the DOE and E.M. Bailey Distributing Co., Inc. (EMB). EMB is a "reseller-retailer" of refined petroleum products as those terms were defined at 10 CFR 212.31, and is located in Paducah, Kentucky, with subsidiary operations in Mayfield, Murray, and Benton, Kentucky. An ERA audit of EMB revealed possible violations of the Mandatory Petroleum Price Regulations during the period November 1, 1973 through March 31, 1974 (the audit period). Subsequently, on June 21, 1979 EMB entered into a consent order with the DOE in order to settle its dispute with the DOE and to resolve potential civil liability with respect to certain sales of refined petroleum products.

The EMB Consent Order covers sales of motor gasoline, kerosene, and diesel fuel during the audit period. The Consent Order refers to the ERA's allegations that EMB sold these covered products in violation of the reseller/retailer price rule at 10 CFR 212.93, but states that in consideration of EMB's implementation of the terms and conditions of the Consent Order, EMB will be deemed to have been in compliance with the price rule during the audit period. Under the terms of the Consent Order, EMB agreed to make direct refunds totalling $30,935.53 to customers who were identified as allegedly overcharged parties. In addition, EMB issued a check payable to the DOE in the amount of $6,193.20 to provide restitution for unidentified EMB customers in the following categories: (i) Retail dealers of Chevron USA-branded regular or supreme motor gasoline, diesel fuel or kerosene, (ii) industrial end-users who purchased kerosene not sold under the Chevron USA brand, and (iii) retail customers who purchased premium or regular motor gasoline from three EMB retail outlets that did not sell under the Chevron USA brand.[1] This Proposed Decision concerns the distribution of the $6,193.20, which is currently held in a DOE escrow account, plus accumulated interest.[2]

II. Proposed Refund Procedures

We have considered the ERA's Petition for the Implementation of Special Refund Procedures and have determined that it is appropriate to establish such procedures with respect to the funds remitted by EMB. As we have stated in previous Decisions, refunding moneys obtained through DOE enforcement proceedings to parties who were injured by alleged or adjudicated violations is the focus of Subpart V proceedings. *See generally Vickers.*

Based upon our experience with Subpart V cases, we propose that the distribution of refunds in the present case should take place in two stages. In the first stage, we will attempt to refund moneys to customers who were injured by EMB's alleged overcharges during the consent order period.[3] After meritorious claims are paid in the first stage, a second-stage refund procedure may become necessary.

Potential claimants in this proceeding will fall into the following categories: (i) Resellers (including retailers) of the products specified in the EMB Consent Order, and (ii) firms, individuals, or organizations that were consumers of the consent order products. In keeping with the intent of the Consent Order, claimants will be required to make a showing that they fall into one of the categories of EMB customers specified above as intended recipients of refunds in this proceeding. As explained below, we propose that the consent order funds be distributed to eligible claimants who demonstrate that they have been injured by EMB's alleged pricing practices.

As in many prior special refund cases, we will adopt certain presumptions in order that refunds may be distributed efficiently and equitably. First, we propose to adopt a presumption that the alleged overcharges on which the $6,193.20 Consent Order fund is based were dispersed equally in all of EMB's sales to the customer categories specified above during the consent order period. OHA has referred to this presumption in the past as a volumetric refund amount. Second, we intend to adopt a presumption of injury with respect to small claims.

Presumptions in refund cases are specifically authorized by applicable DOE procedural regulations. Section 205.282(e) of those regulations states that:

> In establishing standards and procedures for implementing refund distributions, the Office of Hearings and Appeals shall take into account the desirability of distributing the refunds in an efficient, effective, and equitable manner and resolving to the maximum extent practicable all outstanding claims. In order to do so, the standards for evaluation of individual claims may be based upon appropriate presumptions.

10 CFR 205.282(e). The presumptions we are proposing to adopt in this case are used to permit claimants to participate in the EMB refund proceeding without incurring disproportionate expenses, and to enable the OHA to consider the refund applications in the most efficient way possible in view of the limited resources available.

The volumetric refund presumption which we propose to establish in this proceeding assumes that alleged overcharges were spread equally over all gallons of product sold by EMB to the categories of customer mentioned earlier. However, we also recognize that the impact on an individual purchaser could have been greater, and any

[1] The EMB retail outlets covered by this provision of the Consent Order are: Fredonia Speedway, Jack's Speedway, and Park Avenue Speedway. The Park Avenue Speedway outlet's motor gasoline sales are only subject to the Consent Order through January 1, 1974, since EMB ceased operating that outlet after that date.

[2] Under the terms of the Consent Order negotiated by ERA and EMB, the firm was permitted to offset unpaid debts of its customers against the balance of the $77,321.61 of overcharges alleged in the EMB audit.

[3] Customers who received direct refunds under the terms of the EMB Consent Order shall not be eligible for further refunds based on purchases for which they have already received a refund. Such purchasers shall be eligible for refunds, however, if they made other purchases as members of the customer categories noted above.

purchaser will be allowed to file a refund application based on a claim that it suffered a disproportionate share of the alleged overcharges. *See, e.g., Amtel, Inc.*, 12 DOE ¶ 85,073 (1984); *Sid Richardson Carbon and Gasoline Co. and Richardson Products Co./Siouxland Propane Co.*, 12 DOE ¶ 85,054 at 88,164 (1984). To determine the per gallon volumetric factor in the instant proceeding, the $6,193.20 consent order amount will be divided by the estimated total volume of refined petroleum products which EMB sold during the consent order period to the appropriate classes of purchaser.[4] Suing the information available to us at the present time, the volumetric amount in this proceeding will be $0.00167 per gallon ($6,193.20 divided by 3,707,541 gallons). Refunds will be calculated by multiplying the volumetric factor by the total amount of the consent order product that an applicant purchased from EMB. The interest which has accrued on the money in the escrow account will be distributed to each successful claimant in proportion to its refund amount.

The second presumption we propose to establish involves small claims made by resellers. In general, resellers who file refund cliams in Subpart V proceedings are required to establish that they absorbed the alleged overcharges. To make this showing, they must demonstrate that, at the time they purchased refined petroleum products from a consent order firm, market conditions would not permit them to increase their prices to pass through the additional costs associated with the alleged overcharges. However, in this case, as in prior special refund proceedings, we will adopt a presumption that reseller claimants for small refunds were injured by EMB's alleged overcharges. *See Midwest Industrial Fuels, Inc.*, 12 DOE ¶ 85,131 (1984). As we have stated in many prior refund Decisions, there may be considerable expenses involved in gathering the types of data needed to support a detailed claim of injury. In order to prove such a claim, an applicant must compile and submit detailed factual information regarding the impact of alleged overcharges which in the present case took place more than ten years ago. This procedure is generally time-consuming and expensive, and in the case of small claims, the cost to the firm of gathering this factual information and the cost to the OHA of analyzing it may be many times the expected refund amount. Failure to allow simplified application procedures for small claims could therefore operate to deprive injured parties of the opportunity to obtain refunds. The use of presumptions is also desirable from an administrative standpoint, because it allows the OHA to process a large number of routine refund claims quickly, and therefore to use its limited resources more efficiently.

Under the small claims presumption we are adopting, a reseller or retailer claimant will not be required to submit any additional evidence of injury beyond purchase volumes unless its volumetric refund exceeds $5,000.[5] *See Aztex Energy Co.*, 12 DOE ¶ 85,116 (1984) and cases cited therein. In light of the fact that the escrow amount in this proceeding is only slightly more than $5,000, we find it extremely likely that all reseller claimants in the specified classes of purchaser fall under the threshold level.

In addition to the presumptions we intend to adopt in this proceeding, we are making a finding that end-users or ultimate consumers whose business is unrelated to the petroleum industry were injured by the alleged overcharges settled by the EMB Consent Order. Unlike regulated firms in the petroleum industry, members of this group generally were not subject to price controls during the consent order period, and they were not required to keep records which justified selling price increases by reference to cost increases. For these reasons, an analysis of the impact of the increased cost of petroleum products on the final prices of non-petroleum goods and services would be beyond the scope of a special refund proceeding. *See Office of Enforcement, Economic Regulatory Administration: In the Matter of PVM Oil Associates, Inc.*, 10 DOE ¶ 85,072 (1983); *See also Texas Oil & Gas Corp.*, 12 DOE ¶ 85,069 at 88,209 (1984), and cases cited therein. We have therefore concluded that end-users of petroleum products covered by the EMB Consent Order need only document their purchase volumes from EMB in order to make a sufficient showing that they were injured by the alleged overcharges.

We further propose to establish a minimum amount of $15 for refund claims. We have found through our experience in prior refund cases that the cost of processing claims in which refunds are sought for amounts less than $15 outweighs the benefits of restitution in those cases. *See, e.g., Office of Special Counsel*, 10 DOE ¶ 85,048 at 88,214 (1982); see also 10 CFR 205.286(b). The amount of product which an applicant must have purchased from EMB during the consent order period in order to be eligible for the minimum refund is 8,982 gallons.

Refund applications in this proceeding should not be filed until a final Decision and Order is issued. Detailed procedures for filing applications will be provided in the final Decision and Order. Before disposing of any of the funds received, we intend to publicize the distribution process and to provide an opportunity for any affected party to file a claim. In addition to publishing copies of the proposed and final Decisions in the **Federal Register**, we will provide copies to potential claimants whose names we have obtained from the audit file, and to several petroleum marketing organizations. We will also continue our efforts to obtain a more comprehensive list of the names and addresses of petential claimants.

In the event that money remains after all first-stage claims have been disposed of, those funds could be distributed in various ways. We will not be in a position to decide what should be done with any remaining funds until the first-stage refund procedure is completed.

It is therefore ordered that:

The refund amount remitted to the Department of Energy by E. M.. Bailey Distributing Company, Inc. pursuant to the Consent Order executed on June 21, 1979 will be distributed in accordance with the foregoing Decision.

[FR Doc. 85-7426 Filed 3-27-85; 8:45 am]

BILLING CODE 6450-01-M

[4] Pursuant to the EMB Consent Order, one of the retail dealers who purchased Chevron USA-branded motor gasoline from EMB, Joe Douglas, was entitled to a direct refund. Mr. Douglas is therefore not entitled to a refund in this proceeding based on purchases of motor gasoline and the volumes purchased by him have therefore been deducted from EMB's sales volumes for the purpose of computing the volumetric refund amount.

[5] Several groups of purchasers shall be presumed not to have been injured by any overcharges, and will therefore be ineligible for refunds in this proceeding. For example, resellers that were spot purchasers from EMB will be ineligible to receive any refunds, unless they make a showing that rebuts the presumption that they were not injured. As we have previously noted, spot purchasers would not have made spot market purchases of a firm's product at increased prices unless they were able to pass through the full amount of the firm's quoted selling price at the time of purchase to their own customers. *See Vickers*, 8 DOE at 85,396-97. In order to overcome the rebuttable presumption that they were not injured, spot purchasers should submit additional evidence to establish that it would be inappropriate to presume that they had discretion as to where and when to make the purchse(s) upon which the refund claim is based. Moreover, purchasers from EMB that were affiliated with EMB in such a way that any refunds received by them would inure to EMB's benefit, e.g. retail outlets owned and operated by EMB, shall be ineligible for refunds.

Implementation of Special Refund Procedures

AGENCY: Office of Hearings and Appeals, DOE.

ACTION: Notice of implementation of special refund procedures.

SUMMARY: The Office of Hearings and Appeals of the Department of Energy announces the procedures for disbursement of $50,000 and $100,000 obtained as result of Consent Orders which the DOE entered into with Moore Terminal and Barge, Ltd., and Point Landing, Inc., both reseller-retailers of refined petroleum products. Moore Terminal and Barge is located in Monroe, Louisiana; Point Landing is in Harahan, Louisiana.

DATE AND ADDRESS: Applications for refund of a portion of the Moore or Point Landing consent order funds must be received within 90 days of publication of this notice in the **Federal Register**. All applications should refer to Case Number HEF-0132 or HEF-0152 and should be addressed to the Office of Hearings and Appeals, Department of Energy, 1000 Independence Ave., SW., Washington, D.C. 20585.

FOR FURTHER INFORMATION CONTACT: Amy Resner, Office of Hearings and Appeals, 1000 Independence Ave., SW., Washington, D.C. 20585 (202) 252-6602.

SUPPLEMENTARY INFORMATION: In accordance with Section 205.282(b) of the procedural regulations of the Department of Energy, 10 CFR § 205.282(b), notice is hereby given of the issuance of the Decision and Order set out below. The decision relates to two consent orders entered into by Moore Terminal and Barge, Ltd. (Moore) and Point Landing, Inc. (Point Landing). The Moore consent order settled possible pricing violations in the firm's sales of petroleum products to customers during the period October 1, 1973 through Septermber 30, 1974; the Point Landing consent order settled alleged pricing violations in the firm's sale of petroleum products to its customers during the period of October 1, 1973 through November 30, 1974. A Proposed Decision and Order tentatively establishing refund procedures and soliciting comments from the public concerning the distribution of the Moore and Point Landing consent order funds was issued on January 4, 1985. 50 FR 4785 (February 1, 1985).

Today's Decision sets forth final procedures and standards that the DOE formulated to distribute the contents of two escrow accounts funded by Moore and Point Landing pursuant to the respective consent orders. In the case of Moore, the DOE has decided that the consent order funds should be distributed to two first purchasers after each has filed an application for refund. In the case of Point Landing, the DOE proposes that the consent order funds should be distributed to thirty-one pruchasers after each files an application for refund. The purchasers in both of these cases were identified by DOE audits and were allotted funds based on presumptions of injury which the DOE has utilized in past proceedings. In both cases, however, applications for refund will be accepted from pruchasers not identified by the DOE audits.

As the Decision and Order published with this Notice idicates, applications for refunds may now be filed by customers who purchased petroleum products from Moore or Point Landing during the audit periods. Applications will be accepted provided they are received no later than 90 days after publication of this Decision and Order in the **Federal Register**. The specific information required in an application for refund is set forth in the Decision and Order.

Dated: March 15, 1985.

George B. Breznay,

Director, Office of Hearings and Appeals.

Decision and Order of the Department of Energy

Special Refund Procedures

Names of Firms: Moore Terminal and Barge Company, Ltd. Point Landing, Inc.

Date of Filing: October 13, 1983.

Case Numbers: HEF-0132 and HEF-0152.

In accordance with the procedural regulations of the Department of Energy (DOE), 10 CFR Part 205, Subpart V, on October 13, 1983, the Economic Regulatory Administration (ERA), filed a Petition for the Implementation of Special Refund Procedures with the Office of Hearings and Appeals (OHA). The petition requests that the OHA formulate and implement procedures for the distribution of funds received in connection with consent orders that ERA entered into with Moore Terminal and Barge Co., Ltd. (Moore), and Point Landing, Inc. (Point Landing).

I. Background

Each of these firms is a "reseller-retailer" of "covered" products as those terms were defined in 10 CFR 212.31. Moore is located in Monroe, Louisana; Point Landing's main office is in Harahan, Louisana. A DOE audit of each firm's records revealed possible violations of the Mandatory Petroleum Price Regulations. 10 CFR Part 212, Subpart F. Subsequently, each firm entered into a consent order with DOE. Each consent order refers to the ERA's allegations of overcharges but notes that no findings of violation were made. Each consent order also states that the subject firm does not admit that it committed any such violations. A brief discussion of the other pertinent matters covered by each consent order follows.

The Moore consent order covers the period October 1, 1973, through September 30, 1974. The DOE audit alleges that during that period the firm committed possible pricing violations amounting to $942,180.27 with respect to its sales of No. 2-D diesel fuel and No. 6 fuel oil. In order to settle all claims and disputes between Moore and DOE regarding the firm's sales of these refined petroleum products during the audit period, Moore and the DOE entered into the consent order on August 29, 1977. According to the Moore consent order, the firm agreed to refund $367,182.68, plus interest, directly to its customers.[1] However, Moore was unable to locate three of its customers and consequently was unable to distribute $177,104.02 of the alleged overcharges. On December 18, 1980 the consent order was rescinded in part and, on February 6, 1981, Moore accepted a modification of the terms of the consent order and agreed to pay $50,000 in full settlement of the consent order. The $50,000 was paid to the DOE on March 2, 1981, and deposited into an interest bearing escrow account.

The Point Landing consent order covers the period October 1, 1973, through November 30, 1974. The DOE audit reveals possible pricing violations amounting to $212,216.59 [2] with respect to sales of No. 2 diesel fuel during the audit period. In order to settle all claims and disputes between Point Landing and the DOE regarding the firm's sales of No. 2 diesel fuel during the audit period, Point Landing and DOE entered into the consent order on September 9, 1980.[3] According to the Point Landing

[1] The audit file contains letters from Moore to the DOE which indicate that Moore distributed direct refunds to all but three of the purchasers covered by the consent order.

[2] The initial audit alleged pricing violations amounting to $424,432.18. Subsequent modifications and recalculations as well as considerations of refunds previously made directly by Point Landing to its customers, produced a reduction of $212,216.59 in the alleged overcharges just prior to the execution of the consent order.

[3] The consent order resolved an outstanding proposed remedial order issued on March 31, 1978 (Case No. DRO-0029).

consent order, the firm agreed to deposit $100,000 into an interest bearing escrow account for ultimate distribution by DOE. The consent order funds were paid in full on October 10, 1980.

On January 4, 1985, a Proposed Decision and Order (PD&O) was issued which set forth a tentative plan for the distribution of the Moore and Point Landing consent order funds. 50 FR 4785 (February 1, 1985). The PD&O stated that the basic purpose of a special refund proceeding is to make restitution for injuries which were probably suffered as a result of alleged or actual violations of the DOE regulations. In order to effect restitution in this proceeding, we tentatively determined to rely, in part, on the information contained in the relevant ERA audit files. The PD&O states that this approach is warranted based upon our experience in prior Subpart V cases where all or most of the purchasers of a firm's products are identified in the audit file. *See, e.g., Marion Corp.*, DOE ¶ 85,014 (1984) (*Marion*). Under such circumstances, a more precise determination with respect to the identity of the allegedly overcharged parties was possible. A copy of the PD&O was published in the Federal Register and comments were solicited regarding the proposed refund procedures. In addition, a copy of the PD&O was sent to each purchaser identified in the ERA audit file.[4]

None of Point Landing's customers filed comments objecting to the proposed procedures. Comments were filed, however, by one of Moore's customers, Dixie Oil Company (Dixie). In these comments, which pertain to the general presumption against making refunds to spot purchasers, Dixie attempts to show that while the purchase which it made from Moore was a spot purchase, Dixie was nevertheless injured. The firm does not object to our adopting the presumption that generally spot purchasers were not injured by pricing violations (*see* discussion *infra*). Since the purpose of this Decision and Order is limited to establishing procedures to be used for filing and processing claims, we wil reserve our determination on Dixie's contention until we consider firm's Application for Refund. This Decision will only set forth the information that a purchaser of Moore or Point Landing products should submit in an Application for Refund in order to establish eligibility for a portion of the consent order funds.

[4] Some of the copies of the PD&O which were mailed to the identified purchasers were returned unclaimed. We attempted to contact these purchasers, but were unabale to do so. As a result, copies of this Final Decision and Order cannot be sent to these purchasers. However, each may still submit an application for refund.

II. Refund Procedures

The procedural regulations of the DOE set forth general guidelines to be used by the OHA in fomulating and implementing a plan of distriution for funds received as a result of an enforcement proceeding. 10 CFR Part 205, Subpart V. The Subpart V process may be used in situations where the DOE is unable to readily identify those persons who likely were injured by alleged overcharges or to ascertain the amount of these injuries. For a more detailed discussion of Subpart V and the authority of the OHA to fashion procedures to distribute refunds, *see Office of Enforcement*, 9 DOE ¶ 82,508 (1981), *and Office of Enforcement*, 8 DOE ¶ 82,597 (1981).

In the PD&O we stated that during the Moore audit, three first purchasers were identified as having allegedly been overcharged. The Point Landing audit shows that the alleged overcharges settled by its consent order were the result of sales to thirty-three first purchasers. We know that the DOE audit files do not necessarily provide conclusive evidence as to the identity of all possible refund recipients or the refund that may be appropriate. However, the information contained in these audit files may reasonably be used for guidance. *See Armstrong and Associates/City of San Antonio*, 10 DOE ¶ 85,050 at 88,259 (1983). In *Marion* we stated that "the information contained in the . . . audit file can be used for guidance in fashioning a refund plan which is likely to correspond more closely to the injuries probably experienced than would a distribution plan based solely on a volumetric approach." 12 DOE at 88,031. In previous cases of this type, we have proposed that the funds in the escrow account be apportioned either among the customers identified by the audit or to their downstream purchasers. *See, e.g., Bob's Oil Co.*, 12 DOE ¶ 85,024 (1984); *Brown Oil Co.*, 12 DOE ¶ 85,028 (1984); *Reinhard Distributors, Inc.*, 12 DOE ¶ 85,137 (1984). The first purchasers identified by the audits, along with the share of the settlement amount allotted to each by ERA, are listed in Appendices A and B.

Identification of first purchasers is only the initial step in the distribution process. We must also determine whether these first purchasers were injured or whether any or all of the alleged overcharges were passed on. As we stated in the PD&O, we will also adopt certain presumptions in order to determine a purchaser's level of injury and thereby distribute the escrow accounts in this case. Presumptions in refund cases are specifically authorized by applicable DOE procedural regulations. Section 205.282(e) of those regulations states that:

> [i]n establishing standards and procedures for implementing refund distributions, the Office of Hearings and Appeals shall take into account the desirability of distributing the refunds in an efficient, effective and equitable manner and resolving to the maximum extent practicable all outstanding claims. In order to do so, the standards for evaluation of individual claims may be based upon appropriate presumptions.

10 CFR 205.282(e). We will adopt presumptions in this case in order to permit claimants to participate in the refund process without disproportionate expense, and to enable OHA to consider the refund applications in the most efficient way possible in view of the limited resources available. Therefore, as in previous special refund procedures, in these cases we propose to adopt a presumption of injury with respect to small claims and a presumption of no injury with respect to spot purchasers.

The presumption that claimants seeking smaller refunds were injured by the pricing practices settled in the Moore and Point Landing consent orders is based on a number of considerations. *See, e.g., Uban Oil Co.*, 9 DOE ¶ 82,541 (1982). As we have noted in many previous refund decisions, there may be considerable expense involved in gathering the types of data needed to support a detailed claim of injury. In order to prove such a claim, an applicant must compile and submit detailed factual information regarding the impact of alleged overcharges which took place many years ago. This procedure certainly can be time-consuming and expensive. In the case of small claims, the cost (to the firm) of gathering this factual information, and the cost (to OHA) of analyzing it, may exceed the expected refund amount. Failure to adopt simplified application procedures for small claims could therefore operate to deprive injured parties of the opportunity to obtain a refund. The use of presumptions is also desirable from an administrative standpoint because it allows OHA to process a large number of routine refund claims quickly, and to use its limited resources more efficiently. Finally, these smaller claimants did purchase covered products from Moore and Point Landing and were in the chain of distribution where the alleged overcharges occurred. Therefore, they were affected by the

alleged overcharges, at least initially. The presumption eliminates the need for a claimant to submit, and the OHA to analyze detailed proof of what happened downstream of that initial impact.

Under this presumption, a reseller or retailer claimant will not be required to submit any additional evidence of injury beyond purchase volumes if its refund claim involves a level of purchases below a threshold level. Previous OHA refund decisions have expressed the threshold either in terms of a ceiling on purchases from the consenting firm, or as a dollar refund amount. However, in *Texas Oil & Gas Corp.*, 12 DOE ¶ 85,069 (1984), we noted that describing the threshold in terms of a dollar amount rather than a purchase volume figure would better promote our goal of facilitating disbursements to applicants seeking relatively small refunds. *Id* at 88,210. We believe that the same approach should be followed in this case. The adoption of a threshold level below which a claimant is not required to submit any further evidence of injury beyond volumes purchased is based on several factors such as our particular concern that the cost to the applicant and the government of compiling and analyzing information sufficient to show injury not exceed the amount of the refund to be gained. In this case, where the refund amount is fairly low, and the period of time covered by the consent order remote, we believe that the establishment of a presumption of injury for all claims of $5,000 or less is reasonable. *See Texas Oil & Gas Corp.*, 12 DOE ¶ 85,069 (1984); *Office of Special Counsel: In the Matter of Conoco, Inc.*, 11 DOE ¶ 85,226 (1984), and cases cited therein. As the PD&O stated, the record indicates that one of Moore's customers and thirty-one of Point Landing's customers made small purchases of the respective consent order firms' products.

Our conclusion that claimants who were spot purchasers are not entitled to refunds from consent order funds is based on the rationale that spot purchasers are presumed not to have been injured by a supplier's pricing violations. *See Office of Enforcement*, 8 DOE ¶ 82,597 (1981). This conclusion pertains because:

> [T]hose customers tend to have considerable discretion in where and when to make purchases and would therefore not have made spot market purchases of [the firm's product] at increased prices unless they were able to pass through the full amount of [the firm's] quoted selling price at the time of purchase to their own customers.

Richards Oil Co., 12 DOE ¶ 85,150 (1984). The record in this proceeding shows that one of Moore's customers, Dixie Oil of Tennessee (Dixie), made what appears to be a single large purchase of No. 2 diesel fuel oil from Moore during the consent order period. The record also shows that one of Point Landing's customers, International Trading and Transportation (ITT), made only occassional large volume purchases of No. 2 diesel fuel from Point Landing during the consent order period, while Rapsilver International, Inc. (Rapsilver) made only a single large purchase from Point Landing. As a result, these three firms appear to have been spot purchasers which would not be entitled to receive refunds. We will, however, give these purchasers an opportunity to present evidence to rebut this presumption and to establish the extent to which each might have been injured by its purchase of No. 2 diesel fuel oil from Moore or Point Landing during the consent order period.

In addition to the presumptions we are adopting, we are making a finding that end users or ultimate consumers whose business is unrelated to the petroleum industry were injured by the alleged overcharges settled in the consent order. Unlike regulated firms in the petroleum industry, members of this group generally were not subject to price controls during the consent order period, and were not required to keep records which justified selling price increases by reference to cost increases. For these reasons, an analysis of the impact of the alleged overcharges on the final prices of non-petroleum goods and services would be beyond the scope of a special refund proceeding. *See Office of Enforcement, Economic Regulatory Administration: In the Matter of PVM Oil Associates, Inc.* 10 DOE ¶ 85,072 (1983); *see also Texas Oil & Gas Corp.*, 12 DOE at 88,209 and cases cited therein. Therefore, end-users of Moore and Point Landing petroleum products need only document their purchase volumes from Moore or Point Landing to make a sufficient showing that they were injured by the alleged overcharges. According to the record, it appears that at least one of Moore's customers and several of Point Landing's customers are end-users.

On the basis of the considerations discussed above, we propose to distribute a portion of the escrow funds to the first purchasers listed in the Appendices (excepting Dixie, ITT, and Rapsilver) in the amounts specified, plus accrued interest to date. The share of the escrow fund which the listed purchasers in Appendix A may receive represents 28.2% of the amount each was allegedly overcharged, and is consistent with the terms of the Moore consent order, which settled for 28.2% of the total amount of alleged overcharges identified by the audit. The share of the escrow fund which the listed purchasers in Appendix B may receive represents 47.1% of the amount each was allegedly overcharged, and is consistent with the terms of the Point Landing consent order, which settled for 47.1% of the total amount of alleged overcharges identified by audit. In order to actually receive a refund in either the Moore or Point Landing proceeding, each customer will still be required to file an application for refund (*see* discussion *infra*).

However, we have no information as to the idendtity or location of the last five purchasers listed in Appendix B. As a result we are unable at this point to proceed with a distribution of refunds to these purchasers. In order to attempt to make refunds to these apparent purchasers we will contact Point Landing and publish a notice in the **Federal Register**. We will accept information regarding the identity and present locations of these purchasers for a period of 45 days following publication in the **Federal Register** of the notice of this final Decision and Order in this proceeding.[5]

There may also have been first purchasers other than those identified by the ERA audit, as well as subsequent repurchasers, who may have been injured by the alleged overcharges and who therefore could be entitled to a portion of the consent order funds. If these or other additional meritorious claims are filed, we will adjust the figures listed in the Appendices accordingly. Actual refunds will be determined only after analyzing all appropriate claims.[6] Finally, we will establish a minimum of $15 for refund claims. Our experience in other similar refund proceedings is that the cost to the government of processing claims for refunds of less than $15 outweighs the benefits of restitution in those situations. *See, e.g., Uban Oil Co.*, 9 DOE ¶ 82,541 (1982). *See also* 10 CFR 205.286(b).

III. Applications for Refund

We have concluded that the procedures described in the PD&O represent the best means available for

[5] If we are unable to locate these purchasers, we will terminate the first stage of this refund proceeding after other meritorious claims have been disposed of, and reserve the funds for distribution in a subsequent proceeding.

[6] Purchasers identified in the ERA audit as having allegedly been overcharged may also submit information to show that they should receive refunds larger than those indicated in the appendices.

distributing the Moore and Point Landing consent order funds. No comments other than Dixie's were received with regard to the refund procedures proposed in the PD&O. Accordingly, for the reasons stated in the PD&O we will implement these proposals. We shall now accept applications for refunds from customers who purchased petroleum products from Moore or Point Landing during the audit period. As proposed, the consent order funds will be distributed to the firms that the ERA alleged in its audit were overcharged by Moore or Point Landing (excepting Dixie, ITT, and Rapsilver—unless they demonstrate injury), provided each files an application, as well as to other eligible customers of Moore or Point Landing who apply for a refund.

In order to receive a refund each claimant will be required to submit with its application either a schedule of its monthly petroleum products purchases from Moore or Point Landing, or a statement verifying that it purchased products from Moore or Point Landing and is willing to rely on the data in the audit file. Claimants must also indicate whether they have previously received a refund, from any source, with respect to the alleged overcharges identified in the ERA audits. Purchasers not identified by the ERA audits will be required to provide specific information concerning the date, place, and volume of product purchased, the name of the firm from which the purchase was made, and the extent of any injury alleged. In addition, applicant purchasers must indicate how the Moore or Point Landing products were used, *i.e.*, whether resold or consumed. Each applicant must also state whether there has been a change in ownership of the firm during or since the audit period, and must provide the names and addresses of any other owners. If there has been a change in ownership, the applicant should either state the reasons why the refund should be paid to the applicant rather than the other owners or provide a signed statement from the other owners indicating that they do not claim a refund.

All applications must be filed in duplicate and must be received within 90 days after publication of this Decision and Order in the **Federal Register.** A copy of each application will be available for public inspection in the Public Docket Room of the Office of Hearings and Appeals. Any applicant who believes that its application contains confidential information must so indicate and submit two additional copies of its application from which the information that the applicant claims is confidential has been deleted. Each application must also include the following statement: "I swear (or affirm) that the information submitted is true and accurate to the best of my knowledge and belief." *See* 10 CFR 205.283(c); 18 U.S.C. § 1001. In addition, the applicant should furnish us with the name and telephone number of a person who may be contacted by this Office for additional information concerning the application. All applications should refer to Case Numbers HEF-0132 (Moore) or HEF-0152 (Point Landing) and should be sent to: Office of Hearings and Appeals, Department of Energy, 1000 Independence Ave., SW., Washington, D.C. 20585.

It is therefore ordered that:

(1) Applications for refunds from the funds remitted to the Department of Energy by Moore Terminal and Barge Company, Ltd., pursuant to the consent order executed on August 29, 1977, may now be filed.

(2) Applications for refunds from the funds remitted to the Department of Energy by Point Landing, Inc., pursuant to the consent order executed on September 9, 1980, may now be filed.

(3) All applications must be filed no later than 90 days after publication of this Decision and Order in the **Federal Register.**

Dated: March 15, 1985.

George B. Breznay,

Director, Office of Hearings and Appeals.

APPENDIX A.—MOORE TERMINAL & BARGE, LTD.

First purchasers	Portion of settlement amount*
Mr. Jim D. Ethridge, Dixie Oil of Tennessee, 5909 Shelby Oaks Dr., Suite 156, Memphis, TN 38134	$20,238.40
Mr. Walter D. Turner, Estech, Inc., 30 North La Salle St., Chicago, IL 60602	29,636.40
Trailer Marine Transport Corp., d.b.a. Puget Sound Tug & Barge, 1045 Bond Ave., Jacksonville, FL	125.20

* Includes principal and interest through Mar. 2, 1981. Actual refunds will also include the additional interest which has accrued on this amount since DOE received the Moore consent order funds on Mar. 2, 1981.

APPENDIX B.—POINT LANDING, INC.

First purchasers	Portion of settlement amount [1]
Sercurity Barge Line, Inc., Drawer 4927, Greenville, MS 38701	$1,256.71
Upper Miss. Towing Corp., 7703 Normandale Rd., Room 110, Minneapolis, MN 55435	1,824.64
Systems Fuels, Inc., 639 Loyola Ave., P.O. Box 61532, New Orleans, LA 70161	2,773.87
Canal Barge Co., Inc., 1200 Hibernia Bank Bldg., New Orleans, LA 70122	1,792.49
Andino Chemicals Shipping Co., International Trade Mart Bldg., New Orleans, LA 70131	197.35
Farmers Exchange (Farmers Export Grain Elevator), P.O. Box 97, Ama, LA 70031	4,912.43

APPENDIX B.—POINT LANDING, INC.—Continued

First purchasers	Portion of settlement amount [1]
Cargill Co. (Welcome Inn Motel), P.O. Box 28568, Memphis, TN 389128	4,625.29
Cajun Marine Service, Inc., Lakeside Plaza, Lake Charles, LA 70601	29.17
Central Marine Services, Inc., 1200 Hibernia Bank Bldg., New Orleans, LA 70112	115.83
Mr. C.B. Williams, GAT Co., P.O. Box 4908, Jacksonville, FL 32201	88.12
Anthony Bertucci Construction,[2] P.O. Box 10563, New Orleans, LA 70121	10.01
Cliff, Jr., Inc., P.O. Box 389, Harvey, LA 70058	372.20
Six Star Towing, P.O. Box 342, Marrero, LA 70072	36.92
Frank Earl, P.O. Box 342, Marrero, LA 70072	42.10
Wayne, Inc., P.O. Box 342, Marrero, LA 70072	17.76
Kristensen's Petrol. Co., Attn: Ken Johnson, 60 East 42d St., New York, NY 10017	4,564.30
National Phosphate Co., P.O. Box 30, Hahnville, LA 70057	206.70
Triangle Transportation, P.O. Box 339, Greenville, MS 38701	222.02
R&W Marine, Inc., P.O. Box 729, Paducah, KY 42001	551.32
Conscildated Towing, 2320 Trumen Rd., Kansas City, MO 64127	294.04
Hansen & Tideman, Inc., Sanlin Blvd., New Orleans, LA 70150	957.51
Caribe Towing Co., 2500 Saint Nick Dr., New Orleans, LA 70114	2,585.10
Burnside Towing Co., 1330 Charmaine Ave., Baton Rouge, LA 70806	181.73
U.S. Corps of Engineers, 210 North 12th St., St. Louis, MO 63101	49.95
International Trading & Transportation, 9th Floor, 321 St. Charles Ave., New Orleans, LA 70130	60,793.11
Ajax Towing Co., 830 Dam Tower, Minneapolis, MN	50.86
Reavy Co., 300 Wade St., Lulling, LA	66.23
Rapsilver International, Inc., P.O. Box 427, Brookshire, TX 77450	11,065.00
Louisiana Barge [3]	161.84
Surehope Towing [3]	60.05
Weathers Towing [3]	20.73
Aiple Towing Co.[3]	52.09
J&S Towing [3]	22.53

[1] Includes principal and interest through Oct. 10, 1980. Actutal refunds will also include the additional interest which has accrued on this amount since DOE received the Point Landing consent order funds on Oct. 10, 1980.

[2] Claims under $15 will not be processed. See discussion in text.

[3] First purchasers with no available address.

[FR Doc. 85-7428 Filed 3-27-85; 8:45 am]

BILLING CODE 6450-01-M

ENVIRONMENTAL PROTECTION AGENCY

[OW-4-FRL-2805-8]

Extension of Comment Period; Proposed Determination To Prohibit, Deny, or Restrict the Specification, or the Use for Specification, of An Area as a Disposal Site; Public Notice No. IV-404003-HLM (Graham Reeves).

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of Extension of Public Hearing Comment Period.

SUMMARY: On September 5, 1984, a public hearing was held in Charleston, South Carolina pursuant to Public Notice No. IV-404003-HLM (Graham

Reeves) issued July 26, 1984, 49 FR 30111. This hearing concerned a proposed determination by EPA published in that Notice proposing to prohibit the specification of the wetland area therein described as a disposal site for dredge and fill materials under authority of Section 404(c) of the Clean Water Act [33 U.S.C. 1251 *et seq.*]. At the request of Mr. Graham Reeves, the post hearing comment period provided for in 40 CFR 231.4(f) was extended, as noticed at 49 FR 40096 and 49 FR 43502. Also at Mr. Reeves' request, that comment period has since been further extended through the close of business, April 8, 1985.

FOR FURTHER INFORMATION CONTACT: E.T. Heinen, Chief, Environmental Assessment Branch, Office of Policy and Management, Environmental Protection Agency, 345 Courtland Street, Atlanta, Georgia 30365, (404) 881–7901.

Dated: March 21, 1985.

John A. Little,

Deputy Regional Administrator.

[FR Doc. 1985–7344 Filed 3–27–1985; 8:45 am]

BILLING CODE 6560-50-M

FEDERAL COMMUNICATIONS COMMISSION

Tequesta Broadcasting Corp., et al.; Erratum

In re Applications of:

Tequesta Broadcasting Corp.	MM Docket No. 85–60, file no. BPCT–840920KI.
Southern Florida Broadcasting Company.	File No. BPCT–840927KF.
Tequesta Television, Inc.	File No. BPCT–841129KE
Ruth Sperling and Bonita Gooch, et al d/b/a/Tequesta Television Partners Limited Partnership.	File No. BPCT–841129KI.
Triple J. Properties, Inc.	File No. BPCT–841129KL.
Tequesta Coastal Broadcasting Limited.	File No. BPCT–841129KO.
Zephyr Broadcasting Corporation.	File No. BPCT–841129KP.
Old Salt Broadcasting Company, Inc.	File No. BPCT–841129KQ.
Martin Telecommunications, Inc.	File No. BPCT–841129KR.
G and I Ltd	File No. BPCT–841129KS.
Spirit Broadcasting Corporation.	File No. BPCT–841129KT.
Rodriguez-Barnett and Associates, Ltd.	File No. BPCT–841129KU.

For Construction Permit Tequesta, Florida.

Erratum

Released: March 20, 1985.

The Hearing Designation Order in the above entitled proceeding released March 12, 1985, is corrected to change the name of the partners for file number BPCT–841129KI from William H. Dilday, Jr. and Ruth Sperling to Ruth Sperling and Bonita Gooch.

William J. Tricarico,

Secretary, Federal Communications Commission.

[FR Doc. 85–7250 Filed 3–27–85; 8:45 am]

BILLING CODE 6712-01-M

FEDERAL RESERVE SYSTEM

Merchants Bancorp, Inc., et al.; Formations 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 (12 CFR 225.14) 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 April 19, 1985.

A. **Federal Reserve Bank of Philadelphia** (Thomas K. Desch, Vice President) 100 North 6th Street, Philadelphia, Pennsylvania 19105:

1. *Merchants Bancorp, Inc.*, Allentown, Pennsylvania; to acquire 100 percent of the voting shares of The Wyoming National Bank of Wilkes-Barre, Pennsylvania.

B. **Federal Reserve Bank of Cleveland** (Lee S. Adams, Vice President) 1455 East Sixth Street, Cleveland, Ohio 44101:

1. *Peoples Bank Corporation of Berea*, Berea, Kentucky; to merge with Powell County Bancorp, Inc., Stanton, Kentucky, thereby indirectly acquiring Powell County Bank; and 100 percent of the voting shares of First National Carlisle Corp., Carlisle, Kentucky, thereby indirectly acquiring The First National Bank of Carlisle.

C. **Federal Reserve Bank of Atlanta** (Robert E. Heck, Vice President) 104 Marietta Street NW., Atlanta, Georgia 30303:

1. *United Bankshares, Inc.*, Nashville, Georgia; to become a bank holding company by acquiring 100 percent of the voting shares of The United Banking Company, Nashville, Georgia.

D. **Federal Reserve Bank of Chicago** (Franklin D. Dreyer, Vice President) 230 South LaSalle Street, Chicago, Illinois 60690:

1. *First Winthrop BanCorporation, Inc.*, Winthrop, Iowa; to become a bank holding company by acquiring 80 percent or more of the voting shares of Peoples State Bank, Winthrop, Iowa.

2. *Homewood Holdings, Inc.*, Omaha, Nebraska; to become a bank holding company by acquiring 99 percent of the voting shares of Homewood Bancorporation, Homewood, Illinois, thereby indirectly acquiring Bank of Homewood, Homewood, Illinois.

3. *Park Forest Holdings, Inc.*, Omaha, Nebraska; to become a bank holding company by acquiring 88.8 percent of the voting shares of Park Forest Bancorporation, Park Forest, Illinois, thereby indirectly acquiring Bank of Park Forest, Park Forest, Illinois.

E. **Federal Reserve Bank of St. Louis** (Delmer P. Weisz, Vice President) 411 Locust Street, St. Louis, Missouri 63166:

1. *Sacramento Bancorp*, Sacramento, California; to become a bank holding company by acquiring at least 80 percent of the voting shares of Sacramento Deposit Bank, Sacramento, Kentucky.

F. **Federal Reserve Bank of Dallas** (Anthony J. Montelaro, Vice President) 400 South Akard Street, Dallas, Texas 75222:

1. *MCORP*, Dallas, Texas and *MCORP Financial, Inc.*, Wilmington, Delaware; to acquire 100 percent of the voting shares of MBANK USA, Wilmington, Delaware, a *de novo* bank.

Board of Governors of the Federal Reserve System, March 22, 1985.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 85–7307 Filed 3–27–85; 8:45 am]

BILLING CODE 6210-01-M

Security Pacific Corp.; Acquisition of Company Engaged in Permissible Nonbanking Activities

The organization listed in this notice has applied under § 225.23(a)(2) or (f) of the Board's Regulation Y (12 CFR 225.23(a)(2) or (f)) 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 (12 CFR 225.21(a)) to acquire or control voting securities or assets of a company engaged 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.

The 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.

Comments regarding the application must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than April 11, 1985.

A. **Federal Reserve Bank of San Francisco** (Harry W. Green, Vice President) 101 Market Street, San Francisco, California 94105:

1. *Security Pacific Corporation*, Los Angeles, California; to transfer the securities clearance services of Bradford Trust Company, New York, New York, to Security Pacific Corporation to enable it to indirectly offer through its subsidiary, Security Pacific Clearing & Services Corp., to certain account customers of Bradford Trust Company, clearing and custodial services with respect to municipal, government and government agencies' securities, as well as services incidental thereto, such as making call loans to securities brokers and dealers. These activities would be conducted from offices of Security Pacific Clearing & Services Corp. located in Los Angeles and San Francisco, California; Chicago, Illinois; New Orleans, Louisiana; Minneapolis, Minnesota; New York, New York; Philadelphia and Pittsburgh, Pennsylvania; Houston, Texas, and Memphis, Tennessee, serving the United States and the District of Columbia.

Board of Governors of the Federal Reserve System, March 22, 1985.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 85-7308 Filed 3-27-85; 8:45 am]

BILLING CODE 6210-01-M

United City Corp.; Application To Engage de Novo in Nonbanking Activities

The company listed in this notice has filed an application under § 225.23(a)(1) of the Board's Regulation Y (12 CFR 225.23(a)(1)) 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 (12 CFR 225.21(a)) to commence or to engage *de novo*, either directly or through a subsidiary, in a nonbanking activity that has been approved by Board Order. Unless otherwise noted, such activities will be conducted throughout the United States.

The 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.

Comments regarding the application must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than April 22, 1985.

A. **Federal Reserve Bank of Dallas** (Anthony J. Montelaro, Vice President) 400 South Akard Street, Dallas, Texas 75222:

1. *United City Corporation*, Plano, Texas, to engage directly in the *de novo* activity of providing consumer counseling services on a fee basis.

Board of Governors of the Federal Reserve System, March 22, 1985.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 85-7309 Filed 3-27-85; 8:45 am]

BILLING CODE 6210-01-M

[Docket No. R-0534]

U.S. Treasury Book-Entry Securities Service

AGENCY: Board of Governors of the Federal Reserve System.

ACTION: Final action.

SUMMARY: The Board has approved a fee of $0.75 for the funds settlement component of the secondary market book-entry transfer of U.S. Treasury securities.

EFFECTIVE DATE: October 1, 1985.

FOR FURTHER INFORMATION CONTACT: Gerald D. Manypenny, Manager (202/452-3954) or Brada W. Panther, Analyst (202/452-2831), Division of Federal Reserve Bank Operations; or Daniel L. Rhoads, Attorney (202/452-3711), Legal Division, Board of Governors of the Federal Reserve System, Washington, D.C. 20551.

SUPPLEMENTARY INFORMATION: One of the services provided depository institutions by the Reserve Banks is the secondary market book-entry transfer of U.S. Treasury securities. Based upon a review of the roles of the Federal Reserve and the Treasury in providing this service, the Treasury Department has concluded that the secondary market book-entry service provided by the Reserve Banks for U.S. Treasury securities should be regarded as a fiscal agency activity. Consequently, the Treasury determined that fees charged for the book-entry securities activity performed by Reserve Banks as fiscal agents will be established by the Treasury and collected by Reserve Banks on its behalf. A book-entry securities transfer message generally

comprises two components: the securities transfer and the accompanying funds settlement. The Federal Reserve and Treasury determined that the funds settlement element of a securities transfer message is not a fiscal agency activity performed by the Reserve Banks on behalf of the Treasury.

In December 1984, the Board proposed a fee of $0.75 per book-entry securities transfer to cover the direct, support, overhead, and float costs associated with the funds settlement as an activity incidental to the provision of a fiscal agency function. 49 FR 47335 (Dec. 3, 1984). Concurrent with the Board's request, the Treasury Department also requested public comment on its proposed fee schedule for Treasury secondary market securities transfers originated on-line and originated/received off-line. 49 FR 47354 (Dec. 3, 1984). The Treasury also proposed that its fees would be charged daily against depository institution's clearing/reserve accounts. Treasury's proposed fees did not include the funds settlement component of the transfer.

Thirteen responses were received as a result of the Board's request for public comment—twelve depository institutions and one clearing house association.[1] Eight of the twelve depository institutions supported the proposed funds settlement fee. Four depository institutions and the clearing-house association did not comment specifically on the proposed fee.

Six commenters expressed concern over the proposal to have the fees charged daily against their reserve/clearing balances. In their opinion, daily charging would be operationally burdensome and make it difficult for them to reconcile their accounts. Several commenters suggested that charging be done on a monthly basis. The Treasury, however, has indicated that it wants the Reserve Banks to charge depository institutions for transfers of book-entry Treasury securities on a daily basis, as was done on its behalf for many years prior to 1981. In addition, daily charging is consistent with Treasury's current cash management objectives. The Board believes that the Reserve Banks should therefore assess the funds settlement fee on a daily basis so that all fees resulting from a single transaction would be charged on the same basis. Charging the two fees on differing bases would further complicate reconciliation. Statements of activity and charges provided by Reserve Banks should assist depository institutions with reconcilement.

Several commenters stated that earnings credits on clearing balances should be available for charges associated with Treasury securities transfers. Earnings credits are available to pay for charges arising from the use of Federal Reserve priced services. Since the Treasury has determined that secondary market transfer of book-entry Treasury securities is a fiscal rather than priced service, it would be inappropriate to use earnings credits to pay for these charges.

Three commenters stated it was inappropriate to regard the book-entry securities transfer service for Treasury securities as a fiscal agency service and expressed concern that the Federal Reserve may use the fiscal authority to exclude other priced services from the provisions of the MCA. Concern was also expressed that transfers of other types of book-entry securities would also be regarded as fiscal activities thus making it difficult for the private sector to compete. The Board does not believe that these concerns are warranted. Under section 15 of the Federal Reserve Act, the Secretary of the Treasury is authorized to require the Reserve Banks to act as fiscal agents of the United States. After reviewing the roles of the Treasury and the Federal Reserve, the Treasury concluded that Reserve Banks conduct book-entry Treasury securities transfers as fiscal agents. The funds settlement component of the transfer message is an integral element of the transfer and, as one commenter noted, cannot be separated from the securities component without having a disruptive effect on the secondary market. Therefore, the funds settlement component is properly regarded as incidental to a fiscal service rather than a priced service. The Treasury's determinations regarding fiscal agency matters do not extend to services provided by Reserve Banks other than as fiscal agents.

After review of the comments received, the Board has decided to approve a funds settlement fee of $0.75 per transfer to be charged by Reserve Banks for secondary market book-entry transfer of U.S. Treasury securities, effective October 1, 1985.

By order of the Board of Governors of the Federal Reserve System, March 26, 1985.

William W. Wiles,

Secretary of the Board.

[FR Doc. 85-7484 Filed 3-27-85; 8:45 am]

BILLING CODE 6210-01-M

[1] In addition, six Reserve Banks commented in support of the proposal.

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control

Program Announcement; Alternate Testing Sites To Perform Human T-Lymphotropic Virus-Type III (HTLV-III) Antibody Testing; Availability of Funds for Fiscal Year 1985

Correction

In FR Doc. 85-5953 beginning on page 9909 in the issue of Tuesday, March 12, 1985, make the following corrections:

1. On page 9909, second column, under the heading "Special Assurances," the following phrase should be added at the end of item (1): "Except in those situations where this requirement conflicts with State or local law."

2. On page 9910, second column, first line, the word "confidentially" should be changed to "confidentiality".

Dated: March 22, 1985

Robert L. Foster,

Acting Director, Office of Program Support Centers for Disease Control.

[FR Doc. 85-7395 Filed 3-27-85; 8:45 am]

BILLING CODE 4160-18-M

Cooperative Agreement To Assist the University of North Carolina With Investigating the Exposure-Response Relationship Between Silica and Lung Cancer, Silica and Silicosis, and Chrysotile Asbestos and Lung Cancer; Availability of Funds for Fiscal Year 1985

The National Institute for Occupational Safety and Health, Centers for Disease Control, announces the availability of funds in Fiscal Year 1985 for a cooperative agreement with the University of North Carolina for collaborative research to investigate the exposure-response relationship between silica and lung cancer, silica and silicosis, and chrysotile asbestos and lung cancer. This program is authorized under section 20(a)(1) of the Occupational Safety and Health Act of 1970 (29 U.S.C. 669(a)(1)).

Assistance will be provided only to the University of North Carolina for this project. The University of North Carolina has had access to medical and environmental data since 1935 concerning workers in the "dusty trades" in North Carolina and has developed the expertise and resources that make them uniquely qualified to support this project. Therefore, this is not a formal request for applications; other applications will not be accepted. It is expected that approximately $350,000 will be available in Fiscal Year 1985, and that the cooperative

agreement will be funded for 4 years. The funding estimate may vary and is subject to change. Continuation awards for the second, third, and fourth year will be made on the basis of satisfactory performance and on the availability of funds.

For further information contact: Leo A. Sanders, Chief, Grants Management Branch, Procurement and Grants Office, Centers for Disease Control, 255 East Paces Ferry Road, NE., Room 321, Atlanta, Georgia 30305, Telephone: (404) 262-6575 or FTS 236-6575.

Dated: March 19, 1985.

L.W. Sparks,

Acting Director, National Institute for Occupational Safety and Health.

[FR Doc. 85-7389 Filed 3-27-85; 8:45 am]

BILLING CODE 4160-19-M

Cooperative Agreement To Assist and Collaborate With the Massachusetts Institute of Technology in Developing Research Methodology and Training Recommendations for Quantitative Risk Assessment; Availability of Funds for Fiscal Year 1985

The National Institute for Occupational Safety and Health, Centers for Disease Control, announces the availability of funds for Fiscal Year 1985 for a cooperative agreement with the Massachusetts Institute of Technology Center for Policy Alternatives to assist with the research capability and training needed to permit the evaluation of potential occupational hazards to human health by private industry, universities, State and Federal agencies, and other nongovernment organizations. This program is authorized by section 20(a)(1) of the Occupational Safety and Health Act of 1970 (29 U.S.C. 669(a)(1)).

Assistance will be provided only to the Massachusetts Institute of Technology (MIT) for this project. MIT, through its Center for Policy Alternatives (CPA), has developed a unique capability in the quantitative analysis of both occupational and environmental health policy issues. Through its past involvement with occupational and environmental health issues, CPA has demonstrated a continuing commitment to the prevention of occupational illness and injury and the appropriate development of the technical basis for decision making in occupational health and safety standards which makes CPA qualified to support this project. Therefore, this is not a formal request for applications; other applications will not be accepted. It is expected that approximately $100,000 will be available for Fiscal Year 1985 to support this project and that the cooperative agreement will be funded for 3 years. Continuation awards for the second and third years will be made on the basis of satisfactory progress and on the availability of funds. Funding estimates may vary and are subject to change.

For further information contact: Leo A. Sanders, Chief, Grants Management Branch, Procurement and Grants Office, Centers for Disease Control, 255 East Paces Ferry Road, NE., Room 321, Atlanta, Georgia 30305, Telephone: (404) 262-6575 or FTS 236-6575.

Dated: March 19, 1985.

L.W. Sparks,

Acting Director, National Institute for Occupational Safety and Health.

[FR Doc. 85-7390 Filed 2-27-85; 8:45 am]

BILLING CODE 4160-19-M

Research and Demonstration Grants Relating to Occupational Safety and Health; Availability of Funds for Fiscal Year 1985

The National Institute for Occupational Safety and Health (NIOSH), Centers for Disease Control (CDC), announces that competitive grant applications are being accepted for research and demonstration project grants relating to occupational safety and health. These grants will be awarded and administered by NIOSH under the research and demonstration grant authority of 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 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, nor to review by the Health Systems Agency.

Availability of Funds

In Fiscal Year 1985, it is expected that approximately $6,501,000 will be available to award grants. It is estimated that $4.5 million of this amount will support continuation grants. Grants are usually funded for 12 months in project periods of up to 5 years—2 years for small grants and 3 years for Special Emphasis Research Career Award (SERCA) 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 precent.

Eligibility Requirements

Eligible applicants include non-profit 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.

Research Project Grants

A research project grant application should be designed to establish, discover, develop, elucidate, 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 sove problems or contribute to a better understanding of underlying causes and mechanisms

Demonstration Project Grants

A demonstration 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 or health procedure, method, technique, or system, or (2) an innovative method, technique, or approach for preventing occupational safety or health problems.

Special Emphasis Research Career Award (SERCA) Grants

The SERCA is designed to enhance the research capability of individuals in the formative stages of their careers who have demonstrated outstanding potential for contributing as independent investigators to health-related research. Candidates must have had 2 or more years of relevant postdoctoral experience prior to the submission date. The application must document accomplishments in this period that demonstrate research potential; it must also present a plan for additional experience in a productive scientific environment at domestic institutions that will foster development of a career on independent research in the area of occupational safety and health. The SERCA is not intended for untried investigators, or for productive, independent investigators with significant numbers of publications of high quality, or for persons of senior

academic rank (above associate professor or tenured). Moreover, the award is not intended to substitute one source of salary support for another for an individual who is already conducting full-time research, nor is it intended to be a mechanism for providing institutional support. The applications must demonstrate that the award will make a differnce in and enhance the candidate's development as an independent investigator.

Candidates must indicate a commitment of at least 60 percent time (not necessarily 60 percent salary) devoted to research under the SERCA grant, although full-time is desirable. Other work in the area of occupational safety and health will enhance the candidate's qualifications but is not a substitute for this requirement. While working closely with the adviser(s), the awardee is expected to develop capabilities in fundamental, applied, and/or clinical research in one of the areas listed under "Programmatic Interest." At the end of the award period, evidence of independent investigative capability should be present reflecting that the individual is better able to compete in traditional NIOSH research activities.

The total grant award may comprise direct costs of up to $30,000 per year and up to 8 percent additonal indirect costs. Direct costs may include salary plus fringe benefits, technical assistance, equipment, supplies, consultant costs, domestic travel, publication, and other costs. If the awardee already holds a small grant on the same research topic, the amount of the SERCA may be reduced up to the amount of the small grant. Awards may be up to 3 years and will not be renewable.

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 predoctoral graduate students, post-doctoral researchers (within 3 years following completion of doctoral degree or completion of residency or public health training), and junior faculty members (no higher than assistant professor). If university policy requires that a more 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 would 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 additonal indirect costs, as appropriate. The grants may be awarded for up to 2 years and are thereafter continuable 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, though 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, not comprehensive definitions of the category. However, investigators may apply in any areas related to occupational safety and health.

1. Occupational lung disease: 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 loss, 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 (scalding), 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.

12. Respirator research: New and innovative respiratory protective devices; techniques to predict performance; effectiveness of respirator programs; physiologic and erogonomic factors; medical surveillance strategies; psychological and motivational aspects; and effectiveness of sorbents and filters, including chemical and physical properties.

Applications responding 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."**

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 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.

SERCA grant applications will be reviewed additionally on the basis of the following criteria:

- The review process will consider the applicant's scientific achievements.

evidence of demonstrated commitment to a research career in occupational safety and health, and supportive nature of the research environment (including letter(s) of reference from advisor(s) which should accompany the application).

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 of all grant applications 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 program of NIOSH;
- National needs and programs balance; and
- Policy and budgetary considerations.

Applications

The original and six copies of the application should be submitted on Form PHS–398 (revised May 1982) or PHS–5161–1 for State and local government applicants to the address below on or before the specified receipt dates in accordance with the instructions in the PHS–398 packet:

Division of Research Grants, National Institutes of Health, Westwood Building—Room 240, Bethesda, Maryland 20205

Forms should be available from the institutional business offices or from the Procurement and Grants Office, Centers for Disease Control, Room 321, 255 E. Paces Ferry Road, Atlanta, Georgia 30305.

In developing the application, please note that the conventional presentation for grant applications should be used, and the points identified under "Criteria for Review" must be fulfilled.

An applicant organization has the option of having specific salary and fringe benefit amounts for individuals omitted from the copies of the application that are made available to outside reviewing groups. If the applicant's organization elects to exercise this option, use asterisks on the original and six copies of the application to indicate those individuals for whom salaries and fringe benefits are being requested; the subtotals must still be shown. In addition, submit an additional copy of page 4 of Form PHS–398, completed in full with the asterisks replaced by the amount of the salary and fringe benefits requested for each individual listed. This budget page will be reserved for internal PHS staff use only.

The instructions in the Form PHS–398 packet should be followed concerning deadlines for either delivering or mailing the applications. The application should be sent or delivered using the mailing label in the Form PHS–398 packet.

The proposed timetable for receiving applications and awarding grants is as follows:

Application deadline	Primary review group meeting	Secondary review meeting	Expected start date
All except SERCA Grants and Small Grants			
March 1 July 1 November 1	June Oct./Nov. Feb./Mar.	September January May	December 1. April 1. July 1.
SERCA Grants and Small Grants			
February 1 June 1 October 1	June Oct./Nov. Feb./Mar.	September January May	December 1. April 1. July 1.

Awards will be made based on priority score, programmatic significance, programmatic balance, and availability of funds.

For further information contact:

For technical information: Roy M. Fleming, Sc.D., Associate Director for Grants, NIOSH, Bldg. 1, Room 3053, Centers for Disease Control, Atlanta, Georgia 30333, Telephone: (404) 329–3343 of FTS 236–3343.

For business information: Leo A. Sanders, Chief, Grants Management Branch, Procurement and Grants Office, Centers for Disease Control, Atlanta, Georgia 30333, Telephone: (404) 262–6575 FTS 236–6572.

(This program is described in the Catalog of Federal Domestic Assistance Program No. 13.262, Occupational Safety and Health Research Grants)

Dated: March 20, 1985.

L.W. Sparks,

Acting Director, National Institute for Occupational Safety and Health.

[FR Doc. 85–7388 Filed 3–27–85; 8:45 am]

BILLING CODE 4160–19–M

DEPARTMENT OF THE INTERIOR

Information Collection Submitted to OMB for Review

The proposal for the collection of information listed below has been submitted to the Office of Management and Budget for approval under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35). Copies of the proposed information collection requirement and related forms and explanatory material may be obtained by contacting the Office's Clearance Officer at the phone number listed below. Comments and suggestions on the requirement should be made directly to the Office's Clearance Officer and the Office of Management and Budget Interior Department Desk Officer at 202–395–7340.

Title: Private Rental Survey

Abstract: The data is used to establish/adjust rental charges for Government Furnished Quarters and for related services provided each tenant. Respondents are private sector landlords. Majority of data is completed by contract appraiser, not the landlord

Bureau Form Number: Form DI 1873

Frequency: On occasion

Description of Respondents: Individuals and businesses who own rental property

Annual Responses: 3,000

Annual Burden Hours: 750

Bureau Clearance Officer: John Strylowski, 202–343–6191.

R.W. Piasecki,

Director, Office of Acquisition and Property Management.

March 21, 1985.

[FR Doc. 85–7397 Filed 3–27–85; 8:45 am]

BILLING CODE 4310–10–M

Fish and Wildlife Service

Establishment of Tensas River National Wildlife Refuge

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of Establishment of the Tensas River National Wildlife Refuge, and delineation of project boundaries.

SUMMARY: This Notice designates an area of land and water in Franklin, Madison, and Tensas Parishes, Louisiana, which the Secretary of the Interior considers appropriate for the Tensas River National Wildlife Refuge. The Notice also establishes that present and future Fish and Wildlife Service property or interests therein within the project area are components of Tensas River National Wildlife Refuge. These lands are protected and administered in accordance with the Congressional Acts, Treaties and Executive Order which provide the legal basis for operation of units of the National Wildlife Refuge System.

EFFECTIVE DATE: March 28, 1985.

FOR FURTHER INFORMATION CONTACT: James W. Pulliam, Jr., Regional Director, U.S. Fish and Wildlife Service, Richard B. Russell Federal Building, 75 Spring Street SW., Atlanta, Georgia 30303, telephone (404) 221–3588 (commercial) or 242–3588 (FTS).

SUPPLEMENTARY INFORMATION: The Act to establish the Tensas River National Wildlife Refuge was enacted by Congress on June 28, 1980 (Pub. L. 96–285), as amended by Pub. L. 98–581, October 30, 1984. The Act provided that within 4 years after the date of the enactment, after sufficient lands and waters, and interests therein, have been acquired, the Secretary shall establish the Tensas River National Wildlife Refuge by publication of notice to that effect in the **Federal Register.** The Secretary may make minor revisions in the boundaries for the refuge in order to carry out the purpose of the Act or to facilitate acquisition of property within the refuge. To date, 36,795 acres have been acquired by transfer from the U.S. Army Corps of Engineers dated February 5, 1985. Notice is hereby given that, pursuant to the above Act, sufficient property interests have been acquired to constitute an area that could be effectively managed as a unit of the National Wildlife Refuge System. Therefore, the Tensas River National Wildlife Refuge is established effective as of the date of this publication.

Maps of the project area are on file and are available for public inspection in the Wildlife Resources Office, Fish and Wildlife Service, Richard B. Russell Federal Building, 75 Spring Street, SW., Atlanta, Georgia 30303, telephone (404) 221–3548 (commercial) or 242–3548 (FTS).

David B. Allen,

Regional Director, U.S. Fish and Wildlife Service.

March 13, 1985.

[FR Doc. 85–7399 Filed 3–27–85; 8:45 am]

BILLING CODE 4310–55–M

Bureau of Indian Affairs

[Docket 320]

Plan for the Use and Distribution of the Quechan Tribe of Fort Yuma Reservation Indian Judgment Funds Before the United States Claims Court

This notice is published in exercise of authority delegated by the Secretary of the Interior to the Assistant Secretary for Indian Affairs by 209 DM 8.

The Act of October 19, 1973 (Pub. L. 93–134, 87 Stat. 466), as amended, requires that a plan be prepared and submitted to Congress for the use or distribution of funds appropriated to pay a judgment of the Indian Claims Commission or Court of Claims to any Indian tribe. Funds were appropriated on September 6, 1983, in satisfaction of the award granted to the Quechan Tribe of Fort Yuma Reservation of Indians before the United States Claims Court in Docket 320. The plan for the use and distribution of the funds was submitted to the Congress with a letter dated August 30, 1984, and was received (as recorded in the Congressional Record) by the Senate on September 11, 1984, and by the House of Representatives on September 5, 1984. The plan became effective on February 24, 1985, as provided by the 1973 Act, as amended by Pub. L. 97–458, since a joint resolution disapproving it was not enacted.

The plan reads as follows:

The funds appropriated on September 6, 1983, in satisfaction of an award granted to the Quechan Tribe of Indians of the Fort Yuma Reservation in Arizona and California, in Docket 320 by the United States Claims Court, less attorney fees and litigation expenses, including all interest and investment income accrued, shall be used and distributed as herein provided.

A. Per Capita Distribution

Eighty percent of these funds shall be distributed in the form of per capita payments (in sums as equal as possible) to all persons who were born on or prior to and living on the effective date of this plan who are enrolled members of the Quechan Tribe of the Fort Yuma Reservation. The per capita shares of living competent adults shall be paid directly to them. The per capita shares of legal incompetents and minors shall be handled as provided in the Act of October 19, 1973 (87 Stat. 466), as amended (96 Stat. 2512, 25 U.S.C. 1403).

B. Programming

Twenty (20) percent of these funds shall be utilized by the Tribal Council as follows:

1. Six (6) percent to be programmed over a three year period to support tribal administration.

2. Twenty-four (24) percent to be used to retire outstanding liabilities as (a) attorney fees, (b) environmental farms, (c) waste water treatment agreement with the city of Yuma, and (d) CETA program under the Department of Labor.

3. Fifteen (15) percent shall be set aside for the use in economic development programs for the tribe including the upgrading of existing programs.

4. Fourteen (14) percent shall be utilized to supplement existing social services programs such as emergency food and clothing and emergency housing and to establish a Law and Order program including an Adjudication Court, Tribal Police, and program equipment.

5. Six (6) percent shall be set aside for land purchase and leasing. In case of purchase or lease the highest level of the trust responsibility of the Secretary of the Interior shall be maintained.

6. Three (3) percent shall be set aside for emergency needs of the tribe. In the case of natural emergencies such as flood, wind, rain, etc. the funds may be released by the Superintendent, Fort Yuma Agency at the request of the Quechan Tribal Council.

7. Twenty-five (25) percent shall constitute a perpetual investment with the interest only from this portion used for the support of tribal administration programs.

8. Seven (7) percent shall constitute a perpetual investment with the interest only from this portion used to support tribal educational programs.

C. General Provisions

None of the funds distributed per capita or made available under this Plan for programming shall be subject to Federal or State income taxes, nor shall such funds nor their availability be considered as income or resources nor otherwise utilized as the basis for denying or reducing the financial assistance or other benefits to which such household or member would otherwise be entitled under the Social Security Act or, except for per capita shares in excess of $2,000, any Federal or federally assisted program. Any amount remaining after the per capita payment shall revert to the programming portion of this award. Release of the program funds in Parts 1 through 6 are subject to the approval of the Secretary of the Interior through the annual budgetary process. It is anticipated that all program funds in Parts 1 through 6 will be liquidated within three years. In the event the intent of the above programs are not realized, and tribal priorities change, any remaining amounts may be reprogrammed by the Quechan Tribal Council, subject to ratification by the general membership of the tribe, and subject to the approval of the Secretary.

Theodore C. Krenzke,

Acting Deputy Assistant Secretary, Indian Affairs.

[FR Doc. 85–7392 Filed 3–27–85; 8:45 am]

BILLING CODE 4310–02–M

Information Collection Submitted to the Office of Management and Budget for Review Under the Paperwork Reduction Act

The proposal for the collection of information listed below has been

submitted to the Office of Management and Budget for approval under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35). Copies of the proposed collection of information and related forms and explanatory material may be obtained by contacting the Bureau's clearance offices at the phone number listed below. Comments and suggestions on the requirement should be made within 30 days directly to the Bureau clearance officer, Ramona Moore, telephone (202) 343-3574 and to the Office of Management and Budget Interior Department Desk Officer, Washington, D.C. 20503, telephone 202-395-7313.

Title: Additional Requirements for Trust Responsibilities, 25 CFR 271.33.

Abstract: This part indicates the additional requirements respondents must furnish for contract applications which involve Bureau trust responsibilities in the area of natural resources to assure the protection, preservation and perpetuation of such resources, to ensure fair market value to tribes or individuals and assure that there is no delegation of a trust responsibility.

Bureau Form No.: None
Frequency: Annual

Description of Respondents: Indian tribes or tribal organizations across tribal lands.

Annual Responses: 74
Annual Burden Hours: 2,300
Bureau clearance officer: Ramona Moore, (202) 343-3574

John W. Fritz,

Assistant Secretary—Indian Affairs.

March 1, 1985.

[FR Doc. 85-7446 Filed 3-27-85; 8:45 am]

BILLING CODE 4310-02-M

Information Collection Submitted to the Office of Management and Budget for Review Under the Paperwork Reduction Act

The proposal for the collection of information listed below has been submitted to the Office of Management and Budget for approval under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35). Copies of the proposed collection of information and related forms and explanatory material may be obtained by contacting the Bureau's clearance offices at the phone number listed below. Comments and suggestions on the requirement should be made within 30 days directly to the Bureau clearance officer, Ramona Moore, telephone (202) 343-3574 and to the Office of Management and Budget Interior Department Desk Officer, Washington, D.C. 20503, telephone 202-395-7313.

Title: Application Process Contracts 25 CFR 271.14, 271.18, 271.20 and 276.7.

Abstract: This part contains the requirements for information respondents must provide for the evaluation of the content of contract applications as well as information necessary to permit the Bureau to administer, monitor and evaluate contract agreements.

Bureau Form No.: None
Frequency: Annual

Description of Respondents: Indian tribes or tribal organizations across tribal lands.

Annual Responses: 1,430
Annual Burden Hours: 24,680
Bureau clearance officer: Ramona Moore, (202) 343-3574

John W. Fritz,

Assistant Secretary—Indian Affairs.

March 1, 1985.

[FR Doc. 85-7447 Filed 3-27-85; 8:45 am]

BILLING CODE 4310-02-M

Bureau of Land Management

California Desert District; Emergency Closure of Area and Vehicle Routes in the Mesquite Mine Area of Imperial County, CA

AGENCY: Bureau of Land Management, Interior.

ACTION: Closure Notice for Six Vehicle Routes of Travel on Public Lands in the Mesquite Mine Area of Eastern Imperial County, California.

SUMMARY: This closure notice affects vehicle routes A215, A216, A217, A218, A219 and the new "haul and access" roads under the administrative responsibility of the El Centro Resource Area, California Desert District. The affected routes are located approximately 5 miles east of the town of Glamis in sections 7, 8, and 18 of T. 13 S., R. 19 E., SBM. The affected routes are closed to public vehicular travel in order to protect public land users from safety hazards that may result from mining operations along these routes. Route closures were identified as a mitigating measure in Final Environmental Assessment CA-067-85-05 ("The Mesquite Project"), p. 5-77 dated December 27, 1984. Route A215 (Zapponi Road) was a County road and abandoned by order of the Imperial County Board of Supervisors on February 5, 1985.

Additionally, for the reasons noted above, the area described below is closed to all public vehicular access:

T. 13 S., R. 19 E., SBM

Sections 4-7 (all); Sections 3, 8, 9, 18 (Those portions north of Hwy. 78)

This is an area that extends generally from a point at the Intersection of Zapponi Road and Highway 78 in section 18 to the southern boundary of the Chocolate Mountains Aerial Gunnery Range, and eastward five miles.

The routes and areas affected by this notice are being closed under the authority of 43 CFR 8364.1. This closure order was effective on March 11, 1985 and shall remain in effect until one or all of the following actions occur:

1. Termination of the project and rinsing of the leach piles;
2. Successful completion of a mining patent application at which time the land will become private and the route approval process will no longer apply;
3. Termination of commercial lease CA-15903.

Individual closed routes will be barricaded and signed closed. Vehicular access will be permitted beyond the points of closure only to personnel operating under the authority of Plan of Operations CAMC 21188/261, public service, law enforcement officials or Bureau employees while acting on official duty and other specifically authorized persons. Maps showing the exact location of routes affected by this closure notice are available from the El Centro Resource Area, 333 South Waterman Avenue, El Centro, California 92243.

Any person who knowingly and willfully violates this closure order may be subject to a $1,000 fine or imprisonment for not longer than 12 months, or both, under authority of 43 CFR 8364.2.

Dated: March 19, 1985.

Gerald E. Hillier,

District Manager.

[FR Doc. 85-7438 Filed 3-27-85; 8:45 am]

BILLING CODE 4310-40-M

Carson City District Advisory Council; Meeting

AGENCY: Bureau of Land Management, Interior..

ACTION: Notice of Meeting of the Carson City District Advisory Council.

DATE: May 2, 1985.

ADDRESS: 1050 East William Street, Suite 344, Carson City, Nevada.

SUMMARY: The Council will meet at 8:30 a.m. The agenda will include election of officers, update on wild horse management and other resource management programs, the proposed BLM-Forest Service Interchange, and

comments from the public (10:00 a.m.). Upon adjournment, the Council will take a field trip to Alkali Lake in Smith Valley, Nevada, where the Bureau has undertaken a large waterfowl habitat improvement project. Anyone may attend the meeting and field trip but must provide their own transportation.

FOR FURTHER INFORMATION CONTACT: Steve Weiss, BLM Information Officer, 1050 E. William St., Suite 335, Carson City, NV 89701 (702) 882–1631.

Thomas J. Owen,

District Manager.

March 18, 1985.

[FR Doc. 85–7453 Filed 3–27–85; 8:45 am]

BILLING CODE 4310–HC–M

Rock Springs District Advisory Council; Meeting

AGENCY: Bureau of Land Management, Inerior.

ACTION: Notice of Meeting of the Rock Springs District Advisory Council.

DATE: May 1, 1985.

ADDRESS: Rock Springs District Office, Bureau of Land Management, U.S. Highway 191 North, Rock Springs, Wyoming.

FOR FURTHER INFORMATION CONTACT: Donald H. Sweep, District Manager, Rock Springs District, Bureau of Land Management, P.O. Box 1869, U.S. Highway 191 North, Rock Springs, Wyoming 82902–1869, (307–382–5350).

SUPPLEMENTARY INFORMATION: The meeting Wednesday, May 1, will convene at 9:00 A.M. in the District Office Conference Room.

The agenda items are:

Election of Officers
BLM-USFS Interchange
Bone Draw Cooperative Management Agreement
Update on Wild Horse Program
District Policy on Noxious Weeds
Riley Ridge, Phase II
RMP Schedule
Public Comment Period
Arrangements for Next Meeting

Gene Herrin,

Associate District Manager.

[FR Doc. 85–7418 Filed 3–27–85; 8:45 am]

BILLING CODE 4310–22–M

Roswell District Grazing Advisory Board; Meeting

AGENCY: Bureau of Land Management, Interior.

ACTION: Roswell District Grazing Advisory Board Meeting.

SUMMARY: This notice sets forth the schedule and proposed agenda of a forthcoming meeting of the Roswell District Grazing Advisory Board.

DATE: Wednesday, April 24, 1985, beginning at 10:00 a.m. A public comment period will be held at 2:00 p.m.

Location: BLM Roswell District Office, 1717 West Second St., Roswell, NM 88201.

FOR FURTHER INFORMATION CONTACT: Francis R. Cherry, District Manager or Guadalupe G. Martinez, Public Affairs Specialist, Bureau of Land Management, P.O. Box 1397, Roswell, NM 88201 (505) 622–9042.

SUPPLEMENTARY INFORMATION: The proposed agenda will include: (1) The BLM/FS Land Interchange Proposal, (2) Update on Grazing Fee Study, (3) Update on Range Improvement Projects for FY 85, and (4) Public Comment Period.

The meeting is open to the public. Interested persons may make oral statements to the Board during the public comment period or may file written statements. Anyone wishing to make an oral statement should notify the District Manager by April 15, 1985. Summary minutes will be maintained in the District Office and will be available for public inspection during regular business hours within 30 days following the meeting. Copies will be available for the cost of duplication.

Timothy R. Kreager,

Acting District Manager.

[FR Doc. 85–7450 Filed 3–27–85; 8:45 am]

BILLING CODE 4310–FB–M

[A–19164]

Mineral Exchange, Mohave County, AZ

AGENCY: Bureau of Land Management (BLM), Interior.

ACTION: Notice of Realty Action-exchange, Federal minerals in Mohave County, Arizona.

SUMMARY: The federal mineral estate on the following described land has been determined to be available for disposal by exchange under section 206 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. 1716:

GILA AND SALT RIVER MERIDIAN, ARIZONA

T. 39 N., R. 5 W.,
Sec. 5, lots 1 to 4 inclusive, S½N½, S½
Sec. 6, lots 1, 2, 3, 6, and 7, S½NE¼, SE¼NW¼, E½SW¼, SE¼
Sec. 10.
T. 39 N., R. 6 W.,
Sec. 14, NW¼, S½
Sec. 29.
T. 40 N., R. 6 W.,
Sec. 8, NE¼NW¼, S½NW¼, SW¼, E½
Sec. 30, lots 1 to 4 inclusive, E½W½, E½
Sec. 31, lots 1 to 4 inclusive, NE¼NE¼, S½NE¼, SE¼NW¼, E½SW¼, SE¼.
T. 41 N., R. 2 W.,
Sec. 7, S½
Sec. 17, N½SW¼, SW¼SW¼
Sec. 19, W½SW¼.

Comprising 5,257.97 acres, more or less.

In exchange for all or part of the above described 5,257.97 acres of the federal mineral estate, the State of Arizona offers 5,256.80 acres, more or less, of Arizona State-owned mineral estate located in the proposed Arizona Strip Wilderness Bill in the mountainous areas north of the Colorado River, Arizona.

The State mineral estate is described as follows:

GILA AND SALT RIVER MERIDIAN, ARIZONA

T. 35 N., R. 14 W.,
Sec. 32, and E½SE¼.
T. 38 N., R. 14 W.,
Sec. 16.
T. 39 N., R. 6 E.,
Sec. 16.
T. 39 N., R. 13 W.,
Sec. 32.
T. 40 N., R. 7 E.,
Sec. 32.
T. 41 N., R. 14 W.,
Sec. 32.
Sec. 36.
T. 42 N., R. 13 W.,
Sec. 32, lots 1 to 4 inclusive, and S½.
T. 42 N., R. 14 W.,
Sec. 32, lots 1 to 4 inclusive, and S½.
Sec. 36, lots 1 to 4 inclusive, and S½.

Comprising 5,256.80 acres, more or less.

The purpose of the exchange is to acquire the non-federal mineral estate thereby uniting the public split-estate within wilderness areas in Arizona north of the Colorado River. The exchange is consistent with Bureau's planning system.

The above-described mineral estates are not encumbered by mining claim locations. They do, however, contain a number of oil and gas leases. On the basis of a mineral potential report, it has been determined that the overall potential mineral values of the State and Federal minerals are approximately equal.

Minerals to be transferred from the United States will be subject to the following terms and conditions:

1. Oil and gas leases A18341, A10399, and A10421, and the right of the mineral lessee to occupy and use so much of the surface of the land as may be reasonably necessary for mineral leasing operations. Acts of February 25, 1920 and March 4, 1933 (30 U.S.C. 186, 124). The United States will continue to administer these leases until their expiration on cessation of operations, at which time the leasing function will transfer to the State of Arizona.

2. Subject to all valid existing rights and those applications on record as of the date of this Notice.

Minerals to be acquired by the United States will be subject to the following terms and conditions:

Oil and gas leases 13–69803 and 13–69807 with the right to explore for and remove such deposits. The State of Arizona will continue to administer these leases until their expiration or cessation of operations, at which time the leasing function will transfer to the United States.

Publication of this Notice shall segregate the subject land from all appropriations under the public laws, including the mining laws and the mineral leasing laws. This segregative effect shall terminate upon the issuance of a patent or two years from the date of this Notice, or upon publication of a Notice of Termination.

Detailed information concerning the exchange, including the environmental assessment and mineral potential report, can be obtained from the District Manager, 196 East Tabernacle, St. George, Utah 84770. For a period of forty-five (45) days from the date of this notice, interested parties may submit comments to the District Manager. Any adverse comments may be evaluated by the District Manager, who may vacate or modify this realty action and issue a final determination. In the absence of any action by the District Manager, this realty action will become a final determination of the Department of the Interior.

Dated: March 20, 1985.

G. William Lamb,

District Manager.

[FR Doc. 85–7437 Filed 3–27–85; 8:45 am]

BILLING CODE 4310–32–M

[Alaska 48604–P]

Proposed Reinstatement of a Terminated Oil and Gas Lease

March 20, 1985.

In accordance with Title IV of the Federal Oil and Gas Royalty Management Act (Pub. L. 97–451), a petition for reinstatement of oil and gas lease AA–48604–P has been received covering the following lands:

Fairbanks Meridian, Alaska

T. 20 S., R. 2 W.,
Sec. 11, E½.
(320 acres).

The proposed reinstatement of the lease would be under the same terms and conditions of the original lease, except the rental will be increased to $5 per acre per year, and royalty increased to 16⅔ percent. The $500 administrative fee and the cost of publishing this Notice have been paid. The required rentals and royalties accruing from July 1, 1984, the date of termination, have been paid.

Having met all the requirements for reinstatement of lease AA–48604–P as set out in section 31 (d) and (e) of the Mineral Leasing Act of 1920 (30 U.S.C. 188), the Bureau of Land Management is proposing to reinstate the lease, effective July 1, 1984, subject to the terms and conditions cited above.

Dated: March 20, 1985.

Robert E. Sorenson,

Chief, Branch of Mineral Adjudication.

[FR Doc. 85–7457 Filed 3–27–85; 8:45 am]

BILLING CODE 4310–JA–M

[CA–15735]

California; Order Providing for Opening of Lands

By virtue of the authority vested in the Secretary of the Interior by section 204 of the Federal Land Policy and Management Act of 1976, 90 Stat. 1751; 43 U.S.C. 1714 and section 24 of the Federal Power Act of June 10, 1920 (41 Stat. 1075, as amended, 16 U.S.C. 818) and pursuant to the determinaiton of the Federal Energy Regulatory Commission, in DA–1141 California, it is ordered as follows:

1. 1. By order dated February 27, 1985, the Federal Energy Regulatory Commission vacated the land withdrawal in part for Power Project No. 284 as to the following described lands:

Mount Diablo Meridian

T. 5 N., R. 13 E.,
Sec. 5, lot 4.
T. 5 N., R. 14 E.,
Sec. 5, lot 2.

The area aggregates approximately 80.48 acres in Calaveras County, California.

2. The lands shall be opened to operation of the public land laws generally at 10:00 am on April 30, 1985, subject to valid existing rights and the provisions of existing withdrawals. They have been and continue to be open to the mining laws (30 U.S.C. Ch. 2) and the mineral leasing laws.

Inquiries concerning the lands should be addressed to the State Director, Bureau of Land Management, Room E–2841, Federal Office Building, 2800 Cottage Way, Sacramento, California 95825.

Nancy J. Alex,

Chief, Lands & Locatable Minerals Section Branch of Lands & Minerals Operations.

[FR Doc. 85–7440 Filed 3–27–85; 8:45 am]

BILLING CODE 4310–40–M

[CA–15757]

California; Order Providing for Opening of Lands

By virtue of the authority vested in the Secretary of the Interior by section 204 of the Federal Land Policy and Management Act of 1976, 90 Stat. 1751; 43 U.S.C. 1714 and section 24 of the Federal Power Act of June 10, 1920 (41 Stat. 1075, as amended, 16 U.S.C. 818) and pursuant to the determination of the Federal Energy Regulatory Commission, it is ordered as follows:

1. By order dated February 25, 1985, the Federal Energy Regulatory Commission vacated the land withdrawal in part for Power Projects 249 and 2136, dated April 19, 1921 and May 29, 1953, respectively, as to the following described land:

Mount Diablo Meridian

T. 23 N., R. 10 E.,
Sec. 10, W½NE¼ and NW¼.

The area aggregates 240 acres within the Plumas National Forest, Plumas County, California.

This land shall immediately, upon publication in the **Federal Register**, become available for consummation of a pending Forest Service exchange application CA 15304.

Inquiries concerning the land should be addressed to the State Director, Bureau of Land Management, Room E–2841, Federal Office Building, 2800 Cottage Way, Sacramento, California 95825.

Nancy J. Alex,

Chief, Lands & Locatable Minerals Section, Branch of Lands & Minerals Operations.

[FR Doc. 85–7441 Filed 3–27–85; 8:45 am]

BILLING CODE 4310–40–M

[AA–10538]

Alaska Native Claims Selection; Olsonville, Inc.

In accordance with Departmental regulation 43 CFR 2650.7(d) notice is hereby given that the Decision to Issue Conveyance (DIC) to Olsonville, Incorporated, notice of which was published in the **Federal Register** on March 11, 1985, on pages 9720 and 9721, is modified by a change in the land description.

The land description now reads:

Seward Meridian, Alaska, (Unsurveyed)

T. 21 S., R. 59 W.
Secs. 1 and 2 (fractional).
Containing approximately 10 acres.

The land description is modified to read:

T. 21 S., R. 59 W.
Secs. 2 and 3 (fractional).
Containing approximately 10 acres.

Except as modified by this decision, the decision of March 11, 1985, stands as written.

Barbara A. Lange,

Section Chief, Branch of ANCSA Adjudication.

[FR Doc. 85-7345 Filed 3-27-85; 8:45 am]

BILLING CODE 4310-JA-M

[CA 10388; 4-19952-ILM]

Exchange of Public and Private Lands in Tehama County, CA

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of issuance of land exchange conveyance document.

SUMMARY: The purpose of this exchange was to acquire the private land which has high public value for recreational uses. The values of the public and private lands in the exchange were equalized by utilizing exchange values contained in a private exchange with The Trust for Public Land under serial number CA 15726, which exchange was processed by this Bureau's California Desert District Office. The public interest was well served through completion of this exchange.

EFFECTIVE DATE: October 30, 1984.

FOR FURTHER INFORMATION CONTACT: Viola Andrade, California State Office (916) 484-4431.

SUPPLEMENTARY INFORMATION:

The United States issued an exchange conveyance document to The Trust for Public Land on October 30, 1984, for the following described lands under Sec. 206 of the Federal Land Policy and Management Act of October 21, 1976:

Mount Diablo Meridian, California

T. 25 W., R. 1 W.,
Sec. 4, Lot 2 of NE¼.
T. 26 N., R. 1 W.,
Sec. 24, SE¼SE¼.
Comprising 83.53 acres of public land.

In exchange for these lands, the United States acquired the following described land from the Trust for Public Land:

Mount Diablo Meridian, California

T. 28 N., R. 3 W.,
Sec. 22, a portion of Lot 2 of the SE¼.
Comprising 27.05 acres of private land.

Sharon M. Janis,

Chief, Branch of Lands and Minerals Operations.

[FR Doc. 85-7396 Filed 3-27-85; 8:45 am]

BILLING CODE 4310-81-M

Anchorage District Advisory Council Meeting

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of public meeting.

SUMMARY: The Bureau of Land Management's Anchorage District Advisory Council will meet at 12 p.m. April 30, 1985, to discuss implementation of recreation fees and the Gulkana River management plan

As required by regulation, time will be scheduled during the meeting for any member of the public wishing to address the council. Individuals requesting time on the agenda are asked to notify Joette Storm, Public Affairs Specialist, before April 30, 1985, by calling 267-1200.

DATE: Tuesday, April 30, 1985.

TIME: 12 p.m.-5 p.m.

PLACE: Anchorage District Office 4700 East 72nd Avenue, Anchorage, Alaska.

SUPPLEMENTARY INFORMATION:

Agenda

12:00 Call to order and reading of the minutes Introduction of new members Update of district programs
1:00 Recreation fee implementation and guide fees
2:30 Gulkana River Management Plan
4:00 Public comment period
5:00 Adjourn.

Wayne A. Boden,

District Manager.

[FR Doc. 85-7394 Filed 3-27-85; 8:45 am]

BILLING CODE 4310-JA-M

Roseburg District Advisory Council; Meeting

Notice is hereby given in accordance with section 309 of the Federal Land Policy and Management Act (as amended), the Roseburg District Advisory Council will meet April 25, 1985. The meeting will be a field tour and will start at 8:30 a.m. from the conference room at the Roseburg District Office, 777 NW. Garden Valley Blvd., Roseburg, Oregon.

The agenda will include:

1. Visit to Middle Creek and Cow Creek to look at and discuss fisheries, wildlife, recreation and timber management.

2. BLM/FS Interchange will be discussed during lunch.

3. General discussion by Council Members.

Summary minutes of the Council meeting will be maintained in the District Office and available for public inspection during regular business hours within 30 days following the meeting.

Dated: March 20, 1985.

Bennie C. Hobbs,

Associate District Manager.

[FR Doc. 85-7383 Filed 3-27-85; 8:45 am]

BILLING CODE 4310-33-M

[PHX 077416; 5-00261]

Order Providing for Opening of Public Lands, Arizona

March 20, 1985.

1. The following described land has been reconveyed to the United States because the land was no longer used for the purpose specified in Patent No. 1104903 issued under the Act of February 27, 1936 (49 Stat. 1144):

Gila and Salt River Meridian, Arizona

T. 20 N., R. 15 W.,
Sec. 30, NW¼NW¼NE¼, SE¼NW¼SW¼SE¼, E½SW¼SW¼SE¼, S½NE¼SW¼SE¼, SE¼SW¼SE¼.
The area described contains 32.50 acres.

2. The land is situated in the Hualapai Mountains located approximately 15 miles southeast of Kingman in Mohave County. The land will be utilized for communication site purposes in accordance with management plans

3. Upon acceptance of title to the land, they became a part of the public land administered by the Bureau of Land Management. At 9 A.M. on May 8, 1985, the land will be open to surface entry under the public land laws generally, subject to valid existing rights, the provisions of existing withdrawals, and the requirements of applicable laws. All applications received at or prior to 9 A.M. on May 8, 1985, will be considered as simultaneously filed at that time. Those received there after shall be considered in the order of filing. The land will remain closed to mining and mineral leasing.

Inquiries concerning the land should be addressed to the Chief, Branch of Lands and Minerals Operations, Bureau of Land Management, P.O. Box 16563, Phoenix, Arizona, 85011.

Don R. Mitchell,

Chief, Branch of Lands and Minerals Operations.

[FR Doc. 85-7393 Filed 3-27-85; 8:45 am]

BILLING CODE 4310-32-M

[C-38682; C-36866; 5-00258-GP5-160]

Realty Action; Competitive and Modified Sale of Public Lands in Park and Teller Counties, CO, and Noncompetitive Sale of Public Lands in Park County, CO

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of Realty Action C-38682, competitive and modified competitive sale of public lands in Park and Teller Counties, Colorado; C-36866, noncompetitive sale of public lands in Park County, Colorado.

SUMMARY: The following described lands have been examined and identified as suitable for disposal by sale under section 203 of the Federal Land Policy and Management Act of 1976 (90 Stat. 2750, 43 U.S.C. 1701, 1713) at no less than the appraised fair market value (minimum bid price) listed below:

C-38682—Sixth Principal Meridian, Colorado

Parcel No.	Legal description	Acreage	Minimum bid price
	T. 14 S., R. 70 W.,		
337	Sec. 19, lots 6 (32.51), and 7 (32.59)	65.10	$23,300
336A	Sec. 19, lot 9	10.35	6,800
336B	Sec. 19, lot 10	2.69	1,600
335A [1]	Sec. 30, lot 5	12.14	9,700
335B	Sec. 30, lot 6	0.40	75
	T. 14 S., R. 71 W.,		
339	Sec. 13, SW¼NE¼	40.00	12,900
350	Sec. 18, NW¼NE¼	40.00	21,600
338A [1]	Sec. 24, N½NW¼, SE¼NW¼	120.00	45,600
338B	Sec. 24, NE¼SW¼, NW¼SE¼	80.00	28,200
310	Sec. 34, SW¼NE¼	40.00	13,900
341	Sec. 34, NE¼NW¼	40.00	9,600
342	Sec. 34, NW¼SW¼	40.00	25,500

[1] Denotes competitive bidding; the balance is modified competitive. The above aggregates 490.68 acres more or less.

C-36866—Sixth Principal Meridian, Colorado

Parcel No.	Legal description	Acreage	Minimum bid price
	T. 14 S., R. 71 W.,		
346	Sec. 31, SE¼NE¼	40.00	$26,000
345	Sec. 31, NW¼NE¼	40.00	26,000

The above parcels are offered by direct sale and aggregate 80.00 acres more or less. These parcels were previously published in the **Federal Register** on July 24, 1984, and the sale was subsequently postponed until July 1985.

The total acreage in this notice is 570.68 acres more or less. The prices for lands listed under C-36866 have been approved and will not change. The appraisal for land identified under C-38682 has not been officially approved by the supervisory appraiser, Colorado State Office, and may be subject to change. Qualified bidders will be promptly notified of any change in price.

Parcels 345, 345, and 350 are located in Teller County. Parcel 342 is located in both Park and Teller Counties; the balance is located in Park County.

Parcels 335 A and 338A will be offered by competitive bidding because they have public access. Parcels 345 and 346 will be offered to Larry Mahan by direct sale at fair market value. The balance of the parcels will be offered through modified competitive bidding procedures. These bidding methods will be the most productive, beneficial, and least disruptive socially and environmentally.

The general public as well as adjacent landowners are permitted to bid on those parcels identified for competitive bididng. Bids from adjacent landowners will be the only ones accepted on those parcels identified for sale by modified competitive procedures.

Disposal of these parcels will best serve the public interest. The parcels are isolated and only parcels 335A, 338a, 345, and 346 have legal access. Disposal of the parcels does not conflict with local planning and zoning regulations and ordinances. They are identified for disposal in the BLM land use plan.

Each patent issued as a result of the proposed sale will be subject to all valid existing rights of record and contain a reservation to the United States for rights-of-way for ditches and canals constructed by the United States under the Act of August 30, 1890 (26 Stat. 391; 43 U.S.C. 945). All minerals will be reserved to the United States as requred by section 209 (a) of the Federal Land Policy and Management Act of 1976 (43 U.S.C. 1719). Any patent issued for parcel 335A (Teller County Road 11), parcel 338A (Highland Meadows Drive), and parcels 346 and 345 (Park County Road 71) will be subject to a perpetual 60-foot wide right-of-way for county roads.

Additionally, as a condition of sale for parcels 310, 337, 338A and B, 345, 346, and 350, the successful high bidder for each of these parcels will be required to enter into an agreement with the present BLM grazing permittee to honor his or her grazing authorization for any remaining portion of its term. Proof of such an agreement must be submitted before any patent will be issued.

Adjacent landowners and interested bidders from the general public will be sent a detailed sales prospectus providing more details on the parcels.

Sale Procedures

C-38682—Bidding will be sealed bids only. Bids for parcels 310, 335B, 336A, 336B, 337, 338B, 339, 341, 342, and 350 will only be accepted from qualified adjacent landowners as identified by local county records. Sealed bids on parcels 335A and 338A will be accepted from the general public. No bids will be accepted for less than the minimum bid price as identified for each parcel. Sealed bids will be accepted until 1 p.m. on June 5, 1985. Bid opening will be at 2 p.m. on the same day.

Any of the parcels not sold at this June 5, 1985 sale will be reoffered for sale by competitive bidding to the general public beginning June 19, 1985.

C-36866—Larry Mahan must submit, by 2 p.m. July 11, 1985, a bid or bids for the purchase of parcels 345 and/or 346. If Larry Mahan does not purchase the parcel(s), they will be reoffered to the general public by competitive bidding beginning August 7.

In addition to the appraised fair market value of the lands, the prospective purchaser of any of the lands offered by direct sale shall be required to pay the cost of publishing a part of this notice in the **Federal Register** and in the local newspaper. These costs must be paid before a patent will be issued.

A detailed sales propectus providing information on all sale parcels will be sent to all adjacent landowners and interested bidders from the general public. Sealed bids only will be accepted from the general public for the unsold parcel(s) at the Canon City District Office, 3080 East Main, P.O. Box 311, Canon City, CO 81212 and opened at 2 p.m. on the first and third Wednesdays of each month. The sale will continue until it is cancelled or sale of parcels is completed. No bid will be

accepted for less than fair market value (minimum bid price).

BLM may accept or reject any and all bid offers or withdraw any of the parcels from sale at any time if, in the opinion of the authorized officer, consummation of the sale would not be fully consistent with existing Federal laws and regulations.

At some future date any or all remaining unsold parcels may be used as "selected" lands in an exchange program.

Further Information and Public Comment

Additional information concerning this sale, including the planning documents and environmental assessment, is available for review in the Royal Gorge Resource Area Office at 9th and Royal Gorge Boulevard, P.O. Box 1470, Canon City, Colorado. Interested members of the public who wish to submit bids on parcels 335A and 338A may obtain further information from the Royal Gorge Resource Area Office. For a period of 45 days from the date of this notice, interested parties may submit comments to the District Manager, Canon City District Office, Bureau of Land Management, 3080 East Main, P.O. Box 311, Canon City, Colorado 81212. Any adverse comments will be evaluated by the District Manager, who may vacate or modify this realty action and issue his final determination. In the absence of any action by the District Manager, this realty action will become a final determination of the Department of the Interior.

The lands described in this notice are hereby segregated from appropriation under the public land laws, including the mining laws. This segregation shall be in effect for 270 days from publication in the **Federal Register.**

Stuart L. Freer,

Associate Director Manager.

[FR Doc. 85-7396 Filed 3-27-85; 8:45 am]

BILLING CODE 4310-JB-M

[5-00261; AZ 950 GP 5016]

Filing of Plats of Survey; Arizona

March 21, 1985.

1. The plats of survey of the following described lands were officially filed in the Arizona State Office, Phoenix, Arizona, on the dates indicated:

A plat representing a dependent resurvey of a portion of the south boundary, a portion of the subdivisional lines and portions of Homestead Entry Survey No. 446 and No. 611; and a survey of the subdivision of section 33 and the metes-and-bounds survey of Tracts 38, 39 and 40 and Lots 13, 16, 17 and 18, section 33, T. 11 N., R. 10 E., Gila and Salt River Meridian, Arizona, was accepted February 28, 1985, and was officially filed February 28, 1985.

This survey was executed at the request of Region Three, U.S. Forest Service.

A supplemental plat showing amended lottings created by the relotting of Lot 6, in section 27, T. 4 N., R. 3 E., Gila and Salt River Meridian, Arizona, was accepted March 7, 1985, and was officially filed March 8, 1985.

A supplemental plat, showing amended lottings in the S½ of section 20, and the N½ of section 29, T. 8 S., R. 26 E., Gila and Salt River Meridian, Arizona, was accepted January 8, 1985, and was officially filed January 9, 1985.

These supplemental plats were prepared at the request of the Bureau of Land Management, Arizona State Office, Division of Mineral Resouces, and the Safford District, respectively.

2. These plats will immediately become the basic records for describing the lands for all authorized purposes. These plats have been placed in the open files and are available to the public for information only.

3. All inquiries relating to these lands should be sent to the Arizona State Office, Bureau of Land Management, P.O. 16563, Phoenix, Arizona 85011.

James P. Kelley,

Chief, Branch of Cadastral Survey.

[FR Doc. 85-7400 Filed 3-27-85; 8:45 am]

BILLING CODE 4310-32-M

Minerals Management Service

Outer Continental Shelf; Development Operations Coordination Document; Chevron, U.S.A., Inc.

AGENCY: Minerals Management Service, Interior.

ACTION: Notice of the Receipt of a Proposed Development Operations Coordination Document (DOCD).

SUMMARY: Notice is hereby given that Chevron U.S.A. Inc. has submitted a DOCD describing the activities it proposes to conduct on Lease OCS-G 5660, Block 86, Grand Isle Area, offshore Louisiana. Proposed plans for the above area provide for the development and production of hydrocarbons with support activities to be conducted from an onshore base located at Leeville, Louisiana.

DATE: The subject DOCD was deemed submitted on March 21, 1985. Comments must be received within 15 days of the date of this Notice or 15 days after the Coastal Management Section receives a copy of the DOCD from the Minerals Management Service.

ADDRESSES: A copy of the subject DOCD is available for public review at the Office of the Regional Director, Gulf of Mexico OCS Region, Minerals Management Service, 3301 North Causeway Blvd., Room 147, Metairie, Louisiana (Office Hours: 9 a.m. to 3:30 p.m., Monday through Friday). A copy of the DOCD and the accompanying Consistency Certification are also available for public review at the Coastal Management Section Office located on the 10th Floor of the State Lands and Natural Resources Building, 625 North 4th Street, Baton Rouge, Louisiana (Office Hours: 8 a.m. to 4:30 p.m., Monday through Friday). The public may submit comments to the Coastal Management Section, *Attention OCS Plans,* Post Office Box 44396, Baton Rouge, Louisiana 70805.

FOR FURTHER INFORMATION CONTACT: Mr. Michael J. Tolbert, Minerals Management Service; Gulf of Mexico OCS Region; Rules and Production; Plans, Platform and Pipeline Section; Exploration/Development Plans Unit; Phone (504) 838-0875.

SUPPLEMENTARY INFORMATION: The purpose of this Notice is to inform the public, pursuant to section 25 of the OCS Lands Act Amendments of 1978, that the Minerals Management Service is considering approval of the DOCD and that it is available for public review. Additionally, this Notice is to inform the public, pursuant to § 930.61 of Title 15 of the CFR, that the Coastal Management Section/Louisiana Department of Natural Resources is reviewing the DOCD for consistency with the Louisiana Coastal Resources Program.

Revised rules governing practices and procedures under which the Minerals Management Service makes information contained in DOCDs available to affected states, executives of affected local governments, and other interested parties became effective December 13, 1979, (44 FR 53685). Those practices and procedures are set out in revised § 250.34 of Title 30 of the CFR.

Dated: March 21, 1985.

John L. Rankin,

Region Director, Gulf of Mexico OCS Region.

[FR Doc. 85-7385 Filed 3-27-85; 8:45 am]

BILLING CODE 4310-MR-M

Outer Continental Shelf; Development Operations Coordination Document; Kerr-McGee Corp.

AGENCY: Minerals Management Service, Interior.

ACTION: Notice of the Receipt of a Proposed Development Operations Coordination Document (DOCD).

SUMMARY: Notice is hereby given that Kerr-McGee Corporation has submitted a DOCD describing the activities it proposes to conduct on Lease OCS–G 5191, Block 114, Vermilion Area, offshore Louisiana. Proposed plans for the above area provide for the development and production of hydrocarbons with support activities to be conducted from an onshore base located at Cameron, Louisiana.

DATE: The subject DOCD was deemed submitted on March 20, 1985.

ADDRESSES: A copy of the subject DOCD is available for public review at the Office of the Regional Director, Gulf of Mexico OCS Region, Minerals Management Service, 3301 North Causeway Blvd., Room 147, Metairie, Louisiana (Office Hours: 9 a.m. to 3:30 p.m., Monday through Friday).

FOR FURTHER INFORMATION CONTACT: Ms. Angie Gobert; Minerals Management Service; Gulf of Mexico OCS Region; Rules and Production; Plans, Platform and Pipeline Section; Exploration/Development Plans Unit; Phone (504) 838–0876.

SUPPLEMENTARY INFORMATION: The purpose of this Notice is to inform the public, pursuant to section 25 of the OCS Lands Act Amendments of 1978, that the Minerals Management Service is considering approval of the DOCD and that it is available for public review.

Revised rules governing practices and procedures under which the Minerals Management Service makes information contained in DOCDs available to affected states, executives of affected local governments, and other interested parties became effective December 13, 1979 (44 FR 53685). Those practices and procedures are set out in revised § 250.34 of Title 30 of the CFR.

Dated: March 20, 1985.

John L. Rankin,

Regional Director, Gulf of Mexico OCS Region.

[FR Doc. 85–7386 Filed 3–27–85; 8:45 am]

BILLING CODE 4310–MR–M

Outer Continental Shelf; Development Operations Coordination Document; ODECO Oil and Gas Co.

AGENCY: Minerals Management Service, Interior.

ACTION: Notice of the Receipt of a Proposed Development Operations Coordination Document (DOCD).

SUMMARY: Notice is hereby given that ODECO Oil and Gas Company has submitted a DOCD describing the activities it proposes to conduct on Lease OCS 073, Block 19, South Pelto Area, offshore Louisiana. Proposed plans for the above area provide for the development and production of hydrocarbons with support activities to be conducted from an onshore base located at Dulac, Louisiana.

DATE: The subject DOCD was deemed submitted on March 21, 1985.

ADDRESSES: A copy of the subject DOCD is available for public review at the Office of the Regional Director, Gulf of Mexico OCS Region, Minerals Management Service, 3301 North Causeway Blvd., Room 147, Metairie, Louisiana (Office Hours: 9 a.m. to 3:30 p.m., Monday through Friday).

FOR FURTHER INFORMATION CONTACT: Ms. Angie Gobert; Minerals Management Service; Gulf of Mexico OCS Region; Rules and Production; Plans, Platform and Pipeline Section; Exploration/Development Plans Unit; Phone (504) 838–0876.

SUPPLEMENTARY INFORMATION: The purpose of this Notice is to inform the public, pursuant to section 25 of the OCS Lands Act Amendments of 1978, that the Minerals Management Service is considering approval of the DOCD and that it is available for public review.

Revised rules governing practices and procedures under which the Minerals Management Service makes information contained in DOCDs available to affected states, executives of affected local governments, and other interested parties became December 13, 1979 (44 FR 53685). Those practices and procedures are set out in revised § 250.34 of Title 30 of the CFR.

Dated: March 21, 1985.

John L. Rankin,

Regional Director, Gulf of Mexico OCS Region.

[FR Doc. 85–7387 Filed 3–27–85; 8:45 am]

BILLING CODE 4310–MR–M

Outer Continental Shelf; Development Operations Coordination Document; Texaco, USA

AGENCY: Minerals Management Service, Interior.

ACTION: Notice of the Receipt of a Proposed Development Operations Coordination Document (DOCD).

SUMMARY: Notice is hereby given that Texaco USA has submitted a DOCD describing the activities it proposes to conduct on Leases OCS–G 0972 and 0974, Blocks 265 and 278, East Cameron Area, offshore Louisiana. Proposed plans for the above area provide for the development and production of hydrocarbons with support activities to be conducted from onshore bases located at Cameron and Morgan City, Louisiana.

DATE: The subject DOCD was deemed submitted on March 21, 1985. Comments must be received within 15 days of the date of this Notice or 15 days after the Coastal Management Section receives a copy of the DOCD from the Minerals Management Service.

ADDRESSES: A copy of the subject DOCD is available for public review at the Office of the Regional Director, Gulf of Mexico OCS Region, Minerals Management Service, 3301 North Causeway Blvd., Room 147, Metairie, Louisiana (Office Hours: 9 a.m. to 3:30 p.m., Monday through Friday). A copy of the DOCD and the accompanying Consistency Certification are also available for public review at the Coastal Management Section Office located on the 10th Floor of the State Lands and Natural Resources Building, 625 North 4th Street, Baton Rouge, Louisiana (Office Hours: 8 a.m. to 4:30 p.m., Monday through Friday). The public may submit comments to the Coastal Management Section, *Attention OCS Plans*, Post Office Box 44396, Baton Rouge, Louisiana 70805.

FOR FURTHER INFORMATION CONTACT: Mr. Michael J. Tolbert; Minerals Management Service; Gulf of Mexico OCS Region; Rules and Production; Plans, Platform and Pipeline Section; Exploration/Development Plans Unit; Phone (504) 838–0875.

SUPPLEMENTARY INFORMATION: The purpose of this Notice is to inform the public, pursuant to section 25 of the OCS Lands Act Amendments of 1978, that the Minerals Management Service is considering approval of the DOCD and that it is available for public review. Additionally, this Notice is to inform the public, pursuant to § 930.61 of Title 15 of the CFR, that the Coastal Management

Section/Louisiana Department of Natural Resources is reviewing the DOCD for consistency with the Louisiana Coastal Resources Program.

Revised rules governing practices and procedures under which the Minerals Management Service makes information contained in DOCDs available to affected states, executives of affected local governments, and other interested parties became effective December 13, 1979 (44 FR 53685). Those practices and procedures are set out in revised § 250.34 of Title 30 of the CFR.

Dated: March 21, 1985.

John L. Rankin,

Regional Director, Gulf of Mexico OCS Region.

[FR Doc. 85-7384 Filed 3-27-85; 8:45 am]

BILLING CODE 4310-MR-M

Outer Continental Shelf; Development Operations Coordination Document; Conoco Inc.

AGENCY: Minerals Management Service, Interior.

ACTION: Notice of the Receipt of a Proposed Development Operations Coordination Document (DOCD).

SUMMARY: Notice is hereby given that Conoco Inc. has submitted a DOCD describing the activities it proposes to conduct on Lease OCS–G 4254, Block 305, Ewing Bank Area, offshore Louisiana. Proposed plans for the above area provide for the development and production of hydrocarbons with support activities to be conducted from onshore bases located at Grand Isle and Fourchon, Louisiana.

DATE: The subject DOCD was deemed submitted on March 20, 1985. Comments must be received within 15 days of the date of this Notice or 15 days after the Coastal Management Section receives a copy of the DOCD from the Minerals Management Service.

ADDRESSES: A copy of the subject DOCD is available for public review at the Office of the Regional Director, Gulf of Mexico OCS Region, Minerals Management Service, 3301 North Causeway Blvd., Room 147, Metairie, Louisiana (Office Hours: 9 a.m. to 3:30 p.m., Monday through Friday). A copy of the DOCD and the accompanying Consistency Certification are also available for public review at the Coastal Management Section Office located on the 10th Floor of the State Lands and Natural Resources Building, 625 North 4th Street, Baton Rouge, Louisiana (Office Hours: 8 a.m. to 4:30 p.m., Monday through Friday). The public may submit comments to the Coastal Management Section, *Attention OCS Plans*, Post Office Box 44396, Baton Rouge, Louisiana 70805.

FOR FURTHER INFORMATION CONTACT: Mr. Michael J. Tolbert; Minerals Management Service; Gulf of Mexico OCS Region; Rules and Production; Plans, Platform and Pipeline Section; Exploration/Development Plans Unit; Phone (504) 838–0875.

SUPPLEMENTARY INFORMATION: The purpose of this Notice is to inform the public, pursuant to sec. 25 of the OCS Lands Amendments of 1978, that the Minerals Management Service is considering approval of the DOCD and that it is available for public review. Additionally, this Notice is to inform the public, pursuant to Section 930.61 of Title 15 of the CFR, that the Coastal Management Section/Louisiana Department of Natural Resources is reviewing the DOCD for consistency with the Louisiana Coastal Resources Program.

Revised rules governing practices and procedures under which the Minerals Management Services makes information contained in DOCDs available to affected states, executives of affected local governments, and other interested parties became effective December 13, 1979, (44 FR 53685). Those practices and procedures are set out in revised § 250.34 of Title 30 of the CFR.

Dated: March 20, 1985.

John L. Rankin,

Regional Director, Gulf of Mexico OCS Region.

[FR Doc. 85-7419 Filed 3-27-85; 8:45 am]

BILLING CODE 4310-MR-M

Outer Continental Shelf; Development Operations Coordination Document; Kerr-McGee Corp.

AGENCY: Minerals Management Service, Interior.

ACTION: Notice of the receipt of a proposed development operations coordination document (DOCD).

SUMMARY: Notice is hereby given that Kerr-McGee Corporation has submitted a DOCD describing the activities it proposes to conduct on Lease OCS–G 3798, Block 102, Main Pass Area, offshore Louisiana. Proposed plans for the above area provide for the development and production of hydrocarbons with support activities to be conducted from an onshore base located at Hopedale, Louisiana.

DATE: The subject DOCD was deemed submitted on March 20, 1985.

ADDRESSES: A copy of the subject DOCD is available for public review at the Office of the Regional Director, Gulf of Mexico OCS Region, Minerals Management Service, 3301 North Causeway Blvd., Room 147, Metairie, Louisiana (Office Hours: 9 a.m. to 3:30 p.m., Monday through Friday).

FOR FURTHER INFORMATION CONTACT: Ms. Angie D. Gobert; Minerals Management Service; Gulf of Mexico OCS Region; Rules and Production; Plans, Platform and Pipeline Section; Exploration/Development Plans Unit; Phone (504) 838–0876.

SUPPLEMENTARY INFORMATION: The purpose of this Notice is to inform the public, pursuant to sec. 25 of the OCS Lands Act Amendments of 1978, that the Minerals Management Service is considering approval of the DOCD and that it is available for public review.

Revised rules governing practices and procedures under which the Minerals Management Service makes information contained in DOCDs available to affected states, executives of affected local governments, and other interested parties became effective December 13, 1979 (44 FR 53685). Those practices and procedures are set out in revised § 250.34 of Title 30 of the CFR.

Dated: March 20, 1985.

John L. Rankin,

Regional Director, Gulf of Mexico OCS Region.

[FR Doc. 85-7420 Filed 3-27-85; 8:45 am]

BILLING CODE 4310-MR-M

National Park Service

Availability of Finding of No Significant Impact for the Draft Environmental Assessment; Hutchinson, Moore, and Potter Counties, TX

Pursuant to the National Environmental Policy Act of 1969, and Title 40 of the Code of Federal Regulations, the National Park Service has prepared a Finding of No Significant Impact for the Draft Environmental Assessment for the Development Concept Plan/Road Classification Plan, Lake Meredith Recreation Area; and the General Management Plan Amendment, Alibates Flint Quarries National Monument, Hutchinson, Moore and Potter Counties, Texas.

Based on public review comments received and on management decisions, the proposal has been selected as the basis for the final plan. The proposal best provides effective management and development strategies for the areas.

It is the conclusion of the National Park Service that the proposal is not a

major Federal action that will significantly affect the human environment. Therefore, an environmental impact statement will not be prepared. The National Park Service will proceed with development of a final plan.

Copies of the Finding of No Significant Impact are available from Lake Meredith Recreation Area/Alibates Flint Quarries National Monument, Post Office Box 1438, Fritch, Texas 79036; and the Southwest Regional Office, National Park Service, Post Office Box 728, Santa Fe, New Mexico 87501, and will be sent upon request.

Dated: March 15, 1985.

Robert Kerr,

Regional Director, Southwest Region.

[FR Doc. 85-7432 Filed 3-27-85; 8:45 am]

BILLING CODE 4310-70-M

Cuyahoga Valley National Recreation Area Advisory Commission; Meeting

Notice is hereby given, in accordance with the Federal Advisory Committee Act, 86 Stat. 770, 5 U.S.C. App. 1, as amended by the Act of September 13, 1976, 90 Stat. 1247, that a meeting of the Cuyahoga Valley National Recreation Area Advisory Commission will be held beginning at 8:30 p.m. (EST), on Thursday, April 25, 1985, at the Happy Days Visitor Center located on West Streetsboro Road, 1 mile west of Route 8 in Peninsula, Ohio.

The Commission was established by the Act of December 27, 1974, 88 Stat. 1788, 16 U.S.C. 460ff–4, to meet and consult with the Secretary of the Interior on matters relating to the administration and development of the Cuyahoga Valley National Recreation Area.

The members of the Commission are as follows:

Mrs. Tommie P. Patty (Chairperson)
Mr. John Craig
Mrs. William Hutchison
Mr. James S. Jackson
Mrs. George Klein
Mr. Stanley Mottershead
Mr. C. W. Eliot Paine
Mr. Melvin J. Rebholz
Mr. F. Eugene Smith
Ms. R. Robbie Stillman
Dr. Robert W. Teater

The meeting will consist of a general update on the progress of development projects, planning projects, and issues related to natural and cultural resources management in the CVNRA.

The meeting will be open to the public. Interested persons may submit written statements. Such statements should be submitted to the official listed below prior to the meeting.

Further information concerning this meeting may be obtained from Lewis S. Albert, Superintendent, Cuyahoga Valley National Recreation Area, 15610 Vaughn Road, Brecksville, Ohio, 44141, telephone (216) 526–5256. Minutes of the meeting will be available for public inspection 3 weeks after the meeting, at the office of Cuyahoga Valley National Recreation Area, located at 15610 Vaughn Road, Brecksville, Ohio 44141.

Dated: March 21, 1985.

Randall R. Pope,

Acting Regional Director, Midwest Region.

[FR Doc. 85-7431 Filed 3-27-85; 8:45 am]

BILLING CODE 4310-70-M

Delta Region Preservation Commission; Meeting

Notice is hereby given in accordance with the Federal Advisory Committee Act that a meeting of the Delta Region Preservation Commission will be held at 11:00 a.m., c.s.t., on May 10, 1985, at the City Council Chambers, Eunice City Hall, 300 South Second Street, Eunice, Louisiana.

The Delta Region Preservation Commission was established pursuant to Pub. L. 95–265, section 907(a) to advise the Secretary of the Interior in the selection of sites for inclusion in Jean Lafitte National Historical Park, and in the development and implementation of a general management plan and of a comprehensive interpretive program of the natural, historic, and cultural resources of the Region.

The matters to be discussed at this meeting include:

—Status of Construction Programs
—Co-operative Agreements
—Land Acquisition Program

The meeting will be open to the public. However, facilities and space for accommodating members of the public are limited, and persons will be accommodated on a first-come, first-serve basis. Any member of the public may file a written statement concerning the matters to be discussed with the Superintendent, Jean Lafitte National Historical Park.

Persons wishing further information concerning this meeting, or who wish to submit written statements may contact James Isenogle, Superintendent, Jean Lafitte National Historical Park, U.S. Customs House, 423 Canal Street, Room 206, New Orleans, Louisiana 70130, telephone 504/589–3882. Minutes of the meeting will be available for public inspection four weeks after the meeting at the office of Jean Lafitte National Historical Park.

Dated: March 20, 1985.

Robert I. Kerr,

Regional Director, Southwest Region.

[FR Doc. 85-7454 Filed 3-27-85; 8:45 am]

BILLING CODE 4310-70-M

INTERNATIONAL TRADE COMMISSION

[Invs. 104-TAA-24 and 104-TAA-25]

Termination of Countervailing Duty Investigations Concerning Oleoresins From Spain and India

AGENCY: International Trade Commission.

ACTION: On March 13, 1985, the Commission published a notice terminating countervailing duty investigations under section 104(b)(1) of the Trade Agreements Act of 1979 with regard to oleoresins from Spain and India (50 FR 10118, March 13, 1985). That notice did not identify the case numbers assigned to those investigations. They were Nos. 104–TAA–24 (oleoresins from Spain) and 104–TAA–25 (oleoresins from India).

EFFECTIVE DATE: March 5, 1985.

FOR FURTHER INFORMATION CONTACT: Mr. Ted Briggs, Office of Investigations, telephone number (202) 523–4612.

Issued: March 22, 1985.

Kenneth R. Mason,

Secretary.

[FR Doc. 85-7324 Filed 3-27-85; 8:45 am]

BILLING CODE 7020-02-M

INTERSTATE COMMERCE COMMISSION

[Docket No. AB–132 (Sub-1X)]

Rail Carriers; The Akron & Barberton Belt Railroad Co.; Abandonment—in Summit County, OH; Exemption

The Akron and Barberton Belt Railroad Company (ABB) filed a notice of exemption under 49 CFR Part 1152, Subpart F—*Exempt Abandonments.* The line involved is known as the Fairlawn Branch, extending from valuation station 75+26 valuation station 185+58 at Akron, Summit County, OH.

ABB has certified (1) that no local traffic has moved over the line for at least 2 years and that any overhead traffic on the line can be rerouted over other lines, and (2) that no formal complaint filed by a user of rail service on the line (or by a State or local governmental entity acting on behalf of such user) regarding cessation of servcie over the line either is pending with the

Commission or has been decided in favor of the complainant within the 2-year period. The Public Service Commission (or equivalent agency) in Ohio has been notified in writing at least 10 days prior to the filing of the notice. See *Exemption of Out-of Service Rail Lines*, 366 I.C.C. 885 (1983).

As a condition to use of this exemption, any employees affected by the abandonment shall be protected pursuant to *Oregon Short Line R. Co.—Abandonment—Goshen*, 360 I.C.C. 91 (1979).

The exemption will be effective on April 26, 1985, (unless stayed pending reconsideration). Petitions to stay the effective date of the exemption must be filed by April 8, 1985, and petition for reconsideration, including environmental, energy and public use concerns, must be filed by April 16, 1985, with: Office of the Secretary, Case Control Branch, Interstate Commerce Commission, Washington, D.C. 20423.

A copy of any petition filed with the Commission must be sent to ABB's representative: Rene' J. Gunning, Suite 2204, 100 North Charles Street, Baltimore, MD 21201.

If the notice of exemption contains false or misleading information, the use of the exemption is void *ab initio*.

A notice to the parties will be issued if use of the exemption is conditioned upon environmental or public use conditions.

Decided: March 21, 1985.

By the Commission, Heber P. Hardy, Director, Office of Proceedings.

James H. Bayne,

Secretary.

[FR Doc. 85-7334 Filed 3-27-85; 8:45 am]

BILLING CODE 7035-01-M

DEPARTMENT OF JUSTICE

Lodging of Consent Order Pursuant to Clean Air Act; City of Painesville, OH

In accordance with Departmental policy, 28 CFR 50.7, notice is hereby given that a proposed Consent Order in *United States* v. *City of Painesville*, Civil Action No. C-76-324, was lodged with the United States District Court for the Northern District of Ohio. The proposed Consent Order concerns the permanent deration of unit No. 5 of the Painesville Municipal Light Plant below the 250 MMBTU heat input rate specified for application of Clean Air Act New Source Performance Standards set forth at 40 CFR Part 60.

The Department of Justice will receive for a period of thirty (30) days from the date of this publication comments relating to the proposed Consent Decree. Comments should be addressed to the Assistant Attorney General of the Land and Natural Resources Division, Department of Justice, Washington, D.C. 20530, and should refer to *United States* v. *City of Painesville*, D.J. reference #90-5-2-2-5.

The proposed Consent Order may be examined at the office of the United States Attorney, Suite 500, 1404 East Ninth Street, Cleveland, Ohio 44114, at the Region V office of the Environmental Protection Agency, 230 South Dearborn Street, Chicago, Illinois and at the Environmental Enforcement Section, Land and Natural Resources Division of the Department of Justice, Room 1515, 9th Street and Pennsylvania Avenue NW., Washington, D.C. 20530. A copy of the proposed Consent Decree may be obtained in person or by mail from the Environmental Enforcement Section, Land and Natural Resources Division of the Department of Justice. In requesting a copy, please enclose a check in the amount of $2.00 payable to the Treasurer of the United States.

F. Henry Habicht II,

Assistant Attorney General, Land and Natural Resources Division.

[FR Doc. 85-7443 Filed 3-27-85; 8:45 am]

BILLING CODE 4410-01-M

Lodging of Final Judgment on Consent Pursuant to Clean Air Act; Supreme Equipment and Systems Corp.

In accordance with Departmental policy, 28 CFR 50.7, notice is hereby given that on March 7, 1985 a proposed Final Judgment (on Consent) in *United States* v. *Supreme Equipment and Systems Corp.*, Civil Action No. CV 83-0437, was lodged with the United States District Court for the Eastern District of New York. The proposed Final Judgment (on Consent) concerns violations of the Clean Air Act and the New York State Implementation Plan by emission of volatile organic compounds. The complaint alleged that Supreme violated the New York State Implementation Plan, Part 228, by failing to submit a compliance plan by January 1, 1980 for a Brooklyn, New York manufacturing facility, and by failing to achieve compliance with the applicable emission limitation, *i.e.*, 3.0 pounds of organic solvents (minus water) per gallon of coating at application, by July 1, 1980. Subsequent to the filing of the complaint, it was determined that Supreme operated two facilities in Brooklyn, New York that were in violation of the State Implementation Plan. The proposed Final Judgment (on Consent) requires Supreme to have come into compliance by December 24, 1984 at each facility. Each facility is covered under a plan requiring, on an average daily basis, emissions less than or equal to the 3.0 pounds per gallon limitation. The proposed Final Judgment also establishes a stipulated penalty schedule for each day thereafter that Supreme fails to achieve compliance at either plant. In addition, Supreme would be required to pay civil penalties of $24,000.00 for its prior violations.

The Department of Justice will receive for a period of thirty (30) days from the date of this publication comments relating to the proposed Final Judgment (on Consent). Comments should be addressed to the Assistant Attorney General of the Land and Natural Resources Division, Department of Justice, Washington, DC 20530, and should refer to *United States* v. *Supreme Equipment and Systems Corp.* DJ Ref. 90-5-2-1-574.

The proposed Final Judgment (on Consent) may be examined at the office of the United States Attorney, Eastern District of New York, Federal Building, 225 Cadman Plaza East, Brooklyn, New York 11201 and at the Region II Office of the Environmental Protection Agency, 26 Federal Plaza, New York, New York 10278. Copies of the Final Judgment (on Consent) may be examined at the Environmental Enforcement Section, Land and Natural Resources Division of the Department of Justice, Room 1515, Ninth Street and Pennsylvania Avenue NW., Washington, DC 20530. A copy of the proposed Final Judgment (on Consent) may be obtained in person or by mail from the Environmental Enforcement Section, Land and Natural Resources Division of the Department of Justice. In requesting a copy, please enclose a check in the amount of $1.80 (10 cents per page reproduction cost) payable to the Treasurer of the United States.

F. Henry Habicht II,

Assistant Attorney General, Land and Natural Resources Division.

[FR Doc. 85-7444 Filed 3-27-85; 8:45 am]

BILLING CODE 4410-01-M

NUCLEAR REGULATORY COMMISSION

[Docket No. 50-341]

Detroit Edison Co. (Fermi-2); Issuance of a Director's Decision Under 10 CFR 2.206

Notice is hereby given that the Director, Office of Nuclear Reactor Regulation, has issued a decision pursuant to 10 CFR 2.206 concerning a

petition filed by Jennifer E. Puntenney on behalf of the Safe Energy Coalition of Michigan. The Petitioner requested that the Commission take action to ensure adequate resolution of certain alleged deficiencies in the Fermi-2 facility before authorizing fuel load and low-power operation of the plant. The alleged deficiencies concern the adequacy of computer systems as-built electrical systems and instrumentation, the radwaste processing system, fire protection systems, and the containment design.

Upon consideration of the Petitioner's request, the staff has determined that adequate measures have been taken to resolve the issues raised by the Petitioner or that remaining corrective actions need not be completed prior to fuel-load and low-power operation. The reasons for this decision are more fully explained in a "Director's Decision under 10 CFR 2.206" (DD-85-4) issued today which is available for public inspection in the Commission's Public Document Room at 1717 H Street, NW., Washington, D.C. 20555 and in the local public document room at the Monroe County Library, Reference Department, 3700 South Custer Road, Monore, Michigan 41861.

A copy of the decision will be filed with the Secretary for Commission review in accordance with 10 CFR 2.206(c). As provided in 10 CFR 2.206(c), the decision will become the final action of the Commission 25 days after issuance, unless the Commission, on its own motion, takes review of the decision within that time.

Dated at Bethesda, Maryland, this 20th day of March 1985.

For the Nuclear Regulatory Commission

Harold R. Denton,

Director, Office of Nuclear Reactor Regulation.

[FR Doc. 85-7435 Filed 3-27-85; 8:45 am]

BILLING CODE 7590-01-M

[Dockets Nos. 50-269, 50-270, and 50-287]

Duke Power Co.; Environmental Assessment and Finding of No Significant Impact

The U.S. Nuclear Regulatory Commission (the Commission or staff) is considering approval of the storage and recycle of certain very low-level radioactive waste proposed by Duke Power Company (the licensee) for the Oconee Nuclear Station, Units 1, 2 and 3, located in Oconee County, South Carolina. The licensee's proposal also included disposal by burial of some of the waste. However, such disposal in this case is subject to approval by the State of South Carolina under the Agreement entered into pursuant to section 274b of the Atomic Energy Act of 1954, as amended. Under 10 CFR 150.15(a) the NRC retains jurisdiction only as to the storage and handling of the waste at the licensee's site.

Environmental Assessment

Identification of Proposed Action: The proposed action by the NRC would approve the storage and eventual recycling of the shells from the heaters contaminated at levels below reference values in IE Circular No. 81-07, "Control of Radioactively Contaminated Material" (May 14, 1981, USNRC). The proposed action is in accordance with the licensee's request by letter dated September 18, 1984, as supplemented on November 28, 1984. The feedwater heaters are from the secondary systems of Oconee Units 1 and 2. The heater sections will be disposed of in seven-foot to twelve-foot deep trenches and covered with a thickness of three feet of uncontaminated soil. As noted above, this latter activity is subject to approval by the State.

The Need for the Proposed Action: Five feedwater heaters were replaced during the Oconee outage between June and October 1983. Three feedwater heaters were from Unit 1 and two feedwater heaters were from Unit 2. The feedwater system is designed to provide adequate feedwater flow at the required pressure and temperature to the steam generators for all unit operating conditions. The closed feedwater cycle condenses the steam and the treated feedwater is returned to the steam generators. The shells of the feedwater heaters are fabricated from steel and attached at one end to the stationary tube sheet. The feedwater heater tube bundles are composed of a large number of U-tubes, roller expanded at each end into a single tube. The physical dimension of the feedwater heater is approximately 35 feet long and 5 feet in diameter. The licensee plans to cut the feedwater heaters to reduce their total volume prior to disposal.

The reason for the licensee's proposed disposal plan is to dispose of the feedwater heaters at a substantially lower cost than the offsite disposal alternative discussed elsewhere in this report.

Environmental Impacts of the Proposed Action: Duke Power plans to cut the feedwater heaters to reduce their total volume prior to disposal. The parts of the heaters will be segregated into two categories: (1) Parts (i.e., heater shells) in which the detected levels of surface contamination are below reference values in IE Circular No. 81-07; and (2) more highly contaminated parts (i.e., tube bundles). The principal radionuclides detected on the more highly contaminated surfaces of the heaters and their concentrations (pCi/gm) at the time of sampling are as follows: Manganese-58 (Mn-58), 0.35; Cobalt-60 (Co-60), 10.1; Cesium-134 (Cs-134), 0.52; and Cesium-137 (Cs-137), 1.9. The total volume of the feedwater heaters is estimated to be about 10,500 ft^3 before cutting and segregation, and about 4,500 ft^3 after cutting. The total weight of the heaters is about 260 tons of which 160 tons would be disposed in trenches, and about 100 tons would be stored and eventually recycled. The total activity of the five heaters is conservatively estimated to be about 6.5 mCi with Co-60 and Cs-137 accounting for the largest fractions (i.e., 0.79 and 0.15, respectively) of the total activity. The total activity and volume of the five heaters represent about 0.0002% and 8.2%, respectively, of the average annual total activity and volume of solid wastes generated at the Oconee station for the years 1976 through 1980 (see Table 1 below).

TABLE 1.—RADIOACTIVELY CONTAMINATED SOLID WASTES GENERATED AT OCONEE NUCLEAR STATIONS *

Year	Volume, ft	Activity, Ci
1976	78,400	783
1977	37,800	7,370
1978	55,800	5,930
1979	57,600	2,590
1980	46,600	2,910
Average	55,200	3,920

* Values were derived from Table 12 of Tichler, J., and Benkowitz, C., "Radioactive Materials Released from Nuclear Power Plants, Annual Report 1980", NUREG/CR-2907, Volume 1, January 1983.

A. Disposal of Sections of Heaters

The NRC staff has reviewed the potential pathways for exposure to members of the general public from the radionuclides in the disposed parts of the heaters (see Table 2 below).

TABLE 2.—ESTIMATED DOSES TO AN INDIVIDUAL STANDING ABOVE THE FEEDWATER HEATERS

Nuclide	Average concentration, pCi/gm*	Dose rate, mrem/hr*		Annual dose, mrem*
		Uncovered	Covered	
Mn-54	0.35	3.1 E-04	5.3 E-08	0.001
Co-60	10.1	2.7 E-02	4.6 E-06	0.009
Cs-134	0.52	8.8 E-04	1.5 E-07	0.001
Cs-137	1.86	1.1 E-03	1.9 E-07	0.001
Total		2.9 E-02	4.9 E-06	0.01

* From p. 3 of enclosure to letter from H. B. Tucker to H. R. Denton, dated November 28, 1984.

* The dose rate was calculated assuming a semi-infinite source. The following effective energies (in units of Mev/dis) were derived from the *Radiological Health Handbook*, Jan. 1970: Mn-54, 0.84, 0.84, Co-60, 2.5; Cs-134, 1.6; and Cs-

137, 0.56. The dose rate is reduced by a factor of about 5800 based on an approximate attenuation coefficient of 0.13/cm for 3 of cover soil, and a build-up factor of 25 (Jaeger et al, "Engineering Compendium on Radiation Shielding", Volume 1, "Shielding Fundamentals and Methods", 1968).

* Based on an occupancy time of 2000 hours/yr.

These potential pathways include: (1) External exposure from standing on the ground above the disposal site; (2) internal exposure from ingestion of food grown on the disposal site; (3) internal exposure from inhalation of resuspended radionuclides; and (4) internal exposure from drinking water. The dose to a member of the public from the most likely exposure pathway (i.e., external exposure) is conservatively estimated to be 0.01 mrem/yr to the total body. Doses to a member of the public from ingesting food grown on the disposal site and from inhalation of resuspended radio-nuclides are estimated to be minimal due to the proposed soil covering.

Doses from drinking contaminated water are estimated to be minimal due to the relatively low-level concentrations of radionclides in the heaters, and the expected retention of radionclides in the soil if the radionclides migrated from the heaters. The estimated doses are a small fraction of one year's exposure to natural background radiation (about 100 millirems for the State of South Carolina (Oakley, D. T., "Natural Radiation Exposure in the United States, ORP/SID 72-1, June 1972).

Duke Power states that exposure of workers during the cutting and segregation of the heaters will be in accordance with the station Health Physics Procedures and station directives. Workers will be properly dressed during the disposal procedures. The doses to workers from external exposure are estimated to be small compared with the average annual dose per nuclear plant worker of about 0.8 rem (NUREG-0713, Brooks, B. G., "Occupational Radiation Exposure at Commercial Nuclear Power Reactors 1981", Volume 3, November 1982).

B. Storage and Recycling of Scrap

The licensee proposes to store and eventually recycle scrap material from the heaters (consisting primarily of the shells of the heaters) contaminaed at levels below reference values in IE Circular No. 81-07 entitled "Control of Radioactively Contaminated Material." IE Circular 81-07 addresses the practicality of surveying contaminated surfaces, detection limits and the potential radiation doses from materials uniformly contaminated at the detection limits. The detection limits indicated in IE Circular 81-07 are beta-gamma activity of 5000 dpm/100 cm^2 total contamination, and 1000 dpm/100 cm^2 removable beta-gamma contamination. The guidance of IE Circular 81-07 further specifies that if alpha contamination is suspected, appropriate surveys and/or laboratory measurements capable of detecting 100 dpm/100 cm^2 fixed and 20 dpm/100 cm^2 removable alpha activity should be performed.

The staff has estimated potential doses to members of the general public for exposure to the recycled scrap in the following matter. The licensee reports that Co-60 accounts for about 80% of the total concentrations of radionclides detected in the more highly contaminated surfaces of the heaters. O'Donnell et al ("Potential Radiation Dose to Man from Recycle of Metals Reclaimed from a Decommissioned Nuclear Power Plant," NUREG/CR-0134, ORNL/NUREG/TM-215, December 1978), have estimated the potential doses to individuals and the population from exposure to 100 tons of recycled metal containing 10 pCi/g of Co-60. The maximum dose to an individual and the population from six recycling pathways investigated was estimated to be 14 mrems and 1.1 person/rems, respectively, during the first 30 years after recovery and recycling of the metal (O'Donnell et al (1978)). The highest annual dose is estimated to be about 2 mrems to an individual and 0.15 person-rems to the population. The average concentrations of radionuclides in the segregated shells of the heaters should be much less than 10 pCi/gm since only surface contamination is of concern and the licensee has committed to cleaning the heater shells prior to recycling. The highest annual dose is estimated to be much less than 2 mrems to an individual and 0.15 person-rem to the population from the proposed recycling of the cleaned heater shells.

Based on the staff's review of the proposed disposal of sections of five feedwater heaters, the staff concludes that:

(1) The licensee has taken appropriate steps to ensure that occupational dose will be maintained as a low as is reasonably achievable and within the limits of 10 CFR Part 20; and

(2) The estimated doses to the general public from disposal of the heaters and from recycling scrap metal from the heaters are:

(a) Well below regulatory limits, and

(b) Neglible in comparison to the dose members of the public receive each year from exposure to natural background radiation.

Alternatives to the Proposed Action: An alternative to on-site burial would be to ship and dispose the heaters at Barnwell . The overall benefit from the proposed method for the disposal of these five slightly contaminated feedwater heaters will be a cost saving of approximately $160,000 and a saving of burial site space of approximately 4525 Ft^3, which can be used for other radwaste.

Alternative Use of Resources: The principal action involving use of resources not previously considered in connection with the Final Environmental Statement for Operation of Oconee Nuclear Station, Units 1, 2 and 3, is a minor change in land use associated with operating support of the facility. As noted above, this change in land usage is insignificant. As further noted above, this change in land usage is insignificant. As further noted above, the change also involves a minor addition to the operational radiological monitoring and redordkeeping program during plant operation.

Agencies and Persons Consulted: The Staff reviewed the licensee's request and has not consulted other agencies or persons.

Finding of No Significant Impact

The Commission has determined not to prepare an environmental impact statement for the proposed action.

Based upon this environmental assessment, the Commission concludes that the proposed action will not have a significant effect on the quality of the human environment.

For further details with respect to this action, see the request for approval dated September 18, 1984, with its November 28, 1984 supplement, which is available for public inspection at the Commission's Public Document Room, 1717 H Street, NW., Washington, D.C., and at the Oconee County Library, 501 West Southbroad Street, Walhalla, South Carolina.

Dated at Bethesda, Maryland, this 22nd day of March 1985.

For the Nuclear Regulatory Commission.

Gus C. Lainas,

Assistant Director, for Operating Reactors Division of Licensing.

[FR Doc. 85-7433 Filed 3-27-85; 8:45 am]

BILLING CODE 7590-01-M

[Docket No. 50-244]

Rochester Gas and Electric Corp. (R. E. Ginna Nuclear Power Plant); Exemption

I

Rochester Gas and Electric Corporation (the licensee) is the holder of Facility Operating License No. DPR-18 which authorizes operation of R. E. Ginna Nuclear Power Plant (the facility) located in Wayne County, New York. This license provides, among other things, that it is subject to all rules, regulations and Orders of the Commission now or hereafter in effect.

II

On November 19, 1980, the Commission published a revised Section 10 CFR 50.48 and a new Appendix R to 10 CFR 50 regarding fire protection features of nuclear power plants (45 FR 76602). The revised Section 50.48 and Appendix R became effective on February 17, 1981. Section III of Appendix R contains fifteen subsections, lettered A through O, each of which specifies requirements for a particular aspect of the fire protection features at a nuclear power plant. By letter dated October 4, 1984 and supplemented on January 16, 1985, the licensee requested twelve exemptions from the requirements of Section III.G of Appendix R.

Section III.G.2 of Appendix R requires that one train of cables and equipment necessary to achieve and maintain safe shutdown be maintained free of fire damage by one of the following means: (a) Separation of cables and equipment and associated non-safety circuits of redundant trains by a fire barrier having a 3-hour rating. Structural steel forming a part of or supporting such fire barriers shall be protected to provide fire resistance equivalent to that required of the barrier; (b) Separation of cables and equipment and associated non-safety circuits of redundant trains by a horizontal distance of more than 20 feet with no intervening combustibles or fire hazards. In addition, fire detectors and an automatic fire suppression system shall be installed in the fire area; (c) Enclosure of cable and equipment and associated non-safety circuits of one redundant train in a fire barrier having a 1-hour rating. In addition, fire detectors and an automatic fire suppression system shall be installed in the fire area.

If these conditions are not met, Section III.G.3 requires an alternative shutdown capability independent of the fire area of concern. It also requires that a fixed suppression system be installed in the fire area of concern if it contains a large concentration of cables or other combustibles. These alternative requirements are not deemed to be equivalent; however, they provide equivalent protection for those configurations in which they are accepted.

III

Refueling Water Storage Tank (RWST)

The licensee requested an exemption from the technical requirements of Section III.G.2 to the extent that it requires a continuous fire-rated barrier between redundant shutdown systems in the Auxiliary Building Fire Areas ABBM and ABI. The RWST extends through the concrete floor/ceiling that provides the common boundary between Fire Area ABBM and ABI leaving a 6-inch gap around the circumference of the tank. An 8-foot concrete block wall partially circles the gap on the upper side of the barrier.

The only shutdown-related systems that are vulnerable to fire damage in these two fire areas are emergency switchgear bus 14, which is located in Fire Area ABI, and emergency switchgear bus 16, located in Fire Area ABBM. Each bus is approximately 8-feet high and is located about 7 feet from the RWST gap at its closest point.

The fire loading within area ABBM consists of cable insulation, charcoal and transient combustibles. The fire loading within area ABI is of no concern for this exemption because fire would not propagate downward through the gap. Existing fire protection includes area-wide fire detection systems, preaction-type sprinkler systems, manual hose stations and portable fire extinguishers.

The technical requirements of Appendix R are not met because the redundant shutdown system on evaluations of interest in the Auxiliary Building are not separated and protected as delineated in Sections III.G.2.a, b, or c.

The license justifies the exemption on the basis of the low fire loading, existing fire protection and the physical configuration of fire areas.

Based on our evaluation, we conclude that the licensee's alternate fire protection configuration will achieve an acceptable level of safety equivalent to that provided by Section III.G.2.

Because of the presence of an area-wide fire detection system, we have reasonable assurance that a fire will be detected in its initial stages, before significant propagation occurs. The fire would then be extinguished by the plant fire brigade using the existing manual fire fighting equipment or by the preaction type sprinkler system that is presently installed. With the exception of the gap at the RWST, the construction of the floor/ceiling is continuous and fire-rated. Because of the gap, smoke and hot gases from a fire might filter up into area ABI. However, the block wall at the gap will tend to channel the products of combustion up and away from the redundant bus. The floor-to-ceiling height in Area ABI at the RWST is in excess of 50 feet. Therefore, any products of combustion rising up through the gap will dissipate in the large ceiling area and will not pose a significant threat to the bus. Therefore, the licensee's request for exemption at the common boundary between Fire Areas ABBM and ABI at the RWST should be granted.

Auxiliary Building Fire Area ABBM, Control Complex Fire Area CC, Control Building Fire Area BR1B, Emergency Diesel Generator 1B Vault, and Screen House Building

The licensee requested exemptions from the technical requirements of Section III.G.3 to the extent that it requires the installation of a complete area-wide fixed fire suppression system in an area for which an alternate shutdown capability has been provided.

Fire Area ABBM consists of two zones, ABM and ABB. Zone ABM is the mezzanine level of the Auxiliary Building. Zone ABB is the basement level of the Auxiliary Building. The perimeter construction of the fire area is continuous and 3-hour fire-rated except for 2 open stairs, an open hatch and the gap around the RWST. Most penetrations of the fire area boundary construction are protected to provide a 3-hour rating. The licensee committed in the Appendix R Report to protect all other penetrations so as to achieve a 3-hour rating. At the stairways and hatchway the licensee committed to install close-spaced automatic sprinklers designed to discharge water in a "curtain" fashion so as to prevent fire spread through the opening.

Safety-related equipment which is located in the fire area consists of the 480V ac switchgear bus 16; MCCs 1D and 1M; both bus 14 and 16 emergency diesel generator power feeds; the safety injection and RHR pumps and their respective cooling units; and the RHR heat exchangers, control valves and flow instrumentation.

Existing fire protection includes an area-wide fire detection system, preaction sprinkler systems, manual hose-stations and portable fire extinguishers. In addition to the "water curtains" and fire barrier improvements

previously identified, the licensee also committed in the Appendix R Report to protect the power feed and control circuits to charging pump 1A and the emergency disesel generator 1A power feed to bus 14 by a 1-hour fire-rated barrier.

For the other vulnerable shutdown-related systems, the licensee has provided an alternate shutdown capability which will enable the plant to reach and maintain cold shutdown if fire damages redundant cables or components.

Fire Area CC consists of 4 zones: Zones CR, AHR, BRIA and RR. Zone RR is protected by a complete Halon fire suppression system and, therefore, the exemption pertains to the remaining zones.

Fire Zone CR is the Control Room. It contains all the control panels and power control systems for plant operations and is manned on a 24-hour basis.

Fire Zone AHR is the Air Handling Room for the Control Room and the Computer Room. It contains the air handling unit and return air fan for the Control Room, with control and instrument cable.

Fire Zone BRIA is the Train A Battery Room. It contains the 125V dc battery 1A, inverters, main dc distribution panel 1A, battery charger 1A, battery disconnect switches and main fuse cabinet 1A.

Fire Zone RR is the Relay Room. It contains redundant shutdown-related relays, instrumentation, control racks and cabinets.

Existing fire protection includes area-wide fire detection systems; an automatic deluge fire suppression system for the cable trays along the north wall of Zone AHR; a Halon fire suppression system in the Relay Room; and portable fire extinguishers and manual hose stations.

The licensee has provided an alternate shutdown capability (Zones CR, RR and AHR) and redundant shutdown capability (Zone BRIA) that is physically and electrically independent of this fire area.

Fire Area BRIB is designated as Battery Room 1B and contains the 125 dc battery 1B, inverters, main dc distribution panel 1B, battery charger 1B, battery disconnect switches and main fuse cabinet 1B.

The perimeter walls and floor/ceilings of this fire area are constructed of reinforced concrete or concrete block possessing a 2- or 3-hour fire rating. All openings in these barriers, except for the 1½-hour rated access doors, are protected by fire dampers or penetration seals with a fire rating equivalent to the rating of the barrier.

Existing fire protection includes an area-wide fire detection system, manual hose stations and portable fire extinguishers.

In the Appendix R Report, the licensee also committed to protect the train A power feeds to buses 14 and 16, the dc conductor supplying the emergency diesel generator 1A dc distribution panel from Battery Room 1A, and the conductor for the Auxiliary Building distribution panel 1A with a 1-hour fire-rated barrier.

For all of the other vulnerable redundant shutdown systems within this location, the licensee has identified a redundant capability or provided an alternate shutdown capability that is independent of the fire area.

The emergency diesel generator (EDG) 1B Vault fire area contains perimeter walls and floor/ceilings constructed of reinforced concrete with a fire rating in excess of 3 hours. The only access to the fire area is provided through a metal checker-place manhole cover which is bolted to the floor of the vertically adjoining fire area.

This area contains the 480V ac bus 14 and 16 power feeds, the dc power feeds and control circuits for emergency diesel generators 1A and 1B, along with 480V ac bus 17 power feed, and the control cables for 480V ac buses 17 and 18. The redundant service water pumps are powered from buses 17 and 18, all of which are located in the Screen House. The power and control feeds for EDG 1A are separated by a fire barrier.

Existing fire protection includes an area-wide fire detection system, manual hose stations and portable fire extinguishers.

For those redundant shutdown systems that have not been separated by the above referenced fire barrier, the licensee has provided an alternate shutdown capability that is physically and electrically independent of the fire area.

The Screen House Building fire area is a 2-floor structure, physically separated from the rest of the plant. It houses the circulating water equipment, service water pumps, fire pumps, plant auxiliary boiler, and 480V ac buses 17 and 18 that supply the power to this equipment.

Existing fire protection includes an area-wide fire detection system, partial "wet-pipe and deluge" sprinkler protection, manual hose stations and portable fire extinguishers.

The licensee has provided an alternate shutdown capability for the redundant shutdown systems in this area that is independent of the Screen House.

The technical requirements of Appendix R have not been met because these fire areas have not been provided with a fixed five suppression system as stipulated in Sections III.G.2 and III.G.3.

The licensee justifies the exemption in these areas on the ability of the perimeter construction to confine the effects of the fire to the immediate fire area until either the plant fire brigade arrived or the partial automatic fire suppression systems actuated, and the fire is extinguished. Also, the fire loading in these areas is low-to-moderate. Where concentrated combustibles exist, the hazard is mitigated by a fire suppression system in that area. Redundant shutdown systems are either protected by fire barriers or the licensee has identified a redundant capability or provided an alternate shutdown system that is physically and electrically independent of the fire area.

Based on our evaluation, we conclude that the licensee's alternate fire protection configuration will achieve an acceptable level of fire safety equivalent to that provided by Section III.G.

These locations are all equipped with early-warning fire detection systems. We, therefore, have reasonable assurance that a potential fire will be detected in its formative stages before significant propagation or temperature rise occurs. The fire will then be extinguished by the fire brigade using manual fire fighting equipment or by the partial automatic fire suppression systems that are presently installed.

If the fire should damage unprotected components of redundant shutdown systems, the licensee will utilize the alternate shutdown capability that is independent of the fire area to achieve and maintain safe shutdown conditions. Therefore, the licensee's request for exemptions in the aforementioned areas should be granted.

Intermediate Building, North Section

The licensee requested an exemption from the technical requirements of Section III.G.2 to the extent that it requires that redundant shutdown systems be separated by more than 20 feet free of intervening combustibles. The licensee also requested an exemption for the same location from the requirements of Section III.G.3 to the extent it requires a fixed fire suppression system in an area for which an alternate shutdown capability has been provided.

The Intermediate Building, North Section (IBN) is a zone within a larger fire area (ABI) which includes the South Section of the Intermediate Building, the

Auxiliary Building Operating Floor and Nitrogen Storage Building. Within the overall fire area, the licensee has assessed compliance with our regulations and has identified two deviations form Section III.G, both of which are located within Zone IBN.

The location contains cables and components associated with the auxiliary feedwater system, reactor control rod drive, ventilation equipment, main steam safety and isolation valves and the remote shutdown panel.

Existing fire protection includes a fire detection system, partial manual and automatic sprinkler systems, manual hose stations and portable fire extinguishers. In the Appendix R Report, the licensee committed to install additional fire detectors so as to achieve complete area-wide coverage. The licensee also committed to protect steam generator 1B pressure indication circuits with a 1-hour fire barrier.

With the exception of the steam generator pressure transmitters themselves, all other redundant shutdown systems in fire area ABI are either protected and separated according to Section III.G.2, or an alternate shutdown capability is provided which is independent of the fire area. The above referenced transmitters are separated by a distance of 75 feet. Intervening combustibles consist of cables in trays. The trays are protected by an automatic fire suppression system as previously discussed.

The technical requirements of Appendix R have not been met in the north section of the Intermediate Building (IBN) because the space between redundant steam generator pressure transmitters contain cable insulation (Section III.G.2) and a fixed fire suppression system has not been installed per (Section III.G.3).

The licensee justifies these exemptions on the bases of the limited fire load, the sprinkler protection for cable trays, the existing and proposed fire protection, the separation between redundant transmitters and the availability of an alternate shutdown capability for vulnerable redundant shutdown systems.

Based on our evaluation, we conclude that the licensee's proposed fire protection configuration will achieve an acceptable level of fire safety equivalent to that provided by Section III.G.

Until the fire is extinguished, the perimeter walls and floor/ceilings of the fire area would limit the spread of products of combustion. If the fire damages redundant shutdown system that have not been adequately separated or protected, the licensee would rely on the alternate shutdown capability to achieve and maintain safe shutdown. Therefore, the licensee's request for exemptions in the Intermediate Building, North Section, should be granted.

Batter Room 1A and 1B

The licensee requested an exemption from the technical requirements of Section III.G.2 to the extent that it requires that structural steel which forms a part of the barrier be protected to provide fire resistance equivalent to that of the barrier.

Battery Rooms 1A and 1B are situated side by side along the south wall of the Turbine Building. Battery Room 1A is part of the larger Control Complex Fire Area CC. Battery Room 1B is part of Control Building Fire Area BR1B. The walls, floors and ceilings are of 2-hour rated construction or better, except for the exposed structural steel supporting the ceiling.

Existing fire protection includes a smoke detection system in each room along with manual hose stations and portable fire extinguishers outside the entrances to these rooms. In the Appendix R Report, the licensee committed to protect the exposed steel in Battery Room 1B with material that has a 1-hour fire-rating. The exposed steel in Battery Room 1A will not be protected because the floor/ceiling is not relied upon to separate redundant shutdown systems in adjoining fire areas.

The technical requirements of Section III.G.2 have not been met because the protection provided by the exposed steel which supports the ceiling of Battery Room 1B is not equivalent in fire rating to the ceiling itself. There is no deviation from Section III.G.2 in Battery Room 1A because the exposed structural steel does not form a part of a fire barrier that separates redundant shutdown systems.

The licensee justifies the exemption on the basis of the low fire loading, existing fire protection and the ability of the proposed fireproofing to withstand the effects of a fire pending extinguishment.

Based on our evaluation, we conclude that the licensee's alternate fire protection configuration will achieve an acceptable level of fire safety equivalent to that provided by Section III.G.2.

Because of the presence of an early-warning fire detection system, we do not expect a total room burn-out. A potential fire will be detected in its initial stages before significant temperature rise occurs. We, therefore, have reasonable assurance that the fire will be extinguished by the fire brigade before it becomes a significant threat to the integrity of the fire barriers in Battery Room 1B. Therefore, the licensee's request for exemption in Battery Rooms 1A and 1B should be granted.

Cable Tunnel and Emergency Diesel Generator Vault

The licensee requested an exemption from the technical requirements of Appendix R to the extent that it requires either a 1-hour or 3-hour fire-rated barrier between redundant shutdown divisions.

The Cable Tunnel (Fire Area CT) is a reinforced concrete structure approximately 9 feet wide by 7 feet high. It contains redundant cables associated with normal shutdown systems. However, the licensee has provided an alternate shutdown capability that is independent of this area.

Except where the Cable Tunnel interfaces with the Air Handling Room (AHR), Intermediate Building, North Section (IBN), and the mezzanine level of the Auxiliary Building (ABBM), the boundary fire barriers of this fire area are of continuous 3-hour rated construction. The common wall at the AHR is about 63 ft^2. It is constructed of a sheet of 20-28 gauge sheet metal, 5½ inches of ceramic fiber insulation, and a sheet of 20-28 gauge sheet metal. All cable penetrations of the barrier have been sealed with a fire-rated silicone based penetration sealant.

The common wall at the IBN is about 15 feet wide by about 23 feet in height. It is constructed of gypsum wall board and internal metal studs in a configuration that has a 1-hour fire rating. All cable penetrations of the barrier have been sealed with a fire-rated silicone foam. A 1½-hour fire-rated door provides access into the Cable Tunnel through this barrier.

The common wall at ABBM is similar to that at AHR except that 3 inches of ceramic fiber insulation is used in the core. A door is also located in this barrier. It is sealed shut and is constructed of 3 layers of 12 gauge sheet metal sandwiched by 2 inches and 2¼ inches of insulating blanket material on the Auxiliary Building and Cable Tunnel sides of the center sheet, respectively.

Existing fire protection includes area-wide fire detection systems on both sides of the unrated barriers; and automatic deluge water spray system in the Cable Tunnel; automatic preaction sprinkler systems on the opposite side of the barriers in AHR, IBN, and ABBM, as described in the Appendix R Report, manual hose stations and portable fire extinguishers.

The Emergency Diesel Generator Vault 1B fire area contains the circuits associated with the operation of both diesel generators. An existing full-height sheet metal enclosure separates the redundant circuits for emergency diesel generator (EDG) 1A from those of EDG 1B.

The sheet metal enclosure consists of two sheets of 16 gauge galvanized steel separated by 7¼ inch wide 20 gauge galvanized steel channels. The steel channels sectionalize the space between the two layers into "cells" no greater than 450 square inches in area. Each of these sections is filled with a fire-rated silicone foam in sufficient depth to achieve a 3-hour rating.

Existing fire protection includes an early warning fire detection system, manual hose station and portable fire extinguishers as delineated in the Appendix R Report. At our request, the licensee committed in the Report to apply a listed "fire-proofing" material on the exposed metal surfaces of the barrier to prevent heat from being conducted through the barrier to the unexposed side. The material will be installed to a thickness sufficient to achieve at least a 1-hour rating.

The technical requirements of Appendix R are not met in these areas because redundant shutdown divisions are not separated by 1-hour and 3-hour fire-rated barriers as stipulated in Section III.G.2.a. and III.G.2.c.

The licensee justifies the exemptions in these two areas on the basis of the ability of the fire barrier to provide sufficient passive protection until a potential exposure fire is extinguished.

Based on our evaluation, we conclude that the licensee's alternate fire protection configuration will achieve an acceptable level of fire safety equivalent to that provided by Section III.G.2.

These locations are all provided with area-wide fire detection systems as previously described. This provides an early fire warning capability that will enable the plant fire brigade to responds quickly and suppress the fire manually before significant fire propagation occurs. The fire hazards in these areas are well within the capability of the brigade to deal with using portable fire extinguishers or manual hose stations.

If rapid temperature rise occurs at the Cable Tunnel before the arrival of the fire bridgade, the existing automatic sprinkler systems will activate to control the fire, reduce room temperature and protect the barrier from the effects of the fire. We, therefore, conclude that the barriers at the Cable Tunnel will not be subjected to conditions that would cause them to fail before the fire is put out.

In the Emergency Diesel Generator Vault 1B, the licensee has utilized a silicone foam in the construction of the fire barrier that has passed the ASTM E–119 fire exposure test for 3-hours. The licensee committed to protect the steel with a U.L. listed fire proofing, which provides us with reasonable assurance that conducted heat will not pose a threat to the shutdown-related cables within the barrier.

Therefore, the licensee's request for exemptions in the Cable Tunnel and Emergency Diesel Generator Vault 1B should be granted.

One-hour Rated Fire Barriers

The licensee requested an exemption from the technical requirements of Section III.G.2 of Appendix R to the extent that it requires a 1-hour fire-rated barrier to protect one shutdown division. The licensee requested this exemption because in certain locations the fire-rated barrier material that will be provided will not be installed in the same configuration as that which was subjected to an ASTM E–119 fire exposure test.

The licensee's request for exemption from Section III.G.2 related to the installation of a 1-hour fire barrier is not needed because we agree with the licensee's evaluation that the material when installed will achieve a 1-hour fire-rating.

IV

Accordingly, the Commission has determined that, pursuant to 10 CFR 50.12, an exemption is authorized by law and will not endanger life or property or the common defense and security and is otherwise in the public interest. Therefore, the Commission hereby grants the exemption requests identified in Section III above.

Pursuant to 10 CFR 51.32, the Commission has determined that the granting of these exemptions will have no significant impact on the environment (50 FR 11274, March 20, 1985).

A copy of the Safety Evaluation dated March 21, 1985, related to this action is available for public inspection at the Commission's Public Document Room, 1717 H Street, NW., Washington, D.C. and at the local public document room located at the Rochester Public Library, 115 South Avenue, Rochester, New York 14610. A copy may be obtained upon request addressed to the U.S. Nuclear Regulatory Commission, Washington, D.C. 20555, Attention: Director, Division of Licensing.

This exemption is effective upon issuance.

Dated at Bethesda, Maryland this 21st day of March 1985.

For the Nuclear Regulatory Commission.

Frank J. Miraglia,

Deputy Director Division of Licensing, Office of Nuclear Reactor Regulation.

[FR Doc. 85–7436 Filed 3–27–85; 8:45 am]

BILLING CODE 7590–01–M

[Docket No. 50–341]

Detroit Edison Co. Wolverine Power Supply Cooperative, Inc., Fermi–2; Issuance of Facility Operating License

Notice is hereby given that the U.S. Nuclear Regulatory Commission (the Commission or NRC), has issued Facility Operating License No. NPF–33 to Detroit Edison Company and Wolverine Power Supply Cooperative, Incorporated (licensees) which authorizes operation of Fermi–2 (the facility), at reactor core power levels not in excess of 3292 megawatts thermal in accordance with the provisions of the License, the Technical Specifications and the Environmental Protection Plan with a condition currently limiting operation to five percent of full power (165 megawatts thermal). Authorization to operate beyond five percent of full power will require specific Commission approval.

Fermi–2 is a boiling water reactor located in Frenchtown Township, Monroe County, Michigan. The license is effective as of the date of issuance.

The application for the license complies with the standards and requirements of the Atomic Energy Act of 1954, as amended (the Act), and the Commission's regulations. The Commission has made appropriate findings as required by the Act and the Commission's regulations in 10 CFR Chapter I which are set forth in the License. Prior public notice of the overall action involving the proposed issuance of an operating license was published in the **Federal Register** on May 18, 1975 (40 FR 23122).

The Commission has determined that the issuance of this license will not result in any environmental impacts other than those evaluated in the Final Environmental Statement since the activity authorized by the license is encompassed by the overall action evaluated in the Final Environmental Statement.

For further details with respect to this action, see: (1) Facility Operating License No. NPF–33, with Technical Specifications (NUREG–1089) and the Environmental Protection Plan; (2) the report of the Advisory Committee on Reactor Safeguards, dated August 11,

1981; (3) the Commission's Safety Evaluation Report, dated July 1981 (NUREG–0798), and Supplements 1 through 5 (4) the Final Safety Analysis Report and Amendments thereto; (5) the Environmental Report and supplements thereto; (6) the Final Environmental Statement, dated August 1981; and (7) Assessment of the Effect of License Duration on Matters Discussed in the Final Environmental Statement for the Fermi–2 Facility.

These items are available for inspection at the Commission's Public Document Room located at 1717 H Street., NW., Washington, D.C. 20555 and at the Monroe County Library Systems, Reference Department, 3700 Custer Road, Monroe, Michigan 48161. A copy of Facility Operating License NPF–33 may be obtained upon request addressed to the U.S. Nuclear Regulatory Commission, Washington, D.C. 20555, Attention: Director, Division of Licensing. Copies of the Safety Evaluation Report and Supplements 1 through 5 (NUREG–0798) and the Final Environmental Statement (NUREG–0769) may be purchased at current rates from the National Technical Information Service, Department of Commerce, 5285 Port Royal Road, Springfield, Virginia 22161, and through the NRC GPO sales program by writing to the U.S. Nuclear Regulatory Commission, Attention: Sales Manager, Washington, D.C. 20555. GPO deposit account holders may call 301–492–9530.

Dated at Bethesda, Maryland this 20th day of March, 1985

For the Nuclear Regulatory Commission.

B.J. Youngblood,

Chief Licensing Branch No. 1, Division of Licensing.

[FR Doc. 85–7434 Filed 3–27–85; 8:45 am]

BILLING CODE 7590–01–M

PACIFIC NORTHWEST ELECTRIC POWER AND CONSERVATION PLANNING COUNCIL

Economic Forecasting Advisory Committee; Meeting

AGENCY: Economic Forecasting Advisory Committee of the Pacific Northwest Electric Power and Conservation Planning Council (Northwest Power Planning Council).

ACTION: Notice of meeting to be held pursuant to the Federal Advisory Committee Act, 5 U.S.C. Appendix I, 1–4. Activities will include:

- Approval of minutes.
- Presentation and discussion of the Puget Sound Export of Services study William Beyers, University of Washington.
- Discussion of Draft Economic, Demographic and Fuel Price Assumption.
- Update on Demand Forecasting activities.
- Public comment, followed by adjournment.

Status: Open.

SUMMARY: The Northwest Power Planning Council hereby announces a forthcoming meeting of its Economic Forecasting Advisory Committee.

DATE: Tuesday, April 2, 1985, 9:00 a.m.

ADDRESS: The meeting will be held at the Council's Central Office, 850 S.W. Broadway; Suite 1100, Portland, Oregon.

FOR FURTHER INFORMATION CONTACT: Debbie Kitchin, (503) 222–5161.

Edward Sheets,

Executive Director.

[FR Doc. 85–7401 Filed 3–27–85; 8:45 am]

BILLING CODE 0000–00–M

Residential Model Conservation Standards (MCS) Technical Task Force; Meeting

AGENCY: Residential Model Conservation Standards (MCS) Technical Task Force of the Pacific Northwest Electric Power and Conservation Planning Council (Northwest Power Planning Council).

ACTION: Notice of meeting to be held pursuant to the Federal Advisory Committee Act, 5 U.S.C. Appendix I, 1–4. Activities will include:

- Review agenda and task force charter.
- Presentation of 1985 Plan development schedule as it relates to review of the residential MCS.
- Presentation of preliminary cost data from Residential Standards Demonstration Program.
- Presentation of additional cost data from state energy agency cost analysis (tentative).
- Discussion of the RSDP cost data.
- Status reports:

—Thermal performance monitoring—Bonneville staff;

—Builder exit survey and analyses—State Energy Agency staff.

Status: Open.

SUMMARY: The Northwest Power Planning Council hereby announces a forthcoming meeting of its Residential Model Conservation Standards (MCS) Technical Task Force.

DATE: Monday, April 1, 1985, 10:00 a.m.—4:00 p.m.

ADDRESS: The meeting will be held at the Council's Central Office, 850 SW. Broadway; Suite 1100, Portland, Oregon.

FOR FURTHER INFORMATION CONTACT: Tom Eckman at (503) 222–5161.

Edward Sheets,

Executive Director.

[FR Doc. 85–7402 Filed 3–27–85; 8:45 am]

BILLING CODE 0000–00–M

SECURITIES AND EXCHANGE COMMISSION

[Release No. IC14432;812–6021]

The Japan Fund, Inc.; Application for an Order Pursuant to Section 6(c) of the Act for an Exemption From Section 12(d)(3) of the Act

March 20, 1985.

Notice is hereby given that The Japan Fund, Inc. ("Applicant"), 345 Park Avenue, New York, New York 10036, a closed-end, management investment company registered under the Investment Company Act of 1940 ("Act"), filed an application on November 13, 1984, and supplemental information thereto on January 22, 1985, for an order of the Commission, pursuant to section 6(c) of the Act, exempting Applicant from the provisions of Section 12(d)(3) of the Act to the extent necessary to permit Applicant to purchase securities of certain major Japanese securities firms, whose securities are publicly traded on the Tokyo Stock Exchange, subject to the comparable quantity and quality limitations of Rule 12d3–1 under the Act. All interested persons are referred to the application on file with the Commission for a statement of the representations contained therein, which are summarized below, and to the Act for the complete text of the applicable provisions thereof.

Applicant states that its general investment policy is to invest a minimum of 80% of its total assets in securities of Japanese companies, primarily common stock of Japanese operating companies. In practice, virtually all of Applicant's assets have been invested in Japanese securities. Applicant's investment adviser is Asia Management Corporation ("ASIA"), a U.S. corporation which, since April, 1984, has been a wholly-owned subsidiary of Scudder, Stevens and Clark. The Nikko Research Center, Ltd., a U.S. corporation indirectly controlled by The Nikko Securities Co., Ltd., ("Nikko") is the sub-advisor to ASIA. Applicant states that ASIA and Nikko are knowledgeable and experienced

concerning investments in the Japanese markets.

Applicant states that shares of the capital stock for the 12 major broker-dealer securities companies in Japan: Dai-ichi Securities Co., Ltd., Daiwa Securities Co., Ltd., New Japan Securities Co., Ltd., Nikko The Nippon Kangyo Kakumaru Securities Co., Ltd., The Nomura Securities Co., Ltd., Okasan Securities Co., Ltd., Sanyo Securities Co., Wako Securities Co., Ltd., Yamaichi Securities Co., Ltd., and Yamatane Securities Co., Ltd. (collectively, the "Companies"), are publicly traded on the Tokyo Stock Exchange (the "Tokyo Exchange"), the world's second largest exchange in terms of both total equity market value dollar transaction volume and total market value of equity shares of domestic Companies listed. Securities of the companies are also publicly traded on the Osaka Stock Exchange, the world's third largest exchange in terms of total market value of equity shares listed. Listing requirements for the Tokyo Exchange include a mimimum of 10 million listed shares (20 million for companies whose principal business is outside Tokyo); 2,000 shareholders (subject to variation); corporate existence for at least five years; net tangible assets of Y 1,500 million and net tangible assets per share of Y 100; net pre-tax profits for the last three years of Y 200 million, Y 300 million and Y 400 million, respectively; and, dividends of Y 5 per share for the last three years with a prospect of being able to maintain a dividend of Y 5 or more after listing.

Seasoned listed stocks may be assigned to the First Section of the Tokyo Exchange if the issuer has 20 million listed shares; Y 1 billion in amount of capital stock; 3,000 shareholders owning 500 to 50,000 shares; a minimum floating of shares at the end of the preceding two business terms of 3 million, plus 25% of listed shares for stock with less than 60,000,000 listed shares, or a minimum floating amount of 12 million shares plus 10% of listed shares for stock with at least 60,000,000 listed shares; an average monthly trading volume for three months of 200,000 shares; and, dividends for each of the preceeding three years of Y 5 per share. The stock of the Companies qualify for and are assigned to the First Section of the Tokyo Exchange.

Applicant represents that transaction prices on the Tokyo Exchange are reported currently and publicly at the end of each of two trading sessions during the day. The Exchange publicly reports volume in each security and the opening, high, low and closing prices per session, and that daily volume and price range quotations are widely disseminated in newspapers.

Applicant asserts that the listing requirements for stocks assigned to the First Section of the Tokyo Exchanges are comparable, in terms of share distribution, total market value and earning power, to those imposed by the New York and American Stock Exchange ("NYSE" and "AMEX" respectively), by the National Association of Securities Dealers ("NASD") to become eligible for listing on the NASD automatic quotation system ("NASDAQ"), and by the Board of Governors of the Federal Reserve System (the "Board") for inclusion on the over-the-counter ("OTC") margin list. Applicant states that the only exception to comparability of the Tokyo Exchange with the OTC margin requirements is that the market prices per share of Japanese securities on the Tokyo Exchange average below the yen equivalent of $5 per share, the minimum for OTC margin stocks in the United States. Low per share prices, Applicant states, are a characteristic of the Tokyo Exchange and are also a characteristic of most First Section listings, including the major industrial companies of Japan. Applicant cites statistics that the average price per share on the Tokyo Exchange, First Section, during 1984, at the end of each month through August, ranged between Y 565 and Y 614, when the exchange rate ranged between 225 and 247 yen per U.S. dollar.

Applicant states that Japanese companies with publicly issued securities, including the Companies, are required by Japanese law to file with the Minister of Finance ("Minister") annual reports containing information on the issuer's objectives, stated capital, securities issued and financial position, nature and status of its business operations, and other information which the Minister may prescribe. Applicant also states that amended reports must be filed upon the occurrence of any material change of information, and that the financial statements must be certified by a certified public accountant or incorporated accounting firm. Applicant further states that the Companies publish their annual reports in Japanese and in English.

According to the application, all Japanese securities companies ("JSCs") including the Companies, are subject to separate regulation as broker-dealers under the provisions of the Securities and Exchange Law of Japan ("Law"), a law similar in many respects to the Securities Exchange Act of 1934. Applicant states that JSCs are licensed by the Minister who must be satisfied that the applicant has sufficient financial resources, knowledge and experience to conduct the proposed business. The Minister may cancel broker-dealer licenses for statutory violations, noncompliance with administrative orders or if the broker-dealer is threatened with insolvency. The Law also prohibits JSCs from transacting business which is not securities-related unless approved by the Minister. Applicant states that the Law prohibits JSCs from acting as both principal and broker in the same transaction. Under the Law, JSCs are subject to inspection by the Minister, who is also authorized to order such measures as are appropriate in the public interest in the event it is found that a JSC's ratio of debt to net assets is excessive, that its loans or lending position is unsound, or that corrective measures are necessary in the public interest or for the protection of investors.

Section 12(d)(3) of the Act, in pertinent part, prohibits registered investment companies from purchasing or otherwise acquiring any security or any other interest in the business of any person who is a broker, dealer, or who is engaged in the business of underwriting. Applicant states that Rule 12d3–1 (the "Rule"), provides, in pertinent part, that a registered investment company may purchase securities issued by companies deriving more than 15% of their gross revenue from securities-related activities provided certain quantitative and qualitative conditions are satisfied. The quantitative requirements are met if, immediately after the acquisition, the investment company has not invested more than 5% of the value of its total assets in the issuer's securities and does not own more than 5% of the outstanding equity securities of the class acquired or 10% of the outstanding principal amount of the issuer's debt securities. The qualitative condition of the Rule, Applicant states, requires that the stock acquired be a "margin security" as defined in Regulation T promulgated by the Board, which includes any security on a national securities exchange or OTC margin stock. Stock of the Companies are not, under the Rule, margin securities.

Applicant believes that in order to avail itself of good investment opportunities and to further deversify its portfolio, Applicant should be permitted to invest in the Companies, which Applicant represents are of the size and quality comparable to United States securities firms that qualify under the

Rule. Applicant will not invest in Nikko because it indirectly controls ASIA. Applicant represents that, except for Nikko, none of the Companies engages in distribution of Applicant's shares, or acts with or is affiliated with ASIA.

Applicant represents that with one exception, each of the conditions contained in the Rule are satisfied if Applicant purchases shares of the Companies. Applicant states that the availability of annual reports by the Companies will readily enable it to calculate the 5% maximum purchase of outstanding securities requirement. Applicant also represents that it will not invest in any debt securities of the Companies and that it will not invest more than 5% of its asset value in the securities of any one Company. Applicant asserts that the Rule's requirement of margin security is complied with, by analogy, since the conditions for listing on the Tokyo Exchange by Japanese issuers are equivalent to the listing requirements for the NYSE, AMEX, as well as the minimum criteria for quotation of NASDAQ and for OTC margin stock eligibility. Applicant, referring to the statement in the Release adopting the Rule (Investment Company Act Release No. 14036, July 31, 1984) that a reduced quality standard should not apply with respect to the equity securities of foreign issuers significantly involved in securities-related activities, submits that the quality standards for issuers listed on the Tokyo Exchange should not be considered lower than that for U.S. broker-dealers.

Applicant asserts that the effect of section 12(d)(3) of the Act prevents investment companies from taking advantage of important investment opportunities in, and to limit appropriate portfolio diversification within, the financial sector. Consideration of these undesirable effects, Applicant believes, was manifested in the adoption of the Rule. Applicant concludes that granting the requested exemption from section 12(d)(3) to the extent and on the conditions contained herein is necessary and appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the Act.

Notice is further given that any interested person wishing to request a hearing on the application may, not later than April 15, 1985, at 5:30 p.m., do so by submitting a written request setting forth the nature of his/her interest, the reasons for the request, and the specific issues of fact or law that are disputed, to the Secretary, Securities and Exchange Commission, Washington, D.C. 20549. A copy of the request should be served personally or by mail upon Applicants at the address stated above. Proof of service (by affidavit or, in the case of an attorney-at-law, by certificate) shall be filed with the request. After said date, an order disposing of the application will be issued unless the Commission orders a hearing upon request or upon its own motion.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Shirley E. Bollis,

Assistant Secretary.

[FR Doc. 85-7415 Filed 3-27-85; 8:45 am]

BILLING CODE 8010-01-M

[File No. 22-13623]

Application and Opportunity for Hearing; the Procter & Gamble Co.

March 22, 1985.

Notice is hereby given that the Procter & Gamble Company (the "Company") has filed an application pursuant to 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 trusteeships of Bankers Trust Company (the "Bank") under the Indenture dated as of May 15, 1972 between the Company and Morgan Guaranty Trust Company of New York, Trustee (the "1972 Indenture"), under which $31,000,000 aggregate principal amount of 7% Sinking Fund Debentures due May 15, 2002 are presently outstanding, the Indenture dated as of March 1, 1975 between the Company and Morgan Guaranty Trust Company of New York, Trustee (the "1975 Indenture"), under which $178,000,000 aggregate principal amount of the Company's 8¼% Sinking Fund Debentures due March 1, 2005 are presently outstanding (such two Indentures being herein called "Qualified Indentures"), both of which Indentures have been heretofore qualified under the Act and under which the Bank intends to become trustee, the Indenture of Trust dated as of September 15, 1983 between New York State Energy Research and Development Authority and the Bank, as Trustee (the "1983 Indenture"), under which $30,000,000 aggregate principal amount of Solid Waste Disposal Revenue Bonds (the Procter & Gamble Manufacturing Company Project—1983 Series) are outstanding, and the Trust Indenture dated as of May 1, 1984 between City of Green Bay, Wisconsin and the Bank (herein called the "1984 Indenture"), under which $10,000,000 aggregate principal amount of Securing Pollution Control Revenue Bonds (the Procter & Gamble Paper Products Company Project) are outstanding, which latter two indentures are not qualified under the Act, but the Bonds under which are guaranteed by the Company, 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 the Bank from continuing to act as trustee under either of the Qualified Indentures.

Section 310(b) of the Act, which is included in section 7.08 of the 1972 Indenture and in section 7.07 of the 1975 Indenture, provides in part that if a trustee under an indenture qualified under the Act has or shall acquire any conflicting interest (as defined in such section), it shall within 90 days after ascertaining that it has such conflicting interest either eliminate such conflicting interest or resign. Subsection (1) of such section provides, with certain exceptions stated therein, that a trustee under a qualifed indenture shall be deemed to have a conflicting interest if such 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.

The present application, filed pursuant to clause (ii) of section 310(b)(1) of the Act (as set forth in section 7.08 of the 1972 Indenture and section 7.07 of the 1975 Indenture), seeks to exclude from each of the Qualified Indentures and from the operation of section 310(b)(1) of the Act each of the other indentures mentioned herein, except that the 1972 Indenture need not be excluded from the 1975 Indenture since it is already so excluded in section 7.08 of the 1975 Indenture.

The effect of the provisions of clause (ii) of section 310(1) of the Act on the matter of the present application is such that indentures may be excluded from the operation of section 310(b)(1) of the Act (as set forth in section 7.08 of the 1972 Indenture and section 7.07 of the 1975 Indenture) if the Company shall have sustained the burden of proving by application to the Commission that the trusteeships of the Bank under each of the foregoing indentures 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 the Bank from acting as trustee under the Qualified Indentures.

The Company has alleged that:

(1) The Bank is trustee under the 1983 Indenture under which $30,000,000

aggregate principal amount of Solid Waste Disposal Revenue Bonds (The Procter & Gamble Manufacturing Company Project—1983 Series) are outstanding. The principal of, and interest and premium, if any, on, such Bonds are payable from revenues and receipts paid by the Company's obligor subsidiary to the Authority under a Lease Agreement dated as of September 15, 1983 between the Authority and such subsidiary. In addition, the Company has guaranteed such Bonds under a Guaranty dated as of September 15, 1983 from the Company to the Bank, as trustee.

(2) The Bank is trustee under the 1984 Indenture under which $10,000,000 aggregate principal amount of Securing Pollution Control Revenue Bonds (The Procter & Gamble Paper Products Company Project) are outstanding. The principal of, and interest and premium, if any, on, such Bonds are payable from receipts received by the City from notes issued to the City by the Company's obligor subsidiary in connection with such subsidiary's borrowing the proceeds of such Bonds under a Pollution Control Facilities Agreement dated as of May 1, 1984 between the City and such subsidiary. The Company has guaranteed such Bonds under a Guaranty dated as of May 1, 1984 from the Company to the Bank, as trustee.

(3) By virtue of section 3(a)(2) of the Securities act of 1933, as amended (the "1933 Act"), the Bonds referred to in paragraphs (1) and (2) above are exempt from registration from the 1933 Act because such Bonds are issued by a political subdivision of a State of the United States. By virtue of section 304(a)(4)(A) of the Act, neither the 1983 Indenture or the 1984 Indenture is required to be qualifed under the Act.

(4) The Bank intends to become successor trustee under the 1972 Indenture under which $31,000,000 aggregate principal amount of 7% Sinking Fund Debentures due May 15, 2002 are presently outstanding.

(5) The Bank intends to become successor trustee under the 1975 Indenture under which $178,000,000 aggregate principal amount of the Company's 8¼% Sinking Fund Debentures due March 1, 2005 are outstanding.

(6) The obligations of the Company on the Guarantees referred to in paragraphs (1) and (2) hereof and on the Debentures refrred to in paragraphs (4) and (5) hereof are all senior unsecured obligations of the Company.

(7) The provisions of the Guarantees referred to in paragrapsh (1) and (2) above, the 1972 Indenture and the 1975 Indenture are not so likely to involve the Bank in a material conflict of interest as to make it necessary in the public interest or for the protection of investors to disqualify the Bank from acting as trustee under either of the Qualified Indentures.

The Company has waived notice of hearing, and any and all rights to specify procedures under the Rules of Practice of the Commission in connection with this matter.

For a more detailed statement of the matters of fact of and law asserted, all persons are referred to said application which is on file in the offices of the Commission's Public Reference Section, 450 Fifth Street, NW., Washington, D.C. 20549.

Notice is further given that an order granting the application may be issued by the Commission at any time on or after April 16, 1985, 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 Act. Any interested person may, not later than April 15, 1985 at 5:30 p.m., Eastern Standard Time, in writing, submit to the Commission his views on any additional facts bearing upon this application or the desirability of a hearing thereon. Any such communication or 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 persons 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.

Shirley E. Hollis,

Assistant Secretary.

[FR Doc. 85-7417 Filed 3-27-85; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 35-23637; 70-7091]

Alabama Power Co.; Proposed Transactions Related to Weatherization Financing Program

March 22, 1985.

Alabama Power Company ("Alabama"), 600 North 18th Street, Birmingham, Alabama 35291, an electric utility subsidiary of The Southern Company, a registered holding company, has filed an application with this Commission pursuant to sections 9(a) and 10 of the Public Utility Holding Company Act of 1935 ("Act"). Alabama proposes to enter into certain transactions in connection with its planned Weatherization Financing Program ("Program"). Participation in the Program will be limited to Alabama customers who are converting their heating energy source to an electric system or replacing an existing electric heating system. The weatherization items prescribed in the Program include storm windows, storm doors, and insulation; however, Alabama will finance only these items when installed in conjunction with an Alabama approved electric heat pump. Alabama will be granted a security interest in the facilities being financed. The interest rates paid by the customers are expected to vary based upon market conditions at the time of each financing and currently range from 13.0% to 14.0%.

Alabama estimates that the maximum amount of loans to be outstanding in connection with the financing of the weatherization items (exclusive of heat pumps) will not exceed $9,000,000 at any one time. Such loans will be financed by Alabama with its own funds obtained through normal operations, but Alabama may, from time to time, assign its evidences of indebtedness acquired from its customers under the Program to banks and other financial institutions, at a discount with or without recourse.

The application and any amendments thereto are available for public inspection through the Commission's Office of Public Reference. Interested persons wishing to comment or request a hearing should submit their views in writing by April 17, 1985, to the Secretary, Securities and Exchange Commission, Washington, D.C. 20549, and serve a copy on the applicant at the address specified above. Proof of service (by affidavit or, in case of an attorney at law, by certificate) should be filed with the request. Any request for a hearing shall identify specifically the issues of fact or law that are disputed. A person who so requests will be notified of any hearing, if ordered, and will receive a copy of any notice or order issued in this matter. After said date, the application, as filed or as it may be amended, may be granted.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Shirley E. Hollis,

Assistant Secretary.

[FR Doc. 85-7414 Filed 3-27-85; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 35-23633; 70-7062]

Allegheny Power System, Inc., et al.; Proposed Issuance and Sale of Common Stock by Subsidiary Companies and Acquisition by Holding Company

March 18, 1985.

Allegheny Power System, Inc. ("APS"), 320 Park Avenue, New York, New York 10022, a registered holding company, and four of its subsidiary companies, Monongahela Power Company ("Monongahela"), 1310 Fairmont Avenue, Fairmont, West Virginia 26554, The Potomac Edison Company ("Potomac"), Downsville Pike, Hagerstown, Maryland 21740, West Penn Power Company ("West Penn"), 800 Cabin Hill Drive, Greensburg, Pennsylvania 15601, and Allegheny Generating Company ("AGC"), 320 Park Avenue, New York New York 10022, have filed an application-declaration with this Commission pursuant to Sections 6(a), 7, 9(a), and 10 of the Public Utility Holding Company Act of 1935 ("Act").

By orders issued April 23, 1982 (HCAR No. 22469) and December 20, 1984 (HCAR No. 23539) in File No. 70-6613, an inter-related series of transactions was authorized pursuant to which AGC was permitted to acquire up to a 40% ownership interest in the 2,100 MW Bath County Pumped Storage Project being constructed by Virginia Electric and Power Company. Pursuant to such orders, AGC's purchase obligations were authorized to be funded through up to $350 million in equity contributions by its parents (Monongahela, Potomac, and West Penn), and up to $650 million of short-term and medium-term debt including a $225 million revolving credit and term loan agreement with a group of eleven banks. The purchase of an initial undivided 20% ownership interest in the project was consummated on April 27, 1982, for a purchase price of $176,852,262. AGC has elected to make additional purchases to bring its interest up to a total of 40%.

In order to obtain funds with which to make the necessary additional equity investments in AGC, the parent companies, Monongahela, Potomac, and West Penn, propose to issue and sell to APS, and APS proposes to acquire, their common stock in the respective amounts of $31,050,000, $32,200,000 and $51,750,000.

The application-declaration and any amendments thereto are available for public inspection through the Commission's Office of Public Reference. Interested persons wishing to comment or request a hearing should submit their views in writing by April 11, 1985, to the Secretary, Securities and Exchange Commission, Washington, D.C. 20549, and serve a copy on the applicants-declarants at the addresses specified above. Proof of service (by affidavit or, in case of an attorney at law, by certificate) should be filed with the request. Any request for a hearing shall identify specifically the issues of fact or law that are disputed. A person who so requests will be notified of any hearing, if ordered, and will receive a copy of any notice or order issued in this matter. After said date, the application-declaration, as filed or as it may be amended, may be permitted to become effective.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Shirley E. Hollis,

Assistant Secretary.

[FR Doc. 85-7416 Filed 3-27-85; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 34-21884; SR-CBOE-85-4]

Self-Regulatory Organizations; Chicago Board Options Exchange, Inc.; Order Approving Proposed Rule Change

The Chicago Board Options Exchange, Inc. ("CBOE"), LaSalle at Van Buren, Chicago, IL 60605, submitted a proposed rule change pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")[1] and Rule 19b-4 thereunder,[2] to amend CBOE Rule 6.76 (Payment for Floor Brokerage Services), to allow CBOE members to process their brokerage receivables within the first five business days of a month in order to qualify for collection later in the same month. The Commission solicited comments on the proposed rule change, but received none.[3]

Currently, CBOE members must provide an invoice detailing the charges for floor brokerage services performed for other member firms within the first five calendar days of a month, in order to qualify for collection during that same month. Under the present rule, when Saturdays, Sundays and holidays fall within the first five calendar days of a month, member firms may have only two or three business days to process their brokerage receivables and deliver their invoices. In its filing, CBOE noted that under these circumstances, member firms have experienced difficulty processing their brokerage receivables for timely collection. Accordingly, CBOE has amended Rule 6.76 to provide all CBOE members subject to this Rule with five calendar days in which to process accounts and deliver invoices, as required.

Because the proposed rule change would provide all member firms with five business days to comply with the Rule, CBOE stated, in its filing, that the proposal should help assure timely payment to member firms and equitable treatment of member firms. The Commission concurs in CBOE's assessments. Accordingly, the Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to national securities exchanges. In particular, the Commission finds that the proposal is consistent with Section 6 of the Act.

It is therefore ordered, pursuant to section 19(b)(2) of the Act, that the above-mentioned rule change be, and hereby is, approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Dated: March 22, 1985.

Shirley E. Hollis,

Assistant Secretary.

[FR Doc. 85-7413 Filed 3-27-85; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 34-21876; SR-NYSE-84-11]

Self-Regulatory Organizations; New York Stock Exchange, Inc.; Order Approving Proposed Rule Change

March 20, 1985.

The New York Stock Exchange, Inc. ("NYSE") submitted on April 2, 1984, copies of a proposed rule change pursuant to section 19(b) of the Securities Exchange Act of 1934 ("Act")[1] and rule 19b-4 thereunder,[2] to adopt proposed amendments to NYSE Rule 296 (Liquidation of Securities Loans and Borrowings),[3] which: (1) Would

[1] 15 U.S.C. 78s(b)(1) (1984).

[2] 17 CFR 240.19b-4 (1984).

[3] The proposed rule change was noticed in Securities Exchange Act Release No. 21771 (February 15, 1985), 50 FR 7679 (February 25, 1985).

[1] 15 U.S.C. 78s(b).

[2] 17 CFR 240.19b-4 (1984).

[3] Amendment No. 1, which was submitted by the NYSE on March 8, 1985, changed the proposed NYSE rule number from Rule 150 to Rule 296 and changed its caption from "Securities Loans and Borrowings" to "Liquidation of Securities Loans and Borrowings." The amendment also added language to the rule proposal expressly recognizing the effect on the proposal of the Securities Investor Protection Act of 1970 ("SIPA"), 15 U.S.C. 78aaa *et seq.*, and statutes administered by the Commission, as well as including several minor technical changes. In addition, the amendment modified Item 3 (Statement of Purpose of, and Statutory Basis for,

Continued

authorize any NYSE member or member organization to liquidate securities loan and borrowing agreements with another NYSE member or member organization if such member or member organization becomes bankrupt or subject to other financial difficulty specified in the proposed rule, or if it files, or has filed against it, an application for a protective order under section 5 of SIPA, unless such right is stayed, avoided or otherwise limited by an order authorized under SIPA or any statute administered by the Commission; and (2) would prohibit any NYSE member or member organization from borrowing or lending any security to a non-member of the NYSE absent a written agreement authorizing the NYSE member or member organization to liquidate such transactions upon the non-member's bankruptcy or other financial difficulty specified under the proposed rule. Supplementary Information .10 to proposed Rule 296 would state that "agreement for the loan or borrowing of securities" means "a securities contract or other agreement, including related terms . . . . "[4] In addition, the proposed rule change would rescind NYSE Rules 151 to 160 relating to securities loans.

The NYSE states in its filing that section 555 of the Code "provides that no provision of the Bankruptcy Code will operate to stay or limit the right of a securities broker-dealer to liquidate an outstanding securities loan upon the bankruptcy of the *contra* party to the loan provided the broker-dealer has the 'contractual' right to do so." The NYSE further states that, "this contractual right may be set forth in a rule of a national securities exchange to which both parties are subject," and that its proposed rule "would satisfy the latter alternative."

The Commission notes that section 555 of the Code ("contractual right to liquidate a securities contract"), in general, provides that a contractual right of a stockbroker, financial institution, or clearing agency to cause the liquidation of a "securities contract"[5] shall not be stayed, avoided, or otherwise limited by operation of any provision of the Code or by order of a court or administrative agency in any proceeding under the Code unless such order is authorized by SIPA or any statute administered by the Commission. The Commission also notes that section 559 of the Code ("contractual right to liquidate a repurchase agreement"), in general, provides that the exercise of a contractual right of a "repo participant"[6] to cause the liquidation of a "repurchase agreement"[7] because of the insolvency or financial condition of the debtor, the commencement of a case under the Code, or the appointment of a trustee under the Code or a custodian before the commencement of such a case shall not be stayed, avoided, or otherwise limited by operation of any provision of the Code or by order of a court administrative agency in any proceeding under the Code, unless, where the debtor is a stockbroker or securities clearing agency, such order is authorized by SIPA or any statute administered by the Commission.

Both Sections 555 and 559 provide that the term "contractual right" includes a right set forth in a rule or by-law of a national securities exchange. Thus, the NYSE submitted the proposed rule change to establish the contractual rights provided to its members and member organizations. The NYSE has indicated that, in the opinion of the Exchange, the term "securities contract," to which the Code's Section 555 right to liquidate applies, was intended to include repurchase and reverse repurchase agreements.[8] The Commission, however, takes no position regarding the NYSE's opinion that Section 555 applies to repurchase and reverse repurchase agreements.

Notice of the proposed rule change together with the terms of substance of the proposed rule change was given by the issuance of a Commission release (Securities Exchange Act Release No. 20884, April 20, 1984) and by publication in the **Federal Register** (49 FR 18658, May 1, 1984). No comments were received with respect to the proposed rule change.

The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange and, in particular, the requirements of section 6(b)(5), which requires that exchange rules be designed to promote just and equitable principles of trade and to protect investors and the public interest.

It is therefore ordered, pursuant to section 19(b)(2) of the Act, that the proposed rule change be, and hereby is, approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

John Wheeler,

Secretary.

[FR Doc. 85-7412 Filed 3-27-85; 8:45 am]

BILLING CODE 8010-01-M

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the Proposed Rule Change) of Form 19b-4 to state that the rule would provide a contractual right to liquidate securities repurchase agreements under section 559 of the Bankruptcy Code ("Code"). 11 U.S.C. 559.

[4] The full text of Supplementary Information .10, as filed in Amendment No. 1, is as follows:

As used herein, an agreement for the loan and borrowing of securities shall mean a securities contract or other agreement, including related terms, for the tranfer of securities against the transfer of funds, securities, or other collateral, with a simutaneous agreement by the tranferee to transfer to the transferor against the transfer of funds, securities, or other collateral, upon notice, at a date certain, or upon demand, the same or substituted securities.

This amends Supplementary Information .10 as proposed in Rule 150 of the original filing which would have defined an agreement for the loan and borrowing of securities as "an agreement (whether characterized as a purchase and sale, and executory contract, a loan or otherwise) including related terms . . . . "

[5] The term "securities contract" is defined in section 741(7) of the Code.

[6] The term "repo participant" is defined in section 101(38) of the Code.

[7] The term "repurchase agreement" is defined in section 101(39) of the Code.

[8] *See* letter from James E. Buck, Secretary, NYSE, to Michael Cavalier, Branch Chief, Division of Market Regulation, dated March 6, 1985.

DEPARTMENT OF TRANSPORTATION

[Order 85-3-59; Docket 42667]

Application of Flight International Airlines, Inc. for Certificate Authority Under Subpart Q

AGENCY: Department of Transportation.

ACTION: Notice of Order to Show Cause, Order 85-3-59, Docket 42667.

SUMMARY: The Department is directing all interested persons to show cause why it should not issue an order finding Flight International fit and awarding it a certificate of public convenience and necessity to engage in scheduled interstate and overseas air transportation of persons, property, and mail.

DATES: Persons wishing to file objections shall do so no later than April 15, 1985; answers to objections shall be filed no later than April 24, 1985.

ADDRESSES: Objections and answers to objections should be filed in Docket 42667 and addressed to the Documentary Services Division, U.S. Department of Transportation, 400 Seventh Street, SW., Room 4107, Washington, D.C. 20590, and should be served upon the persons listed in Attachment A to the order.

FOR FURTHER INFORMATION CONTACT: Steven B. Farbman, Aviation Enforcement and Proceedings, U.S. Department of Transportation, 400 Seventh Street, SW., Room 4116L, Washington, D.C. 20590, (202) 426-7631.

SUPPLEMENTARY INFORMATION: The complete text of Order 85–3–59 is available from the Documentary Services Division, whose address is provided above. Persons outside the metropolitan area may send a postcard request for Order 85–3–59 to that address.

Dated: March 22, 1985.

Matthew V. Scocozza,

Assistant Secretary for Policy and International Affairs.

[FR Doc. 85–7327 Filed 3–27–85; 8:45 am]

BILLING CODE 4910–62–M

Coast Guard

[CGD 85–018]

Lower Mississippi River Waterway Safety Advisory Committee; Meeting

Pursuant to section 10(a) of the Federal Advisory Committee Act (Pub. L. 92–403; 5 U.S.C. App. I) notice is hereby given of the seventh meeting of the Lower Mississippi River Waterway Safety Advisory Committee. The meeting will be held on Tuesday, April 16, 1985 in the 29th Floor Boardroom of the International Trade Mart Building, 2 Canal Street, New Orleans, LA. The meeting is scheduled to begin at 9 a.m. and end at 4 p.m. The agenda for the meeting consists of the following items:

1. Call to Order
2. Minutes of the January 15, 1985 Meeting
3. Chairman's Message
4. District Commander's response to the Committee's Recommendation of January 15, 1985
5. Mississippi River—Regulated Navigation Area; Towboat Requirements During Highwater
6. Presentation by Federal Communications Commission, local Engineer in Charge
7. Discussion
8. New Business
9. Adjournment

The purpose of this committee is to provide a public forum which will furnish to the U.S. Coast Guard consultation, local expertise, and advice on a wide range of matters regarding all facets of navigation safety.

Attendance is open to the public. With advance notice, members of the public may present oral statements at the meeting. Prior to presentation of their oral statements, but no later than the day before the meeting, members of the public shall submit, in writing, to the Executive Secretary of the Lower Mississippi River Waterway Safety Advisory Committee, the subject of their comments, a general outline signed by the presenter, and the estimated time required for presentation. The individual making the presentation shall also provide their name, address, and, if applicable, the organization they are representing. Any member of the public may present a written statement to the Advisory Committee at any time.

Additional information may be obtained from Commander R.A. Brunell, Executive Secretary, Lower Mississippi River Waterway Safety Advisory Committee, c/o Commander, Eighth Coast Guard District (mps), Room 1341, Hale Boggs Federal Building, 500 Camp Street, New Orleans, LA, 70130, Telephone number (504) 589–6901.

Dated: March 18, 1985.

T.T. Matteson,

Acting Captain, U.S. Coast Guard, Commander, 8th Coast Guard District.

[FR Doc. 85–7353 Filed 3–27–85; 8:45 am]

BILLING CODE 4910–14–M

[CGD 85–016]

Towing Safety Advisory Committee; Request for Applicants for Appointment to Membership

AGENCY: Coast Guard, DOT.

ACTION: Request for applications.

SUMMARY: The U.S. Coast Guard is seeking applicants for appointment to membership in the Towing Safety Advisory Committee (TSAC). This committee advises the Secretary of Transportation on rulemaking matters related to shallow draft inland and coastal waterway navigation and towing safety.

Seven members will be appointed as follows: Two (2) representatives from the barge and towing industry; two (2) representatives from maritime labor; two (2) representatives of shippers (of whom at least one (1) shall be engaged in the shipment of oil or hazardous materials by barge), and one (1) representative of the offshore mineral and oil supply vessel industry.

To achieve the balance of membership required by the Federal Advisory Committee Act, the Coast Guard is especially interested in receiving applications from minorities and women. The committee will meet at least once a year in Washington, D.C. or another location selected by the Coast Guard. All persons who applied for membership last year as representatives of the barge and towing industry will be contacted by the Coast Guard and requested to reverify their interest in applying for membership this year.

DATE: Requests for applications should be received no later than May 1, 1985 and must be completed and returned to the Coast Guard no later than June 1, 1985.

ADDRESS: Persons interested in applying should write to Commandant (G–CMC/21), U.S. Coast Guard Headquarters, Washington, D.C. 20593.

FOR FURTHER INFORMATION CONTACT: Captain C.M. Holland, Executive Director, Towing Safety Advisory Committee (G–CMC), Room 2110, U.S. Coast Guard Headquarters, 2100 Second Street SW., Washington, D.C. 20593 (202) 426–1477.

C.M. Holland,

Captain, U.S. Coast Guard, Executive Director, Towing Safety Advisory Committee.

March 25, 1985.

[FR Doc. 85–7351 Filed 3–27–85; 8:45 am]

BILLING CODE 4910–14–M

National Highway Traffic Safety Administration

Rulemaking, Research and Enforcement Programs; Meeting

AGENCY: National Highway Traffic Safety Administration (NHTSA), DOT.

ACTION: Notice.

SUMMARY: This notice announces a public meeting at which NHTSA will answer questions from the public and the automobile industry regarding the agency's rulemaking, research and enforcement programs.

DATES: The agency's regular, quarterly public meeting relating to the agency's rulemaking, research and enforcement programs will be held on May 1, 1985, beginning at 10:30 a.m. Questions relating to the agency's rulemaking, research, and enforcement programs, must be submitted in writing by April 17, 1985. If sufficient time is available, questions received after the April 17, date may be answered at the meeting. The individual, group or company submitting a question does not have to be present for the question to be answered. A consolidated list of the questions submitted by April 17, 1985 and the issues to be discussed will be mailed to interested persons on April 25, 1985, and will be available at the meeting.

ADDRESS: Questions for the May 1, meeting relating to the agency's rulemaking, research, and enforcement programs should be submitted to Barry Felrice, Associate Administrator for Rulemaking, Room 5401, 400 Seventh Street, SW, Washington, D.C. 20590.

The public meeting will be held in Room 2230, Department of

Transportation, 400 Seventh Street, SW, Washington, D.C. 20590.

SUPPLEMENTARY INFORMATION: NHTSA will hold its regular, quarterly meeting to answer questions from the public and industry regarding the agency's rulemaking, research, and enforcement programs on May 1, 1985. The meeting will begin at 10:30 a.m., and will be held in Room 2230, Department of Transportation, 400 Seventh Street, SW, Washington, D.C. 20590. The purpose of the meeting is to focus on those phases of these NHTSA activities which are technical, interpretative or procedural in nature. A transcript of the meeting will be available for public inspection in the NHTSA Technical Reference Section in Washington, D.C. within four weeks after the meeting. Copies of the transcript will then be available at twenty-five cents for the first page and five cents for each additional page (length has varied from 100 to 150 pages) upon request to NHTSA Technical Reference Section, Room 5108, 400 Seventh Street, SW, Washington, D.C. 20590.

Issued on: March 25, 1985.

Barry Felrice,

Associate Administrator for Rulemaking.

[FR Doc. 85-7370 Filed 3-27-85; 8:45 am]

BILLING CODE 4910-59-M

DEPARTMENT OF THE TREASURY

Fiscal Service

Fee Schedule for the Transfer of U.S. Treasury Book-Entry Securities Held at Federal Reserve Banks

AGENCY: Department of the Treasury, Fiscal Service, Bureau of the Public Debt.

ACTION: Final Notice.

SUMMARY: This notice contains a schedule of fees that will be charged by the Department of the Treasury for the transfer of book-entry Treasury securitis between accounts of depository financial institutions that are maintained at Federal Reserve Banks and Branches. When the fee schedule herein becomes effective on October 1, 1985, it will replace the current schedule of fees charged by Federal Reserve Banks for the transfer and account maintenance of Treasury securities.

EFFECTIVE DATE: October 1, 1985.

FOR FURTHER INFORMATION CONTACT:

Carl M. Locken, Jr., Acting Assistant Commissioner (Financing), Bureau of the Public Debt, Washington, D.C. 20239, telephone (202) 376-4350; or Anne M. Meister, Federal Reserve Liaison Officer, Bureau of the Public Debt, Washington, D.C. 20239, Telephone (202) 376-4304.

SUPPLEMENTARY INFORMATION:

Background

On December 3, 1984, the department of the Treasury published for comment a notice of a proposed fee schedule for Treasury securities transfers (49 FR 47354). This action was taken as a result of a recent Department-initiated evaluation of the role of the Federal Reserve Banks in maintaining and transferring Treasury securities. Based on this review, the Treasury reaffirmed its position that the Federal Reserve Banks are acting as fiscal agents of the United States when performing such functions. Consequently, the Department determined that:

(1) Any fees charged in conjunction with Treasury Book-entry activities performed by the Federal Reserve Banks on behalf of the Treasury should be clearly identified and collected as Treasury fees;

(2) The Treasury would continue to impose a fee on depository institutions for transfers of book-entry Treasury securities conducted by the Federal Reserve Banks, as fiscal agents of the United States, between accounts held at the same or different Federal Reserve Banks.

(3) The fees heretofore imposed for account maintenance for Treasury book-entry securities would be terminated.

The comment period for the proposed fee schedule closed on January 16, 1985. After reviewing and considering all written comments, the Department has decided to adopt the fee schedule as published in the proposed notice. However, to accommodate more extensive Federal Reserve system changes, the proposed implementation date of March 28, 1985, will be delayed until October 1, 1985.

Comments on Proposed Fee Schedule

Only two written comments were addressed to the Treasury, both of which were favorable to the proposed Treasury fee schedule. The Federal Reserve Board of Governors received several written comments in response to its companion notice in the **Federal Register** (49 FR 47354) on a proposed funds settlement fee relative to the transfer of Treasury securities. Since some of the comments directed to the Federal Reserve Board primarily related to Treasury determinations, the Treasury feels it appropriate to respond to these comments as well.

Two commentors expressed concern about the recent determination that the Federal Reserve Banks act as Fiscal Agents of the United States when transferring and maintaining Treasury book-entry securities. These comments cited the implications for other Federal Reserve priced services and for potential private sector competitors to the Federal Reserve. In response to these comments, the Department wishes to clarify that the Treasury determines what functions the Federal Reserve Banks will perform as Fiscal Agents of the United States. At the inception of the book-entry system for Treasury securities, the book-entry activities of the Reserve Banks were deemed to be fiscal agency functions. The system and regulations governing Treasury book-entry securities are established such that the Federal Reserve Banks, acting at the direction of the Treasury, hold the primary level of accounts that evidence Treasury's obligations. The Department's recent review reaffirmed its original fiscal agency determination, leading to the present restructuring of fees in accordance with Treasury direction. The Treasury's determinations regarding fiscal agency matters do not extend to services provided by the Federal Reserve Banks that are outside the scope of their role as Fiscal Agents of the United States.

Several commentors expressed concern to the Federal Reserve Board about the collection of fees on a daily basis for the transfer of Treasury securities. The commentors felt that it would be difficult to reconcile Treasury transfer activity separately from the non-Treasury securities activity that is billed monthly. The Treasury has instructed the Federal Reserve Banks to collect Treasury security transfer fees on a daily basis. This is consistent with the fee collection schedule that had been in place for Treasury securities transfers until several years ago. In preparing to implement the new fee schedule, the Federal Reserve Banks are making system changes that will provide depository institutions with sufficient data to reconcile their daily Treasury transfer activity to the fees charged.

Final Notice

Effective October 1, 1985, the Department of the Treasury establishes the following fee schedule for transfers of Treasury book-entry securities between the accounts of depository institutions that are maintained at Federal Reserve Banks and Branches:

Fee Schedule

On-line transfers originated, $1.50 per transfer

Off-line transfers originated, $6.25 per transfer
Off-line transfers received, $6.25 per transfer.

Carole Jones Dineen,

Fiscal Assistant Secretary.

[FR Doc. 85-7183 Filed 3-27-85; 8:45 am]

BILLING CODE 4810-35-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 revision and lists the following information: (1) The Department or 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 Public Law 96-511 applies.

ADDRESSES: Copies of the form and supporting documents may be obtained from Patricia Viers, Agency Clearance Officer (732), Veterans Administration, 810 Vermont Avenue, NW, Washington, DC 20420, (202) 389-2146. Comments and questions about the items on the 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) 395-7316.

DATES: Comments on the information collection should be directed to the OMB Desk Officer within 60 days of this notice.

Dated: March 22, 1985.

By direction of the Administrator.

Dominick Onorato,

Associate Deputy Administrator for Information Resources Management.

Revision

1. Department of Veterans Benefits.
2. Application for Dependency and Indemnity Compensation or Death Pension by Surviving Spouse or Child (Including Accrued Benefits and Death Compensation, where Applicable).
3. VA Form 21-534.
4. On occasion.
5. Individuals or households.
6. 163,000 responses.
7. 244,500 hours.
8. Not applicable.

[FR Doc. 85-7343 Filed 3-27-85; 8:45 am]

BILLING CODE 8320-01-M

Veterans' Advisory Committee on Rehabilitation; Meeting

The Veterans Administration gives notice that a meeting of the Veterans' Advisory Committee on Rehabilitation, authorized by 38 U.S.C., 1521, will be held in Room 1010 of the Veterans Administration Central Office, 810 Vermont Avenue, NW, Washington, D.C. 20420, April 30, 1985, at 9 a.m. The purpose of the meeting will be to review the administration of veterans' rehabilitation programs and provide recommendations to the Administrator as the Committee determines appropriate.

The meeting will be open to the public up to the seating capacity of the conference room. Because of the limited seating capacity, it will be necessary for those wishing to attend to contact Dr. Carole J. Westerman, Executive Secretary, Veterans' Advisory Committee on Rehabilitation (phone 202-389-2886) prior to April 19, 1985.

Interested persons may attend, appear before, or file statements with the Committee. Statements, if in written form, may be filed before or within 10 days after meeting. Oral statements will be heard at 2:30 p.m. on April 30, 1985.

Dated: March 21, 1985.

By direction of the Administrator.

Rosa Maria Fontanez,

Committee Management Officer.

[FR Doc. 85-7349 Filed 3-27-85; 8:45 am]

BILLING CODE 8320-01-M

Sunshine Act Meetings

Federal Register
Vol. 50, No. 60
Thursday, March 28, 1985

This section of the FEDERAL REGISTER contains notices of meetings published under the "Government in the Sunshine Act" (Pub. L. 94-409) 5 U.S.C. 552b(e)(3).

CONTENTS

1

COMMODITY FUTURES TRADING COMMISSION

TIME AND DATE: 11:00 a.m., Friday, April 5, 1985.

PLACE: 2033 K Street, NW., Washington, D.C., 8th Floor Conference Room.

STATUS: Closed.

MATTERS TO BE CONSIDERED: Surveillance Matters.

CONTACT PERSON FOR MORE INFORMATION: Jean A. Webb, 254–6314.

Jean A. Webb,

Secretary of the Commission.

[FR Doc. 85–7495 Filed 3–26–85; 2:25 pm]

BILLING CODE 6351–01–M

2

COMMODITY FUTURES TRADING COMMISSION

TIME AND DATE: 11:00 a.m., Friday, April 12, 1985.

PLACE: 2033 K Street, NW., Washington, D.C., 8th Floor Conference Room.

STATUS: Closed.

MATTERS TO BE CONSIDERED: Surveillance Matters.

CONTACT PERSONS FOR MORE INFORMATION: Jean A. Webb, 254–6314.

Jean A. Webb,

Secretary of the Commission.

[FR Doc. 85–7496 Filed 3–26–85; 2:25 pm]

BILLING CODE 6351–01–M

3

COMMODITY FUTURES TRADING COMMISSION

TIME AND DATE: 10:00 a.m., Tuesday, April 16, 1985.

PLACE: 2033 K Street, NW., Washington, D.C., 5th Floor Conference Hearing Room.

STATUS: Open.

MATTERS TO BE CONSIDERED: Applicationof the Coffee, Sugar and Cocoa Exchange for designation in the Consumer Price Index for Wage Earners; Rules 4.5—Final rules.

CONTACT PERSON FOR MORE INFORMATION: Jean A. Webb, 254–6314.

Jean A. Webb,

Secretary of the Commission.

[FR Doc. 85–7497 Filed 3–26–85; 2:25 pm]

BILLING CODE 6351–01–M

4

COMMODITY FUTURES TRADING COMMISSION

TIME AND DATE: 10:00 a.m., Tuesday, April 23, 1985.

PLACE: 2033 K Street, NW., Washington, D.C., 5th Floor Hearing Room.

STATUS: Open.

MATTERS TO BE CONSIDERED: Budget Categories, Plans, Priorities 3rd Quarter, FY 1985. Application of the Chicago Board of Trade for designation in Long Term Treasury Note Options.

CONTACT PERSON FOR MORE INFORMATION: Jean A. Webb, 254–6314.

Jean A. Webb,

Secretary of the Commission.

[FR Doc. 85–7498 Filed 3–26–85; 2:25 pm]

BILLING CODE 6351–01–M

5

COMMODITY FUTURES TRADING COMMISSION

TIME AND DATE: 11:30 a.m., Tuesday, April 23, 1985.

PLACE: 2033 K Street, NW., Washington, D.C., 8th Floor Conference Room.

STATUS: Closed.

MATTERS TO BE CONSIDERED: Enforcement Budget Categories—3rd Quarter 1985.

CONTACT PERSON FOR MORE INFORMATION: Jean A. Webb, 254–6314.

Jean A. Webb,

Secretary of the Commission.

[FR Doc. 85–7499 Filed 3–26–85; 2:25 pm]

BILLING CODE 6351–01–M

6

COMMODITY FUTURES TRADING COMMISSION

TIME AND DATE: 11:00 a.m., Friday, April 26, 1985.

PLACE: 2033 K Street, NW., Washington, D.C., 8th Floor Conference Room.

STATUS: Closed.

MATTERS TO BE CONSIDERED: Surveillance Matters.

CONTACT PERSON FOR MORE INFORMATION: Jean A. Webb, 254–6314.

Jean A. Webb,

Secretary of the Commission.

[FR Doc. 85–7500 Filed 3–26–85; 2:25 pm]

BILLING CODE 6351–01–M

7

COMMODITY FUTURES TRADING COMMISSION

TIME AND DATE: 10:00 a.m., Tuesday, April 30, 1985.

PLACE: 2033 K Street, NW., Washington, D.C., 5th Floor Hearing Room.

STATUS: Open.

MATTERS TO BE CONSIDERED: Briefing by the National Futures Association.

CONTACT PERSON FOR MORE INFORMATION: Jean A. Webb, 254–6314.

Jean A. Webb,

Secretary of the Commission.

[FR Doc. 85–7501 Filed 3–26–85; 2:25 pm]

BILLING CODE 6351–01–M

8

COMMODITY FUTURES TRADING COMMISSION

TIME AND DATE: 10:00 a.m., Wednesday, May 8, 1985.

PLACE: 2033 K Street, NW., Washington, D.C., 5th Floor Hearing Room.

STATUS: Open.

MATTERS TO BE CONSIDERED: Applicaton of the Philadelphia Board of Trade for designation in Eurodollar Time Deposit Options.

CONTACT PERSON FOR MORE INFORMATION: Jean A. Webb, 254–6314.

Jean A. Webb,

Secretary of the Commission.

[FR Doc. 85–7502 Filed 3–26–85; 2:25 pm]

BILLING CODE 6351–01–M

9

FEDERAL DEPOSIT INSURANCE CORPORATION

Notice of Agency Meeting

Pursuant to the provisions of the "Government in the Sunshine Act" (5 U.S.C. 552b), notice is hereby given that at 10:05 p.m. on Friday, March 22, 1985, the Board of Directors of the Federal Deposit Insurance Corporation met in closed session, by telephone conference call, to: (1) Receive bids for the purchase of certain assets of and the assumption of the liability to pay deposits made in Golden Valley Bank, Turlock, California, which was closed by the Superintendent of Banks for the State of California on Friday, March 22, 1985; (2) accept the bid for the transaction submitted by Farmers & Merchants Bank of Central California, Lodi, California, an insured State member bank; and (3) provide such financial assistance, pursuant to section 13(c)(2) of the Federal Deposit Insurance Act (12 U.S.C. 1823(c)(2)), as was necessary to facilitate the purchase and assumption transaction.

In calling the meeting, the Board determined, on motion of Chairman William M. Isaac, seconded by Director Irvine H. Sprague (Appointive), concurred in by Mr. Michael A. Mancusi, acting in the place and stead of Director C. T. Conover (Comptroller of the Currency), that Corporation business required its consideration of the matters on less than seven days' notice to the public; that no earlier notice of the meeting was practicable; that the public interest did not require consideration of the matters in a meeting open to public observation; and that the matters could be considered in a closed meeting pursuant to subsections (c)(8), (c)(9)(A)(ii), and (c)(9)(B) of the "Government in the Sunshine Act" (5 U.S.C. 552b(c)(8), (c)(9)(A)(ii), and (c)(9)(B)).

Dated: March 25, 1985.

Federal Deposit Insurance Corporation.

Hoyle L. Robinson,

Executive Secretary.

[FR Doc. 85-7476 Filed 3-26-85; 11:10 am]

BILLING CODE 6714-01-M

10

FEDERAL DEPOSIT INSURANCE CORPORATION

Notice of Agency Meeting

Pursuant to the provisions of the "Government in the Sunshine Act" (5 U.S.C. 552b), notice is hereby given that the Federal Deposit Insurance Corporation's Board of Directors will meet in open session at 2:00 p.m. on Monday, April 1, 1985, to consider the following matters:

Summary Agenda: No substantive discussion of the following items is anticipated. These matters will be resolved with a single vote unless a member of the Board of Directors requests that an item be moved to the discussion agenda.

Disposition of minutes of previous meetings.

Memorandum regarding acquisition of additional office space in the Ecker Square Condominium Office Building, San Francisco, California.

Reports of committees and officers:

Minutes of actions approved by the standing committees of the Corporation pursuant to authority delegated by the Board of Directors.

Reports of the Division of Bank Supervision with respect to applications, requests, or actions involving administrative enforcement proceedings approved by the Director or an Associate Director of the Division of Bank Supervision and the various Regional Directors pursuant to authority delegated by the Board of Directors.

Discussion Agenda:

No matters scheduled.

The meeting will be held in the Board Room on the sixth floor of the FDIC Building located at 550—17th Street, NW., Washington, D.C.

Requests for further information concerning the meeting may be directed to Mr. Hoyle L. Robinson, Executive Secretary of the Corporation, at (202) 389-4425.

Dated: March 25, 1985.

Federal Deposit Insurance Corporation.

Hoyle L. Robinson,

Executive Secretary.

[FR Doc. 85-7477 Filed 3-26-85; 11:10 am]

BILLING CODE 6714-01-M

11

FEDERAL DEPOSIT INSURANCE CORPORATION

Notice of Agency Meeting

Pursuant to the provisions of the "Government in the Sunshine Act" (5 U.S.C. 552b), notice is hereby given that at 2:30 p.m. on Monday, April 1, 1985, the Federal Deposit Insurance Corporation's Board of Directors will meet in closed session, by vote of the Board of Directors, pursuant to sections 552b(c)(2), (c)(6), (c)(8), and (c)(9)(A)(ii) of Title 5, United States Code, to consider the following matters:

Summary Agenda: No substantive discussion of the following items is anticipated. These matters will be resolved with a single vote unless a member of the Board of Directors requests that an item be moved to the discussion agenda.

Recommendations with respect to the initiation, termination, or conduct of administrative enforcement proceedings (cease-and-desist proceedings, termination-of-insurance proceedings, suspension or removal proceedings, or assessment of civil money penalties) against certain insured banks or officers, directors, employees, agents or other persons participating in the conduct of the affairs thereof:

Names of persons and names and locations of banks authorized to be exempt from disclosure pursuant to the provisions of subsections (c)(6), (c)(8), and (c)(9)(A)(ii) of the "Government in the Sunshine Act" (5 U.S.C. 552b(c)(6), (c)(8), and (c)(9)(A)(ii)).

Note.—Some matters falling within this category may be placed on the discussion agenda without further public notice if it becomes likely that substantive discussion of those matters will occur at the meeting.

Discussion Agenda:

Personnel actions regarding appointments, promotions, administrative pay increases, reassignments, retirements, separations, removals, etc.:

Names of employees authorized to be exempt from disclosure pursuant to the provisions of subsections (c)(2) and (c)(6) of the "Government in the Sunshine Act" (5 U.S.C. 552b(c)(2) and (c)(6)).

The meeting will be held in the Board Room on the sixth floor of the FDIC Building located at 550—17th Street, N.W., Washington, D.C.

Requests for further information concerning the meeting may be directed to Mr. Hoyle L. Robinson, Executive Secretary of the Corporation, at (202) 389-4425.

Dated: March 25, 1985.

Federal Deposit Insurance Corporation.

Hoyle L. Robinson,

Executive Secretary.

[FR Doc. 85-7478 Filed 3-26-85; 11:10 am]

BILLING CODE 6714-01-M

12

FEDERAL ELECTION COMMISSION

DATE AND TIME: Tuesday, April 2, 1985, 10:00 a.m.

PLACE: 1325 K Street, NW., Washington, D.C.

STATUS: This meeting will be closed to the public.

ITEMS TO BE DISCUSSED: Compliance. Litigation. Audits. Personnel.

DATE AND TIME: Thursday, April 4, 1985, 10:00 a.m.

PLACE: 1325 K Street, NW., Washington, D.C. (Fifth floor.)

STATUS: This meeting will be open to the public.

MATTERS TO BE CONSIDERED:

Setting of dates of future meetings
Correction and approval of minutes
Eligibility for candidates to receive Presidential primary matching funds
Staff proposal for reorganization of the information division
Request to make oral presentation submitted by the friends of George McGovern
1985 Legislative recommendations
Routine administrative matters

PERSON TO CONTACT FOR INFORMATION: Mr. Fred Eiland, Information Officer, 202–523–4065.

Mary W. Dove,

Administrative Assistant.

[FR Doc. 85–7560 Filed 3–26–85; 2:54 pm]

BILLING CODE 6715–01–M

13

PACIFIC NORTHWEST ELECTRIC POWER AND CONSERVATION PLANNING COUNCIL

MEETING

STATUS: Open.

TIME AND DATE: 9:00 a.m., April 3–4, 1985.

PLACE: Sheraton Missoula Hotel, Boussard, Jenkins & Dolack Meeting Rooms, 200 South Pattee Street, Missoula, Montana.

MATTERS TO BE CONSIDERED:

April 3, 1985

- Council Decision on Analysis of Conservation Availability and Cost (Conservation Supply Function Issue Paper).
- Staff Presentation on Draft Resource Portfolio.
- Staff Presentation on Out-of-Region Imports Issue Paper.
- Staff Presentation on Two-Year Action Evaluation Issue Paper.
- Staff Presentation on Research, Development and Demonstration of Promising Resources.
- Presentation on Bonneville Power Administration's Proposed Model Conservation Standards Alternatives and Surcharge Policy.
- Council Business.

April 4, 1985

- Status Report on Spill Plan at Bonneville Dam, Second Powerhouse.
- Public Comment on Analysis of Forecast Loads Staff Report.
- Public Comment on Critical Water Planning Issue Paper.
- Public Comment on Combustion Turbine Cost-Effectiveness Issue Paper.
- Public Comment on Proposed Council Intertie Access Policy Issue Paper.
- Staff Presentation and Public Comment on Re-Evaluation of the Model Conservation Standards Issue Paper.
- Public Comment on Cost and Availability of Resources Issue Paper.
- Council Decision on Columbia River Basin Fish and Wildlife Program Goals Workplan.

Public comment will follow each item.

FOR FURTHER INFORMATION CONTACT: Ms. Bess Wong, (503) 222–5161.

Edward Sheets,

Executive Director.

[FR Doc. 85–7474 Filed 3–26–85; 11:01 am]

BILLING CODE 0000–00–M

14

SECURITIES AND EXCHANGE COMMISSION

Notice is hereby given, pursuant to the provisions of the Government in the Sunshine Act, Pub. L. 94–409, that the Securities and Exchange Commission will hold the following meeting during the week of April 1, 1985.

A closed meeting will be held on Tuesday, April 2, 1985, at 3:15 p.m.

The Commissioners, Counsel to the Commissioners, the Secretary of the Commission, and recording secretaries will attend the closed meeting. Certain staff members who are responsible for the calendared matters may be present.

The General Counsel of the Commission, or his designee, has certified that, in his opinion, the items to be considered at the closed meeting may be considered pursuant to one or more of the exemptions set forth in 5 U.S.C. 552(c) (4), (8), (9)(A) and (10) and 17 CFR 200.402(a)(4), (8), (9)(i) and (10).

Commissioner Marinaccio, as duty officer, voted to consider the items listed for the closed meeting in closed session.

The subject matter of the closed meeting scheduled for Tuesday, April 2, 1985, at 3:15 p.m., will be:

Formal orders of investigation.
Report of investigation.
Institution of injunctive actions.
Institution of administrative proceeding of an enforcement nature.
Chapter 11 proceeding.

At times changes in Commission priorities require alterations in the scheduling of meeting items. For further information and to ascertain what, if any, matters have been added, deleted or postponed, please contact: Barry Mehlman at (202) 272–2648.

John Wheeler,

Secretary.

March 25, 1985.

[FR Doc. 85–7572 Filed 3–26–85; 3:55 pm]

BILLING CODE 8010–01

Federal Register

Thursday
March 28, 1985

Part II

Department of Health and Human Services

National Institutes of Health

Recombinant DNA; Notice of Meeting and Proposed Actions Under Guidelines for Research

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Recombinant DNA Advisory Committee; Meeting

Pursuant to Pub. L. 92–463, notice is hereby given of a meeting of the Recombinant DNA Advisory Committee at the National Institutes of Health, Building 31C, Conference Room 6, 9000 Rockville Pike, Bethesda, Maryland 20205, on May 3, 1985, from 9:00 a.m. to adjournment at approximately 5:00 p.m. This meeting will be open to the public to discuss:

Report of the Working Group on Release into the Environment;
Report of the Working Group on Human Gene Therapy;
Proposed coordinated framework for regulation of biotechnology;
Proposed working group on biological weapons;
Amendment of Guidelines; and
Other matters to be considered by the Committee.

Attendance by the public will be limited to space available. Members of the public wishing to speak at the meeting may be given such opportunity at the discretion of the chair.

Dr. William J. Gartland, Jr., Executive Secretary, Recombinant DNA Advisory Committee, National Institutes of Health, Building 31, Room 3B10, telephone (301) 496–6051, will provide materials to be discussed at the meeting, rosters of committee members, substantive program information. A summary of the meeting will be available at a later date.

Dated: March 8, 1985.

Betty J. Beveridge,

Committee Management Officer, NIH.

OMB's "Mandatory Information Requirements for Federal Assistance Program Announcements" (45 FR 39592) requires a statement concerning the official government programs contained in the *Catalog of Federal Domestic Assistance*. Normally NIH lists in its announcements the number and title of affected individual programs for the guidance of the public. Because the guidance in this notice covers not only virtually every NIH program but also essentially every federal research program in which DNA recombinant molecule techniques could be used, it has been determined to be not cost effective or in the public interest to attempt to list these programs. Such a list would likely require several additional pages. In addition, NIH could not be certain that every federal program would be included as many federal agencies, as well as private organizations, both national and international, have elected to follow the NIH Guidelines. In lieu of the individual program listing, NIH invites readers to direct questions to the information address above about whether individual programs listed in the *Catalog of Federal Domestic Assistance* are affected.

[FR Doc. 85–7063 Filed 3–27–85; 8:45 am]

BILLING CODE 4140–01–M

Recombinant DNA Research; Proposed Actions Under Guidelines

AGENCY: National Institutes of Health, PHS, HHS.

ACTION: Notice of Proposed Actions under NIH Guidelines for Research Involving Recombinant DNA Molecules.

SUMMARY: This notice sets forth proposed actions to be taken under the NIH Guidelines for Research Involving Recombinant DNA Molecules. Interested parties are invited to submit comments concerning these proposals. After consideration of these proposals and comments by the NIH Recombinant DNA Advisory Committee (RAC) at its meeting on May 3, 1985, the Director of the National Institutes of Health will issue decisions on these proposals in accord with the Guidelines.

DATE: Comments must be received by April 29, 1985.

ADDRESS: Written comments and recommendations should be submitted to the Director, Office of Recombinant DNA Activities, Building 31, Room 3B10, National Institutes of Health, Bethesda, Maryland 20205. All comments received in timely response to this notice will be considered and will be available for public inspection in the above office on weekdays between the hours of 8:30 a.m. and 5:00 p.m. Comments received by close of business April 26, 1985, will be reproduced and distributed to the RAC for consideration at its May 3, 1985, meeting.

FOR FURTHER INFORMATION CONTACT: Background documentation and additional information can be obtained from Drs. Stanley Barban and Elizabeth Milewski, Office of Recombinant DNA Activities, National Institutes of Health, Bethesda, Maryland 20205, (301) 496–6051.

SUPPLEMENTARY INFORMATION: The National Institutes of Health will consider the following actions under the Guidelines for Research Involving Recombinant DNA Molecules.

I. Proposed Points to Consider for Environmental Testing of Microorganisms

Deliberate release into the environment of any organism containing recombinant DNA, except certain plants as described in Appendix L, falls under Section III–A of the NIH Guidelines. Experiments in this category cannot be initiated without submission of relevant information on the proposed experiments to NIH, review by the RAC after publication for public comment, and specific approval by NIH.

The RAC Working Group on Release Into the Environment has prepared draft submission guidelines for individuals preparing proposals involving testing in the environment of microoganisms derived by recombinant DNA techniques. The proposed guidance follows:

Points To Consider for Submissions Involving Testing in the Environment of Microorganisms Derived by Recombinant DNA Techniques

Experiments in this category require specific review by the Recombinant DNA Advisory Committee (RAC) and approvals by the National Institutes of Health (NIH) and the Institutional Biosafety Committee (IBC) before initiation. The IBC is expected to make an independent evaluation although this evaluation need not occur before consideration of an experiment by the RAC. Relevant information on the proposed experiments should be submitted to the Office of Recombinant DNA Activities (ORDA). The objective of this review procedure is to evaluate the potential environmental effects of testing of microorganisms that have been modified by recombinant DNA techniques.

These following points to consider have been developed by the RAC Working Group on Release into the Environment as a suggested list for scientists preparing proposals on environmental testing of microorganisms, including viruses, that have been modified using recombinant DNA techniques. The review of proposals for environmental testing of modified organisms is being done on a case-by-case basis because the range of possible organisms, applications, and environments indicate that no standard set of procedures is likely to be appropriate in all circumstances. However, some common considerations allow the construction of points to consider such as those below. *Information on all these points will not be necessary in all cases but will*

depend on the properties of the parental organism and the effect of the modification on these properties.

Approval of small-scale field tests will depend upon the results of laboratory and greenhouse testing of the properties of the modified organism. We anticipate that monitoring of small-scale field tests will provide data on environmental effects of the modified organism. Such data may be a necessary part of the consideration of requests for approval of large-scale tests and commercial applications.

I. Summary

Present a summary of the proposed trial including objectives, significance, and justification for the request.

II. Genetic Considerations of Modified Organism to be Tested

A. Characteristics of the Nonmodified Parental Organism

1. Information on identification, taxonomy, source, and strain.

2. Information on organism's reproductive cycle and capacity for genetic transfer.

B. Molecular Biology of the Modified Organism

1. Introduced Genes

a. Source and function of the DNA sequence used to modify the organism to be tested in the environment.

B. Identification, taxonomy, source, and strain or organism donating the DNA.

2. Construction of the Modified Organism

a. Describe the method(s) by which the vector with insert(s) has been constructed. Include diagrams as appropriate.

b. Describe the method of introduction of the vector carrying the insert into the organism to be modified and the procedure for selection of the modified organism.

c. Specify the amount and nature of any vector and/or donor DNA remaining in the modified organism.

d. Give the laboratory containment conditions specified by the NIH Guidelines for the modified organism.

3. Genetic Stability and Expression

Present results and interpretation of preliminary tests designed to measure genetic stability and expression of the introduced DNA in the modified organism.

III. Environmental Considerations

The intent of gathering ecological information is to assess to the effects of survival, reproduction, and/or dispersal of the modified organism. For this purpose, information should be provided where possible and appropriate on: (i) Relevant ecological characteristics of the nonmodified organism; (ii) the corresponding characteristics of the modified organism; and (iii) the physiological and ecological role of donated genetic sequences in the donor and in the modified organism(s). For the following points, provide information where possible and appropriate on the nonmodified organism and a prediction of any change that may be elicited by the modification.

A. Habitat and Geographic Distribution

B. Physical and Chemical Factors Which Can Affect Survival, Reproduction, and Dispersal C. Biological Interactions

1. Host range.

2. Interactions with and effects on other organisms in the environment including effects on competitors, prey, hosts, symbionts, predators, parasites, and pathogens.

3. Pathogenicity, infectivity, toxicity, virulence, or as a carrier (vector) of pathogens.

4. Involvement in biogeochemical or in biological cycling processes (e.g., mineral cycling, cellulose and lignin degradation, nitrogen fixation, pesticide degradation).

5. Frequency with which populations undergo shifts in important ecological characteristics such as those listed in III–C points 1 through 4 above.

6. Likelihood of exchange of genetic information between the modified organism and other organisms in nature.

IV. Proposed Field Trials

A. Pre-Field Trial Considerations

Provide data related to any anticipated effects of the modified microorganism on target and nontarget organisms from microcosm, greenhouse, and/or growth chamber experiments that simulate trial conditions. The methods of detection and sensitivity of sampling techniques and periodicity of sampling should be indicated. These studies should include, where relevant, assessment of the following items:

1. Survival of the modified organism.

2. Replication of the modified organism.

3. Dissemination of the modified organism by wind, water, soil, mobile organisms, and other means.

B. Conditions of the Trial

Describe the trail involving release of the modified organism into the environment:

1. Numbers of organisms and methods of application.

2. Provide information including diagrams of the experimental location and the immediate surroundings. Describe characteristics of the site that would influence containment or dispersal.

3. If the modified organism has a target organism, provide the following:

a. Identification and taxonomy.

b. The anticipated mechanism and result of the interaction between the released microorganism and the target organism.

C. Containment

Indicate containment procedures in the event of accidental release as well as intentional release and procedures for emergency termination of the experiment. Specify access and security measures for the area(s) in which the tests will be performed.

D. Monitoring

Describe monitoring procedures and their limits of detection for survival, dissemination, and nontarget interactions of the modified microorganism. Include periodicity of sampling and rationale for monitoring procedures. Collect data to compare the modified organisms with the nonmodified microorganism most similar to the modified organism at the site of the trial. Results of monitoring should be submitted to the RAC according to a schedule specified at the time of approval.

V. Risk Analysis

Results of testing in artificial contained environments together with careful consideration of the genetics, biology, and ecology of the nonmodified and the modified organisms will enable a reasonable prediction of whether or not significant risk of environmental damage will result from the release of the modified organism in the small-scale field test. In this section, the information requested in Sections II, III, and IV should be summarized to present an analysis of possible risks to the environment in the test as it is proposed. The issues addressed might include but not be limited to the following items:

A. The Nature of the Organism

1. The role of the nonmodified organism in the environment of the test site, including any adverse effects on other organisms.

2. Evaluation of whether or not the specific genetic modification (e.g., deletion, insertion, modification of

specific DNA sequences) would alter the potential for significant adverse effects.

3. Evaluation of results of tests conducted in contained environments to predict the ecological behavior of the modified organism relative to that of its nonmodified parent.

B. The Nature of the Test

Discuss the following specific features of the experiment that are designed to minimize potential adverse effects of the modified organism:

1. Test site location and area.
2. Introduction protocols.
3. Numbers of organisms and their expected reproductive capacity.
4. Emergency procedures for aborting the experiment.
5. Procedures conducted at the termination of the experiment.

II. Proposed Revision of Appendix C

Dr. Jack J. Manis of the Upjohn Company, Kalamazoo, Michigan, has proposed that the following kinds of experiments be made exempt under Section III-D-5 and the following language be included in Appendix C of the NIH Guidelines:

Experiments and processes utilizing recombinant DNA containing derivatives of *Streptomyces fradiae* or *Streptomyces lincolnensis* are exempt from the Guidelines at all levels of volume scale when the recombinant DNA molecules contained in these hosts are derived solely from nonpathogenic streptomycetes. The nonpathogenicities of the recombinant DNA sources are determined by the local IBC.

For these exempt laboratory experiments, BL1 physical containment conditions are recommended.

For large-scale fermentation experiments BL1-LS physical containment conditions are recommended. However, following review by the IBC of appropriate data for a particular host-vector system some latitude in the application of BL1-LS requirements as outlined in Appendix K-II-A through K-II-F is permitted.

Exceptions. Experiments described in Section III-A which require specific RAC review and NIH approval before initiation of the experiment.

Large-scale experiments (e.g., more than 10 liters of culture) require prior IBC review and approval (see Section III-B-5).

Explanation of this proposed modification is provided in the submission.

III. Proposed Amendment of Part III

In a memorandum dated February 12, 1985, Dr. Bernard Talbot, Deputy Director of the National Institute of Allergy and Infectious Diseases, noted that under the NIH Guidelines for Research Involving Recombinant DNA Molecules certain proposals are received by NIH for review by the NIH Recombinant DNA Advisory Committee (RAC) and subsequent NIH approval. These include proposals which are required to be submitted from institutions that receive support for recombinant DNA research from NIH, and also proposals voluntarily submitted by institutions that receive no NIH support for recombinant DNA research. Recently other Federal agencies have made steps toward assuming new roles in review of recombinant DNA proposals.

Because of these developments, it could now happen that a proposal submitted to the NIH for RAC review and NIH approval (either from an institution that receives NIH funding for recombinant DNA research or voluntarily submitted by an institution that receives no such support) may be also submitted to another Federal agency for review.

Dr. Talbot states:

In such a case, I believe it would be advantageous for NIH to have the option of deferring to the review and approval by the other Federal agency rather than always going through review and approval by both the other Federal agency and the NIH. In order to allow this, I request that the following proposed change in the NIH Guidelines be issued for public comment, and placed on the agenda of the next RAC meeting. I propose that a new sentence be added at the end of Section III-A of the Guidelines ("Experiments that Require RAC Review and NIH and IBC Approval Before Initiation") just before Section III-A-1 of the Guidelines, as follows: "If experiments in this category are submitted for review to another Federal agency, the submitter shall notify ORDA; ORDA may then determine that such review serves the same purpose, and based on that determination, notify the submitter that no RAC review will take place, no NIH approval is necessary, and the experiment may proceed upon approval from the other Federal Agency."

Additional background information is provided in the memorandum.

IV. Proposed RAC Working Group

Messrs. Lee Rogers and Jeremy Rifkin of the Foundation on Economic Trends, Washington, D.C., submitted the following letter dated February 28, 1985, to NIH:

We are formally proposing that the Recombinant DNA Advisory Committee (RAC) of the National Institutes of Health (NIH) establish a working subgroup whose stated purpose would be to examine potential uses of recombinant DNA technology for offensive and defensive biological weapons systems. In addition, this subgroup will also explore current Department of Defense (DOD) programs specifically designed to develop "defensive" preparedness against the threat of genetic engineering warfare by aggressor nations or terrorists. It should be made clear that such a study is designed to look into the potential as well as actual uses of recombinant DNA technology for military purposes regardless of whether such experimentation is being conducted at this time. The working subgroup on biological warfare will make its findings available to the RAC, NIH, and interested members of the public. The working subgroup may also wish to make recommendations regarding future oversight of recombinant DNA work in this field.

It is no longer possible to ignore the potential military uses of recombinant DNA experimentation in light of the DOD's plan to construct an aerosol test laboratory at Dugway Proving Ground in Utah. The military has stated its intention to use this lab to test defenses against biological warfare experiments and it further stated that it will be working with deadly biological pathogens. In November 1984, the Secretary of Defense, Caspar Weinberger, stated in a letter to Senator Jim Sasser: "We continue to obtain new evidence that the Soviet Union has maintained its offensive biological warfare program and that it is exploring genetic engineering to expand their program's scope. Consequently, it is essential and urgent that we develop and field adequate biological and toxin protection." (See enclosed document.) In light of these recent developments, it is imperative that the RAC begin a thorough and comprehensive study of the potential uses of recombinant DNA technology for military purposes.

Since its inception, RAC has involved itself in every aspect of recombinant DNA technology in an effort to develop procedures, guidelines, protocols, and ethical standards to oversee this research. The only area of recombinant DNA experimentation that has not yet been rigorously examined is the potential military uses. Therefore, I would think that this committee would find it helpful to explore the potential military uses of recombinant DNA technology in order to facilitate a better understanding of the various issues involved. Moreover, it is altogether appropriate for the RAC to engage in such a study as the DOD has stated on many occasions that it is adhering to the guidelines established by this committee and the NIH. An independent study by the RAC of the military potential or recombinant DNA technology can only serve to better inform the Executive Branch, Congress and the public of the issues involved in this particular field.

Dated: March 11, 1985.

Anthony S. Fauci,

Director, National Institute of Allergy and Infectious Diseases, National Institutes of Health.

OMB's "Mandatory Information Requirements for Federal Assistance Program Announcements" (45 FR 39592) requires a statement concerning the official government programs contained in the *Catalog of Federal Domestic Assistance.* Normally NIH lists in its announcements the number and title of affected individual programs for the

guidance of the public. Because the guidance in this notice covers not only virtually every NIH program but also essentially every federal research program in which DNA recombinant molecule techniques could be used, it has been determined to be not cost effective or in the public interest to attempt to list these programs. Such a list would likely require several additional pages. In addition, NIH could not be certain that every federal program would be included as many federal agencies, as well as private organizations, both national and international, have elected to follow the NIH Guidelines. In lieu of the individual program listing, NIH invites readers to direct questions to the information address above about whether individual programs listed in the *Catalog of Federal Domestic Assistance* are affected.

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federal register

Thursday
March 28, 1985

Part III

Administrative Committee of the Federal Register

1 CFR Part 1 et al.

Updating of Publication Procedures; Final Rule

ADMINISTRATIVE COMMITTEE OF THE FEDERAL REGISTER

1 CFR Parts 1, 2, 7, 8, 9, 10, 15, 18, 20 and 21

Updating of Publication Procedures

AGENCY: Administrative Committee of the Federal Register.

ACTION: Final rule.

SUMMARY: The Administrative Committee of the Federal Register (ACFR) is updating its regulations for the Federal Register system to clarify certain policies and to reflect current procedures. These amendments concern filing for public inspection, cross-referencing, authority citations, correction of errors, distribution of official copies, OMB control numbers and technical amendments. This action does not represent a change in policy or increase the burdens on agencies or the public.

EFFECTIVE DATE: April 29, 1985.

ADDRESS: Mail: Office of the Federal Register, National Archives and Records Service, Washington, DC 20408.

FOR FURTHER INFORMATION CONTACT: Martha Girard, (202) 523-5240.

or

Frances McDonald or James Burroughs, (202) 523-4534.

SUPPLEMENTARY INFORMATION: In the **Federal Register** of July 6, 1984 (49 FR 27910) the Administrative Committee of the Federal Register (ACFR) proposed to amend some of its regulations to reflect current procedures and to clarify certain policies. Most of the comments received were from Federal agencies. The ACFR has analyzed all the comments and based on them, has made a few changes to the regulations as proposed.

Filing for Constructive Notice

There has been confusion by agencies and by the public over the difference between the Office of the Federal Register (OFR) receiving a document for publication and filing a document for public inspection. This confusion appears to be over the term "filing" which is not defined in existing regulations on filing at 1 CFR 3.2. Therefore, the ACFR is amending its regulations to define the term "filing" and clarify its use by the OFR under the Federal Register Act (FRA).

The Federal Register Act (44 U.S.C. Chapter 15) requires that a copy of a document be placed on public inspection when it is filed (44 U.S.C. 1503), and states that filing constitutes constructive notice of the contents of the document filed (44 U.S.C. 1507). Thus, because the Federal Register Act directly links filing with the availability of the document for public inspection, a document is filed when it is made available for public inspection.

Before a document can be made available for public inspection it must be processed for publication so that the filed document accurately reflects what will be published in the **Federal Register.** Processing includes a review for compliance with publication requirements (1 CFR Chapters I and II), classification, assignment of a publication date, and editing.

The actual pre-filing processing time for a single document may vary depending on the document's length and its compliance with 1 CFR. Normally a document is published on the third working day after the day it is received by the OFR. A document is available for public inspection during OFR office hours at least on the working day before its publication in the **Federal Register.** The OFR does not release to the public information concerning a document before the document is filed.

Documents are on public inspection at the OFR during official office hours. These hours are 8:45 a.m. to 5:15 p.m. (1 CFR 2.3(d)).

If an agency wishes to provide immediate notice to the public of a document's contents, the agency may request immediate processing and filing for public inspection. This is known as emergency filing. A document may be filed on the same day it is received if there is sufficient time for the document to be both reviewed by the OFR staff and inspected by the public. The document remains on public inspection until it is published according to the normal schedule.

If a document arrives during office hours too late in the day to be filed that day, the agency may substantiate delivery by requesting OFR to stamp a copy of the document or provide a receipt stating the date and time the document was received by the OFR.

The purpose of adding the definition of "filing" to the regulations in 1 CFR is to clarify the usage of that term under the Federal Register Act. It does not change OFR procedures for normal filing, or for handling requests for immediate or emergency filing, expedited, or emergency publication as explained in §§ 17.3 and 17.4, or the withdrawal of documents after they have been filed for public inspection. One commentator sought further information about withdrawal procedures. A request for the withdrawal of a document on public inspection must be made by a timely letter signed by a duly authorized representative of the agency. The original document and the letter remain on public inspection (1 CFR 18.13).

Another commentator suggested that the OFR establish procedures for the issuance of verification receipts so that court ordered and legislative deadlines could be met. The OFR has such a procedure in place. An agency wishing a receipt merely needs to request such a receipt.

Cross-Referencing

The ACFR is responsible for publication of the Code of Federal Regulations (CFR) which is a special edition of the **Federal Register** (FR). The CFR consists of "complete codifications of the documents of *each* [emphasis added] agency of the Government having general applicability and legal effect, issued or promulgated by the agency . . ." (44 U.S.C. 1510(a)). In publishing the CFR, the ACFR is charged with ensuring its "practical usefulness and economical manufacture" (44 U.S.C. 1510(b)), as well as regulating the "manner and form" of the **Federal Register** (44 U.S.C. 1506(3)).

The OFR always has permitted cross-referencing in specific cases under the exceptions which are stated in this regulation. However, requests by agencies to cross-reference other agencies' regulations have multiplied in recent years as agencies seek to reduce regulations and save on printing costs paid to the Government Printing Office for material published in the **Federal Register** and the CFR, even though many of the requests are outside the scope of the recognized exceptions. Regulatory burdens on the public are not lessened by shifting them by cross-referencing from one agency's regulations to another. Moreover, cross-referencing casts legal shadows on the orderly giving of notice through the Federal Register system, which is the legislative intent of the Federal Register Act.

From a practical point of view, use of cross-references to replace regulatory text makes the Federal Register system difficult to use. The reader must look outside an agency's regulations to ascertain the nature of the entire regulatory scheme. In some instances an agency will cross-reference the regulations of another agency, but make piecemeal changes to the text of the cross-referenced regulations to fit its own needs. This imposes an additional burden on the reader who is required to look at two different versions of regulatory text and to determine, without further guidance, the combination of regulations which applies. If the referenced regulations

also cross-reference a third agency's regulations, the reader must consult three different agencies' regulations, read them together and try to decide which version or combination of regulations is applicable to the user. The CFR could become a set of arrows pointing from agency to agency rather than self-contained, agency codifications of regulations. It was precisely because of the lack of a clear, uniform and workable system for providing proper legal notice that the Federal Register Act was passed.

Cross-referencing can create procedural problems for an agency. An untenable situation results when one agency adopts the rules of another agency by cross-referencing. The first agency surrenders to the second control over future amendments to the regulations. An agency could find itself, because the other agency changed its regulations, referencing regulations that are irrelevant or referencing regulations that cannot be enforced or which no longer exist.

The Administration Procedure Act (APA) requires that each agency "separately state and currently publish" in the **Federal Register** substantive rules of general applicability (5 U.S.C. 552(a)(1)(D)). The Federal Register Act directs the ACFR to regulate the "manner and form" of publication in the Federal Register system (44 U.S.C. 1506 (3)) and to publish the CFR in "separate books with a view to practical usefulness and economical manufacture" (44 U.S.C. 1510 (b)). One commentator indicated that the "practical usefulness" provision should be interpreted in a limited way to apply to mere printing and binding format. However, in reading the Federal Register Act and APA together, the ACFR holds, aside from the stated exceptions, that each agency must publish its own rules and not refer the reader to another agency's rules, and that the ACFR has the responsibility to ensure that this and other means "to keep the Code as current and readily useable as possible" (1 CFR 8.1(b)) are followed.

The ACFR received several comments about proposed § 21.21 prohibiting cross-referencing except in certain categories. Many commentators asked for a more detailed explanation of this section, particularly the use of exceptions. It has been rewritten to provide additional guidance. Most commentators accepted the basic reasoning behind this proposal, but were concerned about its effect on cross-references in their own regulations. The introductory text of § 21.21(c) states the general prohibition against cross-referencing and sets forth the criteria for exceptions. One commentator suggested that the issuing agency make the determination in certain circumstances on the propriety of a cross-reference. The ACFR has the statutory responsibility for maintaining the entire Code of Federal Regulations and preserving its practical usefulness. This governmentwide responsibility requires that the ACFR issue regulations which will ensure and facilitate access to the Government's rules. The OFR traditionally provides document drafting and reviewing services to agencies publishing in the Federal Register system. Through this existing consultative process, OFR staff will work with agencies to resolve borderline cases involving cross-referencing.

In the list of exceptions to the prohibition against cross-referencing, § 21.21(c) (1) and (3) are restatements of provisions in the proposed rule with the additions of the use of Executive orders and reorganization plans as legal authorities. The exception in paragraph (c)(1) recognizes that direction by statute, E.O., or reorganization plan to use the regulations of another agency in a rulemaking must be followed. Several commentators cited instances in which agencies' are legally mandated to cross-reference other agencies' regulations. This is recognized by the (c)(1) exception. The exception in paragraph (c)(3) provides for informational cross-referencing. An agency may wish to cite other agencies which regulate in the same field. For example an agency may properly state that "Compliance with this regulation may not necessarily mean compliance with the regulations of Department X found at XX CFR" or "these regulations are issued consistent with the regulations of agency X at XX CFR". These cross-references do not further regulate or burden the public.

The exception in paragraph (c)(2) may be considered part of paragraph (c)(1) but deserves separate mention because it is the most frequently used—and probably the most misunderstood—statutory cross-reference. Regulations promulgated by an agency with the sole legal authority to issue regulations may be referenced by another agency when authorized by statute or similar legal authority. This is permissible because the referencing agency has no legal authority to issue regulations, even duplicative ones, for that subject matter area. For example, the Environmental Protection Agency (EPA) has the legal authority to determine what level of a pollutant is hazardous to human health, but another agency enforces that finding in its own program. EPA sets noise limits but the Federal Railroad Administration enforces them in its area of responsibility. EPA determines radiation limits; the Nuclear Regulatory Commission uses them. The Food and Drug Administration (FDA) issues regulations concerning food and color additives. FDA has the sole authority in the Federal government to issue these regulations, but another agency may use these standards by way of cross-reference.

Exception (c)(4) in § 21.21 involves consensus standards or test methods which are used in many areas of regulations. Some agencies by regulation have issued standards or methods which replace or preempt the voluntary methods and have become mandatory. In cases such as this the nature of the government standard makes reprinting fully text unnecessary. The Department of Transportation has developed in its regulations many symbols of labels to ensure the safe handling and transportation of dangerous and hazardous materials. Other agencies in their own safety programs may reference a requirement to use a DOT label because it has become the accepted standard industry-wide.

The final exception, § 21.21(c)(5), simply recognizes that a subagency can reference regulations of its parent department.

One commentator suggested that when regulations are handled jointly by agencies cross-referencing should be allowed. If in the regulatory scheme one agency is responsible for one part of the program and another agency is responsible for another part of the program cross-referencing is permissible under exemption (c)(3). Where regulations are jointly issued and administered by agencies a separate chapter in the CFR is established for those joint regulations. Jointly issued regulations that are administered individually by each agency must be published in full text by each agency in its own chapter of the CFR.

When special situations occur in which agencies must publish joint regulations or the same regulations, the OFR has devised special formats and publication procedures to accommodate the agencies by permitting them to publish these documents jointly in the **Federal Register** although each agency must publish separately in the CFR. Examples include regulations issued under the Archaeological Resources Protection Act (49 FR 1015; January 6, 1984), and proposed regulations on enforcement of nondiscrimination on the

basis of handicap in Federally conducted programs (49 FR 1449, January 11, 1984 and 49 FR 34132, August 28, 1984).

One commentator suggested that the ACFR consider the problem of the "blind cross-reference", that is, referencing material without giving the reader an idea of what the referenced material contains. The ACFR is not issuing a regulation on this point, but urges agencies to use the following as drafting guidance. Cross-referenced material should be introduced by a brief statement describing the matter referenced for the benefit of the reader.

Examples

Statements to be avoided:

(f) If a summary, rather than the total plan, is made available to the public, the summary must include information required under § 242.24(a) (1), (2) and (3); § 242.28.

Statements to be used:

(f) If the State provides to the public a summary of the proposed services plan, rather than the total plan, the summary must at least contain information on—

(1) The individuals to be served, as specified in § 242.24;

(2) The services to be provided, to whom, and where, as set forth in § 242.26(a) (1) and (4); and

(3) The funds that will be used for the program, as required by § 242.28.

This drafting technique will help to minimize the confusion caused by a permissible cross-reference and make agency regulations more understandable.

Some commentators asked if the prohibition on cross-references would require the agency to engage in full notice and comment rulemaking if the agency were to publish the material in full text. The ACFR does not believe additional notice and comment is necessary. Full text publication would not be a substantive change because the underlying regulation that was cross-referenced was subject to the initial notice and comment of the original rule. The regulatory effect of a regulation is not increased or lessened because it is given effect by a cross-reference.

This reasoning is consistent with the regulation in 1 CFR 5.1(c) where the ACFR states that it "does not intend to affect the validity of any document" by "prescribing headings, preambles, effective dates, authority citations and similar matters of form". When an agency has discretion to determine the content of a regulation, it may not cross-reference another agency's regulations in the CFR.

This formal expression of existing policy will not have significant impact onthe cost of publishing regulations for the affected agencies. The examples of cross-references given by the commentators all fall within the exceptions listed in the regulation. The ACFR does not plan any retroactive enforcement following publication of this regulation. The general prohibition against cross-referencing and the valid exceptions are not new. In practice they have been implicitly recognized and followed over the years, preventing many improper cross-references from being published. Now they are made explicit. In the future, agency regulation writers must consider this rule and the problem of cross-referencing exceptions when drafting new text.

Authority Citation

Each document classified as a rule or proposed rule in the **Federal Register** must contain a citation of the legal authority under which the agency issues the document (1 CFR 21.40). The ACFR is amending the requirements in 1 CFR for the form and placement of authority citations to conform to the guidance set forth in the OFR Document Drafting Handbook (DDH) 1980.

According to the new requirements an agency sets out the full text of the authority citation for each part affected by the document. If a document affects an entire part, the agency places the complete authority citation directly after the table of contents and before the regulatory text. If a document amends only certain sections within a CFR part, the agency presents the complete authority citation as the first item in the list of amendments to the part.

Examples

A. If the authority for issuing an amendment is the same as the authority listed for the whole CFR part, the agency simply restates the authority.

17 CFR Part 7 is amended as follows:

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

Authority: Sec. 5, Pub. L. 98-321, 82 Stat. 370 (34 U.S.C. 7).

2. In Part 7, § 7.10 is revised to read as follows:

(Continue with the new text of § 7.10)

B. If the authority for issuing an amendment changes the authority citation for the whole CFR part, the agency revises the authority citation in its entirety. The agency may specify the particular authority under which certain sections are amended in the revised authority citation.

17 CFR Part 47 is amended as follows:

1. The authority citation for Part 47 is revised to read as follows:

Authority: Sec. 8, Pub. L. 98-328, 82 Stat. 470 (34 U.S.C. 21); §§ 47.10 and 47.11 also issued under sec. 11, Pub. L. 98-329, 82 Stat. 503 (34 U.S.C. 311).

2. In Part 47, Secs. 47.10 and 47.11 are revised to read as follows:

(Continue with the new text of §§ 47.10 and 47.11).

Two commentators felt that requiring an agency to present the complete authority citation for a part where there is no change in the authority citation is unnecessary, redundant, excessively costly and confusing to the reader.

Many of the authority citations presently in the CFR are redundant because agencies have not consolidated the Public Law, Statutes at Large, and U.S.C. citations. In the past, whenever an agency published an authority citation which was not in the exact form that appeared in the blanket authority, that new citation was added to the blanket authority with the result that the same authority was repeated a number of times. Besides being redundant, these authority citations are confusing to the public and can be costly in publication charges to the agencies.

Long-standing ACFR regulations reflecting the requirements in 5 U.S.C. 552 and 553 require that an issuing agency give an authority citation for each section in a rule or proposed rule document and that the agency be responsible for the authority citation.

Under the new regulations when an agency publishes the authority for a part each time the part is amended, the agency will be able to ensure that the citations are necessary and concise.

The ACFR also has decided to issue regulations requiring only the United States Code (U.S.C.) in authority citations. Agencies may use the U.S.C. citation whether or not that title has been enacted into positive law. The additional use of Public Law and U.S. Statutes at Large citations is now optional. This change conforms to the guidance found in "A Uniform System of Citation", 12th edition (the Blue Book).

Most of the comments received on this subject supported citing only the U.S.C. One commentator asked about instances in which the authority cited was not codified in the U.S.C. In those circumstances, the agency must cite the authority that exists.

The ACFR received one comment supporting the proposal to require that the authority citation appearing in the CFR be centralized at the part or subpart level of the regulations.

The authority citations at each section level cause a great amount of repetition. Centralizing the authority citations will be more helpful to the reader. Eliminating the repetition will result in fewer pages in the CFR, save agencies

printing costs, and will be more helpful to the reader. If an agency wishes to specify the authority for a particular CFR section, this can be done within the centralized authority citation.

The ACFR will not require agencies to reach back and rewrite authority citations for regulations already in the CFR. This centralization of authority citations will take place as agencies amend their regulations. It will be most cost effective for agencies when amending their regulations to remove the authority citations at the section level and centralize the citations at the part or subpart level. This can be done with amendatory language such as:

1. The authority citation for Part X is revised to read as set forth below and the authority citations following all the sections in Part X are removed.

Correction of Errors

Although the correction of errors in printing is addressed in 1 CFR 18.15, the responsibility for identifying errors and procedures to correct them needs to be clarified. To ensure that proper legal notice is given the public, the ACFR believes that agencies share in the responsibility for the accuracy of the documents as printed. An agency is in the best position to identify errors found in its published documents; it should routinely and carefully review its own documents for accuracy after publication in the **Federal Register.** Some agencies have waited years to question the text of a rule that has been codified in the CFR.

If an error was submitted in the original document, the document should be corrected by the immediate filing and publication of a correction document. Complete responsibility for this type of error rests with the agency.

A significant OFR editing or GPO typographical error will be corrected by the OFR staff as soon as it is found by OFR staff or when the staff is informed by the agency of the error.

Three comments were received on this subject. Two requested a more flexible time limit for agencies to review their published documents in the **Federal Register.** The other comment asked for a definition in the regulation of what the OFR considered a significant OFR editing or GPO typographical error requiring a correction document. An agency should review its published documents as soon as possible after receiving the **Federal Register.** The commentator was concerned that because some agencies do not receive copies of the **Federal Register** until two or three days after publication, the agencies could not review their documents "immediately after publication". Ten days or two weeks was suggested as a reasonable time to discover and report errors. The ACFR did not intend that an agency be responsible for reviewing documents in the **Federal Register** before receipt of the issue in which they appear. The purpose of the proposed rule was to make clear that agencies share the responsibility for post publication review of the **Federal Register** and CFR. Timeliness was stressed to ensure prompt corrections for the benefit of the affected public and to prevent perpetuation of errors in the CFR. The ACFR believes that the need for promptness by the agencies in identifying errors will be understood without setting time limits in the rule.

The regulation explains that an OFR editing or GPO typographical error requiring a correction document is one which would tend to confuse or mislead the reader or would affect the text subject to codification. This is the type of error which is considered significant.

Another commentator suggested that the emphasis on this rule be changed to give agencies the right to insist on a correction notice, no matter how insignificant the error.

The commentator acknowledged that in his experience in dealing with OFR staff he had never had any problem with correction notices, but he was concerned that OFR staff might not recognize the significance of an error identified by an issuing agency.

The OFR, when informed in a timely manner of a significant clerical or typographical error, will issue a correction document. OFR staff and agencies often agree that certain errors are insignificant and no correction documents are required. In the rare circumstance when an agency and the OFR staff disagree about the source of an error, the Director of the OFR, who has possession of the original document, is in the best position to make the final judgment. Of course, an agency is always free to issue its own correction document.

Distribution of Official Copies

In the Federal Register Act the ACFR is given the authority to regulate the number of copies of **Federal Register** publications to be distributed without charge to members of the Government for official use (44 U.S.C. 1506).

The ACFR amends its regulations to formalize the long-standing policy of limiting to 300 the number of copies of the individual titles of the CFR sent to an executive agency without charge. Copies of the CFR may be requested in paper and microfiche. If an agency needs additional copies of the CFR, it should order them directly from GPO.

Only one comment was received concerning the distribution of official copies. That commentator suggested that issuing agencies be given unrestricted distribution of their CFR volumes at no charge. The reason the ACFR set a limit on the number of copies of the CFR which can be given to agencies free of charge is to keep the CFR page cost of publication to agencies as low as possible. To allow agencies an unlimited number of copies of the CFR without charge would increase the cost to the agencies for publication in the CFR.

The ACFR amends its regulations to change to 12 the number of copies of the United States Government Manual sent routinely to each Senator and each Member of the House of Representatives. Present regulations provide that two (2) copies of the United States Government Manual annually be sent and that an additional 10 be made available upon a written authorization to the Director of the Federal Register.

OMB Control Numbers

The ACFR is responsible for the manner and form of material appearing in the **Federal Register.** The OFR already has issued informal guidance on the style and format to be used by agencies for OMB Control Numbers in regulatory text. The ACFR is formalizing this guidance through regulations. Including these directions in the regulations will give uniformity to the way in which these OMB control numbers are displayed. This will promote orderly codification and aid the reader in finding the numbers.

Updating Regulations

Some of the regulations in 1 CFR are simply out of date. The ACFR therefore is deleting or changing these regulations.

In 1 CFR 15.2, the term "classified material" is deleted from the second sentence. Neither the ACFR nor the OFR have or receive classified material.

The OFR no longer offers the editorial services mentioned in 1 CFR 15.15.–15.18. All lead type that was stored by GPO has been disposed of now that the CFR volumes have been converted to magnetic media as a full text data base. GPO offers agencies CFR data either on magnetic tapes or microfiche.

The ACFR makes a nomenclature change in 1 CFR Part 20. The correct title of the "United States Government Organization Manual" is "The United States Government Manual."

The regulations on headings are clarified and corrected to reflect the current style in the **Federal Register.** The

material previously in §§ 21.16 and 21.17 is consolidated into § 21.16.

The ACFR is also adding an additional authority citation to Part 2 and Part 8 of 1 CFR. In Part 2, the authority for publishing the slip laws and Statutes at Large is 1 U.S.C. 112 and 113, and in Part 8 additional authority for publishing the CFR is 44 U.S.C. 1510.

A new cumulative "List of Sections Affected" has been published. Therefore, the ACFR is adding to 1 CFR 8.5(c) the "List of Sections Affected, 1964–1972", which lists all sections of the Code that have been affected by documents published during the period January 1, 1964-December 31, 1972.

The ACFR is revising Part 10—Presidential Papers to reflect current publication practices. This revision simplifies the existing regulations and explains that the basic text of the "Public Papers of the Presidents of the United States" is the annual compilation of the "Weekly Compilation of Presidential Documents."

The **Federal Register** and the CFR are available in both paper copies and microfiche. The ACFR is amending its regulations to reflect the fact that agencies may request the **Federal Register** and CFR in paper or microfiche.

These new regulations also reflect OFR's policy of requiring reimbursement from agencies for reproductions of original acts and documents filed with the OFR, unless funds are appropriated for this purpose.

The ACFR received comments suggesting that the regulations at §§ 18.4(a) and 19.1 (f) be amended to reflect the standard page size of 8½ × 11. The paper size specification is being changed at § 18.4(a), but the specifications in § 19.1(f) for proposed Executive orders and Proclamations are from Executive Order No. 11030 and must remain as they appear currently in the regulations. Another comment suggested that the regulations should require documents to be typed double spaced. Double spacing a document for publication is required in § 18.4.

Another commentator pointed out that some of the regulations in 1 CFR are gender specific, and suggested that regulations in 1 CFR Chapter I be revised to remove gender specific terminology. As regulations are amended containing gender specific language, these regulations will be changed. However, the sections in the proposed rule which had gender specific terminology, 1 CFR 7.1(b), 8.8 (a) (4), and 10.2 (a) have been revised to eliminate any gender specification.

Executive Order 12291, Paperwork Reduction Act and Regulatory Flexibility Act

This is not a major rule as defined by Executive Order 12291. The rule will have no impact on small entities as described in the Regulatory Flexibility Act (5 U.S.C. 601 et seq.). The rule does not contain any information collection or recordkeeping requirements as defined in the Paperwork Reduction Act of 1980.

List of Subjects in 1 CFR Parts 1, 2, 7, 8, 9, 10, 15, 18, 20, and 21.

Administrative practice and procedure, Government publications.

For the reasons set out in the preamble and under the authority given the Administrative Committee of the Federal Register, 1 CFR is amended as follows:

PART 1—DEFINITIONS

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

Authority: 44 U.S.C. 1506; sec. 6, E.O. 10530, 19 FR 2709; 3 CFR 1954–1958 Comp., p. 189.

2. Section 1.1 is amended by adding in alphabetical order a definition of "filing" to read as follows:

§ 1.1 Definitions.

* * * * *

"Filing" means making a document available for public inspection at the Office of the Federal Register during official business hours. A document is filed only after it has been received, processed and assigned a publication date according to the schedule in Part 17 of this chapter.

* * * * *

PART 2—GENERAL INFORMATION

3. The authority citation for Part 2 is revised to read as follows:

Authority: 44 U.S.C. 1506; sec. 6, E.O. 10530, 19 FR 2709; 3 CFR 1954–1958 Comp., p. 189; 1 U.S.C. 112; 1 U.S.C. 113.

PART 7—DISTRIBUTION WITHIN FEDERAL GOVERNMENT

4. The authority citation for Part 7 continues to read as follows:

Authority: 44 U.S.C. 1506; sec. 6, E.O. 10530, 19 FR 2709; 3 CFR 1954–1958 Comp., p. 189.

5. 1 CFR Part 7 is amended by revising § 7.1 to read as follows:

§ 7.1 Official distribution.

Copies of the daily **Federal Register** in paper and microfiche copies as requested shall be distributed to the following without charge:

(a) *Senators and Representatives.* To each Senator and each Member of the House of Representatives not more than five copies of each daily issue.

(b) *Committees.* To each Committee of the Senate and the House of Representatives in the quantity needed for official use, upon written authorization of the Chairperson, or authorized delegate, to the Director of the Federal Register.

(c) *The Supreme Court.* The Supreme Court is entitled to the number of copies of each daily issue of the **Federal Register** that it needs for official use.

(d) *Other courts.* Each other constitutional or legislative court of the United States is entitled to the number of copies of each daily issue of the **Federal Register** that it needs for official use, based on a written authorization submitted to the Director of the Federal Register by the Director of the Administrative Office of the U.S. Courts specifying the number needed.

(e) *Executive Agencies.* Each Federal executive agency is entitled to the number of copies of each daily issue of the **Federal Register** that it needs for official use. The person in each agency concerned who is authorized under §§ 16.1 and 16.4 of this chapter to list the officers and employees of that agency who need the **Federal Register** for daily use shall send a written request to the Director of the Federal Register for placement of the names of those officers and employees on the mailing list.

§§ 7.2 and 7.3 [Removed]

6. 1 CFR Part 7 is amended by removing §§ 7.2 and 7.3.

PART 8—CODE OF FEDERAL REGULATIONS

7. The authority citation for Part 8 is revised to read as follows:

Authority: 44 U.S.C. 1506, 1510, sec. 6, E.O. 10530, 19 FR 2709; 3 CFR 1954–1958 Comp., p. 189.

8. 1 CFR Part 8 is amended by revising § 8.5(c) to read as follows:

§ 8.5 Ancillaries.

* * * * *

(c) *List of sections affected.* Following the text of each book or cumulative supplement, a numerical list of sections which are affected by documents published in the **Federal Register.** (Separate volumes, "List of Sections Affected, 1949–1963" and "List of Sections Affected, 1964–1972" list all sections of the Code which have been affected by documents published during the period January 1, 1949 to December 31, 1963 and January 1, 1964 to

December 31, 1972 respectively.) Listings shall refer to **Federal Register** pages and shall be designed to enable the user of the Code to assure the user of the precise text that was in effect on a given date in the period covered.

9. 1 CFR Part 8 is amended by revising § 8.8(a) introductory text and paragraph (a)(4) to read as follows:

§ 8.8 Official distribution.

(a) The Code of Federal Regulations, in paper or microfiche copies as requested, shall be distributed to the following, without charge:

* * * * *

(4) *Executive agencies.* To officials, libraries, and major organizational units of the executive agencies in the quantity needed for official use up to 300 copies of individual titles per agency, upon the written authorization of the authorizing officer or the alternate designated under § 16.1 of this chapter.

* * * * *

PART 9—UNITED STATES GOVERNMENT MANUAL

10. The authority citation for Part 9 continues to read as follows:

Authority: 44 U.S.C. 1506; sec. 6, E.O. 10530, 19 FR 2709; 3 CFR 1954–1958 Comp., p. 189.

§ 9.1 [Amended]

11. 1 CFR Part 9 is amended by removing in the Part heading and in § 9.1 the words "United States Government Organization Manual" and inserting in their place the words "United States Government Manual".

12. 1 CFR Part 9 is amended by revising § 9.3(a) introductory text and paragraph (a)(1) to read as follows:

§ 9.3 Distribution to Government agencies.

(a) The United States Government Manual shall be distributed to the following, in the quantities indicated, without charge:

(1) *Members of Congress.* Each Senator and each Member of the House of Representatives shall be furnished twelve copies.

* * * * *

13. 1 CFR Part 10 is amended by revising the entire part to read as follows:

PART 10—PRESIDENTIAL PAPERS

Subpart A—Weekly Publication

Sec.

Subpart B—Annual Publication

Authority: 44 U.S.C. 1506; sec. 6, E.O. 10530, 3 CFR 1954–1958 Comp., p. 189.

Subpart A—Weekly Publication

§ 10.1 Publication required.

The Director of the Federal Register shall publish a special edition of the **Federal Register** called the "Weekly Compilation of Presidential Documents".

§ 10.2 Scope and sources.

(a) The basic text of each publication consists of oral statements by the President or of writing subscribed by the President, and selected from transcripts or text issued by the Office of the White House Press Secretary, including—

(1) Communications to Congress;
(2) Public addresses and remarks;
(3) News conferences and interviews;
(4) Public messages and letters;
(5) Statements released on miscellaneous subjects; and
(6) Formal executive documents promulgated in accordance with law.

(b) In addition, each publication includes selections, either in full text or ancillary form, from the following groups of documents, when issued by the Press Office.

(1) Announcements of Presidential appointments and nominations;
(2) White House statements and announcements on miscellaneous subjects;
(3) Statements by the Press Secretary or Deputy Press Secretary;
(4) Statements and news conferences by senior administration officials; and
(5) Fact sheets.

§ 10.3 Format, indexes, and ancillaries.

(a) The "Weekly Compilation of Presidential Documents" is published in the binding and style that the Administrative Committee of the Federal Register considers suitable for public and official use.

(b) Each publication is appropriately indexed and contains ancillary information respecting Presidential activities and documents not printed in full text. In general, ancillary texts, notes, and tables are derived from official sources.

§ 10.4 Distribution to Government agencies.

(a) The "Weekly Compilation of Presidential Documents" is distributed regularly to Members of the Senate and the House of Representatives and to officials of the legislative, judicial, and executive branches of the Federal Government without charge in the quantities needed for official use. Requests for copies shall be made in writing by the authorizing officer to the Director of the Federal Register.

(b) Special needs for selected issues in substantial quantity are filled by the timely submission of a printing and binding requisition to the Government Printing Office on Standard Form 1.

Subpart B—Annual Publication

§ 10.10 Publication required.

The Director of the Federal Register shall publish annually a special edition of the **Federal Register** called the "Public Papers of the Presidents of the United States".

§ 10.11 Scope and sources.

The basic text of the Public Papers consists of the documents printed in the "Weekly Compilation of Presidential Documents".

§ 10.12 Format, indexes, and ancillaries.

(a) Each publication covers one calendar year, unless procedures require otherwise, and is divided into books according to the amount of material to be included. The publication is published in the binding and style that the Administrative Committee of the Federal Register considers suitable to the dignity of the Office of the President of the United States.

(b) Each publication is appropriately indexed and contains additional ancillary information and illustrative material respecting significant Presidential documents and activities.

§ 10.13 Coverage of prior years.

The Administrative Committee may authorize the publication of volumes of papers of the Presidents covering specified years before 1945 after consulting with the National Historical Publications and Records Commission.

§ 10.14 Distribution to Government agencies.

(a) The Public Papers are distributed to the following, in the quantities indicated, without charge:

(1) *Members of Congress.* Each Senator and each Member of the House of Representatives is entitled to one copy of each annual publication published during the Member's term in office, upon the Member's written request to the Director of the Federal Register.

(2) *Supreme Court.* The Supreme Court is entitled to 12 copies of each publication.

(3) *Executive agencies.* The head of each executive agency is entitled to one copy of each publication upon application to the Director of the Federal Register.

(b) Legislative, judicial, and executive agencies of the Federal Government may obtain copies of the publication, at cost, for official use, by the timely submission of a printing and binding requisition to the Government Printing Office on Standard Form 1.

(c) Each request for extra copies of the publication must be addressed to the Superintendent of Documents, to be paid for by the agency or official making the request.

PART 15—SERVICES TO FEDERAL AGENCIES

14. The authority citation for Part 15 continues to read as follows:

Authority: 44 U.S.C. 1506, sec. 6, E.O. 10530, 19 FR 2709; 3 CFR 1954–1958 Comp., p. 189.

15. 1 CFR Part 15 is amended by revising § 15.2 to read as follows:

§ 15.2 Information services.

The Director of the Federal Register shall provide for the answering of each appropriate inquiry presented in person, by telephone, or in writing. Each written communication and each matter involving the Administrative Committee shall be sent to the Director, Office of the Federal Register, National Archives and Records Service, Washington, DC 20408.

16. 1 CFR Part 15 is amended by revising § 15.4 to read as follows:

§ 15.4 Reproduction of certified copies of acts and documents.

The Director of the Federal Register shall furnish to requesting agencies, at cost, reproductions or certified copies of original acts and documents filed with that Office that are needed for official use unless funds are appropriated for that purpose.

Subpart C—[Removed]

17. 1 CFR Part 15 is amended by removing Subpart C (§§ 15.15, 15.16, 15.17, and 15.18).

PART 18—PREPARATION AND TRANSMITTAL OF DOCUMENTS GENERALLY

18. The authority citation for Part 18 continues to read as follows:

Authority: 44 U.S.C. 1506; sec. 6, E.O. 10530, 19 FR 2709; 3 CFR 1954–1958 Comp., p. 189.

§ 18.4 [Amended]

19. In § 18.5, paragraph (a) is amended by removing "8 by 10½ inches" and inserting in its place "8½ by 11 inches".

20. Part 18 is amended by revising § 18.15 to read as follows:

§ 18.15 Correction of errors in printing.

(a) Typographical or clerical errors made in the printing of the Federal Register shall be corrected by insertion of an appropriate notation or a reprinting in the Federal Register published without further agency documentation, if the Director of the Federal Register determines that—

(1) The error would tend to confuse or mislead the reader; or

(2) The error would affect text subject to codification.

(b) The issuing agency shall review published documents and notify the Office of the Federal Register of printing errors found in published documents.

(c) If the error was in the document as submitted by the agency, the issuing agency must prepare and submit for publication a correction document.

PART 20—HANDLING OF UNITED STATES GOVERNMENT MANUAL STATEMENTS

21. The authority citation for Part 20 continues to read as follows:

Authority: 44 U.S.C. 1506; sec. 6, E.O. 10530, 19 FR 2709; 3 CFR 1954–1958 Comp., p. 189.

§ 20.1 [Amended]

22. 1 CFR Part 20 is amended by removing in the Part heading and in § 20.1 the words "United States Government Organization Manual" and inserting in their place the words "United States Government Manual".

PART 21—PREPARATION OF DOCUMENTS SUBJECT TO CODIFICATION

23. The authority citation for Part 21 continues to read as follows:

Authority: 44 U.S.C. 1506; sec. 6, E.O. 10530, 19 FR 2709; 3 CFR 1954–1958 Comp., p. 189.

24. 1 CFR Part 21 is amended by revising § 21.16 to read as follows:

§ 21.16 Required document headings.

(a) Each rule and proposed rule document submitted to the Office of the Federal Register shall contain the following headings, when appropriate, on separate lines in the following order:

(1) Agency name;

(2) Subagency name;

(3) Numerical references to the CFR title and parts affected;

(4) Agency numbers of identifying symbol in brackets, if used;

(5) Brief subject heading describing the document.

(b) Each CFR section in the regulatory text of the document shall have a brief descriptive heading, preceding the text, on a separate line.

25. 1 CFR Part 21 is amended by revising the section heading and adding a new paragraph (c) to § 21.21 to read as follows:

§ 21.21 General requirements: References.

* * * * *

(c) Each agency shall publish its own regulations in full text. Cross-references to the regulations of another agency may not be used as a substitute for publication in full text, unless the Office of the Federal Register finds that the regulation meets any of the following exceptions:

(1) The reference is required by court order, statute, Executive order or reorganization plan.

(2) The reference is to regulations promulgated by an agency with the exclusive legal authority to regulate in a subject matter area, but the referencing agency needs to apply those regulations in its own programs.

(3) The reference is informational or improves clarity rather than being regulatory.

(4) The reference is to test methods or consensus standards produced by a Federal agency that have replaced or preempted private or voluntary test methods or consensus standards in a subject matter area.

(5) The reference is to the Department level from a subagency.

26. 1 CFR Part 21 is amended by adding an undesignated center heading and § 21.35 to Subpart A to read as follows:

OMB Control Numbers

§ 21.35 OMB control numbers.

To display OMB control numbers in agency regulations, those numbers shall be placed parenthetically at the end of the section or displayed in a table or codified section.

27. 1 CFR Part 21 is amended by revising § 21.40 to read as follows:

§ 21.40 General requirements: Authority citations.

Each section in a document subject to codification must include, or be covered by, a complete citation of the authority under which the section is issued, including—

(a) General or specific authority delegated by statute; and

(b) Executive delegations, if any, necessary to link the statutory authority to the issuing agency.

28. 1 CFR Part 21 is amended by revising § 21.43 to read as follows:

§ 21.43 Placing and amending authority citations.

(a) The requirements for placing authority citations vary with the type of amendment the agency is making in a document. The agency shall set out the full text of the authority citation for each Part affected by the document.

(1) If a document sets out an entire CFR part, the agency shall place the complete authority citation directly after the table of contents and before the regulatory text.

(2) If a document amends only certain sections within a CFR part, the agency shall present the complete authority citation to this part as the first item in the list of amendments.

(i) If the authority for issuing an amendment is the same as the authority listed for the whole CFR part, the agency shall simply restate the authority.

(ii) If the authority for issuing an amendment changes the authority citation for the whole CFR part, the agency shall revise the authority citation in its entirety. The agency may specify the particular authority under which certain sections are amended in the revised authority citation.

(b) The agency shall present a centralized authority citation. The authority citation shall appear at the end of the table of contents for a part or at the end of each subpart within a part. Citations of authority for particular sections may be specified within the centralized authority citation.

§ 21.44 [Removed]

29. 1 CFR Part 21 is amended by removing § 21.44.

30. 1 CFR 21.52 is amended by revising § 21.52 to read as follows:

§ 21.52 Statutory material.

(a) *United States Code.* All citations to statutory authority shall include a United States Code citation, where available. Citations to titles of the United States Code, whether or not enacted into positive law, shall be cited as follows without Public Law or U.S. Statutes at Large citation.

10 U.S.C. 501

(b) Citations to Public Laws and U.S. Statutes at Large are optional when the United States Code is cited.

(1) *Public Laws.* Citations to current public laws shall include reference to the volume and page of the U.S. Statutes at Large to which they have been assigned. For example:

Sec. 5 Pub. L. 89-670, 80 Stat. 935 (49 U.S.C. 1654)

(2) *U.S. Statutes at Large.* Citations to the U.S. Statutes at Large shall refer to section, page, and volume. The page number should refer to the page on which the section cited begins. For example:

Sec. 5 Pub. L. 89-670, 80 Stat. 935 (49 U.S.C. 1654); sec. 313, Pub. L. 85-726, 72 Stat. 752 (49 U.S.C. 1354)

Robert M. Warner,

Chairman.

Ralph E. Kennickell, Jr.,

Member.

Ralph W. Tarr,

Member.

Approved:

Edwin Meese, III,

Attorney General.

Ray Kline,

Acting Administrator of General Services.

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federal register

Thursday
March 28, 1985

Part IV

Small Business Administration

13 CFR Parts 118, 119, 120, 122 and 130
Business Loans; Final Rule

SMALL BUSINESS ADMINISTRATION

13 CFR Parts 118, 119, 120, 122 and 130

[Rev. 7 for Part 120; Rev. 4 for Part 122]

Business Loans

AGENCY: Small Business Administration.

ACTION: Final rule.

SUMMARY: This final rule implements amendments to the Small Business Act by Pub. L. 97–35 (95 Stat. 357), codifies certain existing SBA loan policies, streamlines the organization of these regulations and clarifies certain existing rules and procedures.

EFFECTIVE DATE: March 28, 1985.

FOR FURTHER INFORMATION CONTACT: Everett Shell, Chief, Loan Processing Branch, Small Business Administration, 1441 L Street NW., Room 804, Washington, DC 20416, (202) 653–6470.

SUPPLEMENTARY INFORMATION:

Background

This final rule incorporates SBA basic loan policies, including borrower eligibility and participant eligibility in Part 120, Title 13 of the Code of Federal Regulations, and consolidates the rules and procedures governing specific loan programs into Part 122 of the same Title. Under this reorganization of the business loans regulations, it should no longer be difficult to isolate policies that apply to all loan programs from the policies that have limited applications.

When the President signed the Small Business Budget Reconciliation and Loan Consolidation/Inprovement Act of 1981 (Pub. L. 97–35), SBA's statutory authority for extending financial assistance was extensively revised. Section 7(e), 7(h), 7(i) and 7(l) of the Small Business Act (15 U.S.C. 631 et seq.)(Act) were all effectively repealed and section 7(a) was amended to incorporate the special purpose loan programs that are to be continued. The Trade Adjustment Loan Program [section 7(e)] and the Pool Loan [Group Corporation] Program [section 7(a)(5)] were discontinued. These final regulations represent an effort to reorganize the various parts of existent regulations referred to above into two more cohesive Parts (120 and 122) and to accommodate the changes in the Small Business Act which occurred as a result of Pub. L. 97–35. Since this final rule replaces former Parts 118 (Handicapped Assistance Loans), 119 (Economic Opportunity Loans) and 130 (Small Business Energy Loans), and amends Parts 120 (Loan Policy) and 122 (Business Loans), former Parts 118, 119 and 130 are hereby repealed.

Overview

Part 120 of these regulations sets forth the broad policies and principles SBA employs in deciding whether to grant or deny financial assistance to small businesses pursuant to section 7(a) of the Small Business Act. It also describes the steps SBA employs to administer such assistance once it has been made available to a small business, both with respect to the recipient and any lending institution with which SBA may participate in making the assistance, and the procedures which such a lending institution must follow in order to properly participate in the making of such assistance available.

Subpart A of new Part 120 is intended to set forth the policies that SBA follows in deciding to grant or deny financial assistance. Most of the regulations contained in this Subpart were formerly contained in Part 120 of 13 CFR. However, several of the sections of this Subpart reflect preexistent policies of the Agency which have not previously been stated in regulation form, and several others are a direct result of statutory change.

Section 120.1 sets forth several general provisions of a procedural nature which explain how SBA will interpret these reguations. Of particular note is § 120.1–3 which provides that financial assistance granted before the effective date of these final regulations will be governed by the regulations and contractual provisions then in effect. In addition, § 120.1–2 allows the Administrator of SBA to suspend or modify SBA rules, for a limited period of time in a specified area, so long as the reasons for such suspension or modification are clearly explained by a notice in the **Federal Register.**

Section 120.2 sets forth a number of definitions commonly used in these regulations most of which are self-explanatory. Section 120.3 describes the various forms of SBA financial assistance available to businesses under these regulations. These are statutorily prescribed forms of assistance and the same, or very similar regulations, have been in effect since the Agency's inception.

Section 120.101 specifies the criteria of eligibility for an applicant for SBA business financial assistance. In this regard, this section specifies that an applicant must be a small business as defined by SBA in its size regulations (13 CFR Part 121) and may be an agricultural enterprise. In addition, this section provides that it is permissible to extend assistance to small businesses owned or controlled by Indian Tribes (as defined in § 120.2–7 of this rule). This provision was in the previous regulations.

Subsection 120.101–2 of these regulations establishes the general principle that SBA will make financial assistance available to most types of small businesses. It also sets forth in sub-paragraphs (a)–(h) exceptions to this general rule and descriptions of the reasons for the exceptions and the circumstances under which they will be applied. In this regard, the only exception to the general rule which is different from those presently found in SBA's regulations involves loan packagers (§ 120.101–2(h)). This revision indicates that any small concern, 30 percent of the business of which is the preparation of applications for assistance from SBA, is ineligible for SBA business financial assistance. In addition, the following small business concerns are currently, and will continue to be, excluded from financial assistance under the circumstances specified in these regulations: (a) Charitable, religious or other nonprofit institutions; (b) concerns engaged in the creation, organization, expression, dissemination, propagation or distribution of ideas, values, thoughts, opinions or similar intellectual property, regardless of medium, form or content; (c) most concerns that derive any part of their annual gross receipts or whose principal owner(s) derive any part of their annual income from gambling activities; (d) concerns engaged in illegal activities; (e) concerns primarily engaged in the business of lending or investing or any otherwise eligible applicant where the purpose of the financial assistance is to finance investments that are neither related nor essential to the enterprise; (f) any concern where the proprietor, an holder of at least 20 percent of the stock, or a partner, officer or director is currently on parole or probation following conviction of a serious crime; and (g) any concern engaged in multilevel sales distribution plans of the "pyramid" type.

Section 120.102 of these final rules sets forth the general statutorily mandated principle that eligible recipients of SBA business financial assistance may utilize the assistance to finance construction, conversion or expansion; to purchase equipment, facilities, machinery, supplies or materials; for working capital; or, at the discretion of SBA, to refinance outstanding debt. The section then specifies several uses of SBA assistance which are impermissible. For the most part, these impermissible uses are stated

in SBA's present regulations. However, § 120.102–2, which prohibits the use of assistance for revolving lines of credit other than those specifically permitted by the Small Business Act, is a new regulatory provision. In addition, the provisions of the final rule regarding conflicts of interest [§ 120.102–10(a)–(f)] reflect an attempt to clarify the general proscription against creation of a conflict of interest or appearance of such a conflict between SBA and an applicant or a participating lender, by setting forth examples of such prohibited conduct which have arisen in the course of program administration.

Section 120.103 of the regulations prescribes additional criteria which SBA employs in determining the eligibility of applicants for business assistance.

In general, under these regulations, an applicant must demonstrate need for the assistance which cannot be satisfied by private sources. This is a statutory requirement which has been previously expressed in SBA's regulations. In addition, the final rule provides that SBA must in each case determine and take such steps as are needed to assure that the applicant's credit is such that there is reasonable assurance of repayment of the assistance. Section 120.103–2(a)–(h) of the proposal sets forth the means by which this assurance will be attained. These means were previously contained in SBA regulations. Finally, § 120.103 also contains the administrative provisions under which reconsideration of declined applications will be made. These provisions were also contained in SBA's previous regulations.

Section 120.104 of the final regulations describes the types and amounts of fees which may be paid attendant to SBA business financial assistance, and circumstances under which they may be paid. In circumstances in which business financial assistance is made available by SBA in conjunction with a participating lender, the lender may be required to pay SBA a guaranty fee (§ 120.104–1). The regulations describe the amount, the terms of payment and the effect of payment of such fee. Such lenders are also permitted to charge SBA a servicing fee under certain circumstances [§ 120.104–2(a)] and the final regulations set forth those circumstances and the permissible amount of such fees. The final regulations further specify that no late payment or prepayment fees may be charged in connection with SBA assistance [§ 120.104–2(b)], and that enumerated commitment fees may be charged by participating lenders in connection with SBA's export line of credit program [§ 120.104–2(c)]. Finally, the final regulations provide the terms and conditions under which fees may be paid by applicants for assistance to third parties who represent or otherwise provide services to them in connection with their attempts to obtain SBA assistance [§ 120.104–2(d)–(f)]. All of these provisions were previously contained in SBA's regulations.

Subpart B of Part 120 of the final regulations contains the policies applicable to the administration of SBA business financial assistance. In most instances of financial assistance, other than loans made directly by SBA, the responsibilities for administration of the assistance lies with the lender. Pursuant to § 120.200–1, immediate participation loans which are closed by the lender will generally be serviced by the lender; immediate participation loans or direct loans closed by SBA will generally be administered by SBA. In addition, guaranteed loans will be serviced by the lender pursuant to § 120.200–2. The lender will receive all payments of principal and interest on the loan until SBA completes the purchase of its guaranteed share of the loan. The lender may, however, continue to service the loan after such purchase provided SBA gives written consent. Therefore, the major portion of this Subpart outlines the responsibilities of the lender to SBA and the borrower in the assistance and administration process. For example, § 120.201–1 specifies the instances in which SBA's prior consent is required to permit the lender to take a servicing action, and §§ 120.202–1 and 120.202–2 prescribe the circumstances under which SBA will purchase the guaranteed portion of a loan made by a participating lender. These provisions, for the most part, are reflections of SBA policy which have not previously appeared in regulations governing the program but rather have evolved as a matter of practice and administrative interpretation of relevant program documents.

Section 120.204 of the regulations describes the practices and procedures SBA will employ either to sell or convert an evidence of indebtedness or to liquidate collateral for business assistance when either step is necessary to collect an indebtedness. In general, SBA favors a policy of avoiding such steps in favor or pursuing any reasonable prospect of repayment. Paragraph 120.204–1(a) provides that liquidating the property securing a loan will not be resorted to if there is any reasonable prospect that the loan may be repaid within a reasonable time. Section 120.204–2 prescribes steps which may be taken when SBA determines repayment is not realistic. These steps were previously prescribed in SBA's regulations, and they are the normal practices any commercial lender would follow in realiling recovery on an indebtedness. Section 120.204–1(b)(1) authorizes SBA to sell any direct loan without the consent of the borrower. Direct loans may also be converted to guaranteed loans or to immediate participation loans (§ 120.204–1(b)(2)). Subparagraph 120.204–1(b)(3) authorizes the conversion of immediate participation loans to guaranteed loans or loans wholly owned by the participating financial institution without the borrower's consent. Section § 120.204–2 prescribes provisions for the foreclosure of collateral.

Paragraph 120.204–2(a) provides for the liquidation of the security when any one of seven specified conditions exists. Real and personal property, pledged as security for a loan which is in default, may also be sold in accordance with the provisions of the related security agreement [§ 120.204–2(b)].

Subpart C of Part 120 prescribes the regulations governing the functions of banks and other lending institutions which participate with SBA in making, servicing and collecting business financial assistance. In this regard, SBA is authorized by statute to participate with banks and other lending institutions on an immediate or guaranteed basis in making such assistance (see § 120.300). A major portion of Subpart C describes the conditions under which a lender may (1) participate with SBA (§ 120.301–1 prescribes lender preferences), (2) sell or transfer the guaranteed portion of a loan (§ 120.301–2 and 120.301–3), (3) provide services to a borrower (§ 120.301–3), and (4) otherwise hold itself out as a participant to the public (§ 120.301–5). The remainder of the Subpart describes the qualifications an otherwise regulated lender must possess in order to be allowed to participate in the business financial assistance program with SBA (see § 120.301–6), and the terms on which Small Business Lending Companies (SBLC's), which are regulated only by SBA, may so participate. These qualifications and terms were previously stated in SBA's regulations and are restated without significant change in the final rule.

Subpart D prescribes the rules for the Preferred Lenders Program (PLP) which were published in final form in the **Federal Register** on December 31, 1984 (49 FR 50605). Section 120.400 sets forth the objective of this program to authorize certain lenders to undertake

loan processing, servicing, collection and liquidation functions and responsibilities without obtaining prior SBA approval. Section 120.401 contains definitions of terms used in the subpart. Section 120.402 details how a lending institution becomes a perferred lender including factors which SBA shall consider in making this determination. Section 120.403–1 states that the amount of a PLP loan must exceed $100,000 and cannot exceed $500,000, and Section 120.403–2 prescribes that SBA's guarantee cannot exceed 75% of the loan. Section 120.403–3 sets forth the allocation procedure in providing credit to a PLP lender and Section 120.403–4 states that each PLP lender is responsible for all decisions relating to eligibility, creditworthiness, loan closing and legal compliance. Section 120.403–5 authorizes a Preferred Lender to charge fixed or variable interest rates and Section 120.403–6 discusses the fees which a Preferred Lender may impose. Section 120.403–7 authorizes SBA to have access to the lender's records and also requires the Preferred Lenders to be bound by the basic principles in Parts 120 and 122 relating to the granting and denying of loans. Section 120.404 deals with loan servicing and Section 120.405 with liquidation. Under Section 120.406 SBA reserves the right to suspend or revoke the eligibility of a Preferred Lender which has the right to appeal under Part 134 of this Title.

Subpart E is reserved and Subpart F, dealing with Central Registration for the Secondary Market, reflects the final rule published in the **Federal Register** on October 11, 1984 (49 FR 39837). On July 10, 1984, the Small Business Secondary Market Improvements Act of 1984 (Pub. L. 98–352, 98 Stat. 329) was enacted. It amended the Small Business Act with respect to the operation of the secondary market for SBA guaranteed loans. Subpart F reflects the procedural rules which were required to be published concerning central registration. Section 120.601 states that the statutory authority is Section 5(h) of the Small Business Act [(15 U.S.C. 634(h)] and Section 122.602 defines terms used in this Subpart.

Section 120.603 prescribes that SBA's fiscal and transfer agent (FTA) has the responsibility for registering (1) the guaranteed portions of loans sold in the secondary market and (2) the certificates to be issued representing interests in pools composed solely of the SBA guaranteed portions of loans. Section 120.604–2 details the information which the FTA shall obtain with respect to each sale in the secondary market. Section 120.605–1 provides that certificates issued by the FTA are freely transferable and it prescribes what information a seller must provide to the FTA with respect to each sale. Section 120.605–2 prescribes detailed procedures which must be used in order to replace any certificate which is lost, stolen, destroyed, mutilated or defaced.

Part 122 of these final regulations sets forth the rules governing the making of financial assistance available to small businesses pursuant to section 7(a) of the Small Business Act, 15 U.S.C. 636(a), *et seq.* Subpart A of this Part sets forth the general rules governing the terms and conditions upon which such assistance is made available, including such features as the maturities, amounts available, percentages of loan amounts SBA will guaranty, interest rates and collection policies relative to such assistance.

Subpart B of this Part describes the special features of certain loan programs which are provided for by statute such as financing residential or commercial construction or rehabilitation [Small Business Act section 7(a)(9)], subsidized loans to handicapped small business persons [section 7(a)(10)], loans to businesses located in areas of high unemployment or high proportions of low income individuals [section 7(a)(11)], loans to assist small businesses involved in energy related measures [section 7(a)(12)], loans for exporters [section 7(a)(14)], and loans to qualified employee trusts [section 7(a)(15)].

Sections 122.1–122.4 of the regulations set forth general procedural rules of applicability governing this Part. Section 122.5 describes the requirements of the SBA loan application for the various types of assistance indicated above. In general, SBA will require satisfactory evidence that lending institutions have refused to either make or participate in the making of a loan to a given small business before it will either participate with a lending institution or make the loan directly to a small business (see §§ 122.5 and 120.103). If a lending institution will make assistance available in participation with SBA, it will prepare and submit the application to SBA. For assistance made directly by SBA, the application is made by the small business (§ 122.5–3).

Section 122.6 describes the terms under which SBA assistance may be made available. Most of these requirements are provided for within the provisions of section 7(a) of the Small Business Act. In general, loans have 25 year maturities, with additional periods as may be required for that portion of a loan made for acquiring real property or constructing, converting or expanding business facilities (see § 122.6–1). SBA may also extend or renew a loan maturity up to ten years in order to aid in the orderly liquidation of the loan, or refinance a loan under prescribed conditions (see § 122.6–1). In addition, the regulations provide for the granting of grace periods and moratoria on payments under certain prescribed conditions (see §§ 122.6–2 and 3 and Part 131 [(Loan Moratorium Program) of this Title]).

As the regulations in § 122.7 indicate, SBA is statutorily permitted to make a direct loan in the amount of $350,000, but has administratively limited the available amount of a direct loan to $150,000 per borrower. In immediate participation loans, SBA is authorized a participation of 90 percent of the loan or $350,000 whichever is less. However, again by regulation SBA has limited its participation to 75 percent of the loan or $150,000, whichever is less. With respect to guaranteed loans, SBA's exposure cannot exceed $500,000 in any circumstance. The regulations also set forth statutorily prescribed percentages of SBA guaranty for certain sized loans [see § 122.7–3(a)–(c)].

Section 122.8 prescribes the interest rates which may be charged with respect to the various types of SBA loans. These, too, are statutorily prescribed [(see section 7(a)(4) of the Small Business Act)]. Of note is § 122.8–4 of the final regulations which prescribes SBA policy with respect to fluctuation of interest rates. Section 120.3(b)(2) of the former regulations, 13 CFR 120.3(b)(2), authorizes a participating lender to charge a fluctuating interest rate which could be changed no more frequently than quarterly after an initial rate period of at least one full quarter. Section 122.8–4, as stated herein, permits the fluctuation to commence on the first business day of the month following full disbursement with subsequent fluctuations no more frequently than monthly. The final regulation provides that the base rate is the low New York prime rate as printed in a national daily financial newspaper. This provision will clarify the uncertainty inherent in the previous regulation which referred only to the prime rate as published in the media. In addition, the regulation clarifies the amortization of the loan by allowing an interest spread of up to three percentage points. The previous regulation made no reference to such spread. The final regulation allows SBA to authorize unequal payments in order to amortize the loan. This is not in the present

regulation but does reflect present policy and good lending practice.

Subpart B of Part 122 sets forth provisions for special purpose loans. These regulations contain provisions concerning small general contractors, organizations for the handicapped, low-income areas, energy conservation, exporters, qualified employee trusts, and loans to veterans.

Section 122.50 describes the policy and the availability of loans to small general contractors to finance residential or commercial construction. Such loan funds cannot be used primarily for the acquisition of land (i.e., not more than 20 percent of the loan proceeds can be used for the acquisition of land).

This section specifies eight conditions which must be met in order for these loans to be available (§ 122.50–2 to § 122.50–9). These conditions are: (1) The applicant must be a construction contractor with a demonstrated ability in profitable construction or rehabilitation projects of a comparable type and size; (2) the maturity of the loan cannot exceed 36 months beyond the estimated time to complete the construction or rehabilitation; (3) loan proceeds may only be used for construction or significant rehabilitation of structures for sale; (4) loan funds cannot be used to purchase vacant land or to operate or hold rental property for investment purposes; (5) the constructed or rehabilitated structure cannot be rented, pending sale, without SBA's written approval; (6) the sale of the property must be both a beneficial and a legal change of ownership in the title to the property; (7) SBA must have at least a second lien on the property as collateral; and (8) the application must include three additional letters (as described in § 122.50–9).

Section 122.51 details the authorized loans to assist organizations for the handicapped or to assist handicapped individuals in establishing, acquiring or operating a small business concern. Section 122.51–2 contains definitions of various terms used in this section. It defines the terms "HAL–1," "HAL–2," "organization for the handicapped," "handicapped individual," and "supportive services." HAL–1 applicants must submit evidence that the organization has the capability and experience to successfully perform the HAL–1 requirements [§ 122.51–4(b)]. In addition, pursuant to § 122.51–5(a), these applicants must submit copies of bylaws, incorporation papers, or other evidence that they meet the definition of HAL–1 organizations. This application must also show that private credit is not available and that funds from other government programs are not being duplicated by SBA. An applicant for an HAL–2 type loan must submit written information from a physician, psychiatrist or other qualified professional as to the permanent nature of the handicap and the limitations it places on the applicant]§ 122.51–5(b)]. Section 122.51–6 describes the uses to which the proceeds of both HAL–1 and HAL–2 loans may be put.

Section 122.52 authorizes loans to establish, preserve or strengthen small business concerns (1) located in areas with high proportions of unemployed or low-income individuals, or (2) owned by low-income individuals.

Section 122.53 describes the authorized loans to assist small business concerns to utilize energy measures designed to conserve the Nation's energy resources. Section 122.53–2 defines what the term "energy measures" encompasses, including: solar thermal energy equipment; photovoltaic cells; hydroelectric power equipment; and wind energy conversion equipment. Loan proceeds may be used to acquire vacant land necessary for the construction of a plant and any other equipment or materials which are required to effectively employ eligible energy measures (§ 122.53–3). Section 122.53–4 recognizes that because greater risk may be associated with these energy measures, the status of these loans need not be as sound as for other loans authorized under Subpart B.

Section 122.54 sets forth the provisions governing an authorized revolving line of credit for pre-export financing and for export purposes to enable small concerns to develop foreign markets. An applicant for an Export Revolving Line of Credit must have been in operation for 12 full months before filing an application in order to be eligible, but SBA may waive this requirement if the management of the applicant has sufficient export trade experience or other management ability (§ 122.54–2). The proceeds of such a loan may only be used to penetrate or develop a foreign market and to finance labor and materials for pre-export production (§ 122.54–3). This subsection then gives a few examples of what would constitute both eligible and ineligible uses of proceeds. These stated examples are by no means intended to be exclusive. Section 122.54–5 requires that only collateral that is located in the United States, its territories and possessions will be acceptable security for these loans. In addition, applications for these loans must contain a projected cash flow chart for the term of the loan and monthly progress reports (§ 122.54–6).

Section 122.55 describes the specifications for authorized guaranteed loans to qualified employee trusts. Such guaranteed loans are authorized to finance growth and to effect a change of ownership in business concerns that are small or that would be small after the purchase is accomplished (§ 122.55–1). Section 122.55–2 contains definitions of various terms used in this section. It defines the terms "employee," "employee organization," "employee trust," "employer concern," "ESOP," "qualified employee trust," and "qualifying employer securities." These definitions do not amend or modify the definitions in the Internal Revenue Code, and the regulations thereunder, or the Labor Department definitions. Section 122.55–3 clarifies the fact that the $500,000 statutory limit which SBA may guarantee applies to the *combined total* of all obligations of the qualified employee trust, the employer concern and all its other affiliates in the aggregate. The individual personal assets of the employee-owners cannot be considered in determining whether to guarantee a loan. However, SBA may consider business experience where certain employee-owners assume managerial responsibilities (§ 122.55–4(c)). Paragraph § 122.55–5(a) specifies eight requirements which must be met in order for a qualified employee trust to be eligible for an SBA loan guarantee, including the provision that the SBA guarantee loan can only be used for the purchase of qualifying employer securities. Pursuant to § 122.55–5(b), in order for a trust to be treated as a qualified employee trust for the purposes of an SBA loan guaranty, such trust must: (1) Be maintained by an employee organization which represents at least 51 percent of the employees of such concern; (2) be part of a plan which constitutes an employee benefit plan under the Labor Department regulations implementing ERISA, provided the plan contains certain specified requisites; and (3) enter into an agreement with SBA setting forth the eight requirement cited in paragraph (a) of § 122.55–5.

The veterans loan program is set forth in Sections 122.56—122.56–4. The specific statutory authority, as stated in Section 122.56–1 may be found in the Veterans Small Business Loan Act of 1981 (Pub. L. 97–35) and the Second Continuing Resolution of 1983 (Pub. L. 97–377). Section 122.56–2 states that it is a direct loan program. Section 122.56–3 sets forth the eligibility rules. Section 122.56–4 prescribes that the veteran status may be used only once.

Public Comments

SBA received three public comments concerning this rule as published in proposed form in the **Federal Register** on September 25, 1984 (49 FR 37614). Two of the three comments addressed the Handicapped Assistance Loan Program (HAL). One commenter suggested that the regulations include a statement of SBA's long standing policy that HAL-1 applicants are not subject to SBA size eligibility regulations (13 CFR Part 121). Another stated his belief that the proposed § 122.51-6 was overly restrictive as it required HAL-1 loan proceeds to be used primarily for direct labor and materials expenses. That commenter also objected to the proposed requirement that the eligibility of HAL-1 applicants be confirmed by "a state vocational rehabilitation agency," and the absence of a statement of the statutory requirement that reasonable doubts concerning a concerns ability to repay should be resolved in favor of the applicant. The third commenter objected to SBA's so-called "opinion molder rule" which precludes SBA loan assistance to small concerns engaged in the creation, organization, expression, dissemination, propagation or distribution of ideas, values, thoughts, opinions or similar intellectual property, regardless of medium, form or content.

SBA has reviewed and evaluated these comments as well as suggestions from other SBA employees and has modified the proposed regulations, where appropriate. SBA has added a sentence to § 122.51-2 clarifying that HAL-1 applicants are not subject to SBA size eligibility regulations. SBA has also modified section 122.51-6(a) to specify that proceeds may be used for legitimate business purposes similar to other SBA loans, except that funds may not be used for supportive services.

SBA notes that the language of the eligibility confirmation requirement: "recognition/approval by a state vocational rehabilitation agency" is followed by the qualifying phrase "or other evidence that it meets the definition of a HAL-1 organization." SBA believes this phrase expresses SBA's intent that recognition or approval by a state vocational rehabilitation agency not be the only type of acceptable eligibility confirmation. Nevertheless, in order to clarify this intent, § 122.51-5(a) has been modified to read ". . . recognition/approval by an appropriate State, local, or Federal rehabilitation agency or other evidence. . ." SBA did not modify the regulations as a result of the comment concerning an applicant's ability to repay. Section 122.51-4(a) clearly outlines this provision and we believe that reiteration in other parts of the regulation is unnecessary.

SBA's policy of excluding media-oriented businesses from loan assistance is longstanding and was not proposed in the September 25, 1984 **Federal Register** for purposes of substantive evaluation, but rather as part of an organizational revision. Therefore, SBA has no intent to alter this well-established policy at this time. SBA will consider the commenter's statements as part of a study evaluating all of the exceptions to SBA business loan eligibility.

The following changes have been made in the proposed rule in response to internal SBA suggestions.

Section 120.101-2(e) was rewritten to improve clarity. A phrase was added to subsection 120.101-2(f) prohibiting loans to firms that have principals who are incarcerated, on probation or parole. This prohibition is now extended to include ". . .other persons, including hired managers, who have or will have the authority to speak for and commit the borrower in the management of the business." The inclusion of this item is consistent with present practice. A sentence was added to § 120.103-2 in reference to SBA's credit evaluation as follows: "The Agency may obtain from credit reporting agencies the applicant's credit history and rating." This addition serves to codify the long standing practice of SBA to obtain commercial credit reports on loan applications.

Section 120.202-1 has been clarified to state the basic present rule that a lender may demand that SBA purchase the guaranteed percentage if borrower has defaulted in payment of any installment of principal or interest when due and if the default continues uncured for more than 60 days (or less if SBA agrees).

Section 120.202-5 and § 120.204-2(a)(7) describe circumstances where SBA is not bound to repurchase and when SBA may approve the liquidation of collateral. They have been expanded to include failure to disclose material facts, false statements, or material misrepresentations made to SBA during the life of the loan.

Section 120.302-1(d) has been modified to specify time frames that constitute "prompt notice". Section 120.303-2 has been modified to require audited financial statements instead of "financial reports.". Section 120.304 has been modified to change "Audit Division of SBA" to "Office of Inspector General, Audit Division". Proposed §§ 120.305 through 120.305-8 have been deleted because suspension of eligibility to participate with SBA is now addressed in 13 CFR 134, and the final § 120.305 is effectively a cross-reference to the procedures prescribed in Part 134.

Section 122.54-2 has been modified to permit exceptions to the general rule that applicants for an Export Revolving Line of Credit must have been in operation for twelve (12) full months before filing an application with SBA. This change was published as a final rule in the **Federal Register** (49 FR 32845) on a date that was too late to be incorporated into the proposed rule. In addition, some minor edits and cross references have been added to various subsections to promote the clarity of the narrative and to assist the user in locating related texts. This final rule also incorporates final regulations published since the publication of this proposal. The rules on the central registration for the secondary market published on October 11, 1984, (49 FR 39837), appears in place in subpart F of Part 120; the final rule on sale of the guaranteed portion published on November 2, 1984 (49 FR 44091), appears in Sections 120.301-2 and 120.301-3; and the final rule promulgating the Preferred Lenders Program published on December 31, 1984 (49 FR 50605), appears in place in Subpart D of Part 120.

Compliance With the Regulatory Flexibility Act, (5 U.S.C. 601 et seq.), Executive Order 12291 and the Paperwork Reduction Act, 44 U.S.C. Ch. 35

As indicated above, this final rule is primarily a reorganization of existing regulations and a revision of certain of the provisions to promulgate statutorily mandated changes in the operation of SBA's business financial assistance program. Taken as a whole, these final rules do constitute major rules for the purpose of E.O. 12291 and will have a significant economic impact on a substantial number of small businesses for the purpose of the Regulatory Flexibility Act, 5 U.S.C. 601, *et seq.* In this regard, the rules provide the general framework by which an annual program of approximately $3.5 billion is administered. Under this program, SBA annually approves approximately 25,000 small business applicants for business loan assistance.

1. Description of Potential Benefits

The benefits to be derived from this rulemaking are non-financial in nature. This rulemaking constitutes a procedural simplification of our present regulations which should assist all business loan applicants in understanding the program. It eliminates

repetitious regulations, more clearly codifies existing policies, and updates the regulatory format governing the program to reflect statutory changes.

2. Potential Costs

These final regulations impose no costs in and of themselves, with one exception. Examination fees for existent non-bank lenders of which there are only 16, would be increased by doubling both the base fee and the additional fee calculation.

3. Net Benefits

Since no additional costs will be imposed on the vast majority of entities affected by this regulation, the net benefits of the rule will result from a simpler application and administration procedures for business loans and a clearer statement of SBA's policies regarding such loans.

4. Alternative Approaches

These final rules, as indicated above, constitute a necessary general reorganization and an incorporation of certain statutory requirements. In lieu of this reorganization, SBA could have left unchanged the regulation governing business loans or could have created a series of new parts each representing a separate loan program. SBA believes this reorganization is more logical, easier to follow and less cumbersome than either of the other alternatives.

5. Reporting or Recordkeeping Requirements

These final regulations do not duplicate or overlap any existent regulations. They impose no new application or recordkeeping requirements. Since there are no additional application or recordkeeping requirements imposed by this final regulation, this reorganization is not subject to the Paperwork Reduction Act, 44 U.S.C. Ch. 35.

However, inherent in this regulation are the requirements that applicants provide information and records to SBA to enable determination of eligibility and creditworthiness. Such requirements have been previously approved by the Office of Management and Budget and their appropriate approval numbers are cited in the text of the rule. Professional assistance in preparing such material may be required, i.e., accounting or bookkeeping assistance. Normally, however, applicants are capable of preparing the applications themselves. The statutory basis for these proposed rules are section 5(b)(7), 15 U.S.C. 634(b)(7) and section 7(a), 15 U.S.C. 636(a) of the Small Business Act, as amended.

The following table provides a cross reference to specific regulations as they appear in both the existing regulations and this final rule. Because of repetition in the existing regulations and because these final regulations represent a rearrangement of some sections, several previously existing citations may have the same citation as a reference or may have more than one citation in the final regulations as a reference. Those instances in which Pub. L. 97-35 appears as a reference indicates our authority was modified by the new law. Use of the word "out" appears as the indication that the existing regulation was dropped in this final rule.

118.1(a)	122.51-2(e)—122.51-6.
118.1(b)	122.51.
118.2 (a) and (b)	Out.
118.2(c)	120.101-1.
118.2(d)	120.2-1.
118.2(e)	122.51-2(c)—PL 97-35.
118.2(f)	122.51-2(d)—PL 97-35.
118.2(g)	122.51-2(a).
118.2(h)	122.51-2(b).
118.11(a) and (a)(1)	122.51-2(c)—122.51-5.
118.11(a)(2), (i), and (ii).	120.103-2.
118.11(a)(2) (iii) and (iv).	122.51-5.
118.11(b)	122.51-2(d)-122.4.
118.11(b)(1)	120.103-1.
118.11(c)	122.51-6.
118.11(d)	122.51-5(b).
118.21(a)	122.51-6.
118.21(b)	Out.
118.31(a) and (a)(1)	PL 97-35—122.7.
118.31(b)	122.51-3.
118.31(c)	PL 97-35—122.8.
118.31(d)	120.202-3.
118.31(e)	122.6-1—122.6-2.
118.41(a) and (a)(1)	120.3-4.
118.41(a)(2)	122.7-2—122.7-3.
118.41(a)(3)	120.104.
118.41(a)(4)	120.301-1.
118.51(a) and (a)(1)-(3).	120.103-2.
118.51(a)(4)	120.103-2.
118.51(a)(4)(i)	122.51-4(a).
118.51(a)(5)	120.103-2(c).
118.51(a)(5)(i)	122.51-4(c).
118.51(a)(5)(ii)	122.51-4(c).
118.51(a)(6)	120.103-2.
118.51(a)(6)(i)	122.51-4(b).
118.61	12.5—120.103-3.
118.71(a)	122.4.
118.71(b)	122.51-5(a).
119.1	PL 97-35—122.52.
119.2 (a) and (b)	122.52.
119.2(c)	Out—PL 97-35.
119.11	120.2.
119.21 (a), (b), and (b)(1).	122.52.
119.21(b)(2)	Out.
119.21 (c) and (d)	122.52—120.101-2(a).
119.21(e)	122.52.
119.21(f)	120.103-1.
119.31(a)	122.7.
119.31(b)	122.5—122.6 PL 97-35.
119.31(c)(1)	122.8-1.
119.31(c)(2)	122.8-2.
119.31(c)(3)	120.202-3.
119.31(d)	120.103-2(c).
119.41(a)	122.7-3—PL 97-35.
119.41(b)	122.7-2—PL 97-35.
119.51 (a) and (b)	120.103-2—122.52.
119.51(c)	120.103-2.
119.51(d)	120.103-2(b).
119.51(e)	Out—PL 97-35.
119.61	122.5-3.
119.71	122.4.
119.81	122.52.
119.91	Out—PL 97-35.
120.1(a)	120.1.
120.1(b)	120.2-5.
120.1(c)	120.2-6.
120.1(d)	120.2-2.
120.2(a)	120.103-1.
120.2(b) and (b)(1)	120.3-4.
102.2(b)(2)	122.7 -2 and -3.
120.2(b)(3)	120.301-1.
120.2(c)(1)	120.103-2.
120.2(c) (2) and (3)	120.102 -6 and -7.
120.2(c)(4)	120.101-1(b).
120.2(c)(5)	120.101-1(c).
120.2(d)(1)(i)	120.102-1.
120.2(d)(1)(ii)	120.102-3.
120.2(d)(1)(iii)	120.102-4.
120.2(d)(1)(iv)	120.102-11.
120.2(d)(2)	120.102-5.
120.2(d)(3)	120.101-2(a).
120.2(d)(4)	120.101-2(b).
120.2(d)(4)(i)	120.101-2(b).
120.2(d)(4)(ii)	120.101-2(b).
120.2(d)(4)(iii)	120.101-2(b).
120.2(d)(4)(iv)	120.101-2(b).
120.2(d)(4)(v)	120.101-2(b).
120.2(d)(4)(vi)	120.101-2(b).
120.2(d)(4)(vii)	120.101-2(b).
120.2(d)(5)	120.101-2(c).
120.2(d)(6)	120.102-8.
120.2(d)(7)	120.102-8—122.50.
120.2(d)(8)	120.102-9.
120.2(d)(9)	120.101-2(d).
120.2(d)(10)	120.101-2(e).
120.2(d)(11)	120.101-2(f).
120.2(d)(12)	120.101-2(g).
120.3(a)	122.6—122.6-1.
120.3(b)(1)	120.104.
120.3(b)(1)(i)	Out.
120.3(b)(1)(ii)	Out.
120.3(b)(1) (iii)-(iv)	120.104.
120.3(b)(2)(1) and (ii)	122.8—PL 97-35.
120.3(b)(iii)(A)	Out.
120.3(2)(iii)(B)	122.8-4.
120.3(b)(2)(iv)	122.8-3.
120.3(b)(2)(v)	120.202-3.
120.3(b)(2)(vi)	120.202-4.
120.3(b)(3)	120.104-2 (a) and (b).
120.3(b) (5) and (5)(i)	120.104-2 (d) and (e).
120.3(b)(5)(ii)	120.104-2 (d) and (f).
120.3(b)(6)	120.103-2(e).
120.4(a)	120.300.
120.4(a)(1)	120.301-5(a).
120.4(a)(2)	120.301-5(b).
120.4(a)(3)	120.301-5(c).
120.4(a)(4)	120.301-5(d).
120.4(b)	120.302.
120.4(b)(1)	120.302-1(a).
120.4(b)(2)	120.302-1.
120.4(c)(1)	120.300.
120.4(d)	120.305.
120.4(d)(1)	120.305-1.
120.4(d)(2)	120.305-2.

120.4(d)(3)	120.305–3.
120.4(d)(4)	120.305–4.
120.4(d)(5)	120.305–5.
120.4(d)(6)	120.305–6.
120.4(d)(7)	120.305–7.
120.4(d)(8)	120.305–8.
120.5(a)(1)	120.102–10.
120.5(a)(2)	120.301–3.
120.5(a)(2)(i)	120.103–2 (d) and (e).
120.5(a)(2)(ii)	Out.
120.5(a)(3)	120.301–2—120.301–3.
120.5(a)(4)	120.301–4.
120.5(b)	120.302.
120.5(b)(1)	120.302–2(d).
120.5(b)(2)	120.302–1(c).
120.5(b)(3)	120.302–1(e).
120.5(b)(4)	120.302–1(f).
120.5(b)(5)	120.302–1(g).
120.5(b)(6)	120.302–1(h).
120.5(b)(7)	120.302–1(i).
120.5(b)(8)	120.302–1(j), (k), and (l).
120.5(b)(9)	120.302–1(m).
120.5(b)(10)	Out.
120.5(b)(11)	120.302–1 (n).
120.5(b)(12)	120.302–1 (o).
120.5(b)(13)	120.302–1 (p).
120.5(b)(14)	120.302–1 (q).
120.6(a)	120.303–1.
120.6(b)	120.303–2.
120.6(c)	120.303–3.
120.6(d)(1)	120.303–4.
120.6(d)(2)	120.303–5.
120.6(d)(3)	120.303–6.
120.7	120.304.
122.1	122.1.
122.2(a)	120–1—120.103–1.
122.2(b)	120.103–1.
122.2(c)	120.103–2.
122.2(d)	120.103.
122.2(d)(1)	Out.
122.2(d)(2)	Out.
122.2(d)(3)	Out.
122.2(e)	122.4.
122.2(f)	120.2–3—120.2–6.
122.3	122.4.
122.4	Out.
122.5 (a) and (b)	122.7—PL 97–35.
122.6	Out.
122.7	120.3–2—122.7–2.
122.8	120.3–1.
122.9	Out PL 97–35.
122.10(a) (1)–(4)	Out.
122.10(a)(5)	120.202–1.
122.10(a)(6)	120.202–2—120.202–5.
122.10(b)(1) (i)–(iii)	Out.
122.10(b)(1)(iv)	120.202–5(e).
122.10(b) (2) and (3)	Out.
122.11	Out.
122.12	Out.
122.13	120.102.
122.14	122.6–1.
122.15	122.5.
122.15–1–3	120.103–3.
122.16(a)–(d)	120.103–2.
122.16 (d)(1), (e), (f), and (g).	120.103–2.
122.17	122.6–1.
122.18	120.104–2(e).
122.19	122.5–5.
122.20(a)	120.200–1.
122.20(b)	120.200–2.
122.20(c)(1)	Out.
122.20(c)(2)	120.201.
122.20(d)	Out.
122.21	120.203.
122.22 (a)–(d)	120.204.
122.23(a)	120.204–1.
122.23(b) (1)–(7)	120.204–2.
122.24 (a)–(d)	122.204–2.
122.25 (a)–(c)	120.204–2.
122.100	120.400.
122.101	120.401.
122.102	120.402–1.
122.103	120.402–2.
122.104	120.403–1.
122.105	120.403–2.
122.106	120.403–3.
122.107	120.403–4.
122.108	120.403–5.
122.109	120.403–6.
122.110	120.403–7.
122.111	120.404.
122.112	120.405.
122.113	120.406.
122.302	122.55–2.
122.303	122.55–1.
122.304	122.66–1—122.55–3.
122.305(a)	122.55–5.
122.305(b)	122.55–4(a).
122.305(c)	122.55–4(b).
122.305(d)	122.55–4(c).
122.305(e)	122.55–4(c).
122.305(f)	122.55–5.
122.306(a)	122.55–5(a).
122.306(b)	122.55–5(b).
122.307	122.55–1(b).
122.308(a)	122.55–4(c).
122.308(b)	122.55–4(b).
122.308(c)	122.55–4(b).
122.308(d)	122.55–4(b).
122.309	120.103–1.
122.400	122.54–1—122.54–3.
122.401	122.54–2.
122.403	122.54–4.
122.404	122.54–1.
122.405	122.54–5.
122.406	122.54–6.
122.501	122.56–1.
122.502	122.56–2.
122.503	122.56–3.
122.504	122.56–4.
122.601	120.601.
122.602	120.602.
122.603	120.603.
122.604	120.604–1.
122.605	120.604–2.
12.606	120.605–1.
122.607	120.605–2.
130.1	122.53–1.
130.2	122.53–1.
130.3	122.53–2.
130.4	120.101.
130.5	120.301–5.
130.6	122.53–3.
130.7	122.53–4.
130.8	122.5–1.
130.9	122.7.
130.10	122.8.
130.11	122.6.
130.12	122.4.
130.13–15	Out PL 97–35.
Table 1	Table 1, Pt. 122.

List of Subjects

13 CFR Part 120

Loan programs/business, Small businesses.

13 CFR Part 122

Handicapped, Employee benefit plans, Loan programs/business, Small businesses, Trusts and trustees, Energy, Grant programs/energy, Loan programs/energy, Solar energy.

Accordingly, pursuant to the authority in Section 5(b)(6) of the Small Business Act (15 U.S.C. 631 et seq) Parts 118, 119, and 130, Chapter 1 Title 13 of the Code of Federal Regulations are repealed and Parts 120 and 122 are revised to read as follows:

PART 120—BUSINESS LOAN POLICY

Sec.

Authority: Sec. 5(b)(6), 7(a) and 7(h) of the Small Business Act, as amended, 15 U.S.C. 634(b)(6) and 636 (a) and (h).

§ 120.1 General.

§ 120.1–1 Scope.

This Part sets forth the broad policies and principles that the Small Business Administration (SBA) follows in deciding to grant or deny Financial Assistance under the authority of section 7(a) of the Small Business Act, 15 U.S.C. 636(a), administering and servicing loans, and overseeing the operations of all loan participants. This Part does not apply to financial assistance provided under the Development Company loan program unless specifically referenced by Part 108 of this Title. Frequently firms seeking a loan do not need financial assistance but are in need of management or financial counseling. SBA will, in these cases, provide such assistance through its various counseling programs.

§ 120.1–2 Pilot programs.

(a) In order to explore new directions or improved delivery of SBA services to small concerns, the Administrator of SBA may from time to time publish a notice in the **Federal Register** that certain rules will be suspended or modified for a limited period of time in a specified area.

(b) Such notice in the **Federal Register** shall clearly explain the reasons or grounds for the suspension or modification of SBA rules and comply with all applicable statutes and regulations.

§ 120.1–3 Savings clause.

Financial Assistance granted before March 26, 1985, shall be governed by the related contractual terms and the regulations then in effect. Nothing herein shall bar SBA enforcement action with respect to such Financial Assistance granted pursuant to contractual terms no longer in use or prior regulations no longer in effect. If any section or part of a section of these regulations shall be adjudged invalid, only that part shall be invalid, and the other parts shall not be affected thereby.

§ 120.1–4 Captions.

Captions are inserted as required by the **Federal Register** for convenience only and are not part of the substance of these regulations. Defined terms are capitalized hereafter.

§ 120.2 Definitions.

The following terms have the same meaning wherever they are used in this Part dealing with loan programs or Financial Assistance.

§ 120.2–1 Act.

Act means the Small Business Act, as amended, 15 U.S.C. 631 *et seq.*

§ 120.2–2 Associate.

Associate means an associate of the Lender. This includes any of the following persons who have, or had, an interest in the applicant during the period six months before the date of the application or at any time thereafter while the loan is outstanding:

(a) An officer or director of the Lender; and employee authorized to approve loans on the Lender's behalf; a holder directly or indirectly of 10 percent or more of the value of the Lender's stock, debt instruments or other securities; or a close relative or partner of any such person.

(b) Any person, business or other entity that, directly or indirectly, controls, is controlled by or is under common control with the Lender, or a close relative or partner of such person.

(c) Any enterprise in which 10 percent or more of the value of the stock or ownership interest, debt instruments and other securities are owned or controlled by one or more persons or entities acting in concert and named in paragraphs (a) and (b) of this definition (except a Small Business Investment Company licensed by SBA), or when any such person or entity is an officer, director or partner.

(d) A "close relative" as used in paragraphs (a) and (b) of this definition only, means ancestor, lineal descendant, brother or sister or the lineal descendant of either, spouse, father-in-law, mother-in-law, son-in-law, daughter-in-law, brother-in-law or sister-in-law who is a member of the person's household.

§ 120.2–3 Financial assistance.

Financial Assistance means any SBA loan, whether made directly by SBA or as an immediate participation or guarantee loan made in cooperation with a Financial Institution.

§ 120.2-4 Financial institution.

Financial Institution means banks, or other concerns whose regular course of business entails the making of commercial and industrial loans. The terms participating lender, participant, non-bank lender, small business lending company, bank or lender refer to Financial Institutions that are eligible to participate with SBA and have executed participation agreements.

§ 120.2-5 Lending institution or lender.

(See definition of Financial Institution, § 120.2-4.)

§ 120.2-6 Participant and participating lender.

(See definition of Financial Institution, § 120.2-4.)

§ 120.2-7 Qualified Indian tribe.

Qualified Indian Tribe means an Indian tribe, as defined in section 4(a) of the Indian Self-Determination and Education Assistance Act (25 U.S.C. 4506), which owns and controls 100 percent of a small business concern.

§ 120.2-8 Small Business Lending Company (SBLC).

(See definition for Financial Institution, § 120.2-4.)

§ 120.3 Types of loans.

§ 120.3-1 Direct loans.

These loans are made by SBA without a Financial Institution's participation.

§ 120.3-2 Immediate Participation (IP) loans.

These are loans where either SBA or a Financial Institution agree to purchase from the other, immediately upon disbursement, an agreed percentage of each disbursement.

§ 120.3-3 Guaranty (GP) loans.

These loans, which are referred to as "deferred participations" in the Act, are loans made by a Lender to a small business under a guaranty agreement between the Lender and SBA. The agreement may be an individual agreement that pertains to one specific loan only or a blanket agreement that pertains to all such loans submitted by the Lender and approved by SBA. The Lender advances the total funds for the loan and SBA agrees to purchase, upon demand by the Lender and subject to specific conditions, an agreed portion of the outstanding balance.

§ 120.3-4 Priority of loan type.

Every applicant for a direct loan, immediate participation or guaranty loan must show that the loan is not available without SBA assistance. In addition, an applicant for a direct loan must show that neither an immediate participation nor a guaranty loan is available; an applicant for an immediate participation must show that a guaranty loan is not available.

(Approved by the Office of Management and Budget under control number 3245-0016)

Subpart A—Loan Making Policy

§ 120.100 General.

This subpart outlines the general loans policies covering eligibility, basic loan principles, interest rates, fees and other matters that apply to all SBA Financial Assistance.

§ 120.101 Eligibility of applicant.

§ 120.101-1 Applicant business concern.

(a) *Size.* To receive Financial Assistance from SBA the business applicant must qualify as a small business as defined in Part 121 (Size Standards) of this Chapter.

(b) *Loans to Agricultural Enterprises.* Small concerns engaged in farming and related businesses will be assisted by SBA in accordance with the Memorandum of Understanding signed by the SBA and the United States Department of Agriculture, Farmers Home Administration (FmHA), which appears as Appendix A to this part.

(c) *Loans to Indian Tribes.* Eligibility of small business concerns under section 7(a) of the Act shall not be adversely affected because any such concern is owned or controlled by an Indian Tribe as defined herein (see § 120.2-7).

§ 120.101-2 Type of business.

Most small concerns are eligible for Financial Assistance. The following types of businesses are, however, not eligible for SBA assistance except where otherwise stated in this section (§ 120.101-2).

(a) *Charitable, Religious or Other Non-profit Institutions.* Eleemosynary (charitable) institutions, other non-profit enterprises, government-owned corporations, consumer and marketing cooperatives, churches and organizations promoting religious objectives. An otherwise eligible small concern owned in whole or in part by a private non-profit organization is eligible, as is such a concern when owned and controlled by a qualified Indian Tribe. Sheltered workshops for the handicapped are eligible under a special program, see § 122.51. Producer cooperatives, including farm cooperatives, are eligible if "small" under Part 121 of this Title, and if they are totally owned by otherwise eligible small concerns that share a common need, the cooperative is for the exclusive use of the members and the cooperative provides raw materials, equipment, inventories, supplies or the benefits of research and development or the facilities for such purposes. For qualified employee trusts, see § 122.56.

(b) *Media and Similar Concerns.* Concerns engaged in the creation, origination, expression, dissemination, propagation or distribution of ideas, values, thoughts, opinions or similar intellectual property, regardless of medium, form or content. Financial Assistance to such applications is barred in order to avoid Government interference, or the appearance of such interference, with the constitutionally protected freedoms of speech and press.

(1) Such concerns include:

(i) *Publishing.* Concerns that are publishers, including so-called "vanity" publishers, and producers, importers, exporters or distributors of communications, including newspapers, magazines, books, greeting cards, sheet music, pictures, posters, film, tape, live broadcasts, recordings or reproductions of sight, sound or musical programs or products, motion picture theaters or theatrical productions, and transportation concerns limited to the distribution or delivery of such products.

(ii) *Book Distributors.* Concerns that are book distributors, that specialize in selling products (books, newspapers, etc.) that promote or advocate ideas, including ideological, political, artistic or philosophical viewpoints. This does not prohibit assistance for a general merchandise store that is also selling books, newspapers, magazines, records, etc. or a general (as distinguished from a specialized) book or music, record, or videotape store.

(iii) *Schools.* Concerns operating schools that teach academic subjects. Nursery and pregrade schools are eligible if they are not primarily (50% or more of the time) engaged in teaching academic subjects, and vocational, technical or other nonacademic schools that do not also teach academic subjects are eligible. English taught in a vocational school may be considered a nonacademic subject if the instruction focuses on grammar, spelling, vocabulary, syntax or communications.

(2) Financial Assistance may, however, be extended to:

(i) *Printing.* A concern solely engaged in commercial or job printing, if there is no common ownership or other affiliation with another concern that is ineligible under this section [§ 120.101-2(b)], and the printer has no direct financial interest in the commercial success of the material produced.

(ii) *Advertisements and Technical Material.* A concern that produces advertisements and promotional material for a client's goods and services or technical or instructional material relating to a client's goods and services.

(iii) *Shoppers' Newspapers.* A concern that publishes shoppers' newspapers or circulars consisting of advertising material only, without editorial, narrative or filler material.

(iv) *Reproduction of Material.* A concern that provides motion picture, videotape, sound recording or theatrical technical production facilities, or the technical reproduction of motion picture, videotape or sound recordings without editorial or artistic participation, provided that the applicant concern has no direct interest in the commercial success of the material produced and that there is no common ownership or other affiliation between the applicant and the concern interested in the success of the material being produced.

(v) *Broadcasting and Cable TV.* A concern operating a commercial broadcasting (radio or television) station or a cable TV system under the regulatory jurisdiction of the Federal Communications Commission (FCC) or a cable TV franchise granted in conformity with FCC standards. Concerns engaged in predominantly religious or political programming are not eligible.

(c) *Gambling.* Concerns that derive any part of their annual gross receipts, including rental income, or whose principal owner(s) derive any part of their annual income from gambling activities: *Provided, however,* That an otherwise eligible concern shall not become ineligible if it obtains less than one-third of its annual gross income (either before the loan application or during the life of the loan) from (1) commissions from the sale of official State lottery tickets under a State license or (2) from gambling activities in those States where such activities are legal and supervised by the State.

(d) *Illegal Activities.* Concerns that are engaged in an illegal activity or are engaged in the production, servicing, or distribution by sale or otherwise of products or services used in connection with an illegal activity. This includes, but is not limited to, the production, servicing, distribution of paraphernalia, products or services that are used or intended to be used primarily or exclusively in connection with the unlawful use of drugs or controlled substances.

(e) *Lending or Investment, "Alter Ego".* Concerns primarily engaged in the business of lending or investing. Applicants that are otherwise eligible become ineligible where the purpose of the Financial Assistance is to finance investments that are neither related nor essential to the enterprise: *Provided, however,* That a small concern (holding company) owning and leasing or proposing to own and lease real or personal property to an otherwise eligible small concern (operating company) shall be eligible if all the following conditions are met:

(1) The holding company must be a small business organized and operated for profit as an individual proprietorship, partnership or corporation.

(2) It must be in the business of owning and leasing real or personal property to the operating company.

(3) It must propose to use loan proceeds for purposes that would be eligible uses for the operating company.

(4) It must use the loan proceeds solely to acquire or improve real or personal properly (including eligibile refinancing) for the exclusive use of such operating company.

(5) It must have ownership interest(s) completely identical with and in the same proportion as the ownership interest(s) in the operating company and agree in writing that such identity of ownership shall remain unchanged until the loan is paid in full or unless SBA gives written approval for an earlier change.

(6) It must pledge the lease between it and the operating company having a remaining term at least equal to the term of the loan and a lien on the property itself as collateral for the loan.

(7) The operating company must be either a guarator or coborrower on the loan and the owner(s) of the operating company must guarantee the loan.

(f) *Parole or Probation.* Any concern if the proprietor, or a holder of 20 or more precent of the stock, or a partner, officer, director, or other persons, including hired managers, who have or will have the authority to speak for and commit the borrower in the management of the business, in currently incarcerated, on parole or on probation either pursuant to a pre-trial diversion or following conviction of a serious offense. The concern remains ineligible if the probation or parole is lifted solely because it is an impediment to obtaining a loan.

(g) *Multilevel Sales Distribution Plan.* Generally, any concern engaged in multilevel sales distribution plans of the "pyramid" type.

(h) *Loan Packager.* Any small business concern, where a substantial part (30% or more of its annual business volume) is the preparation of applications seeking Financial Assistance from the SBA. This is not intended to preclude Financial Assistance to an otherwise eligible small concern that regularly provides accounting or legal services to the public.

§ 120.102 Limitations on loan purposes.

Small manufacturers, wholesalers, retailers, service concerns and other firms may borrow to finance construction, conversion or expansion; to purchase equipment, facilities, machinery, supplies or materials; to obtain working capital; or, at the discretion of SBA, to refinance outstanding notes payable. for additional special rules applicable to refinancing loans, see § 122.7-3(c). Financial Assistance shall not be granted if the direct or indirect purpose or result of granting the loan would be to:

§ 120.102-1 Refinance unsecured loans.

Pay off inadequately secured creditor(s) who could suffer a loss if the debt is not refinanced, and SBA would probably sustain all or part of the same loss, or if SBA determined that the loan will not benefit the small concern: *Provided, however,* That (subject to intervening adverse change) SBA may reimburse a lender's interim advance from loan proceeds if made in compliance with a loan authorization previously issued by SBA. SBA shall not decline to guarantee a loan solely because such loan will refinance existing indebtedness of a small concern.

§ 120.102-2 Revolving credit.

Except as permitted under § 122.54, create a revolving line of credit, such as "floor plan" financing.

§ 120.102-3 Pay obligation of owners.

Provides funds for payments, distributions or loans to owners, partners or shareholders of the applicant, exclusive of ordinary compensation for services rendered, and excluding the proceeds of loans to change ownership of the business as described in § 120.102-6 below.

§ 120.102-4 Refund debt to SBIC

Refund a debt owed to a Small Business Investment Company (SBIC) (see Part 107 of this chapter). However, applications may be accepted from business applicants financed by an SBIC if SBA's collateral position will be superior to that of the SBIC.

(a) *Participation with an SBIC.* SBA shall not participate on either an immediate or guaranty basis with an

SBIC (§§ 120–2 and 120–3). However, this does not limit the granting of a loan to an applicant which has or will have a loan or equity capital from an SBIC if SBA's collateral position is superior to that of the SBIC.

(b) *Loans to Firms Owned or Controlled by SBIC.* A loan may be made to a firm which is otherwise eligible but temporarily owned or controlled by an SBIC in compliance with the regulations in Part 107 of this chapter.

§ 120.102–5 Speculation.

Provide or free funds for speculation in any kind of real or personal property, whether tangible or intangible. Examples of speculations include "wildcatting" in oil and dealing in commodity futures.

§ 120.102–6 Change in ownership.

To effect a change in the ownership of the applicant unless the change (a) will promote the sound development or preserve the existence of a small concern or (b) will contribute to a well-balanced national economy by facilitating ownership of small concerns by person(s) whose participation in the free enterprise system has been prevented or hampered because of economic, physical or social disadvantages or because of disadvantages in residential or business location.

Note.—It is not intended that the Agency permit an individual(s) to borrow funds to purchase an interest in a business (except as permitted under § 122.55).

§ 120.102–7 Recreational or amusement enterprises.

Finance the construction, acquisition, conversion or operation of recreational or amusement enterprises unless (a) they are open to the general public and (b) they are properly licensed by the appropriate State or local authority. The character and reputation of the applicant will be given special consideration.

§ 120.102–8 Investment in property.

Finance the acquisition, construction, improvement or operation of personal or real property that is, or is to be, held for sale or investment (rental income) and is not be used in connection with the applicant's otherwise eligible small business. (See § 122.50 of this chapter for an exception.)

§ 120.102–9 Monopoly.

Have the effect of encouraging a monpoly or be inconsistent with the accepted standards of the American system of free enterprise.

§ 120.102–10 Conflict of interest.

Create, or appear to create, a conflict of interest. Without the prior written approval of the responsible district office, SBA shall not participate in or guarantee a loan to a business where the lender or an Associate has, or acquires while the loan is outstanding, an interest in any form which constitutes a conflict of interest, or the appearance thereof, with respect to the loan or the small concern. A field office reviewing a request for approval must determine whether a conflict of interest exists or appears to exist because of preferential treatment or the loss of independent, impartial and objective judgment. It must determine what corrective action, if any, will eliminate the actual or apparent conflict of interest and allow immediate processing of the loan application. The field office determination shall be based on such factors as the nature of the relationship between the Lender and its Associate, the significance of an Associate's influence on the actions or decisions of the Lender, the nature of the relationship with a close relative (e.g. would it tend to prejudice an objective decision) and such other factor(s) as may, directly or indirectly, contribute to or negate a conflict of interest. The following are examples (not an all inclusive listing) of where SBA shall not participate in or guarantee a loan:

(a) *Non-disclosure.* When the Lender's application to SBA does not contain a full disclosure statement, including negative statements to the best of its knowledge, from the Lender and from the small concern, relative to all relationships discussed in § 120.2–2 and an undertaking that no such relationship shall knowingly be created as long as the loan is outstanding. For an exception relating to the handicapped see § 122.51–5(a).

(b) *Purchase from Lender.* When the proceeds will directly or indirectly finance the purchase of real estate, personal property or services (including insurance) from the Lender, its Associate, or the designee of either, SBA may permit such on a case by case basis by making a written determination that the purchase is in the best interest of the applicant and will not impair the Lender's objective judgment in any decisions with respect to the making, servicing or liquidation of the loans. The applicant shall not contract with the Lender or an Associate for goods or services without written approval by SBA.

(c) *Reduced Exposure.* When the proceeds will reduce the exposure of the Participant unless SBA makes a written determination that it is in the best interest of the applicant and meets the requirements of § 122.7–3(c) of this chapter.

(d) *Repay Associate.* To repay or refinance a debt due an Associate unless SBA makes a written determination that the documentation in the file supports the repayment or refinancing. The evidence shall show that the terms of the existing debt are causing the applicant undue hardship, that refinancing the debt will relieve the hardship and the relief from the hardship is not available through extension or modification of the original debt or through refinancing with private lending sources.

(e) *Forward Commitment.* Where the Lender has issued a real estate forward commitment to a builder/developer with respect to a project of such builder/developer and the applicant for Financial Assistant proposes to use the proceeds to acquire space in such project.

(f) *Reinvestment in Lender.* When the applicant or its principals invest funds in the Participant Lender: *Provided, however,* That if the enabling authority of a Participant (such as a Production Credit Association) requires such investment, Participant may make a "side loan" not guaranteed by SBA and subordinated to SBA's Financial Assistance except that lender may hold a first lien on the securities representing such investment, and *Provided, further,* That the interest rate applicable to such side loan does not exceed SBA's maximum for guaranteed loans and the maturity is no shorter than that of SBA's Financial Assistance.

§ 120.102–11 Replacement of funds.

Replace funds already used for the purposes described in § 120.102.

§ 120.103 Lending criteria.

§ 120.103–1 Evidence of needs.

Applications for Financial Assistance shall be considered only when the desired credit is not otherwise available on reasonable terms from non-Federal sources. To establish that the credit is otherwise available, SBA shall:

(a) *Proof of Refusal.* (1) Direct or immediate participation loans: Require written proof of refusal from (i) the applicant's bank of account or, if the amount of the loan exceeds that bank's legal or normal lending limit, from a correspondent bank with a legal or normal lending limit that is adequate to cover the loan, and (ii) from a second Financial Institution in cities with a population exceeding 200,000. The proof of refusal must be dated and signed and

include the amount and terms requested and the reason for denial;

(2) *Guaranty Loans.* The certification a Lender makes in its application for a guaranty by SBA will generally be accepted as sufficient documentation in lieu of a letter(s) of decline.

(b) *Funds Otherwise Available.* Determine from financial statements or other financial information provided whether it appears that the funds are available (1) from a private or public sale of securities issued by the applicant, (2) by disposal at a fair price of assets not necessary to the applicant's operation or growth, (3) through utilization, without undue hardship, of the resources of the owners, partners, management or principal shareholders. SBA may obtain the applicant's credit history from credit reporting agencies as part of the credit evaluation.

(Approved by the Office of Management and Budget under control numbers 3245–0016 and 3245–0196)

§ 120.103–2 Credit evaluation.

In evaluating a loan application, SBA attaches importance to many factors including the character and reputation of the applicant and its principals, experience and depth of management, the inherent soundness of the business enterprise, the past earnings record and future prospects, the long-range possibilities of successful operation, and whether the granting of Financial Assistance has a sound business purpose. SBA may obtain from credit reporting agencies the applicant's credit history and rating.

(a) *Repayment.* The Act specifies that ". . . all loans shall be of such sound value or so secured as to reasonably assure repayment . . ." Therefore no Financial Assistance shall be extended unless there is reasonable assurance that the loan can be paid from the earnings of the business.

(b) *Sound Finances.* The applicant shall have enough equity invested or to invest so that, if SBA Financial Assistance is approved, it can operate on a sound financial basis.

(c) *Collateral.* Adequate collateral is required to reasonably protect the interest of the Government. The amount of collateral needed, considered along with other credit factors, is determined on a case-by-case basis. Proprietors, partners, officers, directors, and owners of 20 percent or more of the business shall generally be required to guarantee payment of the loan and, in SBA's discretion, to pledge personal assets to secure the guarantee. Inadequate collateral will not normally be used as the sole reason for decline unless the applicant refuses to pledge whatever worthwhile collateral is available.

(d) *Special Reports.* SBA may require professional appraisals of the applicant's assets, an engineering survey or feasibility study of the applicant's operation, earnings, management, competitive position or other such factors. The need will be determined by a review of the application and, when needed, the applicant is generally required to purchase the service and submit the report to SBA.

(e) *Insurance Coverage.* A small business is generally required to purchase and maintain hazard insurance and flood insurance (see Part 116 of this chapter). In some instances, life insurance on the principal(s) may also be required. The borrower must select the agent and carrier from whom the insurance is purchased and, generally, any new or additional insurance required should be reducing term insurance with an original face amount no greater than the amount of the loan. Any variation in the type of life insurance shall be authorized by SBA in writing. Any fee or commission for insurance purchased from the Lender or an Associate must be reported as a fee paid to the Lender. The purchase of insurance from the Lender or an Associate may not be required as a condition to accepting, processing, or approving a loan.

(f) *Compliance with Other Parts.* All Financial Assistance under this part shall require compliance with Parts 112, 113, 116 and 117 of this chapter. With respect to any Financial Assistance of SBA, Part 112 prohibits discrimination on the grounds of race, color, or national origin, Part 113 prohibits discrimination based on race, color, religion, sex, material status, handicap or national origin with respect to all recipients of SBA Financial Assistance. Part 116 prescribes policies of general application set forth in several subparts. Subpart A sets forth SBA policies and criteria for giving special consideration to veterans and their survivors or dependents. Subpart B prescribes rules on the prohibition of SBA Financial Assistance for acquisition or construction in special flood hazard areas when persons eligible for flood insurance have not obtained it. Subpart C prohibits recipients of SBA Financial Assistance from using lead-based paint as described therein. Subpart D prescribes policies and procedures dealing with floodplain management and wetlands protection. When promulgated, Part 117 will cover the prohibition of discrimination based on age.

(g) *Tax Requirements.* If any portion of the loan proceeds will be used for paying wages of additional employees, the applicant shall be current on all payroll taxes, both Federal and State. It shall have a depository plan in operation for payment of future employee withholding taxes.

(h) *Bonding Requirements.* On all construction loans, a 100 percent payment and performance bond and builders risks/workman's compensation insurance must be supplied unless waived by SBA.

(Approved by the Office of Management and Budget under control numbers 3245–0016 and 3245–0191)

§ 120.103–3 Reconsideration of decline.

Any applicant that is declined for size may appeal the decision only in accordance with Part 121 of this Chapter. Otherwise, any applicant whose request (including request for a modification of an existing loan condition) has been declined shall have the right to present new or additional information to overcome the reason(s) for decline and request a reconsideration.

(a) *File Within 6 Months.* Applicant shall submit a written request for reconsideration to the office that processed and declined the application within six months of the date of the initial decline. After six months a new application is required. A request for reconsideration of a guaranty loan application must be submitted by the lender.

(b) *Additional Information.* The written request for reconsideration must contain all significant new or additional information which is expected to overcome the reason(s) for decline. Reconsideration requests without new information will not be accepted.

(c) *Reasons for Decline.* Decline of an application for one reason(s) does not waive the Agency's right to decline a request for reconsideration for another reason(s).

(d) *Appeal of Declined Reconsiderations.* An applicant whose request was declined on reconsideration shall have the right to request reconsideration at the next higher office. Such written requests for further reconsideration must be submitted to the office that processed the loan within 30 days of the last decline action, and shall specifically request reconsideration at the next higher office and shall contain the written justification for requesting a reversal of the decline action.

(e) *Finality of Review.* The decision of the regional office is final: *Provided,*

however, That the Regional Administrator may refer a case to the Associate Administrator for Finance and Investment (AA/F&I), or the AA/F&I may request that a file be forwarded to the Central Office because of special circumstances. The term "special circumstances" refers to a policy reconsideration or reevaluation of an existing policy by the Agency, conflicting policy interpretations between two regional offices, alleged improper act by SBA personnel or other such considerations.

[Approved by the Office of Management and Budget under control number 3245–0189]

§ 120.104 Fees.

§ 120.104–1 Guaranty fees.

The Financial Institution shall pay a guaranty fee to SBA for each loan. Acceptance of the guaranty fee by SBA shall not waive any right of SBA arising from the Lender's negligence, misconduct or violation of any provision of these regulations, the guaranty agreement or the loan authorization.

(a) *Amount.* SBA shall charge a guaranty fee on loans with maturities in excess of twelve months, equal to one percent (1%) of the guaranteed portion of the loan. For loans with a maturity of twelve (12) months or less, the guaranty fee shall be one-quarter (1/4) of one percent of the guaranteed portion of the loan. (See section 122.6–1 of this Chapter with respect to loan maturities.)

(b) *When Payable.* The Lender shall pay the guaranty fee on a loan with a maturity not in excess of 12 months at the time the Lender submits the application for guaranty. The Lender shall pay the guaranty fee on a loan with a maturity in excess of 12 months within 90 calendar days of the date of SBA's approval as stated in the loan authorization. Like fees shall be paid for increases in the loan amount. If the guaranty fee is not paid by the Lender within this time period, SBA will send the Lender a written notice (bill) requesting payment. The guaranty shall be subject to termination if SBA does not receive the fee within the time period stated in the notice.

(c) *Who Pays.* The Participating Lender is responsible for paying the guaranty fee to SBA. For guaranty loans having a maturity of 12 months or less, the lender (having paid the fee to SBA) may charge borrower for the guaranty fee upon approval of the loan by SBA. For guaranty loans with maturities exceeding 12 months, a Lender (having paid the guaranty fee to SBA and made the first disbursement on the loan) may charge the borrower for the guaranty fee. The borrower may use loan proceeds to pay the fee.

(d) *Reinstatement of Guaranty.* SBA may, at its sole discretion, reinstate a guaranty that was cancelled for failure to pay the guaranty fee, where SBA determines that such Lender's failure was not intentional and not part of a recurring pattern. SBA will not reinstate a guaranty if the fee is unpaid at the time the borrower defaults and if such default continues uncured for sixty days or if SBA determines that there has been a substantial adverse change in the borrower's condition.

(e) *Refunds.* (1) SBA shall refund the guaranty fee submitted with the application for loans with a maturity of 12 months or less, when an application is withdrawn prior to approval by SBA, or declined by SBA, or when SBA substantially changes the Lender's loan terms and then approves the loan. When SBA's modified terms are unacceptable, the Lender must request refund in writing within 30 calendar days of such approval.

(2) SBA shall refund the guaranty fee for a loan with a maturity exceeding 12 months only when the Lender has not made any disbursement on the guaranteed loan and requests the refund and cancellation of the guaranty in writing.

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§120.104–2 Service and commitment fees.

(a) *Service Fees*—(1) *Regular Service.* The Lender may charge SBA a service fee for servicing immediate participation loans or guaranty loans where SBA has purchased its guaranty portion but has not assumed responsibility for servicing the loan. The Lender may also charge a service fee to a third party where the guaranty portion has been transferred by the Lender to a third party. The Lender shall deduct such fee only from interest collected for the account of SBA or a third party and only so long as the Lender is servicing the loan. The fee shall not be added to any amount the borrower is obligated to pay under the loan. Fees on guaranty loans after SBA purchase are determined by the initial percent of SBA guarantee. Where SBA's share of an immediate participation or guaranteed loan is seventy-five (75) percent or less, the service fee shall be three-eighths (⅜) of one (1) percent per annum on the unpaid principal balance of SBA's share of the loan. Where SBA's share of any immediate participation or guaranteed loan is in excess of seventy-five (75) percent, the service fee shall be one-fourth (¼) of one (1) percent per annum of the unpaid principal balance of SBA's share of the loan. The fee a Lender receives for servicing a loan for the benefit of a third party is negotiated between the two parties and is not subject to the limitations set forth above.

(2) *Loan Extension.* An additional service fee not exceeding one (1) percent of the outstanding amount of the principal may be paid by the borrower to the Lender in consideration for extending the term or refinancing the indebtedness where the extension results in a term that exceeds ten years.

(3) *Extraordinary Service.* Subject to prior written SBA approval, if a loan will have extraordinary servicing needs, a Lender may charge the applicant a service fee not to exceed two (2) percent per annum on the outstanding balance of such loan, or in the case of construction loans, two (2) percent of the amount approved. If the extraordinary services are required only for part of the loan, or for part of the collateral for a loan, such service fee shall be applied only to that part of the loan, or for the part secured by such collateral. In no event may such service fee represent additional interest or profit on the loan. The fee charged shall be commensurate with the extra service provided and shall be requested by the Lender and justified in writing prior to approval of the loan.

(b) *No Late Payment or Prepayment Fees.* Fees for handling late payments and fees or penalties for partial or full prepayment of the loan shall not be charged in connection with any SBA loans.

(c) *Commitment Fee for Export Revolving Line of Credit (ERLC) Loans.* After SBA approves a loan under the ERLC program a Lender may charge the borrower a commitment fee of one-quarter (¼) of one (1) percent (or $200 minimum) of the loan. (See Section 122.54–4 of this Title relating to Export Revolving Lines of Credit.)

(d) *Fees for Representatives.* Except as herein provided, no applicant for SBA Financial Assistance shall be required to pay the Lender, an Associate of the Lender or any party designated by either, any fees or charges, for any goods or services, including insurance as a condition of the Lender's participation in an SBA loan. See also Parts 103 and 104 of this title, especially §103.13–5.

(e) *Fees for Other Services.* Payment of bonus, or brokerage fees or commissions for the purpose of, or in connection with, obtaining financial assistance through SBA is prohibited. A Lender or Associate may charge an applicant reasonable fees on an hourly

basis for necessary services actually performed at the request and for the primary benefit of the applicant. Nothing contained herein shall be deemed to authorize any Lender to impose upon an applicant fees or charges (including origination or packaging fees), any part of which defrays the Lender's overhead cost; for example, payments for services of counsel, accountants, financial analysts, etc., who are salaried employees of the Lender or its Associate. An opinion on the validity of the loan or its compliance with SBA requirements serves the interest of the Lender and is part of its overhead cost. If the Lender needs additional appraisals, abstracts of title or other record searches for the processing or as a condition of the disbursement of a loan, the Lender or an Associate (with the consent of the applicant in either case) may prepare such documentation for a reasonable fee. Legible copies of any such documents shall be made available to the applicant, together with any supporting workpapers that the applicant may request. If the same law firm represents both Lender and applicant, with the applicant's consent and pursuant to applicable bar and court rules, such law firm may charge applicant reasonable fees for the services rendered to and for the benefit of the applicant. SBA has no national standard as to what is reasonable. The SBA district offices determine what fee is reasonable on a case by case basis. A Lender may be reimbursed by the borrower for any reasonable out-of-pocket expenses incurred for filing or recordation necessary to perfect a security interest in the assets of the borrower, including title insurance. A Lender shall not require that borrower pay points, and add-on interest may not be used. A Lender may receive the fees authorized under this paragraph, and no others, whether or not the requested loan is made.

(f) *Report on Fees.* The applicant shall certify the names of all attorneys, accountants or other representatives, including the Participating Lender or its Associates, engaged by the applicant for a fee in connection with the Financial Assistance being requested, as well as the amount paid. SBA Form 159 (Compensation Agreement) shall be used therefor.

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§ 120.105 Other legal requirements.

SBA loans are also subject to the provisions and requirements of other legislation such as the Freedom of Information, Privacy, Right to Financial Privacy, Paperwork Reduction, Flood Disaster Protection, Lead-Based Paint Poisoning Prevention, Equal Credit Opportunity, Occupational Safety and Health, Consumer Credit Protection Acts, Civil Rights Legislation and various Executive Orders. Therefore, SBA may request data, agreements, or acknowledgements to support or document compliance with, and respond to reporting requirements of, these statutes in addition to the data required to make an informed credit decision. (See Parts 112, 113, 116 and 117 of this chapter.)

Subpart B—Loan Administration

§ 120.200 General.

This subpart outlines the general loan administration policies applicable to SBA Financial Assistance.

§ 120.200-1 Servicing direct or immediate participation loans.

Immediate participation loans which are closed by the Lender shall be serviced by the Lender, and immediate participation loans or direct loans closed by SBA shall be administered by SBA. However, SBA reserves the right to transfer the servicing of an immediate participation loan from the Lender to SBA and, with mutual agreement, from SBA to the Lender.

§ 120.200-2 Servicing guaranteed loans.

Guaranteed loans shall be serviced by the Lender. The Lender shall hold the note, instruments of hypothecation, and all other agreements, documents, and instruments required in connection with such loans. The Lender shall receive all payments of principal and interest on the loan until such time as SBA may complete the purchase of its guaranteed share of the loan, i.e., when SBA perfects the paperwork necessary to process disbursement and SBA's purchase of its share of a guaranteed loan is complete. The Lender shall thereupon assign the note and the other loan instruments to SBA and loan servicing shall become the responsibility of SBA. With SBA's written consent the Lender may continue to service the loan after purchase. In such case, the Lender shall execute a certificate of interest evidencing SBA's percentage of the loan and shall continue to service the loan and be the holder of the note and the other instruments, until SBA makes a written request for the transfer of loan servicing to SBA; the Lender shall thereupon assign and deliver to SBA all loan instruments immediately after receipt of such a transfer request from SBA.

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§ 120.201 Servicing requirements.

§ 120.201-1 Prior consent required.

The holder of the note shall not, without the prior written consent of the other participant:

(a) *Alteration.* Make or consent to any substantial alteration in the terms or conditions of any loan instrument. For the purpose of this paragraph, "substantial" includes, but is not limited to, increases in principal amount or interest rate or any action that benefits or confers a preference on the holder;

(b) *Release of Collateral.* Make or consent to releases of collateral having a cumulative value, as reasonably determined by the holder of the note, which is more than 20 percent of the original loan amount;

(c) *Accelerate Maturity.* Accelerate the maturity of the note;

(d) *Sue.* Sue upon any loan instrument;

(e) *Waive Claim.* Waive any claim against any borrower, guarantor, obligor or standby creditor arising out of any loan instrument;

(f) *Increase Amount of Prior Lien.* Increase the amount of any prior lien held by the Lender on property securing an SBA guaranteed loan.

§ 120.202 SBA purchase of guaranteed loans.

§ 120.202-1 SBA purchases determination.

SBA shall have the right at any time to purchase its guaranteed percentage of a loan if SBA shall determine that such purchase is in the best interest of the Government. If the borrower has defaulted in payment of any installment of principal or interest when due and if the default continues uncured for more than 60 calendar days (or less if SBA agrees), Lender may demand in writing that SBA purchase the guaranteed percentage of the loan.

§ 120.202-2 No waiver.

Purchase by SBA of its guaranteed share shall not waive any right of SBA arising from Lender's negligence, misconduct or violation of these regulations, the guaranty agreement or the loan instruments.

§ 120.202-3 Rate of interest to borrower.

When SBA purchases its share of a loan, the rate of interest payable by the borrower on the SBA share shall be the same as the rate of interest provided in the note. On loans with a fluctuating interest rate, the interest paid to SBA shall be the rate in effect at the time of default where a default has occurred, or

the rate in effect at the time of purchase where no default has occurred.

§ 120.202–4 Accrued interest to holder.

When SBA purchases its guaranteed share, its payment to the holder of accrued interest to the date of purchase shall be at the rate of interest provided in the note. On those loans with a fluctuating interest rate, the SBA's payment of accrued interest shall be at that rate in effect at the time of default when a default has occurred, or at the rate in effect at the time of purchase where no default has occurred.

§ 120.202–5 When SBA does not purchase.

SBA shall be released from obligation to purchase its share of the guaranteed loan unless the Lender has substantially complied with all of the provisions of these regulations, the Guaranty Agreement and the Loan Authorization, and has not failed to disclose material facts, and has made no material misrepresentations to SBA with respect to the loan; or upon the happening of any one or more of the following events:

(a) *Defective Closing.* Failure of the Lender to close and disburse the loan substantially in accordance with the terms and requirements of the loan instruments (including the loan authorization), or to service the loan in a prudent manner, either of which may result in a substantial loss on the loan;

(b) *Full Payment.* Payment in full of the amount due on the note;

(c) *Request to Terminate.* Receipt by SBA of written request from the Lender to terminate the guarantee; or

(d) *Non-Payment of Guaranty Fee.* Failure of the Lender to pay the guaranty fee as required by § 120.104–1(c).

(e) *Late Demand.* Failure of the Lender to demand purchase of an unpaid guaranteed portion or to request an extension of maturity within one year after the maturity of the note: *Provided, however,* That if SBA denies the request to extend the loan, the Lender shall have 6 months from the date of such denial to demand that SBA purchase the guaranteed portion of the loan.

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§ 120.203 Collection policy.

It is the policy of SBA to insist upon prompt payments, and upon compliance with all conditions of the note, mortgage and loan agreement. Any request for relief should be directed to the Participating Lender or the SBA field office, whichever is servicing the loan. In order to aid and assist borrowers in the discharge of their finanical obligations, it is the policy of SBA to advise and counsel with borrowers in all aspects of their business, with a view to the development of a healthy, growing concern.

§ 120.204 Liquidation of loans and security.

§ 120.204–1 Liquidation policy.

(a) *Assist and Protect Business.* It is the policy of SBA to aid, counsel, assist and protect small concerns to which loans have been made. Ordinarily, the liquidation of the property securing a loan will not be resorted to if there appears to be any reasonable prospect that the loan may be repaid by the borrower or a guarantor (other than SBA) within a reasonable period.

(b) *Sale and Conversion of Loans*—(1) *Sale of Direct Loan.* SBA is authorized to effect the sale of any direct loan upon payment of the full amount of the borrower's obligation. The consent of the borrower is not required.

(2) *Conversion of Direct Loans.* Direct loans may be converted to guaranteed loans or to immediate participation loans.

(3) *Conversion of Immediate Participation Loans.* An immediate participation loan may be converted to a guaranteed loan or a loan wholly owned by the Participating Institution without the borrower's approval upon payment of the unpaid amount of SBA's participation in such loan, together with accrued interest due thereon and any advances that may have been made by SBA.

§ 120.204–2 Foreclosure of collateral.

(a) *Liquidation of Collateral.* Liquidation of the security may be approved when any one of the following conditions exists:

(1) The borrower is in default in the payment of one or more installments due under a note or has defaulted in the performance of conditions contained in the note, loan agreement, other instrument, or a security instrument, and the failure to cure, or to attempt to cure, such default is due to (i) lack of diligence; (ii) lack of managerial ability which the borrower has failed to correct; (iii) other circumstances within the borrower's control; or (iv) the inability of the borrower to remedy the default;

(2) Foreclosure of other creditor's rights proceedings have been instituted which may jeopardize the interests of the Government;

(3) A borrower has filed a voluntary petition or an involuntary petition has been filed against the borrower pursuant to any of the provisions of the Bankruptcy Code, as amended;

(4) A receiver has been appointed or other judicial action is taken for the purpose of liquidating the borrower's assets.

(5) The borrower has made an assignment for the benefit of creditors;

(6) The borrower is in default and has discontinued or abandoned the business or has not submitted an acceptable plan of payment;

(7) The borrower has failed to disclose in the loan application or during the life of the loan any fact deemed by SBA to be material; or a misrepresentation by, on behalf of, or for the benefit of, the borrower has been made to SBA.

(b) *Disposal of Collateral.* Real and personal property, including contracts and claims, pledged as security for a loan which is in default may be sold in accordance with the provisions of the related security instrument.

(1) *Competitive Bids or Negotiated Sale.* SBA or the Participating Lender generally shall offer acquired collateral for public sale.

Such sales, unless otherwise authorized, will be ordinarily effected through competitive bids at an auction sale or a sealed bid sale. Where property cannot be sold advantageously at auction or sealed bid sale, a negotiated sale of the property may be authorized. The right, title and interest of SBA in property sold will, unless otherwise authorized, be conveyed by an appropriate bill of sale or deed, without representation or warranty.

(2) *Lease of Acquired Property.* SBA does not favor renting or leasing acquired property or the granting of options to purchase. In those instances where the property cannot be sold advantageously and it appears to be in the interest of the Government to lease the property, proposals for a lease will be considered. Any such proposals shall provide for termination by SBA upon the giving of reasonable notice when a favorable offer to purchase is received.

(c) *Recoveries and Security Interests Shared.* All payments or recoveries on a loan as well as all reasonable expenses (including advances for the care, preservation, and maintenance of collateral securing the loan) incurred by SBA or the Participating Lender, and any security interest or guaranty (excluding SBA's guaranty) which the Participating Lender or SBA may hold or receive in connection with a loan shall be shared ratably by SBA and such Lender in accordance with their respective interests in the loan.

(d) *Guarantors.* Guarantors of Financial Assistance, other than SBA, shall have no rights of contribution against SBA on a SBA guaranteed loan. SBA shall not be deemed to be a coguarantor with any other guarantors.

Subpart C—Loan Participants

§ 120.300 Policy.

SBA is authorized to make in its discretion participation loans in cooperation with banks and other Financial Institutions, excluding Small Business Investment Companies licensed by SBA, through agreements to participate on an immediate or deferred (guaranty) basis. Such agreements do not obligate SBA to participate in any particular loan or loans that a Lender may submit. The existence of a participation agreement does not limit SBA's right to determine from time to time, as a matter of general policy or with respect to particular loans, the ratio between its share of a loan and the Lender's share, or SBA's right to withhold, at its sole discretion, approval of a proposed transfer of the guaranteed portion of any loan.

§ 120.301 Operation of all loan participants.

§ 120.301-1 Preferences.

No agreement to participate under the Small Business Act shall establish any preferences in favor of the Participant. "Preferences" as used in this regulation include, but are not limited to, (a) any arrangement giving a Participating Lender a preferred position over the SBA position as regards repayment, collateral or guarantees in connection with the loan, (b) any requirement that the borrower accept a separate or companion loan which results in a preferred position for the Participant or (c) any requirement that a borrower purchase a certificate of deposit or maintain a compensating balance which is not under the unrestricted control of the borrower. For loans made in participation with offices of the Production Credit Association see § 120.102-10(f).

§ 120.301-2 Sale or transfer of guaranteed position.

In addition to assignments of an SBA guaranteed loan as provided in SBA Form 750 and 750B (Loan Guaranty Agreements), a Lender may transfer the entire guaranteed portion using, after February 15, 1985, only SBA Form 1086, Secondary Participation Guaranty and Certification Agreement in which the Lender and SBA agree to the repurchase of the guaranteed portion as provided in such agreement: *Provided,* That prior to the execution thereof:

(a) *Documents.* The duly executed note and settlement sheet(s) underlying the transaction, and such other documents as SBA may expressly require have been submitted by the Lender to SBA;

(b) *Fees Approved.* All fees, including fees to agents (as defined in § 103.13-2 of this chapter) paid or to be paid by the borrower in connection with the loan have been approved by SBA;

(c) *Full Disbursement.* The full amount of the loan, as authorized, has been disbursed by the Lender to the borrower;

(d) *Guaranty Fees Paid.* All guaranty fees have been paid in full; and

(e) *Terms.* The terms of sale do not obligate the Lender or SBA to repurchase under any circumstances other than those provided for in the said secondary participation agreement.

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§ 120.301-3 Centralized registration of guaranty transfers.

When the initial sale by Lender was transacted on SBA Form 1084, the next succeeding transfer, after February 15, 1985, by holder must utilize SBA Form 1085, Request for Certification of SBA Form 1084. All transfers of a guaranteed portion after February 15, 1985, must be centrally registered with SBA's fiscal and transfer agent (FTA) and all financial transactions relative to the guaranteed portion must flow through the FTA. Updating the central registry to reflect subsequent transfers will be accomplished through the use of informaion contained on the Certificate evidencing the transfer. Execution of the secondary participation agreement by SBA shall not relieve any Lender of the obligation of compliance with all legal requirements relating to the sale or other transfer of securities, including (but not limited to) the statutes administered by the Securities and Exchange Commission and "Blue Sky" laws.

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§120.301-4 Services to borrowers.

Subject to § 120.102-10, Lenders, their Associates or the designee of either may provide services to and contract for goods with any small concern only after full disbursement of the loan to the small concern or to an account not controlled by the lender, its Associate, or designee of either. Where lender or any Associate or the designee of either provides services permitted under Subpart A of this part, such srvices shall be furnished on a time basis pursuant to a written contract approved by the board of directors, partners, or proprietor of the small concern. Records of time spent and charges made for such services shall be maintained for examination by SBA. Charges made shall not exceed those charged by established professional consultants providing similar services.

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§ 120.301-5 Advertisement of relationship with SBA.

A Lender may make reference in its advertising to its participation with SBA by the use of phrases such as "a participant with SBA in loans to small business" or "solely engaged in participation with SBA in loans to small business": *Provided, however,* That no such advertising shall state or imply that such Lender, or any of its borrowers, will enjoy preferential treatment from SBA; or be false or misleading in any other respect; and *Provided, further,* That such advertising shall not make use of SBA's seal or any facsimile thereof.

§ 120.301-6 Requirements for all participants.

A participating Financial Institution must meet all of the following requirements:

(a) *Capability.* Have a continuing capability to evaluate, process, close, disburse, and service loans authorized to be made by SBA to small business concerns. Such capability will be deemed to exist when the Financial Institution's operations are at all times conducted by persons possessing the above listed capability. The Financial Institution shall hold itself out to the public as engaged in the making of such loans, and shall maintain a reasonably accessible office in its own name, have a listed telephone number, and be open to the public during regular business hours.

(b) *Good Character and Reputation.* Have continuing good character and reputation. A Lending Institution will be deemed to possess good character and reputation if the holders, direct or indirect, of ten (10) percent or more of its voting power, and all members of its management (including managers and other key employees, officers and directors) possess good character and reputation. Good character and reputation shall be deemed absent if any of the above mentioned is or are currently incarcerated, on parole or probation, or has or have been indicted for, formally charged with or convicted of a felony, or suffered an adverse final civil judgment in any case involving a breach of trust or the violation of a law or regulation protecting the integrity of business transactions.

(c) *Financing Subsidiaries.* Not be engaged (or planning to engage) primarily in financing the operations of

an affiliate as defined in Part 121 of this chapter.

(d) *Supervision and Examination.* Be a Financial Institution subject to continuing supervision and examination by a State or Federal chartering, licensing, or similar regulatory authority as SBA may deem satisfactory, such as a State or National Bank, or a State or Federal Savings and Loan Association.

§ 120.302 Loan participants regulated by SBA.

§ 120.302–1 Small business lending companies.

Prior to January 4, 1982, SBA regulations provided that any Lending Institution which was not subject to continuing supervision and examination by State or Federal regulatory authority could be approved as a Participating Lender subject to certain conditions. Such a Lender was referred to as a "Subsection (b) Lender" and is presently known as a "Small Business Lending Company" or "SBLC". Effective January 4, 1982, SBA does not accept applications for SBLC status but existing SBLC's continue to participate with SBA and be subject to supervision and examination by SBA. In addition to the requirements set forth in § 120.301–6 (a) through (c), an SBLC shall:

(a) *Business Purposes.* Be a corporation (profit or non-profit) engaged solely in the making of loans under Section 7(a) [except Section 7(a)(13)] of the Act in participation with SBA.

(b) *Subject to SBA Supervision.* Maintain a written agreement with SBA whereby it will be subject to supervision and examination by SBA and will conduct its business operations in accordance with all applicable SBA regulations.

(c) *Capital Structure.* Have unencumbered paid-in capital and paid-in surplus of at least $500,000 or ten percent of the aggregate of its share of all outstanding loans, whichever shall be more.

(d) *Capital Impairment.* Maintain at all times an unimpaired capital. Impairment shall be deemed to exist when the retained earnings deficit exceeds fifty percent of combined paid-in capital and paid-in-surplus, excluding treasury stock. SBA shall be given prompt written notice of any capital impairment within 30 calendar days of the month-end financial report that first reflects the impairment. Until the said impairment is cured, a Lender shall not present any loans to SBA for guaranty.

(e) *Issuance of Securities.* Without prior written SBA approval, not issue any securities including stock options and debt securities, except stock dividends and common stock issued for cash or direct obligations of, or obligations fully guaranteed as to principal and interest by, the United States.

(f) *Voluntary Capital Reduction.* Without prior written SBA approval, not voluntarily reduce its capital, or purchase and hold more than two (2) percent of any class or combination of classes of its stock.

(g) *Reserves for Losses.* Maintain a reserve in the amount of anticipated losses on loans and receivables.

(h) *Maintenance of Records.* Maintain accurate and current financial records, including books of account. All financial records, minutes of meetings of stockholders, directors, executive committees, or other officials, and all documents and supporting materials relating to the said Lender's transactions shall be maintained at its principal business office, *Provided, however,* That securities held by a custodian pursuant to a written agreement shall be exempt from this requirement.

(i) *Preservation of Records.* Preserve, for the periods hereinafter specified and in a manner that permits the immediate location thereof, such documents which are the basis for financial statements required by section 120.303 (and of the accompanying independent public accountant's opinion), and shall:

(1) Preserve permanently—

(i) All general and subsidiary ledgers (or other records) reflecting asset, liability, capital stock and surplus, income, and expense accounts;

(ii) All general and special journals (or other records forming the basis for entries in such ledgers); and

(iii) The corporate charter, bylaws, application for determination of eligibility to participate with SBA, and all minutes books, capital stock certificates or stubs, stock ledgers, and stock transfer registers.

(2) Preserve for at least six years following final disposition of the related loan—

—All applications for financing;
—Lending, participation, and escrow agreements;
—Financing instruments;
—All other documents and supporting material relating to such loans, including correspondence.

Records and other documents referred to in this paragraph (i) may be preserved by reproduction: *Provided, however,* That said Lender shall cause a duplicate to be made on a current basis and stored separately from the original for the time required, and shall maintain at all times facilities for the projection and reproduction of the records.

(j) *Internal Control.* Adopt a plan designed to safeguard its funds and other assets, to assure the reliability of its personnel, and the accuracy of its financial data.

(k) *Dual Control.* Maintain dual control over disbursement of funds and withdrawal of securities. Disbursements shall be made only by means of checks or wire transfers authorized by signatures of two or more officers covered by the said Lender's fidelity bond, except that checks in an amount of $1,000 or less may be signed by one bonded officer. Two or more bonded officers, or one bonded officer and a bonded employee, shall be required to open safe deposit boxes or withdraw securities from safekeeping. The SBLC shall furnish to each depository bank, custodian, or entity providing safe deposit boxes, a certified copy of the resolution implementing the foregoing control procedures.

(l) *Fidelity Insurance.* Maintain a Brokers Blanket Bond, Standard Form 14, or Finance Companies Blanket Bond, Standard Form 15, or such other form of coverage as SBA may approve, in a minimum amount of $25,000 executed by a surety holding a certificate of authority from the Secretary of the Treasury pursuant to 6 U.S.C. 6–13.

(m) *Change of Ownership or Control.* Report any proposed change of ownership or control to SBA. Any change of ownership or control is prohibited without prior written approval of SBA. Lender shall file request for approval of any such change with the Associate Administrator for Finance and Investment, SBA, Washington, D.C. 20416. Pending such approval, Lender shall neither register the proposed new owners on its transfer books, nor permit them to participate in any manner in the conduct of the Lender's affairs. Change of ownership or control shall include:

(1) Any transfer of ten percent or more of any class of the SBLC's stock, and any agreement providing for such transfer;

(2) Any transfer that could result in the beneficial ownership by any person or group of persons acting in concert of ten (10) percent or more of any class of its stock, and any agreement providing for such transfer;

(3) Any merger, consolidation, or reorganization; or

(4) Any other transaction or agreement that in fact transfers control (as defined in § 121.3–2(a) of this chapter). If transfer of ownership or control is subject to the approval of any

State or Federal chartering, licensing, or similar regulatory authority, copies of any documents filed with such authority shall, at the same time, be transmitted to the SBA District Office serving the area in which the Lender's principal office is located.

(n) *Common Control.* Not control, be controlled by or under common control with, another SBLC. Without prior written SBA approval, Lender shall not have any officer, director, or holder of ten (10) percent or more of its voting securities who is an officer, director or holder of ten percent or more of the voting securities either of another SBLC or of any entity which directly or indirectly controls or is under common control with another SBLC.

(o) *Management Services.* Employ a manager only with SBA approval. An SBLC may employ a manager or adviser or may contract for managerial or advisory services, subject to prior written approval of SBA and subject to the supervision of the board of directors. The contract shall specify the services to be rendered to the SBLC and to its applicants or borrowers.

(p) *Prohibited Financing.* Not make a loan to a small business concern which has received financing (or commitment therefore) from a small business investment company licensed by SBA which is an "Associate" of such SBLC, as defined by § 120.2–2.

(q) *Borrowed Funds.* Without SBA's prior written approval be capitalized with borrowed funds. Shareholders owning ten (10) percent or more of any class of its stock shall not use borrowed funds in purchasing such stock unless the net worth of such shareholders is at least twice the amount borrowed or unless such shareholders receives SBA's prior written approval of a lesser ratio.

(Approved by the Office of Management and Budget under control number 3245–0077)

§ 120.303 Reports to SBA by small business lending companies.

§ 120.303–1 General.

All reports required to be filed hereunder shall be transmitted to the Associate Administrator for Finance and Investment, SBA, Washington, D.C. 20416.

§ 120.303–2 Financial reports to SBA.

Within three months after the close of each fiscal year, every Small Business Lending Company shall submit an audited financial statement prepared by an independent public accountant who is approved by SBA. When requested by SBA, interim financial reports shall also be submitted.

(Approved by the Office of Management and Budget under control number 3245–0077)

§ 120.303–3 Litigation reports.

When a Small Business Lending Company becomes a party to litigation or other legal or administrative proceedings, including any action commenced by it, or by a security holder thereof in a personal or derivative capacity, against an officer, director, or employee of the SBLC for alleged breach of official duty, it shall within ten (10) days thereof file a report with SBA describing the proceedings, identity of and the SBLC's relationship to other parties involved and upon request, submit copies of the pleadings and other documents specified by SBA. Where such proceedings have been terminated by settlement or final judgment, the company shall within ten (10) days advise SBA of the terms thereof. The requirements of this paragraph are in addition to the requirements of SBA's Form 750 and 750B (Loan Guaranty Agreement).

(Approved by the Office of Management and Budget under control number 3245–0077)

§ 120.303–4 Reports to stockholders.

At the time any report is furnished to its stockholders (including any prospectus, letter, or other publication concerning the financial operations of said Lender or any of its borrowers) it shall file three copies of such report with SBA.

§ 120.303–5 Reports of changes.

A Small Business Lending Company shall, within thirty (30) calendar days of the event in question, notify SBA in writing (using an SBA Form, where appropriate) of:

(a) *Name or Address.* Any change in its name, address or telephone number;

(b) *Charter or Bylaws.* Any change in its charter or bylaws, or if its officers or directors (to be accompanied by a statement of personal history SBA, Form 912);

(c) *Capitalization.* Any changes in capitalization not otherwise required by § 120.303–1(f) to be reported to SBA; or

(d) *Continued Eligibility.* Any changes in the circumstances affecting the validity of representations on the basis of which SBA determined that the Lender was an eligible participant.

(e) *Pledge of Stock.* Whenever ten (10) percent or more of the stock is pledged by any person (or group of persons acting in concert) as collateral for indebtedness, and such pledge does not involve any transfer for which prior written approval of SBA is required under § 120.302–1(m), written notice of the terms of such transaction shall be furnished to SBA by the pledgor within thirty (30) calendar days following the date of the transaction.

(Approved by the Office of Management and Budget under control number 3245–0077)

§ 120.303–6 Miscellaneous reports.

Each Small Business Lending Company shall file with SBA such other reports as SBA may require from time to time by written directive.

(Approved by the Office of Management and Budget under control number 3245–0077)

§ 120.304 Audits of small business lending companies.

Each Small Business Lending Company is subject to periodic audits by SBA's Office of the Inspector General, Audit Division, and the cost of such audits shall be assessed against it, except for the first audit. SBA may waive audits in the case of a company whose operations have been suspended, or which is in receivership. As a general rule, SBA will not assess audit fees for special audits to obtain specific information. The fees structure for audits is based on the company's assets as of the date of the latest audited financial statement submitted to SBA before the audit. The rate table is as follows:

Total assets	Total fee	
	Base fee	Additional fee
$500,000 or less	$800	None.
$500,001 to $1,000,000	800	0.12 pct over $500,000.
$1,000,001 to $3,000,000.	1,400	0.030 pct over $1,000,000.
$3,000,001 to $5,000,000.	2,000	0.016 pct over $3,000,000.
Over $5,000,000	2,320	0.006 pct over $5,000,000.

For example, an SBLC with total assets of $2,000,000 would pay an audit fee of $1700 ($1400+0.030 percent of $1,000,000). SBA may assess an additional fee of $250 per day required to complete an audit that is delayed or prolonged beyond twenty days if, in the judgment of SBA, such delay or prolongation is caused by the SBLC's failure to keep or maintain its books or records in the manner prescribed herein or by failure to cooperate in such audit.

(Approved by the Office of Management and Budget under control number 3245–0077)

§120.305 Suspension and revocation of eligibility to participate.

SBA reserves the right to revoke the eligibility of any Lender to participate with SBA or to suspend temporarily the eligibility of any Lender to participate with SBA, as a result of any violation of SBA regulations, any breach of any

agreement with SBA, or any change of circumstance resulting in the Lender's inability to meet the operational requirements set forth herein: *Provided, however,* That such suspension or revocation shall not invalidate any guaranty previously entered into by SBA. Proceedings for such purposes will be conducted in accordance with the provisions of Part 134 of this title. The Assistant Administrator of the Office of Hearings and Appeals or an Administrative Law Judge of such office shall be the reviewing official for purposes of § 134.34 of this chapter.

Subpart D—Preferred Lenders Program

§ 120.400 Objective of preferred lenders program.

The intent of Congress as expressed in 15 U.S.C. 634(b)(7) and of the regulations in this Subpart is to authorize designated Lending Institutions, hereinafter called Preferred Lenders, to undertake loan processing, servicing, collection and liquidation functions and responsibilities with respect to SBA guaranteed loans without obtaining prior SBA approval ("the Program"). Each Preferred Lender has the right to consult with and obtain guidance at any time from SBA with respect to any loan in the Program.

§ 120.401 Definitions as used in this subpart.

(a) "Act" means the Small Business Act, 15 U.S.C. 631 et seq.

(b) "Administrator" means the Administrator of SBA.

(c) "Preferred Lender" means a small business lending company or a Lending Institution which is subject to continuing supervision and examination by a State or Federal chartering, licensing, or similar regulatory authority satisfactory to SBA, which has met the eligibility requirements prescribed in this Subpart, and which has executed with SBA the Program participation agreement.

(d) "Program" or "PLP" means the Preferred Lenders Program.

(e) "SBA" means the Small Business Administration.

(f) "State" includes the District of Columbia, the Commonwealth of Puerto Rico, the Trust Territory of the Pacific Islands, and the Territories and possessions of the United States.

§ 120.402 Eligibility of preferred lender.

§ 120.402-1 Procedure.

An SBA branch or district office serving the area where the principal office of the Lending Institution is located shall initiate the process designating Lender as a Preferred Lender. It shall make any such recommendation of designation to its supervisory SBA Regional Office which together with its recommendation, shall submit the documentation to the Associate Administrator for Finance and Investment (or designee) for decision. The determination of such Associate Administrator shall be final on whether a lending institution shall be a Preferred Lender.

§ 120.402-2 Factors which SBA shall consider in determining eligibility.

In making the determination of whether a Lending Institution shall be a Preferred Lender, SBA shall consider, but is not limited to, the following factors:

(a) The Lending Institution must have been an active participant in the SBA Certified Lenders Program for at least the twelve consecutive months immediately prior to the SBA field office's initial recommendation.

(b) The Lending Institution must have demonstrated that it has the consistant ability to develop complete and well analyzed loan packages. This factor can be demonstrated by the lack of any negative comments in the file by SBA loan officers familiar with Lender, the inclusion of only a minimal amount of adverse load officer comment in relation to the volume of loans processed by this Lender, or the inclusion of favorable comments by SBA loan officers. If the Lender is a Small Business Lending Company subject to supervision and examination by SBA, this factor may be met by minimal adverse comments by SBA examiners in their reports.

(c) The Lending Institution must have demonstrated a satisfactory history of participation with SBA, which can be shown, among other ways, by a repurchase rate acceptable to SBA.

(d) The Lending Institution, before it can operate as a Preferred Lender, must execute SBA Form 1347, "Supplemental Loan Guaranty Agreement."

(Approved by the Office of Management and Budget under control number 3245-0190)

§ 120.403 Characteristics of PLP loans.

§ 120.403-1 Amount of PLP loan and of maximum guaranteed portion.

The amount of a loan under this program must exceed $100,000 and the amount of the guaranteed portion shall not exceed the statutory ceiling of $500,000.

§ 120.403-2 Maximum percentage of PLP loan to be guaranteed.

SBA shall not guarantee more than 75% of any loan approved under this program.

§ 120.403-3 Credit allocation.

SBA shall provide each Preferred Lender with a periodic allocation of credit which shall be its maximum authority to make program loans for the period designated in such allocation. The Preferred Lender's allocation of credit authority shall be increased only by written permission of SBA and shall not be restored automatically by payments received on SBA loans. Loans made in excess of the allocation do not qualify under this program but may be submitted for guaranty to SBA using regular (non-PLP) procedures.

§ 120.403-4 Loan processing.

Each Preferred Lender shall be responsible for all decisions relating to eligibility (including but not limited to size), creditworthiness, loan closing and compliance with all legal requirements of law or SBA regulations as they apply to non-PLP loans. Evidence of a PLP loan shall be on SBA Form 4-I (Lender's Application for Guaranty or Participation) stating the guaranteed percentage and signed by two authorized representatives of the Preferred Lender and submitted to SBA immediately after approval.

(Approved by the Office of Management and Budget under control number 3245-0016)

§ 120.403-5 Interest rates.

A Preferred Lender has the option of applying, on a loan to loan basis, a fixed or variable rate of interest.

(a) *Fixed Interest Rate.* If the Preferred Lender uses a fixed rate of interest in this program, such rate shall not exceed the maximum rate authorized by the State laws applicable to the particular loan.

(b) *Variable rate loans.* If the Preferred Lender uses a variable interest rate, the base rate shall be either of the rates defined in Section 122.8-4, and the rate may fluctuate no more frequently than the first business day of each month starting with the month following initial disbursement. If the Preferred Lender is a member of the Federal Reserve System, it may use its own prime rate, and the interest rate may fluctuate on daily basis starting no sooner than the first business day of the month following initial disbursement. The maximum allowable interest rate shall be governed by local laws applicable to the particular loan.

§ 120.403-6 Fees.

(a) *Servicing Fee on Loan Sold in Secondary Market.* If the Preferred Lender sells the guaranteed portion of a loan made under the program within six months following full disbursement,

such transfer shall be at a price which will not result in a differential greater than three percentage points (three hundred basis points) between the interest rate paid by the borrower and the interest rate received by the purchaser-investor.

(b) *Fees in General.* SBA regulations in this Part relating to any fees which may be charged to a borrower shall apply to any loan made under this program. This includes, by way of example and without limitation, the rules relating to borrower's fees for services including the payment of legal, brokerage or bonus fees.

§ 120.403-7 Limitations on preferred lender's authority; prohibition on reducing lender's exposure; SBA access.

(a) Every Preferred Lender, in making loans under this program, shall be bound by the basic principles governing the granting and denial of applications for Financial Assistance as contained in Parts 120 and 122 of this chapter which may be changed from time to time. This includes the description contained therein of business concerns which are not eligible for SBA Financial Assistance.

(b) A Preferred Lender shall not use the PLP procedure to reduce its existing credit exposure for any borrower.

(c) Every Preferred Lender shall allow SBA authorized representatives, during normal business hours, to have access to its files to review, inspect and copy all records and documents relating to SBA borrowers.

(Approved by the Office of Management and Budget under control number 3245-0190)

§ 120.404 Loan servicing.

§ 120.404-1 Standard.

Each Preferred Lender shall service its SBA guaranteed loan portfolio using generally accepted commercial banking standards of loan servicing employed by prudent lenders, and shall not use lower standards for such loans compared to others, if any.

§ 120.404-2 Servicing actions.

Notwithstanding §120.201-1, a Preferred Lender may take any servicing action it deems necessary for any loan approved under the Preferred Lenders Program: *Provided,* That the action does not confer a preference on the Lender.

§ 120.404-3 Limitation.

A PLP lender shall not accept a compromise settlement.

§ 120.405 Loan liquidation.

§ 120.405-1 Scope.

Each Preferred Lender shall liquidate any loan which it has made under PLP procedures unless SBA advises the lender in writing that SBA will liquidate such loan. The Preferred Lender has authority to make the decision required by § 120.204 with respect to any loan made under this program.

§ 120.405-2 Standard and requirements.

A Preferred Lender shall submit a liquidation plan to SBA. Such plan should generally describe the course of action and provide cost estimates. SBA may require the Lender to make such changes to the liquidation plan as SBA determines are necessary. Any liquidation by a Preferred Lender must be executed and completed in a commercially reasonable manner.

§ 120.405-3 Final accounting report.

Upon completion of a liquidation under this program, the Preferred Lender shall transmit to SBA a certified accounting of receipts and disbursements.

(Approved by the Office of Management and Budget under control number 3245-0190)

§ 120.405-4 Post audit.

SBA reserves the right to conduct a post liquidation audit of any liquidation of a PLP loan by a Preferred Lender.

(Approved by the Office of Management and Budget under control number 3245-0190)

§ 120.406 Suspension or revocation of preferred lender status.

SBA reserves the right to suspend or revoke the eligibility of a Preferred Lender by providing written notice at least 10 business days prior to the effective date of the suspension or revocation. Reasons for such revocation or suspension include a repurchase rate unacceptable to SBA, violations of applicable statutes, regulations or SBA policy and procedures as published from time to time, and contained in SBA Form 1347, see § 120.402-2(d) above. Procedures for appealing these decisions are found in Part 134 of this chapter.

Subpart E—[Reserved]

Subpart F—Central Registration for Secondary Market

§ 120.601 Statutory provisions.

The statutory authority for this Subpart F is section 5(h) of the Small Business Act [15 U.S.C. 634(h)], as amended by Pub. L. 98-352, approved July 9, 1984.

§ 120.602 Definitions.

(a) *Act* means the Small Business Act, 15 U.S.C. 631, *et seq.*

(b) *Certificate* means the document:

(1) Representing a beneficial fractional interest in a pool consisting of the SBA guaranteed portions of loans or

(2) Representing the guaranteed portion of an SBA loan which is not sold into a pool.

(c) *FTA* means the SBA's fiscal and transfer agent.

(d) *Secondary Market* means the process by which the SBA guaranteed portions of loans made by lending institutions are purchased and sold.

§ 120.603 Fiscal and transfer agent.

The FTA, as authorized by law, is SBA's agent in carrying out the central registration of (a) the SBA guaranteed portions of loans sold in the secondary market and (b) certificates representing fractional interests in pools composed solely of the SBA guaranteed portions of loans. The FTA also has the responsibility for issuing, on behalf of SBA, the certificates representing such interests.

§ 120.604 Registration.

§ 120.604-1 Applicability of registration function.

The rules and requirements in this subpart relating to registration shall apply to:

(a) Every Guaranteed portion of a loan sold in the secondary market commencing with the initial sale by the lender which made the loan; and

(b) Every certificate representing a fractional or undivided interest in a pool approved by the SBA and composed solely of the SBA guaranteed portions of loans.

§ 120.604-2 Central registration.

The FTA shall register each guaranteed portion and each pool certificate sold pursuant to section 5 (f) and (g) of the Act. Such registration shall include, with respect to each sale the following:

(a) Identity of the lender which made the loan and which sold the loan;

(b) Interest rate paid by the borrower to the lender, and whether the rate is fixed or variable;

(c) Lender's servicing fee;

(d) Identity of the purchaser;

(e) Price paid by the purchaser;

(f) Interest rate paid on the guaranteed portion or the certificate, as applicable;

(g) Fees which the FTA is charging for these registration duties and for the issuance of certificates to facilitate pooling; and

(h) Such other information as SBA shall determine.

This information shall be available from the FTA upon request of the purchaser of a guaranteed portion or of a certificate.

(Approved by the Office of Management and Budget under control number 3245–0185)

§ 120.605 Certificates.

§ 120.605–1 Transferability.

Certificates issued by the FTA shall be freely transferable. Transfers shall be carried out pursuant to and in accordance with Article 8 of the Uniform Commercial Code of the State of New York. A form of assignment on the back of each certificate shall be used to transfer the certificate, unless the parties choose to use another form acceptable to FTA. The FTA may refuse to issue a certificate until the documents of transfer are correct and complete. Each certificate presented to the FTA for transfer must be accompanied by a letter of transmittal which shall include the following information: pool number, if applicable; certificate number; exact spelling of name in which new certificate is to be issued; complete address and tax identification number of the new holder; name and telephone number of person handling the transfer; complete instructions for the delivery of the new certificate. Together with such letter there shall be sent the appropriate fee which may be charged by the FTA.

§ 120.605–2 Claim on account of loss, theft, destruction, mutilation or defacement of certificate.

(a) *General.* To obtain a replacement certificate on account of loss, theft, destruction, mutilation or defacement of a certificate, the holder must provide the FTA with complete identification of the certificate and the pertinent facts relating to the situation reported. In addition, the holder must file a bond of indemnity in such form and with such surety, sureties or security as may be required by the FTA to protect the interest of SBA and the FTA. Copies of the form of bond are available from the FTA. The FTA may charge a fee for each replacement certificate.

(1) *Loss or Theft.* Report of the loss or theft of a certificate must be made promptly to the FTA in the form of an affidavit of loss. Copies of the form of affidavit are available from the FTA. The report shall include:

(i) The name and address of the registered owner. If the report is made by any other person or entity, the capacity in which he/she or it represents the owner must be reported;

(ii) The identification of the certificate by pool number, if applicable; certificate number; original principal amount, and the exact form in which the certificate was registered and a full description of any assignment, endorsement or any other writing therein;

(iii) A statement of the circumstances surrounding the theft or loss.

Upon receiving notification of loss or theft, the FTA will stop transfer of the certificate for up to 60 days to allow the registered holder to obtain the required bond of indemnity and any other documentation. The FTA will extend the stop for up to an additional 60 days if subsequently requested.

(b) *Destruction, Mutilation or Defacement.* If a certificate is destroyed, or becomes so mutilated or defaced as to impair its value to owner, a report as outlined in subsection (a)(1) of this section shall be made to the FTA. All available portions of the mutilated or defaced certificates also must be submitted. The FTA then will arrange for the preparation of a replacement certificate.

Subpart G—Pooling of SBA Guaranteed Portions [Reserved]

Subpart H—Individual SBA Guaranteed Portions Sold in the Secondary Market [Reserved]

Appendix A—Memorandum of Understanding Between the Small Business Administration and the United States Department of Agriculture, Farmers Home Administration

Preamble

Pub. L. 94–305, which amended the Small Business Act, authorized the Small Business Administration (SBA) to assist small businesses engaged in farming and related activities under its existing programs. The legislation did not create any new SBA loan programs but merely included the agricultural industries among the industries eligible for SBA assistance. Neither did the legislation diminish, in any way, the responsibility of the Farmers Home Administration (FmHA) to meet the financial and other needs of farmers.

The joint memorandum reaffirms the mutual desire of SBA and FmHA to cooperate in the use of their respective loan making authorities to complement the activities of each other and, to the extent possible, to improve and expand the delivery of financial assistance to the agricultural production segment of the country; all with the least possible degree of overlapping, confusing or duplicating activities.

1. The FmHA administers its financial assistance programs through its State, District and County offices.

The SBA administers its financial assistance programs through its Regional, District and Branch offices.

FmHA State Directors and SBA District Directors will exchange addresses of their offices and identify the geographical areas served by each. This information will be available in all field offices of both agencies so applicants can be referred to the appropriate offices. These same officials will make arrangements to inform the personnel within their jurisdictions of the other agency's current loan making and servicing policy so the referral advice given to potential applicants will be as accurate as possible.

2. FmHA and SBA will establish a liaison at both the State Director/District Director level and the National level and periodically coordinate their activities to: (a) Exchange detailed information concerning loan programs; (b) define areas of cooperation between the two agencies; (c) assure that their programs are servicing the intended recipients; (d) establish new methods to serve the public more expeditiously; and (e) achieve maximum utilization of their respective resources.

The SBA and the FmHA agree that the interests of agricultural industries will be best served and that each agency will achieve better utilization of available resources through the following operating guidelines:

3. Potential applicants may contact either agency for an interview but may file an application with only one agency at a time. However, SBA will encourage those potential applicants that have been or are borrowing through the FmHA to continue their relationship with that agency.

4. Potential applicants meeting FmHA eligibility requirements will, at the time of initial interview, be advised by SBA to contact the appropriate FmHA County Office for assistance.

FmHA personnel will, at the time of initial interview, refer potential applicants who are not eligible for FmHA assistance, (such as corporations, partnerships or aliens, applying for certain loans) to SBA if they appear to be eligible for SBA assistance.

5. Potential applicants are not to be referred back and forth between FmHA and SBA. Representatives of each agency must be reasonably certain that the applicant and proposed use of proceeds may be eligible for assistance from the other agency before a referral is made.

6. Neither agency will refuse a loan request from an applicant who prefers to file with that agency.

7. Agricultural applicants filing for financial assistance from either agency will give written permission for FmHA and SBA to exchange whatever prior or current loan application and loan experience information including appraisals, either may have in its files.

8. Applicants who are denied FmHA assistance for any reason, including lack of FmHA funding, may contact SBA for assistance.

9. Applicants filing for financial assistance from either agency must use the forms and procedure of the agency being requested to provide the assistance. An applicant who is denied assistance by either agency must use a new application to file with the other in

accordance with that agency's forms and procedures.

10. Applicants should not have to apply to two Federal agencies to borrow funds for a single purpose. Therefore, if either FmHA or SBA can make the entire loan, the applicant should not be referred to the other agency for part of the funds needed. If either FmHA or SBA cannot make the entire loan, the applicant should be referred to the other agency. Joint funding with shared collateral between the agencies is not encouraged and should be used only as a last resort.

Description of Lending Policies

11. The FmHA makes guaranteed loans and insured loans. Guaranteed loans are loans where the lending institution advances the entire funds from its account and the FmHA guarantees repayment of a certain percentage of principal and interest. Insured loans are those made from one of FmHA's insurance funds.

The SBA makes guaranteed, immediate participation and direct loans. The Guaranteed loans are those where the lending institution advances the entire loan and the SBA agrees to purchase a percentage of the outstanding balance at time of default. Immediate participation loans are those where SBA disburses a percentage of the loan and the lender disburses the remainder from its account. Direct loans are made with SBA funds alone.

FmHA Loan Programs for Farmers

12. Operating Loans.

a. Eligibility.

Be a citizen of the United States.

Be unable to obtain credit elsewhere (Exclusive of SBA.)

Be the operator of a family farm.

Note.—A "family farm" is defined as "one that will produce agricultural commodities for sale in sufficient quantities so that it is recognized as a farm rather than a rural residence; one that will provide substantial income by itself and which together with an other dependable income will enable the family to pay necessary family and other operating expenses, including maintenance of essential chattel and real property and pay debts; and one for which the operator and his immediate family provide the management and are actively engaged in the operation by providing a major amount of the farm and any non-farm enterprise labor. A reasonable amount of hired labor may be used during seasonal peakload periods."

b. Loan Purposes.

Finance livestock, machinery and operating expenses.

Refinance debts.

Finance non-farm enterprises.

c. Terms.

Up to seven years with five year renewal.

Interest rate based on the cost of Treasury borrowings.

d. Loan Limit—$50,000.

13. Farm Ownership Loans.

a. Eligibility.

Be a citizen of the United States.

Be unable to obtain the credit from other sources (exclusive of SBA.)

b. Loan Purpose.

Buy land.

Construct and repair farm buildings.

Develop land and pollution control measures.

Develop farm irrigation facilities and domestic water supply.

Refinance debt.

Finance non-farm enterprise.

c. Terms.

Up to 40 years.

Five (5) percent interest rate.

d. Loan Limits.

$100,000.

Maximum debt on security with other credit is $225,000.

14. Soil and Water Loans.

a. Eligibility.

Be unable to obtain the credit elsewhere (exclusive of SBA).

Be a farm tenant, owner, partnership or corporation engaged in farming.

b. Loan Purposes.

Develop land and pollution control practices.

Water development.

Purposes related to soil and water conservation.

c. Terms.

Up to 40 years.

Five (5) percent interest.

d. Loan Limits.

$100,000.

Maximum debt on security with other credit is $225,000.

15. Recreation Loans.

a. Eligibility.

Be a citizen of the United States.

Be unable to obtain the credit elsewhere (exclusive of SBA).

Be an individual engaged in farming when the loan is applied for.

b. Loan Purposes.

Convert all or part of the farm to outdoor recreation enterprises.

Acquire land and easement for recreational uses.

Refinance debts.

c. Terms.

Up to 40 years.

Five (5) percent interest rate.

d. Loan Limits.

$100,000.

Maximum debt on security with other credit is $225,000.

16. Rural Housing.

a. Eligibility.

Be a U.S. Citizen or permanent resident.

Be unable to obtain credit elsewhere (exclusive of SBA).

Be a farmowner without decent, safe and sanitary housing for his own use or the use of tenants, sharecroppers, farm laborers or farm manager.

b. Loan Purpose.

Buy, build or repair dwellings of modest size, design and cost.

c. Terms.

Up to 33 years.

Interest rate established periodically based on housing money market rate.

d. Loan Limits.

The cost of providing modest, decent, safe and sanitary housing.

17. Business and Industry Loans.

a. Eligibility.

If an individual, a U.S. Citizen.

A cooperative, corporation, partnership, trust, Indian tribe, or other legal entity.

b. Loan Purposes.

Pollution control measures.

c. Terms.

Up to 30 years.

Interest rate is negotiated between lender and applicant.

c. Loan Limits.

No statutory dollar limit; determined by cost of project and credit factors.

18. Grazing Association Loans.

a. Eligibility.

Be a nonprofit association.

Be unable to obtain credit elsewhere (exclusive of SBA).

Provide seasonal grazing for association members.

b. Loan Purposes.

Acquire land for grazing.

Develop land for grazing.

Pollution control measure incidental to other authorized purposes.

c. Terms.

Up to 40 years.

Five (5) percent interest rate.

d. Loan Limits.

No statutory or regulatory dollar limit determined by value of security.

19. Irrigation, drainage and soil and water association loans.

a. Eligibility.

Be an association composed primarily of farmers and other rural residents.

Be unable to obtain credit elsewhere (exclusive of SBA).

Provide a facility to serve farmers and other rural residents within the service area.

b. Loan Purpose.

Install or improve drainage facilities.

Install, repair or enlarge irrigation facilities.

Install or improve soil conservation and water control facilities including pollution abatement.

Special-purpose machinery and equipment.

c. Terms.

Up to 40 years.

Five (5) percent interest rate.

d. Loan Limits.

No statutory or regulatory dollar limit determined by value of security.

Note.—In addition to the eligibility requirements for specific programs listed above, the following eligibility requirements must be met by all FmHA borrowers:

Have the experience to carry out the proposed operation to be financed.

Have the ambition to carry out the proposed operations.

Have the management ability to carry out the obligations required in connection with the loan.

SBA Loan Programs for Agricultural Enterprises

In addition to the specific eligibility factors listed under the following SBA programs, a borrower must be of good character, be an eligible small business under SBA rules and regulations (13 CFR Parts 121 and 122), be organized for profit, and be able to evidence reasonable assurance of ability to repay the loan from the profits of the business. Can be proprietorship, partnership or corporate business organization, and need not be a citizen of the U.S.A.

20. Regular Business Loans—7(a).

a. Eligibility.

Be eligible under SBA rules and regulations (13 CFR Part 120).

Be unable to obtain the credit from non-Federal sources through utilization of personal resources or otherwise.

b. Loan Purpose.

Purchase of land and buildings and land improvements (fencing, irrigation systems, etc.) including pollution control facilities essential to the small business.

Construction, renovation or improvement (including water systems) of (i) farm building other than residential buildings (ii) residential building essential to the business if not available from other Federal Sources.

Purchase of farm machinery and equipment (appliances and other household contents used for residential purposes are not eligible).

Operating expenses directly related to the farming operation excluding personal or family living expenses.

Refinancing of debt directly related to the farming operation, but excluding personal or family debt.

c. Terms.

The interest rate on direct and SBA share of immediate participation loans is based on a legislative formula.

The lender's interest rate on immediate participation and guaranty participation loans is established by the lending institution, within SBA policy, but cannot exceed SBA's maximum which is periodically published in the **Federal Register**.

Maturity of the loans will generally not exceed one year for annual seed, feed, fertilizer and other annual needs, 7 years for the portion of the loan used for working capital, 10 years for that portion of the loan use for livestock and/or farm machinery and equipment, and 20 years for that portion of the loan used for acquisition or construction of real estate. However, all borrowers are expected to repay the loan as soon as possible and these maximum maturities are not automatically available in every case.

SBA loans are generally repaid in even monthly payments of principal and interest. However, quarterly, semiannual, annual or seasonal payments can be arranged when necessary.

d. Loan Limits.

Direct loans have an administrative limit of $150,000.

Immediate participation loans have an administrative limit of $150,000, SBA share. (Both the direct and immediate participation administrative limits can be waived in exceptional situations by SBA's Regional Directors.)

Guaranty participation loans have a limit of $350,000, SBA share, except that in exceptional situations the SBA share can be increased to $500,000.

The limits on a borrower's total indebtedness to SBA on all outstanding loans is (i) the aggregate of direct and the SBA share of immediate participation loans cannot exceed $350,000 and (ii) the aggregate of direct and the SBA share of immediate participation and guaranty participation loans cannot exceed $500,000 at any one time.

21. Economic Opportunity Loans.

a. Eligibility.

Must be economically or socially disadvantaged.

Meet the eligibility requirements set forth in SBA rules and regulations (13 CFR Parts 119 and 120).

b. Loan Purposes.

Can be used for the same purpose as Regular Business Loans.

c. Terms.

Interest on direct and SBA share of immediate participation loans is subject to a legislative formula, and is subject to change quarterly.

The lender's interest on immediate and guaranty participation is the same as for regular business loans.

Maturities of these loans are generally restricted to 10 years for working capital other than annual operating expenses and farm machinery and equipment and to the legislative limit of 15 years for real estate purposes. However, no borrower will receive a longer maturity than is necessary for the loan to be repaid from the business income.

d. Loan Limits.

These loans cannot exceed $100,000 SBA share, whether direct, immediate participation or guaranty.

22. Water Pollution Control Loans.

a. Eligibility.

Meet eligibility requirements set forth in SBA rules and regulations (13 CFR Parts 120 and 123).

Must have a statement from EPA of the necessity and adequacy.

Must show evidence of substantial economic injury.

b. Loan Purposes.

Only to make modifications and changes necessary to meet the Federal standards established under the Federal Water Pollution Control Act or State standards established in compliance with the Federal Water Pollution Control Act.

c. Terms.

Interest rate same as for Regular Business Loans.

Maturity not to exceed 30 years.

d. Loan Limits.

No dollar limit.

23. Other Substantial Economic Injury Programs.

The SBA has loan authority to aid small businesses that suffer substantial economic injury as a result of a Federal action or Federally directed action, such as Occupational Health and Safety regulations, Air Pollution Control regulations or being displaced by a Federally financed construction project. These programs are more completely described in 13 CFR Part 123.

Administrative Guidelines

24. The services of FmHA and SBA to lenders and applicants are, by mutual agreement, those that each agency would provide any eligible applicant in the normal course of business and there will be no reimbursement by either agency to the other for such services.

25. The National Office of FmHA and the Central Office of SBA will cooperate with each other in counseling their field offices and in resolving problems in specific cases.

26. This Memorandum of Understanding in no way alters or supersedes the existing Memorandums between the two agencies covering their disaster (emergency) loan authority and FmHA's Business and Industrial Loan Program.

27. This Agreement may be amended at any time by written agreement of both parties.

28. This agreement shall take effect upon the date of execution thereof.

Mitchell P. Kobelinski,

Administrator, SBA.

Dated: September 2, 1976.

Frank B. Elliott,

Administrator, FmHA.

Dated: September 20, 1976.

PART 122—BUSINESS LOANS

Subpart A—General Provisions

Subpart B—Special Purpose Loans

Authority: Sec. 5(b) (6) and 7(a) of the Small Business Act, as amended, 15 U.S.C. 634(b)(16) and 636(a).

§ 122.1 Statutory provisions.

The authority for these loans is contained in Section 7(a) of the Small Business Act, as amended, 15 U.S.C. 636(a). See also 15 U.S.C. 636 (Note).

§ 122.2 Captions.

Captions are inserted as required by the **Federal Register** for convenience only and are not part of the substance of these regulations.

§ 122.3 Savings clause.

§ 122.3–1 Prior rules.

Financial assistance granted before (the date of publication of this rule) shall be governed by the related contractual terms and the regulations then in effect. Nothing herein shall bar SBA enforcement action with respect to such financial assistance granted pursuant to contractual terms no longer in use and prior regulations no longer in effect.

§ 122.3–2 Effect of invalidity.

If any section or part of a section of these regulations should be adjudged invalid, only that part shall be invalid, and the other parts shall not be affected thereby.

§ 122.4 Applicability of other parts.

The Loan Policy and definitions of Part 120 of this chapter apply to the loans authorized in this part. Also applicable are Parts 112, 113, 116 and 117. With respect to any financial assistance of SBA, Part 112 prohibits discrimination on the grounds of race, color, or national origin. Part 113 prohibits discrimination based on race, color, religion, sex, marital status, handicap or national origin with respect to all recipients of SBA financial assistance.

Part 116 prescribes policies of general application set forth in several subparts. Subpart A sets forth SBA policies and criteria for giving special consideration to veterans and their survivors or dependents. Subpart B prescribes rules on the prohibition of SBA financial assistance for acquisition or construction in special flood hazard areas when persons eligible for flood insurance have not obtained it. Subpart C prohibits recipients of SBA financial assistance from using lead-based paint as described therein. Subpart D prescribes policies and procedures dealing with floodplain management and wetlands protection. Part 117 covers the prohibition of discrimination based on age.

§ 122.5 Application.

§ 122.5–1 Other financing.

Except as otherwise specified, before applying for SBA financial assistance, an applicant shall endeavor to obtain financing from other non-Federal sources, including (but not limited to) other resources of its owners, and private lending sources.

If an institution is unable or unwilling to make the loan, the applicant must then determine if the Lender would make the loan in participation with SBA as a guaranty or an immediate participation loan. (If a Lending Institution will make a loan in participation with SBA, the Lender, not the applicant, shall contact SBA.) SBA shall require satisfactory evidence concerning the Lending Institution(s) refusing to make, or to participate in, the loan. See § 120.3–4 and 120.103–1 of this chapter.

§ 122.5–2 Contents of application.

An applicant for SBA financial assistance in any form shall furnish [1] a history of the business, the nature of the business, the amount and purpose(s) of the loan, the collateral offered for the loan, and current financial statements, together with financial statements (or tax returns if appropriate) for the past three years. Annual financial statements shall be required from borrower thereafter, but SBA may also require more frequent reports. In addition, personal financial statements may be required, as applicable, from a proprietor, general partners, officers, directors, guarantors and holders of twenty percent or more of the equity of the applicant. Finanical statements from non-stockholder directors or officers may be waived by SBA.

(Approved by the Office of Management and Budget under control numbers 3245–0016 and 3245–0196)

§ 122.5–3 Direct assistance.

Subject to availability of funds, an applicant unable to obtain a loan or loan participation from a private lender (See § 120.3–4 of this chapter) may apply to SBA for a direct loan on a form provided by SBA. Such application shall be made to the SBA office serving the location of the proposed or existing business, but counseling may be obtained from any SBA office. (See § 101.3–1 of this chapter for the addresses of all SBA offices.)

(Approved by the Office of Management and Budget under control number 3245–0016)

§ 122.5–4 Approval or decline.

Applicants will be given notice of approval or decline by either the Lender (for a participation/guaranty loan) or by SBA (for a direct loan). The decline notification will include the reason(s) for the decline.

§ 122.5–5 Loan authorization.

If SBA approves a loan request, a loan authorization is issued. The authorization states the terms and conditions on which SBA is willing to make, participate in or guarantee a loan but it is not a contract to loan money.

(Approved by the Office of Management and Budget under control number 3245–0201)

§ 122.6 Loan terms.

§ 122.6–1 Maturities.

(a) Except as otherwise specified, a loan, including extensions and renewals, may be made for a period not to exceed twenty-five years, except that such portion of a loan made for the purpose of acquiring real property or constructing, converting or expanding facilities may have a maturity of twenty-five years plus such additional period as may be required to complete such construction, conversion or expansion.

(b) The maximum maturity shall not be available for every loan. The maturity of each loan will be the shortest feasible term commensurate with the repayment ability of the borrower and shall not exceed ten years, except when the loan finances real estate or the construction or the acquisition of equipment with a useful life exceeding ten years. Amortization will generally require equal monthly payments of principal and interest but may be adjusted to accommodate the cash flow of the borrower. See § 122.8–4(g) of this part. In addition, SBA may extend the maturity of a loan before October 1, 1985 pursuant to section 1902 of Pub. L. 97–35, approved August 13, 1981, conditioned in the case of a participation upon the concurrence of the participant, the holder in due course (if any) and the borrower, or refinance such loan with an extension of its term. The aggregate term of such extended or refinanced loan shall not exceed the maximum maturity permitted by this

paragraph and shall be repaid in equal installments of principal and interest. SBA may also extend the maturity of or renew a loan pursuant to Section 7(c)(1) of the Act (including any loan transferred to SBA pursuant to Reorganization Plans No. 2 of 1954 and No. 1 of 1957) for additional periods not to exceed ten years beyond their original maturity, limited to such periods of time as appear necessary to avoid forced liquidation of loans. Extensions are granted under the preceding sentence only when it appears that no other course will result in a greater or earlier recovery of the indebtedness.

§ 122.6-2 Grace periods.

SBA may defer initial payments for a grace period, and use such other methods as it deems necessary and appropriate to assure the successful establishment and operation of the borrower.

§ 122.6-3 Moratorium.

SBA may suspend or undertake borrower's obligations to pay principal and interest in certain circumstances and on certain conditions. See Part 131 of this title.

§ 122.7 Loan amounts.

Limits on loan amounts apply to the combined aggregate amount of all loans to a given borrower under this Part, including such borrower's affiliates, as defined in § 121.3(a) of this title.

§ 122.7-1 Direct loans.

The statutory limit for direct loans is $350,000. SBA has established an administrative limit of $150,000. Regional Administrators may authorize, in writing, the acceptance of an application that exceeds the administrative but not the statutory limit.

§ 122.7-2 Immediate participation.

The statutory limit on SBA's portion of an immediate participation loan is the lesser of 90 percent of the loan, or $350,000. The administrative limit, however, is the lesser of 75% of the loan, or $150,000. Regional Administrators may allow exceptions to the administrative dollar limit, up to $350,000. District directors may make exceptions to the percentage limit if the participant's legal lending limit precludes a 25 percent exposure. In such cases the Lender will be required to participate up to its legal lending limit, but in no event less than 10 percent.

§ 122.7-3 Guaranty loans.

SBA's exposure on guaranty loans shall not exceed $500,000 in any circumstance. The percentage of the SBA guaranty shall not exceed the following:

(a) *Guaranty of loans not to exceed $100,000.* SBA shall guarantee at least 90 percent of a loan so long as the total amount outstanding (including the loan under consideration) does not exceed $100,000, except as permitted under paragraph (c) below.

(b) *Guaranty of loans in excess of $100,000.* SBA shall guarantee no more than 90 percent and not less than 70 percent of loans in excess of $100,000 so long as the total amount approved and outstanding does not increase SBA's exposure beyond $500,000, subject to paragraph (c) below. Decisios to guarantee such loans in amounts between 70 percent and 90 percent shall be made on a case-by-case basis. The percentage guaranteed shall not influence loan approvals. A Lender's request for less than a 70 percent participation by SBA shall not be approved unless a lesser percentage is necessary due to the statutory $500,000 ceiling on SBA exposure.

(c) *Refinancing.* SBA shall guarantee no more than 80 percent of that portion of a loan used to refinance a debt owed to a bank or other lending institution. Therefore the blended guaranty percentage of the total loan will reflect the respective percentages of guaranty for the refinancing and the remaining portion of the loan. Until October 1, 1985, SBA shall not refuse to guarantee a loan solely because such loan will be used to refinance all or any part of the outstanding indebtedness of a small concern unless:

(1) The creditor is likely to suffer a loss if the loan is not refinanced and SBA is likely to sustain part or all of any loss which would have otherwise been sustained by the creditor, or

(2) SBA determines that refinancing the debt will not benefit the small concern.

§ 122.8 Interest rate.

§ 122.8-1 Direct loans.

The rate of interest on direct loans and SBA's share of immediate participation loans is determined by a statutory formula based on the cost of money to the Federal government. No later than the 10th day of each calendar quarter (Jan. 10, April 10, July 10, and Oct. 10) SBA shall publish such rate in the **Federal Register** for such quarter. (The rate in effect at any time is available from the local SBA offices.)

§ 122.8-2 Immediate participation.

The maximum rate a Participating Lender shall charge on its share of an immediate participation loan shall be the lesser of (a) the rate permitted under the applicable usury statute, or (b) one percent less than the maximum rate permitted by SBA policy for a guaranteed loan of the same maturity, published from time to time in the **Federal Register** and available from local SBA offices.

§ 122.8-3 Guaranty loans.

A Participating Lender may establish an interest rate that is legal and reasonable. SBA publishes from time to time in the **Federal Register** the maximum rate permitted. Such rate information is available from local SBA offices.

§ 122.8-4 Variable (fluctuating) rate.

A Participating Lender may utilize a fluctuating rate of interest. SBA's maximum allowable rates apply only to the initial rate as of the date the loan application was received by SBA. SBA's approval of the use of a variable interest rate shall be subject to the following conditions:

(a) *Frequency.* The fluctuation may occur no more frequently than monthly, except for the first fluctuation, which may occur on the first business day of the month following initial disbursement.

(b) *Commencement of fluctuation.* Fluctuation periods may commence on the first business day of the month following initial disbursement.

(c) *Basis for fluctuation.* The note rate must rise and fall on the same basis. Where a participant establishes a floor and ceiling for the fluctuating rate, the difference between the initial rate and the ceiling rate may be no greater than the difference between the initial rate and the floor rate.

(d) *Base rate.* The base rate shall be the low New York prime rate in effect on the first business day of the month, as printed in a national financial newspaper published each business day, or the SBA Optional peg rate which SBA publishes quarterly in the **Federal Register.**

(e) *Maturities under 7 years.* For loans with maturities under seven years, the maximum interest rate shall not exceed two and one-quarter (2¼) percentage points over the base rate.

(f) *Maturities of 7 years or more.* For loans with maturities of seven or more years, the maximum interest rate shall not exceed two and three-quarters (2¾) percentage points over the base rate.

(g) *Amortization.* Amortization shall require equal monthly payments combining principal and interest, and may be computed on the basis of an interest rate higher than the interest rate

prevailing at the date of the note to insure that future payments will be sufficient in the event of a rise in the base rate. With SBA prior approval, unequal payments or fixed payments of principal plus interest may be agreed upon on a case-by-case basis.

(h) *Pilot Project.* Pursuant to § 120.1–2 of this chapter, for a period of one year from April 27, 1984, and only for the States of New Jersey, New York, the Commonwealth of Puerto Rico (Region II); Iowa, Kansas, Missouri, Nebraska (Region VII); and Arizona, California, Hawaii, Nevada (Region IX), the maximum initial interest rate on a fluctuating rate loan shall be the State legal rate applicable to such loan. Thereafter, the rate may fluctuate and the loan be amortized as set forth in this section: *Provided,* That the reference to percentage point limits is not applicable. If the guaranteed portion of a loan made pursuant to this subparagraph is transferred as provided in § 120.301–2 of this part to a third party within six months following full disbursement, such transfer shall be at a price which will not result in a differential greater than three percentage points (three hundred basis points) between the interest rate paid by the borrower and the coupon rate received by the investor.

Subpart B—Special Purpose Loans

§ 122.50 Small general contractors.

§ 122.50–1 Policy.

The Act authorizes loans to contractors to finance residential or commercial construction or rehabilitation provided that loan funds are not used primarily for the acquisition of land. The terms "construction" and "rehabilitation" as used in this section apply only to work done on-site, construction and rehabilitation of the structure, above or underground utility connections and landscaping. Not more than five (5) percent of the loan proceeds can be used for community improvements that benefit more than the structure financed with the SBA loan. Examples include streets, curbs, open spaces and similar improvements. These loans can be used for individual structures only: *Provided, however,* That an SBA loan may be used for more than one individual structure if each structure is separately identified, the loan proceeds for each structure are identified separately, and the amount that must be paid on the loan to effect transfer of clear title on each structure as sold is shown. Such loans are not prohibited by § 120.102–8 of this title. These loans may be available under the following conditions:

§ 122.50–2 Demonstrated ability.

The applicant shall be a construction contractor or homebuilder with a demonstrated managerial and technical ability in profitable construction or rehabilitation projects of a comparable type and size. Joint ventures or other organizations that have no history or are organized only for a specified project are not eligible. A portion of the work may be subcontracted, but on subcontracts in excess of $25,000 a one-hundred percent payment and performance bond may be required.

(Approved by the Office of Management and Budget under control number 3245–0077)

§ 122.50–3 Maturity.

The maturity of the loan shall not exceed thirty-six months plus the estimated time to complete the construction or rehabilitation.

§ 122.50–4 Purpose of loan.

Loan proceeds shall be used solely for the direct expense of acquisition, immediate construction and/or prompt significant rehabilitation of residential or commercial structures for sale. For this purpose "significant" rehabilitation means rehabilitation costing more than one-third (⅓) of the purchase price or fair market value at time of loan application. Not more than twenty (20) percent of the loan proceeds shall be used for the acquisition of land.

(Approved by the Office of Management and Budget under control number 3245–0077)

§ 122.50–5 Investment property prohibited.

Loan funds shall not be used to purchase vacant land for possible future construction or to operate or hold rental property pending future rehabilitation. Loan funds shall not replace or free applicant's funds for these purposes.

§ 122.50–6 Rental.

The constructed or rehabilitated structures shall not be rented, in whole or in part, pending sale, without SBA's prior written approval.

§ 122.50–7 Sale of entire property.

Loan proceeds shall not be used as a construction loan to be repaid with permanent financial if the applicant or its affiliate retains title. The sale of the property must be both a beneficial and a legal change or ownership in the title to the property.

§ 122.50–8 SBA's Lien.

SBA shall have not less than a second lien on the property as collateral. All prior liens shall permit the release of individual parcels upon payment of a predetermined amount (so the buyer of each parcel can get a clear title) and the sum of all liens, including SBA's shall not exceed eighty (80) percent of the fair market value of the completed structure.

§ 122.50–9 Application.

The application shall include three letters in addition to the regular requirements of § 122.5–2. (A Participating Lender may provide the necessary written assurance instead of three such separate letters). The three letters are (a) from a mortgage lender doing business in the project area advising whether permanent mortgage money is normally available to qualified purchasers of comparable real estate at the project location; (b) from an independent, licensed real estate broker with at least three years experience in the project area advising whether a market exists for the proposed structure and whether the property's monetary and architectural values are compatible with other structures in the neighborhood; (c) from an independent licensed architect, appraiser or engineer who shall agree to make all construction inspections and certifications needed to support interim disbursements. (Inspection fees may be paid from loan proceeds.)

§ 122.51 Handicapped.

§ 122.51–1 Policy.

The Act authorizes loans to assist a public or private organization for the handicapped or to assist a handicapped individual in establishing, acquiring or operating a small concern.

§ 122.51–2 Definitions.

(a) *HAL–1* is the designation of a loan to a nonprofit public or private organization for the employment of the handicapped. HAL–1 applicants are not subject to Part 121 of this title.

(b) *HAL–2* is the designation of a loan to a handicapped individual or a small business which is wholly owned by a handicapped individual(s). Such loans shall comply with the requirements of Parts 120 and 121 of this title, and direct loans are subject to the availability of funds.

(c) *Organization for the Handicapped* means one which:

(1) Is organized under the laws of the United States or any State, the net income of which does not inure in whole or in part to the benefit of any shareholder or other individual, and which is operated in the interest of handicapped individuals;

(2) Complies with all occupational health and safety standards prescribed by the Secretary of Labor; and,

(3) Employs in the production of commodities and the provision of services during any fiscal year in which it received financial assistance under this subsection, handicapped individuals for not less than 75 per centum of the man-hours required for the production or provision of the commodities or services.

(d) *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. For HAL–2 purposes a partnership or corporation must be 100 percent owned by handicapped individuals.

(e) *Supportive services* refers to expenses incurred by HAL–1 organizations to subsidize wages of low producers, health and rehabilitation services, management, training, education and housing of handicapped workers and other such uses.

§ 122.51–3 Interest rate.

Direct loans and SBA's share of immediate participation loans are subject to an administrative limit of $150,000 and shall bear interest at a rate of three (3) percent. There is no separate interest rate on guaranty loans. See § 122.8–3 of this part.

§ 122.51–4 Repayment ability.

(a) *Reasonable doubt.* In the application of § 120.103–2 of this chapter to loans under this § 122.51, reasonable doubt shall be resolved in favor of the applicant.

(b) *Capability and experience.* HAL–1 applicants must submit evidence that the organization has the capability and experience to perform successfully, but evidence of repayment ability from the earnings of the organization is not necessary provided other sources of repayment are reasonably established.

(c) *Collateral*—(i) *Assignment of proceeds.* Loans to finance Federal Government contracts may require an assignment of the proceeds of the contracts.

(ii) *Personal guarantees.* Personal guarantees of the officers and directors of a HAL–1 organization shall not be required but may be accepted if offered.

(Approved by the Office of Management and Budget under control number 3245–0016)

§ 122.51–5 Application.

(a) *Contents of HAL–1 application.* A HAL–1 applicant shall submit copies of bylaws, incorporation papers, Internal Revenue Service certification of tax-exempt status, recognition/approval by an appropriate State, local or Federal rehabilitation agency or other evidence that it meets the definition of a HAL–1 organization, including the percentage of man-hours performed by handicapped persons. The applicant shall also show that private credit is not available and that funds from other Government programs are not being duplicated by SBA and that contributions from foundations, State fund raising activities (including tax assessements) and other traditional funding will not be diminished as a result of an SBA loan. Notwithstanding § 120.102–10 of this chapter, a HAL–1 organization shall not be considered to be an associate of the lender solely because one or more of the organization's officers or directors are also officers, directors or holders of 10 or more percent of the stock of the lender: *Provided, however,* That such person shall have no part in the lender's decision to participate in the loan.

(b) *Contents of HAL–2 application.* A HAL–2 applicant shall submit written information from a physician, psychiatrist or other qualified professional as to the permanent nature of the handicap and the limitations it places on the applicant.

(Approved by the Office of Management and Budget under control number 3245–0016)

§ 122.51–6 Use of proceeds.

(a) *HAL–1.* HAL–1 loan proceeds may be used for purposes consistent with §§ 120.101 and 120.102 of this chapter, except that loan funds cannot be used for supportive services, see Section § 122.51–2(e). Further, the use of SBA funds to purchase or construct facilities is prohibited when construction grants and mortgage assistance are available from another Federal source.

(b) *HAL–2.* HAL–2 funds may be used to effect a change of ownership without regard to § 120.102–6 of this chapter.

§ 122.52 Low-income areas.

The Act authorizes loans to small concerns with particular emphasis on the establishment, preservation and strengthening of small concerns located in urban and rural areas with high proportions of unemployed (as designated by the Department of Labor) or low-income individuals or owned by low-income individuals (income is not adequate to satisfy basic family needs). Partnerships and corporations must be over 50 percent owned by low-income individuals to qualify under the low-income criteria. Program requirements and credit standards outlined in other sections of this regulation will not be relaxed to accommodate loan applicants qualifying under this Section.

§ 122.53 Energy conservation.

§ 122.53–1 Policy.

The Act authorizes loans to assist a small concern to design architecturally or to engineer, manufacture, distribute, market, install or service energy measures designed to conserve the Nation's energy resources. See Table 1 for eligible energy measures.

§ 122.53–2 Energy measures defined.

Energy measures include:

(a) Solar thermal energy equipment which is either of the active type based on mechanically forced energy transfer or of the passive type based on convective, conductive or radiant energy transfer or some combination of these types;

(b) Photovoltaic cells and related equipment;

(c) A product or service the primary purpose of which is conservation of energy through devices or techniques which increase the energy efficiency of existing equipment, methods of operation or systems which use fossil fuels, and which is on the Energy Conservation Measures list of the Secretary of Energy (see Table 1) or which the Administrator determines to be consistent with the intent of this subsection;

(d) Equipment the primary purpose of which is the production of energy from wood, biological waste, grain or other biomass source of energy;

(e) Equipment the primary purpose of which is industrial cogeneration of energy, district heating or production of energy from industrial waste;

(f) Hydroelectric power equipment;

(g) Wind energy conversion equipment; and

(h) Engineering, architectural, consulting or other professional services which are necessary or appropriate to aid citizens in using any of the measures described in paragraphs (a) through (g) of this section.

§ 122.53–3 Use of proceeds.

Loan proceeds may be used to acquire vacant land immediately necessary for the construction of a plant and for buildings, machinery, equipment, furniture, fixtures, facilities, supplies or materials for eligible energy measures. Working capital loans shall be made only to the extent it is demonstrated to SBA's satisfaction that the proceeds will be used for entry into or expansion in the area defined above as energy measures. The applicant may be a new business or an existing business that is expanding. Loan funds shall not be used primarily for research and development:

Provided, however, That up to 30 percent of the loan proceeds may be used for further development of a product or service already on the market or where the remaining development of a product or service may be completed under a business plan that provides reasonable assurance of repayment.

§ 122.53–4 Repayment ability.

Recognizing that greater risk may be associated with these energy measures, the status of these loans need not be as sound as for other loans authorized under this part. In order to determine "sound value", SBA will consider such factors as quality of the product or service, technical qualifications of the applicant's management and employees, sales projections and the applicant's financial status.

§ 122.54 Loans for exporters.

§ 122.54–1 Policy.

The Act authorizes a revolving line of credit for export purposes to enable small concerns to develop foreign markets and for pre-export financing. No such credit shall be extended for a period or periods exceeding eighteen months.

§ 122.54–2 Eligibility.

An applicant for an Export Revolving Line of Credit (ERLC) loan, in addition to meeting the eligibility criteria applicable to all section 7(a) loans, shall have been in operation for at least 12 full months prior to filing an application. This 12-months requirement may be waived by the appropriate SBA regional office if the management of the applicant has sufficient export trade experience or other management ability to warrant an exception to the general rule. Waivers can be made only by regional office officials who have delegated authority to approve ERLC loans.

§ 122.54–3 Use of proceeds.

Proceeds of an ERLC loan can be used only to penetrate or develop a foreign market and to finance labor and materials for pre-export production. Professional export marketing advice or services, foreign business travel or participation in trade shows are examples of eligible expenses to develop or penetrate a foreign market. The cost of acquiring or renting office or commercial space in a foreign country, equipping such an office, or wages for a staff in such an office are examples of ineligible uses of proceeds.

§ 122.54–4 Fees.

In addition to other allowable fees [see Section 120.104–2 of this Chapter], the participant in an ERLC loan may charge the borrower a commitment fee equal to one-fourth (¼) of one (1) percent of the loan or $200, whichever is greater. This fee shall not be charged until the SBA has approved the lender's request for guaranty.

§ 122.54–5 Collateral.

Only collateral that is located in the United States, its territories and possessions shall be acceptable security for these loans.

§ 122.54–6 Additional loan conditions.

(a) *Cash flow projection.* All ERLC loan applications shall include a projected cash flow chart for the term of the loan that supports the need for the funds and that evidences repayment ability. The projection must cover the applicant's total operation and clearly identifies the use(s) of the loan proceeds and source(s) or repayment.

(b) *Monthly progress reports.* The ERLC borrowers must submit monthly progress reports to the Lender and explain discrepancies between the projected cash flow and the progress report.

(Approved by the Office of Management and Budget under contract number 3245–0196)

§ 122.55 Qualified employee trust.

§ 122.55–1 Policy.

The Act authorizes guaranty loans to:

(a) *Finance growth.* A qualified or other employee trust which may be treated as a qualified employee trust (see § 122.55–5 below), that represents at least 51 percent of the employees and that is maintained by a continuing small concern which is seeking to finance its corporate growth through the use of a loan from the trust; or

(b) *Change of ownership.* A qualified or other employee trust representing at least 51 percent of the employees, to purchase at least 51 percent of the voting control of a business operated for profit which is (1) a small concern or (2) a business which is other than small and controlled by another person or entity if, after the purchase is accomplished, such business would be a small concern. Such purchase shall be deemed completed when at least 51 percent of the total voting stock of the employer concern is registered in the name of the qualifying employee trust. In these cases the trustee must certify, without limitation, that

(i) Subsequent to such purchase, the small business will be a corporation which

(A) Is a small concern pursuant to Part 121 of this chapter, and

(B) Is not under the effective control (as defined in Part 121 of this title), directly or indirectly, of the seller(s), and

(ii) Not later than the date the guaranteed loan is repaid (or as soon thereafter as is consistent with the requirements of the Internal Revenue Code) at least 51 percent of the total voting stock of the small concern shall be allocated to the accounts of at least 51 percent of the employees entitled to share in such allocations.

(iii) There will be annual reviews by the plan participants or by the trustee of the role in management of employees entitled to share in the allocations in the management of such concern,

(iv) There will be adequate management to assure management expertise and continuity, and

(v) The trustee shall report annually to the lender with respect to the requirements of this section.

§ 122.55–2 Definitions.

The following definitions do not amend or modify the definitions of the Internal Revenue Code (26 U.S.C. 4975(e)(8)), or the Treasury or Labor Department definitions in their respective regulations. As used in this subpart:

Employee means, in the case of a loan not involving a change of majority ownership of the employer concern's voting stock, every person who has been on the payroll of the employer concern as a permanent, full-time employee in any capacity for at least 30 days prior to the date SBA receives the application for a loan guarantee. In case of a loan guarantee to an employee trust to effect a change of the majority ownership (at least 51 percent) of the employer concern, employee means every person on the payroll of such concern as a permanent, full-time employee in any capacity at the time such majority ownership is acquired. (Any person who is employed for 1,000 or more hours over 12 consecutive months is considered a full-time, permanent employee).

Employee organization means an entity representing at least 51 percent of the employees of the employer concern and which maintains a trust treated as an employee trust.

Employee trust means a qualified employee trust or a trust (described in § 122.55–5(b)) maintained by an employee organization.

Employer concern means the present, or prospective, corporate business concern with respect to which an employee trust is receiving an SBA loan guarantee and which qualifies (or will

qualify) as small under Part 121 of this chapter.

ESOP means an employee stock ownership plan as defined in the Internal Revenue Code (26 U.S.C. 4975(e)(8)).

Qualified employee trust means, with respect to a small business concern, a trust which forms a part of an ESOP (or a part of an employee benefit plan that is treated as an ESOP for SBA loan guarantee purposes):

(a) Which is maintained by such concern,

(b) Which represents at least 51 percent of the employees;

(c) Which provides that each plan participant is entitled to direct the plan how to vote the qualifying employer securities which are or will be (as the SBA guarantee loan is repaid and encumbrances are removed) allocated to the account of such participant with respect to corporate matters which by law, charter or by-laws must be decided by a majority vote of outstanding qualifying employer securities voted; and

(d) Which the Internal Revenue Service has qualified in writing or which has been exempted in writing from appropriate Labor Department regulations governing Employee Benefit Plans under ERISA.

Qualifying employer securities means, for SBA purposes, and employer security which is (a) stock or otherwise an equity security or (b) a bond, debenture, note, certificate or other evidence of indebtedness which is described in the ESOP provisions of the Internal Revenue Code. Warrants and options are excluded.

§ 122.55–3 Amount of loan.

The $500,000 statutory limit which SBA may guarantee applies to the combined total of all obligations of the qualified employee trust, the employer concern and all its other affiliates in the aggregate.

§ 122.55–4 Exceptions to other SBA regulations.

(a) *Guaranty loan only.* SBA's assistance is available only as a loan guaranty.

(b) *Repayment ability.* In determining whether a reasonable assurance of repayment exists,

(1) SBA shall consider the earnings history and projected future earnings of the employer concern together with its ability to make the necessary payments to the trust. The trustee must document in the application that funds generated from the employee trust will enable the small business concern to overcome present competitive difficulties, if any, which may have an adverse impact on the small concern's prospects of success, including (without limitation) plant obsolescence or the need for regulatory compliance.

(2) SBA shall not consider the personal assets of the employee-owners who are members of the employee organization. However, SBA must have evidence that financial assistance is not otherwise available by utilizing the personal resources and credit of the principals of the employer concern who are not participating in the employee organization, the resources and credit of the employer concern or the sale of those employer assets that are not assential to the operation of the business or its healthy growth.

(c) *Experience or assets of employees.* The individual personal assets of the employee-owners shall not be used as criteria in determining whether to guarantee a loan: *Provided, however,* That SBA may consider business experience, where certain employee-owners assume managerial responsibilities. The small concern must maintain an adequate managerial capacity which may be derived from contracts with employee-owners, or with others. An employee trust relying on the expertise of other than employee-owners shall endeavor to train employee-owners for managerial responsibilities in order to accelerate the assumption of such responsibilities by employee-owners no later than the date the guaranteed loan is repaid.

(Approved by the Office of Management and Budget under control number 3245–0016)

§ 122.55–5 Eligibility.

(a) *Qualified employee trust.* A qualified employee trust shall be eligible for an SBA loan guarantee to assist an employer concern if the trustee of the trust enters into an agreement with SBA which is binding on both the trust and the small concern and which provides that:

(1) The SBA guaranteed loan shall be used solely for the purchase of qualifying employer securities;

(2) The employer concern agrees to use funds received from the employee trust solely for the business purposes for which the loan was guaranteed;

(3) The employer concern agrees to provide the funds necessary for the trust to repay the loan principal plus interest;

(4) The property of the employer concern shall be available as security for repayment of the loan;

(5) All unencumbered qualifying employer securities acquired by the trust using SBA guarantee loan funds shall be allocated to the accounts of the plan participants who are entitled to share in the allocation;

(6) Each plan participant has a nonforfeitable (vested) right, not later than the date such loan is repaid, to all such allocated qualifying employer securities which are acquired with SBA guaranty loan funds;

(7) The employer concern agrees that an employee organization owning less than 51 percent of the voting control will have a 90 day "right of first refusal" to acquire the business before the business is relocated, sold, liquidated or loses its identity as an independently owned and operated small concern by any means other than court action; and

(8) The employer concern has placed no maximum or minimum limits on the percentage of voting stock that the employee organization is allowed to purchase and control.

(b) *Trust equivalent to a qualified employee trust.* A trust may be treated as a qualified employee trust for the purposes of an SBA loan guaranty if:

(1) Such trust is maintained by an employee organization which represents at least 51 percent of the employees of such concern;

(2) The trust is part of a plan which constitutes an employee benefit plan under the Labor Department regulations implementing ERISA and has a written Labor Department exemption from certain prohibited loan transactions. The plan must provide for the following:

(i) Be designed to invest primarily in qualifying employer securities;

(ii) Stipulate that each plan participant is entitled to direct the trustee in the manner of voting all qualifying employer securities acquired with SBA loan guarantee funds that have been allocated or, as the SBA loan is repaid, will be allocated to the participants' accounts, on all corporate matters which, by law, charter or by-laws, must be decided by a majority vote of the qualifying employer securities voted;

(iii) Provides that each participant who is entitled to distribution from the plan has a right, with respect to qualifying employer securities not readily tradable on an established market, to require that the employer concerned repurchase such securities under either a fair valuation formula, appraisal requirement or other method, any of which the Internal Revenue Service or the Labor Department have accepted in writing;

(iv) Provides procedures for including future employees in the plan; and

(3) The trust, with respect to an SBA loan guaranty, enters into an agreement with SBA setting forth the provisions

outlined in paragraph (a) of this § 122.55–5.

§ 122.56 Veterans loan program.

§ 122.56–1 Policy.

The statutory authorities for these loans appear in Pub. L. 97–377 (96 Stat. 1871), Pub. L. 97–72 (95 Stat. 1055), and Section 7(a) of the Act.

§ 122.56–2 Direct loans.

Only SBA direct financial assistance is available to eligible veterans under this program. Private sector financing and SBA guaranteed loans must be unavailable before a direct loan can be considered.

§ 122.56–3 Eligibility.

(a) *Eligible veterans.* Veterans eligible for this program include the following:

(1) Vietnam-era veterans who served for a period of more than 180 days, any part of which was between August 5, 1964, and May 7, 1975, and were discharged other than dishonorably.

(2) Disabled veterans of any era with a minimum compensable disability of 30%, or a veteran of any era who was discharged for disability.

(b) *Ownership percentage.* The small business concern must be owned (a minimum of 51%) by one or more eligible veterans.

(c) *Management requirements.* Management and daily operations of the business must be directed by one or more of the veteran owners of the applicant whose veteran status was used to qualify for the loan.

§ 122.56–4 Single loan benefit.

The veteran status of an individual may only be used once to qualify for an SBA loan. After having received an SBA loan with eligibility based on veteran status, second or refunding loans can be considered only under the regular business loan program or based on the ownership by other eligible veterans (51% minimum ownership by persons of unused eligibility). Individuals who formerly received SBA loans with eligibility based on veteran status have used their loan benefit and may not be considered for the veterans loan program.

Table 1—Eligible Energy Measures

Subject to the requirements and limitations set forth in Title 10, Code of Federal Regulations, Chapter II, § 450.32 (1984), an energy conservation measure shall be—

(a) Ceiling insulation in a residential or commercial building which is a material which is installed on the surface of the ceiling facing the building interior or between the heated top level living area and the unheated attic space and which resists heat flow through the ceiling;

(b) Wall insulation in a residential or commercial building or industrial plant, which is a material which is installed on the surface facing the building interior or in the cavity of an exterior wall and which functions to resist heat flow through the wall;

(c) Floor insulation in a residential or commercial building, which is a material which resists heat flow through the floor between the first level heated space and the unheated space beneath it, including a basement or crawl space;

(d) Insulation for hot bare pipes in a residential or commercial building or industrial plant, which is a material which resists heat flow from the pipes to the surrounding space;

(e)(1) Caulks and sealants in a residential or commercial building or industrial plant, which are nonrigid materials placed in joints of buildings to prevent the passage of heat, air and moisture;

(2) Weatherstripping in a residential or commercial building or industrial plant, which consists of narrow strips of flexible material placed over or in movable joints of windows and doors to reduce the passage of air and moisture;

(f) Roof insulation in a commercial building or industrial plant which is insulation placed on the surface of the roof facing the building interior or between a roof deck and its water repellent roof surface;

(g) Clock thermostat in a residential building, which is a temperature control device for interior spaces incorporating more than one temperature control point and a clock for switching from one control point to another;

(h) Exterior insulation for a hot water heater in a residential or commercial building or industrial plant, which is a material placed around the tank which resists the heat flow from the hot water heater to its surrounding space;

(i) Insulation for forced air ducts in a residential or commercial building or industrial plant, which is a material which resists heat flow from the duct to its surrounding space;

(j) Storm window in a residential or commercial building which is an extra window, normally installed to the exterior, but which may be installed to the interior, of the primary or ordinary window, to increase resistance to heat flow and to decrease air infiltration;

(k) Efficient lighting fixture or lamp in a residential or commercial building or industrial plant, which is one which—

(1) Replaces an incandescent fixture or lamp with a type of lighting system including fluorescent, mercury vapor, metal halide, and high pressure sodium or ellipsoidal reflector lamps; or

(2) Replaces a mercury vapor fixture or lamp with a high pressure sodium lighting system.

(l) Mixing valve for a hot water supply line in a residential or commercial building or industrial plant, which is a type of valve mounted in the hot water supply line, close to the water heater, which mixes cold water with hot, reducing the temperature of the water in the hot water distribution system;

(m) Flow restrictor for hot water lines in a residential or commercial building or industrial plant, which is a device that limits the rate of flow of hot water from shower heads and faucets;

(n) Burner for oil fired heating equipment in a residential building, which is a device which atomizes the fuel oil, mixes it with air and ignites the fuel-air mixture, and is an integral part of an oil fired furnace or boiler, including the combustion chamber;

(o) Individual meters to replace a master meter for gas, electricity and hot water in a commercial building, which are meters that measure the consumption of gas, electricity or centrally distributed hot water for individual users, instead of the total consumption which is measured by a master meter;

(p)(1) New oil burner in a commercial building or industrial plant, which is a device that meters, atomizes, ignites and mixes the oil with air for the combustion process of boiler; or

(2) New boiler controls in a commercial building or industrial plant, which are devices that sense the need for reducing or increasing the firing rate and change the combustion air and oil flow rate accordingly;

(q) Controls for lighting in a residential or commercial building or industrial plant which are manual or automatic cut off switches for lighting systems that allow cut off of all lighting or a portion of the lighting systems when lighting is not required;

(r) Automatic HVAC control system in a commercial building or industrial plant, which is a device which adjusts the supply of heating or cooling to meet space conditioning requirements;

(s) High efficiency electric motor or motor controls in a commercial building or industrial plant, which replace an existing motor or motor controls, resulting in not less than a specified increase in efficiency at a specified level of use, as determined by DOE; and

(t) Whole house ventilation fan in a residential building, which is a fan which removes air from the inside of a residential building to the outside.

(u) Air source heat pump, which is a system which is part of the central heating system and which has the capability of extracting heat from a body of air and transferring this heat to a body of liquid or to another body of air for space conditioning purposes;

(v) Water source heat pump, which is a system which is part of the central heating system and which has the capability of extracting heat from a body of water and transferring this heat to another body of liquid or to a body of air for space conditioning purposes.

(Catalog of Federal Domestic Assistance Programs No. 59.012, Small Business Loans)

Dated: March 7, 1985.

James C. Sanders,

Administrator.

[FR Doc. 85–6927 Filed 3–27–85; 8:45 am]

BILLING CODE 8025–01–M

federal register

Thursday
March 28, 1985

Part V

Office of Management and Budget

Deferrals of Budget Authority; Notice

OFFICE OF MANAGEMENT AND BUDGET

Budget Deferrals

To the Congress of the United States:

In accordance with the Impoundment Control Act of 1974, I herewith report five new deferrals of budget authority for 1985 totaling $121,544,000 and three revised deferrals now totaling $162,677,844. The deferrals affect the Departments of Energy, Health and Human Services, Interior, and Transportation.

The details of these deferrals are contained in the attached report.

Ronald Reagan,

The White House,

March 22, 1985.

BILLING CODE 3110-01-M

CONTENTS OF SPECIAL MESSAGE
(in thousands of dollars)

DEFERRAL #	ITEM	BUDGET AUTHORITY
	Department of Energy	
	Energy Programs	
D85-29B	Naval petroleum and oil shale reserves.....	155,668
D85-30A	Energy conservation.....	5,772
D85-32B	Alternate fuels production.....	1,238
D85-65	Uranium supply and enrichment activities....	90,000
	Department of Health and Human Services	
	Health Care Financing Administration	
D85-66	Program management.....	4,271
	Social Security Administration	
D85-67	Limitation on administrative expenses.....	9,176
	Department of the Interior	
	National Park Service	
D85-68	Land acquisition and state assistance.....	3,356
	Department of Transportation	
	Office of the Secretary	
D85-69	Payments to air carriers.....	14,741
	Total, deferrals.....	284,222

SUMMARY OF SPECIAL MESSAGES
FOR FY 1985
(in thousands of dollars)

	RESCISSIONS	DEFERRALS
Eighth special message:		
New items	---	121,544
Revisions to previous special messages	---	2,464
Effects of eighth special message	---	124,008
Amounts from previous special messages that are changed by this message (changes noted above)	---	160,214
Subtotal, rescissions and deferrals	---	284,222
Amounts from previous special messages that are not changed by this message	1,805,913	14,562,401
Total amount proposed to date in all special messages	1,805,913	14,846,623

D85-29B

Supplementary Report

Report Pursuant to Section 1014(c) of Public Law 93-344

This report updates Deferral No. D85-29A transmitted to Congress on February 6, 1985.

This revision to a deferral in the Department of Energy's Naval petroleum and oil shale reserves account increases the previous deferral of $155,667,000 by $981 and results in a total deferral of $155,667,981. The additional funds are from recoveries of prior year obligations which cannot be effectively used this year.

DEFERRAL OF BUDGET AUTHORITY
Report Pursuant to Section 1013 of P.L. 93-344

AGENCY: Department of Energy	**New budget authority.....** (P.L. 98-473) $ 160,076,000
Bureau: Energy Programs	**Other budgetary resources** *134,612,113
Appropriation title and symbol: Naval Petroleum and Oil Shale Reserves 1/ 89X0219	**Total budgetary resources** *294,688,113
	Amount to be deferred: Part of year $ ____
	Entire year *155,667,981
OMB identification code: 89-0219-0-1-271	**Legal authority** (in addition to sec. 1013): [X] Antideficiency Act
Grant program: [ ] Yes [X] No	[ ] Other
Type of account or fund:	**Type of budget authority:**
[ ] Annual	[X] Appropriation
[ ] Multiple-year (expiration date)	[ ] Contract authority
[X] No-Year	[ ] Other

Justification: *This account primarily funds activities necessary to operate, explore, conserve, develop, and produce the naval petroleum reserves at the maximum efficient rate and to conserve the oil shale reserves. The $155,667,981 to be deferred is an increase of $981 over the previous deferral of $155,667,000. The additional deferral of $981 represents recoveries of prior year obligations for projects and activities which were completed or terminated during the months of October through December 1984. These funds cannot be effectively used this year and will be used to partially offset the 1986 appropriation request. This action is taken pursuant to the Antideficiency Act (31 U.S.C. 1512).

Estimated Program Effect: None

Outlay Effect: None

1/ This account was the subject of a similar deferral in 1984 (D84-40A).

* Revised from previous report.

Supplementary Report

Report Pursuant to Section 1014(c) of Public Law 93-344

This report updates Deferral No. D85-30 transmitted to Congress on November 29, 1984.

This revision to a deferral in the Department of Energy's Energy conservation account increases the previous deferral of $3,398,271 by $2,373,669 and results in a total deferral of $5,771,940. The additional funds are from recoveries of prior year obligations which will be used to partially offset the 1986 appropriation request.

Deferral No: *D85-30A

D85-32B

DEFERRAL OF BUDGET AUTHORITY
Report Pursuant to Section 1013 of P.L. 93-344

AGENCY: Department of Energy	New budget authority..... $*467,969,000 (P.L. 98-473)
Bureau: Energy Programs	Other budgetary resources *33,658,042
Appropriation title and symbol: Energy Conservation 1/ 89X0215	Total budgetary resources *501,627,042
	Amount to be deferred: Part of year $ ____ Entire year *5,771,940
OMB identification code: 89-0215-0-1-272	Legal authority (in addition to sec. 1013): [X] Antideficiency Act [ ] Other ____
Grant program: [X] Yes [ ] No	
Type of account or fund: [ ] Annual [ ] Multiple-year ____ (expiration date) [X] No-Year	Type of budget authority: [X] Appropriation [ ] Contract authority [ ] Other ____

Justification: *This account funds a variety of energy research and development and grant programs providing support for buildings and community systems, industry, transportation, multi-sector research and state and local assistance. The deferred funds consist of recoveries of prior year obligations for projects and activities which were completed or terminated. These funds cannot be effectively used this year and will be used to partially offset the 1986 appropriation request. This action is taken pursuant to the Antideficiency Act (31 U.S.C. 1512).

Estimated Program Effect: None

Outlay Effect: None

1/ This account was the subject of a similar deferral in 1984 (D84-41). It is also the subject of a rescission proposal (R85-87).

* Revised from a previous report.

Supplementary Report

Report Pursuant to Section 1014(c) of Public Law 93-344

This report updates Deferral No. D85-32A transmitted to Congress on February 6, 1985.

This revision to a deferral in the Department of Energy's Alternate fuels production account increases the previous deferral of $1,149,000 by $88,963 and results in a total deferral of $1,237,963. The additional funds are from prior year unobligated balances which will be used to partially offset the 1986 appropriation request.

Deferral No: D85-32A*

DEFERRAL OF BUDGET AUTHORITY
Report Pursuant to Section 1013 of P.L. 93-344

AGENCY:
Department of Energy

Bureau:
Energy Programs

Appropriation title and symbol:
*Alternative Fuels Production 1/
89X0180

OMB identification code:
89-0180-0-2-271

Grant program:
[ ] Yes [X] No

Type of account or fund:
[ ] Annual
[ ] Multiple-year _____ (expiration date)
[X] No-Year

New budget authority..... $_____
(P.L. _____)

Other budgetary resources *2,160,786

Total budgetary resources *2,160,786

Amount to be deferred:
Part of year $_____

Entire year *1,237,963

Legal authority (in addition to sec. 1013):
[X] Antideficiency Act
[ ] Other_____

Type of budget authority:
[X] Appropriation
[ ] Contract authority
[ ] Other_____

Justification: *This program funds feasibility studies and cooperative agreements for the development and production of alternative fuels. *The deferral consists of recoveries of prior year obligations for projects and activities which were completed or terminated. *These funds cannot be effectively used this year. *This action is taken pursuant to the Antideficiency Act (31 U.S.C. 1512). *The 1986 budget proposes to transfer $1,149,000 of these funds to the Fossil energy research and development account to finance its 1986 requirements. *The remaining funds will be used to offset 1986 appropriation requirements.

Estimated Program Effect: None

Outlay Effect: None

1/ This account was the subject of a similar deferral in 1984 (D84-72A). It is also the subject of a rescission proposal (R85-93).

* Revised from previous report.

Deferral No: D85-65

DEFERRAL OF BUDGET AUTHORITY
Report Pursuant to Section 1013 of P.L. 93-344

AGENCY:
Department of Energy

Bureau:
Energy Programs

Appropriation title and symbol:
Uranium Supply and Enrichment Activities 1/
89X0224

OMB identification code:
89-0224-0-1-271

Grant program:
[ ] Yes [X] No

Type of account or fund:
[ ] Annual
[ ] Multiple-year _____ (expiration date)
[X] No-Year

New budget authority..... $1,650,300,000
(P.L. 98-360)

Other budgetary resources 258,558,720

Total budgetary resources 1,908,858,720

Amount to be deferred:
Part of year $_____

Entire year 90,000,000

Legal authority (in addition to sec. 1013):
[X] Antideficiency Act
[ ] Other_____

Type of budget authority:
[X] Appropriation
[ ] Contract authority
[ ] Other_____

Justification: The purpose of the uranium enrichment program is to meet domestic, foreign, and United States Government requirements for uranium enrichment services in the most economical, reliable, safe, and environmentally acceptable manner possible. Excess funds of $90,000,000 have resulted from the large carryover of unobligated balances and the deobligation of funds in 1985 from completed construction projects. These funds are not required in 1985 and have been applied against 1986 requirements such as the purchase of power to operate the gaseous diffusion plants. This action is taken pursuant to the Antideficiency Act (31 U.S.C. 1512).

Estimated Program Effect: None

Outlay Effect: None

1/ This account was the subject of a similar deferral in 1984 (D84-8A). It is also the subject of a rescission proposal (R85-83).

DEFERRAL OF BUDGET AUTHORITY
Report Pursuant to Section 1013 of P.L. 93-344

Deferral No: D85-67

AGENCY:
Department of Health & Human Services
Bureau:
Health Care Financing Administration
Appropriation title and symbol:
Program Management
7550511 1/

OMB Identification code:
75-0511-0-1-550
Grant program:
[ ] Yes [X] No

Type of account or fund:
[X] Annual
[ ] Multiple-year _____ (expiration date)
[ ] No-Year

New budget authority.....$ 98,147,000
(P.L. 98-619)
Other budgetary resources 1,129,779,000
Total budgetary resources 1,227,926,000
Amount to be deferred:
Part of year $ 4,271,000
Entire year _____
Legal authority (in addition to sec. 1013):
[X] Antideficiency Act
[ ] Other _____
Type of budget authority:
[X] Appropriation
[ ] Contract authority
[ ] Other _____

Justification: This account funds the administrative costs of Medicare and Medicaid. This account consists of general funds and authorization for transfers to trust funds. Of $5,811,000 identified as savings pursuant to section 2901 of the Deficit Reduction Act, $1,540,000 (the general funds portion) was proposed for rescission in the fifth special message. The remaining $4,271,000 (the trust fund transfer reduction amount) is deferred pending the outcome of Congressional action on the proposed reduction in the authorization to transfer. This action is taken pursuant to the Antideficiency Act (31 U.S.C. 1512).

Estimated Program Effect: None

Outlay Effect (in thousands of dollars):

	1985 Outlay Estimate 2/		Outlay Savings			
	Without Deferral	With Deferral	1985	1986	1987	1988
(Medicare Trust Funds)...	86,260	84,124	2,136	2,135	---	---

1/ Separate limitations in this account are the subject of a deferral (D85-9) and the above mentioned rescission proposal (R85-120).
2/ Outlay effect of trust fund transfer reduction only.

DEFERRAL OF BUDGET AUTHORITY
Report Pursuant to Section 1013 of P.L. 93-344

AGENCY:
Department of Health & Human Services
Bureau:
Social Security Administration
Appropriation title and symbol:
Limitation on Administrative Expenses 1/
7558704
OMB Identification code:
75-8007-0-7-571
Grant program:
[ ] Yes [X] No

Type of account or fund:
[X] Annual
[ ] Multiple-year _____ (expiration date)
[ ] No-Year

New budget authority..... $3,577,349,000
(P.L. 98-619)
Other budgetary resources -39,105,000
Total budgetary resources 3,538,244,000
Amount to be deferred:
Part of year $ 9,176,000
Entire year _____
Legal authority (in addition to sec. 1013):
[X] Antideficiency Act
[ ] Other _____
Type of budget authority:
[X] Appropriation
[ ] Contract authority
[ ] Other _____

Justification: This account funds administrative costs of the Social Security and Supplemental Security Income (SSI) programs, including funds for reimbursable work done by the Social Security Administration (SSA) for other organizations. Pursuant to the Deficit Reduction Act of 1984, $9,176,000 was identified as savings. A reduction in the limitation of this amount was proposed in the 1986 Budget. These funds are deferred pending the outcome of Congressional action on the proposed limitation reduction. This action is taken pursuant to the Antideficiency Act (31 U.S.C. 1512).

Estimated Program Effect: None

Outlay Effect (in thousands of dollars):

1985 Outlay Estimate		Outlay Savings			
Without Deferral	With Deferral	1985	1986	1987	1988
3,538,244	3,529,068	9,176	---	---	---

1/ Two separate limitations in this same account are also the subject of deferrals (D85-9 and D85-44).

Deferral No: D85-68

DEFERRAL OF BUDGET AUTHORITY
Report Pursuant to Section 1013 of P.L. 93-344

AGENCY:
Department of the Interior

Bureau:
National Park Service

Appropriation title and symbol:
Land Acquisition and State Assistance 1/
14X5035

OMB identification code:
14-5035-0-2-303

Grant program: [X] Yes [ ] No

Type of account or fund:
[X] Annual Contract authority
[ ] Multiple-year (expiration date)
[X] No-Year

New budget authority..... $180,220,000
(P.L. 98-473; 16 U.S.C. 460l-10a)
Other budgetary resources 121,015,235
Total budgetary resources 301,235,235

Amount to be deferred:
Part of year $ ---
Entire year 3,356,000

Legal authority (in addition to sec. 1013):
[X] Antideficiency Act
[ ] Other

Type of budget authority:
[X] Appropriation
[X] Contract authority
[ ] Other

Justification: This appropriation provides (1) funds to acquire land for inclusion in the National Park system, and (2) grants to states for outdoor recreation purposes. The 1986 Budget proposes to pay administrative expenses for prior-year grants to States and administrative expenses for land acquisition from unobligated prior-year balances. Accordingly, $852,000 of the Secretary's contingency fund for grants and $2,504,000 (amount carried over from 1984) of administrative expense funds are being deferred to cover estimated administrative expenses in 1986. These funds are not needed to meet anticipated requirements in 1986. Appropriation language is proposed in 1986 to make contingency grant funds available for administrative expenses. This action is taken pursuant to the Antideficiency Act (31 U.S.C. 1512).

Estimated Program Effect: None

Outlay Effect (in thousands of dollars):

1985 Outlay Estimate Without Deferral	1985 Outlay Estimate With Deferral	Outlay Savings 1985	1986	1987	1988
261,504	259,000	2,504	---	---	---

1/ This account was the subject of a deferral in 1984 (D84-23A). It is also the subject of a rescission proposal (R85-146).

Deferral No: D85-69

DEFERRAL OF BUDGET AUTHORITY
Report Pursuant to Section 1013 of P.L. 93-344

AGENCY:
Department of Transportation

Bureau:
Office of the Secretary

Appropriation title and symbol:
Payments to Air Carriers
69X0150

OMB identification code:
69-0150-0-1-402

Grant program: [X] Yes [ ] No

Type of account or fund:
[ ] Annual
[ ] Multiple-year (expiration date)
[X] No-Year

New budget authority..... $ ---
(P.L.)
Other budgetary resources 53,611,490
Total budgetary resources 53,611,490

Amount to be deferred:
Part of year $ 14,741,000
Entire year ---

Legal authority (in addition to sec. 1013):
[X] Antideficiency Act
[ ] Other

Type of budget authority:
[X] Appropriation
[ ] Contract authority
[ ] Other

Justification: This program compensates airlines -- primarily commuter carriers -- to provide a guaranteed level of air service to certain eligible communities. This subsidy is designed to meet the specific service needs of each community, as detailed in its Essential Air Service determination. At the sunset date of the Civil Aeronautics Board, January 1, 1985, this account was transferred to the Office of the Secretary of Transportation. The President's 1986 Budget proposes to transfer surplus balances from this account to other Department of Transportation accounts to cover the January 1985 pay increase and program supplemental requirements. This action defers funds until Congressional action occurs. This action is taken pursuant to the Antideficiency Act (31 U.S.C. 1512).

Estimated Program Effect: None

Outlay Effect: None

[FR Doc. 85-7430 Filed 3-27-85; 8:45 am]
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Federal Register

Vol. 50, No. 60

Thursday, March 28, 1985

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Code of Federal Regulations

General information, index, and finding aids	523-5227
Printing schedules and pricing information	523-3419

Laws

Indexes	523-5282
Law numbers and dates	523-5282
	523-5266

Presidential Documents

Executive orders and proclamations	523-5230
Public Papers of the President	523-5230
Weekly Compilation of Presidential Documents	523-5230

United States Government Manual 523-5230

Other Services

Library	523-4986
Privacy Act Compilation	523-4534
TDD for the deaf	523-5229

FEDERAL REGISTER PAGES AND DATES, MARCH

8317-8572.....1
8573-8702.....4
8703-8988.....5
8989-9260.....6
9261-9420.....7
9421-9608.....8
9609-9784.....11
9785-9978.....12
9979-10198.....13
10199-10492.....14
10493-10748.....15
10749-10926.....18
10927-11144.....19
11145-11362.....20
11363-11496.....21
11497-11652.....22
11653-11828.....25
11829-11990.....26
11991-12214.....27
12215-12512.....28

CFR PARTS AFFECTED DURING MARCH

At the end of each month, the Office of the Federal Register publishes separately a List of CFR Sections Affected (LSA), which lists parts and sections affected by documents published since the revision date of each title.

1 CFR

1.....12462
2.....12462
7.....12462
8.....12462
9.....12462
10.....12462
15.....12462
18.....12462
20.....12462
21.....12462

3 CFR

Proclamations:
5133 (Amended by Proc. 5308).....10927
5306.....8989
5307.....9979
5308.....10927
5309.....11829
5310.....11831
5311.....11833

Executive Orders:
12193 (See EO 12506).....8991
12295 (See EO 12506).....8991
12351 (See EO 12506).....8991
12409 (See EO 12506).....8991
12463 (See EO 12506).....8991
12506.....8991
12507.....11835
12508.....11837

Administrative Orders:

Memorandums:
September 6, 1973 (Superseded by Memorandum of February 27, 1985).....8953
February 27, 1985.....8953

5 CFR

Ch. XIV.....8993
213.....11145
293.....8993, 11788
294.....8993
430.....11788
530.....11788
531.....11788
536.....11788
540.....11788
595.....11788
771.....11788

7 CFR

27.....10929
52.....10199
54.....11814
55.....10749
56.....10749
59.....10749
70.....10749
226.....8573
301.....9261, 9785, 9786, 12215
318.....8317, 9786
319.....8703, 8704, 9786, 10750
402.....10200
409.....9609
425.....9981
433.....10201
440.....9609
448.....9263
713.....11145
722.....11145
800.....9981
910.....8317, 9610, 10500, 11497
916.....12217
917.....12217
979.....10206
981.....12219
1032.....12218
1062.....8318
1094.....11991
1150.....9982
1205.....10929
1446.....10750
1772.....11497
1807.....8581
1822.....8581
1902.....8581
1910.....11498
1922.....11839
1924.....11498
1930.....8581
1941.....11498
1944.....8581
1951.....8581, 11498
1955.....8581, 11498
1965.....8581
1980.....9987, 11498, 11648
2018.....11839

Proposed Rules:
Ch. IV.....9806
Ch. X.....11171
29.....10501
52.....10970
53.....10236
54.....10236, 11816
271.....10450
272.....10450
273.....10450
275.....10450
400.....11508
651.....12034
911.....9452
981.....11510
989.....9037
1002.....9637, 11374
1004.....9637
1007.....9038
1011.....9038

1030.....10236
1046.....9038
1093.....9038
1094.....9654
1097.....9038
1098.....9038
1102.....9038
1108.....9038
1126.....9661, 11880

8 CFR

100.....9991, 10751, 11146
103.....8319, 11840
214.....9991
235.....11841
238.....11363

Proposed Rules:

287.....11880

9 CFR

51.....11992
78.....9991, 10493, 11499
94.....10752
303.....12220
319.....9788
327.....9788
381.....12220

Proposed Rules:

92.....11374, 11376
352.....10778, 11882

10 CFR

Ch. I.....11147
1.....8605
40.....12221
53.....8605
70.....12221
73.....12221
110.....12221

Proposed Rules:

25.....1064
50.....11882, 11884
95.....1064

11 CFR

100.....9992
101.....9992
9007.....9421
9038.....9421

Proposed Rules:

2.....10066
3.....10066

12 CFR

3.....10207
7.....10207
202.....8707
205.....8707
207.....10933
213.....8708
220.....10933
221.....10933
226.....8708
303.....11653
308.....11653
325.....11128, 11138
332.....10493
333.....10753
337.....10493
346.....11142
407.....8606
612.....11655
701.....8708
741.....8708

Proposed Rules:

202.....10890
207.....10972
210.....12310
220.....10972
226.....8737
338.....10784

13 CFR

118.....12472
119.....12472
120.....12229, 12472
121.....9995, 10495
122.....12472
125.....11994
130.....12472
301.....12235
302.....12236
305.....12236

14 CFR

39.....8319–8321, 9794, 10219, 10934–10936, 11363, 11843
71.....9250, 9252, 10937–10939, 11843–11846
73.....11364
91.....9252, 9795
97.....10939, 12237
103.....9252
105.....9252

Proposed Rules:

Ch. I.....11292
1.....10144
11.....10444
23.....8948
39.....8337–8339, 9806, 9808, 10973–10977, 11377, 11512, 11705, 11706, 11891–11894, 12035, 12036
43.....10144
45.....10144
61.....10144
71.....8340, 8738, 8739, 9039, 9040, 9452, 9453, 10978, 10979, 11707, 12313, 12314
73.....9809, 11895
75.....9453, 11896
91.....10144, 11292
121.....10444
133.....10144
135.....10144
211.....11182
272.....11182
302.....8341, 11182

15 CFR

301.....11500
376.....11994

Proposed Rules:

90.....11708
391.....10501
902.....11995

16 CFR

13.....9795
1610.....11847
1611.....11847, 11848

Proposed Rules:

13.....12314
259.....11378
443.....11709

17 CFR

1.....11656
140.....11149
144.....11149
200.....12239
211.....11657
239.....9267

Proposed Rules:

1.....8639
3.....10786
32.....10786
210.....11725
230.....9281, 11725
239.....11725
240.....11725, 11896
270.....11709
275.....8740, 11718

18 CFR

4.....11658
271.....9997
282.....11848
803.....12241

Proposed Rules:

2.....12325
154.....8639
155.....8639
156.....8639
157.....8639, 12326
225.....10243
271.....10505, 11901
277.....10243
284.....8639
410.....9284

19 CFR

6.....8710, 9796
10.....9797
12.....8710, 9796
18.....8710, 9796
19.....8710, 9796
141.....8710, 9610, 9796
143.....8710, 9610, 9796
144.....8710, 9796
145.....9610
146.....8710, 9796
147.....9610
172.....9610
177.....9610
178.....11849

Proposed Rules:

101.....9455

20 CFR

227.....11501
350.....12241
404.....8726
416.....8726
629.....11850
630.....8323, 11850
631.....8323
652.....8323
701.....9799
702.....9799
703.....9799

Proposed Rules:

200.....8341, 9285, 10247
260.....9810
320.....9810
603.....10450

21 CFR

5.....9423, 9424
10.....8993
12.....8993
13.....8993
14.....8993
20.....8993
25.....8993
58.....8993
73.....9424
184.....8997
201.....8993
207.....8993
211.....8993
225.....8993
291.....8993
310.....8993
312.....8993
320.....8993
330.....8993
361.....8993
429.....8993
430.....8993, 9998
431.....8993
436.....9267, 9998, 10220
440.....10220
442.....9998, 11690
444.....10754
510.....9800
520.....9800, 10220, 11852
524.....9800
556.....10220
561.....8999
573.....8606
600.....9000
606.....9000
610.....9000, 9800, 10941
620.....9000
630.....9000, 11365
640.....9000, 11365
660.....9000, 9800
864.....8729
1308.....11690

Proposed Rules:

193.....10070
211.....11478
310.....9678, 11478
334.....9678
341.....9040
357.....9040
561.....10070, 10071
600.....8743
660.....8743
1304.....11902

22 CFR

601.....11995

23 CFR

625.....10001
655.....10001

Proposed Rules:

420.....12328
450.....12328
625.....10072, 10506
635.....12037
655.....10072, 10506
658.....8342
667.....10755

24 CFR

1.....9268
17.....9268
35.....9268
42.....9268
50.....9268
51.....9268
52.....11365
108.....9268
200.....9268
201.....9268
207.....11365
255.....11365
390.....9268
600.....9268

811 11365
850 11365
880 9268
882 9268
883 9268
885 9268
886 9268
888 ..... 9268, 11998
905 9268
960 9269
1710 ..... 9268, 10942
1720 10942
2700 9268
3280 9268
3500 9268

Proposed Rules:
885 11903
1800 9040

25 CFR
11 12242

Proposed Rules:
115 10980

26 CFR
1 ..... 9269, 9613, 9614, 11852–11856, 12012, 12243
31 9614
54 9614
301 9614
601 10221
602 ..... 10221, 12012

Proposed Rules:
1 ..... 8749, 11904
31 11904
54 11904
301 ..... 9678, 10981

27 CFR
3 8456
5 8456
13 8456
19 ..... 8456, 9152
20 9152
21 9152
22 9152
30 8456
55 10496
170 ..... 8456, 9152
178 ..... 10496, 11692
194 8456
195 8456
196 8456
197 8456
200 ..... 8456, 9152
211 ..... 8456, 9152
213 ..... 8456, 9152
231 8456
240 8456
245 8456
250 ..... 8456, 9152
251 ..... 8456, 9152
252 ..... 8456, 9152

Proposed Rules:
9 12038

28 CFR
0 ..... 8606, 8607
42 8608

Proposed Rules:
18 11905
31 9679
32 10982

29 CFR
20 8608
629 12243
1691 8608
1910 9800
2510 10075
2619 10498

30 CFR
47 11642
56 11502
57 11502
250 12248
913 9620
917 8608
935 10757
936 10759

Proposed Rules:
Ch. I 11644
56 11638
57 11638
904 9286
914 10791
916 11735
920 9679
931 10792
943 9287
946 10793
950 9680

31 CFR
51 ..... 8610, 8612

Proposed Rules:
206 12333

32 CFR
78 12249
107 11693
199 8729
518 11857
706 11503
721 9000
724 10943

Proposed Rules:
97 ..... 10248, 12337

33 CFR
1 10761
117 ..... 10228, 11365, 11694
126 ..... 8612, 9426
157 11622
160 ..... 8612, 9426, 11503
165 ..... 9426, 11695, 12251
401 10962

Proposed Rules:
100 ..... 9681, 12337
110 8640
117 ..... 9288, 9289, 10250, 10251, 11382, 11736
140 ..... 9290, 10252
141 ..... 9290, 10252
142 ..... 9290, 10252
143 ..... 9290, 10252
144 ..... 9290, 10252
145 ..... 9290, 10252
146 ..... 9290, 10252
166 9682
183 11383

34 CFR
76 9960
251 10924
252 10924
253 10924
263 10924
369 9960
370 9960
690 10710
745 11630

Proposed Rules:
251 11513
324 11356
700 9970
701 9970
702 9970
703 9970
709 9970
710 9970
716 9970
718 9970
720 9970
795 9970

36 CFR

Proposed Rules:
223 ..... 8344, 9302
1154 9686

37 CFR
Ch. IV 9801
1 ..... 9368, 11366
201 ..... 9270, 11366

Proposed Rules:
308 10989

38 CFR
8 12252
9 12252
21 9621

Proposed Rules:
3 12041
17 9811

39 CFR
111 ..... 9622, 11151, 12019
601 9015

Proposed Rules:
111 ..... 8345, 9051, 10991

40 CFR
52 ..... 8614, 8616, 10004, 10005, 10964, 11859
60 ..... 8323, 8324, 8620, 9578,
61 ..... 8620, 10764–10766
62 9627
80 9386
81 ..... 11503, 10761–10765, 11860
86 10606
180 10006–10008
228 ..... 9273, 10009
271 ..... 9427, 11858
421 12252
600 10606
712 11695
716 11697
775 8621

Proposed Rules:
51 ..... 9456, 9694, 11737, 11738
52 ..... 8346, 8749, 8751, 9052, 9694, 10076, 10794, 10796, 11183, 11738, 12043, 12338
58 9538
60 ..... 9055, 9057
65 11908
80 9400
81 ..... 8751, 9694, 10797, 11183, 12044, 12341
86 ..... 9204, 11515, 11739
110 9776
122 9362
153 12045
154 12188
155 12208
162 12188
180 ..... 10077–10085, 11184
220 10252
227 10252
228 10252
234 10252
260 11068
261 12342
264 ..... 11068, 11740
265 11068
270 11068
271 11186
305 9586
306 9593
421 10918
464 11187
710 9944
721 ..... 11384, 11391, 12046

41 CFR
Ch. 101 8622
101–20 10229
Ch. 201 11861

Proposed Rules:
Ch. 201 10252
105–64 8641

42 CFR
124 10798
435 10013
436 10013
440 10013
441 10013

Proposed Rules:
431 10450
435 ..... 10450, 10992
436 10992

43 CFR
4 8325
1769 (Revoked in part by PLO 6598) 12253
3400 8626
3410 8626
3420 8626
3430 8626
3450 8626
3460 8626
3470 8626
3780 (Revoked in part by PLO 6598) 12253
5187 (Revoked in part by PLO 6598) 12253
6598 12253
8560 12020

Public Land Orders:
2634 (Amended by PLO 6595) 11505
3512 (Amended by PLO 6596) 11366
3923 (Corrected by PLO 6594) 11505
6141 (Corrected by PLO 6593) 11505
6459 (Corrected by PLO 6589) 9428
6588 9279
6589 9428
6590 10766
6591 10965
6592 10966
6593 11505
6594 11505
6595 11505
6596 11366

6597 11865

Proposed Rules:

4 10996
418 11515
1600 10086
2800 10998
2880 10998
3140 10998
3160 11517
3400 ..... 10508, 12053
3420 ..... 10508, 10510, 12053
3460 ..... 10508, 12053
4100 9698

44 CFR

64 ..... 10229, 10767
205 9628

Proposed Rules:

67 ..... 10253, 10256

45 CFR

205 11698

Proposed Rules:

205 10450
206 10450
232 10450
1206 10998
1601 11518
1622 11740

46 CFR

50 9428
52 9428
53 9428
54 9428
55 9430
56 9430
57 9430
58 9428
59 9430
60 9430
61 9430
62 9430
63 9428
64 9430
153 8730
154 8730
162 9428
298 9437
550 10966
580 10966

Proposed Rules:

Ch. IV 10807
50 11397
56 ..... 11397, 11741
58 11741
69 10803
107 11741
108 11741
109 11741
111 11741
154 10264
174 11741
298 ..... 9456, 11397
572 10810

47 CFR

Ch. I 8627, 9016
0 9632
1 ..... 11151, 11161
2 12021
21 11161
22 ..... 10029, 11505, 12021
42 11161
43 11161
64 9033
69 ..... 9633, 12254
73 ..... 8325-8335, 8628, 8634, 9033-9035, 9804, 10768, 12257-12260
74 ..... 9035, 12021
81 11699
83 11699
87 11699
90 ..... 10231, 11699, 12021, 12260
94 ..... 10231, 11699, 11865
95 11699
97 ..... 10771, 11699

Proposed Rules:

Ch. I 9462, 10274
1 ..... 10814, 11402, 11909
2 ..... 9059, 9060, 9292, 11000, 11743
15 ..... 9059, 11743
21 11402
22 ..... 9059, 11519, 11743
25 ..... 9059, 11743
42 11909
43 11909
64 ..... 9060, 10510
73 ..... 8347, 9060-9074, 9804, 10817, 11000, 11188, 11190 11406, 12343
76 ..... 9076, 10274, 11100, 11191
83 10086
90 ..... 9059, 9060, 9293, 10821, 11743
97 ..... 8348, 10087, 10275
100 11744

48 CFR

Ch. 1 10233
Ch. 5 10036
Ch. 29 8914
201 12261
202 ..... 12261, 12275
204 ..... 12261, 12275, 12286
208 ..... 12261, 12275
209 ..... 12261, 12286
211 12286
212 12275
213 ..... 12286, 12291
214 12291
215 ..... 12261, 12286
216 12261
217 ..... 12275, 12291
219 12286
225 ..... 12261, 12286, 12291
227 ..... 12261, 12286
228 12275
230 ..... 12275, 12286
231 ..... 12261, 12291
235 12291
236 ..... 12275, 12286
237 12286
242 ..... 12028, 12261, 12275, 12286
243 12275
245 12286
252 ..... 12028, 12261, 12275, 12286, 12291
253 12291
270 ..... 12286, 12291
901 12180
902 12180
903 12180
904 12180
905 12180
906 12180
914 12180
915 12180
919 12180
924 12180
928 12180
943 12180
950 12180
952 12180
970 12180
1801 11866
1803 11866
1804 11866
1805 11866
1807 11866
1809 11866
1810 11866
1813 11866
1814 11866
1815 11866
1816 11866
1817 11866
1819 11866
1827 11866
1831 11866
1832 11866
1836 11866
1837 11866
1852 11866
1853 11866

Proposed Rules:

Ch. 5 ..... 9293, 11910
14 11522
31 8752
36 10516
52 ..... 11522, 11523
533 10276
914 12053
933 12053
952 12053
970 12053

49 CFR

1 9036
25 8955
107 10060
172 ..... 11048, 11700
173 ..... 8635, 11048, 11700
174 11048
176 11048
177 11048
178 ..... 11048, 11700
179 ..... 11048, 11700
533 11162
555 10771
571 ..... 10772, 10968, 11506, 12029
574 10772
830 11165
1033 ..... 11366, 11368, 12031
1048 10233
1135 10969
1152 8566
1220 10774

Proposed Rules:

25 8987
172 10088
173 10088
192 10088
195 10088
215 ..... 9293, 9977
531 12344
571 ..... 9294, 11209, 11213
573 12056
830 11214
192 11921
195 11921
1171 ..... 9298, 10822

50 CFR

21 8636
17 ..... 12298, 12302, 12306
91 9279
611 8335
641 11166
651 8735
652 11166
655 ..... 10499, 12032
671 ..... 8348, 10233
672 ..... 10234, 11368
675 11369

Proposed Rules:

17 ..... 9083-9095, 9300, 10276, 12345, 12348
20 10276
26 9300
33 8752
285 11215
661 12059
663 10290
677 8348

List of Public Laws

Note: No public bills which have become law were received by the Office of the Federal Register for inclusion in today's **List of Public Laws.**

Last List March 27, 1985

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